




# WHITE BOOK 2010/11

2010/11

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<b>ASYCUDA</b>	Automated System for CUstoms Data
<b>ATA Carnet</b>	combination of French and English phrases "Admission Temporaire/Temporary Admission
<b>BATA</b>	Institute for Accreditation of BiH
<b>BH FMT</b>	BiH Ministry of Finance and Treasury
<b>BiH</b>	Bosnia and Herzegovina
<b>BU</b>	Business Unit
<b>CD</b>	Customs declaration
<b>CDM</b>	Clean Development Mechanisms
<b>CEMT</b>	fr. Conférence Européenne des Ministres des Transports - The European Conference of Ministers of Transport
<b>District / BD</b>	District Brcko
<b>DNA</b>	Designated National Authority
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>EDMWS system</b>	Electronic Document Management and Workflow System
<b>EU</b>	European Union
<b>FBiH</b>	Federation of Bosnia and Herzegovina
<b>FDI</b>	Foreign Direct Investments
<b>FIC</b>	Foreign Investors Council
<b>GNI</b>	Gross national income
<b>HJPC BiH</b>	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
<b>IFC</b>	International Finance Corporation
<b>ILO</b>	International Labor Organization
<b>ITA BiH</b>	Indirect Taxation Authority of Bosnia and Herzegovina
<b>KS</b>	Canton Sarajevo
<b>MoFTER BiH</b>	Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>PARS</b>	Parliamentary Assembly of RS
<b>RS</b>	Republic of Srpska
<b>TIR Carnet</b>	fr. Transports Internationaux Routiers – Karnet TIR –International Road Transport
<b>VAT</b>	Value Added Tax
<b>*</b>	Recommendations from the previous White Book edition

# 1 FOREWORD

The White Book is the most important publication produced by the Foreign Investors Council. In this annual publication the FIC highlights the key obstacles our members are facing while doing business in Bosnia and Herzegovina. The White Book 2010 is the most thorough edition the FIC has yet published and contains only the most important issues as determined by our membership.

Despite Bosnia and Herzegovina's efforts to open its economy to more foreign investment, foreign investors continue to face a number of serious obstacles, including a complex legal and regulatory framework, non-transparent business procedures, and weak judicial structures. Given the fact that many of last year's recommendations still remain the same it is an obvious indication that very little has been accomplished. We intentionally left the majority of last year's recommendations to emphasize the necessity and actuality of the same.

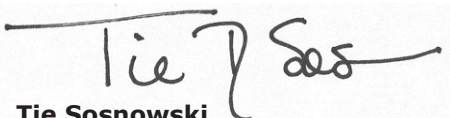
Privatization of state-owned enterprises has lagged behind the rest of the countries in the region (including Croatia, Serbia, Montenegro and Macedonia). Government authorities at all levels have begun to address these obstacles as part of the larger effort to transition to a market economy; however, BiH is still in the early stages of this process. As a result, foreign investment (particularly greenfield investment) has shown only limited gains. Foreign investment in the banking sector is the exception, with Austrian banks taking a significant position

in the local banking market. The Republic of Srpska entity approved a law authorizing PPPs and FBiH still hasn't adopted this law and we strongly believe that the government of this entity as well as the state level will put in the efforts to handle the issue of PPP. The EU progress report for 2009 shows a small number of implemented reforms, as a result of which BiH is still pending on the EU membership process.

In the last year some limited improvements in the business environment were recorded, but the inadequate reforms were not sufficient to substantially foster private sector developments. We need more improvement and FIC members are ready to assist the government in developing an agenda for needed reforms, thus contributing in their implementation.

It is our hope that the recommendations provided in this edition of the White Book 2010 will pave the path for an improved business climate which will insure a better working environment for the present foreign companies and secure conditions that will attract investors willing to contribute to better employment of BiH citizens and the economic growth of the country. We are hopeful that the newly elected government will show more support to foreign companies and in that way contribute to a better business climate in Bosnia and Herzegovina.

We would like to express our gratitude to all who contributed to the production of the White Book 2010 edition, with a special thanks to our devoted members.



**Tie Sosnowski**  
FIC President





## **2** FIC IMPRESSIONS

**T**he Foreign Investors Council aims to act as a single voice for all foreign investors in Bosnia and Herzegovina and seeks to promote business-oriented initiatives and provide practical support to all investors in order to improve the business environment in the country. By taking an active role in the transition process, the FIC contributes to the improvement of the investment climate in Bosnia and Herzegovina, engaging in dialogue with the stakeholders and voicing the position of the investors.

In order to meet or accomplish goals, we have so far conducted activities related to the promotion of our members and their aspirations, with the aim of pointing out important facts about our work in BiH as well as our influence on the business climate.

Since 2007, we have been working on promoting our activities mostly through advocating and lobbying for better conditions for foreign and local investors.

When it comes to the implementation of the recommendations from the White Book 2009, some limited and slight improvements could be seen. According to data that we obtained, some modest improvements have been noticed in the area of business registration. As of 2008, FIC members along with other company representatives were involved in working groups that lobbied for these changes. In addition, the Law on Direct Foreign Investments have recently been altered and improved in a way to reduce the administration when it comes to registration of foreign capital in BiH.

Some of the modest improvements have been noticed in the area of obtaining construction permits, temporary residence permits, land and registry documents and court registration. Together with the municipal court in Sarajevo, our member companies have greatly contributed to land registry reform in Bosnia and Herzegovina.

### **The FIC is striving to maintain a constant flow of information to government authorities.**

One of these attempts may be reflected in the FIC's publication of the Open Letter to BiH authorities, with the aim of emphasizing the importance of the government endorsing foreign investments in BiH. Through this communication we have attempted to highlight the importance of tax reform, construction and work permits reform, further development of PPP, stressing and the significance of privatization..

### **In order to channel our vision and aims we are in constant cooperation with representatives of foreign institutions and other foreign companies.**

As a part of the Kyoto protocol, the CDM (Clean Development Mechanisms) is one of the most important elements that should be implemented in order to secure further development of the companies dealing with renewable energy sources. Our members, along with foreign embassies and other foreign companies have advocated for the forming of a DNA, a national body for submitting the applications for CDM certification, on a state level. In October 2010, the BiH Council of Ministers adopted the decision on forming this important body. The continuation of these activities will follow during this year.

FIC members have also played a significant role in the process of promoting exports in Bosnia and Herzegovina. This has been done through the cooperation with the EU funded project for developing exports in BiH. FIC company representatives were involved in developing the first National Export Strategy.

In addition to the above, the Foreign Investors Council organized several events with the aim of promoting our membership and discussing foreign investors issues with different representatives of government institutions, international organizations as well as with others

who significantly contribute to the business climate of BiH. Events such as these secured significant feedback which was used to direct and guide further work of FIC members.

Representatives of the media played a crucial role in covering and highlighting our events during the year 2010. The media's active involvement in our actions made it possible for us to spread our vision and aims throughout the business community in Bosnia and Herzegovina and the region.

FIC members have demonstrated more than once that they are socially engaged companies responsible for local communities where they act. Actions such as: building parks, donating schools, supporting the development of education, are common activities of our members, which the society has recognized.

The lack of a coherent policy by the government towards the economy and a clear vision on how to set priorities and manage the needed reforms are the biggest obstacles for direct foreign investments. The FIC is primarily concerned with improving the legal and regulatory framework in BiH. At the same time we would like to emphasize the importance of practical steps that government officials can take in order to improve the work process within the Institutions. When it comes to business envi-

ronment, companies are not adequately informed about the legal and regulatory changes that have been made and how they will be enforced.

In previous years BiH authorities have taken steps to improve the business climate in BiH. It is necessary not only to continue these efforts but to do much more for the development of a positive investment climate in the country as well. Our current cooperation with authorities has been quite satisfactory, but the new government is expected to harmonize legislation, as well as to take concrete measures for reviving the investment cycle.

Given the fact that the newly elected BiH and FBiH Governments have not been formed by the time this edition of the White Book is being edited (end of February 2011), we are using this opportunity to stress once more that the activities of our association as well as the activities of our members have been hindered pending the formation of the Government.

The future plans of the FIC are to maintain and build new relations with newly elected government officials and other important stakeholders. We will continue our cooperation with other similar associations and foreign embassies through the Cooperation Council, with the aim of attracting new members and improving general conditions for conducting business in BiH.



# 3 BIH BUSINESS CLIMATE OVERVIEW - 2010

Bosnia and Herzegovina's progress in transition has been effectively stalled for some years, and as a result the country lags behind all others in South-eastern Europe. The country's complicated political and constitutional structure is a major obstruction to reform and good governance. As a result of the reform paralysis, the country also lags behind other EU accession candidates or potential candidates in the region.

In recent years, policy reform efforts have been (greatly) inadequate and uncoordinated and the business climate continues to suffer due to persisting structural rigidities. The lack of political will combined with unfavourable market conditions over the past year to prevent any progress on privatization, particularly in FBiH.

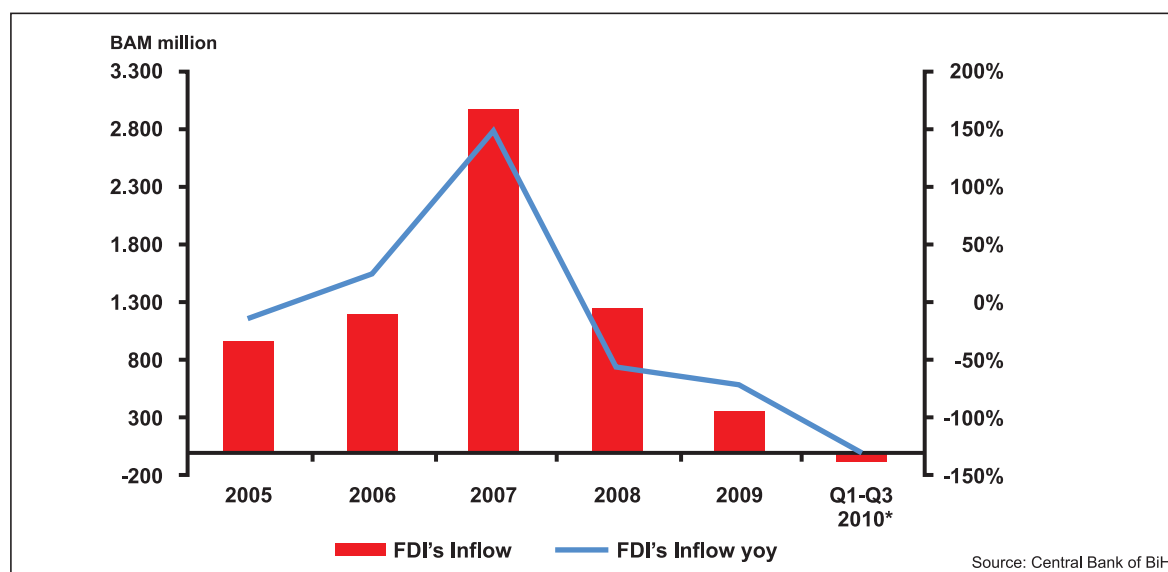
In 2010 Inflows of foreign direct investments in BiH declined by almost 45% in comparison to 2009.<sup>1</sup> Annual average of foreign investments inflow for BiH was 14.3 per cent in 2009 and beginning of 2010. The highway construction works on the Corridor Vc were stopped between September 2009 and March 2010 due to political and legal problems.

Graph below, shows FDI's decline inflow:

The labour market remains relatively rigid, which continues to encourage informality of economic activities and employment, particularly during the time of crisis. High payroll contributions and high minimum wages remain key factors in sustaining labour market rigidities. In response to the pressures created by the crisis, the entity authorities introduced limited restrictions to the unemployment benefits. The employment capacity is further damaged by the failure of the country's education system to adapt to the market needs. An advanced draft labour law has been prepared in FBiH, but was not discussed in the Parliament during the pre-election period. According to the Labour Force Survey prepared in line with the ILO methodology, unemployment increased to 24.1% in 2009 and it even rose to 27,1% in 2010 .

Also, labour market issues are one of the key factors for not seeing the development among foreign companies in BiH, followed by the difficulty to attract new investors. Our members recognized this to be also a great issue while conducting business in this country.

Bosnia and Herzegovina undertook some business environment reforms. The court-based



<sup>1</sup> CBBiH, November 2010 – <http://www.cbbh.ba/index.php?id=741&lang=bs>

business registration system is in operation since 2007 and at present permits this segment of the registration process to be completed in less than 10 days on average. The need for double registration of foreign investors with the Ministry of Foreign Trade and Economic Relations was recently replaced by an electronic connection to the court-based database.

Regarding the construction permits, some improvements can be seen in comparison to previous year. A construction permit can now be obtained faster, with the average time down from 296 to 255 days.<sup>2</sup>

Although BiH felt the impact of the global financial crisis, the banking system has remained sound, and by early 2010, the total level of deposits returned to pre-crisis levels. The Vienna Initiative agreement among the main banks succeeded in preventing outflows of funds back to foreign parent banks. In order to counter a rise in non-performing loans, regulations regarding debt restructuring were loosened in both entities early in 2010.

The economy growth in BH is expected to be up this year by 2.2 per cent,<sup>3</sup> and more significant progress is not to be expected without

major reform. Return to a stronger and more sustainable growth of economy demands reliable public finance, a solid banking system and a better business environment

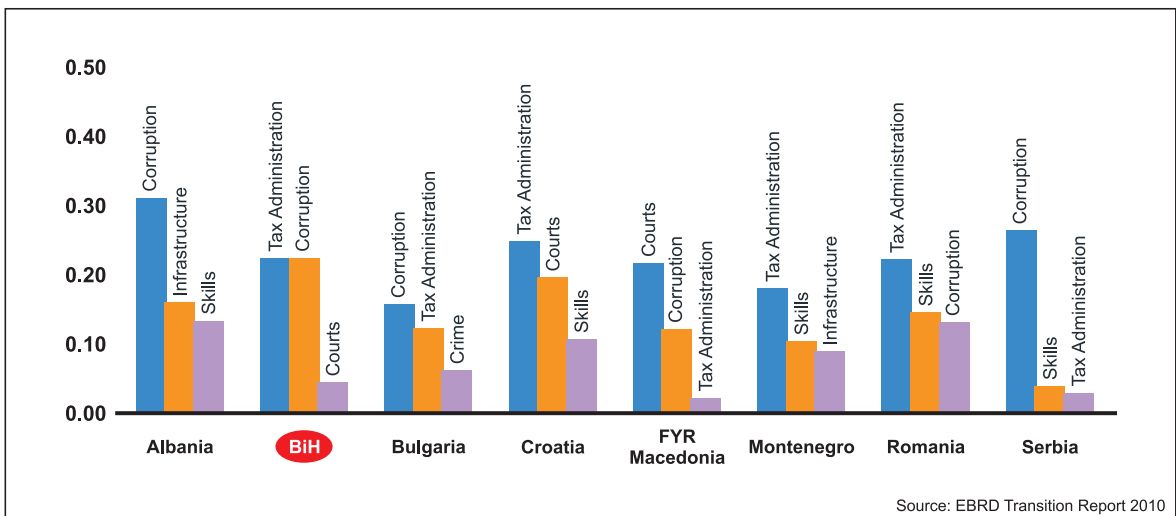
BiH is the country open to foreign investments, especially, when it comes to natural resources, energy and tourism. However, legal obstacles, constitutional reform and tax administration are the most significant reason why BiH remains unattractive to foreign investors.<sup>4</sup>

Graph below shows top three business environment obstacles in the SEE region (relative severity of constraint).

**We believe it is high time that all levels of government take concrete steps and assign highest priority to improving environment for foreign and private investments.**

New governments have a precious opportunity to reverse the negative trends of economic decline and to take clear and strong actions to motivate foreign investors to come in Bosnia and Herzegovina.

FIC members will spare no efforts in striving towards achieving this particular goal for benefit of both foreign investors and local companies.



<sup>2</sup> World Bank "Doing business report for 2011".

<sup>3</sup> IMF Global Economic Outlook - BiH

<sup>4</sup> EBRD Transition Report 2010.

# 4 EXECUTIVE SUMMARY

## BUSINESS REGISTRATION

ISSUES	RECOMMENDATIONS	INSTITUTION
<p><b>Legislation</b></p> <p><b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Instituting a Lien on Shares in a Limited Liability Company (d.o.o.)</li> </ul> <p><b>FBiH</b></p> <ul style="list-style-type: none"> <li>• Unclear Definition of the Cases that May Result in a Suspension of Registration Procedure</li> <li>• Participation of Notaries in the Registration Procedure in FBiH</li> </ul> <p><b>Practical aspects</b></p> <p><b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Inadequate Availability of General Information on Registration Procedure</li> <li>• Lack of Consistency in Processing Registration Applications in Courts</li> <li>• Application of the Principle of Public Access to the Court Registry Records</li> <li>• Failure to Honor Statutory Timeframes and Unnecessary Delays in Registration Procedure</li> </ul>	<p><b>Legislation</b></p> <p><b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Registration laws need to be amended to provide for registration courts' registering liens instituted on shares.</li> </ul> <p><b>FBiH</b></p> <ul style="list-style-type: none"> <li>• More specific definition of the facts that may result in a suspension of registration procedure</li> <li>• Amend the Notaries Law and registration regulations such that notaries' participation is completely reduced in the processing of company's founding acts and articles of association, as well as any amendments.</li> </ul> <p><b>Practical aspects</b></p> <p><b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Post information on the registration procedure on web pages of all institutions involved in the procedure or indicate contact details where the required information is available.</li> <li>• Remove the unnecessary red tape from laws and practices.</li> <li>• Access to basic company information should be enabled on the website of each court that maintains a company's registry.</li> <li>• Courts' operation needs to organize such that they provide continuous registration services.</li> </ul>	<ul style="list-style-type: none"> <li>• Ministries of Justice of FBiH and RS</li> <li>• Ministry of Justice of FBiH</li> <li>• Ministry of Justice of FBiH</li> <li>• Registration courts</li> <li>• Competent registration courts</li> <li>• Competent Ministries of Justice</li> <li>• Competent registration courts</li> <li>• Competent Ministries of Justice</li> <li>• Competent registration courts</li> <li>• Ministries of Justice of FBiH and RS</li> <li>• Competent registration courts</li> </ul>

ISSUES	RECOMMENDATIONS	INSTITUTION
<b>FBiH</b> <ul style="list-style-type: none"> <li>Hours for Consultation with Registration Judges in the Municipal Court in Sarajevo</li> </ul>	<b>FBiH</b> <ul style="list-style-type: none"> <li>Since hours for consultation are scheduled in other courts as a matter of typical practice, this practice should also be reinstated in the Municipal Court in Sarajevo.</li> </ul>	<ul style="list-style-type: none"> <li>Municipal Court in Sarajevo</li> </ul>

### TEMPORARY RESIDENCE AND WORK PERMIT

ISSUES	RECOMMENDATIONS	INSTITUTION
<p style="text-align: center;"><b>Legislation</b></p> <p><b>FBiH, RS, BD</b></p> <ul style="list-style-type: none"> <li>Work Permit Cannot Be Issued in Specific Cases Without an Employment Contract Signed</li> </ul> <p style="text-align: center;"><b>Practical aspects</b></p> <p><b>FBiH, RS</b></p> <ul style="list-style-type: none"> <li>Failure to Comply with Applicable Regulations Regarding the Length of the Procedure for Approving and Extending Temporary Residence</li> </ul> <p><b>FBiH, RS, BD</b></p> <ul style="list-style-type: none"> <li>Inconsistent Enforcement of Laws and Lack of Coordination Among State Bodies and Institutions in Exchanging Information</li> </ul> <p><b>FBiH</b></p> <ul style="list-style-type: none"> <li>Lack of Harmonization of Laws and Practices Relating to the Procedure of Issuing a Work</li> </ul>	<p style="text-align: center;"><b>Legislation</b></p> <p><b>FBiH, RS, BD</b></p> <ul style="list-style-type: none"> <li>There are two solutions to this problem: (i) amend Article 84 of the BiH Law on Movement and Residence of Aliens and Asylum, or (ii) amend the FBiH Law on Hiring Foreign Nationals.</li> </ul> <p style="text-align: center;"><b>Practical aspects</b></p> <p><b>FBiH, RS</b></p> <ul style="list-style-type: none"> <li>The Department for Alien Affairs needs to act in accordance with the BiH Law on Movement and Residence of Aliens and Asylum when deciding on an application for approval or extension of temporary residence that was submitted directly to the competent unit with the Department and to issue a decision within 30 days.</li> </ul> <p><b>FBiH, RS, BD</b></p> <ul style="list-style-type: none"> <li>A practice of mutual communication and coordinated operation needs to be established between the Department for Alien Affairs and courts in charge of business registration.</li> </ul> <p><b>FBiH</b></p> <ul style="list-style-type: none"> <li>The BiH Law on Movement and Residence of Aliens and Asylum and the FBiH Law on Hiring Foreign Nationals</li> </ul>	<ul style="list-style-type: none"> <li>BiH Parliamentary Assembly and FBiH Parliament</li> <li>Competent Ministries</li> <li>BiH Ministry of Security</li> <li>Competent Department for Alien Affairs with the BiH Ministry of Security</li> <li>BiH Ministry of Security</li> <li>Competent courts</li> <li>Competent Department for Alien Affairs</li> <li>Competent Ministries</li> <li>KS Employment Department</li> </ul>

