

# LABOUR

## THE LABOUR RELATED REGULATIONS

### CURRENT SITUATION

During 2009 there have been important changes in labour related regulations since a number of new regulations came into force while some of the already existing ones have been changed. Namely, the General Collective Agreement signed in April 2008 (hereinafter: the GCA) had its validity extended upon all employers in the Republic of Serbia as of February 11<sup>th</sup> 2009 based on Decision on its extended application adopted by the Minister for Labour and Social Policy, dated February 3<sup>rd</sup> 2009. The new Law on Foreigners applies in Serbia as of April 1<sup>st</sup> 2009; the new Law on Professional Rehabilitation and Employment of Persons with Disabilities came into force on May 23<sup>rd</sup> 2009 (except for provisions on obligation of employers to employ certain number of persons with disabilities, which have been postponed for one year i.e. will be effective as of May 23, 2010). The new Law on Employment and Insurance in Case of Unemployment came into force also on May 23<sup>rd</sup> 2009. Also, with the business development and inflow of foreign investments, the local companies have more opportunities to work aboard. In relation to that it is necessary to modernize currently valid Law of Protection of Citizens of Federal Republic of Yugoslavia at Work Abroad ("FRY Official Gazette", No. 24/98 and "RS Official Gazette", No. 101/2005 and 36/2009 - the last version with amends from this year is effective since May 23<sup>rd</sup> 2009). We note that certain companies use the services of staff leasing agencies whereby the concept of staff leasing is not regulated, but is tolerated in practice.

### POSITIVE DEVELOPMENTS

The state recognized the importance of regulating the labour related issues and adopted several new laws as noted in previous section.

The new Law on Foreigners regulates requirements regarding entering, residing and transit through Serbia of foreigners in accordance with EU standards, and so it provides for 4 different types of visas (Visa A, B, C, D), 3 types of residence

(up to 90 days, up to 1 year, permanent residence), possibility of determining that citizens of certain countries may reside in Serbia for 90 days at maximum just on basis of passport or ID card without obtaining temporary residence permit, longer term for applying for temporary residence permit (90 days as of arrival to Serbia) new measures and fines in case of illegal residing etc.

The new Law on Professional Rehabilitation and Employment of Persons with Disabilities has been adopted for a purpose to improve employment status of persons with disabilities, considering that vast majority of the individuals is not working and prescribes measures and activities intended to integrate these individuals into the working environment.

The new Law on Employment and Insurance in Case of Unemployment sets the Government's role in defining annually the employment policies, their financial framework, and categories of population with priorities at seeking employment.

As for the Law of Protection of Citizens of Federal Republic of Yugoslavia at Work Abroad, since 1998, there have been specific alterations made toward reconciliation with provisions of other positive regulations, which partly or entirely regulate part of issues which are pursued by this regulation.

The Labour Law has been amended in Article 116 so to enable employers to send employees to paid leave also in case of decrease in volume of work without employees' fault, for longer than 45 working days per calendar year with the consent of Minister for Labour and Social Policy. It is expected that this change shall result in decreased number of employment terminations due to interruption in work or decrease in volume of work.

### REMAINING ISSUES

#### The General Collective Agreement (GCA)

The extended application of GCA has been the subject of serious criticism by employers who are not members of the Association of Employers that signed the agreement, due to the following reasons: (i) agreement of two parties can be extended to a third party which did not participate in it which creates additional legal uncertainty in already unstable Serbian market; (ii) such extended application gave to the GCA legal

force of a law without undergoing the regular parliamentary procedure for adopting the new law; (iii) the decision on extended application is of political nature, and it is questionable if the legal requirements for its adoption have been met; (iv) content of the GCA which is not in line with the principles of modern market economy (e.g. determining base salary based on coefficient and minimal price of work etc.).

