



Foreign
Investors
Council

Improving the Business
Environment in BiH



FOREIGN INVESTORS COUNCIL
WHITE BOOK 2015/16





WHITE BOOK 2015/16

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TABLE OF ACRONYMS

BiH	BiH
BD	District Brcko
BAM	Bosnian Convertible Mark
CEST	Centre for education of judges and prosecutors
DERK	The State Electricity Regulatory Commission
EBRD	European Bank for Reconstruction and Development
EEO scheme	Energy Efficiency Obligations
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
FDI	Foreign Direct Investments
FERK	Regulatory Commission for Energy in Federation of Bosnia and Herzegovina
FIC	Foreign Investors Council
HJPC	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
IMF	International Monetary Fund
ITA	Indirect Taxation Authority of Bosnia and Herzegovina
MOFTER	Ministry of foreign trade and economic relations of Bosnia and Herzegovina
OECD	Organization for economic cooperation and development
PEEREA	The Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects
RERS	Regulatory Commission for Energy in Republika Srpska
RS	Republika Srpska
USAID	United States Agency for International Development
VAT	Value Added Tax
WB	World Bank
WTO	World Trade Organization

FOREWORD

It is my pleasure to have the opportunity to present the 6th edition of the most important written document of the Foreign Investors Council (**FIC**) – the 2015/16 White Book.

Numerous studies and reports of international corporations and organizations show that, overall, the legal and political landscape of Bosnia and Herzegovina (**BiH**) seems very unstable and affects both the outflow and the inflow of future investments. In this regard, our activities over the past 10 years have been focused on advocating and lobbying for the creation of better business conditions for foreign and local investors. The fact that the “White Book”, our most important written document has become part of the reform processes in a number of governmental and non-governmental institutions bears witness to the significance of this document. This is corroborated by the fact that our “White Book”, as an official document, has been subject to parliamentary discussion twice, in the FBiH and in RS.

By its continuous activities to eliminate and identify key barriers to further economic development and boosting of the investments by supporting reforms, the FIC has established itself as the legitimate representative of foreign investors in BiH and the main partner and interlocutor with the government representatives and the coordinator of advocating and initiating changes aimed at the development of the economy and attracting foreign investments.

The FIC, through the White Book, seeks to provide concrete solutions to the legal and procedural obstacles, so that the line ministries and other

competent institutions could refer them to the legislative procedure and thus jointly contribute to the overall business environment in BiH to make it as business-friendly and convenient as possible.

As for the actual endorsement of the recommendation made in the previous White Book edition, I can say that we are satisfied with the previous period and the success achieved in this area. Both Entity governments, as well as the top authorities, supported the reforms proposed in the White Book, and the recommendations were adopted to the extent of about 30%.

The authorities listen to, and consult the voice of investors by including the recommendations given in the White Book in their work programs (at all levels); by institutionally including the representatives of investors in the task forces working on drafting and amending the laws and regulations relevant to the development of the economy.

I am pleased to see that there is the desire for dialogue and that a large portion of recommendations is implemented by both Entity governments. Yet, I believe that the implementation could and should go faster, bolder, with more concrete and decisive measures, which requires political will.

In addition to the issues addressed in the preceding editions, in this White Book edition the FIC working groups addressed some new issues greatly hampering the business of foreign investors in BiH. The 2015/16 White Book edition contains seven chapters covering the following areas: labor law, corporate law, concessions and public-private partnerships, licenses, the rule of law, taxes, energy efficiency and oil products.

Looking at the overall socio-economic situation in BiH, we can say that the past period was marked by the adoption and implementation of the Reform Agenda. Increase in taxes and excise duties, reducing the number of employees in the public sector, structural reforms in labor legislation, strengthening the fiscal system, public administration reform, employment policy in the public sector, improving the business climate and competitiveness, reform of social benefits, restructuring of public enterprises, reform of the health sector and the rule of law are only some of the items included in the Reform Agenda that BiH (state, entities and cantons) should follow in the next few years in order to obtain the support of the International Monetary Fund (*IMF*), the World Bank (*WB*) and the European Union (*EU*).

The FIC commends the efforts of the current governments in the implementation of reforms and the creation of a predictable and stable business environment. Hereby, I would like to stress that we truly appreciate the activities pursued by the Office of the current FBiH Prime Minister, Mr. Fadil Novalić, who, since the beginning of his term, has made a great effort to get the government and the parliament to adopt a large number of specific laws and measures to enable the adoption of the recommendations made by foreign investors and the businesses in general.

The cooperation with the RS authorities is also a continuous process, and the RS Government representatives have always been very open for FIC initiatives; through working groups and individual

meetings with the government authorities, we are pointing to and advocating for amendments to certain legal provisions.

In order to increase the scope of foreign direct investments it is necessary to establish a coordination for developing and implementing an economic reform program that should also include structural reforms, aiming to improve the business environment and create conditions for attracting foreign investments.

Adoption of efficient and cost effective laws aimed at removing regulatory and legislative barriers, primarily by:

- tax reform, which should be aimed towards tax relief and relief of other various fees,
- significantly shortening the deadlines and time required for issuing and obtaining various permits (environmental, construction, etc.),
- adopting framework or harmonized laws relevant to the fields of energy, agriculture,
- reducing bureaucracy and increasing its efficiency and
- facilitating the procedures for the establishment and operation of companies,

will significantly contribute to the economic growth and development of BiH, and make room for new investments, create jobs and ensure legal stability for both domestic and foreign companies.

Branimir Muidža
FIC President

BIH BUSINESS CLIMATE OVERVIEW - 2015/16¹

BiH has committed to ambitious reforms. As noted elsewhere, in July 2015, after lengthy discussions, governments at the state and entity levels adopted the new Reform Agenda. This agenda includes six priority areas of reforms: public finances, taxes and tax sustainability; business climate and competitiveness; labour market; social protection and pensions; the rule of law and good governance; and public administration reform. The Agenda is aligned with the EU's new emphasis on economic governance in BiH and other Western Balkans countries. In April 2015 the Council of the EU decided to unfreeze the long frozen Stabilisation and Association Agreement (**SAA**) which had been signed in 2008, and this entered into force in June 2015. Further in February 2016 BiH submitted an application for membership to the EU, a step which has been widely welcomed both by the EU and BiH's key trading partners.

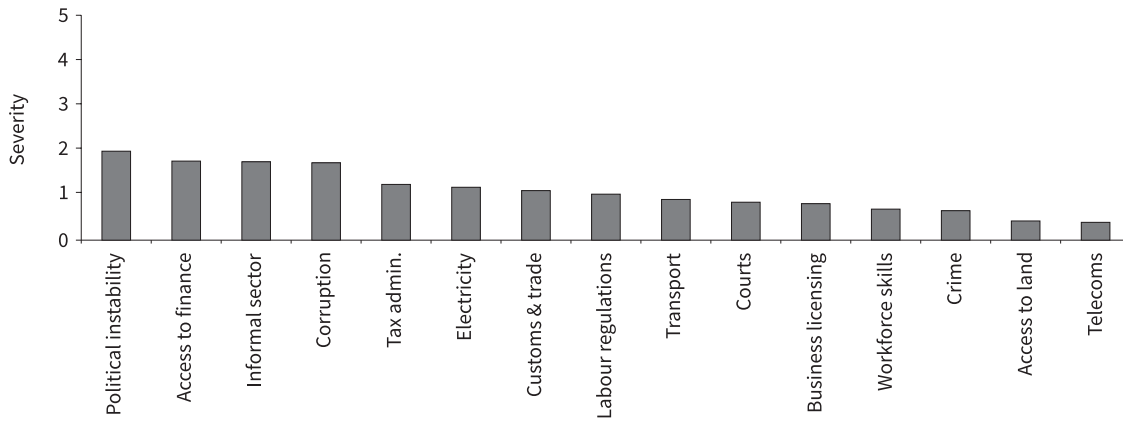
BiH is in the final stages of accession to the World Trade Organisation (**WTO**). The country currently has observer status in the WTO, having applied for membership in 1999 and submitted its memorandum covering all aspects of its trade and legal regime already in 2002.

However, doing business remains difficult. BiH continues to perform poorly on various international rankings both of competitiveness and of the quality of the business environment. In the World Bank Doing Business 2016 report BiH was ranked 79th overall, an improvement of three places from the previous year, though it remains in the so-called 'mediocre middle' overall. The country is ranked worst in the areas of starting a business, obtaining construction permits, getting electricity, and paying taxes.

To gain further insight into the obstacles to doing business in BiH, as perceived by businesses, the EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS) provides useful insights. The BEEPS, carried out every 3-4 years since the first round in 1999, is a face-to-face survey of top managers that looks at various aspects of the business environment through both quantitative and qualitative questions. One of the parts of the survey is an opinion-based question that asks respondents to grade areas according to their perception of how severe an obstacle is. The responses range from "not an obstacle", which can be scored at 0, to "a very severe obstacle", scored 4.

¹ The FIC would like to acknowledge Mr. Ian Brown, head of EBRD office in BiH, for his special contribution for the development of this section.

Chart 1 highlights the main obstacles, ranked by severity, for a hypothetical “average” firm in BiH.



Competition from the informal sector stands out as a key constraint. This is a long-standing problem in the region and efforts to address it have been sporadic at best. The complex political structure is also noted as an important obstacle to doing business in BiH.

Overwhelmingly in the Western Balkan region the main reason behind the constraint of access to finance is the discouraging level of interest rates.

Despite the high number of banks in the region, competition among lenders appears to be limited and SMEs in particular struggle to get the funds they need to grow their businesses. Other reasons that discourage firms from applying for bank credit include: complex procedures, collateral requirements and size of the loan.

FIC ACTIVITIES

Founded in 2006 with the aim to act as a single voice of foreign investors in BiH, the FIC today gathers more than 50 major international and regional companies, the investments of which exceed the amount of BAM 9 billion, employing more than 14,000 workers.

Our mission is to promote good practices of foreign companies from their home countries, and through that prism, offer solutions to overcome the obstacles facing foreign investors, as these obstacles are indeed numerous. In addition, through our activities, we are trying to improve the status of both foreign and domestic investors by getting closer to the global economic trends.

The White Book, as the FIC's most important written document, has established itself as the only publication of its kind in BiH so far. Owing to the active participation of the FIC members in the working groups responsible for developing the White Book and their consultative and working meetings with representatives of relevant ministries, governmental and non-governmental organizations, the issues, views and recommendations of foreign investors in BiH are re-articulated in the new edition of the White Book.

Through the implementation of the recommendations made in the White Book, foreign investors were given an opportunity to influence the amendments to the legislation of vital importance for investments, such as the Law on Foreign Direct Investment, the Labor Law, the Law on Registration of Business Entities, and many regulations and other important documents in the area of tax and fiscal policy.

Also, the ministries have committed to address the recommendations systematically, and each of the competent ministries have been delivering the latest updates on the status of the recommendations in their respective areas on a regular basis. Depending on the area, the effects have been larger or smaller, but certainly today we have the official documents of government offices dealing with our recommendations.

Having developed the Business Barometer publication in December 2015, the FIC continued its strategic activities focused on advocacy on behalf of its members, foreign investors, with the aim of gaining a better insight into the level of satisfaction with BiH business environment, obstacles that companies face in their business, their plans to reinvest and create more opportunities for new employment in BiH. The information collected is used to improve the overall business environment, regulatory framework and the efficiency of administration at all levels in order to attract new investments.

The FIC, in cooperation with others, such as foreign embassies present in BiH, EU Delegation representatives in BiH, and similar business associations with an aim identical or similar to its own, makes every effort to disburden the economy and by doing so, facilitate the business of the companies.

The FIC strives to make BiH a country attractive for potential investors, to encourage reinvestment and boost employment.

Thus, through our media communication channels, the Council for the cooperation with foreign embassies, as well as workshops and educational seminars with companies and institutions, we are pointing out the necessity of cooperation among all of us.

By sharing their positive stories and good results in BiH, our member companies can produce a very positive impact promoting foreign investments and attracting other foreign investors.

WHITE BOOK IMPLEMENTATION OF RECOMMENDATIONS / COOPERATION WITH THE BIH AUTHORITIES

Since its inception, the FIC has launched an initiative to institute a legislative and institutional framework in order to improve the investment climate in BiH and establish dialogue and cooperation with the authorities in BiH, in all areas of common interest, through the process of drafting and adopting the recommendations contained in our “White book”.

This initiative is part of a broader mission that the FIC has been implementing for the past 10 years, together with many other partners, to build institutional dialogue between non-governmental and governmental sector in BiH. As a result of these activities over the past ten years, the Memorandum of Understanding between the FIC and entity governments has been signed, and a close cooperation established with the Council of Ministers of BiH, the FBiH Parliament, and other state and entity agencies and institutions.

We are particularly proud of the daily expansion of the FIC network that, in addition to state and entity institutions, includes international organizations, foreign embassies in BiH, foreign chambers of commerce, regional FIC offices and other non-governmental organizations and associations having the same or similar goals to our own and that is used for exchanging knowledge and experiences and creating new ideas.

A platform for this type of cooperation is this “White Book”, which came as a result of the efforts and expertise of our expert teams/working groups over the past year who have been working on the development of this unique document which contains specific recommendations for improving the business and investment climate in BiH.

Owing to the FIC’s efforts and activities, the authorities in BiH have recognized the benefits of

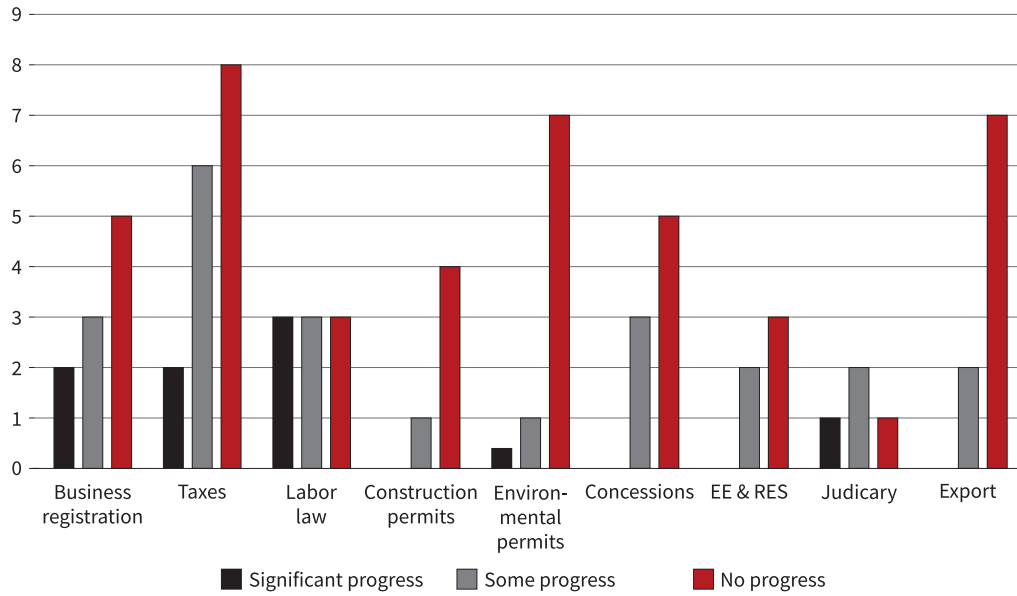
having such a business association that can use its knowledge and independent expertise to make a significant contribution to the decision-making process led by the governments at all levels - local, entity and state. In addition, the FIC has given a special contribution to public policy making over the past 10 years as it enjoys a special of trust among its members and partners, as well as in society at large, which allows us to express the concerns of our members, represent their interests and provide them with an opportunity to participate in decision-making on important issues.

We are particularly pleased to see that there is a desire for dialogue, and that a considerable part of the recommendations from our White Book has been implemented by both Entity governments, as most of them coincide with the proclaimed goals of the recently adopted Reform Agenda. The key objectives of the reform, such as the rule of law, reducing the tax burden on labor and investment, creating a better business environment and a commitment to further growth and prosperity that must be based on attracting investments, certainly sound encouraging, but it is also necessary to ensure that the reforms and changes are indeed implemented much faster and more efficiently, and in accordance with the objectives.

FIC will, as always before, strive to provide support to BiH institutions and the international community, in order to improve the business environment. By implementing the recommendations given in the “White Book”, and in the wider context, by implementing the Reform Agenda, we will unquestionably create an environment where our citizens will be safer and happier, and where foreign investors will come by themselves and invest more. We are pleased to see that there is a serious commitment by the BiH governments to move

decisively towards the changes, but it is important not to make mistakes on that road.

The analysis below shows the achieved level of implementation of recommendations provided in the last edition of the White Book for 2012/13.



CHAPTERS

CORPORATE LAW

INTRODUCTION

Significant progress has been made in the area of business registration in BiH since the last edition of the White Book in 2013, and it has been a great pleasure to see that some of the most important recommendations have been implemented meanwhile. Here, we, in particular, highlight the following: elimination of barriers to foreign investment in the media, facilitating the registration court access to other judicial registers electronically, and certain improvement in the organization of registration courts. However, despite the progress made, the business registration procedure in BiH is still relatively complex and time-consuming, while the court practice (and the practice of registration judges within a single court) is inconsistent. We believe that this is caused by different interpretations of the regulations by the courts and their practices, rather than by inadequate legislation. Accordingly, the recommendations relating to the registration of businesses mostly refer to improving court practices, rather than changes in the regulations governing this procedure.

Furthermore, given the fact that the legal framework conducive for foreign investments entails the ease of business registration, but also allows free management and disposal of invested capital, in this edition of the White Book, we have decided to address some of the issues that foreign investors face in this regard. In the past year, institutions in

BiH have instigated the legal reform in the areas of corporate law and adopted several very important laws governing the business, operations and management of companies, wherein we highlight the new Law on Companies in the FBiH, the new FBiH Takeover Law and the new RS Bankruptcy Law. However, despite the undertaken legal reforms in the areas of corporate law we believe that there is a need for more detailed and clearer regulations governing the business, operations and management of companies, in order to avoid practical problems and uncertainties in respect of their application.

Apart from registration and management of businesses, free disposal of foreign capital also entails a quick and easy way to complete an investment and liquidate businesses. In this way, foreign investors are provided with quick and easy movement of capital and its directing towards more profitable and successful projects. In BiH, and especially in the FBiH, the regulations governing the procedure of company liquidation is fragmented, deficient and contradictory, while the process, as such, is time consuming, expensive and complicated. Given the above, in this edition of the White Book, special focus is laid on the recommendations to simplify and speed up the company liquidation proceedings.

BUSINESS REGISTRATION

UNCLEAR DEFINITION OF THE CASES THAT MAY RESULT IN A SUSPENSION OF REGISTRATION PROCEDURE*

FBiH and RS: OPEN ISSUE

The FBiH Law on Registration of Business Entities (“Official Gazette of BiH”, Nos. 27/05, 68/05, 43/09, and 63/14), Article 55, paragraphs 2 and 3, and the RS Law on Registration of Business Entities (“Official Gazette of RS”, No. 67/13), Article 13, paragraph 5 and 6, provide that, if a competent registration court suspects the existence of a fact that is critical for deciding whether the registration application is in compliance with this or other laws or not, and where the establishment of such a fact falls under the jurisdiction of other court, the registration procedure will be suspended pending the final decision of that other court. Taking into account the time needed for the completion of the civil procedure, an unfounded suspension of the registration procedure may cause irreparable losses and costs for clients, and hinder daily business operations of the company.

FBiH and RS: RECOMMENDATION

Since the FBiH Law on Registration of Business Entities and the RS Law on Registration of Business Entities do not specify the facts that are decisive for the suspension of registration procedure before a court registry, this open issue could be solved by introducing a precise definition of the reasons for which the registration procedure may be suspended, which would provide greater legal certainty.

APPLICATION OF THE PRINCIPLE OF PUBLIC ACCESS TO COURT RECORDS*

FBiH and RS: OPEN ISSUE

In the current year, there has been an improvement in terms of the availability of information maintained by the commercial registries. The websites collating information about companies at the level of each BiH entity certainly make it easier to access the necessary information. Unfor-

tunately, the system is still not fully up to date with the information from the entire BiH, because of the separated business registers, and therefore, its reliability is questionable.

In accordance with the principle of public access to the court records, which is applied in BiH, the information maintained by the court registries are public. Any person without proving his/her legal interest has the right to inspect the information contained therein. Establishing an electronic court register of business enterprises registered in the FBiH and BD has made significant progress in this area. Searching through this electronic database is free of charge and it is done by the name of business entity or by its ID number.

However, the electronic register has not been fully aligned with the court register yet, and therefore, in practice, reliable information on business entities can be obtained exclusively from the competent courts. In addition, an excerpt from the electronic register of business entities is not a public document. Furthermore, to access case files maintained by the competent courts or obtain certified transcripts or copies thereof, some courts require a proof of legal interest (or stating the purpose of accessing the files), which is not in accordance with the law.

FBiH and RS: RECOMMENDATION

The improvement of the electronic registry would aim to help performing the entire data search on business entities electronically. This would save time and money one wastes while seeking for the information from the court registries. The electronic register of business entities should include all important information related to the businesses, as well as the steps that need to be taken in the registration procedure, the amount of court fees and other useful information. It should be possible to submit requests for extracts from the register electronically and to receive such extracts in electronic form with the force of public documents.

FAILURE TO COMPLY WITH LEGAL TIME-FRAMES AND UNNECESSARY DELAYS IN THE REGISTRATION PROCEDURE *

FBiH and RS: OPEN ISSUE

The FBiH Law on Registration of Business Entities and the RS Law on Registration of Business Enti-

* This issue have been identified at the White Book edition 2012/2013

ties lay down urgency and uniformity of the procedure for registering business entities in the register, as well as its applicability to all businesses established in BiH, either by domestic or foreign legal entities and individuals. These laws stipulate the obligation of competent registration courts in the FBiH to issue a decision on registration within 5 days after application was duly filed, or within two days, in the case of RS. However, in practice, these statutory deadlines are disregarded and the procedure for registering or amending information in the registry takes longer than the prescribed timeframes.

One of the key reasons for delays in the procedures of registering or amending information in the registry is the principle that the case assigned to a registration judge, in the event of his/her prolonged absence (due to illness, vacation, seminars, training, etc.), cannot be automatically reassigned to another judge. The case may be reassigned to another judge only upon written request submitted by the applicant to the Court Administration, which then makes a decision on whether the request will be approved and the case reassigned to another judge. This procedure only causes even longer delays in the procedure, which is most certainly already overdue due to the absence of the judge.

FBiH and RS: RECOMMENDATION

Courts' operation needs to be organized in a way that would provide continuous registration services. In the event that the registration judge to whom the case was originally assigned is absent for more than three days, it is necessary to introduce a mechanism that allows forwarding the case automatically to another judge, in order to complete the registration procedure within the statutory timeframes.

CONSULTATION APPOINTMENTS WITH REGISTRATION JUDGES*

FBiH and RS: OPEN ISSUE

Currently, there is no possibility of scheduling a formal consultation appointment with registration judges, even though this is often the simplest and the fastest way of providing clarifications and additional information necessary for fast and efficient completion of the registration procedure.

Consultation appointments with registration judges are common practice in most courts. However, many registration judges do not allow consultations.

FBiH and RS: RECOMMENDATION

It is necessary to introduce a requirement for all court registration departments and judges in BiH to schedule consultation appointments at the request of the parties.

PROCEDURE FOR REGISTRATION OF BUSINESS ENTITIES IN CASE THAT THE FOUNDER IS A FOREIGN PERSON

RS: OPEN ISSUE

The latest amendments to the RS Law on Registration of Business Entities RS ("Official Gazette of RS" no. 15/16), Article 32, paragraph 1, items a), b) and v) prescribe a set of mandatory documents that are to be filed when establishing a business entity or modifying information relevant for its legal transactions. Item v) of the said Article stipulates the obligation to file a BiH residence permit if the person authorized to represent the business entity is a foreign person. Bearing in mind that the residence permit for foreign entities conducting business activities in BiH is issued on the basis of work permit, it is practically impossible for foreigners to set up a company on the territory of RS without appointing a local citizen or a person holding the residence permit as an authorized representative of such company. It should be noted that obtaining work permit requires the employer to file an application with the competent authorities, and given that the employer is yet to be established by the said foreign entity, we arrive at large discrepancies and complications.

RS: RECOMMENDATION

Delete provisions set out in Article 32, paragraph 1, item v) of the RS Law on Registration of Business Entities RS, which provides for the mandatory filing of the BiH residence permit in case that the person authorized to represent the company is a foreign person, in the procedure for establishing a business.

INABILITY TO REGISTER BUSINESS UNITS/SUBSIDIARIES OF FOREIGN LEGAL ENTITIES

FBiH and RS: OPEN ISSUE

Foreign legal entities are allowed to establish their business units/subsidiaries in FBiH and RS. However, although the establishment of foreign subsidiaries in RS has already materialized resulting in the duly registered foreign subsidiaries in practice, the latest amendments to the RS Law on Registration of Business Entities RS (“Official Gazette of RS” no. 15/16) made this procedure complicated by introducing the requirement that the person authorized to represent the company must have a residence permit in BiH. In FBiH, the establishment of foreign subsidiaries is still unfeasible even though there is a legal framework. Namely, the Law on Companies (“Official Gazette of FBiH” no. 81/15) and the Law on Registration of Business Entities in the FBiH contain provisions which allow foreign entities to establish subsidiaries in the territory of FBiH, however, in practice this is not feasible due to the lack of adequate infrastructure (e.g. Software system support, application forms for registration, etc.).

FBiH and RS: RECOMMENDATION

In the FBiH: introduce the necessary software system that would allow the registration of foreign subsidiaries, and adopt the form for submitting applications for registration. In RS: eradicate the requirement for obtaining a BiH residence permit prior to registering a subsidiary/business unit.

REGISTERING STATUTORY AMENDMENTS IMPORTANT FOR LEGAL TRANSACTIONS

FBiH: OPEN ISSUE

Articles of Association/Statute, as a mandatory document of any company, contain all the information relevant for legal transactions and details the work and operations of the company. Any changes in the company have to be specified in its Articles of Association. However, in practice, courts often require the company to register any changes in the facts relevant for its legal transactions in the founding documents in addition to specifying such changes in the company’s

Articles of Association. This can be extremely difficult in the case of multi-member companies in a situation where the members have defined the required majority for the adoption of certain decisions in the Articles of Association, while the Memorandum of Association defines that any amendments to the Memorandum of Association will be made in the same way as it was adopted, i.e. by consent of all members. Therefore, a change to the facts relevant for the company’s legal transaction that requires a certain majority under the Articles of Association still requires the approval of all company members in order to be registered in the founding documents of the company. In addition, by this practice, the registration courts also expose businesses to unnecessary costs, given that the company’s founding documents and Articles of Associations must be notarized.

FBiH: RECOMMENDATION

Allow businesses to register changes relevant for their legal transactions only by making amendments to their Articles of Association/Statute and harmonize the practice of the registration courts.

LIQUIDATION OF COMPANIES

FRAGMENTED, INCOMPLETE AND CONTRADICTORY LEGISLATION GOVERNING THE LIQUIDATION PROCEEDINGS

FBiH: OPEN ISSUE

The liquidation proceedings is governed by the Law on Liquidation (“Official Gazette of FBiH” no. 29/03) and the Law on Companies. Certain issues that are not covered by the aforementioned laws are, in practice, governed by the Law on Bankruptcy Proceedings *mutatis mutandis*, even though the legal basis of such a subsidiary application of the Law on Bankruptcy Proceedings is not adequately regulated. However, these regulations are often contradictory, and certain issues are regulated in different ways, which in practice leads to legal uncertainty and inconsistent practice of courts and judges in conducting liquidation proceedings. For example, the Law on Liquidation Proceedings prescribes the obligation of the liquidator to publish the instigation of liquidation proceedings in the Official Gazette, while the Law on

Companies requires a public notice on the instigation of liquidation proceedings to be published in daily newspapers, at appropriate intervals. As a result of these inconsistent regulations, some courts and judges arbitrarily assess whether the instigation of a specific liquidation proceedings should be published only in the Official Gazette or possibly in newspapers, or both. Furthermore, the subsidiary application of the Law on Bankruptcy Proceedings on the issues that are not regulated by the Law on Liquidation or the Law on Companies often results in the imposition of unnecessary and inappropriate duties the liquidator in the liquidation proceedings, which ultimately results in a longer procedure and higher costs. For example, in practice – modeled after bankruptcy proceedings - all existing bank accounts of the company must be closed and a single account opened specially for the purposes of the liquidation proceedings, which entails costs of opening and closing the said accounts, as well as the obligation to inform the debtors about the change of account. In practice, the latter one can be extremely problematic in case that the company has a large number of clients/debtors that need to be informed thereof, or in case of customers who are accustomed to a certain payment procedure.

FBiH: RECOMMENDATION

Adopt a new law on liquidation to regulate the liquidation proceedings in a unique and detailed way, and either repeal the provisions of the Law on Companies governing this issue or harmonize the new law with it so that they complement each other.

UNCLEAR POINT IN TIME AS OF WHICH LIQUIDATION PROCEEDING IS TO BE CONSIDERED INSTIGATED

FBiH: OPEN ISSUE

In the liquidation proceedings, the point in time when the liquidation is instigated is an important issue because the law provides for giving rise to certain obligations and calculating different deadlines therefrom. However, none of the regulations governing the liquidation proceedings specifically defines when the liquidation procedure is to be considered instigated: whether it is from the moment when the court renders the decision, or

from the moment making an annotation in the commercial registry, or from the moment of publishing the decision in Official Gazette, or from some other moment.

FBiH: RECOMMENDATION

The Law should specify the moment when the liquidation proceedings is to be considered instigated. In case of implementation of the previous recommendation, which envisages the adoption of a new law to regulate the liquidation proceedings in a unique and detailed way, this should be done in the new law; otherwise it is necessary to adopt amendments to the Law on Liquidation to define the point in time when the liquidation proceedings is to be considered instigated.