ISSUES	RECOMMENDATIONS	INSTITUTION
<p>Permit Before Approving Temporary Residence in the Sarajevo Canton (FBiH)</p> <ul style="list-style-type: none"> <li>• Failure to Comply with Applicable Regulations Regarding Working Hours of a Foreign National in the Sarajevo Canton</li> </ul>	<p>need to be harmonized with respect to the first issuance of a work permit to foreign nationals.</p> <ul style="list-style-type: none"> <li>• Practices need to be harmonized and applicable laws need to be complied with. Another option is to adopt a rule defining the lower limits of full working hours of foreign nationals.</li> </ul>	<ul style="list-style-type: none"> <li>• FBiH Parliament</li> <li>• FBiH Ministry of Labor and Social Policy</li> <li>• KS Employment Department</li> </ul>

**LAW ON EXECUTION PROCEEDINGS**

ISSUES	RECOMMENDATIONS	INSTITUTION
<p><b>Legislation</b> <b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• The Process of Identifying Debtor’s Property Does Not Include Authentic Documents</li> <li>• Abuse of proceedings in case of objections submitted against a writ of execution</li> <li>• The rules for preparing and managing an auction are not defined</li> <li>• Different Interpretation of the Provision Concerning Sale of Real Property</li> <li>• Imprecisely defined deadlines in the following areas: <ul style="list-style-type: none"> <li>o Satisfaction of claims</li> </ul> </li> </ul>	<p><b>Legislation</b> <b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• The Law needs to be expanded to include authentic documents in addition to enforceable documents.</li> <li>• The Law needs to preclude such stalling of collection of claims, and another possible solution would be to prevent the debtor from making arbitrary and groundless allegations in his/her objections.</li> <li>• The Law needs to define the course of auction in detail because currently each court determines the terms and course of auction on its own.</li> <li>• The Law needs to clearly define the meaning of the provisions that a real property “may be sold without restrictions on the lowest price”.</li> <li>o Clearly define a deadline to satisfy petitioner’s claims (within 15, 30 or 60 days).</li> </ul>	<ul style="list-style-type: none"> <li>• BiH Ministry of Justice</li> <li>• Entity Ministries of Justice</li> <li>• BiH Ministry of Justice</li> <li>• Competent courts</li> <li>• BiH Ministry of Justice</li> <li>• Competent courts</li> </ul>

ISSUES	RECOMMENDATIONS	INSTITUTION
<ul style="list-style-type: none"> <li>o Hearing to split the sale proceeds</li> <li>o Decision on satisfaction of claims</li> <li>• Unclear definition of the process of appraising the value of real property</li> </ul> <p style="text-align: center;"><b>Practical aspects</b></p> <p><b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Execution against movable property (motor vehicles)</li> <li>• Abuse of the procedure of determining the sales price</li> <li>• Different practices in courts in issuing a decision on satisfaction of claims</li> <li>• Incomplete information on the debtor's level of debt</li> <li>• Authentic documents do not include an invoice and a statement from business books for all legal entities</li> </ul>	<ul style="list-style-type: none"> <li>o Define a specific timeframe within which the court must schedule a hearing to split the sales proceeds.</li> <li>o Define a specific deadline and replace the term "without delay" with 15 or 30 days</li> <li>• Define more precisely the meaning of "a part of the creditor's claim", i.e. specify an exact amount/ percentage of the claim, (e.g. 1/3 or the like)</li> </ul> <p style="text-align: center;"><b>Practical aspects</b></p> <p><b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Regulations should provide for recording a pending execution on a passenger motor vehicle in the vehicle records with the competent Ministry of the Interior and in the vehicle registration certificate or license.</li> <li>• These cases need to be defined such that a mechanism is ensured to prevent these identified abuses.</li> <li>• The Law needs to clearly define the decision detailing satisfaction of claims.</li> <li>• The Law needs to specify that employers are required to list all present debts of the employee.</li> <li>• The definition of an authentic document needs to be expanded to include invoices and statements from business book for all legal entities, without exception.</li> </ul>	<ul style="list-style-type: none"> <li>• Competent courts</li> <li>• Competent courts</li> <li>• Parliaments of cantons/entities /People's Assembly of the RS- PARS</li> <li>• BiH Ministry of Justice</li> <li>• Entity Ministries of Justice</li> <li>• Competent Ministries of the Interior FBiH and RS</li> <li>• Competent Ministries of Justice FBiH I RS</li> <li>• Competent courts</li> <li>• BiH Ministry of Justice</li> <li>• Ministries of Justice FBiH I RS</li> <li>• Competent courts</li> <li>• Competent courts</li> </ul>

**COMPANIES LAW**

ISSUES	RECOMMENDATIONS	INSTITUTION
<p><b>Legislation</b> <b>FBiH, RS, BD</b></p> <ul style="list-style-type: none"> <li>Establishing a Branch Office of a Foreign Legal Entity</li> </ul> <p><b>FBiH</b></p> <ul style="list-style-type: none"> <li>Prohibition of Share Purchase Financing</li> </ul> <p><b>FBIH</b></p> <ul style="list-style-type: none"> <li>Convening and Advertising the Shareholders' Meeting</li> <li>Provision of Materials to Shareholder for the Shareholders' Meeting</li> <li>Making Copies of Materials Available to Shareholders for the Shareholders' Meeting</li> <li>Vote of Confidence for Supervisory Board Members</li> <li>Age Limit for Supervisory Board Members</li> <li>Limitations Regarding Appointment as Supervisory Board Member</li> </ul>	<p><b>Legislation</b> <b>FBiH, RS, BD</b></p> <ul style="list-style-type: none"> <li>Harmonize the FBiH Law with the RS and BD Laws and provide for an option for foreign legal entities to establish branch offices in FBiH.</li> </ul> <p><b>FBiH</b></p> <ul style="list-style-type: none"> <li>The issue of financing a purchase of equity shares/stakes should be defined more specifically in the FBiH Companies Law.</li> </ul> <p><b>FBIH</b></p> <ul style="list-style-type: none"> <li>Amend Article 242 of the FBiH Law and specify the minimum required circulation of a daily newspaper issued in FBiH in which the notice on a Shareholders' Meeting is advertised.</li> <li>In these cases, the person submitting the request and having authority to directly convene the Shareholders' Meeting should also be required to prepare draft resolutions.</li> <li>Amend provisions of Article 247 of the FBiH Law and add a provision according to which every shareholder who requests so, must have copies of the documents made available to him/her.</li> <li>Amend provisions of Article 259 of the FBiH Law, defining the need to convene a Shareholders' Meeting for mandatory vote of confidence for Supervisory Board Members following the first two years of their term.</li> <li>The Law needs to extend the age limit for Supervisory Board Members to at least 70 years of age.</li> <li>Amend provisions of Article 264(1), and exempt affiliated companies from this limitation.</li> </ul>	<ul style="list-style-type: none"> <li>Ministry of energy, mining and industry of FBiH</li> <li>Securities Commission of BiH</li> <li>Securities Commission of FBiH</li> <li>Securities Commission of FBiH</li> <li>Securities Commission of FBiH</li> <li>Securities Commission of FBiH</li> <li>Securities Commission of FBiH</li> <li>Securities Commission of FBiH</li> <li>Securities Commission of FBiH</li> </ul>

## LAW ON SECURITIES MARKET

ISSUES	RECOMMENDATIONS	INSTITUTION
<p style="text-align: center;"><b>Legislation</b></p> <p><b>FBiH</b></p> <ul style="list-style-type: none"> <li>• Stock Subscription and Payment</li> <li>• Deadline to Submit Applications for Approval of Public Share Offering</li> </ul> <p><b>RS</b></p> <ul style="list-style-type: none"> <li>• Registration of Securities Transfers</li> <li>• Inability to Manage a Portfolio in Other Markets</li> </ul>	<p style="text-align: center;"><b>Legislation</b></p> <p><b>FBiH</b></p> <ul style="list-style-type: none"> <li>• The wording of the FBiH Companies Law and the FBiH Securities Market Law needs to be harmonized such that the FBiH Companies Law refers to the FBiH Securities Market Law, instead of setting a time period.</li> <li>• The deadlines in the FBiH Companies Law and the FBiH Securities Market Law need to be harmonized such that the FBiH Companies Law refers to deadlines specified in the FBiH Securities Market Law.</li> </ul> <p><b>RS</b></p> <ul style="list-style-type: none"> <li>• Transfers of securities resulting from errors in entering transfer orders in the stock exchange system should be exempted from the mandatory clearing.</li> <li>• The solution would read: "A stockbroker that provides securities portfolio management services shall keep its client's securities that are traded in markets outside the Republika Srpska in a custody account – in its own name and for client's account."</li> </ul>	<ul style="list-style-type: none"> <li>• FBiH Ministry of Finances</li> <li>• FBiH Securities Commission</li> <li>• FBiH Ministry of Finances</li> <li>• FBiH Securities Commission</li> <li>• RS Ministry of Finances</li> <li>• RS Securities Commission</li> <li>• RS Ministry of Finance</li> <li>• RS Securities Commission</li> </ul>
<p style="text-align: center;"><b>Practical aspects</b></p> <p><b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Brokerage Services</li> </ul>	<p style="text-align: center;"><b>Practical aspects</b></p> <p><b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Allow for implementation of the principle of reciprocity to banks and professional brokers that hold brokerage licenses in BiH, provided that full control of the competent Commissions</li> </ul>	<ul style="list-style-type: none"> <li>• FBiH/RS Ministry of Finance</li> <li>• FBiH/RS Securities Commission</li> </ul>



ISSUES	RECOMMENDATIONS	INSTITUTION
<p><b>RS</b></p> <ul style="list-style-type: none"> <li>• The Issue of Publishing a Prospectus</li> </ul>	<p>over the work of professional brokers is ensured.</p> <p><b>RS</b></p> <ul style="list-style-type: none"> <li>• Introducing a “preliminary prospectus” would allow the general public to get to know the company that plans a public share issue.</li> </ul>	<p><b>RS</b></p> <ul style="list-style-type: none"> <li>• RS Ministry of Finance</li> <li>• RS Securities Commission</li> </ul>

**TAXES**

ISSUES	RECOMMENDATIONS	INSTITUTION
<p><b>Legislation</b> <b>FBiH, RS, BD</b></p> <ul style="list-style-type: none"> <li>• Complicated Procedure for Applying International Agreements for BiH</li> <li>• Unclear legal provisions of the personal income tax and social security contribution for individuals residing in FBiH, RS and BD and earning their income in another administrative unit</li> <li>• Lack of harmonization between Personal Income Tax Laws with respect to tax exemptions and the amount of personal deduction at entity and BD level</li> <li>• Unclear legal provisions regarding taxation of foreign nationals who are employed in their home country and were sent on duty to BiH, and who pay their social security obligations in their home country</li> </ul>	<p><b>Legislation</b> <b>FBiH, RS, BD</b></p> <ul style="list-style-type: none"> <li>• All data on international agreements to be stored in a single database and made publicly available</li> <li>• Precisely define the obligation to pay social security contributions for individuals residing in FBiH, RS and the District and earning their income in another administrative unit, and harmonize Laws.</li> <li>• Harmonize regulations at state level.</li> <li>• Precisely define taxation of foreign individuals and their rights to a reduction in tax base, and develop a system in FBiH that will be linked with institutions authorized to carry out payment transactions.</li> </ul>	<ul style="list-style-type: none"> <li>• BiH Ministry of Finance and Treasury (BiH MFT)</li> <li>• FBiH Tax Administration</li> <li>• Federation Ministry of Finance</li> <li>• RS Ministry of Finance</li> <li>• Entity Ministries of Finance</li> <li>• FBiH/RS Ministries of Finance</li> <li>• FBiH and RS Ministries of Finance</li> </ul>

ISSUES	RECOMMENDATIONS	INSTITUTION
<p style="text-align: center;"><b>Practical aspects</b></p> <p><b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• VAT Refund for Persons Who Do Not Have a Registered Business in BiH</li> <li>• Issuance of Opinions by BiH Indirect Taxation Authority</li> <li>• Inefficient Forced Collection on Debtors' Bank Accounts (RS and FBiH)</li> </ul> <p><b>RS</b></p> <ul style="list-style-type: none"> <li>• CORPORATE INCOME TAX               <ul style="list-style-type: none"> <li>o The Law does not clearly define the meaning of unrealized gains/losses, income/expenses not included in the tax base</li> <li>o Depreciation of newly-acquired buildings is not possible</li> <li>o Different practices of taxation of business units which have their registered address in another entities and BD</li> </ul> </li> <li>• Fiscal cash register software does not support any rebates or other discounts in retail sales or requires a very complex tracking of such rebates or discounts, which is quite nonsensical in a computer age</li> </ul>	<p style="text-align: center;"><b>Practical aspects</b></p> <p><b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Under the Regulation on VAT Law, clarify in detail the right to a VAT refund, in accordance with EU directives and publish a list of countries from which VAT refund is possible.</li> <li>• Allow requests for opinion to be submitted in such a way that an opinion may be sought in all cases up to the moment when an inspection control procedure begins.</li> <li>• The present entity laws governing payment transactions should be upgraded by including mechanisms whereby all bank accounts of a client would be blocked.</li> </ul> <p><b>RS</b></p> <ul style="list-style-type: none"> <li>o Clearly define in the Law gains/losses, income/expenses not included in the tax base.</li> <li>o Allow depreciation one month after the building was put into use.</li> <li>o Harmonize legislation regarding taxation of business units in the other entity and BD.</li> <li>• Harmonize the Fiscalization Law and the Trade Law and their related regulations and other regulations.</li> </ul>	<ul style="list-style-type: none"> <li>• BiH Ministry of Finance and Treasury</li> <li>• BiH Indirect Taxation Authority</li> <li>• BiH Indirect Taxation Authority</li> <li>• FBiH and RS Ministries of Finance</li> <li>o RS Ministry of Finance</li> <li>o RS Tax Administration</li> <li>o RS Ministry of Finance</li> <li>o RS Tax Administration</li> <li>o RS Ministry of Finance</li> <li>o RS Tax Administration</li> <li>• RS Ministry of Trade and Tourism</li> <li>• RS Ministry of Finance</li> </ul>

**CONSTRUCTION PERMITS**

ISSUES	RECOMMENDATIONS	INSTITUTION
<p><b>Legislation</b></p> <p><b>RS</b></p> <ul style="list-style-type: none"> <li>Unclear and Incomplete Urban Planning and Construction Law</li> </ul> <p><b>FBiH, RS</b></p> <ul style="list-style-type: none"> <li>Law Does Not Define Treatment of Telecommunications Sector</li> </ul> <p><b>Practical aspects</b></p> <p><b>FBiH</b></p> <ul style="list-style-type: none"> <li>Transfer of Construction Permit in the Sarajevo Canton</li> </ul> <p><b>FBiH, RS</b></p> <ul style="list-style-type: none"> <li>Inefficient Processing of Applications</li> </ul>	<p><b>Legislation</b></p> <p><b>RS</b></p> <ul style="list-style-type: none"> <li>Amend the Urban Planning and Construction Law such that clear cause-effect relationships may be established between different provisions of the Law.</li> </ul> <p><b>FBiH, RS</b></p> <ul style="list-style-type: none"> <li>The RS Urban Planning Law needs to incorporate more detailed telecommunications infrastructure provisions. In FBiH, laws need to be further harmonized within the Federation framework (FBiH and cantons)</li> </ul> <p><b>Practical aspects</b></p> <p><b>FBiH</b></p> <ul style="list-style-type: none"> <li>Relevant laws need to define the conditions for transferring a construction permit from one investor to another. In addition, a new Construction Law needs to be enacted at FBiH level as well as a new law at cantonal level.</li> </ul> <p><b>FBiH, RS</b></p> <ul style="list-style-type: none"> <li>It is important to have professional, trained and responsible staff, capable of managing all the changes made. Improvements would also require setting up networked databases.</li> </ul>	<ul style="list-style-type: none"> <li>Legislative and executive authorities in the RS</li> <li>Legislative and executive authorities in the entities and cantons</li> <li>Legislative and executive authorities in the Federation and cantons</li> <li>Municipalities in FBiH and the RS</li> </ul>

**FBIH LIQUIDATION LAW AND BANKRUPTCY**

ISSUES	RECOMMENDATIONS	INSTITUTION
<p><b>Legislation</b></p> <p><b>FBIH and RS</b></p> <ul style="list-style-type: none"> <li>Vague Wording of Liquidation Procedure</li> </ul>	<p><b>Legislation</b></p> <p><b>FBIH and RS</b></p> <ul style="list-style-type: none"> <li>The Liquidation Law needs to more adequately address the course of the</li> </ul>	<ul style="list-style-type: none"> <li>FBiH Parliament / PARS</li> </ul>

ISSUES	RECOMMENDATIONS	INSTITUTION
<ul style="list-style-type: none"> <li>• Inability to Access a List of Companies Being Liquidated in the Court Registry</li> <li>• Qualifications and certification of receivers in BiH</li> <li>• Treatment of company’s real property after the liquidation procedure is completed</li> <li>• Different Practices in Courts Regarding Submission of Documents for Liquidation</li> </ul>	<p>liquidation procedure as well as the position, rights and obligations of the liquidator; alternatively, the Law should include a provision allowing for an adequate application of provision of the Bankruptcy Proceedings Law to those aspects of the liquidation procedure that have not been defined.</p> <ul style="list-style-type: none"> <li>• The obligation to record the liquidation procedure with the Companies Register and to include words “under liquidation” in the company name during liquidation should be defined by law.</li> <li>• Specific measures needed to improve confidence in the implementation of the bankruptcy law should include: (i) amend the present law to set some minimum requirements regarding past experience and define a specific profession that would correspond to the nature of duties of a receiver.</li> <li>• Entity level property laws should expressly provide for this option.</li> <li>• The Liquidation Law needs to include a list of all the documents that a liquidation petitioner is required to submit, and also to precisely define the moment when each of the documents is to be submitted.</li> </ul>	<ul style="list-style-type: none"> <li>• Ministries of Justice of FBiH and RS</li> <li>• FBiH Parliament / PARS</li> <li>• Ministries of Justice of FBiH and RS</li> <li>• FBiH Parliament / PARS</li> <li>• Ministries of Justice of FBiH and RS</li> <li>• FBiH Parliament / PARS</li> <li>• Ministries of Justice of FBiH and RS</li> <li>• Competent courts</li> </ul>
<p style="text-align: center;"><b>Practical aspects</b></p> <p><b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Different practices in courts regarding submission of a certificate proving payment of tax liabilities during the institution</li> </ul>	<p style="text-align: center;"><b>Practical aspects</b></p> <p><b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Practice in courts regarding this issue needs to be harmonized, and relevant regulations need to define that the tax administration shall have the same</li> </ul>	<ul style="list-style-type: none"> <li>• FBiH Parliament / PARS</li> <li>• Ministries of Justice of FBiH and RS</li> <li>• Competent courts</li> </ul>

ISSUES	RECOMMENDATIONS	INSTITUTION
<p>of a liquidation procedure</p> <ul style="list-style-type: none"> <li>• Penalties for company managers who do not file for bankruptcy on time</li> <li>• Payment of a 5% lump sum to the bankruptcy estate from the sale of movables and real property</li> <li>• The issue of the right to dispose of real property in bankruptcy proceedings</li> </ul>	<p>position as all other creditors of a company being liquidated.</p> <ul style="list-style-type: none"> <li>• The Bankruptcy Proceedings Law should include, by way of amendments to it, a higher fine and even a criminal penalty for company managers/administrators who do not file for bankruptcy on time.</li> <li>• The lump sum payment for the costs of maintenance would only be justified if the real property was in the possession of the bankruptcy debtor between the institution of bankruptcy proceedings and the sale of real property, which means that in such case all the maintenance costs would be borne by the bankruptcy debtor.</li> <li>• Specify the meaning of the right of disposal, i.e. whether it is the transfer of possession or something else. A collision between the Bankruptcy Proceedings Law and the VAT Law needs to be resolved in terms of the legal effects of such disposal.</li> </ul>	<ul style="list-style-type: none"> <li>• FBiH Parliament / PARS</li> <li>• Ministries of Justice of FBiH and RS</li> <li>• Competent courts</li> <li>• FBiH Parliament / PARS</li> <li>• Ministries of Justice of FBiH /RS</li> <li>• FBiH Parliament / PARS</li> <li>• BiH Ministry of Finance and Treasury</li> <li>• Ministries of Justice of FBiH and RS</li> </ul>