The General Collective Agreement provides more favourable rights to employees in comparison with those set out in the Labour Law on several issues, as well as the duties of employer that are in no relation to protection of employees' rights, such as:

- The GCA mandates calculation of base salary by using the coefficient for the specific work (obsolete method which existed under the old law), as well as restrictions in respect to the term of application of the negotiated base salary for the most simple work (six-month period at the maximum) and its amount (the newly negotiated amount cannot be lower than the previously agreed amount). Such provisions can create problems in practice for the employers who do not have collective agreements or a union, and it seems that based on these provisions, the employers are not allowed to offer annexes to employment contracts to employees regarding reduction of the base salary (even if the employer faces financial difficulties);
- The obligation of the employer to inform the trade union on various issues, such as: annual report on the business operations of the company, on the profit and distribution of profit, information on paid salaries, etc. that have no connection with protection of employees' rights;
- The employer may offer minimum wage only in case of difficulties in business operation and for only up to 6 months during the calendar year, whereby it has to pay back to employees the difference up to the full salary (within 9 months);
- In the case of redundant employees, the minimum severance payment is 1/3 of the employee's salary, or 50% of the average salary in the Republic for each full year of service, whichever is more favourable for the employee (please note that this specific provision is rather unclear and different interpretations are possible). Also, the GCA provides for detailed criteria for determination of the employees whose employment shall be terminated in case of redundancy;
- Termination of employment due to lack of working skills and work results is much more complicated and time consuming and entails forming an employees' committee competent to decide on the alleged lack of working skills and work results;
- Employers are obliged to provide 0.15% of the payroll costs per month for prevention of disability and recreational holiday of their employees (application of this financial provisions has been postponed for unknown period of time);
- The GCA sets out an extensive list of events which may trigger the employee's right to paid leave, as well as additional criteria for increase of annual leave duration;
- Certain salary items are paid at an increased rate compared to the rates set out in the Labour Law: work on a non-working day - 120% of the base salary; night work - 30% of the base salary; allowance for previous years of service - 0.5% for each full year of service, etc. The application of these financial provisions has been postponed for unknown period of time;
- Food allowance is set at the minimum amount of 15% of the average salary in the Republic; allowance for annual leave in the amount of 75% of the average salary in the Republic; field work daily allowance in the amount of 3% of the average salary in the Republic (application of these financial provisions has been postponed for unknown period of time); food allowance during business trips in the country in the amount of 5% of the average salary in the Republic etc.; daily allowance for business trip in the country in the amount of 5% average salary in the Republic;
- The GCA mandates reporting of vacant job position to NES although such obligation does not exist under the new Law on Employment and Insurance in Case of Unemployment;
- The GCA provides for the employers' obligation to insure employees for the case of death, work related injury and decrease or loss of work capacity. It is not clear how to apply this provision, bearing in mind relevant provisions of the Law on Occupational Safety and Health and past interpretation of this law by the competent bodies that this obligation shall not be applicable until this type of insurance is regulated by a separate law.

### The Law on Professional Rehabilitation and Employment of Persons with Disabilities

The Law is terminologically uncoordinated with special laws it refers to which can create practical problems in identifying persons with disabilities.

The assessment of work ability of a person with disabilities (for the purpose of this law) is performed in the PSF and the resolution on assessed work ability is issued by the NES. It is highly probable that such division of competence will result in a longer work ability assessment procedure.

Each employer having at least 20 employees is obliged to employ a certain number of persons with disabilities from May 23<sup>rd</sup> 2010 (if it has between 20 – 49 employees – 1 person with disability; employer with 50 or more employees - 2 persons with disability and one additional person with disability for each next 50 employees). If the employer fails to do so, it will be obliged to pay penal amount of triple minimum salary for each person with disability the employer failed to employ. Certain categories of employers are exempted from the obligation of employing persons with disabilities (recently established employers, employers participating in financing the salaries of persons with disabilities and employers that fulfil financial obligations arising from certain agreements they have concluded with this company).