RESPONSIBILITY OF THE COMPANY'S MANAGEMENT BOARD MEMBERS DISMISSED DURING THE LIQUIDATION PROCEEDINGS

FBiH: OPEN ISSUE

According to the Law on Companies and the Law on Liquidation Proceedings, the dismissed board members are not required to cooperate with the liquidator or support him/her in case that the company's liquidator is appointed by a person who is not a member of the management board. In addition, the aforementioned law do not provide for the responsibility of the dismissed management board for the liabilities incurred during the liquidation proceedings as a result of their actions or failures to act prior to the dismissal or as a result of their failure to deliver complete information or documentation to the company's liquidator.

FBiH: RECOMMENDATION

The law should impose a legal requirement on the dismissed company's management board to provide the necessary cooperation and support to the company's liquidator pending the completion of the liquidation proceedings. In addition, the law should stipulate that the dismissed management board should be responsible for damages or liabilities of the company or the liquidator arising from its actions or failures to act prior to the dismissal, or from a failure to deliver complete information or documentation to the company's liquidator.

HARMONIZATION WITH THE NEW LAW ON BANKRUPTCY

RS: OPEN ISSUE

In 2016, the RS adopted new Law on Bankruptcy (“Official Gazette of RS” no. 16/16), which repealed the former Law on Bankruptcy. As the Law on Liquidation makes certain references to the *mutatis mutandis* application of the provisions set out in the Law on Bankruptcy, this might create ambiguities and confusion in their implementation, because the provisions of the aforementioned law are no longer in effect.

RS: RECOMMENDATION

Amend the Law on Liquidation by prescribing *mutatis mutandis* application of the Law on Bankruptcy in Article 16 or to provide for *mutatis mutandis* application of the applicable regulations governing the bankruptcy proceedings, in order to avoid any future confusion.

MISCELLANEOUS

PLEDGE ON SHARES IN A LIMITED LIABILITY COMPANY (LTD.)*

FBiH and RS: OPEN ISSUE

The Framework Law on Pledges adopted at the level of BiH governs the issue of establishing the pledge. The law is primarily related to the pledge on property that is considered movable property, but the legal practitioners and theorists have adopted the view that this law also applies to the establishment of a pledge on shares in companies with limited liability. The establishment (and subsequent search) of pledges in the BiH Pledge Registry requires, among other things, entering a 13-dig tax number held by the pledgor, as well as the pledgor’s address in BiH. Foreign entities that do not have the 13-digit tax number and address in BiH have no possibility of registering a pledge. This fact practically prevents foreign entities to establish a pledge on shares in limited liability companies registered in BiH, given that the registration in the BiH Pledge Registry is one of the preconditions for the establishment of pledge.

Furthermore, given that the registration courts keep records of shares in limited liability compa-

nies, it would be logical and practical if the information related to encumbrances on the shares in these companies (e.g. pledges) would also be registered and kept in the commercial registries. Although there is no legal basis for such action, there is no obstacle either, as no legal provision prohibits this type of registration. However, in practice, courts usually reject requests for registration of encumbrances on shares. This results in less legal certainty given that the potential buyers of shares cannot be adequately informed by examining the records of the possible encumbrances on shares.

The above issues are not present in relation to the establishment and registration of pledges on shares at the entity level, as the entity securities registries perform registration of pledges on shares. However, the problem in relation to the shares is that third parties are deprived of the possibility to obtain relevant information related to the pledges on shares (such information can only be obtained by the owner of shares), which is contrary to the purpose of the pledge, which, among other things, entails public access to the information on pledges.

FBiH and RS: RECOMMENDATION

It is necessary to amend the BiH Law on Pledges (and the associated secondary legislation, primarily the Rulebook on Pledges) by including pledges on shares owned by foreign entities, and to make the corresponding changes in the system of the BiH Pledge Registry so as to allow the registration of such pledges in practice. Furthermore, it is necessary to amend the entity laws on registration of business entities in a way that they specifically prescribe the procedure for registration of pledge on shares, which would be conducted by the registration courts. The amendments should provide for the obligation of the pledgor, whose shares have been pledged, to register the pledge in the registration court, and the penalties for failure to meet this obligation.

The relevant regulations governing the operations of the securities registries should provide for the possibility to access the information related to the pledges on shares by any third party, without any restrictions that are currently in place (a registry excerpt that contains this information is currently obtainable only by shareholder who has pledged his/her share).

SOFTWARE PLATFORM DEFICIENCIES

One of the main practical issues potential creditors face in BiH is the very limited options for searching the Pledge Register database. Existing pledges can be identified based on only three criteria: (i) the pledge registration number, (ii) the machinery serial number, if the collateral has one and (iii) the tax identification number (or personal identification number) of the debtor. The lack of a search option by keywords is often felt and impede appropriate searching of database, in order to confirm whether the pledge over the assets with the priority rights is registered.

Although foreign pledgers have been regularly registered with the Pledge Register since 2004, this option was eliminated in 2013 when Pledge Register software was overhauled. At the moment, it does not technically allow pledge registration where the pledgor is a foreign entity – it is impossible to enter any country of the pledgor's origin other than BiH. Foreign natural or legal persons may own and freely dispose of their assets in BiH, and thus may pledge them in the same manner as BiH persons. But due to the technical features of the Pledge Register software, pledge registrations where the pledgor is a foreign entity are not feasible in BiH.

FBiH and RS: RECOMENDATION

It is necessary to eliminate software platform deficiencies of the Pledge Register, in order to allow: (i) pledge registration where the pledgor could be a foreign entity; and (ii) searching the Pledge Register database by using search option by keywords.

THE INTRODUCTION OF MECHANISM OF DEBT TO EQUITY SWAP

THE MECHANISM OF DEBT TO EQUITY SWAP

The existing Company Law in FBiH does not regulate the mechanism of debt to equity swap. Namely, the Article 130 paragraph 1 point d) of the aforementioned law foresees the possibility of share capital increase *“by converting creditors' receivables in the share capital of the debtor in accordance with the Law on Financial Consolidation of Business Companies in FBiH”*. According to the above mentioned provision, the conversion of creditors' receivables into share capital is possible

only for debts incurred no later than 30 September 2013, on the basis of health insurance contribution, unemployment insurance, taxes, debts to employees, and delivered water, electricity, gas and other utilities, as provided by the Law on Financial Consolidation of Business Companies in FBiH.

In the RS Company Law, the question of debt to equity swap in the open joint-stock company is possible only in terms of converting the tax debt and exchangeable bonds into shares and by share subscription based on the rights of warrant holders to such subscription (conditional increase). On the other hand, the possibility of the debt to equity swap is possible in case of swap of creditors receivables, as well as in the case of swap of the tax debt both with closed joint-stock companies and limited liability companies. The increase of the share capital either by one or both of the these methods, is limited to the amount of half of the share capital existing at the moment of decision-making by the shareholder's meeting of the members of limited liability company within one year, or at the moment of initiating the procedure of settlement of tax debt by its conversion into shares.

In the Company Law of BD, the question of debt to equity swap is not at all provided as a possibility, and in accordance with that, share capital may increase *“only by issuing new shares.”*

Debt to equity swap mechanism is supposed to enable further consolidation of companies, considering the illiquidity and a large number of accumulated financial problems of companies in BiH. By introducing this model, creditors would have possibility to enforce their receivables from company swapping it for the capital of the company. This way of settling debts would not represent an additional financial burden for the indicated companies, which is particularly important. Therefore, the possibility of debt to equity swap represents a worthy solution for settlement of debts of companies because in this way, among other things, the company repays their debts without compromising its liquidity. This way, even the creditors would be given the discretion to initiate the process of swapping their receivables into capital, which would also provide an effective system for protecting of their interests.

FBiH, RS and BD: RECOMMENDATION

It is necessary to introduce a model of debt to equity swap into Company Law of the FBiH, without limiting its application to aforementioned receivables set forth in the Law on Financial Consolidation of Business Companies in FBiH, while the Company Law of BD needs to be amended in order to provide additional possibilities of increasing share capital other than by issuing new shares. Company Law of RS should be amended in a manner to enable debt to equity swaps for all forms of companies. By doing so legal framework would be set up to enable financial consolidation of companies without compromising their liquidity.

MUTATIS MUTANDIS APPLICATION OF THE PROVISIONS ON JOINT-STOCK COMPANIES TO LIMITED LIABILITY COMPANIES

FBiH, RS and BD: OPEN ISSUE

FINANCING THE ACQUISITION OF OWN SHARES

The current FBiH Law on Companies contains only one provision in Article 225 governing the ban on financing the acquisition of shares, forbidding joint stock companies to provide and guarantee for advance payments, loans and credits for the purpose of selling their own shares. This ban is not explicitly provided for limited liability companies, but by the analogous application of the provisions of this law on limited liability companies, it can be concluded that the ban also applies to this type of companies.

The situation is similar in the BD.

The RS Law on Companies defines this matter more precisely for both joint stock companies and limited liability companies. The imprecision in the definition of the ban on financing the acquisition of shares, particularly in the FBiH, creates legal uncertainty as to the admissibility of undertaking certain legal transactions, particularly when acquiring/purchasing companies.

The financing of share acquisition should be precisely defined in the FBiH Law on Companies and the BD Law on Companies by providing a clear and precise formulation of whether the ban applies

only to joint stock companies, or also to limited liability companies, as appropriate.

In addition to advance payments, loans and credits, it is necessary to define the concept of providing “security” to third parties for the acquisition of shares in the company. Also, a clear formulation of what is meant by direct and what by indirect financing, would further contribute to the creation of legal certainty.

RESERVE FUND

The provisions of the FBiH Law on Companies governing the obligations imposed on joint stock companies, include, inter alia, the obligation to establish a reserve fund. More specifically, the joint stock company is required to have a reserve fund, which is created from profit and other sources in accordance with this Law and other regulations. The reserve fund must account for at least 25% of the company’s capital stock. This provision that stipulates the obligation to establish a reserve fund is not contained in the sections of the FBiH Law on Companies stipulating the obligations of limited liability companies. However, taking into account the provision which states that the provisions referring to joint stock companies apply to limited liability companies *mutatis mutandis*, unless explicitly stated otherwise in the special provisions of the law, we can conclude that the obligation to establish a reserve fund also applies to limited liability companies.

This is also the case in the RS Law on Companies, provided that the statutory reserves to be set aside amount to 5% of the total annual profits earned in the current year, until they, together with capital reserves, reach at least 10% of the company’s share capital.

FBiH, RS i BD: RECOMMENDATION

The Laws on Companies of FBiH and RS, respectively should clearly define the obligations of different types of companies without making reference to the *mutatis mutandis* application of provisions governing the obligations of one specific type of companies. This would create legal certainty and prevent differing interpretations of applicability of the provisions related to one type of companies to another type of companies.

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	INSTITUTION
REGISTRATION OF BUSINESSES		
FBiH and RS Unclear definition of the cases that may result in a suspension of registration procedure	Introduce a precise definition of the reasons for which the registration procedure may be suspended in the entity laws on business registration.	<ul style="list-style-type: none"> • FBiH Government • RS Government • FBiH Parliament • RS National Assembly
FBiH and RS Application of the principle of public access to court records	The entire data search on business entities should be performed electronically. The electronic register of business entities should include all important information related to the businesses, as well as the steps that need to be taken in the registration procedure, the amount of court fees and other useful information. It should be possible to submit requests for extracts from the register electronically and to receive such extracts in electronic form with the force of public documents.	<ul style="list-style-type: none"> • FBiH Ministry of Justice • RS Ministry of Justice • Competent registration courts
FBiH and RS Failure to comply with legal timeframes and unnecessary delays in the registration procedure	Ensure continuous registration services by the courts. In the event that the registration judge to whom the case was originally assigned is absent for more than three days, it is necessary to introduce a mechanism that allows forwarding the case automatically to another judge, in order to complete the registration procedure within the statutory timeframes.	<ul style="list-style-type: none"> • Competent registration courts
FBiH and RS Consultation appointments with registration judges	It is necessary to introduce a requirement for all court registration departments and judges in BiH to schedule consultation appointments at the request of the parties.	<ul style="list-style-type: none"> • Competent registration courts
RS Procedure for registration of business entities in case that the founder is a foreign person	Eradicate the requirement to file the BiH residence permit in case that the person authorized to represent the company is a foreign person.	<ul style="list-style-type: none"> • RS Government • RS National Assembly
FBiH and RS Inability to register business units/subsidiaries of foreign legal entities in FBiH	In the FBiH introduce the necessary software system that would allow the registration of foreign subsidiaries, and adopt the form for submitting applications for registration. In the RS abolish condition of obtaining prior residence permit in BiH during the registration of business units when the founder is a foreign person.	<ul style="list-style-type: none"> • FBiH Ministry of Justice • RS Government • RS National Assembly
FBiH Registering statutory amendments important for legal transactions	It is necessary to harmonize the practice of the registration courts in terms of allowing businesses to register changes relevant for their legal transactions only by making amendments to their Articles of Association/Statute.	<ul style="list-style-type: none"> • Competent registration courts
LIQUIDATION OF COMPANIES		
FBiH Fragmented, incomplete and contradictory legislation governing the liquidation proceedings	Adopt a new Law on liquidation to regulate the liquidation proceedings in a unique and detailed way, and either repeal the provisions of the Law on Companies governing this issue or harmonize the new law with it so that they complement each other.	<ul style="list-style-type: none"> • FBiH Government • FBiH Parliament

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<p>FBiH</p> <p>Unclear point in time as of which liquidation procedure is to be considered instigated</p>	<p>The Law on liquidation should specify the moment when the liquidation proceedings is to be considered instigated.</p>	<ul style="list-style-type: none"> • FBiH Government • FBiH Parliament
<p>FBH</p> <p>Responsibility of the company's management board members dismissed during the liquidation proceedings</p>	<p>The law should impose a legal requirement on the dismissed company's management board to provide the necessary cooperation and support to the company's liquidator pending the completion of the liquidation procedure.</p> <p>The law should stipulate that the dismissed management board should be responsible for damages or liabilities of the company or the liquidator arising from its actions or failures to act prior to the dismissal.</p>	<ul style="list-style-type: none"> • FBiH Government • FBiH Parliament
<p>RS</p> <p>Law on Liquidation makes certain references to the <i>mutatis mutandis</i> application of the provisions set out in the former Law on Bankruptcy which was repealed</p>	<p>Amend the Law on Liquidation by prescribing <i>mutatis mutandis</i> application of the Law on Bankruptcy in Article 16 or to provide for <i>mutatis mutandis</i> application of the applicable regulations governing the bankruptcy proceedings, in order to avoid any future confusion.</p>	<ul style="list-style-type: none"> • RS Government • RS National Assembly
MISCELLANEOUS		
<p>FBiH and RS</p> <p>Pledge on shares in a limited liability company (Ltd.) and the access to information on pledge of shares</p>	<ul style="list-style-type: none"> • It is necessary to amend the BiH Law on Pledges (and the associated secondary legislation, primarily the Rulebook on Pledges) by including pledges on shares owned by foreign entities, and to make the corresponding changes in the system of the BiH Pledge Registry so as to allow the registration of such pledges in practice. • Amend the entity laws on registration of business entities in a way that they specifically prescribe the procedure for registration of pledge on shares, which would be conducted by the registration courts. • The relevant entity regulations governing the operations of the securities registries should provide for the possibility to access the information related to the pledges on shares by any third party, without any restrictions. 	<ul style="list-style-type: none"> • FBiH Ministry of Justice • RS Ministry of Justice • FBiH Government • RS Government • FBiH Parliament • RS National Assembly
<p>FBiH, RS and BD</p> <p><i>Mutatis mutandis</i> application of the provisions on joint-stock companies to limited liability companies</p> <p>a. Financing the acquisition of own shares</p> <p>b. Reserve fund</p>	<p>The Laws on Companies of FBiH and RS, respectively should clearly define the obligations of different types of companies without making reference to the <i>mutatis mutandis</i> application of provisions governing the obligations of one specific type of companies. This would create legal certainty and prevent differing interpretations of applicability of the provisions related to one type of companies to another type of companies.</p>	<ul style="list-style-type: none"> • FBiH Government • RS Government • BD Government • FBiH Parliament • RS National Assembly • BD Assembly
<p>FBiH, RS and BD</p> <p>Introduction of debt to equity swap mechanism</p>	<p>It is necessary to introduce a model of debt to equity swap into Company Law of the FBiH, without limiting its application to aforementioned receivables set forth in the Law on Financial Consolidation of Business Companies in FBiH</p> <p>Company Law of BD needs to be amended in order to provide additional possibilities of increasing share capital other than by issuing new shares.</p> <p>Company Law of RS should be amended in a manner to enable debt to equity swaps for all forms of companies.</p>	<ul style="list-style-type: none"> • FBiH Government • RS Government • BD Government • FBiH Parliament • RS National Assembly • BD Assembly

LABOR LAW

INTRODUCTION

In 2015 and 2016, significant progress has been made in labor legislation by adopting new entity Labor Laws. These are regulations that are of great socio-economic sensitivity and it is understandable that their adoption is the result of compromise between the economic and social partners. Some of these compromises have led to the adoption of legislative provisions that are insufficiently clear, which needs to be addressed in the future. On the other hand, certain issues have been clarified and better regulated, which is an improvement that needs to be acclaimed.

The adoption of the Labor Laws certainly represents only the first step in the reform of labor legislation. Adoption of the general collective agreements is to come, as well as the collective agreements for particular sectors and industries. The process of negotiations related to their conclusion can be used to resolve ambiguities in the adopted laws and improve the resolution of certain issues by consensus of interested parties. In this regard, below are specific issues and questions that need to be addressed in order to improve the labor law legal framework.

If BiH wants to keep the existing investors and attract new ones it must clearly demonstrate that it has a stable and secure legal system that investors can rely on and operate efficiently. Adoption of clear regulations, without room for different interpretations, is an absolute must.

In the forthcoming period, it is necessary to urgently adopt collective agreements, and clarify ambiguities that have arisen from the latest Labor Laws. The next step is to harmonize the regulations at the state level. Expanding business throughout the country should be facilitated for the investors, and the presence of different laws governing the same area certainly is not a motivation, but rather a complication that the investors do not want to encounter. It is clear that the competences are defined by the Constitution; however, fostering further investments in BiH requires maximum efforts aimed at harmonizing the entity-level legislation. Investors want to define and implement their business policies, including

their human resources policies, and they do not want to have different approaches applied in the two BiH entities.

We urge the legislative authorities at all levels of BiH government to take a serious and professional approach when adopting the regulations and to keep in mind that the problem of unsafe and unclear regulations is the problem of employers only in the first step, and in the long run, it is a problem of the state. In fact, nowadays it is easier for investors to transfer their capital to any part of the world than it is for a country with a complex structure and a small market, to attract investors, particularly foreign investors. BiH indispensably needs foreign investors. The legislators must be aware of this and prepare a good foundation and infrastructure for business.

COMPENSATIONS FOR WORKERS ON SICK LEAVE AND REFUND OF THOSE COMPENSATIONS TO EMPLOYERS BY THE HEALTH INSURANCE FUNDS*

FBiH, RS and BD: OPEN ISSUE

Health Insurance laws in the entities and the BD differ in the amount of the compensation the employer needs to pay workers who are on sick leave, as well as on the periods during which those compensations are the employer's burden. The application of mentioned laws is also different between the entities and the BD, as well as between different cantons within the FBiH. As far as the refund of the paid compensations during sick leave is concerned, the applications differ in terms of which compensations are refunded by the Health Insurance Funds.

In FBiH (in most cantons) and the BD, the employer is obliged to pay compensations to the workers on sick leave during the whole period of sick leave; up to 42 days, the compensations are his burden, whereas over 42 days he can get refund from the relevant Health Insurance Fund. The minimal amount of that compensation is 80% of that particular worker's salary. For sick leave longer than 42 days, the employer also pays the minimal amount of the compensation; however, the Fund can never refund the entire compensation, but only for 70-80% of the average net wage in FBiH. In the BD, those amounts are determined by the

Health Insurance Institute according to the average gross hourly payment whereas the maximum refund is 1,000 KM, and the lowest is the determined by the minimal gross hourly wage earned in the BD.

In RS the employers are also required to pay compensations to workers on sick leave which have to be at least 70% of their monthly net pay for the entire duration of the sick leave, whereas they can get refunded for a sick leave longer than 30 days by the competent Fund, and the gross hourly wage is determined by the Health Insurance Institute according to the average gross hourly wage. The maximum refund paid to the employer during the worker's sick leave is 1,000 KM, and the lowest is determined by the minimal gross hourly wage earned in RS.

Through this, employers are at loss because they mostly pay higher compensations than the refunds they get.

FBiH, RS and BD: RECOMMENDATION

Harmonize the laws in the cantons of FBiH, as well as the entities and BD in this area, and also issues concerning the amount the employer is obliged to pay workers on sick leave, the periods in which there is no refund for the employer and the amount of the refund by the Health Insurance Funds paid to the employers as a wage compensation to workers during sick leave.

WAGE COMPENSATIONS TO FEMALE WORKERS ON MATERNITY LEAVE AND REFUND TO EMPLOYERS*

FBiH, RS and BD: OPEN ISSUE

The FBiH, RS, and BD legislation governing the amount of maternity compensations, and the requirement of the employer to pay compensations to workers on maternity leave is inconsistent. This inconsistency also exists between different cantons in the FBiH, since every canton has its own regulations governing this subject matter that significantly differ from the regulations enforced in other cantons.

In FBiH, the Labor Law defines only the right of the worker to compensations during maternity leave, while the compensation itself is determined by cantonal regulations. In practice, the employers in

almost all cantons pay no compensations to the female workers on maternity leave, and the compensations that are paid by the cantonal governments differ a lot. Thus, in the Sarajevo Canton, women on maternity leave receive 50% of the average net salary earned in the Sarajevo Canton, and this compensation is paid by the cantonal government. In the Tuzla Canton, the employer is required to pay at least 90% of the worker's salary prior to the maternity leave, and this amount is refunded by the Cantonal government. On the other hand, in the Herzegovina-Neretva Canton, women on maternity leave have no right to compensation whatsoever, and they only receive one-time financial aid for newborns in the amount of 400 KM.

In BD, female workers on maternity leave receive 100% of their salary paid by the employer, who also pays all the pertaining taxes and social security contributions, the net amount of which (i.e. excluding taxes and contributions) is subsequently refunded by the relevant Labor Centre according to the calculated hourly wage earned in the BD.

In RS, female workers on maternity leave are paid their average wage, including pertaining taxes and social security contributions by their employer, whereas the right to receive the net refund from the Child Protection Fund is only given to the employers who have been paying child protection contributions for all of their workers in the period of at least 12 months prior to and during the maternity leave in question.

FBiH, RS and BD: RECOMMENDATION

It is necessary to harmonize regulations and practices related to determining the amount and payment of maternity leave wage compensations in all cantons in the FBiH, and then harmonize those regulations with the ones in RS and BD, by determining an equal maternity leave compensation in all parts of BiH and defining who will be burdened by it and for what period of time.

REGULATING TEMPORARY AND SHORT-TERM EMPLOYMENT IN THE FBiH AND RS*

FBiH and RS: OPEN ISSUE

In recent years there is a rapid growth of need for the latest form of hire – temporary agency work through a growing number of private hiring agen-

cies which offer such jobs. These jobs are considered to be extremely important for those entering the labor market and they contribute to the growing demand for labor flexibility. According to the data of the International Association - CIETT, which represents the interests of these agencies, 59% of all those employed through this type of hiring are under the age of 30, and 24% of them do not have a high school degree. It is considered that hiring through job agencies furthers the labor market qualifications, which is very important for young people and unqualified labor force.

FBiH and RS: RECOMMENDATION

Classification of business activities in FBiH and RS has affirmed the existence of the activities of these agencies and has “introduced” them into the legal and economic sphere of BiH. It is necessary to draft a legal framework, which will define the founding, and work of such agencies, that would undoubtedly help raise the employment rate in BiH and fight grey economy. Accordingly, it is necessary to regulate so called labor force ‘leasing’, i.e. assigning labor force for a certain period of time.

MANAGERIAL CONTRACTS

FBiH and RS: OPEN ISSUE

Under the new Labor Laws, it is possible to conclude a contract with the Management Board members outside of employment. The introduction of this novelty is commendable, but it is necessary to harmonize tax regulations to make it enforceable in practice. Otherwise, it will remain just a dead letter in the Labor Law, without the possibility of implementation. To be precise, the tax laws do not recognize this type of contract and for this reason it is currently unclear how to report and to tax this type of income. It is also necessary to regulate the stay of foreign Management Board members in BiH on the basis of their assignment that does not entail employment contract. This is particularly important for foreign investors who after the investment and start-up in BiH typically want to appoint persons from their parent companies or group in the management boards.

FBiH and RS: RECOMMENDATION

Tax laws should define the obligations under the contracts with the Management Board members, which does not entail an employment relationship.

Foreign Management Board members should be enabled to stay in BiH on the basis of their work assignment that does not entail employment contract.

PROFESSIONAL AND ADDITIONAL TRAINING

RS: OPEN ISSUE

Under the new Labor Law, the former legal concept of volunteer work has been replaced by the legal concept of vocational training. The problem arises due to the fact that the law in question already recognizes the legal concept of additional training and professional development relating to special training in machine handling or safety at work, as well as education and training required for performing a specific job. Since the legal concept of vocational training (formerly: volunteer work) includes internship contracts, it is clear that these are completely different concepts that have been termed identically. Terming the two different legal concepts identically creates unnecessary confusion and inability to make clear differentiation between these legal concepts.

RS: RECOMMENDATION

The old term ‘volunteer work’ should be restored to designate the legal concept of professional training or a new term should be invented to distinguish this legal concept from the existing eponymous one.

OVERTIME

FBiH, RS and BD: OPEN ISSUE

The Labor Laws treat overtime differently. In addition, overtime is too strictly defined so that it does not provide for adjustments to the employer’s needs, certainly, while taking into account the rights and interests of workers.

FBiH, RS and BD: RECOMMENDATION

1. Harmonize the Labor Laws;
2. Allow overtime work to accommodate the needs of the employer with the consent of the workers and of course, adequate pay.

ANNUAL LEAVE

FBiH: OPEN ISSUE

The Labor Law stipulates mandatory use of a portion of annual leave for a period of at least 12 days. In practice, this means that worker must use two weeks and two working days in the third week in a row, which is quite impractical when synchronizing the use of annual leave among workers. The employer has to ensure continuous and uninterrupted business activities and in case of a large number of workers, it is gets problematic when a holiday enters the third week.

FBiH: RECOMMENDATION

The provision governing the use of annual leave should be amended i.e. harmonized with the RS Labor Law, so that it reads that a part of annual leave must be used for a period of at least 2 weeks in a row.

SALARY

FBiH and RS: OPEN ISSUE

The Labor Laws stipulate that the salary consists of the basic (fixed) wage, the performance-related compensation (which is variable and depends on the performance), and a raise. This mandatory regulation of the performance-related compensation is often a problem in practice. Namely, there are many situations where it is very difficult to measure the performance, especially on a monthly basis in order to pay the salary (salaries are mandatorily paid on a monthly basis; otherwise, it would be considered a bonus and not salary). Sometimes it is impossible to measure the monthly performance and sometimes it is theoretically possible, but would cause too many undue costs. Another issue is that it is not clear at all what the minimum wage is. Is it the basic wage or the total amount of salary (basic wage plus performance-related compensation)? In case it is only the basic wage, whereas the performance-related compensation must also exist, this would entail an increase in salaries in many situations, leading to an increase in the employers' liabilities. We are of the opinion that the Labor Law should not have introduced this in this way.

In case that, however, the minimum wage represents the sum of the basic wage and the perfor-

mance-related compensation, an worker who underperformed would receive only the basic wage which is less that the amount defined as minimum wage.

FBiH and RS: RECOMMENDATION

The performance-related compensation should be defined as an option, and not as a requirement and it could be regulated by branch collective agreements or rules of procedure. It is necessary to define what constitutes the minimum wage, and to clarify that the base salary cannot be less than the minimum wage, in order to avoid payments to workers that are below the legal minimum.

CANCELLATION OF THE EMPLOYMENT CONTRACT

FBiH, RS and BD: OPEN ISSUE

The reasons for, and the procedure of dismissal are not harmonized in the entities and BD. They are not clearly regulated either. The law is vague, as, for instance, it is not clear what the legislator considers, and what the court will ultimately consider "an economic reason" that can be the basis for termination of employment, or in which situation it can be considered that "the worker is unable to perform his/her duties" (FBiH and BD Labor Laws).

The way this area is regulated is not in compliance with the market economy.

The investor who invests its assets wants workers who will work in a manner that ensures the most effective and most profitable business. The Labor Law very clearly seeks to reduce unemployment, which however is not employers' problem, and if the legislator is trying to solve the problem of high unemployment rates in this way, it will not succeed. On the contrary, this can lead to reduced investments or their withdrawal. We believe that a better solution for both sides is to ensure a good business climate for investors and the possibility to hire and keep the necessary people, which will then lead to business expansion and therefore more jobs. Everything else will produce only momentary effects, leading to lower investments in the long run.

An important provision of the RS Labor Law is the one stipulating that in the event of a dispute

before the competent authority arising from the termination of employment by the employer, the employer is required to prove the merits of the employment termination. This puts employers in an unfavorable position, because in case of a dispute due to termination of employment by the employer, on any basis, employers have to spend more money and time in order to establish the grounds for termination of employment.

FBiH, RS and BD: RECOMMENDATION

The provisions governing employment termination should be harmonized in the Labor Laws. Termination of employment should be tied to the economic needs of the employer, irrespective of the age or other attributes of workers. It should be prescribed that in the case of dispute arising from the termination of employment by the employer, the burden of proof should be assigned to the plaintiff, which is also one of the basic principles of civil proceedings.