## EXPORTS

ISSUES	RECOMMENDATIONS	INSTITUTION
<p><b>Legislation</b> <b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Issuing and Recognition of Certificates in Countries in the Region and EU</li> <li>• Implementation of TIR and ATA Carnet Conventions</li> </ul>	<p><b>Legislation</b> <b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Provide for signing bilateral agreements with neighboring countries (BiH, Croatia, Serbia, Montenegro). Mutual recognition of certificates.</li> <li>• The Ministry of Foreign Trade and Economic Relations should immediately</li> </ul>	<ul style="list-style-type: none"> <li>• BiH Ministry of Foreign Trade and Economic Relations</li> <li>• Institute for Accreditation of Bosnia and Herzegovina - BATA/</li> <li>• BiH Ministry of Foreign Trade and Economic Relations</li> </ul>

ISSUES	RECOMMENDATIONS	INSTITUTION
<ul style="list-style-type: none"> <li>• Automation of the Process of Awarding ECMT Licenses</li> </ul> <p style="text-align: center;"><b>Practical aspects</b></p> <p><b>FBIH and RS</b></p> <ul style="list-style-type: none"> <li>• CUSTOMS AND ISSUES EXPORTERS FACE IN CLEARANCE:               <ul style="list-style-type: none"> <li>o Waiting for the green lane – often takes too long</li> <li>o Short office hours of the customs offices and the obligation to provide the CP form two hours before the end of office hours for approved exporters</li> <li>o Too high price for correcting a CD (very often due to a trivial technical error)</li> <li>o Individual payment of duty for each export generates additional bank charges</li> <li>o Collecting a copy of 3 ex declarations stamped by competent authority at a border crossing and submitting it to the competent institution is a complicated procedure, especially for large exporters.</li> </ul> </li> </ul>	<p>prepare the documents required to ratify the ATA Carnet agreement and start implementing it.</p> <ul style="list-style-type: none"> <li>• The Ministry of Transport and Communications should amend the regulation in order to formulate the entire process of awarding an ECMT license.</li> </ul> <p style="text-align: center;"><b>Practical aspects</b></p> <p><b>FBIH and RS</b></p> <ul style="list-style-type: none"> <li>o Automation of the ASYCUDA system should enable automatic clearance through the green lane after 45 min.</li> <li>o Organize customs operation 0-24h (or at least 7-21), especially regarding in-house clearance, and shorten the deadline to provide the form to 0,5-max 1 hour before the end of office hours</li> <li>o Reduce the price to a reasonable level (KM 2.00-5.00)</li> <li>o Allow collective completion of monthly declaration with a single duty or at least collective payment of all duties on a single payment slip.</li> <li>o Placing mailboxes at all border crossings for forwarders to put certified copies of ex declarations</li> </ul>	<ul style="list-style-type: none"> <li>• BiH Ministry of Transport and Communications</li> <li>• BiH Indirect Taxation Authority</li> <li>• BiH Indirect Taxation Authority</li> <li>• BiH Indirect Taxation Authority</li> <li>• BiH Indirect Taxation Authority</li> <li>• BiH Indirect Taxation Authority</li> </ul>

# 5

## OBSTACLES TO INVESTMENT

The 2010/11 edition of the White Book is looking into nine areas that are important for the future inflow of investments in the country. The issues presented in this publication reflect experiences that our Members are facing in the business environment. In certain sections we are only emphasizing issues our Members are facing in one BiH entity, but it does not mean that the same or similar problems do not exist in another BiH entity or the District.

The following areas are covered:

- Business Registration
- Temporary Residence and Work Permit

- Law on Execution Proceedings
- Companies Law
- Securities Market Law
- Taxes
- Construction permits
- Liquidation Law and Bankruptcy
- Exports

Each section provides (i) narrative overview of the key issues, (ii) summary of major recommendations for reforms (iii) table summarizing key issues, recommendation, and key institution (government authority).





# 6 SECTIONS

## 6.1. BUSINESS REGISTRATION

### INTRODUCTION

Due to the crisis and the country's focus on elections in October 2010, reforms in the business environment proceeded at a somewhat slow pace.

The latest amendments to the BiH Law on Policy of Foreign Direct Investment discontinued the obligation of foreign investors to register their individual investments with the BiH Ministry of Foreign Trade and Economic Relations. Instead, competent registration courts are now required to act ex officio and forward information to the BiH Ministry of Foreign Trade and Economic Relations regarding registered companies that include foreign investments.

The steps required to start a business in Bosnia and Herzegovina include 12 procedures, taking 60 days, and the cost are equivalent to 15.75% GNP per capita for every start of business in Bosnia and Herzegovina.

Over the previous year the situation in this field has even worsened because the procedure became more complex and expensive. This was primarily due to the fact that decisions made by bodies of the company must be now notarized, which extends the registration process and makes it more expensive. We cannot but wonder whether this participation of notaries in the registration process is merely a matter of formality and whether it boils down to "rewriting" decisions of the bodies that actually passed those same decisions.

In spite of the reforms implemented or started in this field, there still remain numerous obstacles faced by foreign investors, in particular with respect to registration of their businesses.

Below are only some of the obstacles faced by our members in this area.

### EXPERIENCES: ISSUES AND RECOMMENDATIONS

#### **Inadequate Availability of General Information on Registration Procedure\***

##### **FBIH and RS: ISSUE**

The registration procedure for legal entities in Bosnia and Herzegovina would have to be simpler, faster and cheaper in order to boost the economy in general, and foreign investment in particular. The enactment of the Framework Law on Business Registration in BiH was aimed at introducing a simple and rapid procedure for registration of businesses. In practical terms, however, legal entities still encounter problems in the registration procedure because legislation and in particular practices vary from administrative unit to administrative unit in Bosnia and Herzegovina. In some cases, practices are different even within one and the same court, depending on which judge handles the case. Changing the present legislation is a lengthy process. It would therefore be useful if the courts/relevant Ministry of Justice, and even Chambers of Commerce, could make information related to registration of companies publicly available. This information should be available on websites of courts of law, Ministries or Chambers of Commerce, and should be updated as necessary. What is important is that this information should be available for review in a single location to facilitate and shorten the process of gathering required information such as documents to be submitted to the court for examination, amount of duties, contact details, etc. Furthermore, it would help if there were a list of the countries signatories to the Apostille Convention and of the countries that had signed bilateral agreements with BiH according to which the Apostille authentication is not needed.

##### **FBIH and RS: RECOMMENDATION**

Information on the registration procedure needs to be posted on websites of all institu-

tions involved in the procedure if they have a website, or bulletin boards in these institutions should be used to post contact details of the department/person where the required information is available. Parties would find it much easier to understand the procedure if instructions were posted, reference laws were identified and all information relating to the registration process was provided. In addition, registration instructions should be harmonized among all courts and end users should be able to simply input information in these instructions.

### **Lack of Consistency in Processing Registration Applications in Courts\***

#### **FBIH and RS: ISSUE**

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

This seems unnecessary, particularly because the persons being relieved of their duty do not have to be employed with the company at the time their names are removed from the court registry records. We can see no reason for the certificate of no outstanding fines to include details of traffic and other violations that are unrelated to the company itself, which these persons committed as private individuals or as citizens-amateur drivers (parking tickets, etc.) The bases for these are FBIH and RS Minor Of-

fense Laws (Article 80), which should be modified. We believe this should only include such minor offenses for which the company and the responsible person in the company were subject to an appropriate sanction in relation to minor offenses committed while performing one's duties related to the company operation, and certainly not for minor offenses committed as private individuals.

#### **FBIH and RS: RECOMMENDATION**

The laws need to be consistently applied and the unnecessary red tape should be removed from both the laws and practices. If a party has failed to provide full documentation with its application the first time, the court should issue a single conclusion listing all the shortcomings in the submitted documents.

This would avoid unnecessary delays in the procedure that are now present when several requests are made for different alterations in a single case, in spite of the fact that all the shortcomings could have been noted in just one conclusion.

### **Application of the Principle of Public Access to the Court Registry Records**

#### **FBIH and RS: ISSUE**

According to the relevant laws, data entered in the court registry records are public and anyone may examine such data without the need to prove they have a legal interest in doing so. In practice, however, the principle of such public access generally involves only requests for information (certificates, etc.) by registered companies themselves.

#### **FBIH and RS: RECOMMENDATION**

Access to this information should be enabled on the website of each court that maintains a company's registry (name and address, registered business activity, capital and persons authorized to represent the company)

### **Instituting a Lien on Shares in a Limited Liability Company (d.o.o.)**

#### **FBiH and RS: ISSUE**

Registration courts are the only institutions that manage records on shares in limited liability companies, and it would appear logical that they should also register any liens instituted on such shares. There have been several attempts to register such liens with the court, but the courts refused these requests because there was no explicit legal provision defining such registration. This situation affects legal certainty because potential buyers of such shares cannot use public records to obtain information on any liens instituted on the shares. This is in contrast to purchasers of stocks, because entity securities registries have been successfully registering liens instituted on stocks.

#### **FBiH and RS: RECOMMENDATION**

Registration laws need to be amended such that information on liens instituted on shares are maintained by registration courts.

### **Failure to Honor Statutory Timeframes and Unnecessary Delays in Registration Procedure**

#### **FBiH and RS: ISSUE**

Under the law, the procedure of company registration is an urgent and uniform procedure applicable to all companies established in Bosnia and Herzegovina both by domestic and international legal entities or individuals. Accordingly, the Business Registration Law in the Federation of Bosnia and Herzegovina and the Business Registration Law in the Republika Srpska stipulate that competent registration courts are required to issue a registration decision within five days of an application being duly filed. Unfortunately, this statutory timeframe is not honored in practice, with registration procedures taking most often 5 – 20 days for companies being registered for the first time, while registration of status changes in the company takes

even longer. In addition to other factors that affect the honoring of these statutory deadlines, unwarranted delays in the registration procedure are also due to the registration judge's being on an annual leave/sick leave/training/seminar/internship. This results in the registration procedure not being conducted and the registration case remains pending. Likewise, while Business Registration Laws are clear and specify the documents required to register a company, it is often the case that additional documents not required by law are requested by courts, or that judges will take different positions and make different conclusions, which leads to insecurity and uncertainty in each procedure. There are also frequent cases that a judge will make several requests for different alterations in a single case, in spite of the fact that all the shortcomings could have been noted in just one conclusion. This artificially extends the statutory periods to complete the registration procedure, which start at the moment all the relevant documents have been submitted.

#### **FBiH and RS: RECOMMENDATION**

Courts' operation needs to organize such that they provide continuous registration services. In case of absences of more than a few days, registration cases need to be reassigned to other judges in order to honor statutory timeframes. Laws need to be consistently applied and only the documents required under law should be requested. If a party has failed to provide full documentation with its application the first time, a judge should issue a single conclusion listing all the shortcomings in the submitted documents. This would avoid unnecessary delays in the procedure.

### **Unclear Definition of the Cases that May Result in a Suspension of Registration Procedure\***

#### **FBiH: ISSUE**

The FBiH Business Registration Law provides that if a competent registration court suspects

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

**FBiH: RECOMMENDATION**

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

**Hours for Consultation with Registration Judges in the Municipal Court in Sarajevo\***

**FBiH: ISSUE**

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

**FBiH: RECOMMENDATION**

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

**Participation of Notaries in the Registration Procedure**

**FBiH: ISSUE**

Council members believe that notaries' participation in the processing of company decisions is needless and boils down to copying-and-pasting of company decisions. This raises the issue of the justification for such formalism and the contribution of a notary who, for example, notarizes a decision on establishing a new branch office (which is required under the law) or appointment or removal of a head of branch office in a company with 50 or 100 such branch offices (this is not required under law, but is requested in practice). Why would a notarized decision carry a greater legal force or be more authentic in any way than a decision made by the management of a company that appoints the head officer in its own branch? What is the contribution of a notary, for example, in notarizing a decision on capital increase, in which case a corporation must anyhow submit to the registration court a certificate issued by the depository bank certifying payment of capital, etc?

**FBiH: RECOMMENDATION**

Amend the Notaries Law and registration regulations such that notaries' participation is completely reduced, except in cases of authenticating signatures of persons authorized to represent the company.

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>Inadequate Availability of General Information on Registration Procedure</li> </ul>	<ul style="list-style-type: none"> <li>Information on the registration procedure needs to be posted on web pages of all institutions involved in the pro-</li> </ul>	<ul style="list-style-type: none"> <li>Competent Ministries of Justice</li> </ul>

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
	<p>cedure if they have a web page, or bulletin boards in these institutions should be used to post contact details of the department/person where the required information is available. In addition, registration instructions should be harmonized among all courts and end users should be able to simply input information in these instructions</p>	<ul style="list-style-type: none"> <li>• Competent registration courts</li> </ul>
<ul style="list-style-type: none"> <li>• Lack of Consistency in Processing Registration Applications in Courts</li> </ul>	<ul style="list-style-type: none"> <li>• Laws need to be applied consistently. If a party has failed to provide full documentation with its application the first time, a judge should issue a single conclusion listing all the shortcomings in the submitted documents. This would avoid unnecessary delays in the procedure that are now present when several requests are made for different alterations in a single case, in spite of the fact that all the shortcomings could have been noted in just one conclusion.</li> </ul>	<ul style="list-style-type: none"> <li>• Competent Ministries of Justice</li> <li>• Competent registration courts</li> </ul>
<ul style="list-style-type: none"> <li>• Application of the Principle of Public Access to the Court Registry Records</li> </ul>	<ul style="list-style-type: none"> <li>• Access to this information should be enabled on the website of each court that maintains a company's registry. (name and address, registered business activity, capital and persons authorized to represent the company)</li> </ul>	<ul style="list-style-type: none"> <li>• Competent registration courts</li> </ul>
<ul style="list-style-type: none"> <li>• Instituting a Lien on Shares in a Limited Liability Company (d.o.o.)</li> </ul>	<ul style="list-style-type: none"> <li>• Registration laws need to be amended such that information on liens instituted on shares is maintained by registration courts.</li> </ul>	<ul style="list-style-type: none"> <li>• Ministries of Justice of FBIH and RS</li> </ul>
<ul style="list-style-type: none"> <li>• Failure to Honor Statutory Timeframes and Unnecessary Delays in Registration Procedure</li> </ul>	<ul style="list-style-type: none"> <li>• Courts' operation needs to organize such that they provide continuous registration services. In case of absences of more than a few days, registration cases need to be reassigned to</li> </ul>	<ul style="list-style-type: none"> <li>• Ministries of Justice of FBIH and RS</li> <li>• Competent registration courts</li> </ul>

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
	<p>other judges in order to honor statutory timeframes.</p> <p>Laws need to be consistently applied and only the documents required under law should be requested</p>	
<ul style="list-style-type: none"> <li>• Unclear Definition of the Cases that May Result in a Suspension of Registration Procedure</li> </ul>	<ul style="list-style-type: none"> <li>• Since the Law does not specify which facts are decisive for registration with a court registry, there should be a more detailed definition of the facts that may lead to a suspension of registration procedure.</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Justice of FBiH</li> </ul>
<ul style="list-style-type: none"> <li>• Hours for Consultation with Registration Judges in the Municipal Court in Sarajevo</li> </ul>	<ul style="list-style-type: none"> <li>• Since hours for consultation are scheduled in other courts as a matter of typical practice, this practice should also be reinstated in the Municipal Court in Sarajevo.</li> </ul>	<ul style="list-style-type: none"> <li>• Municipal Court in Sarajevo</li> </ul>
<ul style="list-style-type: none"> <li>• Participation of Notaries in the Registration Procedure</li> </ul>	<ul style="list-style-type: none"> <li>• Amend the Notaries Law and registration regulations such that notaries' participation is completely reduced, except in cases of authenticating signatures of persons authorized to represent the company</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Justice of FBiH</li> <li>• Registration courts</li> </ul>

## 6.2. TEMPORARY RESIDENCE AND WORK PERMIT

### INTRODUCTION

Entry into force of the BiH Law on Movement and Residence of Aliens and Asylum<sup>5</sup> and the relevant secondary legislation<sup>6</sup>, and of the RS Law on Hiring Foreign National and Stateless Persons<sup>7</sup>, facilitated the process of being granted temporary residence and work permit for foreign nationals in certain respects, depending on the entity in which the foreign national applies for the work permit.

The FBiH Parliament has not enacted proposed amendments to the FBiH Law on Hiring Foreign Nationals<sup>8</sup>, and therefore the present FBiH Law on Hiring Foreign Nationals is yet to be harmonized with the BiH Law on Movement and Residence of Aliens and Asylum.

During 2010, an improvement was made in the work of authorities that issue work and residence permits, such that the KS Employment Department and the Department for Alien Affairs<sup>9</sup> now accept certified copies of court registry certificates for the purposes of extending one's temporary residence, rather than requiring certified copies of all registration decisions for the company. In addition, another improvement is that it is now sufficient to submit a certificate of no pending criminal proceedings against a foreign national to the Department for Alien Affairs for the purposes of extending one's temporary residence. This certificate is issued by the competent court according to the foreign national's place of residence in BiH. Earlier, the foreign national had to provide an additional

document, a certificate of no criminal record, issued by the competent Ministry of the Interior.

In cooperation with the ten cantonal employment departments, the Federation Employment Institute launched an initiative to develop a common procedure for issuing work permits, which will ensure that this procedure is defined in the same way across the entire F BiH. This will make the procedure of issuing work permits uniform and will close the present gaps regarding the lack of coordination between the FBiH Law on Hiring Foreign Nationals and the BiH Law on Movement and Residence of Aliens and Asylum.

What remained an obstacle in 2010 was the failure to comply with applicable regulations regarding the length of the Department for Alien Affairs' procedure for approving and extending temporary residence.

Summarizing all the issues identified in the last year's White Book, in the section Temporary Residence and Work Permits for Foreign Nationals in BiH, we can conclude the these issues remain and they have therefore been included in this White Book for 2010/11: inconsistent enforcement of laws and lack of coordination among state bodies and institutions in exchanging information; specific cases where a work permit cannot be issued without an employment contract signed; lack of harmonization of laws and practices relating to the procedure of issuing a work permit before approving temporary residence in BiH; and failure to comply with applicable regulations regarding working hours of a foreign national.

Below are the problems faced by FIC members and recommendations for improving the procedure, starting with the new issues in 2010:

<sup>5</sup> Official Gazette of BiH 36/08

<sup>6</sup> Regulation on Entry and Stay of Foreign Nationals, Official Gazette of BiH No. 81/08,

<sup>7</sup> Official Gazette of RS 24/09

<sup>8</sup> Official Gazette of FBiH 8/99

<sup>9</sup> BiH Ministry of Security

**EXPERIENCE:  
ISSUES AND RECOMMENDATIONS**

**TEMPORARY RESIDENCE**

**Failure to Comply with Applicable Regulations  
Regarding the Length of the Procedure for Ap-  
proving and Extending Temporary Residence**

**FBiH and RS: ISSUE**

Article 60(6) of the BiH Law on Movement and Residence of Aliens and Asylum provides that the Department for Alien Affairs needs to decide on an application for approval and extension of temporary residence and issue the decision to the party as soon as possible, no later than within 60 days of the application being duly submitted via a BiH Diplomatic-Consular Mission, or within 30 days if the application was submitted directly to the competent unit within the Department. In practice, however, decision on approval or extension of a temporary residence application filed with the competent unit with the Department most often takes more than 30 days.

**FBiH and RS: RECOMMENDATION**

The Department for Alien Affairs needs to act in accordance with the BiH Law on Movement and Residence of Aliens and Asylum when deciding on an application for approval or extension of temporary residence that was submitted directly to the competent unit with the Department and to issue a decision within 30 days.

**Inconsistent Enforcement of Laws and Lack of  
Coordination Among State Bodies and Institu-  
tions in Exchanging Information\***

**FBiH and RS: ISSUE**

When extending a temporary residence permit, a foreign national needs to provide to the Department for Alien Affairs certified copies of

the same documents that were provided the previous year(s). In addition, Article 86 of the BiH Law on Movement and Residence of Aliens and Asylum stipulates that the registration courts need to automatically forward, immediately and no later than within seven days of the day the company was registered or changes to company data were registered, full information on the registration/change of data to the Department for Alien Affairs. Changes in the company's registry referred to in the Business registration Laws (BiH, FBiH, RS and BD)<sup>10</sup> relate to the following: changes in shareholders, members on Management Board/procurators and members on the Supervisory Board of the registered company. In practice, however, these state institutions fail to act in accordance with this Law and to exchange information. Past experience has not shown that competent courts either honor or follow this practice, which is their legal obligation. This would resolve the situation where the parties are required to submit certified copies of registration decisions for the company or court registry certificates that had already been provided to the Department for Alien Affairs the previous year(s).