### The Law on Foreigners

The Government has still not adopted all bylaws necessary for application of this law. In addition, the law does not apply in full in practice, but only partially (e.g. Visa type D cannot be obtained outside Serbia, but foreigner has to apply for temporary residence when he/she comes to Serbia etc.). The new "white card" has to be obtained every time when the residence permit is prolonged event if the address is not changed.

### The Law on Employment and Insurance in Case of Unemployment

In general, the provisions of the Law regulating employee's rights and compensation amount in case of unemployment are set more restrictively than by the previous law. Unlike the previous law, the Law does not envisage the right to pecuniary compensation in case of consensual termination of employment.

### The Law on Protection of Citizens of Federal Republic of Yugoslavia at Work Abroad

Terminology of the Law is not wholly consistent with terminology of the Labour Law and other positive regulations, which evokes dilemmas which act or acts an employer is obliged to use in order to regulate the matter of relegation of employees to temporary work abroad. Employer's obligation to regulate certain issues concerning relegation of employees to temporary work abroad with official documents or some other acts, including way of selecting an employee for work abroad, is very complexly set, vague and misadjusted to contemporary concept of work and labour relations.

Employer's obligation to advise competent Ministry of Labour and Social Welfare that conditions are met to relegate employee to temporary work abroad 30 days before the relegation, as well as to deliver complete documentation to the Ministry including evidence on paid taxes and contributions, highly slow all the activities of the Employer and it practically results in impossibility to perform activity abroad not only fast, but also not in a compatible term. Further, the Ministry is entitled to demand additional documentation and the term is proceeded. The procedure before Ministry last for 60 days at an average. Without any evidence that information is rendered to the competent Ministry and that the Ministry ascertained that conditions are met, health insurance for employees which is valid abroad cannot be provided through Health Insurance Fund of RS, in accordance with regulations of RS.

### The Labour Law

Since, apart from the change in Article 116, the Labour Law has not been amended in respect to the issues previously detected by the FIC as problematic, we remain at the comments given in the previous editions of the White Book and here we reiterate just the most prominent issues:

- Issues in relation to employment of foreigners: temporary employment limited to one year is mandatory which can be insufficient in practice; obtaining business visas and temporary residence permits is an excessively complicated and time consuming process even under the new Law on Foreigners; each transfer of funds abroad by foreigners entails gathering a large number of documents and evidence that need to be submitted to the bank;

- Pursuant to the current law and GCA, the calculation of salary is more complex than the previous calculation and the payroll list has to be signed by the employee which can be very technically complicated in practice;
- Salary compensation for absence during sick leave, national holidays, annual leave, paid leave etc. is calculated on the basis which represents the average salary in the three preceding months (Articles 114 and 115). In case of high one-off payments in one month (such as annual bonuses) such salary compensation could be substantially higher than the salary itself if the employee had not been absent. Additionally, this results in employers' failure to plan their budget;
- Generally, the employment related paperwork and records that should be kept with each employer are overly voluminous;
- An employee whose employment contract is terminated due to unsatisfactory work performance and/or lack of required knowledge/abilities is entitled to notice period in duration between 1 to 3 months, depending on the total number of years of employment service. The GCA makes this termination even more complicated by mandating formation of committee competent to decide on the alleged lack of working skills and work results;
- An employer is obliged to issue a decision regarding annual leave at least 15 days prior to date the requested annual leave would begin which is usually not possible in practice;
- It is not possible for persons on maternity leave to return to work on a part-time basis during the leave and achieve proportional maternity benefits;
- The level of contributions to the regional chambers of commerce which are calculated on the gross salary level varies throughout Serbia which complicates the introduction of a unified payroll calculation system for companies employing individuals throughout Serbia;
- Certain categories of employees cannot be unilaterally terminated as redundant by the employer even if they consent to the termination (pregnant woman, woman on maternity, childcare leave or special childcare leave, trade union representatives);
- The business trip in the country is not defined by the law;
- The law allows employer to offer annex to employment contract only in cases listed in Article 171 which do not encompass all practical cases when it is necessary to sign the annex.