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<p>FBiH, RS and BD</p> <p>Compensations for workers on sick leave and refund of those compensations to employers by the Health Insurance Funds</p>	<p>Harmonize the laws in the cantons of FBiH, as well as the entities and BD in this area, and also concerning the amount the employer is obliged to pay workers on sick leave, the periods in which there is no refund for the employer and the amount of the refund by the Health Insurance Funds paid to the employers as a wage compensation to workers during sick leave.</p>	<ul style="list-style-type: none"> • FBiH Government • RS Government • BD Government • FBiH Parliament • RS National Assembly • BD Assembly • Entity line ministries • Health Insurance Institutes
<p>FBiH, RS and BD</p> <p>Wage compensations to female workers on maternity leave and refund to employers</p>	<p>It is necessary to harmonize BD regulations and practices by determining an equal maternity leave compensation in all parts of BiH and defining who will be burdened by it and for what period of time.</p>	<ul style="list-style-type: none"> • FBiH Government • RS Government • BD Government • FBiH Parliament • RS National Assembly • BD Assembly • Entity line ministries • Health Insurance Institutes • Social Welfare Centers
<p>FBiH and RS</p> <p>Regulating temporary and short-term employment conducted by private employment agency in the FBiH and RS</p>	<p>It is necessary to draft a legal framework which will define the founding and work of private employment agencies which will undoubtedly help raise the employment rate in BiH and fight grey economy.</p>	<ul style="list-style-type: none"> • FBiH Government • FBiH Parliament
<p>FBiH and RS</p> <p>Nonconformity of the tax laws with the provisions of the Labor Laws, relating to the contracts with the Management Board members outside of employment</p>	<p>Tax laws should define the obligations under the contracts with the Management Board members, which does not entail an employment relationship. Foreign Management Board members should be enabled to stay in BiH on the basis of their work assignment that does not entail employment contract</p>	<ul style="list-style-type: none"> • FBiH Ministry of Finance • FBiH Government • FBiH Parliament
<p>RS</p> <p>In the RS Labor Law, the former legal concept of volunteer work has been replaced by the legal concept of vocational training, which creates confusion and inability to make clear differentiation between this concept and the concept of additional training and professional development that refer to special training courses attended by workers at the employer's request</p>	<p>The old term 'volunteer work' should be restored to designate the legal concept of professional training or a new term should be invented to distinguish this legal concept from the existing eponymous one</p>	<ul style="list-style-type: none"> • RS Government • RS National Assembly

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<p>FBiH, RS and BD</p> <p>The entity and BD Labor laws treat overtime differently</p>	<p>It is necessary to harmonize the entity and BD Labor Laws with respect to the provisions governing overtime work.</p>	<ul style="list-style-type: none"> • FBiH Government • RS Government • BD Government • FBiH Parliament • RS National Assembly • BD Assembly
<p>FBiH</p> <p>Prescribing mandatory use of a portion of annual leave for a period of 12 days creates problems in practice when synchronizing the use of annual leave among workers</p>	<p>The provision governing the use of annual leave should be amended i.e. harmonized with the RS Labor Law, so that it reads that a part of annual leave must be used for a period of at least 2 weeks in a row.</p>	<ul style="list-style-type: none"> • FBiH Parliament • FBiH Government • FBiH Ministry of Labor and Social Policy
<p>FBiH and RS</p> <p>The mandatory regulation of the performance-related compensation is often a problem in practice. Namely, there are many situations where it is very difficult to measure the performance, especially on a monthly basis in order to pay the salary</p> <p>The FBiH Labor Law does not define clearly what the minimum wage is. Is it the basic wage or the total amount of salary (basic wage plus performance-related compensation)</p>	<p>The performance-related compensation should be defined as an option, and not as a requirement and it could be regulated by branch collective agreements or rules of procedure.</p> <p>It is necessary to define what constitutes the minimum wage, and to clarify that the base salary cannot be less than the minimum wage, in order to avoid payments to workers that are below the legal minimum.</p>	<ul style="list-style-type: none"> • FBiH Parliament • FBiH Government • FBiH Ministry of Labor and Social Policy
<p>FBiH, RS and BD</p> <p>The reasons for, and the procedure of dismissal are not harmonized in the entities and BD. They are not clearly regulated either.</p>	<p>The provisions governing employment termination should be harmonized in the entity and BD Labor Laws. Termination of employment should be tied to the economic needs of the employer, irrespective of the age or other attributes of workers.</p> <p>It should be prescribed that in the case of dispute arising from the termination of employment by the employer, the burden of proof should be assigned to the plaintiff, which is also one of the basic principles of civil proceedings.</p>	<ul style="list-style-type: none"> • FBiH Parliament • FBiH Government • RS National Assembly • RS Government • BD Assembly • BD Government • Entity line ministries

TAXES

INTRODUCTION

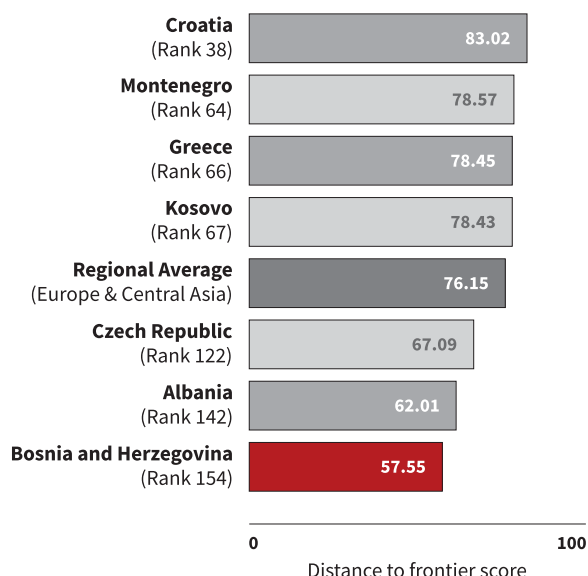
The inconsistency and complexity of the taxation system, frequent changes in the legislation, ambiguous laws and insufficient by-laws, and the subjectivity of the controlling authorities in the interpretation and enforcement of the laws are still the main problems facing foreign investors in BiH. In the ranking by ease of paying taxes, BiH ranks 154 out of 185 countries in total.²

Unfortunately, there has been no improvement in tax reforms since the publication of the last White Book.

Problems are still present in the area of application of the interstate Double Taxation Avoidance Agreements. The procedure for obtaining an interpretation from the Ministry of Finance and Treasury of BiH takes from several weeks to several months, especially in case of complex issues, which inhibits business activities and investments. During the inspection controls, tax inspectors use exclusively the texts of the Agreements, without taking into account the particulars set out in the OECD Model Tax Convention. The OECD Model Tax Convention constitutes an integral part of the Agreement and without it, it is not possible to adequately interpret the provisions of the Agreement.

In the course of 2015, most of the laws governing the taxation of income and profits in BiH have been amended. According to *FIC Business Barometer*, frequent changes in laws and unpredictable tax policy are among the key factors adversely affecting the business operations of foreign companies.

In order to facilitate business operations of enterprises engaged in business activities across the country, the FIC promotes the need for harmonization of tax regulations at the state level, as well as the reduction of the number of administrative procedures for tax payment aiming to disburden the business sector. The latest legal provisions do not go in that direction. Thus, the new Law on Profit Tax in the FBiH abolished tax relief for exporters, and downgraded the entitlement to relief arising from a new investment, prescribing additional restrictions in terms of the recognition of costs used for determining the taxable base.



The competent ministries in both BiH entities have not adopted the implementing regulations yet and therefore, the application and interpretation of certain legal provisions constitutes a problem for most taxpayers.

In addition to taxes, the business operations of foreign investors in BiH are made even more difficult and burdened by numerous charges and fees payable at different levels of government. Specifically, there are numerous specific fees payable at the state, entity, cantonal and municipal level, which creates problems and high costs for investors operating across the country.

It is therefore necessary also to harmonize the regulations on fees and charges, and the number of required payment of fees and charges should be reviewed and reduced.

Below is a list of specific tax problems facing members of the FIC, as well as the list of recommendations.

PROFIT TAX

APPLICATION OF INTERSTATE DOUBLE TAXATION AVOIDANCE AGREEMENTS IN BIH*

BiH: OPEN ISSUE

The current Profit Tax Laws in BiH stipulate that the provisions of the International/Interstate Double Taxation Avoidance Agreements entered into by BiH take precedence over the provisions of the said Laws.

² “Doing Business 2016”, World Bank report

The Double Taxation Avoidance Agreements are published in the BiH Official Gazette, in the official languages in use in BiH.

The Ministry of Finance and Treasury of BiH has published a list of concluded Double Taxation Avoidance Agreements and uploaded the Agreements published in the BiH Official Gazette.

The published Agreements are used by the Ministry of Finance and Treasury of BiH when responding to the requests for interpretation, as well as by tax authorities during inspection controls.

Several issues have been identified in the implementation of the International/Interstate Double Taxation Avoidance Agreements:

- The list of Double Taxation Avoidance Agreements (**Agreements**) posted on the website of the Ministry of Finance and Treasury of BiH is not updated on a regular basis and the notices of such Agreements ceasing to have effect are not transparently published.
- The Agreements are signed in the language of the Contracting State and in English. Most of the final provisions set out in the Agreements stipulate that in case of discrepancies in the translation and interpretation, the version in English will prevail. Since the Agreements are published in the Official Gazette in the languages that are in official use in BiH, there are often differences in the translation, which can lead to misinterpretation and misapplication of the Agreements in practice. Specific examples include the Agreements concluded with the Czech Republic and the United Arab Emirates, as well as the Republic of Serbia, where the meaning of the provision stipulating taxation method was changed due to a translation error.
- The procedure for obtaining an interpretation from the Ministry of Finance and Treasury of BiH takes from several weeks to several months, especially in case of complex issues, which inhibits business activities and investments.
- During the inspection controls, tax inspectors use exclusively the texts of the Agreements, without taking into account the particulars set out in the OECD Model Tax Convention. The OECD Model Tax Convention constitutes an integral part of the Agreements and with-

out it, it is not possible to adequately interpret the provisions of the Agreements.

BIH: RECOMMENDATIONS

- The Ministry of Finance and Treasury of BiH should publish all valid Agreements, including those that have been adopted but not yet ratified, those that are currently in the adoption procedure, and those that are no longer effective (including their effective and termination dates). All bilateral agreements should be available to all taxpayers in all languages in which they have been signed.
- When interpreting the Agreements, it is necessary to pay attention to the OECD Model Tax Convention and the interpretation of the relevant provisions because only in this way it is possible to ensure adequate implementation.
- A Rulebook or another piece of secondary legislation should be adopted by the Ministry of Finance and Treasury of BiH to define the procedure for submitting requests and required information, as well as the procedure for issuing interpretations of the Agreements, and introduce a reasonable deadline for a response.
- The Ministry of Finance and Treasury of BiH should draft a manual explaining the basic principles of the application and interpretation of international agreements and the OECD guidelines, so that the users, i.e. the taxpayers better understand and apply the international agreements, which would lead to a reduction in the number of requests for interpretation by the Ministry.

THE LAW ON PROFIT TAX IS NOT CLEAR AS TO WHICH INCOMES AND EXPENDITURES ARE INCLUDED IN THE TAX BASE*

FBiH: OPEN ISSUE

Article 7, paragraph 9 of the FBiH Law on Profit Tax stipulates that transactions that are not made for business purposes with the aim of making profit shall not be included in the tax base. Considering that the Law does not define the “transactions that are not made for business purposes” or the meaning of “doing business with due diligence”, the legislator has left room for subjective interpre-

tation and disputes among inspection authorities and taxpayers, because any expenditure made for business purpose by the taxpayers can be interpreted by the inspection authorities as a non-business expenditure.

FBiH: RECOMMENDATION

It should be precisely defined what types of expenditures are not considered business expenses in terms of determining the tax base.

UNEQUAL TAXATION PRACTICE OF THE BUSINESS UNITS HEADQUARTERED IN THE OTHER BiH ENTITY AND BD*

RS, FBiH and BD: OPEN ISSUE

The RS Law on Profit Tax, which is in effect as of 1 January 2016, stipulates that profit taxpayer shall be any business unit of a legal entity headquartered in the FBiH or BD, for the profit generated on the territory of RS. The business unit shall submit its tax returns in the main place of business on the territory of RS. Submitting tax returns by business units is complicated because of the inconsistencies in the laws and different tax treatment of certain revenues and expenses, as well as the requirement to keep separate accounting records and compile separate financial statements.

Article 49 of the FBiH Law on profit Tax stipulates that every taxpayer shall submit its tax return and the supporting documentation to the relevant unit of the Tax Authority within 30 days after the expiration of the prescribed deadline for the submission of financial statements.

Business units of the business entities headquartered in RS, BD and abroad are required to submit the income statements together with their tax return.

Legal entities headquartered in RS, BD or abroad performing their business activities through several business units in different parts of the FBiH face the problem of drawing up the balance sheet and submitting the tax balance and tax returns to the relevant unit of the Tax Authority separately for each registered business unit. The Income Statements are required to be drawn up by the legal entity together with all other financial statements, while its subsidiary, i.e. business unit, which has no legal personality, capital or assets, may make

an overview of incomes and expenses related to the given subsidiary, if it chooses to do so.

RS, FBiH and BD: RECOMMENDATION

Consider the possibility to have the ministers of finance reach an understanding and agree that taxpayers, who perform business activities through their business units on the territory of the other BiH entity or BD, submit a single tax return based on the headquarters of the taxpayer, and that the allocation of revenues from the tax paid is made according to the share of the business units in total profits generated by the legal entity. In this way, the harmonization of regulations and tax treatment of business units would be achieved throughout the country, and it would facilitate business operations.

FBiH: OPEN ISSUE

According to Article 9, paragraph (2) of the FBiH Law on Profits, legal entities headquartered in RS, BD or abroad, performing their registered taxable activity through a business unit situated in the FBiH, shall not be recognized general and administrative expenses that are not directly attributable to their business activities.

The above provision is ambiguous, vague and discriminatory. Namely, the business unit is an organizational part of the company, and therefore, it is not a legal entity, it has a place of business and its representatives, and it operates on behalf and for the account of the company. For this reason, it is unavoidable and natural to attribute part of general and administrative expenses of the legal entity to the subsidiary, i.e. business unit according to an established model of costs distribution for a specific place of business.

FBiH: RECOMMENDATION

Amend the above-stated Article of the Law and prescribe that part of the general and administrative expenses of the legal entity is included in the tax base of the business unit situated in the FBiH, and clearly define the terms and conditions for determining the portion of such expenses in the Rulebook on application of the FBiH Law on Profit Tax.

PAYMENT OF DIVIDENDS ABOLISHES THE RIGHT TO TAX EXEMPTION ON THE BASIS OF INVESTMENT

FBiH: OPEN ISSUE

Pursuant to Article 36, paragraph 6, subparagraph a) of the FBiH Profit Tax Law, a taxpayer loses the right to tax exemption if it makes a dividend payment from the profit that is exempt from profit tax during and, up to three years from the last year it used tax incentives set out in this Article.

If the taxpayer is able to make investments from its own funds, and if in addition, it has sufficient funds to make a dividend payment, we do not see the purpose of this restriction. On the other hand, such a provision may be a constraint to new investments.

FBiH: RECOMMENDATION

Paragraph 6 and Paragraph 7 of Article 36 of the Profit Tax Law should be deleted because they are restrictive to new investments.

DIFFERENT ENTITY-LEVEL REGULATIONS OF THE TAX TREATMENT OF ALLOWANCES FOR BALANCE SHEET ASSETS OF BANKS (FBiH and RS)

FBiH and RS: OPEN ISSUE

A taxpayer headquartered in one BiH entity that performs its business activities also in the other BiH entity is exposed to the risk of double taxation arising from non-deductible expenses/revenues based on the impairment adjustments and provisions, due to different tax treatment of the assets impairment.

Pursuant to the provisions of Article 32, paragraph 3 of the FBiH Profit Tax Law, the financial institution's

- (1) expenses arising from revaluation of accounts receivable and provisions for off-balance sheet losses shall be recognized, provided that there is objective evidence of their impairment, regardless of whether they are evaluated on an individual or group basis, which were made by the financial institutions in accordance with the accounting rules and regulations of the supervisory bodies. Revenues arising from the impairment allowance and provisions are included in the tax base;

- (2) expenses arising from revaluation of accounts receivable being evaluated on a group basis and based on historical costs (latent losses – IBNR) shall not be tax deductible expenses. Revenues arising from IBNR impairment shall be excluded from the tax base.

Article 51, paragraph 2 of the RS Profit Tax Law stipulates that expenses from indirect write-offs of loans shall be recognized to financial institutions, other than insurance companies, that are, in accordance with the internal regulations of the financial institution, reported in the income statement in the accounting period, up to the amount prescribed by the RS Banking Agency for B, C, D and E loan categories.

The above provisions are contrary to:

- (1) the provisions of the RS Law on Accounting and Auditing under which the banks classify loans and record revenues and expenses related to their indirect write-off in the income statement according to the International Accounting Standards, and not according to the regulations of the RS Banking Agency;
- (2) Decisions of the RS Banking Agency prescribe the asset classification by A, B, C, D and E categories, as well as the calculation of the provisions pursuant to these categories, however, such provisions are not recorded in the balance sheet and income statements, but are used for calculating capital adequacy and monitoring the banks' asset quality in accordance with the standards and methodologies of the RS Banking Agency.

FBiH and RS: RECOMMENDATION

Harmonize regulations governing tax treatment of the allowance for impairment of balance sheet assets of banks provided for in the Law on Profit Tax to ensure equal tax treatment for revenues/expenses impairments for tax purposes and the application of the international accounting standards.

TRANSFER PRICES*

FBiH and RS: OPEN ISSUE

Transfer prices have arisen as a requirement of tax jurisdictions to protect their tax revenues by preventing affiliated companies to set the prices

among themselves under subjective terms and conditions that would lead to a reduction of tax liabilities in a particular jurisdiction.

FBiH and RS have introduced the obligations arising from transfer pricing, which are in compliance with the international practice however, these obligations do not preclude scrutinizing the relationship between the two entities operating within the same tax jurisdiction.

We are of the opinion that this introduces unnecessary expenses for developing a Study on transfer pricing for the business entities operating in the same jurisdiction, especially taking into account that the abuse of tax regulations aimed at profit tax evasion may be subject to offence or denial of deductible expenses in case such an abuse is revealed, regardless of the transfer pricing.

In addition, in the case of two affiliated business entities operating within the same jurisdiction and making profit, the transfer pricing effects are in most cases neutral and therefore, the cost-benefit scrutiny of such transactions is not justified.

RECOMMENDATION

The Law should stipulate that transfer prices are not to be set between the two affiliated business entities if both of them operate within a single tax jurisdiction and make profit.

FBiH and RS: OPEN ISSUE

The FBiH Profit Tax Law and the RS Profit Tax Law stipulate that a special rulebook will provide for the guidelines and instructions on how to document and prove the transfer pricing. RS adopted a rulebook on transfer pricing with small number of articles regulating this area, while on the other hand, the FBiH adopted more detailed rulebook that defines numerous provisions similar or identical to the OECD Transfer Pricing Guidelines. We are of the opinion that it will not be enough to define this area with rulebooks, and that referring to the international guidelines, in particular the OECD Transfer Pricing Guidelines, is also necessary because proving transfer pricing is a very complex process and as such, it should be supported by adequate guidelines. We believe that by applying the OECD Guidelines, which are generally considered the most comprehensive document in this area, the transfer pricing testing process would be facilitated for both tax inspectors and taxpayers.

RECOMMENDATION

The Rulebook on transfer pricing should make reference to the OECD Transfer Pricing Guidelines as the most comprehensive guidelines for transfer pricing documenting and testing procedures.

FBiH and RS: OPEN ISSUE

The FBiH Profit Tax Law and the RS Profit Tax Law stipulate that a taxpayer taking part in the transactions with affiliated business entities shall be required to, at the time of filing its tax return, present the transfer pricing documentation containing sufficient information and analysis confirming that the terms and conditions of such transactions with the affiliated entities comply with the arm's length principle.

In practice, this means that the taxpayer would be required to have a ready and complete study on transfer pricing at the time of filing its tax return. The Law does not specify the information that will be considered relevant for the development of such an analysis. RS rulebook stipulates that the last comparable data could be used, whereas the FBiH rulebook prescribes that the latest available data should be used for the analysis. We wish to note that the financial statements of the companies that are subject to the testing procedure are usually available in mid-calendar year for the previous year.

Consequently, the question is what if there is no direct comparability between years and it is necessary to update the study when the actual data are available.

RECOMMENDATION

It should be more precisely defined what constitutes relevant data for testing of transfer pricing.

FBiH: OPEN ISSUE

The FBiH Profit Tax Law stipulates that the concept of affiliated (related) parties includes any two persons provided that either one of them acts or is likely to act in accordance with the guidelines, requirements, suggestions or wishes of the other person or provided that both of them act or are likely to act in accordance with the guidelines, requirements, suggestions or wishes of a third party, regardless of whether these guidelines, requirements, suggestions or wishes have been communicated.

RECOMMENDATION

This definition leaves room for subjective interpretations by taxpayers and tax inspectors of who could be considered an affiliated (related) person. Our recommendation is to precisely define the method of determining whether a person has acted in accordance with the guidelines, requirements, suggestions or wishes of the other person or a third party.

PERSONAL INCOME TAX**NONCONFORMITY OF THE RS LAW ON PERSONAL INCOME TAX AND THE RS LAW ON SOCIAL SECURITY CONTRIBUTIONS****RS: OPEN ISSUE**

As of 1 September 2015, a new Law on Personal Income Tax has come into force in RS, stipulating that the personal income is an income generated by natural person from employment, while an income generated by natural person from dependent personal services provided to a client represents other income.

The RS Law on Personal Income Tax provides a definition of the terms 'resident' and 'non-resident' and stipulates that income generated by natural person who is subject to personal income tax is also subject to social security contributions.

The RS Law on Social Contributions stipulates that contribution payer is an RS resident. According to the RS Law on Social Contributions, resident is considered a natural person holding mandatory insurance, a natural person holding mandatory insurance under specific circumstances or a natural person holding voluntary insurance, under the regulations governing the field of social security.

These laws provide a different definition of the term 'resident', leading to different interpretations by contribution payers. A payer of all or individual contributions is a resident generating income, regardless of his/her domicile or residence and his/her center of vital interests, as defined by the RS Law on Personal Income Tax.

RS: RECOMMENDATION

It is necessary to harmonize the provision of Article 6 of the Law on Personal Income Tax and Article 5 of the Law on Social Security Contributions. The harmonization of these Articles would remove doubts related to taxation and the definition of the personal income taxpayers and social contribution payers, thus facilitating the procedure for both taxpayers and competent authorities.

COMPLICATED PROCEDURE FOR FILING TAX RETURNS FOR PERSONAL INCOME TAX AND SOCIAL SECURITY CONTRIBUTIONS AND UNJUSTIFIABLY LARGE NUMBER OF PAYMENT ORDERS***FBiH: OPEN ISSUE**

The procedure of paying public revenues which an employer or a natural person, as a taxpayer required to pay contributions, taxes and fees, has to pay when paying salaries is very complex. There are many kinds of public revenues on different government levels. Employers have to pay mandatory social security contributions, personal income taxes, and fees for their workers onto different bank accounts, depending on the type of income, the employer's seat, or the worker's place of residence. A large number of procedures and different payment orders are both time-consuming and costly.

The Ministry of Finance of FBiH, supported by the USAID, has launched a project to simplify the public revenue payment procedures by reducing the number of the required payment slips from the current 10 to five with the ultimate objective to reduce this number to only one single payment slip.

This way, the employers' overall bank provision costs and the time necessary to fill out all the payment orders will be reduced by 44%.

FBiH: RECOMMENDATION

Implement a simpler way of transferring public revenues paid by the employer together with the pay checks, in a way that would reduce the number of payment orders without violating constitutional and legal provisions determining the affiliation of public revenues or their allocation criteria, in any way. This activity is compatible with

the Government of FBiH commitment to generating a more favorable climate for local and foreign investments.

The Ministry of Finance of FBiH needs to amend bylaws in order to create a legal framework for the accomplishment of these goals and USAID will design and developed the software for the allocation of revenues from collective accounts to the accounts of end users.

VALUE ADDED TAX (VAT)

VAT REFUND TO PERSONS WHO DO NOT HAVE REGISTERED BUSINESS IN BIH*

BiH: OPEN ISSUE

Article 53 of the VAT Law of BiH provides an option for a refund of the input tax calculated on sale of goods and provision of services by BiH taxpayer or tax calculated on goods imported into BiH for foreign legal entities that do not have a registered business in BiH.

According to the current practice of the Indirect Taxation Authority (*ITA*) and the jurisprudence of the Court of BiH, VAT refund is approved only to “carriers, persons exhibiting goods at fairs, airliner and the like”. The aforementioned persons are specified in Article 93 of the Rulebook on the Implementation of the Law on VAT in brackets, whereas Article 53 of the Law on VAT provides for a much wider options of applying the VAT refund compared to the Rulebook on the Implementation of the Law on VAT. According to the available information, a certain number of countries that apply reciprocity in terms of VAT refund do not approve VAT refund to BiH taxpayers because of this restrictive policy of BiH in connection with the VAT refund to foreign taxpayers.

The effective provision of Article 94 item d) of the Rulebook on the Implementation of the Law on VAT defines restrictive conditions for VAT return and prevents signing of bilateral agreements for establishing the mutuality of VAT refund with the EU countries seeking mutuality. The adoption of the amendments of the Rulebook as previously referred is a condition for applying the mutuality principle, or for entering into bilateral agreements on the reciprocity of VAT refund, primarily with

Croatia and Slovenia, but also with Switzerland, Italy, Slovakia, the Czech Republic and Hungary.

The final effect of alteration of Article 94 of the Rulebook would enable VAT refund to BiH companies from Croatia, Slovenia, Switzerland, Italy, Hungary, the Czech Republic, etc. The benefit would be felt by all branches of economy, especially by companies in the field of export, international transport, telecommunications, etc.

The majority business community of BiH has supported in writing the proposal for alteration of the disputed norm (it was supported by the Chamber of Foreign Trade of BiH, Trade Chamber of the FBiH, Trade Chamber of RS, Employers’ Association of the FBiH, Carriers’ Association of RS), including also the experts group which was tasked as part of a Twinning project to propose the amendments for harmonization of local regulations governing indirect taxes with the EU legislation.

BiH: RECOMMENDATION

Given that the VAT in BiH is not applied according to the institutional, but rather functional principles, when deciding on the requests for VAT refund submitted by taxpayers who do not have registered business in BiH, the ITA should interpret Article 93 of the Rulebook on the Implementation of the Law on VAT in the context of Article 53 of the Law on VAT, in the sense that this right is not applicable only to the foreign taxpayers performing a specific business activity (institutional approach), but to all foreign taxpayers, in accordance with the other requirements prescribed by the Law on VAT and its implementing regulations.

We advice the Management Board of the ITA to amend the Rulebook on the Implementation of the Law on VAT by deleting item d) from the Article 94.

ISSUANCE OF OPINIONS BY ITA BIH*

BiH: OPEN ISSUE

Article 50 of the Law on Indirect Taxation Procedure and Article 4 of the Instruction on Requirements and Procedure for Issuance of Opinions define a timeframe for submitting an application for issuance of an opinion. According to this timeframe, such application cannot be filed once a particular action has already been taken, or when the VAT return has already been filed in relation to

a particular action. This deprives the taxpayers to obtain needed opinion from BiH ITA regarding resolution of certain dilemmas at the moment they occur, since certain actions have already been taken.

The ITA's opinions and positions are not published on the BiH ITA website, and often opinions issued by different ITA departments (sectors) are dissimilar, causing dilemmas and misleading taxpayers.

In addition, there is no possibility of appeal in the cases when ITA deems that a taxpayer does not meet the requirements for issuing an opinion and instead of issuing a legally binding opinion, it issues a document merely informing the taxpayer on the legal provisions. Likewise, the right to appeal is not provided in the cases when the ITA issues an opinion that the taxpayer considers not to be well-founded.

BiH: RECOMMENDATION

Article 50 of the Law on Indirect Taxation Procedure and Article 4 of the Instruction on Requirements and Procedure for Issuance of Opinions should be amended in such a way that an opinion may be sought in all cases up to the moment when an inspection control procedure begins, whether complete or partial.

Issued opinions, including a summary of the questions, should be published on the ITA BiH website, provided that the ITA does not have to identify the taxpayer who received the opinion. This would help achieve one of the functions of the ITA BiH, which is that its work should be transparent, and it would also result in better-informed taxpayers and more consistent application of tax laws.

The requirements for issuing a legally binding opinion by the ITA BiH should be specified in detail, which would minimize the possibility of arbitrary interpretation of the requirements that need to be met in order to receive the said opinion, and the Law on Indirect Taxation Procedure should be amended to prescribe the right to appeal and institute administrative proceedings, in case that the issued opinion is not well-founded.

DOUBLE TAXATION ISSUE

BiH: OPEN ISSUE

The Law on VAT in BiH does not comply with the Council Directive on the EU's common system of VAT (EU legislation), although Article 23 of the Law on Indirect Taxation System stipulates that the VAT in BiH shall be compliant to the EU standards. The principle related to the place of taxation of services in the EU has been modified long ago. Due to the non-compliance of the Law on VAT, the taxpayers in BiH and those abroad are faced with the problem of double taxation. Double taxation of foreign taxpayers is aggravated by the fact that the ITA does not approve the VAT refund to foreign taxpayers, unless they are "carriers, persons exhibiting goods at fairs, airliner and the like", and consequently, this double taxation has real effects hindering the BiH taxpayers' business because their products and services become more expensive by the VAT rate prescribed in BiH.

BiH: RECOMMENDATION

It is vital to adopt a new VAT law in BiH that will be in compliance with the EU regulations in order to avoid double taxation or non-taxation.