**FBiH and RS: RECOMMENDATION**

The Department for Alien Affairs has already established certain registers of foreign nationals and entered in them the data about their functions in companies. In line with this, a practice of mutual communication and coordinated operation needs to be established between the Department for Alien Affairs and courts in charge of business registration. The courts have a legal obligation to provide full information on registration/change of data to the competent Department for Alien Affairs. This would resolve the situation where the parties are required to submit certified copies of registration decisions

<sup>10</sup> Official Gazette of BiH, No. 42/04; Official Gazette of FBiH 27/05, 68/05 and 43/09; Official Gazette of RS, 42/05; Official Gazette of Brčko DC, No. 15-05 B



for the company or court registry certificates that had already been provided to the Department for Alien Affairs the previous year(s).

#### **WORK PERMIT**

##### **Work Permit Cannot Be Issued in Specific Cases Without an Employment Contract Signed**

###### **FBiH and RS: ISSUE**

International invitations for bids for construction and installation works advertised by legal entities in BiH are most often awarded to foreign legal entities that do not have a registered address in BiH. The reason for this is that specific industries in BiH do not have a qualified workforce, which necessitates hiring of foreign nationals whose knowledge is required to implement such projects. These projects may take a few years and for their duration foreign legal entities need to hire their own staff, foreign nationals, to work in BiH because they have certain specific skills. In order for these employees of the foreign legal entity to obtain a work permit, who are staying for more than 3 months in BiH, the FBiH Law on Hiring Foreign Nationals requires them to first sign an employment contract with an employer based in BiH.

###### **FBiH and RS: RECOMMENDATION**

In other countries, there is a possibility of issuing a work permit on the basis of the assignment/posting from the home country where the foreign national is based on a permanent employment contract and, if necessary, may be engaged in projects implemented by his company in another country. There are two solutions to this problem: (i) amend Article 84, paragraph "o" of the BiH Law on Movement and Residence of Aliens and Asylum such that it reads "foreign national who perform tasks related to delivery, installation and servicing of machinery and equipment, provided that their work does

not last longer than 6 consecutive months or more than a total of two years with breaks", or (ii) amend the FBiH Law on Hiring Foreign Nationals and allow issuance of work permits in BiH based on a certificate of temporary posting from the home country that is issued by the competent Ministry of Labor, without the foreign national being forced to first sign an employment contract with an employer based in BiH.

##### **Lack of Harmonization of Laws and Practices Relating to the Procedure of Issuing a Work Permit Before Approving Temporary Residence in the Sarajevo Canton**

###### **FBiH: ISSUE**

Articles 77 and 80 of the BiH Law on Movement and Residence of Aliens and Asylum do not require that a foreign national must first come personally to BiH and report his stay in order to initiate the procedure for obtaining the work permit before being granted a temporary residence permit. Therefore, the employer can initiate the work permit procedure instead. On the other hand, Article 7 of the FBiH Law on Hiring Foreign Nationals and the practices of the Sarajevo Canton Employment Department require that the application for a first work permit needs to include a certificate of residence, which is stated on the Department's official application form<sup>11</sup> for a work permit. In relation to this, in December 2008 the FBiH Ministry of Labor and Social Policy sent a document to<sup>12</sup> all cantonal employment departments stating: "The Federation Ministry of Labor and Social Policy believes that until the Law on Hiring of Foreign Nationals is harmonized, provisions of the Law on Movement and Residence of Aliens and Asylum apply both in cases of issuing a work permit before approving a temporary residence and in cases of exemptions from the possession of the same".

<sup>11</sup> <http://www.juszzks.com.ba/ba/zahtjev-za-izdavanje-radne-dozvole.html>

<sup>12</sup> Letter No. 03-34/10-1979/08

**FBiH: RECOMMENDATION**

The BiH Law on Movement and Residence of Aliens and Asylum and the FBiH Law on Hiring Foreign Nationals need to be harmonized with respect to the first issuance of a work permit to foreign nationals. In the interim period, the Sarajevo Canton Employment Department needs to act in compliance with the document provided by the FBiH Ministry of Labor and Social Policy.

**Failure to Comply with Applicable Regulations Regarding Working Hours of a Foreign National in the Sarajevo Canton\***

**FBiH: ISSUE**

In its practices to date, the Sarajevo Canton Employment Department has refused to extend the work permit to a foreign national whose full working hours are less than 40 hours per week. A foreign national may obtain a work permit for a working time of 20 hours per week only if the redistribution of his/her working hours is such that he/she will perform tasks in two different positions in two different countries. A decision, to be made by the founder, on redistributing the working hours of a foreign national must clearly explain that his/her physical presence in the workplace in both countries is possible and logical. In addition, proof of employment in the

other country also needs to be provided. A foreign national who has been issued a work permit is registered for a 20-hour workweek only if they provide evidence that the foreign national is also employed abroad. If such evidence is not provided, the foreign national must be registered as working 40 hours per week. This practice contravenes applicable laws. The FBiH Law on Hiring Foreign Nationals does not define required working hours of a foreign national for issuing a work permit. Article 29 of the FBiH Labor Law<sup>13</sup>, which governs labor relations, provides that full working hours of an employee cannot be more than 40 hours per week, which is the upper limit of the full working hours. Full working hours cannot be more than 40 hours per week; however, there are no obstacles to defining shorter full working hours under the collective agreement, labor regulation or employment contract. There are no legal restrictions regarding working hours being less than 40 hours per week because this issue is left to be decided solely at employer's discretion.

**FBiH: RECOMMENDATION**

Practices need to be harmonized and applicable laws need to be complied with. Another option is to adopt a rule defining the lower limits of full working hours of foreign nationals.

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>Failure to Comply with Applicable Regulations Regarding the Length of the Procedure for Approving and Extending Temporary Residence</li> </ul>	<ul style="list-style-type: none"> <li>The Department for Alien Affairs needs to act in accordance with the BiH Law on Movement and Residence of Aliens and Asylum when deciding on an application for approval or extension of temporary residence that was submitted directly to the competent unit with the Department and to issue a decision within 30 days.</li> </ul>	<ul style="list-style-type: none"> <li>BiH Ministry of Security</li> <li>Competent Department for Alien Affairs with the BiH Ministry of Security</li> </ul>

<sup>13</sup> Official Gazette of FBiH 43/99

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>Inconsistent Enforcement of Laws and Lack of Coordination Among State Bodies and Institutions in Exchanging Information</li> </ul>	<ul style="list-style-type: none"> <li>A practice of mutual communication and coordinated operation needs to be established between the Department for Alien Affairs and courts in charge of business registration.</li> </ul>	<ul style="list-style-type: none"> <li>BiH Ministry of Security</li> <li>Competent courts</li> <li>Competent Department for Alien Affairs with the BiH Ministry of Security</li> </ul>
<ul style="list-style-type: none"> <li>Work Permit Cannot Be Issued in Specific Cases Without an Employment Contract Signed</li> </ul>	<ul style="list-style-type: none"> <li>There are two solutions to this problem: (i) amend Article 84 of the BiH Law on Movement and Residence of Aliens and Asylum, or (ii) amend the FBiH Law on Hiring Foreign Nationals and allow issuance of work permits in BiH based on a certificate of temporary posting from the home country that is issued by the competent Ministry of Labor, without the foreign national being forced to first sign an employment contract with an employer based in BiH</li> </ul>	<ul style="list-style-type: none"> <li>BiH Parliamentary Assembly and FBiH Parliament</li> <li>Competent Ministries</li> </ul>
<ul style="list-style-type: none"> <li>Lack of Harmonization of Laws and Practices Relating to the Procedure of Issuing a Work Permit Before Approving Temporary Residence in BiH</li> </ul>	<ul style="list-style-type: none"> <li>The BiH Law on Movement and Residence of Aliens and Asylum and the FBiH Law on Hiring Foreign Nationals need to be harmonized with respect to the first issuance of a work permit to foreign nationals. In the interim period, the Sarajevo Canton Employment Department needs to act in compliance with the document provided by the FBiH Ministry of Labor and Social Policy</li> </ul>	<ul style="list-style-type: none"> <li>Competent Ministries</li> <li>KS Employment Department</li> </ul>
<ul style="list-style-type: none"> <li>Failure to Comply with Applicable Regulations Regarding Working Hours of a Foreign National</li> </ul>	<ul style="list-style-type: none"> <li>Practices need to be harmonized and applicable laws need to be complied with. Another option is to adopt a rule defining the lower limits of full working hours of foreign nationals</li> </ul>	<ul style="list-style-type: none"> <li>FBiH Parliament</li> <li>FBiH Ministry of Labor and Social Policy</li> <li>KS Employment Department</li> </ul>

## 6.3. LAW ON EXECUTION PROCEEDINGS

### INTRODUCTION

In Bosnia and Herzegovina, the execution proceedings are defined by laws on execution proceedings which are enacted at entity level, as follows: Law on Execution Proceedings of the Federation of Bosnia and Herzegovina (Official Gazette of FBiH No. 32/03, 52/03, 33/06, 39/06 and 39/09), Law on Execution Proceedings of the Republika Srpska (Official Gazette of the RS No. 59/03, 85/03, 64/05 and 118/07) and Law on Execution Proceedings of the Brčko District (Official Gazette of the Brčko District Nos. 8/00, 1/01, 5/02, 8/03, 19/07 and 2/08).

Even though this matter is governed at entity level, the texts of these three laws are virtually identical. There are only some minor differences between these entity-level laws.

The execution proceedings in BiH are still not receiving the attention they deserve, and the institutions themselves are one of the major issues. Specifically, there is an issue of a large backlog of unresolved cases, which grows from year to year instead of being reduced, even if the so-called utility cases are not taken into account.

Considering that the execution proceedings are treated as urgent proceedings per se, the deadlines and their honoring are also one of the major issues of the Law because they are generally not honored.

As an example, the Law states that the court is required as a rule to decide on a petition for execution within eight days, and on any objections within 15 days of the day when all the requirements have been met to decide on such objection (Law on Execution Proceedings of FBiH).

Below we have identified some of the shortcomings of the Law on Execution Proceedings in both FBiH and the RS that FIC members would like to note.

### EXPERIENCE:

#### ISSUES AND RECOMMENDATIONS

#### **The Process of Identifying Debtor's Property Does Not Include Authentic Documents\***

##### **FBiH and RS: ISSUE**

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

##### **FBiH and RS: RECOMMENDATION**

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

#### **Abuse of Proceedings in Case of Objections Submitted Against a Writ of Execution\***

##### **FBiH and RS: ISSUE**

Article 50 of the Law defines that, in case a writ of execution was passed based on an authentic document, the debtor may challenge such writ of execution by submitting objections that must include a "reasoning". Paragraph 4 of this Article states that, in case a writ of execution is challenged in full or only in the part where the claim was found to be valid, a petition for execution will be considered to constitute a legal action. In such a case, the court has to act pursuant to provisions of civil procedure, which effectively means that the case in question will be forwarded to the court's civil procedure depart-

ment for decision. According to Paragraph 5 of the same Article, in case a debtor submits such an objection, the court will defer execution and will continue with the execution instituted on the creditor's petition only after the writ of execution becomes final if the creditor wins the civil action. This legal solution has proven inadequate in practice because it leaves room for debtors to submit groundless objections and stall payment of their obligations, needlessly prolonging court proceedings. Specifically, the Law does not specify the way and the degree in which an objection submitted by the debtor must provide reasons. Therefore, the debtor may state all kinds of allegations in the reasoning of an objection regardless of their grounds and accuracy. This legal solution is particularly deficient in cases of promissory notes and checks, whose purpose is to ensure a quick collection of claims.

**FBIH and RS: RECOMMENDATION**

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

**Unclear Definition of the Process of Appraising the Value of Real Property\***

**FBIH and RS: ISSUE**

This Law provides that persons who qualify for satisfaction of their claims from sale proceeds of a real property may ask that execution be discontinued if the appraised value of the real property in question does not cover even a part of the petitioner's claim. In practice, the

words "a part of the claim" lead to different interpretation by courts.

**FBIH and RS: RECOMMENDATION**

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

**Abuse of the Procedure of Determining the Sales Price\***

**FBIH and RS: ISSUE**

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

**FBIH and RS: RECOMMENDATION**

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

**Execution Against Movable Property\***

**FBIH and RS: ISSUE**

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

**FBIH and RS: RECOMMENDATION**

Regulations should provide for recording a pending execution on a passenger motor ve-

hicle in the vehicle records with the competent Ministry of the Interior and in the vehicle registration certificate. This would prevent sale of a vehicle before a petitioner's claim is satisfied, as well as a factual transfer of a vehicle by granting a power of attorney to other persons to use the car.

#### **The Rules for Preparing and Managing an Auction Are Not Defined\***

##### **FBIH and RS: ISSUE**

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

##### **FBIH and RS: RECOMMENDATION**

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

#### **Different Interpretation of the Provision Concerning Sale of Real Property\***

##### **FBIH and RS: ISSUE**

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

##### **FBIH and RS: RECOMMENDATION**

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

#### **Different Practices in Courts in Issuing a Decision on Satisfaction of Claims\***

##### **FBIH and RS: ISSUE**

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

##### **FBIH and RS: RECOMMENDATION**

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

#### **Incomplete Information on the Debtor's Level of Debt\***

##### **FBIH and RS: ISSUE**

The Laws provide that a debtor may sign a certified document to give permission to collect a creditor's claims by garnishing a part of his/her salary and by paying such money directly to the creditor as described in the document. Such document has the legal effect of a writ of execution (signed and stamped, and sent by registered mail with a return receipt). In addition to cases when employers simply do not act in accordance with this permission, the greatest problem in practice has proven to be the fact that employers sign and stamp certificates of monthly salary for an unlimited number of loans for a single employee, and also the fact that for each new loan, employers do not provide the new creditor with information on em-

ployee's present level of debt. This results in a situation where the creditor who was issued the first certificate of monthly salary and the certified permission is unable to enforce an activated permission because subsequent permissions have already been activated for the purpose of garnishment. This situation is further complicated in case of guarantors (once activated, a potential obligation becomes a real obligation).

**FBIH and RS: RECOMMENDATION**

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

**Imprecisely Defined Deadlines in the Following Areas:**

**Satisfaction of Claims\***

**FBIH and RS: ISSUE**

The Law stipulates that in the process of satisfying petitioner's claims, the petitioner will be satisfied immediately after the court issues a decision on the best bidder. Since the Law does not provide a specific timeframe, this leaves room for varying interpretations in practice.

**FBIH and RS: RECOMMENDATION**

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

**Hearing to Split the Sale Proceeds\***

**FBIH and RS: ISSUE**

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

provide a specific timeframe within which the court must schedule a hearing to split the sales proceeds.

**FBIH and RS: RECOMMENDATION**

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

**Decision on Satisfaction of Claims\***

**FBIH and RS: ISSUE**

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

**FBIH and RS: RECOMMENDATION**

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

**Authentic Documents Do Not Include an Invoice and a Statement from Business Books for All Legal Entities**

**FBIH and RS: ISSUE**

Under the Law on Execution Proceedings in FBIH and the RS, in addition to promissory notes and checks, authentic documents also include invoices and statements from business books, but this only applies to the prices of utility services such as water supply, heating and waste disposal. These restrictions were not present in earlier laws, and it is unclear why utility companies have been made privileged relative to other legal entities.

**FBIH and RS: RECOMMENDATION**

The definition of an authentic document needs to be expanded to include invoices and statements from business book for all legal entities, without exception.

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>The process of identifying debtor's property does not include authentic documents</li> </ul>	<ul style="list-style-type: none"> <li>For the purposes of identifying judgment debtor's property, the Law needs to be expanded to include authentic documents in addition to enforceable documents.</li> </ul>	<ul style="list-style-type: none"> <li>BiH Ministry of Justice</li> <li>Entity Ministries of Justice</li> </ul>
<ul style="list-style-type: none"> <li>Abuse of Proceedings in Case of Objections Submitted Against a Writ of Execution</li> </ul>	<ul style="list-style-type: none"> <li>The Law needs to preclude such stalling of collection of claims, primarily for promissory notes and checks. For example, in case an objection is submitted against a writ of execution, the execution proceedings should continue while the debtor (not the petitioner-creditor) should be instructed to file civil action instead. Another possible solution would be to prevent the debtor from making arbitrary and groundless allegations in his/her objections by limiting the civil procedure only to allegations made in the related objection.</li> </ul>	<ul style="list-style-type: none"> <li>Competent courts</li> </ul>
<ul style="list-style-type: none"> <li>Unclear Definition of the Process of Appraising the Value of Real Property</li> </ul>	<ul style="list-style-type: none"> <li>To avoid any dilemmas regarding suspension of executions proceedings, the law needs to define more precisely the meaning of "a part of the creditor's claim", i.e. it needs to specify an exact amount/percentage of the claim, such as 1/3 or the like.</li> </ul>	<ul style="list-style-type: none"> <li>Parliaments of cantons/entities /People's Assembly of the RS- PARS</li> <li>BiH Ministry of Justice</li> <li>Entity Ministries of Justice</li> </ul>
<ul style="list-style-type: none"> <li>Abuse of the Procedure of Determining the Sales Price</li> </ul>	<ul style="list-style-type: none"> <li>These cases need to be defined such that a mechanism is ensured to prevent these identified abuses.</li> </ul>	<ul style="list-style-type: none"> <li>BiH Ministry of Justice</li> <li>Competent courts</li> </ul>
<ul style="list-style-type: none"> <li>Execution Against Movable Property</li> </ul>	<ul style="list-style-type: none"> <li>Regulations should provide for recording a pending execution on a passenger motor vehicle in the vehicle records with the competent Ministry of the Interior and in the vehicle registration certificate. This would prevent sale of a vehicle before a petitioner's claim is satisfied, as well as a factual transfer of a vehicle by granting a power of attorney to other persons to use the car.</li> </ul>	<ul style="list-style-type: none"> <li>Competent Ministries of the Interior FBiH and RS</li> <li>Competent Ministries of Justice FBiH I RS</li> </ul>



KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>The Rules for Preparing and Managing an Auction Are Not Defined</li> </ul>	<ul style="list-style-type: none"> <li>To avoid abuses in the auctioning procedure, the Law needs to define the course of auction in detail because currently each court determines the terms and course of auction on its own.</li> </ul>	<ul style="list-style-type: none"> <li>BiH Ministry of Justice</li> <li>Competent courts</li> </ul>
<ul style="list-style-type: none"> <li>Different Interpretation of the Provision Concerning Sale of Real Property</li> </ul>	<ul style="list-style-type: none"> <li>The Law needs to clearly define the meaning of the provisions that a real property "may be sold without restrictions on the lowest price".</li> </ul>	<ul style="list-style-type: none"> <li>BiH Ministry of Justice</li> </ul>
<ul style="list-style-type: none"> <li>Different Court Practices in Issuing a Decision on Satisfaction of Claims</li> </ul>	<ul style="list-style-type: none"> <li>The decision detailing satisfaction of claims needs to be clearly defined in the Law by determining the extent to which a creditor has been satisfied in cases where the creditor is also the buyer of the pledged real property.</li> </ul>	<ul style="list-style-type: none"> <li>BiH Ministry of Justice</li> </ul>
<ul style="list-style-type: none"> <li>Incomplete Information on the Debtor's Level of Debt</li> </ul>	<ul style="list-style-type: none"> <li>The Law needs to specify that employers are obligated to list all present debts of the employee, whether actual or potential, in the certificate of employee's salary, and also the Law needs to ensure that the creditor who was first issued a certified permission will have precedence in garnishment.</li> </ul>	<ul style="list-style-type: none"> <li>FBiH and RS Ministries of Justice</li> <li>Competent courts</li> </ul>
<ul style="list-style-type: none"> <li>Imprecisely Defined Deadlines in the Following Areas:                             <ul style="list-style-type: none"> <li>Satisfaction of Claims</li> <li>Hearing to Split the Sale Proceeds</li> <li>Decision on Satisfaction of Claims</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>The Law should clearly define a deadline to satisfy petitioner's claims, such as within 15, 30 or 60 days.</li> <li>The Law needs to define a specific time-frame within which the court must schedule a hearing to split the sales proceeds.</li> <li>The deadline for a decision on satisfaction of claims needs to be specific instead of "without delay", e.g. within 15 or 30 days.</li> </ul>	<ul style="list-style-type: none"> <li>Competent courts</li> <li>Competent courts</li> <li>Competent courts</li> </ul>
<ul style="list-style-type: none"> <li>Authentic Documents Do Not Include an Invoice and a Statement from Business Books for All Legal Entities</li> </ul>	<ul style="list-style-type: none"> <li>The definition of an authentic document needs to be expanded to include invoices and statements from business book for all legal entities, without exception.</li> </ul>	<ul style="list-style-type: none"> <li>Competent courts</li> </ul>

## 6.4. COMPANIES LAW

### INTRODUCTION

Since the publication of the 2009 White Book, there have been no amendments to the FBiH Companies Law or the RS Companies Law. As a result, there have been no progresses in remedying the shortcomings identified in the 2009 White Book.