THE ISSUE OF INABILITY TO CORRECT ERRONEOUSLY CALCULATED OUTPUT VAT

BiH: OPEN ISSUE

In practice, it happens that a VAT payer based in the area covered by an ITA regional center charges VAT on a transaction that it considers VAT-liable, whereas the same transaction is not treated as VAT-liable under the VAT Law by the competent ITA regional center during the inspection. According to the tax practice of the ITA, the taxpayer who charged VAT on a transaction which is not considered taxable under the Law on VAT does not have the option to correct such an error in favor of its customer.

BiH: RECOMMENDATION

Given that VAT in the chain of taxpayers must be neutral according to the principles of the VAT system, the ITA should enable taxpayers to update incorrectly calculated VAT, provided that the error is corrected in favor of the customer pursuant

to Article 55, paragraph (11) of the Law on VAT, and prescribe a detailed procedure for such a correction.

TREATMENT OF VAT IN CASE OF BAD DEBT PURCHASE

BiH: OPEN ISSUE

The ITA treats the purchase of bad debts as a financial service that is not exempted from VAT and that the person required to charge VAT is the person purchasing the bad debts.

According to the Judgement No. C-93/10 rendered by the EU Court of Justice, a legal entity that, at its own risk, purchases defaulted debts at a price below their face value does not effect a supply of services for consideration within the meaning of the Directive on the EU's common system of VAT and does not carry out an economic activity falling within the scope of that directive when the difference between the face value of those debts and their purchase price reflects the actual economic value of the debts at the time of their assignment.

BiH: RECOMMENDATION

The ITA should accept the legal opinion of the EU Court of Justice at least insofar as the EU legislation does not differ from the BiH regulations. The definition of taxpayer and economic activities provided in the Directive on the EU's common system of VAT (EU legislation) is very similar to the one provided in the Law on VAT (BiH legislation). Thus, the tax treatment in BiH could be the same as in the EU, provided that the legal opinion of the EU Court of Justice is accepted.

EXCISE DUTIES LAW

ABOLITION OF EXCISE DUTIES PAYMENT IN ADVANCE*

BiH: OPEN ISSUE

According to the Law on Excise Duties, Article 23, paragraph 5, a taxpayer must pay the excise for tobacco products when taking the excise stamps. Paying excise in advance hinders the business of tobacco companies in BiH and negatively affects their liquidity. Namely, by making the advance payment, they freeze their working capital,

because they have to wait for the refund of the invested money for up to two months after they pay the excise and the pertaining VAT to the state.

Producers of other excise goods do not have to pay excise duties in advance, but immediately before consumption. There is no clear or stated reason for the special treatment of tobacco products.

Excise is, in its essence, a consumption tax and, in that sense, cannot be charged prior to the sale/consumption.

BiH: RECOMMENDATION

The ITA Board of Directors should initiate a procedure for making amendments to the Law on Excise Duties, according to which excise on tobacco products will be paid through delayed payment with a deadline. With an approximate average of two months from the moment the excise stamps are taken to the moment of circulation of the tobacco products, we suggest that the deadline for paying excise duties for tobacco products to be a period of 60 days after the day the excise stamps were taken or that this obligation arises at the time of leaving the excise warehouse.

Amending Article 23 of the Law on Excise Duties would not endanger the budget in any way, and the collection of excises would be guaranteed by a mechanism of bank warranties presented by the companies to the ITA.

The proposed amendments would contribute to a more effective operating of tobacco companies in BiH, which as large taxpayers, significantly contribute to the long-term stability of the state budget.

DECELERATING GROWTH IN EXCISE DUTIES ON TOBACCO PRODUCTS

BiH: OPEN ISSUE

The Law on Excise Duties has imposed extremely aggressive growth pace for excise duties on tobacco products, and consequently, the tax on cigarettes tripled over the period from 2009 to 2015. This accelerated pace of growth in tax burden on tobacco products has not been accompanied by the matching purchasing power of consumers, and in compliance with the excise tax environment in the region, which resulted in multiple negative effects:

- percentage of state revenues from excise duties on cigarettes has been in decline;
- revenues of tobacco companies and all those who are in the legal supply chain (from tobacco growers to retailers of tobacco products) are in strong decline, risking layoffs or withdrawal of their operations from BiH;
- illegal market has exploded; according to internal estimates, 1,920.000 kg of illegal cut tobacco was sold in 2014 in BiH. This amount is sufficient to produce 96 million of illegal packs. Due to this black market, the state loses 200 million KM of excise and VAT revenues, which is a sharp increase compared to the initial study developed by the Agency for Public Opinion Research 'Ipsos' in late 2013 when this loss was 69.2 million KM at the state level.

BiH: RECOMMENDATION

The ITA Board of Directors should initiate a procedure for making amendments to the Law on Excise Duties on cigarettes, in particular its Article 21, as soon as possible. We suggest making an excise model, based on the good practices of the EU countries and the region, which would lead to the establishment of new growth dynamics appropriate for the standard of living, purchasing power and the current situation in the country.

REMOVING PRICES FROM EXCISE STAMP ON TOBACCO PRODUCTS

BiH: OPEN ISSUE

Pursuant to Article 25, paragraph 5 of the Law on Excise Duties, tobacco products must be labeled with excise stamps specifying the retail price.

Numerous European and neighboring countries do not have this practice of specifying the prices on the excise stamps. The price specified on excise stamp causes that the market is flooded with cigarette packs showing "wrong price", because the Law allows changing of the price (provided that the corresponding excise duty has been paid) even though the excise stamp shows the price before the price increase.

BiH: RECOMMENDATION

The ITA Board of Directors should initiate a procedure for making amendments to the Law on Excise Duties, in particular its Article 25, paragraph 5, according to which tobacco products will be labeled with control excise stamps, while the prices will be published in the Official Gazette.

Benefits: avoiding confusion caused by the new prices of products and the old excise stamps; retail prices published in the Official Gazette are also a guarantee of binding requirement, and it restores the confidence in the tax regularity of the tobacco sector.

These amendments would improve the process of administering excise products and ensure the legislative compliance with the EU and neighboring countries.

INTRODUCING TOLLS ON HEATING OIL

BiH: OPEN ISSUE

Heating oil sale is not allowed in the FBiH, while in RS, the latest amendments to the legislation provided for an option of selling heating oil at petrol stations using special tanks and fuel dispensers.

The main problem is the fact that heating oil is not used only and exclusively for heating or industrial purposes, and the like, but more and more frequently as automobile fuel. It follows that heating oil is used contrary to its purpose, i.e. that the abuse of heating oil is evident.

The applicable Law on Excise Duties favors the above-described situation, because it does not provide for payment of tolls on heating oil, which is 0.25 KM.

Namely, according to the Law on Excise Duties, the excise duty payable on heating oil amounts to 0.30 KM per liter, however, neither road toll in the amount of 0.15 KM per liter nor highway toll in the amount of 0.10 KM per liter is payable on it. The toll is an earmarked excise aimed at providing funds for the construction of roads and highways, and, as such, it is allocated to the Public Enterprise "Putevi" and the Public Enterprise "Autoputevi" from the ITA's public revenue account.

As opposed to heating oil, diesel fuel is subject to both toll and excise duties in the total amount of 0.55 KM. It follows that heating oil is cheaper than

diesel fuel by 0.25 KM only based on the duties payable, and it is no wonder that the abuse of this derivative is becoming more and more common.

Furthermore, since the toll is included in the VAT base, the public revenues are, in this way, “deprived of” 0.295 KM per liter of heating oil sold and used to power motor vehicles.

Given the above facts, it is easy to assume that the damage to the RS budget exceeds 40 million KM on an annual basis.

BiH: RECOMMENDATION

In order to prevent further abuse of heating oil, it is necessary to urgently adopt a set of amendments to the Law on Excise Duties in respect of heating oil.

The amendments to the Law on Excise Duties should equalize the levies on heating oil and diesel fuel by increasing the excise duties on heating oil by 0.25 KM or by prescribing the obligation to pay tolls on heating oil in the amount of 0.25 KM.

This has been done in all countries of the region and the EU, starting from Serbia, over Croatia, etc.

REFUND OF EXCISE DUTIES PAID ON HEATING OIL

BiH: OPEN ISSUE

Article 31 of the BiH Law on Excise Duties, in paragraph 1) stipulates that physical and legal entities that use heating oil to heat residential and commercial buildings and agricultural production facilities are entitled to a refund of the excise duties paid on heating oil.

In the food industry, especially in the dairy sector, around 95% of heating oil is used for the production of industrial steam that is used in the further process of milk reproduction and processing, as well as the production of dairy products, while only around 5% of the total heating oil consumption accounts for heating premises. This could lead to a conclusion that the right to excise duty refund has been provided for the heating oil used in so-called end consumption, while it has not been provided for the heating oil used in reproduction. Manufacturers of dairy products in BiH use heating oil in the reproduction and manufacturing of finished products that are not excisable goods in BiH.

BiH: RECOMMENDATION

We are of the opinion that Article 31 of the BiH Law on Excise Duties should be amended to provide food manufacturers with the right to receive excise duty refunds for heating oil used in reproduction, especially considering the fact that it is not the practice in modern economies to burden the reproduction with special taxes, duties, excises, etc.

REFUND OF EXCISE DUTY PAID ON ETHYL ALCOHOL IN DAIRY INDUSTRY

BiH: OPEN ISSUE

We assume that when passing the Law on Excise Duties, the proponent of the said Law did not have the information that ethyl alcohol is used in the dairy industry and primary agriculture as raw material for the purpose of milk quality testing. Pursuant to Article 30 of the said Law, the excise goods exempt from excise duties are, inter alia, provided under item g), as follows: “imported and/or delivered alcohol used as a raw material for the production of alcoholic beverages, registered for production in accordance with Article 13 of this Law”

Furthermore, pursuant to Article 31, item 2) of the BiH Law on Excise Duties, the excise duty paid on medicinal alcohol is refundable to “entrepreneurs and legal entities that use alcohol for the production of medicines and/or for medical purposes, as well as the excise duty paid on ethyl alcohol used as a raw material for manufacturing cleaning and washing agents, cosmetics and other products that are not excisable”.

Only the fact that 1 liter of ethyl alcohol costs a little more than 1.00 KM and that the excise duty payable on this product has been 15.00 KM (15 times more) so far, and that the use of ethyl alcohol is at no stage related to any of the excisable products, semi-finished products or raw material, but that it only and exclusively relates to the raw milk processing and dairy production, speaks for itself.

We are of the opinion that it makes no sense to be provided an excise duty refund in cases where ethyl alcohol is used as raw material for the production of cleaning and washing agents or cosmetics, while at the same time, the excise duties paid on ethyl alcohol used in dairy industry for milk acidity testing are not refundable, even

though the paid excise duty is included in the cost price of raw milk and directly affects the price of milk and finished dairy products, in spite of the fact that they are non-excise products.

BiH: RECOMMENDATION

Accordingly, we propose to amend Article 31 of the Law on Excise Duties in the sense that the food manufacturers and dairy processors in BiH are refunded the excise duties paid on ethyl alcohol.

ELIMINATION OF PARA-FISCAL LEVIES ³

FBiH: OPEN ISSUES

The key objective towards a better business environment is the reduction of para-fiscal levies. This primarily refers to the levies relating to fees and charges. These are not fees and charges payable for specific services, permits or licenses. By their nature, they are, in fact, taxes that are collected from a large number, if not all, companies, and that are simply referred to as fees or charges. In the recent years their number has increased. They increase the operating costs of the private companies and prevent the inflow of foreign investments.

The USAID FAR project analyzed the payment of fees and charges on all levels of government and selected certain number of para-fiscal levies that should be eliminated. The following fees and charges represent the biggest burden for all companies.

RECOMMENDATIONS	DESCRIPTION
Abolition of “General Water Charge”	This fee is levied on all employers and it amounts to 0.5% of employers’ net salary costs. This is not a fee or charge payable for specific services; this is an additional tax on jobs and employment!
Abolition of “Special fee for protection from natural and other disasters”	This fee is charged in the amount of 0.5% of 0.5% of employers’ net salary costs. This fee is also a tax on jobs and employment.
Abolition of “Fee for generally beneficial forest functions”	These fees can range from 0.015% to 0.1% of the total turnover of the company. These do not discriminate whether a company is making a profit or a loss and between types of business activity, for example it affects more severely companies that have lower profit margins but rely on high volumes of turnover than those with higher profit margins.
Abolition of “Tourist Board Membership Fee”	Legal actions have been instigated before the Constitutional Court to repeal this levy, but in practice, the fee is still collected from the companies that are not engaged in tourism or related business activities. This levy is also based on the total revenues, without taking into account whether the company is making a profit or incurring loss.
KEY RECOMMENDATIONS:	<p>Fees and charges should be payable for specific services, licenses, parking and the like.</p> <p>Companies and dealers should be clear what they should pay, how and when they should pay it.</p> <p>Implementation of these recommendations will improve the business environment and significantly contribute to the implementation of the Reform Agenda.</p>

³ This recommendation comes from USAID FAR project – Fiscal Sector Reform Activity and it is compliant with the EU Reform Agenda for BiH that requires elimination of para-fiscal levies which are an obstacle to business and economic development

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATIONS	INSTITUTION
PROFIT TAX		
<p>BiH</p> <p>Application of interstate double taxation avoidance agreements in BiH</p>	<p>All information relating to the Double Taxation Avoidance Agreements currently in force, including those that have been adopted but not yet ratified, those that are currently in the adoption procedure, and those that are no longer effective (including their effective and termination dates) should be made available. All bilateral agreements should be publicly available in all languages in which they have been signed.</p>	<ul style="list-style-type: none"> Ministry of Finance and Treasury of BiH
<p>FBiH</p> <p>The Law on Profit Tax is not clear as to which incomes and expenditures are included in the tax base</p>	<p>It should be precisely defined what types of expenditures are not considered business expenses in terms of determining the tax base.</p>	<ul style="list-style-type: none"> RS Ministry of Finance RS Tax Authority
<p>RS, FBiH and BD</p> <p>Unequal taxation practice of the business units headquartered in the other BiH entity and BD</p>	<ul style="list-style-type: none"> Consider the possibility to have the ministers of finance reach an understanding and agree that taxpayers, who perform business activities through their business units on the territory of the other BiH entity or BD, submit a single tax return based on the headquarters of the taxpayer, and that the allocation of revenues from the tax paid is made according to the share of the business units in total profits generated by the legal entity. Amend Article 9, paragraph 2 of the FBiH Law on Profit Tax and prescribe that part of the general and administrative expenses of the legal entity is included in the tax base of the business unit situated in the FBiH, and clearly define the terms and conditions for determining the portion of such expenses in the Rulebook on application of the FBiH Law on Profit Tax. 	<ul style="list-style-type: none"> FBiH Ministry of Finance RS Ministry of Finance BD Finance Directorate
<p>FBiH</p> <p>Payment of dividends abolishes the right to tax exemption on the basis of investment</p>	<p>Paragraph 6 and Paragraph 7 of Article 36 of the Profit Tax Law should be deleted because they are restrictive to new investments</p>	<ul style="list-style-type: none"> FBiH Ministry of Finance
<p>FBiH and RS</p> <p>Different entity-level regulations of the tax treatment of allowances for balance sheet assets of banks (FBiH and RS)</p>	<p>Harmonize the entity-level Laws on Profit Tax governing tax treatment of the allowance for impairment of balance sheet assets of banks to ensure equal tax treatment for revenues/expenses impairments for tax purposes and the application of the international accounting standards.</p>	<ul style="list-style-type: none"> FBiH Ministry of Finance RS Ministry of Finance BD Finance Directorate

OPEN ISSUE	RECOMMENDATIONS	INSTITUTION
<p>FBiH and RS Transfer Pricing</p>	<ul style="list-style-type: none"> The Law should stipulate that transfer pricing should not be set between the two affiliated business entities if both of them operate within a single tax jurisdiction and make profit. The Rulebook on transfer pricing should make reference to the OECD Transfer Pricing Guidelines as the most comprehensive guidelines for transfer pricing documenting and testing. It should be clarified what the transfer pricing documentation should include and it should be defined what constitutes relevant data for testing of transfer pricing, i.e. the concept of entities affiliated with the taxpayer should be precisely defined. 	<ul style="list-style-type: none"> FBiH Ministry of Finance RS Ministry of Finance BD Finance Directorate
PERSONAL INCOME TAX		
<p>RS Nonconformity of the RS Law On Personal Income Tax and the RS Law on Social Security Contributions</p>	<p>Harmonize the provision of the Law on Personal Income Tax and the Law on Social Security Contributions in order to remove doubts related to taxation, i.e. defining the personal income taxpayers and social contribution payers.</p>	<ul style="list-style-type: none"> RS Ministry of Finance
<p>FBiH Complicated procedure for filing tax returns for personal income tax and social security contributions and unjustifiably large number of payment orders</p>	<p>Simplify the procedure of paying public revenues, because the current procedure for paying mandatory social security contributions, personal income taxes, and fees for the workers onto different bank accounts, depending on the type of income, the employer's seat, or the worker's place of residence is both time-consuming and costly.</p>	<ul style="list-style-type: none"> FBiH Ministry of Finance FBiH Tax Authority
VALUE ADDED TAX (VAT)		
<p>BiH VAT refund to persons who do not have registered business in BiH</p>	<p>Article 94 of the Rulebook on the Implementation of the Law on VAT should be interpreted in the context of Article 53 of the Law on VAT. This means that under the conditions stipulated by the Law on VAT and its implementing regulations, the right to refund shall be given to all foreign taxpayers who do not have registered business in BiH, and not only to those performing a specific business activity (carriers and the like) (institutional approach).</p> <p>Publish a list of countries where VAT is refundable.</p> <p>We advise the Management Board of the ITA to amend the Rulebook on the Implementation of the Law on VAT by deleting item d) from the Article 94.</p>	<ul style="list-style-type: none"> Indirect Taxation Authority of BiH
<p>BiH Issuance of opinions by the ITA BiH</p>	<ul style="list-style-type: none"> Amend the procedure for issuance of ITA opinions in such a way that an opinion may be sought in all cases up to the moment when an inspection control procedure begins, whether complete or partial, and publish them on the official ITA website. Amend the Law on Indirect Taxation Procedure to prescribe the right to appeal and institute administrative proceedings, in case that the issued opinion is not well-founded. 	<ul style="list-style-type: none"> Indirect Taxation Authority of BiH

OPEN ISSUE	RECOMMENDATIONS	INSTITUTION
<p>BiH The Law on VAT in BiH does not comply with the Council Directive on the EU's common system of VAT</p>	<p>Adopt a new Law on VAT in BiH that will be in compliance with EU regulations in order to avoid double taxation or non-taxation</p>	<ul style="list-style-type: none"> • Indirect Taxation Authority of BiH
<p>BiH According to the ITA practice, a VAT payer who charged VAT on a transaction which is not considered taxable under the Law on VAT does not have the option to correct such an error in favor of its customer.</p>	<p>In order to preserve the VAT system neutrality the ITA should enable taxpayers to update incorrectly calculated VAT, provided that the error is corrected in favor of the customer pursuant to Article 55, paragraph (11) of the Law on VAT, and prescribe a detailed procedure for such a correction.</p>	<ul style="list-style-type: none"> • Indirect Taxation Authority of BiH
<p>BiH The ITA treats the purchase of bad debts as a financial service that is not exempted from VAT</p>	<p>The ITA should accept the legal opinion of the EU Court of Justice, which deems that no taxable supply of services is effected when an operator purchases defaulted debts at a price below their face value, provided that the difference between the face value of those debts and their purchase price reflects the actual economic value of the debts at the time of their assignment.</p>	<ul style="list-style-type: none"> • Indirect Taxation Authority of BiH
EXCISE DUTIES LAW		
<p>BiH Amendments to Article 23 of the Law on Excise Duties – paying excise duties in advance</p>	<p>Initiate a procedure for making amendments to the Law on Excise Duties, according to which excise on tobacco products will be paid through delayed payment with a deadline</p>	<ul style="list-style-type: none"> • ITA Board of Directors • BiH Ministry of Finance • RS Ministry of Finance • FBiH Ministry of Finance
<p>BiH Amendments to Article 21 of the Law on Excise Duties - decelerating growth in excise duties on tobacco products.</p>	<p>Develop an excise model which would lead to the establishment of new growth dynamics appropriate for the standard of living, purchasing power and the current situation in the country</p>	<ul style="list-style-type: none"> • ITA Board of Directors • BiH Ministry of Finance • RS Ministry of Finance • FBiH Ministry of Finance
<p>BiH Amendments to Article 25 of the Law on Excise Duties – excise stamp labelling</p>	<p>Amend Article 25, paragraph 5 according to which the price will not be stated on excise stamp but published in the Official Gazette of BiH</p>	<ul style="list-style-type: none"> • ITA Board of Directors • BiH Ministry of Finance • RS Ministry of Finance • FBiH Ministry of Finance
<p>BiH Amendments to the Law on Excise Duties – equalizing the levies on heating oil and diesel fuel</p>	<p>Adopt amendments to the Law on Excise Duties either by increasing the excise duties on heating oil by 0.25 KM or by prescribing the obligation to pay tolls on heating oil in the amount of 0.25 KM.</p>	<ul style="list-style-type: none"> • ITA Board of Directors • BiH Ministry of Finance • RS Ministry of Finance • FBiH Ministry of Finance
<p>BiH Amendments to Article 31 of the Law on Excise Duties – refund of excise duties paid on heating oil</p>	<p>Article 31 of the BiH Law on Excise Duties should be amended to provide food manufacturers with the right to receive excise duty refunds for heating oil used in reproduction, especially considering the fact that it is not the practice in modern economies to burden the reproduction with special taxes, duties, excises, etc.</p>	<ul style="list-style-type: none"> • ITA Board of Directors • BiH Ministry of Finance • RS Ministry of Finance • FBiH Ministry of Finance
<p>BiH Amendments to Article 31 of the Law on Excise Duties -refund of excise duties paid on ethyl alcohol in dairy industry</p>	<p>We propose the amendment of the Article 31 of the Law on Excise Duties in the sense that the food manufacturers and dairy processors in BiH are refunded the excise duties paid on ethyl alcohol.</p>	<ul style="list-style-type: none"> • ITA Board of Directors • BiH Ministry of Finance • RS Ministry of Finance • FBiH Ministry of Finance

PERMITS

CONSTRUCTION PERMITS

INTRODUCTION

According to the World Bank's Doing Business Report for 2016, BiH ranks 171 according to the ease and time required to obtain a construction permit, while at the time of the last White Book edition, it ranked 163. Therefore, in terms of the ease and time required to obtain a construction permit, BiH has worsened its rank by 8 positions. This is primarily due to the lack of progress in amending the legislation governing this area, and the concurrent progress made by the other countries in this area. In addition, the legislative changes made in this area over the past few years have not been adequately followed up in practice, particularly in terms of efficiency and promptness of issuing construction permits.

The problem that is still present in FBiH is that the issue of permits is governed by both entity and cantonal laws and regulations, which further complicates the process for the investors, because experience gained in one municipality cannot be relied on when obtaining permits in another municipality.

It should be noted that the currently applicable Law on Spatial Planning and Land Utilization at the level of FBiH was adopted back in 2006. Since then, it has been amended five times, but not in compliance with the regulations governing the same area at the cantonal level, and the consolidated text of the Law has never been made. In this regard, it should be noted that FBiH has no spatial plan and that it relies on the Spatial Plan of the Socialist Republic of BiH (1981 – 2000), which is outdated (given the period it originates from) and therefore, it is not adequate for addressing the needs arising in practice, such as, *inter alia*, the needs related to energy infrastructure projects and energy infrastructure. Specifically, the plants using renewable energy sources, such as biomass, and the technologies currently in use were not known or were less known at the time, which is the reason for not being included in the spatial planning documents. Accordingly, in formal terms, it is, first and foremost, necessary to adopt the Law on

Spatial Planning and Land Utilization and a new FBiH Spatial Plan that would include the latest power facilities and to harmonize the laws and regulations at the cantonal levels both horizontally and vertically, aiming to regulate this area in a balanced and systematic manner.

Compared to the previous period, RS has not made any significant progress in this area. The Law on Spatial Planning and Construction adopted in 2013 is still in force and it has not undergone any substantial changes compared to the previous one. Essentially, the problem in RS is primarily that these plans are incomplete, yet it is only based on these plans that investors may be issued location requirements within an optimum timeframe. However, it should be noted that the current RS Spatial Plan has adequately addressed major infrastructure facilities, and it can be concluded that, in this respect, it is significantly better compared to the one used in FBiH.

Having reviewed the recommendations given in the previous "White Book", it can be concluded that incomplete and mismatched procedures, non-transparent process and inefficient administrative staff are the issues causing lack of adequate and timely support to investors.

INEFFICIENT PROCESSING OF APPLICATIONS*

FBiH and RS: OPEN ISSUE

Inefficient processing of applications in FBiH is primarily reflected in the decisions and actions that are dependent on the territorial organization of FBiH. Investors in major projects of significance for FBiH submit their applications for construction permits to the FBiH Ministry of Physical Planning that forwards the applications to the competent cantonal and municipal authorities in order to obtain their opinions and approvals. This procedure takes several months provided that the municipal and cantonal authorities have no res-

ervations concerning the application. This makes the process of obtaining the necessary approvals and permits highly inefficient and slow.

Inefficient processing of applications in RS is especially manifested in relation to investment in telecommunications infrastructure. It should be noted that the current Law on Spatial Planning of RS does not cover the telecommunication sector and does not define linear infrastructure and mobile network, and accordingly, there is no clear procedure for obtaining permits in this segment at the level of municipalities, which is the reason why the time period for obtaining a permit varies from one municipality to another. In some of the municipalities it takes 15 days, while in others, it takes up to one year to process all documents required for obtaining a permit. An additional problem is that the base station installations for mobile telephony have not been envisaged in the spatial plan, zoning or regulatory plan.

FBiH and RS: RECOMMENDATION

Define a single pattern for the lower levels of government to provide their opinions on the construction that should be defined either as positive or as negative, and only in case of a negative opinion, have them provide appropriate clarifications. In this way, any ambiguities and arbitrary interpretations of the opinions provided by the lower levels of government would be avoided and there would be no basis for requiring the investors to provide additional approvals or amend their applications.

FBiH and RS: OPEN ISSUE

The problem of slow application processing in FBiH and RS still remains present. The length of procedure varies from one authority to another. For example, in smaller municipalities, where the application influx is lower, the officials are more willing to support investors, while in the majority of developed municipalities, primarily due to an overload and higher application influx, obtaining permits takes more time.

The aforementioned territorial organization of FBiH also contributes to the slow application processing. Thus, when a company applies for the construction permit, the FBiH Ministry of Physical Planning does not consider the application but refers the company to the cantonal and municipal authorities for obtaining an opinion, approval

and the like, and this procedure can take several months. Accordingly, the process for obtaining an urban approval for a facility is very inefficient and slow.

FBiH and RS: RECOMMENDATION

It is necessary to provide professional, well trained and responsible staff. In order to improve efficiency, it would be advisable to set up the inter-linked electronic databases that would allow for faster and easier processing of all applications.

THE DOCUMENTATION REQUIRED FOR OBTAINING URBAN AND CONSTRUCTION APPROVALS IS EXCESSIVE*

FBiH and RS: OPEN ISSUE

When applying for the construction permit, the applicant is required to submit various approvals (related to infrastructure, utility services, telecommunications, the Institute for Protection of Monuments, the local electricity provider, electricity permit, etc.) that are in most of the cases valid only for one year from the date of issuance. For each additional facility that is built within the industrial zone, the applicant is required to obtain the same approvals again, even though it has already been stated that e.g. there are no facilities that are under the protection of the Institute for Protection of Monuments or transmission lines or telecommunication infrastructure on the construction site. In both BiH entities there is a practice of duplicating the required approvals within the same procedure (water approval – water permit; fire protection approval – fire protection permit) leading to a significant increase in the workload and lengthy procedures in general.

FBiH and RS: RECOMMENDATION

Introduce a clear obligation for the responsible enterprises, as the owners of the respective infrastructure, to keep updated records and inform the competent cantonal or entity Ministries of Physical Planning about any changes on the given infrastructure in a timely manner. It should be specified that a new approval is to be obtained only if there have been changes in the cadastral records since the time of issuance of the last approval.

Furthermore, the issuance of a single approval for the supporting infrastructure within seven days from the date of application by all relevant parties, would, at least on an annual basis, solve the problem of lengthy procedures. Such an approval would cover the industrial zone site where the construction takes place.

Reducing the scope and avoiding the approvals duplication within a single procedure can be achieved by verifying the compliance with the issued approvals through the technical handover procedure. The competent authority must be notified promptly in case of any deviations from the issued approval.

INCOHERENCE AND LACK OF COOPERATION BETWEEN THE STATE/PUBLIC COMPANIES, THE APPROVALS OF WHICH ARE REQUIRED FOR OBTAINING CONSTRUCTION PERMITS*

FBiH and RS: OPEN ISSUE

The utility companies (electrical utility, utility service company, telecom operators, mines, railways) issuing approvals for supporting infrastructure in the process of obtaining a construction permit do not have a blueprint of their installations which results in a collision between the installations of some utility companies. This additionally extends the period of issuing certificates or impedes setting up a particular installation.

Namely, the current Law on Physical Planning and Land Utilization in FBiH stipulates that the municipal authorities responsible for spatial planning and land utilization are required to collect the information related to the construction from the investors, legal entities and other organizations and forward it to the cantonal or FBiH Ministry for the adoption of the report on the implementation of the planning documents in the relevant Canton. However, no sanctions have been prescribed in case of non-compliance with the aforementioned requirement imposed by the municipality, as is the case in RS.

Furthermore, in RS the main problem in this area is the mismatch of cadastral and land registry records, which greatly slows down or even prevents the fulfilment of the main prerequisite for

obtaining the construction permit – resolving property and legal issues on the piece of land in question. A particular problem is the land that is listed as state-owned property in the land-registry records, while in the cadastral records, the same piece of land is sometimes listed as the property owned by private individuals.

FBiH and RS: RECOMMENDATION

The best solution would be for the entity governments to be responsible for the central database and for the lower levels to be required to submit and update the data in accordance with the changes occurring on the ground, with the possibility to seek information from the entity government when dealing with the applications.

It should be made clear that the aforementioned persons are required to periodically (e.g. quarterly, semi-annually or annually) provide information, rather than merely upon request submitted by the competent authorities. The fines should also be specified as an inducement for timely submission of information, as it is regulated by the Law on Spatial Planning and Construction of RS that prescribes a fine ranging from KM 5,000 to KM 30,000 for a legal entity-investor in case of failure to comply with the requirements set out by the municipal authority and submit the required information and documentation.

With respect to the current issue in RS, it is proposed to speed up the process of harmonizing the cadastral with the land-registry records and resolve the issue of state property.

VAGUENESS IN REGARDS TO REGULATING THE PAYMENT OF THE FEES FOR THE USAGE OF CONSTRUCTION LAND IN FBiH AND RS*

FBiH and RS: OPEN ISSUE

It is not clear how the fees for the usage of construction land in FBiH are determined, what the objective criteria are, or who is required to pay the fee. In addition, there is no distinction between the persons intending to build on the state-owned construction land and those intending to construct on a privately owned land.

Furthermore, the legislation does not provide for the cases of exemption from payment of fees, and it is not clear how and under what conditions the investor is entitled to deduction of the specified rent on the account of the rent paid during the construction of the previous facility on the construction site where the new one is to be built. In other words, it is not clear whether the fee is to be paid only once, during the initial construction, or during each construction, and at which stage it is to be paid. The entity-level legislation does not provide any answers to the above issues and problems.

FBiH and RS: RECOMMENDATION

Harmonize the provisions of relevant laws at the level of FBiH and RS, cantons and municipalities, in formal and substantive terms, and provide a clarification on when, how and who is required to pay the rent, as well as on the exemption cases.

FBiH and RS: OPEN ISSUE

The Law on Physical Planning and Land Utilization in FBiH does not define the area of telecommunication infrastructure and therefore, there is no clear procedure for obtaining permits in this segment, while there is still a problem that in some of the municipalities it takes about 30 days, while in others, it may take up to one year to process all documents required for obtaining a construction permit.

The concept of line infrastructure should be defined in more detail to include the telecommunications sector, especially the part that refers to the facilities that do not require approval for construction.

Similarly, the procedure for obtaining permits in RS is neither clear nor simple. Namely, in the process of issuing the construction permits for the facilities of public interest the Government's decision based on the Expropriation Law should be considered as an evidence of land ownership. Article 83 of the Law may be associated with the construction of telecommunication facilities - line infrastructure. Therefore, in case there is a need to resolve legal and property issues based on partial expropriation of the real estate intersected by telecommunication network cables, the municipal authority may decide to accept the RS Government's decision on determining the public interest

for expropriation of property as a proof of resolved property issues, pursuant to the aforementioned provision of the Law. This provision would be sufficient for the implementation of the decision in the land registry records, instead of the current arrangement reflected in the implementation of the decision on partial expropriation issued by the RS Authority for Geodetic and Property Affairs in the land registry records. Specifically, the said provision is ambiguous and subject to different interpretations, and therefore, this issue should be further explored and adequately addressed.

FBiH and RS: RECOMMENDATION

The Law on Physical Planning and Utilization of Land in FBiH and the Law on Physical Planning and Construction in RS should clearly define the concept of linear infrastructure and include the telecommunication sector.

Linear infrastructure should be defined as follows: a linear infrastructure facility is a public road, public railway infrastructure, electric power line, oil pipeline, oil products pipeline, gas line, cable transport facility, linear electronic communications infrastructure, water supply, sewerage, telecommunications infrastructure and the like, which may be above or below ground and the construction of which is provided for in the corresponding planning document.

With respect to further regulation of facilities that are not subject to construction permit, the provisions of the RS Law on Physical Planning should be taken into account and analogously applied in FBiH, as they regulate the above issue in detail.

SELECTION OF COMMITTEE FOR TECHNICAL ACCEPTANCE OF BUILDING

FBiH: OPEN ISSUE

Harmonization of the Law on Physical Planning and Land Utilization in FBiH, because in FBiH, the applicant has no possibility to select the technical committee, nor is it entitled to seek legal remedy.

FBiH: RECOMMENDATION

FBiH should introduce a requirement of submitting a list of legal entities or individuals authorized to perform technical inspection who would be selected on the basis of a public competition

and give the applicant right to choose. This proposal aims to increase efficiency and facilitate the evaluation.

ENVIRONMENTAL PERMITS

INTRODUCTION

Environmental permits regulate the measures and actions that can be applied in the manufacturing process and are focused on the prevention of pollution at the source, and better management of natural resources.

When it comes to the practical aspects of issuing environmental permits, in BiH situation is more than complex, especially taking into account that legal provisions and standards prescribed by the law are often not applied in practice; FBiH and cantonal laws on environmental protection are not harmonized; the procedures for renewing environmental permits upon their expiration are either underdeveloped or not established at all; the practice of issuing environmental permits varies from one canton to another, and the like.

It should be noted that through continuous improvements and investments made by foreign investors, and through modernization and automating of the processes, new plants are being built and changes are being introduced to the operations of the existing ones with the aim to reduce the negative impacts on the environment while respecting the principles of sustainable development.

An integrated approach supports and fosters a sustainable, social, and economic development, improves the quality of life of residents in the municipalities, raises awareness and respect for nature, which is of vital importance for the environment, but also for a long-term success of the internal market.

PUBLIC DEBATE TRANSPARENCY*

FBiH and RS: OPEN ISSUE

Public debates are non-transparent; the applications are processed slowly; the length of procedure depends on the territorial organization of BiH and the procedure for obtaining an environmental permit, from the moment of submitting an

application to obtaining the permit, takes a very long time, i.e. several months, which has a negative impact on investors in technical and financial terms.

FBiH and RS: RECOMMENDATION

In order to achieve transparency and eliminate these shortcomings it is necessary that the responsible ministry, above all, enable file downloads electronically, as well as submitting comments and suggestions to the authorized persons via e-mail.

Further, it is essential that the call for public debate on the action plan is reduced to the shortest period possible, not exceeding 10 or 15 days (taking into account the arrangements provided for in RS).

In addition, it would be advisable for the FBiH Government to amend the applicable regulations on licensing as soon as possible, in order to clearly define the scope of the integrated environmental permit, as well as the possibility of e-permits (electronic permit) and to clearly define the procedure for renewal of the existing environmental permits.

In terms of environmental permit, the issuing procedure should be shortened, as well as the procedure for obtaining approvals from the public institutions (e.g. the FBiH Ministry of Environment and Tourism), because these approvals are a precondition for obtaining urban approval and construction permit, which slows down the investment cycle.

Finally, with regard to the water permit, it is necessary to extend the deadline for bringing specific parameters within the prescribed limits due to significant investments, while relying on the Regulation of conditions for discharging wastewater into natural recipients and public sewer systems ("Official Gazette of the FBiH", No. 04/12) prescribing that the quality of all the parameters must be in line with the maximum allowable limits laid down in FBiH Government's Ordinance.

DIFFICULTIES IN ANALYZING ZERO STATE*

FBiH: OPEN ISSUE

Basis for any environmental research in a particular area must be a detailed analysis of the current situation. Therefore, a detailed knowledge of the zero state of the environment can serve as the basis on which realistically all future dealings could be based, correct conclusions regarding the negative consequences made, and the necessary measures of protection taken.

Therefore it is necessary to carry out a Study on pollution in the zero state which determines the state of the environment on the given location, a list of the source points, and quantitative and qualitative characteristics of waste streams (waste, noise, air emissions, waste water), showing the emission sites on the map of the location. However, difficulties that arise when analyzing the zero state for the certain areas are as follows: lack of data on emissions at certain areas (municipalities, cantons); the problem of multiple emitters (legal entities) and the lack of data on their impact on the location, the lack of data on the share of individual emitters in the overall emissions on the site, the lack of emissions stations for analyzing air quality in populated areas.

FBiH: RECOMMENDATION

Since provider's action plan cannot be submitted without the aforementioned Study of pollution in the zero state, the FBiH Ministry of Environment and Tourism, through the competent cantonal and local authorities, should take the necessary measures to eliminate these obstacles, in particular, to urge the setup of a registry of pollutants in the respective locations.

PUBLIC TENDER APPLICATIONS AT THE FUND FOR ENVIRONMENTAL PROTECTION*

FBiH: OPEN ISSUE

From the public tender published by the FBiH Fund for Environmental Protection it is evident that an applicant can only submit one project per program. However, it is not clear what the reason for this restriction could be, given that such a restriction is not prescribed by the Rulebook on

the procedure for announcing public tenders and selecting the beneficiaries of the FBiH Fund for Environmental Protection ("Official Gazette of FBiH" No. 73/10), the Rulebook on the criteria for the evaluation of applications for funds i.e. programs, projects and similar activities of the Fund ("Official Gazette of FBiH" No. 73/10), the Rulebook on the requirements to be met by the beneficiaries of the FBiH Fund for Environmental Protection ("Official Gazette of FBiH" No. 75/10), or the Rulebook on the conditions and manner of granting loans, credits or other facilities of the Fund ("Official Gazette of FBiH" No. 75/10), or the Rulebook amending the Rulebook on the procedure for announcing public tender and selecting the beneficiaries of the FBiH Fund for Environmental Protection ("Official Gazette of FBiH" No. 17/15).

FBiH: RECOMMENDATION

We are of the opinion that the applicants investing major resources in the FBiH Fund for Environmental Protection should be allowed to submit multiple projects per program.

ABOLISH FEES FOR OPERATORS MAINTAINING EMISSIONS WITHIN LIMIT VALUES*

FBiH: OPEN ISSUE

The air pollutant fee is paid regardless of the fact whether the emissions are inside or outside the emission limit values. The Regulation on the types of fees and criteria for calculating air pollutant fees ("Official Gazette of FBiH" No. 66/11,107/14) stipulates that only those liable for obtaining the permit are required to pay the fee, based on the above-mentioned criteria. The fee is not revoked in case that the emissions are below the limit values. In EU countries, operators pay fees only for the emissions exceeding the limit values, i.e. for the amount of emitted pollutants exceeding the allowable values prescribed by the environmental permit.

FBiH: RECOMMENDATION

The Regulation on the types of fees and criteria for calculating air pollutant fees ("Official Gazette of FBiH" No. 66/11,107/14) should be amended so that the operators are exempt from paying the fees if it has been determined that the emis-

sions are within the limit values, i.e. the Regulation should be aligned with the EU regulation.

DEFINE LIMIT VALUES FOR EXISTING PLANTS*

FBiH: OPEN ISSUE

The regulations governing this area do not define the limit values for the existing plants, i.e. the plants that are currently at the stage of being adjusted to the best available techniques and emission limit values, and the deadlines for gradual emission reduction and adjustment of the existing plants to the best available techniques are very tight.

Specifically, the Regulation on limit values of pollutant emissions into the air ("Official Gazette of FBiH" No. 12/05) provides for specific deadlines for aligning the existing plants, which has not been done since the release of the last White Book.

On the other hand, in 2013, a new Regulation on limit values for emissions into the air from combustion plants ("Official Gazette of FBiH" No. 3/13) was adopted to supersede the Regulation on limit values for emissions into the air from combustion plants adopted back in 2005. In this respect, it has been prescribed that the operators of the existing large combustion plants and/or gas turbines can comply with the obligation to reduce SO₂, NO_x and solid particles either by applying the emission limit values laid down in the Regulation or by developing a Program for reducing emissions of pollutants into the air or a combination of these two approaches. Obviously, the prescribed methods of fulfilling the requirements are related to the requirements prescribed by the new Regulation.

FBiH: RECOMMENDATION

The Regulation on limit values of pollutant emissions into the air ("Official Gazette of FBiH" No. 12/05) and the Regulation on limit values for emissions into the air from combustion plants ("Official Gazette of FBiH" No. 3/13) should define the limit values for the existing plants. In addition, the environmental permits should specify the limit values applicable during the adjustment period that should be somewhat milder compared to the limits defined in the Regulations that apply to new plants or the plants compliant with the best available techniques. It is necessary to define realistic

deadlines for the implementation of projects in the field of environmental protection.

CLEARLY DEFINE THE LEVEL OF OXYGEN IN THE WASTE GASES*

FBiH: OPEN ISSUE

The level of oxygen in the waste gases, which is used to reduce the parameters down to Nm³, is not defined in the relevant regulations, and due to the lack of these data, it is impossible to determine the concentration of pollutants in the flue gases unambiguously.

FBiH: RECOMMENDATION

The Regulation on limit values of pollutant emissions into the air ("Official Gazette of FBiH" No. 12/05) and the Regulation on limit values for emissions into the air from combustion plants ("Official Gazette of FBiH" No. 3/13) should clearly define the level of oxygen in waste gases.

CLEARLY DEFINE THE DEVELOPER OF THE WASTEWATER MONITORING PROGRAM*

FBiH: OPEN ISSUE

The Regulation of conditions for discharging wastewater into natural recipients and public sewer systems ("Official Gazette of FBiH" No. 4/12) defines the general parameters for the wastewater quality, but no specific ones, for instance, in the case of iron or steel production. The Regulation does not clearly define the entity responsible for developing a Wastewater Monitoring Program or the mandatory chapters of the Program which would identify the entity responsible for developing the Monitoring program.

FBiH: RECOMMENDATION

The entity responsible for the development of the Wastewater Monitoring Program should be clearly defined (whether authorized laboratories or operators or both). In addition, it is necessary to clearly define the chapters of the Wastewater Monitoring Program with a focus on defining the specific parameters that must be monitored for discharged wastewater from specific technological processes and plants.

LACK OF COHERENCE BETWEEN THE RELEVANT GOVERNMENT INSTITUTIONS*

FBiH: OPEN ISSUE

The lack of coherence between the competent government institutions is a major issue. For instance, environmental permit issued by the competent FBiH ministry is not delivered *ex officio* to the other government institutions, such as the Water Agency and the Fund for Environmental Protection and the measures specified in the environmental permit and the deadlines for their implementation are not compliant with the water regulations.

FBiH: RECOMMENDATION

Increase cooperation of relevant government institutions and introduce a system of *ex officio* delivery of environmental permits and other decisions issued by relevant government institutions.

INTRODUCE CORRECTIVE INCENTIVE COEFFICIENTS FOR IMPLEMENTATION OF THE PROJECTS TO REDUCE UNCONTROLLED EMISSIONS

FBiH: OPEN ISSUE

For the purpose of collecting the funds, which could not be collected otherwise, and investing them in the environmental and energy efficiency projects and programs, the FBiH established the Fund for Environmental Protection to ensure the basic mechanism for the implementation of such project and programs. The funds for financing projects, programs and other activities in the field of environmental protection by the Fund, as defined in Article 18 of the Law on Environmental Protection Fund of the FBiH (“Official Gazette of BiH”, No. 33/03), are to be collected from the fees.

The unit fee and the corrective coefficient and the method of their calculation and payment are prescribed by: Regulation on the method of calculation and payment, and the deadlines for calculation and payment of fees by air pollutants (“Official Gazette of FBiH” No. 79/11); Regulation on the types of fees and criteria for calculating air pollutant fees (“Official Gazette of FBiH” No. 66/11) and Regulation amending the Regulation on the types

of fees and criteria for calculating air pollutant fees (“Official Gazette of FBiH” No. 107/14).

The Regulation prescribes corrective incentive factors for calculating emissions from controlled sources aiming to stimulate operators (pollutants) to reduce emissions and environmental loads, and to reduce the costs resulting from the payment of these fees, i.e. to reduce the costs of rehabilitation caused by air pollution.

The amendments introduced by the adoption of the Regulation amending the Regulation on the types of fees and criteria for calculating air pollutant fees (“Official Gazette of FBiH” No. 107/14), in Article 3, read as follows:

“Asphalt plants and uncontrolled emissions from the process of dry distillation of coal in coke ovens shall be subject to an emission factor, i.e. the mass of emitted pollutants shall be determined by the mass output, so that in case of asphalt plants it shall be 0.01% of solid particles (dust) in relation to the total annual output, and in case of uncontrolled emissions of coke ovens, it shall be 0.035% of solid particles (dust) in relation to the total annual output of coke”.

In Article 6, paragraph 3, the words “from asphalt plants” are followed by the words “and coke ovens (for uncontrolled emissions)”, i.e. Article 6 of the Regulation on the types of fees and criteria for calculating air pollutant fees currently reads as follows: “Notwithstanding paragraph 1, line 3 of this Article, the amount of the annual fee for one ton of solid particles (dust) from asphalt plants and coke ovens shall be 2350 KM/t.”

Furthermore, uncontrolled emissions from coke batteries are put in a more difficult position than the uncontrolled emissions of asphalt plants (emission factor of 0.01% for asphalt plants and 0.035% for coke plants). According to the Amendments to the Regulation, the operator (pollutant), in this case, of a coke plant, is being deterred with the aim to reduce future investments in a significant reduction of uncontrolled emissions, given that the fees are directly dependent on their annual output.

The projects defined in the best available techniques (BATs) for these plants are the projects that require major investments (where the investment value of each such project exceeds 10 million EUR).

FBiH: RECOMMENDATION

It is necessary to introduce corrective incentive coefficients in case of implementation of projects aimed at the reduction of uncontrolled emissions from coke batteries. When defining corrective incentive coefficients, it is necessary to take into account the overall reduction of emissions from coke batteries, as well as the value of investments.

REGULATIONS ON PACKAGING WASTE**FBiH: OPEN ISSUE**

The complicated method of reporting and calculating the fee for packaging waste is one of the current problems. The operators are charged with the obligation to report on the amount of imported packaging by type for any import of goods from other countries, as well as to report on the quantities of packaging. In addition to the reporting requirements related to the quantities of imported and produced packaging, the operator is charged with the obligation to control the suppliers in terms of payment of the fee for packaging waste.

FBiH: RECOMMENDATION

In the newly drafted/revised by-laws, it should be defined that the calculation and payment of these fees are to be performed together with the calculation and payment of all other import charges (customs clearance) of goods or when placing the produced packaging on the market by domestic manufacturers.

REGULATIONS ON WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WEEE)**FBiH: OPEN ISSUE**

It should be noted that the method of reporting and calculation of fees for waste electrical and electronic equipment (WEEE fees) is very complicated. The operator is charged with the obligation to report on the amount of electrical and electronic equipment imported from other countries, by type, as well as on the quantities of produced electrical equipment by domestic manufacturers. In addition to the requirement to report on the quantities of imported and produced electrical equipment, the operator is charged with the obligation to control the suppliers in terms of the WEEE fees payment.

FBiH: RECOMMENDATION

In the newly drafted/revised by-laws, it should be defined that the calculation and payment of these fees are to be performed together with the calculation and payment of all other import charges (customs clearance) of goods or when placing the produced packaging on the market by domestic manufacturers.

CONCLUSION: It is necessary to increase the cooperation of relevant governmental institutions and introduce a system of delivery of permits and decisions, *ex officio*, to other relevant government institutions, and regulate the emission factors in detail, as well as the fees for uncontrolled emissions of solid particles (dust) from the coke batteries.

LICENSE IN THE FIELD OF ELECTRICITY SECTOR**GAS**

Gas market in BiH is still in an early stage of development, which means that BiH still does not have a liberalized and regulated gas market. BiH has no domestic production of gas, and it imports gas to meet the domestic demands.

FBiH has begun to implement regulations aimed at the organization and the liberalization of the gas market in general, and the latest developments in this sector refer to the planned adoption of a new Gas Law which should govern the gas sector in more detail. It is still unclear whether the new law will actually be adopted, and if so, when.

Gas market in RS is mostly regulated by the RS Gas Law ("Official Gazette of RS" Nos. 86/07 and 121/12) governing the organization and operation, as well as the performance of business activities in the natural gas sector in RS. Given that the RS Energy Regulatory Commission (**RERS**) is the authority responsible for regulating the gas-related operations in the RS, the regulations issued by the RERS are also of importance.

FBiH: OPEN ISSUE

The current regulations covering the area of gas is contained in the Ordinance on organization and regulation of the gas industry sector ("Official

Gazette of FBiH” No. 83/07). Although the present Regulation provides for the licensing of gas supply to tariff customers, in practice, such a license is not obtainable.

FBiH: RECOMMENDATION

The FBiH Ministry of Energy, Mining and Industry should adopt an appropriate set of regulations on the basis of the above-mentioned Ordinance, in order to define the licensing method in more detail. In addition, it is necessary to urgently adopt the FBiH Gas Law, which has been pending in the parliamentary procedure for a long time already, to enable the companies to obtain the license for performing other activities in the gas industry, as it has already been done in RS.

Prior to the adoption of the regulations that would detail the requirements for licensing the supply of gas to tariff customers, we suggest to amend Article 34 of the aforementioned Ordinance. The reason for the suggested amendment stems from the fact that in FBiH there are companies that could be classified as eligible customers based on the requirement set out in Article 34, paragraph 1. However, given the unrealistic requirements prescribed by this provision, these companies cannot be classified as such. For instance, the requirement related to annual consumption is not realistic, given that in BiH there is no such consumer, and in the current situation, the prescribed consumption level is close to the consumption level of the entire BiH. According to Article 29 of the Ordinance, the eligible customer is entitled to choose its gas supplier freely, which includes the right of switching to another supplier. Please keep in mind that the initiative to obtain the status of eligible customer is in accordance with the Draft Gas Law in FBiH.

Applicable Article 34 of the Ordinance reads as follows:

Preferential customer is:

- a customer that consumes gas for electricity generation, regardless of the annual consumption volumes and within the limits intended for such use of gas,
- an end customer that consumed **more than 150 million m³ of gas** in the preceding calendar year.

Gas Supply Contracts with the preferential customer in the system of another country shall be permissible provided that the customer has the preferential status both in FBiH and in such other country.

Gas Supply Contracts with the gas supplier from another country shall be permissible provided that the customer has the preferential status both in FBiH and in such other country.

The provisions set out in paragraphs 2 and 3 shall apply *mutatis mutandis* to the relationship between the two entities”.

Proposed amendment to Article 34 of the Ordinance reads as follows:

Preferential customer is:

- a customer that consumes gas for electricity generation, regardless of the annual consumption volumes and within the limits intended for such use of gas,
- an end customer that consumed more than **20 million m³** of gas in the preceding calendar year.

Gas Supply Contracts with the preferential customer in the system of another country shall be permissible provided that the customer has the preferential status both in FBiH and in such other country.

Gas Supply Contracts with the gas supplier from another country shall be permissible provided that the customer has the preferential status both in FBiH and in such other country.”

RS: OPEN ISSUE

Currently, the companies registered in FBiH cannot apply for license to perform energy-related activities in the gas sector at RERS. The RERS Rulebook on Licensing (“Official Gazette of RS” No. 39/10 and 65/13), in essence, does not set such a restriction, however, in practice, RERS does not issue licenses to the companies headquartered in FBiH. Such companies are, basically, completely precluded from engaging in the gas sector activities, particularly, gas trading, across BiH.

RS: RECOMMENDATION

It is necessary to allow the companies headquartered in FBiH to apply for license at RERS.

ELECTRICITY

Opening of the electricity market in BiH

The liberalization of the electricity market in BiH has started as of 1 January 2015 giving end users an opportunity to choose the supplier and the terms and conditions of electricity supply.

The opening of the electricity market occurred gradually, and the aim was to create, maintain and develop competition among participants in the electricity market. According to Article 4.1. and Article 8 of the Law on Transmission, Regulator and System Operator in BiH (“Official Gazette of BiH”, Nos. 7/02, 13/03, 76/9 and 11/1), the electricity market in BiH is a unique economic space and is based on free and equal access to the transmission network, based on the principles of regulated access and applicable directives of the EU.

The opening of the electricity market in BiH followed the schedule according to which the status of an eligible customer was granted to:

- all customers with annual consumption of electricity exceeding 10 GWh, as of 1 January 2007;
- all customers with annual consumption of electricity exceeding 1 GWh, as of 1 January 2008;
- all customers, except households, as of 1 January 2009;
- all electricity customers as of 1 January 2015.

Licenses

Any business entity registered in FBiH that performs or wishes to perform activities of production, transmission, distribution, supply or trade of electricity, is required to hold or obtain the appropriate license issued by the Energy Regulatory Commission in the FBiH (**FERK**). The procedure is carried out in accordance with the Licensing Regulations (“Official Gazette of FBiH” No. 43/14).

At the same time, any legal person registered in the RS, that performs or wishes to perform activities of production, transmission, distribution, supply or trade of electricity, is required to hold or obtain the appropriate license issued by RERS. The procedure is carried out in accordance with the Licensing Regulations (“Official Gazette of RS” Nos. 39/10 and 65/13).

A legal person who wishes to perform or performs the activity of international electricity trade and international trade for its own use, must hold the appropriate license issued by the State Electricity Regulatory Commission (**DERK**). The procedure is carried out in accordance with the Licensing Regulations (“Official Gazette” Nos. 87/12 and 98/15).

The above procedures are associated with several outstanding issues that need to be addressed in the coming period to increase efficiency.

FBiH and RS: OPEN ISSUE

A significant portion of the prescribed licensing requirements is not compliant with the actual situation in practice, and some evidence of compliance with the requirements laid down by the aforementioned licensing regulations cannot be submitted, as the electricity market has not been fully liberalized yet, as it is provided for in the regulations.

This results in legal dilemmas facing the applicants when preparing the required documentation, and submission of a large number of statements about the non-fulfillment of the requirements laid down in licensing regulations.

FBiH and RS: RECOMMENDATION

We are generally of the opinion that there is a realistic need for amending and revising the above-mentioned regulations on issuing licenses for performing electricity/energy activities in order to align them with the factual situation on the market. This is particularly important in relation to the requirements and criteria set out in those regulations.