Therefore, some of the issues listed below had already been identified in the 2009 White Book, in addition to some new issues that FIC members face in their everyday operations.

### EXPERIENCE:

#### ISSUES AND RECOMMENDATIONS

##### **Establishing a Branch Office of a Foreign Legal Entity\***

###### **FBiH: ISSUE**

Under the current regulations in the Federation of BiH, foreign investors are able to establish either a subsidiary company or a representative office (whose operations are limited to market research, advertising and communication, and representation of the foreign entity). The FBiH Companies Law, unlike the RS Companies Law and the Brčko District BiH Companies Law, does not provide an option for foreign legal entities to establish a branch office. In FBiH, the option to establish branch offices is only provided to domestic legal entities.

###### **RS and BD**

The RS Companies and the BD Companies Law provide for an option for foreign legal entities to establish branch offices.

###### **FBiH: RECOMMENDATION**

The FBiH Companies Law should provide a legal framework for foreign entities to establish a branch office, as is provided for in other jurisdictions in the world and in the region (Croatia, Serbia, Macedonia, etc.). In addition, given

that the RS Companies Law and the Brčko District BiH Companies Law provide for this option, the legal framework in FBiH should be harmonized with the regulations of the other entity and the Brčko District.

### **Prohibition of Share Purchase Financing**

#### **FBiH and BD: ISSUE**

The present Companies Law in FBiH defines prohibition of share purchase financing in a single provision of Article 237, prohibiting a corporation from issuing or guaranteeing advances, short-term or long-term loans to sell its own equity shares. This prohibition does not explicitly refer to limited liability companies; however, applying provisions of this Law by way of analogy to limited liability companies, this prohibition appears to also apply to this form of company. The situation is similar in Brčko District BiH.

The new RS Companies Law defines this issue with a somewhat higher degree of precision for both a corporation and a limited liability company. This imprecise prohibition of share purchase financing, especially in FBiH, creates legal uncertainty as to whether certain legal transactions are permitted, in particular those carried out during take-over/acquisition of companies.

#### **FBiH and BD: RECOMMENDATION**

The issue of financing a purchase of equity shares/stakes should be defined more specifically in the FBiH Companies Law. In addition to a clear and precise wording as to whether this prohibition also applies to limited liability companies, the Law needs to clearly specify the cases in which share purchase financing is prohibited, and also under what conditions such financing is permitted. In addition to advances, short-term and long-term loans, the Law needs to define the notion of providing "security" to third parties to purchase equity shares. Furthermore, a clear stipulation of what direct financing and indirect financing include would additionally contribute to legal certainty.

### **Convening and Advertising the Shareholders' Meeting**

#### **FBiH: ISSUE**

Under Article 242 of the FBiH Companies Law, a notification of the agenda, place, date and time of the Shareholders' Meeting, and also of the method of issuing a proxy and voting at the Shareholders' Meeting must be advertised in at least one daily newspaper issued in the Federation of BiH, no later than 20 days before the date set for the Shareholders' Meeting.

#### **RS**

Article 272 of the RS Companies Law provides for such advertising of the notification only as an exception for public corporations, provided that such option was provided for under the company's Memorandum of Association, and such notification must also be advertised on the company's website.

#### **FBiH: RECOMMENDATION**

Article 242 needs to be amended by expanding the above provision, specifying the minimum required circulation of a daily newspaper issued in the Federation of BiH. Such provision would ensure better informed shareholders and their active participation in the Shareholders' Meeting and the exercising of their legal right.

### **Provision of Materials to Shareholders for the Shareholders' Meeting\***

#### **FBiH: ISSUE**

Article 244 of the FBiH Companies Law fails to define fully the need to provide, in addition to providing a draft agenda, draft resolutions that are listed under items on the agenda for the Shareholders' Meeting. The problem of exercising one's right to examine materials prepared for the Shareholders' Meeting is present in the following cases: (i) the Supervisory Board has failed to advertise the convening of the Shareholders' Meeting upon a request submit-

ted by authorized persons; (ii) five months after the end of a business year, the Supervisory Board has failed to convene the Shareholders' Meeting to decide on the annual report.

#### **RS**

In the Republika Srpska, Article 272 of the Companies Law defines that a written notification for a regular Shareholders' Meeting must be provided no later than 30 and no earlier than 60 days before the date of the Shareholders' Meeting, or no later than 15 and no earlier than 30 days in case of an extraordinary session. The notification must also include financial statements, auditor's report, management's report on operations or draft amends to the Articles of Association. Notwithstanding personal delivery, it is possible to advertise the notification and the materials on the company's website and also to advertise the notification in newspapers, in which cases the company makes available at the company's registered address during regular office hours a copy of the financial statements, auditor's report, management's report, etc., to every shareholder who requests them. Therefore, this issue is effectively not present in the RS.

#### **FBiH: RECOMMENDATION**

In these cases, the person submitting the request and having authority to directly convene the Shareholders' Meeting should also be required to prepare draft resolutions, ensuring thereby that the right of access to these documents as defined under Article 247 of the FBiH Companies Law may be exercised in full.

### **Making Copies of Materials Available to Shareholders for the Shareholders' Meeting**

#### **FBiH: ISSUE**

Article 247 of the FBiH Law fails to define fully the need to ensure, in addition to allowing examination of documents for the Sharehol-

ders' Meeting, that copies of such documents are made available to a shareholder who requests them.

#### **RS**

As stated earlier, under the RS Companies Law, in case of personal delivery of the notification, the notification must be accompanied by copies of the materials for the Shareholders' Meeting, whereas in case the notification is advertised on the company's website or in a newspaper, copies of the materials for the Shareholders' Meeting are made available, to every shareholder who requests them, at the company's registered address during regular office hours.

#### **FBiH: RECOMMENDATION**

Article 247 of the FBiH Companies Law needs to be expanded by adding a provision according to which every shareholder who requests so, must have copies of the documents made available to him/her. This would ensure that shareholders can fully exercise this right. At the same time, this would harmonize the legal frameworks in FBiH and the RS.

#### **Vote of Confidence for Supervisory Board Members\***

##### **FBiH: ISSUE**

Article 259(2) of the FBiH Companies Law provides that the Chairperson and Members on a Supervisory Board are appointed for a period of four years; however, two years after their appointment, the Shareholders' Meeting is to hold a vote of confidence for Members on the Supervisory Board. Given that the second paragraph in the same Article of the Law provides for an option to remove the Chairperson and Members on the Supervisory Board even before the end of their term, this mandatory vote of confidence following the first two years of their term appears unnecessary.

#### **RS**

In contrast to this, Article 302 of the RS Companies Law provides that the term of Members on the Management Board (in the RS there is no Supervisory Board, but the Management Board has the same powers) can cease at each annual Shareholders' Meeting if the annual business report is not approved. In addition, Article 318 provides that a Member on the Management Board may be relieved of duty by a resolution of the Shareholders' Meeting with or without stating the reasons, if the shareholders believe this is in the best interest of the company.

#### **FBiH: RECOMMENDATION**

Amend Article 259(2) of the FBiH Companies Law and delete provisions defining the need to convene a Shareholders' Meeting for mandatory vote of confidence for Supervisory Board Members following the first two years of their term.

#### **Age Limit for Supervisory Board Members**

##### **FBiH: ISSUE**

Article 260 of the FBiH Companies Law defines an age limit for appointment as a Member on a Supervisory Board at 65 years of age. Considering that Supervisory Board Members have a specific role, their primary duty being to supervise, and considering the fact that years of service have generally been increasing, the age limit for Supervisory Board Members should be extended. The FBiH Labor Law provides an option for employment beyond 65 years of age, while state-level regulations on appointment of justices and prosecutors set the final age limit at 70.

#### **RS**

There is no age limit for appointment as a Member on a Management Board in the Republika Srpska.

**FBiH: RECOMMENDATION**

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

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

**FBiH: ISSUE**

Article 264 (1) of the FBiH Companies Law provides that a Managing Director and a Managing Board Member in a corporation cannot act as a Chairperson or Member on the Supervisory Board or Managing Board of a company or institution, including but not limited to: funds, banks, agencies, commissions. This provision was probably intended to prevent conflict of interest, which certainly makes sense if this concern a single company. However, the way this provision was conceived makes it very restrictive, needlessly limiting the rights of a shareholder to nominate one/same person to repre-

sent the shareholder on the Supervisory Board of his/her subsidiary or on several Supervisory Boards in his/her subsidiaries, in case of affiliated companies.

**RS**

The issue of conflict of interest in the Republika Srpska has been resolved under Article 36 of the RS Companies Law, which limits options for membership on the Management Board of another competing company, unless they are given approval by the Shareholders' Meeting after the Shareholders' Meeting has been informed of the existence of a possible conflict of interest.

**FBiH: RECOMMENDATION**

The above-mentioned provision needs to be amended and affiliated companies should be exempted from this limitation, taking into account specific features of state and private ownership.

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>Establishing a Branch Office of a Foreign Legal Entity</li> </ul>	<ul style="list-style-type: none"> <li>The FBiH Companies Law should allow foreign entities to establish a branch office, as is provided for in other jurisdictions in the world and in the region (Croatia, Serbia, Macedonia, etc.). In addition, given that the RS Companies Law and the Brčko District BiH Companies Law provide for this option, the legal framework in FBiH should be harmonized with the regulations of the other entity and the Brčko District</li> </ul>	<ul style="list-style-type: none"> <li>Ministry of energy, mining and industry of FBiH</li> </ul>
<ul style="list-style-type: none"> <li>Prohibition of Share Purchase Financing (FBiH and BD)</li> </ul>	<ul style="list-style-type: none"> <li>The issue of financing a purchase of equity shares/stakes should be defined more specifically in the FBiH Companies Law. In addition to a clear and precise wording as to whether this</li> </ul>	<ul style="list-style-type: none"> <li>Securities Commission of FBiH</li> </ul>

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
	prohibition also applies to limited liability companies, the Law needs to clearly specify the cases in which share purchase financing is prohibited, and also under what conditions such financing is permitted	
<ul style="list-style-type: none"> <li>• Convening and Advertising the Shareholders' Meeting</li> </ul>	<ul style="list-style-type: none"> <li>• Article 242 needs to be amended by expanding the above provision, specifying the minimum required circulation of a daily newspaper issued in the Federation of BiH. Such provision would ensure better informed shareholders and their active participation in the Shareholders' Meeting and the exercising of their legal rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Securities Commission of FBiH</li> </ul>
<ul style="list-style-type: none"> <li>• Provision of Materials to Shareholders for the Shareholders' Meeting</li> </ul>	<ul style="list-style-type: none"> <li>• In these cases, the person submitting the request and having authority to directly convene the Shareholders' Meeting should also be required to prepare draft resolutions, ensuring thereby that the right of access to these documents as defined under Article 247 of the FBiH Law may be exercised in full.</li> </ul>	<ul style="list-style-type: none"> <li>• Securities Commission of FBiH</li> </ul>
<ul style="list-style-type: none"> <li>• Making Copies of Materials Available to Shareholders for the Shareholders' Meeting</li> </ul>	<ul style="list-style-type: none"> <li>• Article 247 of the FBiH Companies Law needs to be expanded by adding a provision according to which every shareholder who requests so, must have copies of the documents made available to him/her. This would ensure that shareholders can fully exercise this right. At the same time, this would harmonize the legal frameworks in FBiH and the RS</li> </ul>	<ul style="list-style-type: none"> <li>• Securities Commission of FBiH</li> </ul>
<ul style="list-style-type: none"> <li>• Vote of Confidence for Supervisory Board Members</li> </ul>	<ul style="list-style-type: none"> <li>• Amend Article 259(2) of the FBiH Companies Law and delete provisions defining the need to convene a Share-</li> </ul>	<ul style="list-style-type: none"> <li>• Securities Commission of FBiH</li> </ul>

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
	holders' Meeting for mandatory vote of confidence for Supervisory Board Members following the first two years of their term.	
<ul style="list-style-type: none"> <li>• Age Limit for Supervisory Board Members</li> </ul>	<ul style="list-style-type: none"> <li>• Given the increasing years of service and other applicable laws in FBiH, the Law needs to extend the age limit for Supervisory Board Members to at least 70 years of age</li> </ul>	<ul style="list-style-type: none"> <li>• Securities Commission of FBiH</li> </ul>
<ul style="list-style-type: none"> <li>• Limitations Regarding Appointment as Supervisory Board Member</li> </ul>	<ul style="list-style-type: none"> <li>• The above-mentioned provision regarding prevention of conflict of interest, which is too restrictive, needs to be amended and affiliated companies should be exempted from this limitation, taking into account specific features of state and private ownership</li> </ul>	<ul style="list-style-type: none"> <li>• Securities Commission of FBiH</li> </ul>

## 6.5. LAW ON SECURITIES MARKET

### INTRODUCTION

The legal framework for the capital market in Bosnia and Herzegovina, which concerns securities markets, is provided in the legislation of the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). This legislation governs core issues including definitions of terms, participants, institutions and their bodies, rights and obligations in respect of the capital market in BiH, and it includes the FBiH Securities Market Law and the RS Securities Market Law.

The presence of foreign investors in this capital market necessitates harmonization of these laws with other markets where such investors are present.

Some of the shortcomings of the FBiH Securities Market Law and the RS Securities Market Law, which affect professional brokers and investors, are identified below.

### EXPERIENCE: ISSUES AND RECOMMENDATIONS

#### Stock Subscription and Payment

##### FBiH: ISSUE

Article 135 of the FBiH Companies Law provides that a cash payment for shares of a new issue may be made in installments, within a time period that cannot exceed "six months" from the day the FBiH Securities Commission passes a Decision on a successful share issue. Under the FBiH Securities Market Law, a share issue is deemed a success if the amount defined by the resolution on share issue as the lowest amount for a successful issue has been subscribed and paid.

##### FBiH: RECOMMENDATION

The wording of the FBiH Companies Law and the FBiH Securities Market Law needs to be

harmonized such that the FBiH Companies Law refers to the FBiH Securities Market Law, instead of setting a time period.

A review of the regional legislation has shown that this time period in Croatia was set to three months starting on the day when the subscription period begins, which effectively shortens the procedure for registering corporations. In addition, 3 months is a sufficient time period for investors who wished to participate in the capital increase to make their payments.

#### Deadline to Submit Applications for Approval of Public Share Offering

##### FBiH: ISSUE

Article 143(2) of the FBiH Companies Law provides that the supervisory board of a company is required to submit to the FBiH Securities Commission an application for approval of a public share offering not later than 30 days of the resolution on share capital increase being adopted. The FBiH Securities Market Law defines the deadline to submit an application for approval of a public share offering as 90 days from the day the resolution on share issue was adopted, or 60 days prior to the day defined under the resolution as the day when the subscription and payment of shares begins.

##### FBiH: RECOMMENDATION

The deadlines in the FBiH Companies Law and the FBiH Securities Market Law need to be harmonized such that the FBiH Companies Law refers to deadlines specified in the FBiH Securities Market Law.

#### Registration of Securities Transfers

##### RS: ISSUE

Under the Securities Market Law, a transfer of securities related to transactions completed on the stock exchange or another regulated public market cannot last longer than three working days from the day the transaction was completed.



**RS: RECOMMENDATION**

Transfers of securities resulting from errors in entering transfer orders in the stock exchange system should be exempted from the mandatory clearing in order to protect investors.

**Brokerage Services****RS: ISSUE**

Under the Republika Srpska Securities Market Law, brokerage services may be provided by a corporation which has a registered address in the Republika Srpska and was issued a brokerage license by the Securities Commission.

Brokerage licenses issued to stockbrokers in the Federation of Bosnia and Herzegovina and the Brčko District are also valid in the territory of the Republika Srpska, under the condition that the stockbroker meets the conditions relating to the incorporation and operation requirements defined under the Law and subject to the principle of reciprocity.

**FBiH: ISSUE**

Under the Federation of Bosnia and Herzegovina Securities Market Law, a professional broker or bank holding a license issued in BiH, but outside the Federation, may apply for a brokerage license with the Securities Commission in order to provide brokerage services in the Federation of Bosnia and Herzegovina.

In other words, a license issued in the RS is also valid in the Federation of BiH; however, brokers are not required to register a corporation and have a registered address in the Federation of BiH, subject to the principle of reciprocity.

**FBIH and RS: RECOMMENDATION**

Harmonize the Republika Srpska Securities Market Law with the Federation of BiH Securities Market Law. Banks and professional brokers that hold brokerage licenses in BiH, but outside the Republika Srpska, should be able to

be issued an approval by the Securities Commission to provide the same services in the Republika Srpska in order to implement the principle of reciprocity provided for under both laws, and to enable full control of the Commissions over the work of professional brokers.

**The Issue of Publishing a Prospectus****RS: ISSUE**

In a share issue through a public offering, there is a problem of informing the general public of the past and future operation of the issuer and of the plans in the share issue. Consequently, the issuer cannot make a good assessment of the level of interest among the general public in investing in the securities offered. The issuer is prohibited from publishing a prospectus before being approved by the Commission, and therefore the general public can examine the prospectus only after a decision has been made on the number of shares and the price at which they will be issued. In this way the issuer cannot formally test public interest in the new share issue it prepares.

**RS: RECOMMENDATION**

Introducing a "preliminary prospectus" would allow the general public to get to know the company that plans a public share issue and to express interest in investing before a request is submitted to the Securities Commission. The issuer would thus be able to assess the level of public interest. The preliminary prospectus would include the same data as the prospectus, except for the price, the number of shares issued and the period of issue. The Commission would approve the preliminary prospectus and the issuer would not be allowed to publish the preliminary prospectus before receiving Commission's permission. Having assessed the public interest, the issuer would decide on the remaining parts of the prospectus (the price, the number of shares issued and the period of

issue) and would submit the prospectus to the Commission. This would not be a mandatory provision and issuers would be allowed to produce prospectuses without the need to prepare preliminary prospectuses.

*Specific recommendation for the amendment*

Under Article 14, Paragraph 2 shall be added, which reads: "The preliminary prospectus shall include the same elements as the prospectus, except for elements defined under Article 16(a), (v), (g), (e) and (ž), as well as Article 18.

**Inability to Manage a Portfolio in Other Markets**

**RS: ISSUE**

The present Article 126 of the Law prevents

brokerage houses that manage portfolios from purchasing securities in foreign markets for their clients because such securities cannot be held in an account with the RS Central Securities Registry.

**RS: RECOMMENDATION**

Under Article 126, Paragraph 7 shall be added, which reads: "A stockbroker that provides securities portfolio management services shall keep its client's securities that are traded in markets outside the Republika Srpska in a custody account – in its own name and for client's account."

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>• Stock Subscription and Payment</li> </ul>	<ul style="list-style-type: none"> <li>• The wording of the FBiH Companies Law and the FBiH Securities Market Law needs to be harmonized such that the FBiH Companies Law refers to the FBiH Securities Market Law, instead of setting a time period.</li> </ul>	<ul style="list-style-type: none"> <li>• FBiH Ministry of Finances</li> <li>• FBiH Securities Commission</li> </ul>
<ul style="list-style-type: none"> <li>• Deadline to Submit Applications for Approval of Public Share Offering</li> </ul>	<ul style="list-style-type: none"> <li>• The deadlines in the FBiH Companies Law and the FBiH Securities Market Law need to be harmonized such that the FBiH Companies Law refers to deadlines specified in the FBiH Securities Market Law.</li> </ul>	<ul style="list-style-type: none"> <li>• FBiH Ministry of Finances</li> <li>• FBiH Securities Commission</li> </ul>
<ul style="list-style-type: none"> <li>• Registration of Securities Transfers</li> </ul>	<ul style="list-style-type: none"> <li>• Transfers of securities resulting from errors in entering transfer orders in the stock exchange system should be exempted from the mandatory clearing in order to protect investors</li> </ul>	<ul style="list-style-type: none"> <li>• RS Ministry of Finances</li> <li>• RS Securities Commission</li> </ul>
<ul style="list-style-type: none"> <li>• Inability to Manage a Portfolio in Other Markets</li> </ul>	<ul style="list-style-type: none"> <li>• Under Article 126, Paragraph 7 shall be added, which reads: "A stockbroker that provides securities portfolio management services shall keep its client's securities that are traded in</li> </ul>	<ul style="list-style-type: none"> <li>• RS Ministry of Finance</li> <li>• RS Securities Commission</li> </ul>

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
	<p>markets outside the Republika Srpska in a custody account – in its own name and for client’s account.”</p>	
<ul style="list-style-type: none"> <li>• Brokerage Services</li> </ul>	<ul style="list-style-type: none"> <li>• Harmonize the Republika Srpska Securities Market Law with the Federation of BiH Securities Market Law. Banks and professional brokers that hold brokerage licenses in BiH, but outside the Republika Srpska, should be able to be issued an approval by the Securities Commission to provide the same services in the Republika Srpska in order to implement the principle of reciprocity provided for under both laws, and to enable full control of the Commissions over the work of professional brokers.</li> </ul>	<ul style="list-style-type: none"> <li>• FBiH/RS Ministry of Finance</li> <li>• FBiH/RS Securities Commission</li> </ul>
<ul style="list-style-type: none"> <li>• The Issue of Publishing a Prospectus</li> </ul>	<ul style="list-style-type: none"> <li>• Introducing a “preliminary prospectus” would allow the general public to get to know the company that plans a public share issue and to express interest in investing before a request is submitted to the Securities Commission. The issuer would thus be able to assess the level of public interest. The Commission would approve the preliminary prospectus and the issuer would not be allowed to publish the preliminary prospectus before receiving Commission’s permission. Having assessed the public interest, the issuer would decide on the remaining parts of the prospectus (the price, the number of shares issued and the period of issue) and would submit the prospectus to the Commission.</li> </ul>	<ul style="list-style-type: none"> <li>• RS Ministry of Finance</li> <li>• RS Securities Commission</li> </ul>

## 6.6. TAXES

### INTRODUCTION

The inconsistency and complexity of the taxation system remains one of the major issues faced by foreign investors in investing in Bosnia and Herzegovina. The lack of harmonization among tax regulations at different levels is particularly readily apparent to those investors that do business across Bosnia and Herzegovina. When it comes to the ease of tax payment, Bosnia and Herzegovina ranks 154 among a total of 181 countries.<sup>14</sup>

Unfortunately, no significant improvement in the field of taxation has been made over the last year.