EXECUTIVE SUMMARY

OPEN ISSUES	RECOMMENDATION	INSTITUTION
CONSTRUCTION PERMITS		
<p>FBiH and RS</p> <p>Inefficient processing of applications in FBiH is primarily reflected in the decisions and actions that are dependent on the territorial organization of FBiH</p> <p>The problem of slow application processing in FBiH and RS still remains present Treatment of investors differs from municipality to municipality</p>	<p>Define a single pattern for the lower levels of government to provide their opinions on the construction that should be defined either as positive or as negative. In this way, any ambiguities and arbitrary interpretations of the opinions provided by the lower levels of government would be avoided.</p> <p>It is necessary to provide professional, well trained and responsible staff. In order to improve efficiency, it would be advisable to set up the interlinked electronic databases that would allow for faster and easier processing of all applications.</p>	<ul style="list-style-type: none"> • Municipalities of the FBiH and RS.
<p>FBiH and RS</p> <p>The documentation required for obtaining urban and construction approvals is excessive</p>	<p>Introduce a clear obligation for the responsible enterprises, as the owners of the respective infrastructure, to keep updated records .</p> <p>Furthermore, the issuance of a single approval for the supporting infrastructure within seven days from the date of application by all relevant parties, would, at least on an annual basis, solve the problem of lengthy procedures. Such an approval would cover the industrial zone site where the construction takes place.</p>	<ul style="list-style-type: none"> • Municipalities of the FBiH and RS • FBiH Ministry of Physical Planning • RS Ministry of Physical Planning, Civil Engineering and Ecology
<p>FBiH and RS</p> <p>Incoherence and lack of cooperation between the state/public companies, the approvals of which are required for obtaining construction permits</p>	<p>The best solution would be for the entity governments to be responsible for the central database and for the lower levels to be required to submit and update the data in accordance with the changes occurring on the ground, with the possibility to seek information from the entity government when dealing with the applications.</p>	<ul style="list-style-type: none"> • Responsible state and federal administrative bodies • Public companies in FBiH and RS
<p>FBiH and RS</p> <p>Vagueness in regards to regulating the payment of the fees for the usage of construction land in FBiH and RS</p>	<p>Harmonize the provisions of relevant laws at the level of FBiH and RS, cantons and municipalities, in formal and substantive terms, and provide a clarification on when, how and who is required to pay the rent, as well as on the exemption cases.</p>	<ul style="list-style-type: none"> • FBiH Ministry of Physical Planning • RS Ministry of Physical Planning, Civil Engineering and Ecology
<p>FBiH</p> <p>The Law on Physical Planning and Land Utilization in FBiH does not define the area of telecommunication infrastructure and therefore, there is no clear procedure for obtaining permits in this segment</p>	<p>The Law on Physical Planning and Utilization of Land in FBiH and the Law on Physical Planning and Construction in RS should clearly define the concept of linear infrastructure and include the telecommunication sector.</p>	<ul style="list-style-type: none"> • FBiH Ministry of Physical Planning • RS Ministry of Physical Planning, Civil Engineering and Ecology • FBiH Government • RS Government • FBiH Parliament • National Assembly of RS

OPEN ISSUES	RECOMMENDATION	INSTITUTION
<p>FBiH</p> <p>In FBiH, the applicant has no possibility to select the technical committee, nor is it entitled to seek legal remedy.</p>	<p>FBiH should introduce a requirement of submitting a list of legal entities or individuals authorized to perform technical inspection who would be selected on the basis of a public competition and give the applicant right to choose. This proposal aims to increase efficiency and facilitate the evaluation.</p>	<ul style="list-style-type: none"> • FBiH Ministry of Physical Planning
ENVIRONMENTAL PERMITS		
<p>FBiH</p> <p>Public debates are non-transparent; the applications are processed slowly; the length of procedure depends on the territorial organization of BiH and the procedure for obtaining an environmental permit, from the moment of submitting an application to obtaining the permit, takes a very long time.</p>	<p>It is necessary that the responsible ministry, above all, enable file downloads electronically, as well as submitting comments and suggestions to the authorized persons via e-mail.</p> <p>Call for public debate on the action plan is reduced to the shortest period possible, not exceeding 10 or 15 days.</p> <p>Amend the applicable regulations on licensing as soon as possible, in order to clearly define the scope of the integrated environmental permit, as well as the possibility of e-permits (electronic permit) and to clearly define the procedure for renewal of the existing environmental permits.</p>	<ul style="list-style-type: none"> • FBiH Government • FBiH Ministry of Environment and Tourism
<p>FBiH</p> <p>Difficulties in analyzing zero state for the certain areas due to lack of data on emissions at certain areas.</p>	<p>Since provider's action plan cannot be submitted without the aforementioned Study of pollution in the zero state, the competent Ministry of Environment and Tourism, through the competent cantonal and local authorities, should take the necessary measures to eliminate these obstacles.</p>	<ul style="list-style-type: none"> • FBiH Ministry of Environment and Tourism
<p>FBiH</p> <p>An applicant who applied to the public tender published by the FBiH Environmental Fund can only submit one project per program</p>	<p>The applicants investing major resources in the FBiH Fund for Environmental Protection should be allowed to submit multiple projects per program.</p>	<ul style="list-style-type: none"> • FBiH Fund for Environmental Protection
<p>FBiH</p> <p>Abolish fees for operators maintaining emissions within limit values</p>	<p>The Regulation on the types of fees and criteria for calculating air pollutant fees ("Official Gazette of FBiH" No. 66/11,107/14) should be amended so that the operators are exempt from paying the fees if it has been determined that the emissions are within the limit values, i.e. the Regulation should be aligned with the EU regulation.</p>	<ul style="list-style-type: none"> • FBiH Government

OPEN ISSUES	RECOMMENDATION	INSTITUTION
<p>FBiH</p> <p>The regulations governing this area do not define the limit values for the existing plants, i.e. the plants that are currently at the stage of being adjusted to the best available techniques and emission limit values</p>	<p>The Regulation on limit values of pollutant emissions into the air (“Official Gazette of FBiH” No. 12/05) and the Regulation on limit values for emissions into the air from combustion plants (“Official Gazette of FBiH” No. 3/13) should define the limit values for the existing plants.</p> <p>The environmental permits should specify the limit values applicable during the adjustment period that should be somewhat milder compared to the limits defined in the Regulations that apply to new plants or the plants compliant with the best available techniques.</p>	<ul style="list-style-type: none"> • FBiH Ministry of Environment and Tourism
<p>FBiH</p> <p>The level of oxygen in the waste gases, which is used to reduce the parameters down to Nm3, is not defined in the relevant regulations, and due to the lack of these data, it is impossible to determine the concentration of pollutants in the flue gases unambiguously</p>	<p>The Regulation on limit values of pollutant emissions into the air (“Official Gazette of FBiH” No. 12/05) and the Regulation on limit values for emissions into the air from combustion plants (“Official Gazette of FBiH” No. 3/13) should clearly define the level of oxygen in waste gases.</p>	<ul style="list-style-type: none"> • FBiH Ministry of Environment and Tourism
<p>FBiH</p> <p>The Regulation of conditions for discharging wastewater into natural recipients and public sewer defines the general parameters for the wastewater quality, but no specific ones. The Regulation does not clearly define the entity responsible for developing a Wastewater Monitoring Program or the mandatory chapters of the Program</p>	<p>It is necessary to clearly define who is responsible for the development of the Wastewater Monitoring Program (whether authorized laboratories or operators or both). In addition, it is necessary to clearly define the chapters of the Wastewater Monitoring Program with a focus on defining the specific parameters that must be monitored for discharged wastewater from specific technological processes and plants.</p>	<ul style="list-style-type: none"> • FBiH Government
<p>FBiH</p> <p>Lack of coherence between the relevant government institutions – for instance, issued environmental permit is not delivered <i>ex officio</i> to the other government institutions, the operator is obliged to submit this document</p>	<p>Increase cooperation of relevant government institutions and introduce a system of <i>ex officio</i> delivery of environmental permits and other decisions issued by relevant government institutions.</p>	<ul style="list-style-type: none"> • FBiH Ministry of Environment and Tourism
<p>FBiH</p> <p>Introduce corrective incentive coefficients for implementation of the projects to reduce uncontrolled emissions</p>	<p>It is necessary to introduce corrective incentive coefficients in case of implementation of projects aimed at the reduction of uncontrolled emissions from coke batteries. When defining corrective incentive coefficients, it is necessary to take into account the overall reduction of emissions from coke batteries, as well as the value of investments.</p>	<ul style="list-style-type: none"> • FBiH Ministry of Environment and Tourism

OPEN ISSUES	RECOMMENDATION	INSTITUTION
<p>FBiH</p> <p>The complicated method of reporting and calculating the fee for packaging waste and electrical and electronic equipment waste</p>	<p>In the newly drafted/revised by-laws, it should be defined that the calculation and payment of these fees are to be performed together with the calculation and payment of all other import charges (customs clearance) of goods or when placing the produced packaging on the market by domestic manufacturers.</p>	<ul style="list-style-type: none"> FBiH Ministry of Environment and Tourism
<p>LICENSE IN THE FIELD OF ELECTRICITY SECTOR</p>		
<p>FBiH</p> <p>The current regulations covering the area of gas is contained in the Ordinance on organization and regulation of the gas industry sector ("Official Gazette of FBiH" No. 83/07). Although the present Regulation provides for the licensing of gas supply to tariff customers, in practice, such a license is not obtainable.</p>	<p>The FBiH Ministry of Energy, Mining and Industry should adopt an appropriate set of regulations on the basis of the mentioned Ordinance, in order to define the licensing method in more detail. In addition, it is necessary to urgently adopt the FBiH Gas Law.</p>	<ul style="list-style-type: none"> FBiH Ministry of Energy, Mining and Industry
<p>RS</p> <p>Currently, the companies registered in FBiH cannot apply for license to perform energy-related activities in the gas sector in RS. The RERS Rulebook on Licensing ("Official Gazette of RS" No. 39/10 and 65/13), in essence, does not set such a restriction, however, in practice, RERS does not issue licenses to the companies headquartered in FBiH</p>	<p>It is necessary to allow the companies headquartered in FBiH to apply for license at RERS.</p>	<ul style="list-style-type: none"> Regulatory Commission for Energy of RS – RERS
<p>FBiH and RS</p> <p>A significant portion of the prescribed licensing requirements is not compliant with the actual situation in practice, and some evidence of compliance with the requirements laid down by the aforementioned licensing regulations cannot be submitted, as the electricity market has not been fully liberalized yet, as it is provided for in the regulations.</p>	<p>We are generally of the opinion that there is a realistic need for amending and revising the above-mentioned regulations on issuing licenses for performing electricity/energy activities in order to align them with the factual situation on the market. This is particularly important in relation to the requirements and criteria set out in those regulations.</p>	<ul style="list-style-type: none"> Regulatory Commission for Energy of RS – RERS Regulatory Commission for Energy of FBiH - FERK

CONCESSIONS AND PUBLIC-PRIVATE PARTNERSHIP

INTRODUCTION

In a free-market economy, concessions and public-private partnership (*PPP*), being economic and legal institutes, nowadays represent the most common instruments for infrastructure development and improvement of public services. Instead of the former economic development model that included the decisive role of the state in the planning and execution of public works or provision of services of public interest, nowadays, in most economically developed countries, the private sector participation is significant, if not even dominant when it comes to these two models for the implementation of capital projects. Previous experience has shown numerous advantages of this approach, the most important being flexibility in planning, efficiency in the execution of works, greater availability of capital and higher overall cost-effectiveness due to higher operability in the project management and the introduction of new 'know-hows' and technologies.

The transition from the planned economy model, managed by the state apparatus, into the market economy model has been one of the general features of the development of BiH as a transition country over the past twenty years. This transition is particularly evident in the field of public infrastructure development, which is most commonly associated with the concept of concessions and PPPs. In this sense, concessions and PPPs have effectively appeared in the legal system of BiH for the first time only in this period.

From an economic point of view, investment in infrastructure, particularly in the fields of transportation, communication, energy and water management is one of the basic prerequisites for strengthening the position of BiH in the context of the European integrations. However, for successful investment in the said industries, especially in terms of attracting foreign investors, it is necessary to have a transparent and effective legal framework. Unfortunately, the complexity of the development context, as well as the political and territorial organization of BiH often results in an unclear and unbalanced legal framework, including in the areas of conces-

sions and PPPs. In addition to the above, along with a transparent and effective legal framework, it is necessary to build the appropriate capacities in the public sector for the implementation of such a framework. Taking into account the current situation, it is clear that the current capacity does not correspond to the actual needs for the implementation of existing concepts and processes.

Concessions

Concession as a legal concept is the right assigned by a Conceding Party (i.e. the Government) to ensure infrastructure development and/or the provision of services for the exploitation of natural resources under the terms and conditions agreed by and between the Conceding Party and a Concessionaire (business entity). One of the basic conditions is usually the payment of a concession fee by the Concessionaire, which can be a fixed or variable amount. Depending on their form, concession activities are usually classified as:

- exploitation of natural resources and other goods legally defined as being of the public interest;
- a business activity in the public interest for the state; and
- the use of facilities and installations of the public interest.

In legal terms, the concession implies making a decision to award a concession within a legally prescribed procedure, and concluding the concession agreement clearly regulating the mutual relations and the rights and obligations of the Concessionaire and the Conceding Party, whereby the basic elements of such an agreement are also prescribed by the law.

The laws governing the area of concessions in BiH, at the state-, entity and cantonal level, are referenced below:

BiH / FBiH / RS / Canton	Reference
BiH	Official Gazette of BiH No. 32/02 and 56/04
FBiH	Official Gazette of FBiH No. 40/02 and 61/06
RS	Official Gazette of RS No. 59/13
Sarajevo Canton	Official Gazette of Sarajevo Canton No. 27/11 and 15/13
Zenica-Doboj Canton	Official Gazette of Zenica-Doboj Canton No. 5/03, 12/13 and 5/14
Tuzla Canton	Official Gazette of Tuzla Canton No. 5/04, 7/05, 6/11, 1/13 and 11/14
Central Bosnia Canton	Official Gazette of Central Bosnia Canton No. 8/09, 6/13 and 9/15
Una-Sana Canton	Official Gazette of Una-Sana Canton No. 10/03, 7/09 and 19/13
Bosnia-Podrinje Canton – Goražde	Official Gazette of Bosnia-Podrinje Canton – Goražde No. 5/03 and 11/15
Hercegovina-Neretva Canton	Official Gazette of Hercegovina-Neretva Canton No. 1/13
Posavina Canton	Official Gazette of Posavina Canton No. 6/14
Canton 10	Official Gazette of Canton 10 No. 2/06 and 4/06
West Herzegovina Canton	Official Gazette of West Herzegovina Canton No. 13/13

The above laws are, as a rule, complemented by a Concession Awarding Policy Paper providing for the undercurrents of awarding concessions in the entities.

Statutory regulation of concessions in BiH effectively began in 1996 and the first formal framework was established in 2002 following the adoption of the Law on Concessions at the entity and state level. At the outset of regulating the area of concessions, the regulations at the state and entity level provided for almost identical solutions. The so-called source laws on concessions were almost identical. This created a harmonized system of concessions throughout BiH despite its complex political, territorial and administrative structure.

However, amendments to the entity laws, including the adoption of the new Law on Concessions in RS, undermined the initially harmonized system in the area of concessions. In addition, the entity regulations on concessions have not been compliant with the regulations and directives of the EU.

In addition to the above, different laws in the area of concessions have caused legal uncertainty, being a serious obstacle to the implementation of projects in the eyes of potential investors. The above is particularly true in the FBiH and its can-

tons, considering that in addition to the law on concessions at the entity level, the cantonal laws on concessions governing the same area also apply, even though they are not harmonized. This situation has resulted in a smaller number of concessions-related activities in FBiH than in RS.

The consequence of this situation is bureaucratization of the concession awarding procedure, which leaves room for abuse. This situation has created conditions for corruption in the concession awarding process, thus further complicating the already complex concession awarding process. As a consequence, a large number of potential foreign investors have given up investing in BiH.

At the BiH state level, the Law on Concessions (Official Gazette of BiH No. 32/02 and 56/04) is in effect determining

- the authority to award concessions,
- the institutional structure, and
- the method of establishment and competences of the Commission for Concessions.

The same legal provisions exist at the entity level, as well.

The Law on Concessions at the state level provides for the adoption of the necessary secondary legislation that will facilitate the proper implementation of the Law (e.g. Rulebook on Request Submitting Procedure and Concession Granting Procedure, Concession Awarding Policy Paper in BiH, etc.).

When it comes to the entity level, there is also a requirement to establish a Commission for Concessions that operate in accordance with the entity laws on concessions. In FBiH, in addition to the entity-level commissions, there are also cantonal commissions established pursuant to the cantonal laws on concessions.

The consequences of such a complex structure in the area of concessions are best described by the fact that no major concession contract has been awarded in FBiH since 2002. On the other hand, at the cantonal level there are about 300 contracts awarded, most of which are far from being implemented owing to the complex structure and overly bureaucratized system of awarding concessions. There are cases in practice where in spite of the fact that the procedure has been completed and a concession awarded, the contract has never been signed with the Concessionaire.

Meanwhile, due to the deficiencies in the initial Law on Concessions of FBiH, most cantons in FBiH practically adopted new laws on concessions, regulating the award procedure, as well as the types and subjects of concession in a different way. The logical conclusion of average investors would be that the FBiH Law on Concessions has been simply disregarded and that at the same time, nine cantonal mutually inconsistent laws on concessions apply. It is clear that this situation can only deter potential investors from investing in FBiH, especially taking into account the relatively low potential of our country compared to the neighboring, better organized ones.

An additional problem is the fact that the FBiH Law on Concessions, which has never been applied in practice, has meanwhile become completely outdated, both in economic and in legal terms. Potential investors cannot obtain a concession in FBiH at all when it comes to a large number of resources, the exploitation of which is a current and very profitable trend in the rest of the world. For instance, the FBiH Law on Concessions does not recognize solar or wind energy

as energy sources, although these are already well-established environmentally friendly energy sources, being an important source of revenues for all countries in the region, generated on the basis of the concessions awarded. Some of the cantons in FBiH have tried to overcome this problem by introducing these energy sources in their laws on concessions. Nevertheless, no plant of this type has been built to date, which is a fact that speaks for itself. However, the current FBiH Law on Concessions is outdated also in legal terms, given that performing an activity of public interest or importance by a private concessionaire has practically become a norm and as of the 15th of January 2014 when the latest set of EU Directives was adopted, it has become an obligation for all EU Member States. It is also important to point out that the award of concessions in EU countries is conducted in accordance with the public procurement rules, instead of special procedures as it has been the case earlier, thus concretizing the principles of transparency and equal treatment in the concession award procedure. Bearing in mind the declarative will of the FBiH Government and Parliament, it is clear that the current legal framework in the area of concessions must be urgently brought into line with EU regulations and practices, as it is very far away from them at this point.

Public-Private Partnership (PPP)

The Laws governing PPPs have been adopted in nine out of ten cantons (save for Canton 10), BD and RS. In FBiH, the Law governing PPPs should be drafted in the course of 2016, in line with the Reform Agenda.

Although at first glance the number of laws governing PPPs may seem discouraging, in reality, those are very similar regulations establishing the PPP base model. On the other hand, the fact that to date very few PPP contracts have been registered (one or two in BD) suggests that the existing legislation on PPP is incompliant with the rest of the legal framework and the BiH context, especially at the local level. The existing Laws on PPP should be harmonized with a number of laws in BiH/FBiH/RS/cantons, but also with the good EU practices, primarily with the European Charter of Local Government and Self-Government and the BiH Law on Public Procurement, the FBiH/RS Law on Property Rights and the FBiH/RS Law on Com-

panies. Furthermore, the existing Laws on PPP are not sufficiently clear when it comes to the similarities and differences between PPPs and concessions. They actually facilitate misinterpretation and consequently, misapplication of both models in practice. According to the Law on PPP in RS (*Official Gazette of RS* Nos. 59/09 and 63/11), the legal basis for establishing a PPP can be a concession. In such a case, the PPP should be implemented in accordance with the provisions of the relevant law on concessions.

At the time of writing, Zenica-Doboj Canton had been the only canton undergoing the process for adopting the Law on PPP and the establishment of the institutional structure aimed at enabling its practical application.

Given the shortcomings in the PPP legal framework, the projects inducing PPP are mainly developed using the provisions of the law on concessions and other relevant laws.

The table below shows the references to the cantonal PPP laws:

Canton	Reference
Una-Sana Canton	Official Gazette of Una-Sana Canton No. 19/2012
Posavina Canton	Official Gazette of Posavina Canton No. 04/2013
Tuzla Canton	Official Gazette of Tuzla Canton No. 14/12
Zenica-Doboj Canton	Official Gazette of Zenica-Doboj Canton No. 5/13
Bosnia-Podrinje Canton – Goražde	Official Gazette of Bosnia-Podrinje Canton – Goražde No. 05/13
Central Bosnia Canton	Official Gazette of Central Bosnia Canton No. 13/13
West Herzegovina Canton	Official Gazette of West Herzegovina Canton No. 14/2013
Sarajevo Canton	Official Gazette of Sarajevo Canton No. 27/2011
Hercegovina-Neretva Canton	Official Gazette of Hercegovina-Neretva Canton No. 02/2013
Canton 10	No law

PRESCRIBING TIME LIMITS FOR THE AUTHORITIES TO TAKE ACTION AND THE APPLICATION OF THE PRINCIPLES OF TRANSPARENCY

BiH, FBiH and CANTONS: OPEN ISSUE

The Laws on Concessions do not define time limits for completion of the procedures for awarding concessions. However, there are indications that the amendments to, or new laws on concessions will put an emphasis on the principle of timeliness and efficiency. An additional problem is the fact that the law at the FBiH level and the cantonal laws give too much freedom and autonomy to the Commissions responsible for awarding concessions without providing for any significant public scrutiny or disclosure to the parties involved. The concessions awarding procedure is not clearly defined, which particularly refers to the time limits for the concession awarding authorities to take action. In practice, this leads to the situation that an investor cannot foresee the time required for the completion of a project or its costs.

Particularly problematic is awarding concessions through unsolicited offers, for a number of reasons: firstly, because of the fact that this procedure does not provide the benefits of faster and more cost-effective procedure, given that in such a case, the procedure is still almost identical to the public tender procedure, whereby the investor bears all the costs that would otherwise be borne by the conceding party, without any possibility to control the amount of such costs and without any guarantees that the concession will be actually awarded. This is particularly important, given the fact that in practice, the majority of concessions is awarded under the unsolicited proposals, whereby the conceding party actually transfers all of its costs to the concessionaire. On the other hand, in cases where the conceding party and the concessionaire manage to agree on the concession terms and conditions, the aspect of transparency is completely missing due to the lack of an adequate legal framework.

BiH, FBiH and CANTONS: RECOMMENDATION

It is necessary to legally define and prescribe clear and precise time limits for each of the concession awarding authorities to take action in order to enable investors to make a reasonable estimate of

the duration of the concession award procedure, and to establish a mechanism to control the compliance with the deadlines in practice.

The concession awarding procedure must be transparent, so that all parties involved have access to the operation and decision-making procedure pursued by the Commission responsible for awarding concessions.

In case of amendments to the Law on Concessions at the BiH level, which will define the issue of time limits and transparency in the work of the Commission for concessions, it will be necessary to harmonize the laws at the entity and cantonal levels.

LEGAL PROTECTION IN THE CONCESSION AWARDING PROCEDURES

BiH, FBiH and CANTONS: OPEN ISSUE

The essential flaw in the procedure for awarding concessions is the lack of second-instance ruling in an administrative procedure for awarding concessions, meaning that an appeal cannot be filed against the decision rendered by the Commission for Concessions, except in cases when there is a new fact which could have influenced the decision had it been known at the time the decision was made and if the party involved was not able to express its opinion on the Commission's decision for justified reasons.

In all other cases, the right to second-instance ruling can be exercised by bringing an action within an administrative dispute before the competent court (i.e. the Supreme Court of FBiH or the cantonal courts). The above solutions are inadequate and hardly cost effective, taking into account the duration of administrative disputes and damages that the investors and concessionaires may suffer.

The open issue is reflected in the lack of adequate legal protection for investors, i.e. concessionaires, given that the only protection available to them is the judicial one, the same as to any other legal or natural person, which is unfortunately slow and insufficient. In addition to the above, since the final decision on the concession award is made by the FBiH Government, there is no adequate instrument of administrative and legal protection, since such decisions are not subject to regular administrative supervision.

BiH, FBiH and CANTONS: RECOMMENDATION

It is necessary to introduce second-instance ruling, i.e. the second-instance subject matter jurisdiction in order to make use of the joint commission that would act as an objective and remedial factor in all disputed cases. The second-instance ruling procedure should be established in a way that the Commission responsible for awarding concessions at the BiH level functions as an appellate authority dealing with the decisions made by the entity-level Commissions, while the Commission at the FBiH level should function as an appellate authority dealing with the decisions made by the Commissions responsible for awarding concessions at the cantonal level.

In this way, instituting administrative proceedings or unnecessary delays in concession awarding process would be avoided, while statutory deadlines for deciding in the second instance would be clearly defined.

It is important to point out that there is no register of resources that could potentially become subject to concessions. Such a register would give potential investors an overview of open investment opportunities and the timeframes for their implementation. In addition, there are no adequate cadastral and land registry records or a register of existing installations, which makes proper designing practically impossible. There is also the problem of overlapping competences in energy projects. As a result of this overlapping, the concessionaires are required to obtain a series of permits and approvals that are content-wise identical but issued by different authorities, where particular emphasis should be put on the overlapping role of public enterprises in the field of transmission and distribution of electricity with the authorities vested in RERS and FERC.

PUBLIC-PRIVATE PARTNERSHIP

Public-private partnership (PPP) is the most common model for assigning the right to carry out activities of public interest in all developed countries. As a legal concept, PPP entails a contract between a public/state authority and its private partner, whereby their business and legal relationship is governed by the principles of legal equality, while sharing the benefits and business risk in a certain proportion. In this sense, the PPP enables the participation of the state and public

capital in different proportions, usually through the establishment of a separate corporate entity. This is also one of the major distinctions between the standard form of concession and PPP.

The legal framework governing the PPPs in BiH has been established only partially so far. Specifically, the Law on PPPs has been adopted only in RS (Official Gazette of RS Nos. 59/09 and 63/11), all of the Cantons in FBiH (except in Canton 10 and in BD). However, the relevant legislation at the state level and in FBiH has not been adopted yet, despite the announcements and the drafts being worked on for several years.

This issue is of great importance for the whole country, especially for FBiH, due to the fact that all major projects in the energy field that the FBiH Government intends to carry out in cooperation with foreign partners are designed on the PPP model. It is clear that further negotiations in this field have no legal grounds unless the Law on PPPs is adopted in FBiH and that the implementation of such projects effectively depends on it.

When drafting the BiH/FBiH Law on PPP, one must borne in mind the existing legal framework already governing the area of concessions and that these two sets of legislation must be aligned, particularly because of the close ties between these two legal modalities. In addition, the amendments to the EU Directives must be taken into account given that as of early 2014, there is a requirement of calling public tenders for all major works of public interest under any of these two models and in accordance with the public procurement regulations.

At this point, it is necessary to make special reference to the implementation of a relatively new Law on Property Rights of FBiH that gives the possibility to foreign legal entities to acquire the title to real property under Article 15 of the Law on Property Rights of FBiH. In practice, there are different interpretations related to the issue of reciprocity in acquiring title to real property, where the Federal Ministry of Justice has taken a very passive role, even though it is the only authority competent for providing an interpretation of this legal matter. Consequently, a foreign legal entity, as an investor can get into a situation where it is not possible to include the real property in the charter capital of its special-purpose vehicle (SPV), if so specified in

the PPP tender, without any valid reason or legal limitations.

ADOPTION OF THE LAW ON PPP

BiH and FBiH: OPEN ISSUE

When drafting the BiH/FBiH Law on PPP, special attention should be paid to the harmonization of all existing pieces of the PPP-related legislation with the BiH Public Procurement Law and the FBiH Law on Property Rights. In addition, it would be practical and desirable to harmonize the respective legislation with the Law on Local Government and Self-Government of FBiH and the Law on Companies of FBiH.

The levels of BiH and FBiH are the only levels of government where there is still no law governing PPPs.

BiH and FBiH: RECOMMENDATION

It is necessary to adopt the laws governing the area of PPPs at the level of BiH and FBiH.

POSSIBILITY TO ASK QUESTIONS FOR THE PURPOSE OF CLARIFYING AMBIGUITIES IN THE CONCESSION AND PPP CONTRACT AWARDING PROCEDURES

BiH, FBiH and RS: OPEN ISSUE

The laws on concessions at the level of BiH, FBiH and RS do not provide the potential investors with a possibility to address the competent authorities in order to clarify ambiguities in the calls/tenders or the procedures for the award of the concession. The RS Law on PPP does not provide for such a possibility in the procedure for the award of PPP contracts either.

BiH, FBiH and RS: RECOMMENDATION

It is necessary to establish an adequate procedure and method of addressing the competent authorities and filing written and, where possible, oral requests for clarifications and additional information in the regulations governing the area of concessions at the level of BiH, FBiH and RS, as well as in the Law on PPP of RS. This should also be taken into account when drafting the Laws on PPP at the BiH and FBiH levels.

DEFINING THE TERM “CONCESSIONAIRE”*

BiH, RS and FBiH: OPEN ISSUE

As defined in the relevant BiH legislation, the term “concessionaire” is discriminatory at its very roots given that a concessionaire can be only and exclusively a legal entity registered with the competent authorities in accordance with the BiH/FBiH/RS laws. Such a definition of the term “concessionaire” does not allow physical persons or a group of physical and legal entities to become concessionaires.

The BiH/FBiH Law on Concessions indicates that it governs the matters of awarding concessions to “national and international legal entities” (Article 1 of the BiH Law on Concessions and Article 1 of the FBiH Law on Concessions). However, the BiH/FBiH Law defines the concessionaire (Article 3 of the BiH Law on Concessions and Article 4 of the FBiH Law on Concessions) as “a legal entity established in accordance with the laws of BiH/FBiH owned by domestic and/or foreign legal entity”.

The BiH/FBiH Law on Concessions does not provide a precise provision on how these issues are to be addressed in practice. In addition, it often happens in practice that the concession is awarded to a foreign legal entity, which is then required to establish a local legal entity that will “take over” the concession and execute the awarded concession contract. On the other hand, the Law on Concessions of RS (Article 5 and Article 39) comprehensively regulate this area, but does not allow physical persons or a group of physical and legal entities to be designated as concessionaires.

In practice, negative consequences come down to putting the foreign legal entity that was awarded the concession in a difficult situation and raising many practical concerns, in particular:

- potential annexing of the already awarded contract (annexing initial concession contracts is very common in practice because such initial contracts are usually very general and require further refining at later stages),
- in the process of “transferring” concessions from a foreign legal entity to a domestic legal entity owned by it (At which stage is it required to establish a domestic legal entity?)

At which stage should the local legal entity be considered the concessionaire? Etc.).

BiH, RS and FBiH: RECOMMENDATION

In BiH and FBiH, it is necessary to precisely define the time period in which the (foreign) legal entity, after having been awarded concession/having signed the concession contract, should establish a local legal entity and to precisely define the term “concessionaire”. A good example of this can be found in the RS Law on Concessions (Article 5 and Article 39).

The definition of the term “concessionaire” should include the possibility for physical entities to appear as concessionaires, as well as the group of physical and/or legal entities as concessionaires.

In addition, it is necessary to provide a foreign legal entity with a possibility to become a concessionaire but without being required to establish a “local” legal entity that would be executing the awarded concession contracts on its behalf, and to prescribe the possibility of establishing a business unit/branch of a foreign legal entity that would be executing the concession contract concluded with a foreign person.

CONCESSION AWARDING PROCEDURE

BiH, RS and FBiH: OPEN ISSUE

The concession awarding procedure, especially the part related to the public call/tender, is not comprehensively and precisely defined at the levels of BiH and FBiH. This particularly refers to the part of procedure from the approval of the public call to the concession award (Articles 21 through 25 of the Law on Concessions of BiH and Articles 24 through 28 of the Law on Concessions of FBiH). This leaves room for a large number of practical problems that may emerge in the period between the public tender approval and the concession award to a particular entity.

In addition to the above, the Laws on Concessions, (under the terms of Articles 21 through 25 of the BiH Law on Concessions and the Articles 12 through 24 of the RS Law on Concessions and Articles 24 through 28 of the FBiH Law on Concessions) must also conform to the applicable Law on Public Procurement in procedural terms, given that the concession contract generates a financial interest through the development of infrastructure and/or providing services of exploitation of natural resources. On the other hand, the conceding party usually requires a first-class insurance instruments when awarding a concession, such as large bank guarantees.

BiH, RS and FBiH: RECOMMENDATION

It is necessary to define each step in the concession award process, as well as the responsibilities of all parties involved in this process, in BiH and FBiH (required set of documents, receiving institution, decision maker, deadlines, etc.).

It is necessary to harmonize the laws on concessions with the BiH Law on Public Procurement.

CONCLUSION: Due to the lack of legal framework governing concessions and PPPs or the extent of the required amendments to the current laws on concessions and PPPs, it is reasonable to expect that there will be no improvements in terms of concluding new concession and PPP contracts. Unless these reform processes are significantly accelerated, which includes passing not only the primary, but also secondary legislation and institutional capacity building for the implementation of the said legislation, investments in BiH will further regress and will be limited to primary (direct) investment models, such as land acquisition.