A few noticeable improvements include the following:

- The District has enacted the Corporate Income Tax Law and the Personal Income Tax Law. They began applying as of 01 January 2011.
- Under the RS Regulation on Taxpayer Registration and Identification<sup>15</sup> it is possible to register a foreign legal entity that operates and has a permanent place of operation in the RS with the Tax Administration.
- By amending the Regulation on Identification Numbers and Tax Registration for Taxpayers in FBiH<sup>16</sup>, it has now become possible to register business units of non-resident legal entities for taxation purposes.

In spite of this complexity of the taxation system, however, the RS decided to amend the Personal Income Tax Law in July 2010. One significant amendment was a reduction in the personal deduction from KM 300 to KM 250. In December 2010, further amendments were made to the Personal Income Tax Law and the Salary Contribution Law to be applied as of 01 February 2011, whereby the personal deduction

was discontinued; the taxation rate was increased from 8% to 10%; and the contribution rate was increased from 30.6% to 33%. Such frequent amendments to laws create uncertainty for foreign investors.

To facilitate operation of companies that operate across Bosnia and Herzegovina, tax regulations need to be harmonized at state level.

Apart from taxes, the operation of foreign investors in Bosnia and Herzegovina is further complicated and burdened by a number of different Cantonal and municipal duties. Specifically, there is a large number of individual duties paid at municipal and Cantonal level and regulations on payment of duties vary from municipality to municipality and from Canton to Canton, creating problems and generating high costs to foreign investors that operate across Bosnia and Herzegovina.

It is therefore necessary to also harmonize these regulations on duties and to review and reduce the amounts of duties.

Below are the specific taxation issues faced by FIC members, as well as related recommendations.

### EXPERIENCE:

### ISSUES AND RECOMMENDATIONS

#### Application of International Agreements\*

##### FBiH: ISSUE

The Corporate Income Tax Law in the Federation of BiH provides for application of international treaties on avoidance of double taxation which have priority over the provisions of that Law. However, according to instructions of the FBiH Tax Administration, in order to exercise a tax relief provided for under an international Double Taxation Avoidance Agreement, taxpayers are required to seek approval of the BiH

<sup>14</sup> PricewaterhouseCoopers Study: Paying Taxes 2009

<sup>15</sup> Official Gazette of RS No. 25/10

<sup>16</sup> Official Gazette of BiH No 83/10

Ministry of Finance and Treasury for every business situation in which a certain tax relief may apply. This has resulted in a large number of requests being sent to the BiH Ministry of Finance and Treasury seeking approval for the application of these agreements and the long taxpayer waiting lists to be issued such approval.

#### **RS**

In order to exercise a tax relief provided for under international double taxation avoidance agreements, a complicated procedure needs to be followed. The taxpayers need to use a form titled "Request for lower tax rate, tax exemption or tax refund for income from services, interest and royalties, in accordance with the double taxation avoidance agreement between BiH and .....", which then needs to be submitted to the income beneficiary to be stamped by the competent authority, and then this stamped form is sent by the income beneficiary to the income payer. It is also necessary to provide a document confirming that the foreign supplier is registered for the invoiced activities, however, it is often the case that the country signatory to the agreement does not have this type of document and the competent authority there cannot fill in the form completely.

#### **FBiH and RS: RECOMMENDATION**

The BiH Ministry of Finance and Treasury needs to publish all applicable Double Taxation Avoidance Agreements, Agreements with other countries signed but not yet ratified as well as Agreements that are being adopted. All the bilateral Agreements should be stored in a single register/central database and should be publicly available to all taxpayers. In addition, we recommend simplifying the procedure to apply international agreements in the Republika Srpska. A sufficient condition to be exempt from the withholding tax or to use a lower rate for tax assessment purposes should be to provide a

certificate of residency and a declaration by the foreign supplier that it is the actual beneficiary of income, setting aside the currently used form.

The use of the instruction of the FBiH Tax Administration should be discontinued according to which taxpayers are required to seek approval of the BiH Ministry of Finance and Treasury for every business situation in which a certain tax relief may apply as provided for under an international Double Taxation Avoidance Agreement.

#### **PERSONAL INCOME TAX LAW**

##### **Unclear Provisions on Personal Income Tax and Social Security Contributions\***

#### **FBiH and RS: ISSUE**

The major issues in the implementation of the F BiH and RS Salary Contribution Laws are in cases where the employer headquartered in one entity employs an individual residing in the other entity.

#### **RS**

The RS Salary Contribution Law stipulates that the payer of contributions is an individual – RS resident who is employed with a legal entity or with an individual who is an RS resident, or with a legal entity or an individual headquartered in the other entity, the District or the state. If the payment of personal income is subject to payment of contributions, the contributions are reported and paid according to the place where the personal income was earned, which leads to issues in exercising certain rights that payers of contributions are entitled to. This is particularly pronounced among persons whose place of work is in one entity and whose residence is in the other entity. The personal income tax is paid according to the place of residence in case of a resident taxpayer, or according to the place where the personal income was earned in case of a non-resident taxpayer. Amendments made to the Personal

Income Tax Law have added Paragraph 6 to Article 5, according to which the above rule does not apply to non-resident payers of the personal income tax from FBiH and BD who earn their personal income in BiH common institutions and public companies that are located in the territory of the RS. This provision is discriminatory because it discriminates between taxpayers depending on their employer. The personal income tax is paid according to the municipality of taxpayer's residence such that the payment is made to a single public revenue account, using the same revenue code and the same tax period, the only difference being the municipality code. This method of making payments and filing tax returns forces payers to maintain extensive parallel records, which leads to additional costs, reduces efficiency and opens up the possibility of errors, both for payers of income and for banks.

#### **FBiH**

Federation regulations define that payers of contributions include an individual who is a non-resident in FBiH and is employed in the territory of FBiH with a legal entity or an individual who is a Federation resident. If contributions are assessed according to FBiH regulations, employees residing in the RS are unable to exercise their right to health insurance and unemployment insurance. If the assessment and payment of contributions is done partially according to FBiH regulations and partially according to RS regulations, this effectively violates FBiH regulations.

The Federation Ministry of Finance has issued an interpretation according to which an employer with a registered address in FBiH should pay contributions for its employees residing in the RS in the following way:

- retirement-disability insurance contribution is to be paid to the F BiH Retirement and Disability Insurance Fund;

- health insurance contribution is to be paid as follows: 9% to the FBiH Solidarity Fund, and 91% to the RS Health Insurance Fund;

- unemployment insurance contribution is to be paid as follows: 30% to the Federation Institute and 70% to the RS Employment Institute.

However, this method of paying contributions is not in line with the Republika Srpska Salary Contribution Law, and employees residing in this entity cannot exercise their insurance-related rights.

The Republika Srpska Employment Institute has sent an official letter to the Federation of BiH Employment Department stating that the Institute would not acknowledge the right to the payment of unemployment allowance to persons who were employed with employers in the Federation of BiH and were residing in the Republika Srpska, in spite of the fact that the employer had paid the unemployment insurance contribution to the account of the RS Employment Institute. The RS Institute will acknowledge the right to the unemployment allowance only in cases where the employer has paid all the contributions (such as in the case of staff of BiH common institutions)

#### **FBiH and RS: RECOMMENDATION**

The contribution system needs to be defined in such a way that it primarily ensures that employees are able to exercise their insurance-related rights, which can be achieved by directing the contributions according to the employee's place of residence. FBiH, RS and BD Salary Contribution Laws need to precisely define the obligation to pay social security contributions for individuals residing in FBiH, RS and the District and earning their income in one of the other two administrative units, as well as where and how these persons may exercise their social rights (health care, retirement benefits, child allowance, unemployment allowance). The procedure for filing tax returns in the RS needs to be simplified.

## Lack of Harmonization between Personal Income Tax Laws with Respect to Tax Exemptions, Amount of Personal Deduction and Tax Rates at Entity and BD Level

RS, FBiH and BD: ISSUE

	REPUBLIKA SRPSKA	FEDERATION OF BOSNIA AND HERZEGOVINA	BRČKO DISTRICT
• Meal Allowance	• Taxable; nontaxable if the meal is prepared in own restaurant or is supplied by a person registered for catering services, up to KM 3.5 per day and KM 77 per month	• Nontaxable, 2% of the average net salary in FBiH	• Taxable
• Commuting	• Nontaxable up to the amount defined under the relevant regulation, or in the amount of the actually paid costs of using public transportation for commuting	• Nontaxable up to the amount defined under the relevant regulation	• Taxable
• Annual Leave Bonus	• Taxable	• Nontaxable up to 70% of the employee's salary or the average three-month net salary in FBiH	• Taxable
• Monthly amount of personal deduction	• As of 01 February 2011, there is no personal deduction	• KM 300 Only for residents	• As of 01 January 2011, a KM 300 deduction
• % of personal income tax	• As of 01 February 2011, the tax rate is 10%	• 10%	• 10%

### RECOMMENDATION

Harmonize regulations at state level!

### Foreign Nationals Who Are Employed in Their Home Country and Are On Duty in BiH\*

#### FBiH and RS: ISSUE

FBiH and the RS have unclear legal provisions regarding taxation of foreign nationals who are employed in their home country and were sent on duty to BiH, and who pay their social security obligations in their home country.

Due to different social security systems in their home country, it is not clear whether and

which contributions paid in his/her home country by an employee on duty in BiH may be recognized as tax-deductible expenses in FBiH or the RS.

According to FBiH and RS Personal Income Tax Laws, aliens are considered resident for tax purposes and are entitled to the same tax deductions as other taxpayers who are resident in FBiH and RS.

#### FBiH

The Regulation on Identification Numbers and Tax Registration for Taxpayers in FBiH<sup>17</sup> in-

<sup>17</sup> Official Gazette of FBiH 39/02, 1/03

roduced temporary tax identification numbers. Unfortunately, this system did not take hold because tax ID numbers are not included in the CIPS system and therefore payments cannot be realized.

#### **FBiH and RS: RECOMMENDATION**

Harmonize the Personal Income Tax Laws at entity and BD levels. Define clear procedures for taxation and the right to a reduction in tax base for foreign individuals – nonresidents. A system needs to be developed in FBiH and linked with institutions authorized to carry payment transactions to ensure that these persons can pay their tax obligations without any administrative obstacles and that their payments are properly registered by the relevant tax authority.

#### **Vat refund for persons who do not have a registered business in Bosnia and Herzegovina\***

##### **RS and FBiH: ISSUE**

Article 53 of the BiH VAT Law provides an option for a refund of the input tax assessed on sale of goods and provision of services by a BiH taxpayer or tax assessed on goods imported into BiH for foreign legal entities who do not have a registered business in BiH. Article 93 of the Regulation on VAT Law further provides that foreign legal entities that do not have a registered business in BiH (freight companies, persons displaying goods in fairs, airlines and the like), and that buy goods or receive services from taxpayers in BiH, related to transaction of business abroad, are entitled to VAT refunding to be exercised by submitting a request to the BiH Indirect Taxation Authority (hereinafter: BiH ITA). As this Regulation only covers freight companies, persons displaying goods in fairs, airlines and the like, there have been cases that the BiH ITA refused VAT refund requests submitted by foreign legal entities on the grounds that such legal entities were not specifically referred

to in the Regulation. This gives precedence to the Regulation, as an implementing piece of legislation, over the VAT Law, which carries greater legal force. By doing so, the Indirect Taxation Authority does not consider what these other “similar” legal entities are that this provision of the Regulation applies to. Furthermore, there is no publicly available list of countries or procedure according to which domestic legal entities, VAT payers, may receive VAT refunds.

#### **FBiH and RS: RECOMMENDATION**

The Indirect Taxation Authority should act in accordance with the VAT Law and approve VAT refund to all entities that do not have a registered business in BiH and that meet requirements defined under the Law. All possible restrictions regarding VAT refunds to foreign entities should be defined under the VAT Law and only further developed and clarified under the Regulation on VAT Law. The BiH ITA should also clearly identify “similar” foreign legal entities that are referred to in the Regulation as entities entitled to refunds of VAT assessed and paid in Bosnia and Herzegovina. The explanation should be in line with EU directives on indirect taxation and the method of VAT refunding used in EU countries that apply these directives. Publish a list of countries from which VAT refund is possible for domestic legal entities – VAT payers.

#### **Issuance Of Opinions By Indirect Taxation Authority (BiH ITA)**

##### **FBiH and RS: ISSUE**

Article 50 of the Indirect Taxation Law and Article 4 of the Instruction on Requirements and Procedure for Issuance of Opinions define a timeframe within which to submit 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 denies tax-



payers the opinion and the position of the BiH ITA regarding resolution of certain dilemmas because their application for opinion must include certain supporting documentation, and this in turn means that certain actions have already been taken. Opinions and positions are not posted on the BiH ITA website, which makes implementation of the law more difficult; in addition, positions issued by different ITA departments (sectors) frequently vary, causing dilemmas and misleading taxpayers.

#### **FBiH and RS: RECOMMENDATION**

Article 50 of the Indirect Taxation Law 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 question, should be published on the ITA 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, which is that its work should be transparent, and it would also result in better informed taxpayers and more consistent application of tax laws.

#### **Inefficient Forced Collection on Debtors' Bank Accounts\***

##### **FBiH and RS: ISSUE**

The fact that companies may have more than one transaction account with different banks causes problems in cases of forced collection. Frequently a debtor company that is subject to a forced collection procedure has only one of its transaction accounts blocked. This makes it possible for such company to continue meeting its financial obligations to other companies without any problems using its remaining accounts with other banks. During for-

ced collection actions, the blocking of a debtor's transaction account does not mean that all of its bank accounts with other banks will be blocked automatically. An additional problem is that forced collection against a debtor company is not enforced in a single place, in only one of the debtor's banks. In such cases, the insolvent company is able to choose personally which outstanding obligations will be satisfied and in which order. This contravenes provisions of entity Financial Payments Laws, which provide a precise order of payment for obligations of an insolvent debtor. Once a single account of a debtor is blocked, the company should be treated as an illiquid participant in payment transactions in all other banks where the company has bank accounts, and all these bank accounts should be blocked until full satisfaction of all obligations that are part of the forced collection. The more accounts an illiquid debtor has with different banks, the more complicated and inefficient is the procedure of collecting creditors' claims, thus creating legal uncertainty.

#### **FBiH and RS: RECOMMENDATION**

The present entity laws governing payment transactions should be upgraded by including mechanisms whereby all bank accounts of a client would be blocked.

#### **CORPORATE INCOME TAX LAW**

**The Law does not clearly define the meaning of unrealized gains/losses, income/expenses not included in the tax base**

##### **RS: ISSUE**

The Corporate Income Tax Law (hereinafter: the Law) refers to an accounting method in determining taxable income and expenses, which is in accordance with accounting regulations. However, Article 6 of the Law defines that for the purposes of determining the tax base, all incomes from any sources are to be included except for incomes defined under Article 7, and

no difference was made between realized and unrealized income.

It is only income/expenses arising from accounting for foreign exchange gains and losses (as one type of unrealized income/expense) that are exempt from inclusion in taxable income or expenses (Article 14 of the Law), citing “actually received income or paid costs of foreign exchange differences”. The issue here is the inconsistency between Article 14 and Article 6 of the Law. Other unrealized income/expenses or gains/losses are not clearly defined under the Law, albeit they are clarified through the Regulation on the Implementation of the Law.

#### **Depreciation of newly-acquired buildings is not possible**

Article 25(1) of the Regulation on the Implementation of the Law defines that the depreciation for acquired buildings begins as of 01 January of the year following the year in which the asset was activated. According to accounting rules, depreciation is accounted for in the month following the month in which the asset was put into use.

Given that these assets are real property which generally has a long useful life, this inconsistency between tax and accounting rules in depreciation accounting results in deferred tax assets with the taxpayer that require tracking for a long period of time.

Since the start of depreciation accounting for all other assets is the same for both tax and financial statements, this exclusion of buildings necessitates additional records to be maintained, which leads to additional costs and has no significant influence on public revenues. In the Regulation on the Implementation of the Law, certain provisions are defined differently than in the Law, which causes dilemmas in the implementation of these pieces of legislation. (Article 28(1)(ž) of the Law and Article 60(2) of the

Regulation differently define the place where a service was rendered).

#### **Different practices of taxation of business units which have their registered address in another entities and BD**

Taxation of business units of legal entities which have their registered address in the other entity is done in the entity where the business unit generates taxable income, such that the total tax obligation of the legal entity at its registered address is reduced by the amount of the tax obligation paid. Article 13(5) of the Law defines that a tax loss realized in the territory of FBiH or BD cannot be deducted from the tax base of the legal entity in the RS. Under the Corporate Income Tax and the Regulation on the Implementation of the Law in the Federation, business units (BU) are exempt from corporate income tax, however there is an obligation to submit tax returns for each business unit; in the BD, BUs are taxed at a rate of 10% in such a way that business books need to be maintained according to the cash method in accordance with the Personal Income Tax Law, which further complicates the operation of companies.

#### **RS: RECOMMENDATION**

Harmonize provisions of the Law (Article 6 with Article 14) and amend the Law by specifying all unrealized income/expenses or gains/losses not included in the tax base.

Amend Article 25 of the Regulation by deleting the exclusion of newly acquired buildings from the beginning of (regular) depreciation, making the start of depreciation the month following the month in which the asset was put into use. Harmonize Article 28(1)(ž) of the Law and Article 60(2) of the Regulation, i.e. harmonize the Regulation with the Law by using the Regulation to develop provisions of the Law, rather than having the Regulation define somet-

hing not defined under the Law or define something in opposition to the Law. Discontinue taxation of business units of legal entities headquartered in the other entity or in the BD, or ensure application of Article 48 of the Corporate Income Tax Law by filing a single tax return according to the place of registered address of the legal entity, while the corporate income tax would be paid on a pro rata share of gross income generated by the taxpayer in the territory of the other entity or the BD.

**Fiscalization in RS**

**RS: ISSUE**

Fiscal cash register software does not support any rebates or other discounts in retail sales or requires a very complex tracking of such rebates or discounts, which is quite nonsensical in a computer age. This means that the Fiscalization Law directly interferes with the

Value Added Tax Law and the Consumer Protection Law, which allow such rebates or discounts. In addition, there is a similar issue related to the implementation of the Trade Law, which provides for an instrument called a trade book that prevents application of the Value Added Tax Law and the Consumer Protection Law or it at least prevents their simple application.

**RS: RECOMMENDATION**

Harmonize the Fiscalization Law and the Trade Law and their related regulations and other regulations by ensuring that they do not restrict or hinder application of the VAT Law and the Consumer Protection Law.

**FBIH: ISSUE**

As of the time of writing, fiscalization has not yet started applying in FBIH, and therefore there is no recommendation for this entity.

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>Application of International Agreements for BiH</li> </ul>	<ul style="list-style-type: none"> <li>All data on international agreements to be stored in a single database and made publicly available</li> <li>Simplify the procedure for reporting the withholding tax and exercising relieves under international agreements; in FBIH, discontinue the order according to which the BiH MFT must give its approval for each individual case</li> </ul>	<ul style="list-style-type: none"> <li>BiH Ministry of Finance and Treasury (BiH MFT)</li> <li>Federation Ministry of Finance</li> <li>RS Ministry of Finance</li> <li>Tax Administration of the Federation of BiH</li> </ul>
<ul style="list-style-type: none"> <li>Unclear Provisions on Personal Income Tax and Social Security Contributions</li> </ul>	<ul style="list-style-type: none"> <li>Precisely define the obligation to pay social security contributions for individuals residing in FBIH, RS and the District and earning their income in another administrative unit, as well as where and how these persons may exercise their social rights</li> <li>Payment of contributions according to the employee's place of residence.</li> <li>Harmonization of the Personal Income Tax Laws at entity and BD levels.</li> </ul>	<ul style="list-style-type: none"> <li>Entity Ministries of Finance</li> </ul>

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>Lack of harmonization between Personal Income Tax Laws with respect to tax exemptions, amount of personal deduction and tax rates at entity and BD level</li> </ul>	<ul style="list-style-type: none"> <li>Harmonization of regulations at entity and BD levels</li> </ul>	<ul style="list-style-type: none"> <li>Entity Ministries of Finance</li> </ul>
<ul style="list-style-type: none"> <li>Unclear legal provisions regarding taxation of foreign nationals who are employed in their home country and were sent on duty to BiH, and who pay their social security obligations in their home country</li> </ul>	<ul style="list-style-type: none"> <li>Precisely define taxation of foreign individuals and their rights to a reduction in tax base</li> <li>Develop a system in FBiH that will be linked with institutions authorized to carry out payment transactions to ensure that these persons can pay their tax obligations without any administrative obstacles</li> </ul>	<ul style="list-style-type: none"> <li>FBiH and RS Ministries of Finance</li> </ul>
<ul style="list-style-type: none"> <li>VAT Refund for Persons Who Do Not Have a Registered Business in Bosnia And Herzegovina</li> </ul>	<ul style="list-style-type: none"> <li>Under the Regulation on VAT Law, clarify in detail the right to a VAT refund, in accordance with EU directives.</li> <li>Publish a list of countries from which VAT refund is possible</li> </ul>	<ul style="list-style-type: none"> <li>BiH Ministry of Finance and Treasury</li> <li>BiH Indirect Taxation Authority</li> </ul>
<ul style="list-style-type: none"> <li>Issuance of Opinions by BiH Indirect Taxation Authority (BiH ITA)</li> </ul>	<ul style="list-style-type: none"> <li>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, and opinions should be published on the official ITA website</li> </ul>	<ul style="list-style-type: none"> <li>BiH Indirect Taxation Authority</li> </ul>
<ul style="list-style-type: none"> <li>Inefficient Forced Collection on Debtors' Bank Accounts (RS and FBiH)</li> </ul>	<ul style="list-style-type: none"> <li>The present entity laws governing payment transactions should be upgraded by including mechanisms whereby all bank accounts of a client would be blocked.</li> </ul>	<ul style="list-style-type: none"> <li>Entity Ministries of Finance</li> </ul>
<ul style="list-style-type: none"> <li>RS CORPORATE INCOME TAX</li> <li>The Law does not clearly define the meaning of unrealized gains/losses, income/expenses not included in the tax base</li> </ul>	<ul style="list-style-type: none"> <li>Clearly define in the Law gains/losses, income/expenses not included in the tax base.</li> </ul>	<ul style="list-style-type: none"> <li>RS Ministry of Finance</li> <li>RS Tax Administration</li> </ul>

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>o Depreciation of newly-acquired buildings is not possible</li> <li>o Different practices of taxation of business units which have their registered address in another entities and BD</li> </ul>	<ul style="list-style-type: none"> <li>• Allow depreciation one month after the building was put into use.</li> <li>• Harmonize legislation regarding taxation of business units in the other entity and BD.</li> </ul>	<ul style="list-style-type: none"> <li>• RS Ministry of Finance</li> <li>• RS Tax Administration</li> <li>• RS Ministry of Finance</li> <li>• RS Tax Administration</li> </ul>
<ul style="list-style-type: none"> <li>• Fiscal cash register software does not support any rebates or other discounts in retail sales or requires a very complex tracking of such rebates or discounts, which is quite nonsensical in a computer age</li> </ul>	<ul style="list-style-type: none"> <li>• Harmonize the Fiscalization Law and the Trade Law and their related regulations and other regulations by ensuring that they do not restrict or hinder application of the VAT Law and the Consumer Protection Law.</li> </ul>	<ul style="list-style-type: none"> <li>• RS Ministry of Trade and Tourism</li> <li>• RS Ministry of Finance</li> </ul>

## 6.7. CONSTRUCTION PERMITS

### INTRODUCTION

According to the World Bank's Doing Business Report for 2011, Bosnia and Herzegovina ranks 139 according to the ease and time required to obtain a construction permit, while last year it ranked 136. In other words, in spite of amendments to the urban planning laws made by entity governments in an attempt to improve and accelerate the procedure of issuing a permit, the participants in a study which preceded the Doing Business publication believed that in terms of the ease and time required to obtain permits, BiH was even somewhat worse than last year. In addition, Doing Business 2011 found that the investor had to complete 16 procedures to obtain a construction permit, requiring around 255 days on average.

Both entities have made certain changes to the procedures for issuance of construction permits. Both entities amended the relevant legislation, introducing new terms with a similar meaning: "location information" in FBiH and "location requirements" in the RS.

During the period between 2009 and 2010, Federation of BiH enacted three amendments to the Urban Planning and Use of Land Law.<sup>18</sup> Through these amendments, the Federation of BiH Government attempted to simplify the procedure for issuing a construction permit. Under the amended law, there are two alternative procedures which precede the application for a construction permit in FBiH: issuance of either an urban permit or location information.

The procedure for obtaining an urban permit remains the same. The new procedure is the one relating to location information. Unlike FBiH, where this location information is obtained through a simplified procedure, in the RS the equivalent location requirements are obtain-

ned through the general administrative procedure. The location information is obtained for the location that already has the detailed planning documents in place (zoning plan, regulation plans, urban planning projects).

In addition to entity laws in FBiH, there are also cantonal laws governing the issue of permits and approvals, which further complicates the process for the investor because experience gained in one municipality cannot be relied on when obtaining permits in another municipality. The amendments made to the law at entity level have not yet been implemented in all the cantons by harmonizing cantonal laws with the entity law.

The Republika Srpska also enacted new legislation in this field during the year. The Urban Planning and Construction Law<sup>19</sup> did not introduce any substantial changes over the previous law. Given the relatively short period of its implementation, as in the Federation of BiH, we cannot be specific about its results in practice so far.

Development of all the plans provided for under the Law is financed from budgets of the relevant territorial units. Essentially, the problem is that these plans are often non-existent or are incomplete and/or not harmonized, yet it is only based on these plans that investors may be issued location requirements within an optimum timeframe.

With respect to differences between the new and the old law, there are several changes introduced by the new law:

1. The new RS law also introduced a new term – location requirements;
2. Provisions were introduced governing safety zones aimed at ensuring uninterrupted operation of infrastructure systems and structures, and these zones are the following: road, railroad, airport, transmission line and pipeline zones; the zone for radio-transmission

<sup>18</sup> Official Gazette of FBiH 2/06, 72/07, 32/08, 4/10, 13/10, 45/10

<sup>19</sup> Official Gazette of RS" No. 55/10

plants and communications; safety zone for water springs, watercourses and water management structures; safety zone for sensitive areas (explosives and flammable materials and liquids);

3. If the authority in charge of issuing the location requirements fails to issue them within 30 days, which constitutes the so-called "failure to respond", the location requirements are not deemed to be issued; rather, the investor may then file an appeal as if his application was denied.

Improvements in this area cannot be achieved without adequate financial resources and harmonization of legislation for the both entities and the Brčko District. To implement these changes, it is equally important to have professional, trained and responsible staff, capable of managing all these changes. Furthermore, networked databases are also required to enable swift and easy processing of all the requests.

Comparing this with the earlier law and the recommendations made in the previous issue of the White Paper, we can conclude that, regardless of the amendments made to the laws, there remain the issues of vague wording and lack of harmonization in procedures, non-transparent procedures and inefficient administrative staff that is supposed to provide an adequate and timely support to investors.

#### **EXPERIENCE:**

#### **ISSUES AND RECOMMENDATIONS**

#### **Inefficient Processing of Applications\***

#### **FBiH and RS: ISSUE**

The problem of the too slow processing of applications for permits remains even after the new laws were enacted in both entities. Investor treatment varies from municipality to municipality. Officials in smaller municipalities, where there are less applications to be processed,

are more willing to support the investor, while in more developed municipalities one has to wait longer to be issued permits due to the overload. In general, the main issue in the processing of applications is the frequent lack of harmonization between planning documents, meaning that investors cannot obtain permits within an optimum timeframe. There are still issues with inconsistent interpretation of laws, unclear procedure, inadequate staff efficiency and the number of staff, no coordination in data sharing among institutions/officials, and a lack of understanding regarding investors' needs. Variation in the time required is considerable: some municipalities take 15 days, while others need a whole year to issue certain approvals/permits. The new Republika Srpska law defines that location requirements need to be issued within 30 days (provided that there is a regulation plan in place); in case there is no regulation plan, the deadline is 30 days from the day the application is complete. If the requirements are not issued within the specified timeframe, the investor may file an appeal as if his application was denied. Unfortunately, investors-FIC members have not noticed any improvements since the law started applying. In practice, municipal authorities often do not honor the deadlines defined by law.

#### **FBiH and RS: RECOMMENDATIONS**

Improvements in this area cannot be achieved without adopting and harmonizing all the plans provided for under the law, and also without harmonizing the legislation for both entities and the Brčko District, in order to ensure legal certainty for the investor in the entire territory of BiH. To achieve optimum efficiency in application processing, it is equally important to have professional, trained and responsible staff, capable of managing all the changes made. Improvements would also require setting up networked databases to enable swift and easy

processing of all the requests. Since pilot projects launched in some cities have yielded great results, these good practices need to be implemented in all municipalities and the system needs to be improved on a continuous basis, as was recommended in the 2009 White Paper.

### **Transfer of Construction Permit in the Sarajevo Canton\***

#### **FBiH: ISSUE**

In case the title to the building being constructed is transferred during construction, the transfer of the construction permit is not clearly defined either under the FBiH Urban Planning and Use of Land Law or the Sarajevo Canton Urban Planning Law. The vague working of the Law leads to varying practices from municipality to municipality. Such inconsistent procedures are an obstacle to an efficient transfer of the construction permit for a building.

#### **FBiH: RECOMMENDATION**

To eliminate any ambiguities regarding the transfer of a construction permit, the relevant laws need to define the conditions for transferring a construction permit from one investor to another. In addition, the construction-related legislation at FBiH and cantonal levels needs to define streamlined procedures for issuing all permits related to construction, as well as the method and conditions for transferring a construction permit from the moment the permit is issued to the moment a certificate of occupancy is issued and the finished building is included in planning documents.

### **Unclear and Incomplete Urban Planning and Construction Law**

#### **RS: ISSUE**

Under the previous urban planning law, the procedure for obtaining a construction permit was much more clearly defined. The entire procedure was based on obtaining a prior urban

permit, which was issued based on urban-technical requirements. The previous law fully described the procedure required to obtain a construction permit. It also provided a clear definition of how to prepare full technical documents based on the requirements specified in the urban permit and what needed to be done to obtain the construction permit. The new law does not provide such clear definitions, however. Under the new law, the entire procedure is divided into several phases and there are individual deadlines specified for each phase. After a careful review of the law, it appears that the procedure to obtain a construction permit will now be significantly longer and much more funds will be needed for these purposes. Likewise, the new law does not make it quite clear as to what the purpose of preparing the urban-technical requirements is.

#### **RS: RECOMMENDATION**

The law needs to be amended so that clear cause-effect relationships may be established between different provisions of the law, including removing of all ambiguities and shortening of the deadlines for obtaining a construction permit.

### **Law Does Not Define Treatment of Telecommunications Sector\***

#### **RS: ISSUE**

The RS Urban Planning law does not include the telecommunications sector and fails to clearly define landline infrastructure and mobile networks. Since the field of telecommunications infrastructure has not been defined by the Law, municipalities have no clear procedure governing the issuance of permits in this field. This is the reason some municipalities need 15 days while others require as much as one year to process all documents required for a permit. An additional problem is the fact that installation of a base station is not provided for in the spa-



tial plan, but some municipalities do provide for it in their master and regulation plans, which further complicates the procedure.

**FBIH: ISSUE**

The treatment of the telecommunications sector in FBIH is defined similarly to that in the RS; in other words, it is quite unclear. The situation is further complicated by the fact that each canton has its own law, and when combined with different interpretations of the same institutes in different cantons, this causes additional problems to investors.

**FBIH and RS: RECOMMENDATION**

To resolve any dilemmas in obtaining permits, the RS Urban Planning Law needs to incorporate telecommunications infrastructure provisions to cover set up of network, equipment and facilities. In FBIH, legislation at local and cantonal levels requires further regulation, and laws need to be harmonized within the Federation framework. The RS and FBIH laws need to include more precise specific provisions governing the setup of telecommunications networks, equipment and facilities.

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>Inefficient Processing of Applications</li> </ul>	<ul style="list-style-type: none"> <li>It is important to have professional, trained and responsible staff, capable of managing all the changes made. Improvements would also require setting up networked databases to enable swift and easy processing of all the requests</li> </ul>	<ul style="list-style-type: none"> <li>Municipalities in FBIH and the RS</li> </ul>
<ul style="list-style-type: none"> <li>Transfer of Construction Permit in the Sarajevo Canton, FBIH</li> </ul>	<ul style="list-style-type: none"> <li>Relevant laws need to define the conditions for transferring a construction permit from one investor to another</li> </ul>	<ul style="list-style-type: none"> <li>Legislative and executive authorities in the Federation and cantons</li> </ul>
<ul style="list-style-type: none"> <li>Unclear and Incomplete RS Urban Planning and Construction Law</li> </ul>	<ul style="list-style-type: none"> <li>The law needs to be corrected so that clear cause-effect relationships may be established between different Articles of the law, including removing of all ambiguities related to shortening the deadlines for obtaining a construction permit</li> </ul>	<ul style="list-style-type: none"> <li>Legislative and executive authorities in the RS</li> </ul>
<ul style="list-style-type: none"> <li>Law Does Not Define Treatment of Telecommunications Sector</li> </ul>	<ul style="list-style-type: none"> <li>To resolve any dilemmas in obtaining permits, the relevant entity laws need to incorporate more detailed telecommunications infrastructure provisions to defined set up of network, equipment and facilities. In FBIH, laws need to be further harmonized within the Federation framework (FBIH and cantons)</li> </ul>	<ul style="list-style-type: none"> <li>Legislative and executive authorities in the entities and cantons</li> </ul>

## 6.8. FBiH LIQUIDATION LAW AND BANKRUPTCY

### FBiH LIQUIDATION LAW

#### INTRODUCTION

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

In the past year since the publication of the 2009 White Book, nothing has changed when it comes to this Law. Investors face the same issues and we therefore make the same recommendations and solutions in this section, with minor changes. Below we have identified shortcomings in the FBiH Liquidation Law that FIC members would like to note for 2009 and 2010.

#### EXPERIENCE: ISSUES AND RECOMMENDATIONS

##### **Vague Wording of Liquidation Procedure\***

###### **FBiH: ISSUE**

Liquidation of companies in FBiH is governed by the Liquidation Law and the Companies Law. Present regulations do not provide adequately for the liquidation procedure itself, nor do they provide adequately for the position of the liquidator during the procedure and for the activities a liquidator may or must take. For instance, there are no rules defining the moment at which the liquidator may terminate employment contracts of employees of the company being liquidated; there are no rules defining which legal transactions the liquidator may effect on behalf of the company, and which transactions are not permitted (this relates primarily to incurring new liabilities on behalf of the company unrelated to the liquidation procedure); there are no rules defining the moment

at which the liquidator may start converting company's assets into cash and which conversion method is to be applied, etc. In practice, this gives rise to numerous difficulties and results in legal uncertainty. In order to address legal gaps they face, some courts of law in FBiH have been applying corresponding provisions of the Bankruptcy Proceedings Law to aspects of the liquidation procedure that were not defined under the Liquidation Law and the Companies Law. However, there is no legal basis for this subsidiary application of the Bankruptcy Proceedings Law, which leads to different interpretations in practice and to application of provisions of the Bankruptcy Proceedings Law to liquidation.

###### **FBiH: RECOMMENDATION**

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

##### **Different Practices in Courts Regarding Submission of Documents for Liquidation\***

###### **FBiH: ISSUE**

Applicable regulations do not include a comprehensive list of documents the petitioner needs to submit to the court along with the petition for initiating a liquidation procedure. This has led to great variations in practices used in different courts. Some documents, which are considered mandatory by certain courts and without which these courts will not even receive a petition for initiating a liquidation procedure, are not at all required by other courts. In addition, it is not clear when and what types of documents need to be submitted in the course of the procedure<sup>20</sup>.

<sup>20</sup> Which documents must be submitted along with the petition, and which documents are to be submitted later in the procedure.

**FBiH: RECOMMENDATION**

The Liquidation Law needs to include a list of all the documents that a liquidation petitioner is required to submit, and also to precisely define the moment when each of the documents is to be submitted.

**Different Practices in Courts Regarding Submission of a Certificate Proving Payment of Tax Liabilities During the Institution of a Liquidation Procedure\***

**FBiH: ISSUE**

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

**FBiH: RECOMMENDATION**

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

**Treatment of Company's Real Property After the Liquidation Procedure Is Completed**

**FBiH and RS: ISSUE**

Even though the BiH Law on Policy of Foreign Direct Investment fully equates property rights of foreign investors with those of dome-

stic legal entities and individuals in terms of acquisition of property rights including real property, there have been several cases where, following completion of the liquidation procedure, a foreign investor was denied the right to register his/her title to real property remaining as part of liquidation estate after creditors have been paid.

**FBiH and RS: RECOMMENDATION**

While there are no obstacles in the current laws to transfer title to real property to the foreign investor once the liquidation procedure is completed (provided, of course, that the creditors have been paid off from the liquidation estate), we believe the entity level property laws should expressly provide for this option to avoid different interpretations in future court proceedings.

**Inability to Access a List of Companies Being Liquidated in the Court Registry\***

**FBiH and RS: ISSUE**

One of the latest amendments to the Companies Law<sup>21</sup> was deletion of the paragraphs<sup>22</sup> which defined that the liquidation procedure had to be recorded in the Companies Register and that the company name during liquidation had to include the words "under liquidation". The purpose of these provisions was to ensure that companies under liquidation could be easily recognized and that the general public was informed of the company's liquidation. After these provisions were removed from the Companies Law, a legal gap was created in this respect because other provisions of the Companies Law and the Liquidation Law do not provide for a similar obligation to record the initiation of the liquidation procedure with the Companies Register and to inform the public thereof.

<sup>21</sup> Official Gazette of FBiH 84/08

<sup>22</sup> Article 73, Paragraphs 2 and 3.

### **FBiH and RS: RECOMMENDATION**

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

## **BANKRUPTCY**

### **INTRODUCTION**

Bankruptcy in BiH is defined under the FBiH Bankruptcy Proceedings Law and the RS Bankruptcy Proceedings Law. In our circumstances, bankruptcy is frequently and unduly very lengthy. In spite of all the inconvenience it entails, bankruptcy should not be seen as an end, but rather as a new beginning.

The Bankruptcy Proceedings Law defines in detail the requirements to institute bankruptcy proceedings, and in particular the legal effects of instituting bankruptcy proceedings. However, there is a problem with the implementation of the Law in the process of instituting and implementing bankruptcy proceedings, particularly for the following reasons: (i) bankruptcy is insufficiently promoted as something that can help in the recovery of a company, satisfaction of creditors and settlement of other debts; (ii) education and training aimed at participants in bankruptcy proceedings in BiH are insignificant (judges, lawyers, receivers and other participants require more training); and (iii) the role of the state (entities) in bankruptcy cases is still minor or non-existent.

Unfortunately, it is quite rare that bankruptcy proceedings are instituted on time, when the company's recovery is both possible and effective.

Judges in charge of bankruptcy proceedings most often lack the required expertise, and another issue is inconsistent enforcement of the Law. In addition, courts lack resources, which in turn means that most of the bankruptcies

take too long, rendering them purposeless in terms of being an urgent procedure.

While receivers are all certified by the Ministry of Justice, the actual quality of their performance varies greatly. The Law that governs bankruptcy is generally good, however its implementation is slow and there is still a lack of knowledge, even in the judiciary. Furthermore, bankruptcy proceedings carry an accompanying stigma: the general society views them as a "disaster". The governing structures have done nothing to change this perception.