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	INSITUATION
CONCESSIONS		
<p>BiH, FBiH and CANTONS</p> <p>The Laws on Concessions do not specify the time limits for the implementation of concession award procedures</p>	<p>The Law should specify and prescribe clear and precise time limits for the competent authorities to take action in each individual stage of the concession awarding process.</p>	<ul style="list-style-type: none"> • Parliamentary Assembly of BiH • FBiH Parliament • Cantonal Assemblies
<p>BiH, FBiH and CANTONS</p> <p>There is a lack of adequate second-instance administrative procedure related to awarding concessions</p>	<p>The Law should define second-instance ruling model, i.e. second-instance subject matter jurisdiction, e.g. Commissions for Concessions</p>	<ul style="list-style-type: none"> • Parliamentary Assembly of BiH • FBiH Parliament • Cantonal Assemblies
PUBLIC-PRIVATE PARTNERSHIP		
<p>BiH and FBiH</p> <p>At the BiH and FBiH levels, there is no law governing PPP</p>	<p>Adopt the laws governing PPP at the BiH and FBiH levels.</p>	<ul style="list-style-type: none"> • Parliamentary Assembly of BiH • FBiH Parliament
<p>BiH, FBiH and RS</p> <p>The laws on concessions do not provide for the possibility of addressing the competent authorities by the investors for the purpose of clarifying ambiguities. The RS Law on PPPs does not provide for such a possibility in the PPP contract award procedure either.</p>	<p>Establish the procedure and define the method for submitting request for clarification, in the regulations governing the concessions at the levels of BiH, FBiH and RS, as well as in the RS Law on PPPs.</p>	<ul style="list-style-type: none"> • Parliamentary Assembly of BiH • FBiH Parliament • National Assembly of RS
<p>BiH, FBiH and RS</p> <p>Discrimination in defining the term “concessionaire”, in the sense that only and exclusively a legal entity can be a concessionaire.</p>	<p>It is necessary to define precisely the time period in which the (foreign) legal entity should establish a local legal entity;</p> <p>The definition of the term “concessionaire” should also include physical persons and groups of physical and/or legal persons;</p> <p>The possibility for a foreign legal entity to become a concessionaire without being required to establish a “local” legal entity should be defined in more detail.</p>	<ul style="list-style-type: none"> • Parliamentary Assembly of BiH • FBiH Parliament • National Assembly of RS
<p>BiH, FBiH and RS</p> <p>The concession awarding procedure is not comprehensively and precisely defined at the BiH and FBiH level. The Laws must conform to the applicable BiH Law on Public Procurement in procedural terms.</p>	<p>Define each step of the concession award process, as well as the responsibilities of all parties involved in this process in BiH and FBiH, respectively.</p> <p>Harmonize the Laws on Concessions with the BiH Law on Public Procurement.</p>	<ul style="list-style-type: none"> • Parliamentary Assembly of BiH • FBiH Parliament • National Assembly of RS

ENERGY EFFICIENCY AND PETROLEUM PRODUCTS

ENERGY EFFICIENCY

INTRODUCTION

BiH is a signatory to a number of international treaties giving rise to obligations related to policy and regulatory reform in the energy sector. As the signatory to these treaties and agreements, BiH has undertaken a series of commitments, including the modernization of legislation in the field of energy efficiency. Modernization, in this context, generally concerns the adoption of new legislation harmonized with the relevant EU directives (i.e. Directive 2006/32/EC, Directive 2010/30/EU and 2010/31/EU), which is an obligation under international treaties and agreements that BiH has signed, as follows: Stabilization and Association Agreement (**SSA**), Energy Charter Treaty and Treaty establishing the Energy Community of South East Europe.

In addition, the Protocol on Energy Efficiency and Related Environmental Aspects (**PEEREA**), which was enacted as part of the Energy Charter Treaty and ratified by BiH in 2001, urges BiH to ensure cost-effective and energy-efficient way of minimizing the negative impacts on the environment when implementing energy projects.

Bearing in mind the importance of modern energy efficiency system primarily for BiH, but also for foreign investors, and in line with the current legislative reforms, hereinafter the general weakness relating to this area in BiH have been identified by the FIC members.

LACK OF LEGAL FRAMEWORK FOR THE IMPLEMENTATION OF MEASURES TO INCREASE ENERGY EFFICIENCY IN LINE WITH THE EU STANDARDS*

BiH and FBiH: OPEN ISSUE

The last report on the implementation of the PEEREA in BiH identified as the main issues the lack of an overall energy policy at the state and entity levels as well as financing energy efficiency

policies, and as a consequence, the lack of an appropriate legal framework to adequately implement energy efficiency measures in line with EU standards.

Meanwhile, this area has experienced some progress in BiH. Specifically, RS enacted the energy policy and strategy, and adopted the Law on Energy Efficiency, as well as the pertaining Action Plan, while the FBiH has, unfortunately, postponed the adoption of the Law on Energy Efficiency, thus preventing the adoption of the Energy Efficiency Action Plan, as well.

BiH and FBiH: RECOMMENDATION

First of all, BiH must adopt a National Energy Efficiency Action Plan and an FBiH Energy Efficiency Action Plan to define the objectives to be included in the policies at the state and FBiH levels. Further, it is necessary to adapt the legislative and executive framework to ensure that the objectives set by the Action Plans are implementable. Certainly, a very important part in this process is to adopt mechanisms for financing energy efficiency measures. One of the mechanisms that proved to be very successful at the international level in terms of stimulating the economies in the countries that implement them is the energy efficiency obligation (**EEO**) scheme. In the countries of the EU, 34% of the total energy savings achieved by the application of energy efficiency measures is achieved thanks to the EEO scheme mechanisms. The EEO schemes are used to finance a great deal of energy efficiency measures, through domestic funding that does not depend on donations or loans. This results in far-reaching effects in terms of job creation in the construction sector (companies implementing works), industrial sector (companies producing the necessary equipment and materials) and services sector (companies monitoring the quality of services, issuing various construction certifications, marketing, etc.). The EEO scheme mechanism can help improving the economy of BiH and for this reason it is considered a developmental mechanism.

In order to ensure the functioning, it is necessary to create the necessary legal, regulatory and institutional environment through:

- the adoption of the Law on Energy Efficiency in FBiH as well as the adoption of secondary legislation (by-laws) in the field of energy

efficiency, in accordance with the aforementioned EU directives, and

- initiation of the adoption of incentive measures for the implementation of energy efficiency-related projects, in particular the EEO schemes laid down by Article 7 of Directive 2012/27 / EU.

Finally, in addition to the above it is necessary to:

Encourage the efficient use of energy in the housing/building sector:	Focus on the housing sector, which consumes up to 52% of the total energy in BiH. EEO schemes can be a driver for the implementation of energy efficiency measures in the housing sector, which currently has limited financial support in BiH. This would contribute to improving the energy efficiency of buildings across the country.
Reduce energy bills for vulnerable customers:	Provide support to vulnerable customers to implement energy efficiency measures, which will be continuously providing relief by making their energy bills lower. This approach is long-term and it does not require burdening the state budget and it will provide much-needed relief for vulnerable customers.
Create new jobs in the energy efficiency industry:	EEO schemes accumulate significant funds for the implementation of energy efficiency measures. With adequate planning and choosing the right energy efficiency measures it will be possible to make a significant boost to the local industry, both for the companies engaged in the production of energy efficiency-related supplies and equipment, and for the companies providing services of their installation.
Increase energy security:	Reducing energy consumption through the implementation of energy efficiency measures (in particular, reducing the consumption of imported fuels, such as oil and natural gas) contributes significantly to the energy security of the country.
Reducing harmful emissions / greenhouse gases:	All energy efficiency measures reduce energy consumption, while also reducing emissions. This is especially true in the building sector in BiH, which uses large quantities of coal and wood for heating.
Develop and implement programs on energy efficiency	Implement the adopted policies, and Cooperate at the regional and international levels in this area

PETROLEUM PRODUCTS

INTRODUCTION

The area of petroleum products in the FBiH was first regulated in 2014 by passing the FBiH Law on Petroleum Products and its implementing regulations governing the area of petroleum products in this BiH entity.

At the state level, the area of petroleum products is governed by the Decision on the quality of liquid petroleum fuels in BiH.

Given the importance of petroleum products and the current state of legislation in this area, i.e. the legal uncertainty of foreign investors, it is necessary to urgently implement legislative reforms aimed at the harmonization of the state and entity level (FBiH) regulations with the EU legislation and international standards.

Aligning energy legislation with the latest global market trends is of great importance for enabling the BiH market participants to become more competitive by improving their products and services and achieve a better economic position. An improved economic position of businesses has a direct impact on the prosperity of the local community, and we sincerely hope for the relevant amendments to the energy legislation starting from the Decision on the quality of liquid petroleum fuels in BiH.

Below are the general shortcomings identified in the field of petroleum products in BiH that the FIC members have been pointing out:

The key focus is on amending some of the provisions in the following legislation:

Decision on the quality of liquid petroleum fuels (Decision on quality)	("Official Gazette of BiH", Nos. 27/02, 28/04, 16/05, 14/06, 22/07, 101/08, 71/09, 58/10 i 73/10)
Law on petroleum products of FBiH (Law)	("Official Gazette of FBiH", No. 52/14)
Rulebook on determining the quality of liquid petroleum fuels (Rulebook on quality)	("Official Gazette of FBiH", Nos. 107/14, 69/15 i 3/16)
Rulebook on Licensing for performing energy activities in the sector of the oil industry (Rulebook on licencing)	("Official Gazette of FBiH", No. 15/16),
Decision on Obligatory Application of Domestic Preferences BiH (Decision on Preferences)	("Official Gazette of BiH", No. 103/14)
Rulebook on the submission of oil sector-related data (Rulebook on Data Submission)	("Official Gazette of FBiH" No. 16/16)
BAS EN 228 and BAS EN 590 set of standard (Standards)	

INCONSISTENCY OF THE LEGISLATION AT THE ENTITY AND STATE LEVEL

BiH and FBiH: OPEN ISSUE

Labelling of petroleum products on the FBiH market is governed by the above-listed regulations.

None of the above-listed regulations specifies or determines which of the regulations should be given priority in the application, and due to the differences in the prescribed methods of labelling, the application of all regulations at the same time is not possible.

Article 5a) of the Decision on quality sets out the labels for liquid petroleum fuels, i.e. it requires "the method of labeling liquid petroleum fuels to be compliant with the titles provided for in the Standards", while the Rulebook on quality, unlike the Decision on quality, prescribes mandatory labels that must be displayed on every fuel dispenser. Specifically, the Rulebook on quality has made a difference in terms of labeling fuel dispensers by obligatory introduction of additional labels related to the content of sulfur in fuel - "ppm" (50 ppm or 10 ppm), which is contrary to, or different from the provision set out in the Decision, the Law and the Standards prescribing the label for diesel fuels without specifying the content of sulfur in the fuel (CN reads: DIZEL BAS EN 590).

Since the transitional and final provisions of the Rulebook on quality do not specify whether the Rulebook or the Decision on quality will have a

stronger legal force, the effectiveness of the Law on quality and the Rulebook on quality resulted in problems in the application and practice, because these provisions have been interpreted differently by the FBiH inspectors and the businesses in the energy sector. Inconsistency of the legislation at the state and entity level opens up the possibility of arbitrary interpretation of the laws by the inspection authorities, which may result in a financial burden for businesses in the energy sector due to colliding legislation.

BiH and FBiH: RECOMMENDATION

In order to eliminate the described collisions in the legislation, the competent authorities at the state level should, above all, adopt a new Decision on the quality of liquid petroleum fuels in BiH that will be compliant with the international standards, current market trends and the development of petrochemical and petroleum industry. After regulating this area at the state level, it will be necessary to harmonize the entity-level legislation with the Decision on the quality of liquid petroleum fuels, in order to create a single market of BiH.

It is essential that the Decision on quality provides for:

- Import / marketing / labeling of high octane petroleum products / high-quality fuels

- Import / marketing / labeling of additivated petroleum products
- Marketing of a wide range of petroleum products
- Labeling of petroleum products with their commercial names in addition to the mandatory labels prescribed by the Standards.

PETROLEUM PRODUCTS LABELING

BiH and FBiH: OPEN ISSUE

The provisions of the Decision on quality and the Rulebook on quality require labels for liquid petroleum fuels that do not follow the current market trends and the development of petrochemical and petroleum industry, as these regulations do not provide for distinctive labeling of high-quality fuels or additivated liquid petroleum products (gasoline and diesel) at all.

The businesses in the energy sector primarily face the issue of an outdated Decision on quality that can be interpreted as stipulating that the fuel label and its trade name/mark are one and the same. Due to the failure to make a distinction between fuel labels and fuel names, the situation on the market is as such that fuel of different quality is marketed under the same name (Diesel 4 and Diesel 5).

Namely, Article 5a) of the Decision on quality prescribes the labels for liquid petroleum products restrictively, which makes it impossible for the energy sector businesses to market high-octane petroleum products, gasoline and diesel fuels with and without additives at the petrol stations at the same time, because they must use the same label for all of them, which in practice, inhibits the marketing of both products.

In fact, the Oil Price Change (**OPC**) Request Form, which is submitted to the FBiH Ministry of Trade cannot contain a different price for the same petroleum product label, and the trade name of petroleum products should not be used as an indicator of the product's distinctiveness. In this way, foreign energy operators are forced to market their high-quality/high-octane additivated petroleum product as a product of standard quality, thereby misleading consumers and energy operators who wish to sell high-octane products and additivated fuels on the market, and being deprived the opportunity to offer a wide range of products, while the improved quality of their product is simply not recognized in local laws.

In the Western European countries practice, developing high-quality fuels is desirable, especially given that such fuels are mostly environmentally friendly types of fuels. Foreign investors are mainly oriented towards the production of high quality fuels and in this way the doors are closing for them because they have to bounce back and produce the type of fuel that may no longer be produced in their mother countries in order to adjust (down) to the standards.

The applicable legislation restricts the companies to sell only the products the labels of which are prescribed by the law, while completely ignoring the product quality. Putting an emphasis on the fuel label or its trade name, instead on the fuel quality, restricts the growth and competitiveness of the participants in the market of petroleum products.

BiH and FBiH: RECOMMENDATION

First of all, it is necessary to pass/adopt a new Decision on the quality of liquid petroleum fuels in BiH at the state level, with the aim of creating a single market in BiH, which will be compliant with the international standards and will not contain restrictive provisions, and with which the entity-level regulations should be harmonized.

AMENDMENTS TO THE LAW ON PETRO- LEUM PRODUCTS OF FBiH

FBiH: OPEN ISSUE

Petroleum products additization ban

Following the entry into force and beginning of implementation of the Law, energy operators in FBiH faced a number of challenges in the area of petroleum products sale. Namely, due to restrictive and/or ambiguous provisions of the Law, foreign investors have been put in a worse/unequal position in FBiH entity in relation to the competitors, as well as in relation to petroleum product sellers in the other BiH entity – RS, which has ultimately resulted in legal uncertainty.

The largest problem for the foreign investors is the provision of Article 32, paragraph 4 imposing ban on the use of additives to improve the fuel parameters.

Specifically, the provision is not sufficiently clear, i.e. it does not make the necessary distinction between the uncontrolled fuel manipulation by the importers and/or energy operators – participants in the retail and wholesale of petroleum products and the controlled additizing of fuels in the production process. It is necessary to amend the provisions so as to make a clear distinction between the controlled production of high-quality petroleum products and the uncontrolled manipulation in this matter.

The introduction of this ban has mostly affected the consumers, who are denied the opportunity to buy high-quality fuel with improved performance characteristics (referring to engine output and preservation, reduction of consumption, engine cleaning and numerous other performance characteristics that can be improved by additizing fuels), which is also subject to quality assurance issued by the refineries where the fuel is produced and all other accompanying certificates.

The legislation governing petroleum products in RS does not contain this limiting provision, and therefore, the energy undertakings operating in this BiH entity do not face this problem.

Duty stamp for setting up oil reserves

Another very important issue that came as a result of this Law is the requirement to pay the petroleum product fees in the amount of 0.01 KM/liter of petroleum products. In this regard, Article 30 of the Law stipulates that in case the taxpayer is a retailer of petroleum products, such a retailer must include the tax in the fiscal invoice as an addition to the retail price, which already includes all indirect taxes (customs, excise, road and highway tolls, value-added tax), thus avoiding the possibility to include this tax in the base for calculation of VAT.

However, despite the above legal provisions, energy operators that were subject to inspections by the ITA were fined in such a way that they had to pay additional amount of VAT on the accrued and paid taxes.

Charging this additional VAT amount arising from the taxes for setting up oil reserves, which was imposed by the inspectors during the VAT inspection performed at the energy operators, is contrary to the principle of legality and causes legal uncertainty in the operations of the taxpayers operating in compliance with the applicable laws and other relevant regulations. These actions directly burden the operating costs of the foreign investors, given that the sums paid by order of the ITA have not been charged to customers.

LPG Trading

Definition of the term “LPG Trading” set out in Article 2 of the Law on Petroleum Products refers only to trading LPG bottled gas. It is necessary to clarify how the LPG wholesale is to be treated if not sold in bottles. According to current legal provisions, the requirements for obtaining a license to trade in LPG are as follows:

an energy operator must either own or lease the storage with the capacity of 150 m³ (in a single or several storage facilities) for the purpose of LPG trading, and it has to own at least one LPG tank.

The transportation of petroleum products can be carried out only by carriers licensed in the FBiH (whose core business activity must be the transport of petroleum products).

Monitoring companies and monitoring of petroleum products

The Law defines monitoring of the quality and quantity of petroleum products. The Law explicitly prohibits the appointment of the accredited monitoring companies by the energy operator, thus ruling out any competition between the monitoring companies.

In addition, the Law does not define the compensation for monitoring services rendered by an inspection authority or the compensation ceilings per sample, and therefore, given the fact that energy undertakings have no influence on the selection of the inspection authorities, the inspection authorities have the possibility to arbitrarily set disproportionately high fees for their services. In fact, the monitoring fees are imposed by the monitoring companies on the basis of an agreement concluded contrary to the BiH Law on Competition.

Given that sampling is carried out by an accredited inspection authority in any case, it is absolutely unacceptable that the legislator deprives the energy operators of the possibility to select a monitoring company that turns out to be economically the best contractual partner selected on the basis of a tendering procedure.

Similarly, the current monitoring method implies that the arbitrary sample is to be kept by the inspection authority, while sealed unilaterally, i.e. by the same inspection authority. According to the Standards, it would be necessary to allow the operator to affix its seal on the arbitrary sample, as such a procedure would ensure integrity, transparency and security in terms of the representativeness thereof. For this reason, it is necessary to ensure bilateral sealing.

When it comes to fuel sampling, the Law refers to the Decision on quality and Monitoring Program, which makes it extremely complex and unclear. The law does not define “the number of samples”, nor does it specify the sampling method for the purpose of quality compliance control. It is therefore necessary to make the provisions of this Law clearer and more precise. Straightforwardness and accuracy can only be achieved by amending the Decision on quality of liquid fuels at the state level, as certain ambiguities in determining the number of samples of petroleum products would be thus eliminated.

A further problem is disproportionately frequent and extensive sampling, without the possibility to object to the sampling number prescribed by the Program of the FBiH Ministry of Energy, Mining and Industry.

The scope of sampling activities should be defined based on a set of transparent criteria.

FBiH: RECOMMENDATION

The amendments to the Law must be adopted urgently. In addition, urgent amendments to the Decision on quality of liquid fuels at the state level would eliminate certain ambiguities in determining the number of samples of petroleum products, in particular:

Article 32 of the Law on Petroleum Products should be amended by adding paragraph 5 that reads: “It is allowed to import and market additivated petroleum products under controlled conditions, and high octane petroleum products”.

Article 30 of the Law on Petroleum Products should be urgently amended by adding a new paragraph specifying whether the tax for setting up oil reserves is taxable or not, while taking into account the applicable entity and state-level laws.

Arbitrary sample that is kept under controlled conditions in a warehouse of an inspection authority must be protected by being lead-sealed by both parties, i.e. the inspection authority and the distributor of liquid fuels”.

Article 2 and Article 11 of the Law on Petroleum Products of FBiH should be amended by excluding the provisions requiring LPG traders that own or lease the prescribed storage capacities to also own their own tank for LPG transportation. It is necessary to amend the definition of the term “LPG Trading” by defining if this term also covers the wholesale of LPG not sold in bottles.

Bearing in mind the importance of petroleum products trading primarily for BiH, but also for foreign investors, we hope that you will support this initiative and our proposals, thus contributing to the creation of business environment in BiH, where all traders of petroleum products would be treated equally, which is a guarantee for enabling the single market to operate effectively.

PUBLIC PROCUREMENT OF FUEL WITH PREFERENTIAL TREATMENT OF DOMESTIC SUPPLY

BiH: OPEN ISSUE

Legal framework: Decision on Obligatory Application of Domestic Preferences (“Official Gazette of BiH” No. 103/14 dated 30 December 2014) in public procurement .

Implications of the Decision:

- Inability to equally participate in the tendering procedures for energy operators that do not procure goods from a domestic refinery/producer
- Violation of the principle of free movement of goods and services, which is contrary to the SAA, international free trade standards and the WTO law
- Disproportionately preferential treatment of domestic (national) products or manufacturers over the products imported from abroad
- The market is directly divided by a state regulation, i.e. one source of supply is clearly put in a far more better position, contrary to the Law on Competition of BiH
- Discrimination of energy operators employing local people, as the definition of preferential treatment is in contradiction with the purpose of protecting the domestic labor force, putting a company or product in a significantly better position extremely adversely affects the trade between BiH and EU countries and other countries in the region.
- Limiting competition in public procurement can only produce negative financial consequences for contracting authorities.

BiH: RECOMMENDATION

It is necessary to abolish the preferential treatment in relation to the foreign countries, because it is contrary to the international commitments of BiH, and to make an effort to comply with the international standards related to free movement of goods and prohibited preference for certain products/producers and enabling marketing of goods having minimum required quality of Euro 5 and above.

AMENDMENT OF THE RULEBOOKS

FBiH: OPEN ISSUE

<p>RULEBOOK ON LICENSING</p>	<p>Pursuant to the Rulebook on Licensing, the Regulatory Commission for Energy in the Federation (FERK) prescribes the procedure for issuing licenses, criteria, requirements, documents and other elements needed to obtain a license. The basis for the adoption of this Rulebook is the FBiH Law on Petroleum Products.</p> <p>The Rulebook contains a number of provisions that should be urgently amended, considering that they create policies for energy operators. However, since the Law on Petroleum Products is the legal basis for the adoption and approval of the Rulebook, it is necessary to first adopt the amendments to the Law, in particular, the aforementioned provisions.</p>
<p>Rulebook on the submission of oil sector-related data</p>	<p>The Rulebook on the submission of oil sector-related data defines the obligation of the energy operator to keep records on the monthly and annual marketed quantities by all possible criteria and using the predefined tables that form an integral part of the Rulebook.</p> <p>There is not even a single article in the Rulebook defining that such records have the status of “Business Secret”, which they indeed are, nor is there a prescribed method of keeping such records by the receiving authority. The liability in case of unauthorized disclosure is not stipulated, either. The tables are quite confusing and unclear with respect to certain requirements, especially sale and purchase of goods by product (Annexes 1 and 3), or sale to end consumers (Annexes 2 and 4) or distributors by country of origin (Annex 2).</p> <p>It should be particularly noted that internal linking of the institutions requiring these data is essential in order to avoid submitting different reports to different institutions (e.g. FBiH Ministry of Trade, FBiH Ministry of Energy, Mining and Industry). The new Rulebook stipulates that the data (except for the information on the tax for setting up oil reserves) are to be delivered only to the FBiH Ministry of Energy, Mining and Industry, while the requirement to submit a similar report to the FBiH Ministry of Trade is still effective.</p> <p>Also, the tax payment report is to be submitted to the Tax Authority of FBiH and the company “Operator - Terminali FBiH” in addition to the FBiH Ministry of Energy, Mining and Industry.</p>

FBiH: RECOMMENDATION

We believe that national authorities should be in conjunction when it comes to the flow of information, and be sure to assign such data the status of “business secret”. In order to prevent such irregularities, public hearings would produce much greater effect if held before the adoption of such Rulebooks, when the energy operators would be given an opportunity to provide concrete and relevant examples of submitting oil sector-related data, as well as the content and form of the Annexes accompanying the Rulebook.

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	INSTITUTION
ENERGY EFFICIENCY		
<p>BiH and FBiH</p> <p>The lack of overall energy policy at the FBiH and state level</p>	<p>Adopt a National Energy Efficiency Action Plan and an FBiH Energy Efficiency Action Plan to define the objectives to be included in the policies at the state and FBiH levels, and create the necessary conditions in order to increase energy efficiency by:</p> <p>the adoption of the Law on Energy Efficiency in FBiH</p> <p>the adoption of secondary legislation in the field of energy efficiency</p> <p>the adoption of incentive measures for the implementation of energy efficiency-related projects.</p>	<ul style="list-style-type: none"> • Ministry of Foreign Trade and Economic Relations of BiH • FBiH Ministry of Energy, Mining and Industry
PETROLEUM PRODUCTS		
<p>BiH and FBiH</p> <p>Inconsistency of the legislation at the entity and state level</p>	<p>Adopt a new Decision on the quality of liquid petroleum fuels in BiH that will be compliant with the international standards, current market trends and the development of petrochemical and petroleum industry.</p> <p>Harmonize the entity-level regulations with the new Decision on the quality of petroleum products.</p>	<ul style="list-style-type: none"> • Ministry of Foreign Trade and Economic Relations of BiH • FBiH Ministry of Energy, Mining and Industry • RS Ministry of Industry, Energy and Mining
<p>BiH and FBiH</p> <p>Inconsistency in labelling of petroleum products</p>	<p>Facilitate labelling of petroleum products with their commercial names in addition to the mandatory labels prescribed by the Standards.</p> <p>Harmonize the labels prescribed in the Decision on quality, the Law and the Rulebooks.</p>	<ul style="list-style-type: none"> • Ministry of Foreign Trade and Economic Relations of BiH • FBiH Ministry of Energy, Mining and Industry • RS Ministry of Industry, Energy and Mining
<p>FBiH</p> <p>Amendments to the Law on Petroleum Products of FBiH required</p>	<p>Facilitate import and marketing of high-octane petroleum products / high-quality fuels.</p> <p>Facilitate import and marketing of additivated petroleum products</p> <p>Regulate taxes for setting up oil reserves; define whether the taxes are taxable or not.</p> <p>Regulate the issue of monitoring.</p> <p>Amend the definition of the term “LPG Trading” and abolish the conditions for obtaining a license for LPG trading that are redundant (ownership of a tank (lease / ownership of a warehouse).</p>	<ul style="list-style-type: none"> • FBiH Ministry of Energy, Mining and Industry • FBiH Ministry of Finance • FBiH Tax Authority • Indirect Taxation Authority

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<p>BiH Amendments to the Decision on Obligatory Application of Domestic Preferences in Public Procurement required</p>	<p>It is necessary to abolish the preferential treatment of suppliers from BiH and CEFTA member countries in relation to other foreign suppliers for obvious discriminatory reasons in the market and because the suppliers from member countries cannot have preferential treatment, according to the interpretation of the Public Procurement Agency.</p>	<ul style="list-style-type: none"> • Council of Ministers of BiH
<p>FBiH Amendments to the Rulebook on the submission of oil sector-related data required</p>	<p>It is necessary to clearly define the required information, the form for data submission, as well as the work of the institutions assigned to receive the reports.</p> <p>Requests for information should be based on a “need-to-know” basis by the competent ministries, taking into account that the confidential information must be reduced to the essential, objectively required minimum. Data submitted to the ministries should be assigned the status of “business secret”, given that it is what they really are.</p>	<ul style="list-style-type: none"> • Ministry of Energy, Mining and Industry of FBiH • Ministry of Foreign Trade and Economic Relations of BiH

THE RULE OF LAW

INTRODUCTION

The division of the state into different political units has resulted in the division of the court system, i.e. the presence of a total of four judicial systems - the system at the state level, the system at the level of the two entities, and at the Brcko District level. At the state level there is the Constitutional Court, the jurisdiction of which is defined by the BiH Constitution, and the Court of BiH, the jurisdiction of which covers only specific areas. Specifically, the judiciary in BiH consists of regular and specialized courts and it is regulated at both the state and the entity level, namely by: the Law on the Court of Bosnia and Herzegovina, the Law on Courts in the Federation of BiH and the Law on Courts in Republika Srpska (RS), respectively.

There are also bylaws further regulating this area. Since 2000 onwards, the judicial system of BiH has been subject of a number of reforms, which culminated in the period from 2002 to 2006 when a number of new procedural and substantive laws (law on courts, law on civil procedure, law on enforcement procedure, bankruptcy laws, etc.) were introduced. In 2008, the BiH Council of Ministers defined three main pillars of the Rule of Law Reform, namely: justice, greater access to justice, and support to economic growth, which is in accordance with the requirements set before Bosnia and Herzegovina in the EU accession process. In this process, BiH will be particularly required to fulfil specific preconditions in the area of judiciary, such as strengthening of judicial institutions and the rule of law. Precisely, the Stabilization and Association Agreement in Article 78 states: *“In their cooperation on justice and home affairs the Parties shall attach particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular”*. In this respect, the endorsement of the BiH 2015-2018 Reform Agenda has reemphasized the need to implement further reforms in the rule of law area. The implementation of the aforementioned Reform Agenda is expected to result in the adoption of the new Court Reform Strategy Paper and generally, to strengthen the rule of law, and

in particular, to strengthen the independence of the judiciary and improve its efficiency and institutional capacities, promote equal treatment, etc.

Bearing in mind the importance of an efficient judiciary as a guarantee of legal security for foreign investors, and in line with the currently pursued reforms, hereinafter FIC identified certain deficiencies relating to the judiciary in BiH that have been pointed out by the FIC members.

SPECIALIZATION OF COURTS AND JUDGES (IN COMMERCIAL CASES)

FBiH and RS: OPEN ISSUE

Adoption of an increasingly large number of laws governing different areas, and their complexity, suggests that there is a growing need for specialization of judges in certain areas of law. In this regard, the issue of specialization of courts and judges is closely related to the organization and structure of the courts, their jurisdiction, as well as education and training for judges.

However, in practice, the lack of capacity affects the assignment of cases in a way that judges preside many different types of cases, which prevents them from having an adequate specialization and the appropriate level of training in a particular area.

Moreover, some cases require familiarity with the concept that surpasses the legal sphere, which requires additional training for optimal resolution of such cases (e.g. in case of commercial disputes, the knowledge of certain economic concepts or market conditions is required, or in matters relating to the competition law, etc.).

In other words, improving investment-friendly business environment cannot be fully achieved if the investors, who, given their business activities and often high-value commercial disputes need an effective resolution of their disputes, lack the confidence that their case will be resolved efficiently and soundly by judges who have, through specialization, achieved the appropriate level of expertise to deal with them.

Furthermore, assigning cases to individual judges is performed automatically, in accordance with Article 8 of the Rulebook on Automatic Case Management System in Courts⁴ which *inter alia* stipulates that the cases should be assigned according to the specialization of judges following the principle of uniform random allocation of cases based on the pre-determined parameters set by the Court President in his/her decision on the assignment of cases. However, the Rulebook does not specify the type of information that should be used for determining these parameters (e.g. experience, training, etc.), which is essential for ensuring proper automatic assignment of cases to judges holding appropriate specialization.

FBiH and RS: RECOMMENDATION

When it comes to commercial cases, it is recommended to increase the capacity, i.e. the number of judges in the municipal courts where commercial departments have been established, in order to expedite court proceedings and resolution of commercial disputes.

Due to the great complexity of commercial cases, it is necessary to establish a higher degree of specialization for judges in order to be able to better identify certain legal specifics of these cases. In this regard, it is necessary to provide economy-oriented training for judges which would enable them to adequately understand the market in BiH, provide them with a specialization in specific areas of commercial law (such as intellectual property, competition, liability of company shareholders), as well as a modern market economy, and in particular the common market of the European Union, given the BiH's aspirations to the EU membership.

In addition, it would be desirable to take into account the Recommendations of the Council of Europe, i.e. the Consultative Council of European Judges, contained in Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges (Paris, 5-6 November 2012). These recommendations may be particularly relevant for BiH (as a member state of the Council of Europe) since they reflect various nations' experiences on judicial specialization in general,

and include a comparative review of the generally accepted trends in specialization and internal judicial organization of all other member states, including the EU member states. In addition to the reviews and descriptions of different specializations, these recommendations describe the specific framework under which the specialization of courts and judges should be implemented. Thus, for instance, under points 41 and 42 of the aforementioned Opinion it is recommended that there should be either specialist courts or chambers that are part of the general judicial system, which has been, in essence, implemented in both the FBiH and RS, through the establishment of commercial departments within the FBiH municipal courts and the district commercial courts in RS. However, with regard to the specialization of judges, under point 44 of this Opinion, it is recommended that attainment of the necessary specialization of judges may be achieved either by appointing judges from among the lawyers specialized in a particular area of the law or by having the existing judges receive specific training in a specialist area of the law or in a non-legal area (e.g. economy) before their appointment to the departments of specialized jurisdiction or a specialist court.

In addition, given that among the judges already appointed in the commercial departments of municipal courts in FBiH and the RS District Commercial Courts, there are judges holding specialized knowledge in the some of the commercial law areas, acquired through previous professional experience and training, it is necessary to ensure that cases relating to such specific areas are assigned to the judges possessing the aforementioned specialist knowledge. Taking into account the current capacity of the courts, this can be ensured by clearly defining the framework for the court presidents to make decisions defining the parameters for the automatic assignment of cases to judges within the case management system, whereby the prior professional experience and training of judges should be defined as the primary and main criteria.

One of the ways to implement this recommendation could be to have the HJPC's Judicial and Prosecutorial Training Centre (**CEST**) develop a training program that would be compulsory for each judge serving in the commercial departments of municipal courts, with a focus on specific areas of commercial law (for example, general corpo-

⁴ Rulebook on Automatic Case Management System in Courts (Official Gazette of Bosnia and Herzegovina No. 4/16)

rate law, banking and financial law, insurance law, intellectual property law, competition law, etc.) and different levels of specialization (e.g. basic, intermediate, advance, etc.) supported by experts from each of the mentioned areas. Records could be kept of such training courses for the purpose of assigning cases to judges who have attended particular courses and based on the level they have achieved. The training program should be developed by the CEST for each judge individually based on his/her past experience and the courts' needs communicated by the court presidents or commercial departments' presidents. On the other hand, it should be prescribed that the attendance of judges is mandatory and that the judges are obliged to attend such training courses instead of having their attendance depend on the court presidents' discretion.

TRIAL WITHIN A REASONABLE TIME

FBiH and RS: OPEN ISSUE

The Constitution of Bosnia and Herzegovina, in Article II/3 e), provides for the right to a fair trial and the right to a fair hearing in civil and criminal cases. One of the key elements of the right to a fair trial is the right to have a decision reached, i.e. the right to finalization of proceedings, within a reasonable time. It is precisely this element, i.e. the right to trial within a reasonable time, which is the topic of all topics when it comes to the judicial system in Bosnia and Herzegovina. Specifically, in everyday practice, we see the inefficiency of the judiciary, long-lasting trials, as well as the failure to comply with court decisions, even though, there are numerous legal documents in BiH that are aimed at ensuring the right to a trial within a reasonable time. Thus, the Laws on Civil Procedure (hereinafter referred to as: **LCP**) in RS and FBiH, respectively, require the courts to prevent any abuse of the parties' rights during the proceedings and to conduct the proceedings within a reasonable time, without delay and at the least cost. Furthermore, the current Law of Civil Procedure requires the courts to handle lawsuits efficiently and in a timely manner. For instance, Article 69 of the Law on Civil Procedure of FBiH stipulates that a statement of claim, including the supporting documentation, shall be submitted to the defendant for response within 30 days from receiving a properly drafted and complete statement of claim by the court, while Article

75, Paragraph 4 stipulates that a preliminary hearing shall be held, as a rule, not later than 30 days from receiving a written statement of defense, or after the expiration of the deadline for filing the statement of defense by the defendant. Although at first glance it seems that there are control mechanisms with respect to the proceedings duration and exercising the right to trial within a reasonable time, we witness a non-compliance with these provisions on a daily basis, which is especially pronounced in, for instance, labor disputes which take years, even in case of enforcement proceedings, although the Laws on Civil Procedure expressly stipulate that all enforcement proceedings are to be urgently treated. This situation in practice and everyday discussions about the slow pace of justice has resulted in efforts to better regulate the trial procedures in order to increase efficiency. Efforts to reform the judiciary in BiH resulted in enactment of the Ordinance on time frames for handling the cases in the courts and prosecutors' offices in Bosnia and Herzegovina, the Rulebook on referential criteria for the work of judges and expert associates in BiH Courts, the 2014–2018 Action Plan of the High Judicial and Prosecutorial Council of BiH, and the 2014 – 2018 Strategic Plan of the High Judicial and Prosecutorial Council of BiH. All of these Ordinances provide for instruments that should result in lawful, proper and timely resolution of court cases where any violation of the parties' right to a trial within a reasonable time would be reduced to a minimum. Unfortunately, all of them lack the specific sanctions in case of unreasonable duration of proceedings. Law theorists have been warning, and the practitioners confirmed that without specific sanction measures, it will not be possible to make effective improvements aimed at shortening unreasonably long court proceedings. Therefore, all previous pieces of legislation, strategies and action plans on this subject are, in effect, only a dead letter.

FBiH and RS: RECOMMENDATION

For the purpose of expediting court proceedings, it will be necessary to adopt a concrete package of measures which will, on one hand, introduce specific sanction measures in case of violation of the right to trial within a reasonable time, and on the other hand, disburden judges enabling them to handle disputes quickly and efficiently. One possible measure is the establishment of the institute of protection of the right to trial within a reason-

able time. If truth be told, this institute is already largely used in the decisions rendered by the Constitutional Court. In a significant number of its decisions, the BiH Constitutional Court found a violation of the right to trial within a reasonable time, and ordered an appropriate indemnification to be paid to the party whose rights were violated.

However, we are of the opinion that the request for protection of the right to trial within a reasonable time should be incorporated into the legislation of the Entities and Brcko District in a manner similar to that applied in the neighboring countries. Thus, in Montenegro, this institute was introduced back in 2007 through a special Law on Protection of the Right to Trial within a Reasonable Time. Serbia followed by adopting its Law on Protection of the Right to Trial within a Reasonable Time on 7 May 2015, which entered into force on 1 January 2016, while Croatia introduced this institute in 2013 under the Law on Courts.

The introduction of this institute, either through a special law at the entity and Brcko District level or within the current laws on courts, would significantly expedite the decision-making process with regard to the protection of the parties' rights to a trial within a reasonable time, and disburden the BiH Constitutional Court.

Similarly to the legal arrangements in the neighboring countries, this institute should contain the following major components:

- The authority deciding on the requests for protection of the right to trial within a reasonable time, modelled on the laws of Serbia and Croatia, should be the president of the court where the violation occurred;
- the time period in which the president of the court is to decide on the request for protection of the right to trial within a reasonable time, in our opinion, should not exceed 60 days (this time period is also prescribed in the Serbian and Croatian laws);
- the procedure in case of merits of the request: at this point various issues should be considered, starting from defining the time period in which the court should resolve the case, which is subject to a violation of the right to trial within a reasonable time, to removing the trial judge from the case and assigning it to another judge, etc.

- compensation in case of merits of the request: when determining this compensation one should primarily take into account the abundant practice of the BiH Constitutional Court. In addition, neighboring countries' legislation should be taken into consideration. Thus, for instance, the aforementioned compensation cannot exceed 35.000 Kuna (approx. EUR 4,540) in Croatia, while in Serbia, it ranges from EUR 300 to EUR 3,000, and in Montenegro, this range is between EUR 300 and EUR 5,000.

Besides the above stated, it would be practical to increase the competences of the HJPC in terms of supervising the legality and efficiency of judges in conducting judicial proceedings by, *inter alia*, prescribing sanctions against judges in case of missing the legally prescribed deadlines for proceeding in court cases (e.g. the deadline for scheduling preparatory hearing in civil cases, and the like). On the other hand, the level of responsibility of court presidents should be increased in terms of supervising the work of judges and administrative staff, particularly when it comes to their efficiency in resolving cases.

With regard to exercising the right to a fair trial, the HJPC adopted a program to eliminate the case backlogs, however, this measure has produced only partial results, because it covers only specific cases identified as old and backlog cases and it does not constitute a systemic solution to the problem of court efficiency in resolving cases.

The process would be significantly accelerated also by fully assigning technical tasks to the administrative staff. There is no reason for judges to supervise technical assignments, such as scheduling hearings, verifying addresses, collecting official information and documents, forwarding submissions to the parties, or reminding parties to the responsibilities they have neglected. These tasks normally fall under the responsibilities of administrative staff, and therefore, we are of the opinion that, for instance, a judge should not necessarily issue an order for exchanging each and every submission among parties, because it is often the case in practice that the submissions, which have not been subject to prior court examination (save for the law suits, enforcement motions, etc.) are submitted late, even at the very hearings, for which reason the judge has not had

the opportunity to take over the case filed and issue an order for its dispatch. On the other hand, if this is not feasible for the reasons of maintaining their independence and discretionary right to manage cases, we believe that it would be possible to introduce a rule that each submission filed creates a requirement for the Court Registry office to forward the case to the judge immediately, instead of forwarding it only after the judge makes a record of the case i.e. sets the date of its submission to the judge. In this way, the judges would have to react promptly to each submission filed and issue appropriate orders.

Also worth considering is the possibility of recruiting more judicial associates in the courts who would assist the judges in conducting judicial proceedings within the legal limits and under the supervision of the judges (by drafting decisions, researching case law and regulations, etc.). Recruiting judicial associates is certainly more cost effective than appointing additional judges, given that gross salaries of judicial associates are incomparably lower than the salaries of judges.

Finally, FBiH should follow the example of RS and exclude litigations between entrepreneurs, traders and companies and other legal entities engaged in economic activities from the jurisdiction of the municipal courts, putting such litigations under the jurisdiction of commercial courts.

ARBITRATION

It is well known that a stable, predictable arbitration regime, as a part of broader framework for the rule of law, is one of the factors that foster foreign investment. Namely, the complex commercial disputes require reliable and flexible mechanism for dispute resolution that reflects the autonomy of the parties' will, and ensures arbitrators' competence, confidentiality of procedures, and facilitates the recognition of awards in case of their judicial enforcement through enforcement proceedings before the national courts. This comes from the fact that foreign investors often lack confidence in national courts and prefer alternative dispute resolution and in that sense, see clearly regulated and predictable arbitration regime as a way to reduce the risk for their investments and one of the possible ways to ensure an adequate legal protection system.

Despite the fact that the reform of the arbitration system is even more important for transition countries, the current legal reform in BiH has not yet been focused on the detailed regulation of the arbitration. The present legislative framework provides for a very wide and general framework for arbitration regulating only its main aspects. Arbitration procedure is defined as a special procedure under the entity laws on civil procedures, and the statutory provisions on arbitration come down to nineteen articles covering formal validity of an arbitration agreement, the composition of an arbitral tribunal, the challenge of arbitrators, court involvement in the procedure, limited procedural aspects, and rendering and setting aside the arbitral award. In this sense, BiH falls within the group of 8% of countries regulating the arbitration procedure within the Law on court proceedings or some other relevant laws, without providing the sufficient regulation of arbitration as such.

As a consequence of the lack of an appropriate legal framework in the form of a coherent legal act on arbitration procedure, a significant number of matters is not regulated or is insufficiently regulated, leading to legal gaps and leaving room for inconsistent interpretations. At the same time, the official commentaries of the civil procedure litigation very rarely refer to these problems; there is a significant lack of practice relating to arbitration procedures in BiH; and it is not possible to predict with certainty how a particular legal situation would be treated in practice.

As an illustration of the above stated, below we point out only some of the issues related to the arbitration, which are, due to confusing regulation, subject to different interpretations and which, as such, contribute to legal uncertainty.

OPEN ISSUES IN FBIH AND RS:

Dispute Arbitrability	The issue of dispute arbitrability is regulated under relevant provisions and principles of civil procedure, which can lead to incorrect and inconsistent interpretations. An illustrative example of this is the application of the provisions governing the exclusive territorial jurisdiction of the court that, if consistently applied, would lead the conclusion that arbitral tribunals do not have jurisdiction to deal with legal issues that are placed within the exclusive territorial jurisdiction of certain national courts. In fact, contrary to the above, the purpose of the provisions on exclusive territorial jurisdiction is to determine territorial jurisdiction among the courts in a country, rather than to decide on the arbitrability of a specific legal matter <i>in arbitration</i> .
The appointment of arbitrators	Pursuant to the entity-level LCPs, a party may file a motion to the competent court for declaring the arbitration agreement terminated if: (i) an arbitrator is not appointed in due time, (ii) appointed arbitrators cannot agree on the appointment of the chairperson, (iii) the parties cannot agree on an arbitrator they have to appoint jointly, (iv) the appointed arbitrator cannot, or will not act as arbitrator. The current regulations are very restrictive contrary both to the <i>UNCITRAL Model Law on International Commercial Arbitration</i> , and to the comparative provisions in general. In this sense, the UNCITRAL Model Law provides that in these types of situations, the competent court shall take the necessary measures, unless the agreement itself provides for another appointing procedure. The Model Law does not take a radical stand as to have the agreement terminated merely because the appointment procedure is facing obstacles.
The choice of the applicable law	The provisions of the entity-level LCPs stipulate that in the absence of the parties' agreement on the applicable law, arbitrators can decide which law to apply. However, from the wording of the provision it is not clear whether this means that the arbitrators are free to decide on substantive and/or procedural law. The relevant laws on civil procedure do not differentiate domestic from international arbitration, and without clear guidelines, the question is whether an arbitral tribunal should resort to private international law in case of an international dispute and if so, should it apply the private international law rules of BiH, or "the conflict of laws rules which it considers applicable" as provided by the UNCITRAL Model Law.
Interim measures	An interesting aspect of an arbitration procedure in BiH concerns the issuance of interim measures. Specifically, pursuant to the Law on Civil Procedure, filing an interim measure prior to the statement of claim requires the party to start civil proceedings before the court within the legally prescribed deadline. There are no guidelines or practical examples as to how this issue would be reconciled with an existing arbitration agreement and a parties' choice to subject their dispute to arbitration. Furthermore, a request for an interim measure can also be filed with the statement of claim, or in the course of procedure. The provisions of the entity-level Laws on Civil procedure do not specify if the arbitral tribunal may grant interim measures. Even though there are no formal obstacles for applying these provisions governing the interim measures by analogy to the arbitration proceedings, given the overall restrictive regulation of the interim measures in the BiH system, it is more likely that it will be interpreted that the tribunal has no power to grant interim measures, and that this issue is reserved for courts only.

RECOMMENDATIONS IN FBIH AND RS

Bearing in mind the above, it is necessary to modify the legal framework in order to create a stable and predictable arbitration system, in which foreign investors will have confidence. In this sense, we propose amendment to the LCP provisions which would precisely regulate this matter, or the adoption of a special law on arbitration in accordance with the provisions of the UNCITRAL Model Law with adjustments to our legal system to the extent necessary or appropriate.

GAP BETWEEN CADASTRAL AND LAND-REGISTRY RECORDS

In FBiH, maintaining land-registry records on real property rights falls under the competence of the land registry offices that are part of the courts, while cadastral records (containing information on the holders) are maintained by the responsible municipal administrations in charge of cadaster

and property survey. In RS, the land-registry and cadastral records are maintained by the RS Authority for Geodetic and Property Affairs, and the Law on Land Survey and Cadaster stipulates the establishment of the real estate cadaster records that would consolidate the cadastral and land-registry records.

OPEN ISSUES IN FBiH AND RS:

<p>Data Inconsistency</p>	<p>Real estate data maintained in the Land Registry and those maintained in the Cadaster are often inconsistent, both in terms of real estate identification, i.e. the identification of land plots according to the old and new survey, and in terms of surface areas and descriptions. The inconsistency between land-registry and cadastral records hinders the implementation of investment projects because obtaining urban, construction and use permits and finally, the registration in the Cadaster and Land Registry requires reconciliation of these records, which takes time.</p> <p>Since 2012, FBiH and RS have been implementing the Real Estate Registration Project – RERS funded by the World Bank, aimed at harmonizing the cadastral and land-registry records; however, it is necessary to speed up the implementation of this project as according to the latest report, by the end of 2015, the harmonization was made in 82, out of 528 cadastral municipalities.</p>
<p>Lack of Land Registers</p>	<p>No Land Registers have been established for some of the geographical areas in BiH, and given that real property rights are acquired by registration in the land register, any acquisition and transfer of real property rights for which there is no land register established is impossible, which also threatens legal certainty, because it is neither possible to determine the actual situation regarding the ownership and encumbrance on such properties, nor is it possible to market such properties in a lawful manner.</p>
<p>Keeping real estate records at different authorities</p>	<p>In FBiH, keeping cadastral records is the responsibility of the municipal administrations, while keeping land registers falls under the competence of the courts; however, we are of the opinion that that it would be purposeful to keep both cadastral and land-registry records within a single register, thus ensuring uniformity and consistency in the registration of all changes relating to real estates, as it has already been done in RS.</p>

RECOMMENDATIONS IN FBiH AND RS

We are of the opinion that it would be necessary to speed up the implementation of the RERS project in order to harmonize land-registry records with cadastral ones, as soon as possible.

It is necessary to commence the establishment of land registries for all areas where they have not been established yet.

ENFORCEMENT PROCEEDINGS

The provisions of the Law on Enforcement Proceedings of RS and FBiH, respectively, as well as the institutional bases often slow down the enforcement proceedings. Although the current Laws on Enforcement Proceedings stipulate that enforcement is an expedite proceeding, and that the remedies filed against an enforcement decision do not suspend the enforcement thereof, when it comes to enforcement proceedings against real estate and movable property of the defendants, we are witnessing different kinds of treatment by the courts. Specifically, in most of the cases, the courts wait for the enforcement decisions to become final, before instigating the other procedural actions, such as seizure and assessment of movables, or assessment and sale of immovable.

OPEN ISSUES IN FBiH AND RS:

<p>Unnecessary stay of enforcement actions in the enforcement proceedings</p>	<p>This case law leads to legal uncertainty for the claimants and often causes damages to creditors because, in this way, the defendants are given an opportunity to sell or otherwise dispose of their property thus preventing the collection of debts by the claimants. This issue is particularly acute in the enforcement against movables, where the claimant acquires judicial lien on the seized movables from the moment of their inventory by a bailiff. As a result of this improper application of the Law on Enforcement Proceedings, as well as the tardiness of the courts in terms of deciding upon the legal remedies filed against the enforcement decisions, it may take several years between the time of rendering the enforcement decision and the time of inventory and assessment of movables, during which period the defendant is free to dispose of property that is subject to the proposed enforcement, i.e. it is free to sell it, thus hindering or preventing the collection of debts by the claimant.</p>
<p>Court Bailiffs</p>	<p>The Laws on Enforcement Proceedings of FBiH and RS, respectively, entrusts court bailiffs with significant powers, such as seizure, assessment and sale of movables, handover and evacuation of real estate, etc.</p> <p>However, in practice there are various problems related to the work of court bailiffs, especially when it comes to seizure and assessment of movables, as bailiffs are typically unqualified to make an assessment of the seized property, or generally to identify the property that should be seized, often unreasonably requiring the involvement of court experts to identify the moveable property subject to seizure and make the assessment thereof. This unnecessarily increases the costs, and extends the duration of the proceedings. This is particularly evident in the enforcement procedures against industrial equipment and vehicles, when bailiffs, as a rule, seek the involvement of court experts.</p> <p>Furthermore, court bailiffs are often very inefficient as some of the actions are significantly delayed or even suspended in case the defendant files an objection. The number of bailiffs is also an issue as it does not meet the needs of the judicial system, especially taking into account the number of cases requiring their involvement. In RS, the Law on Enforcement Proceedings, allows the involvement of contractual enforcement officers holding the same powers as the court-appointed bailiffs, however, this applies only to the cases initiated in connection with the collection of municipal debts, and therefore, the appropriateness of such a solution is debatable as it does not accelerate the actions pursued by the court bailiffs related to the debt collection in commercial enforcement cases.</p>

RECOMMENDATIONS IN FBiH AND RS

The provisions relating to the assessment and seizure of movables in the Laws on Enforcement Proceedings should be amended to provide for inventory and seizure of movables immediately after rendering an enforcement decision, regardless of possible remedies filed.

Specialized training and education should be provided to bailiffs to enable them to independently carry out the seizure and make assessments of movables.

In the Federation of BiH, it would be necessary to adopt a rulebook implementing the provision of Article 46.a of the Law on Courts stipulating that court bailiffs must have passed the professional exam. This rulebook should provide for an exam-taking program covering legal, technical and economic topics, the appointment method, and the responsibility for organizing and taking the exams. In addition, the RS Law on Courts should include a similar provision supported by similar implementing legislation.

The legal construct of private enforcement officers should be introduced, trained and encouraged to quickly and efficiently carry out enforcement procedures in accordance with the enforcement decisions rendered by the courts, or the number of bailiffs should be significantly increased.

PUBLIC DISCLOSURE OF SOURCES OF LAW AND JURISPRUDENCE

OPEN ISSUE IN BIH, FBiH and RS

The Official Gazettes in BiH, RS, FBiH and the FBiH Cantons are not freely available to the public, but only to subscribers on a chargeable basis, which is contrary to the practice of the EU Member States. In FBiH, this problem is particularly pronounced in relation to the official gazettes of the Cantons, because official publications are published by a different publisher in each Canton and not in a single Canton, save for the Sarajevo Canton, are the official gazettes available on the Internet immediately after their publication. In this way, access to official sources of the relevant laws is very difficult or almost impossible, which creates legal uncertainty, as businesses, not being able to access the official sources of law, often rely on the unofficially published laws and regulations, which in practice often leads to partial application of the rules, since such unofficial sources often do not contain the relevant amendments to the laws and regulations, or differ from their official counterparts.

Access to the database of court decisions of Judicial Documentation Centre containing relevant court decisions regarding the interpretation and application of legal institutes is not freely available either, and the database search is often hampered by poor indexation of search terms, or incompletely or incorrectly entered database search terms.

RECOMMENDATIONS FOR BiH, FBiH and RS

The competent state-level institutions, i.e. the High Judicial and Prosecutorial Council of BiH and the competent state, entity and cantonal ministries should create an electronic database of online regulations making all laws and regulations available in one place and in the same form and contents as published in the official gazettes, as well as the index of current regulations and the regulations that have been put out of force. We are of the opinion that the current practice of charging the access to the official gazettes should be abolished, and make all official publications available on the Internet on the day of their publication in a standard printable form.

We are of the opinion that this recommendation could be implemented through the public reform project and the establishment of e-government at the state level, as well as at the entity and cantonal levels, by linking cantonal, entity- and state-level official gazettes with the e-government system, which would enable collecting all laws and regulations in one place, and also allow users free access to them via the Internet.

The existing Judicial Documentation Centre database of court decisions should be improved to enable easier and safer search of the relevant case law, and make it publicly available free of charge.

EXECUTIVE SUMMARY

OPEN ISSUE	RECOMMENDATION	INSTITUTION
Specialization of courts and judges (in commercial cases).	<ul style="list-style-type: none"> The number of judges in commercial departments of the FBiH municipal courts and the RS District Commercial Courts, respectively, should be increased, in order to expedite court proceedings and resolution of commercial disputes. It is necessary to establish a higher degree of specialization for judges in commercial departments of the FBiH municipal courts and the RS District Commercial Courts, respectively. In this regard, it is necessary to provide training for judges which would enable them to adequately understand the market and the relevant legislation in BiH. The Case Management System should be adjusted to ensure that cases requiring certain specialized knowledge are assigned to the judges possessing such knowledge. 	<ul style="list-style-type: none"> High Judicial and Prosecutorial Council of BiH - HJPC, Centre for Judicial and Prosecutorial Training - CEST of FBiH and RS.
Trial within a reasonable time.	<ul style="list-style-type: none"> For the purpose of expediting judicial proceedings, it is necessary to adopt a concrete package of measures, such as sanction measures, in case of violation of the right to trial within a reasonable time; to establish the institute of protection of the right to trial within a reasonable time; to introduce judicial inspection that would supervise the legality and efficiency of judges; technical assignments, such as scheduling hearings, verifying addresses, etc. should be transferred to the administrative staff; and more judges should be recruited/appointed in order to expedite court proceedings. 	<ul style="list-style-type: none"> High Judicial and Prosecutorial Council of BiH - HJPC, Competent judicial authorities in BiH, FBiH and RS.
Inadequate regulation of arbitration procedure	<ul style="list-style-type: none"> Amendment to the LCP provisions which would precisely regulate this matter or the adoption of a special law on arbitration in accordance with the provisions of the UNCITRAL Model Law with adjustments to our legal system to the extent necessary or appropriate. 	<ul style="list-style-type: none"> FBiH Parliament and RS National Assembly
Gap between cadastral and land-registry records, Lack of Land Registers	<ul style="list-style-type: none"> It is necessary to speed up the harmonization of the cadastral and land-registry records implemented within the RERS project, and commence the establishment of land registries for all areas where they have not been established yet. In FBiH, it is necessary to ensure that all real estate registers, i.e. land registers and cadastral records are maintained by a single authority. 	<ul style="list-style-type: none"> Municipal Courts in FBiH , FBiH Authority for Geodetic and Property Affairs , RS Authority for Geodetic and Property Affairs

OPEN ISSUE	RECOMMENDATION	INSTITUTION
<p>Unnecessary stay of enforcement actions in the enforcement procedures</p>	<ul style="list-style-type: none"> • The provisions relating to the assessment and seizure of movables in the Laws on Enforcement Procedure of FBiH and RS, respectively, should be amended to provide for inventory and seizure of movables immediately after rendering an enforcement decision, regardless of possible remedies filed. • Specialized training and education should be provided to bailiffs to enable them to independently carry out seizures and make assessments of movables. • In the Federation of BiH, adopt a by-law regulating the professional exam for court bailiffs. • In RS, amend the Law on Courts and prescribe that court bailiffs are required to take the professional exam; and adopt a by-law regulating the professional exam for court bailiffs. • Private enforcement officers should be introduced, trained and encouraged to quickly and efficiently carry out enforcement procedures in accordance with the enforcement decisions rendered by the courts, or the number of bailiffs should be significantly increased. 	<ul style="list-style-type: none"> • FBiH Government, RS Government, • FBiH Parliament and RS National Assembly
<p>Public disclosure of sources of law and jurisprudence</p>	<ul style="list-style-type: none"> • Creating an electronic database that would be accessible free of charge and contain all laws and regulations as published in the official gazette, regardless of the level of government, which will be publicly available through the e-government project at the state level, or through the e-government projects being implemented at the entity level. This database must necessarily include the registers of (i) all applicable laws and regulations, (ii) all of the laws and regulations that have been put out of force. • We suggest to abolish the current practice of charging the access to the official gazettes, and make all official publications freely available on the Internet on the day of their publication in a standard printed form. • The Judicial Documentation Centre database of court decisions should be improved to enable easier and safer search of the relevant case law, and should be made publicly available free of charge. 	<ul style="list-style-type: none"> • High Judicial and Prosecutorial Council of BiH - HJPC, • Centre for Judicial and Prosecutorial Training - CEST of FBiH and RS, • BiH Council of Ministers • Public Administration Reform Coordinator's Office • FBiH Government ; • RS Government ; • Cantonal Governments;

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