Below are only some of the problems faced by our members when it comes to bankruptcy proceedings in BiH.

### **EXPERIENCE:**

#### **ISSUES AND RECOMMENDATIONS**

#### **Penalties for Company Managers Who Do Not File for Bankruptcy on Time**

##### **FBiH and RS: ISSUE**

Penalties for managers who do not file for bankruptcy on time are totally inadequate (the penalties are misdemeanor penalties, i.e. fines). In most cases, at the time the manager/administrator files for bankruptcy, the conditions are already inadequate and the company is typically beyond recovery and the value of its business and assets is significantly reduced.

##### **FBiH and RS: RECOMMENDATION**

The Bankruptcy Proceedings Law should include, by way of amendments to it, a higher fine and even a criminal penalty for company managers/administrators who do not file for bankruptcy on time. By acting in such a way, they directly cause irreparable damage to company assets and they bring the company itself (its employees, creditors and all other participants in bankruptcy proceedings) into a position where it cannot satisfy the claims, causing losses to third parties.

### **Qualifications and Certification of Receivers in BiH FBiH and RS: ISSUE**

In terms of practical implementation of bankruptcies, receivers in BiH are not competent enough for their job. To become a receiver, the only requirement a candidate must meet is to pass a test administered by the BiH Ministry of Justice, which then issues the license. Any citizen having a university degree may apply, and there is no minimum experience required. The BiH Ministry of Justice has the authority to revoke licenses, yet this has never been done. The Ministry of Justice has no control over the work of receivers, which results in their performance varying considerably.

### **FBiH and RS: RECOMMENDATION**

Specific measures needed to improve confidence in the implementation of the bankruptcy law should include amend the present law to set some minimum requirements regarding past experience and define a specific profession that would correspond to the nature of duties of a receiver, which would be a requirement to become a receiver. The Association of Receivers should take on a supervisory role and conduct training for bankruptcy personnel, such as judges and receivers. This should be done both through the law and through the regulation on the award of vocational titles (Ministries of Justice at entity level). The criteria for being awarded the title of a receiver should be made stricter. Amendments to the law that deal with qualifications and competencies of receivers are being prepared.

### **Payment of a 5% lump sum to the bankruptcy estate from the sale of movables and real property**

#### **FBiH and RS: ISSUE**

Article 105 (in conjunction with Article 103) of the RS and the Federation of BiH Bankruptcy Proceedings Laws provide for an obligation to

make a 5% lump sum payment to the bankruptcy estate from the proceeds of the sale of a movable which the receiver conveyed to a creditor. According to practices of courts in the RS and the Federation of BiH, receivers and bankruptcy judges arbitrarily interpret these provisions and often order secured creditors to pay this lump sum even in case of a sale of real property that was passed on to secured creditors for liquidation in accordance with Article 107 of the RS Bankruptcy Proceedings Law, neglecting the fact that such secured creditor is the only party who has actual expenses related to liquidation of such property (appraisal costs, costs of execution proceedings, costs of sale and marketing of the real property, etc.). It is not infrequent that a real property is entrusted to the secured creditor for keeping (and the secured creditor has to pay the maintenance costs, which can be considerable) and on top of that the bankruptcy court may order the creditor to pay the lump sum of 5%.

#### **FBiH and RS: RECOMMENDATION**

This issue must be clearly defined and clarified in the entity Bankruptcy Proceedings Laws by amending the above Articles, which would ensure harmonized practices among different courts and would prevent courts from making arbitrary decisions. We believe that the lump sum payment for the costs of maintenance, in a maximum amount of 5% of the sales price, which would be contributed to the bankruptcy estate by the secured creditor, would only be justified if the real property was in the possession of the bankruptcy debtor between the institution of bankruptcy proceedings and the sale of real property, which means that in such case all the maintenance costs would be borne by the bankruptcy debtor. Otherwise, this raises the issue of the justification for imposing this lump sum payment on the secured creditor and the issue of equitable allocation of costs incur-

red by the institution of bankruptcy proceedings.

### **The Issue of the Right to Dispose of Real Property in Bankruptcy Proceedings**

#### **FBIH and RS: ISSUE**

Since the right of disposal under our bankruptcy proceedings laws most often concerns secured creditors, this issue needs to be harmonized and specified through the FBIH and RS Bankruptcy Proceedings Laws. Solutions provided by amendments to the laws would facilitate the realization of secured rights by secured creditors, in particular the sale of property. The main issue that arises is the imprecise and insufficient emphasis on this problem in our legislation.

#### **FBIH and RS: RECOMMENDATION**

The meaning of the right of disposal needs to be made more specific, i.e. whether it is the transfer of possession or something else; furthermore, a collision between the Bankruptcy

Proceedings Law and the VAT Law needs to be resolved in terms of the legal effects of such disposal, because under the VAT Law a transfer of the right of disposal incurs a VAT obligation.

The receiver should first attempt to sell the real property to be transferred to the secured creditor for the amount of the secured claim registered in the land-registry records in the form of a lien or mortgage. If the sale at the appraised value is not successful, the receiver should offer the real property to the secured creditor for the amount of claim plus applicable interest and the amount of the real property sales tax. At the same time, the bankruptcy court would issue a decision on the award of the real property, including removal of all land-registry charges, which would be used by the Land-Registry Office to register the title and also for tax assessment purposes. This solution has been accepted in other legislations (such as the legislation of the Republic of Croatia) as it ensures better liquidation than lengthy execution proceedings.

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<p><b>Liquidation</b></p> <p><b>FBIH</b></p> <ul style="list-style-type: none"> <li>• Vague Wording of Liquidation Procedure</li> </ul>	<ul style="list-style-type: none"> <li>• The Liquidation Law needs to more adequately address the course of the liquidation procedure as well as the position, rights and obligations of the liquidator; alternatively, the Liquidation Law should include a provision allowing for an adequate application of provision of the Bankruptcy Proceedings Law to those aspects of the liquidation procedure that have not been defined.</li> </ul>	<ul style="list-style-type: none"> <li>• FBIH Parliament / PARS</li> <li>• Ministries of Justice of FBIH and RS</li> </ul>
<ul style="list-style-type: none"> <li>• Different Practices in Courts Regarding Submission of Documents for Liquidation</li> </ul>	<ul style="list-style-type: none"> <li>• The Liquidation Law needs to include a list of all the documents that a liquidation petitioner is required to submit, and also to precisely define the mo-</li> </ul>	<ul style="list-style-type: none"> <li>• FBIH Parliament / PARS</li> <li>• Ministries of Justice of FBIH / RS</li> <li>• Competent Courts</li> </ul>

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>• Different Practices in Courts Regarding Submission of a Certificate Proving Payment of Tax Liabilities During the Institution of a Liquidation Procedure</li> </ul>	<p>ment when each of the documents is to be submitted.</p> <ul style="list-style-type: none"> <li>• Practice in courts regarding this issue needs to be harmonized, and relevant regulations need to define that the tax administration shall have the same position as all other creditors of a company being liquidated.</li> </ul>	<ul style="list-style-type: none"> <li>• FBiH Parliament / PARS</li> <li>• Ministries of Justice of FBiH / RS</li> <li>• Competent Courts</li> </ul>
<ul style="list-style-type: none"> <li>• Treatment of Company's Real Property After the Liquidation Procedure is Completed</li> </ul>	<ul style="list-style-type: none"> <li>• While there are no obstacles in the current laws to transfer title to real property to the foreign investor once the liquidation procedure is completed (provided, of course, that the creditors have been paid off from the liquidation estate), we believe the entity level property laws should expressly provide for this option to avoid different interpretations in future court proceedings.</li> </ul>	<ul style="list-style-type: none"> <li>• FBiH Parliament / PARS</li> <li>• Ministries of Justice of FBiH / RS</li> </ul>
<ul style="list-style-type: none"> <li>• Inability to Access a List of Companies Being Liquidated in the Court Registry</li> </ul>	<ul style="list-style-type: none"> <li>• The obligation to record the liquidation procedure with the Companies Register and to include words "under liquidation" in the company name during liquidation should be defined by law.</li> </ul>	<ul style="list-style-type: none"> <li>• FBiH Parliament / PARS</li> <li>• Ministries of Justice of FBiH / RS</li> </ul>
<p><b>Bankruptcy</b> <b>FBiH and RS</b></p> <ul style="list-style-type: none"> <li>• Penalties for Company Managers Who Do Not File for Bankruptcy on Time</li> </ul>	<ul style="list-style-type: none"> <li>• The Bankruptcy Proceedings Law should include, by way of amendments to it, a higher fine and even a criminal penalty for company managers/administrators who do not file for bankruptcy on time. By acting in such a way, they directly cause irreparable damage to company assets and they bring the company itself (its employees, creditors and all others) into a position where it cannot satisfy the claims, causing losses to third parties.</li> </ul>	<ul style="list-style-type: none"> <li>• FBiH Parliament / PARS</li> <li>• Ministries of Justice of FBiH / RS</li> <li>• Competent Courts</li> </ul>

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>Qualifications and Certification of Receivers in BiH</li> </ul>	<ul style="list-style-type: none"> <li>The criteria for being awarded the title of a receiver should be made stricter. Specific measures needed to improve confidence in the implementation of the bankruptcy law should include: (i) amend the present law to set some minimum requirements regarding past experience and define a specific profession that would correspond to the nature of duties of a receiver, which would be a requirement to become a receiver. The Association of Receivers should take on a supervisory role and conduct training for bankruptcy personnel, such as judges and receivers.</li> </ul>	<ul style="list-style-type: none"> <li>FBiH Parliament / PARS</li> <li>Ministries of Justice of FBiH / RS</li> </ul>
<ul style="list-style-type: none"> <li>Payment of a 5% lump sum to the bankruptcy estate from the sale of movables and real property</li> </ul>	<ul style="list-style-type: none"> <li>The lump sum payment for the costs of maintenance would only be justified if the real property was in the possession of the bankruptcy debtor between the institution of bankruptcy proceedings and the sale of real property, which means that in such case all the maintenance costs would be borne by the bankruptcy debtor.</li> </ul>	<ul style="list-style-type: none"> <li>FBiH Parliament / PARS</li> <li>Ministries of Justice of FBiH / RS</li> </ul>
<ul style="list-style-type: none"> <li>The Issue of the Right to Dispose of Real Property in Bankruptcy Proceedings</li> </ul>	<ul style="list-style-type: none"> <li>The meaning of the right of disposal needs to be made more specific, i.e. whether it is the transfer of possession or something else; furthermore, a collision between the Bankruptcy Proceedings Law and the VAT Law needs to be resolved in terms of the legal effects of such disposal, because under the VAT Law a transfer of the right of disposal incurs a VAT obligation. The receiver should first attempt to sell the real property to be transferred to the secured creditor for the amount of the secured claim registe-</li> </ul>	<ul style="list-style-type: none"> <li>FBiH Parliament / PARS</li> <li>Ministries of Justice of FBiH / RS</li> <li>BiH Ministry of Finance and Treasure</li> </ul>



KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
	<p>red in the land-registry records in the form of a lien or mortgage. If the sale at the appraised value is not successful, the receiver should offer the real property to the secured creditor for the amount of claim plus applicable interest and the amount of the real property sales tax. At the same time, the bankruptcy court would issue a decision on the award of the real property, including removal of all land-registry charges, which would be used by the Land-Registry Office to register the title and also for tax assessment purposes.</p>	

## 6.9. EXPORTS

### INTRODUCTION

When discussing exports, we need to review not just the legal framework but also its economic aspect, which is of primary importance. To improve the rules that regulate this industry, we need to address its economic side. In other words, we need to increase the volume of exports, because that is the only way to ensure resources required to make any kind of progress. On the other hand, to increase exports, the volume of real economy, i.e. production, needs to increase. In this respect, the state (entities) need to play a role.

Looking back at the specific steps taken by entities in this field, we can note that the Republika Srpska has adopted a strategy to stimulate exports, whereas such strategy in FBiH and at BiH level is still being developed, with implementation expected to start in June 2011.

It is necessary to harmonize standards and certificates with EU standards and, in particular, with countries in the region that most of BiH's cooperation and trade relates to.

The operation of the BiH Export Council needs to be more efficient. Its effectiveness is hampered by political influences and its main task is to serve as a link between state institutions and businesses (exporters).

(i) Institutional reform: Improving policies and the legal, institutional and regulatory framework. This would help achieve alignment with the EU *acquis* related to trade, for all types of business. Restructuring in order to reduce complexities and ambiguities regarding responsibilities of the state and entity levels.

(ii) It is very important to note that BiH Institutions are working together with the BiH State Veterinary Office on addressing the issues concerning the exporter code number and the regulations on exporting milk, meat and milk and meat products, and on harmonizing them with EU regulations.

(iii) The piece of statistical data according to which BiH exports rose by 30% in 2010 appears very optimistic. However, it should be noted that such exports consist of ore and timber (raw materials).

A general recommendation that could be addressed at executive authorities is to define an economic policy that will best protect the interests of Bosnia and Herzegovina and its citizens, but this should also include:

- Recognition of these interests and an uncompromising commitment to achieving them
- Legislation that will protect national production so that it can be competitive
- Protection of national natural resources
- Certification and standardization of BiH products so that they are ready for export

### EXPERIENCE:

#### ISSUES AND RECOMMENDATIONS

#### Issuing and Recognition of Certificates in Countries in the Region and EU

##### FBiH and RS: ISSUE

The difficult relations among countries formed following the collapse of the former Yugoslavia are burdened by their mutual non-recognition of certificates or national certifying institutes that issue certificates for products that seek to find buyers in neighboring countries. This is the reason we need to certify one and the same product in the same way, but by each national certifying body, depending on the neighboring country where we want to export the product. For example, a certificate for cement that is in line with the requirements of harmonized EU standards or norms (EN) and is issued by the national institute in BiH is not recognized in Croatia; on the other hand, the same certificate issued by the Croatian institute according to the requirements of the same EN norm is not recognized in the EU! An additional problem in BiH is the fact that at BiH level there is no insti-

tute or a similar body that can issue a certificate or CE mark for a product that will be valid in the countries in the region and in EU members states.

**FBIH and RS: RECOMMENDATION**

In this respect, additional efforts should be made to ensure that at least the neighboring countries (BiH, Croatia, Serbia, Montenegro) start mutually recognizing certificates issued by competent national institutions. This would

avoid duplication or multiplication of the certification procedure, which requires a lot of funds and time from everyone, makes the product more expensive and reduces its competitiveness in the neighboring countries' markets.

**CUSTOMS AND ISSUES EXPORTERS FACE IN CLEARANCE:**

**FBIH and RS**

Specific proposals relating to customs:

ISSUE	RECOMMENDATION
<ul style="list-style-type: none"> <li>• Waiting for the green lane – often takes too long</li> </ul>	<ul style="list-style-type: none"> <li>• Automation of the ASYCUDA system should enable automatic clearance through the green lane after 45 min</li> </ul>
<ul style="list-style-type: none"> <li>• Short office hours of the customs offices and the obligation to provide the CP form two hours before the end of office hours for approved exporters</li> </ul>	<ul style="list-style-type: none"> <li>• Organize customs operation 0-24h (or at least 7-21), especially in light of in-house clearance, and shorten the deadline to provide the form to 0,5-max 1 hour before the end of office hours</li> </ul>
<ul style="list-style-type: none"> <li>• Too high price for correcting a CD (very often due to a trivial technical error)</li> </ul>	<ul style="list-style-type: none"> <li>• Too high price for correcting a CD (very often due to a trivial technical error)</li> </ul>
<ul style="list-style-type: none"> <li>• Individual payment of duty for each export generates additional bank charges</li> </ul>	<ul style="list-style-type: none"> <li>• Allow collective complete monthly declaration for those who have the status of an approved exporter or at least collective payment of all duties on a single payment slip when submitting documents for the complete declaration</li> </ul>
<ul style="list-style-type: none"> <li>• Collecting a copy of 3 ex declarations stamped by competent authority at a border crossing and submitting it to the competent institution is a complicated procedure, especially for large exporters.</li> </ul>	<ul style="list-style-type: none"> <li>• Placing mailboxes at all border crossings for forwarders to put certified copies of ex declarations in addressed envelopes supplied by exporters would significantly facilitate this important and complex operation. This practice has been used in EU countries for a long time. Liberalization of deadlines for submitting the documents would also be very beneficial to exporters.</li> </ul>

### **Implementation of TIR and ATA Carnet Conventions.**

#### **FBIH and RS: ISSUE**

BiH is the only country in the extended region that does not implement TIR Carnet, and one of the few countries in the region that are not signatories to the ATA Carnet Convention. Difficulties related to this issue and the costs imposed by forwarders, agents and dealers are an additional burden to the economy of BiH.

#### **FBIH and RS: RECOMMENDATION**

BiH would have to implement the TIR Carnet Convention it signed. The Ministry of Foreign Trade and Economic Relations should immediately prepare the documents required to ratify the ATA Carnet agreement and start implementing it.

### **Automation of the Process of Awarding ECMT Licenses.**

#### **FBIH and RS: ISSUE**

The award of ECMT licenses is not fully transparent at the moment, in part due to the fact that the present regulation does not include a specific formula for the license award.

#### **FBIH and RS: RECOMMENDATION:**

The Ministry of Transport and Communications should amend the regulation in order to formulate the entire process of awarding an ECMT license through the use of algorithmic award software. This would prevent discretionary award of licenses and would ensure full transparency.

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>• Issuing and Recognition of Certificates in Countries in the Region and EU</li> </ul>	<ul style="list-style-type: none"> <li>• In this respect, additional efforts should be made to ensure that at least the neighboring countries (BiH, Croatia, Serbia, Montenegro) start mutually recognizing certificates issued by competent national institutions, to avoid duplication or multiplication of the certification procedure</li> </ul>	<ul style="list-style-type: none"> <li>• BiH Ministry of Foreign Trade and Economic Relations</li> <li>• Institute for Accreditation of BiH- BATA</li> </ul>
<ul style="list-style-type: none"> <li>• CUSTOMS AND ISSUES EXPORTERS FACE IN CLEARANCE:               <ul style="list-style-type: none"> <li>o Waiting for the green lane – often takes too long</li> <li>o Short office hours of the customs offices and the obligation to provide the CP form two hours before the end of office hours for approved exporters</li> <li>o Too high price for correcting a CD (very often due to a trivial technical error)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>o Automation of the ASYCUDA system should enable automatic clearance through the green lane after 45 min</li> <li>o Organize customs operation 0-24h (or at least 7-21), especially in light of in-house clearance, and shorten the deadline to provide the form to 0,5-max 1 hour before the end of office hours</li> <li>o Reduce the price to a reasonable level (KM 2-5)</li> </ul>	<ul style="list-style-type: none"> <li>• BiH Indirect Taxation Authority</li> <li>• BiH Indirect Taxation Authority</li> <li>• BiH Indirect Taxation Authority</li> </ul>

KEY ISSUE	KEY RECOMMENDATION	KEY INSTITUTION
<ul style="list-style-type: none"> <li>o Individual payment of duty for each export generates additional bank charges</li>   <li>o Collecting a copy of 3 ex declarations stamped by competent authority at a border crossing and submitting it to the competent institution is a complicated procedure, especially for large exporters.</li> </ul>	<ul style="list-style-type: none"> <li>o Allow collective complete monthly declaration for those who have the status of an approved exporter or at least collective payment of all duties on a single payment slip when submitting documents for the complete declaration</li>   <li>o Placing mailboxes at all border crossings for forwarders to put certified copies of ex declarations in addressed envelopes supplied by exporters would significantly facilitate this important and complex operation. This practice has been used in EU countries for a long time. Liberalization of deadlines for submitting the documents would also be very beneficial to exporters</li> </ul>	<ul style="list-style-type: none"> <li>• BiH Indirect Taxation Authority</li>   <li>• BiH Indirect Taxation Authority</li> </ul>
<ul style="list-style-type: none"> <li>• Implementation of TIR and ATA Carnet Conventions</li> </ul>	<ul style="list-style-type: none"> <li>• BiH would have to implement the TIR Carnet Convention it signed. The Ministry of Foreign Trade and Economic Relations should immediately prepare the documents required to ratify the ATA Carnet agreement and start implementing it</li> </ul>	<ul style="list-style-type: none"> <li>• BiH Ministry of Foreign Trade and Economic Relations</li> </ul>
<ul style="list-style-type: none"> <li>• Automation of the Process of Awarding ECMT Licenses</li> </ul>	<ul style="list-style-type: none"> <li>• The Ministry of Transport and Communications should amend the regulation in order to formulate the entire process of awarding an ECMT license through the use of algorithmic award software. This would prevent discretionary award of licenses and would ensure full transparency.</li> </ul>	<ul style="list-style-type: none"> <li>• BiH Ministry of Transport and Communications</li> </ul>



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