## FIC RECOMMENDATIONS

Because the regulations listed in the above text are considered particularly important and vital for attracting and maintaining foreign investments, the FIC has a number of suggestions on how to improve the situation.

### The GCA

The extended application of the GCA should be put out of force due to the reasons listed above. If not, here are the recommendations whereby they under no circumstances mean that employers-members of FIC agree with the GCA.

- The coefficient system for determining base salary should be left out the GCA as obsolete and non-practical.
- We suggest deleting Article 55 of the GCA which provide for employer's duty to inform trade union on the certain business issues since the issues are related to the business operations of the company, vast majority of the issues represents trade secret and they are in no relation to employees' status.
- There should be no limits in respect of payment and duration of minimal salary. Otherwise, the employers could be sent off in bankruptcy.
- Clarify the severance payment provision in case of redundancy; simplify criteria for determining redundant employees;

- In case of professional inadequacy there should be no need to form committee but employer can evidence the reason for termination in other suitable manner.
- The employer should be entitled (not obliged) to provide means for prevention of disability and recreational holiday of its employees at any amount it finds suitable or agrees about with the union without setting mandatory minimum and the fund should be kept with the specific employer.
- Outside the cases mandated by the Labour Law, employers should have freedom to provide employees with paid leave and increase in annual leave in cases and duration agreed with the trade union, specific employee or at the sole discretion.
- Since there is no duty to recruit thorough NES, employer should have the right to announce vacant job position, but it does not have to be obliged to do so;
- The GCA obligation to insure employees for the case of death, work related injury and decrease or loss of work capacity should be coordinated with the same obligation provided by the Law on Occupational Safety and Health.

#### The Law on Professional Rehabilitation and Employment of Persons with Disabilities

- The law should be terminologically coordinated with special laws in the area;
- The work ability assessment and issuance of resolution on assessed work ability should be performed by the same body in order to shorten the procedure. We would suggest assigning the procedure to a competent body other than PSF considering that PSF already has significant volume of work;
- We believe that more efficient manner for achieving the higher employment rate of persons with disabilities would be stimulating employers to employ such persons by way of beneficial measures (e.g. lower income tax and social contribution rates, financial means granted by the state etc.) rather than punishing them for non-compliance. In addition, there are business activities for which performance it is practically impossible to employ a person with disability (construction etc.).

#### The Law on Foreigners

- The Government should adopt all bylaws necessary for application of this law as soon as possible in order to make the law operational. Enhance practical application of law and make sure that it applies in full in practice. In case the address has not been changed, it should not be necessary to obtain new "white card" when extending the residence permit.

#### The Law on Protection of Citizens of Federal Republic of Yugoslavia at Work Abroad

- The Law should be modernized, attuned with terminology of the Labour Law and other relevant regulations and adjusted to new business terms. Since new possibilities are opened up for localized companies to perform series of jobs abroad through their employees, fast mobility of employees should be provided, together with reduction of administrative obstacles and needlessly long procedures. Alternative is to suspend this Law and regulate by the Labour Law essential issues connected to protection Serbian employees at work abroad.

#### Staff Leasing

- The concept if staff leasing should be regulated by a separate regulation which would govern all important issues in

respect to this (relation of employer and individual, employer and service user, employee and service user, occupational health and safety etc.).

### The Labour Law

- We believe that additional decreases in labour expenses are necessary in order to boost the employment rate and reduce the so-called “moonlighting.” This can be accomplished through either further reductions of the income tax rate and the income amount exempt from taxation, or by a reduction in social security contributions;
- The changes in the area of employment for foreign citizens must contribute to a positive environment for foreign investments, such as the temporary work permit time limits should be extended to 3 years, the procedure of obtaining business visas and temporary residence permits should be made far less complicated and time consuming and the procedure for transfer of funds abroad by employed foreigners should be simplified;
- We suggest that salary compensation during absence due to sick leave, national holidays, annual leave, paid leave is due in the amount of base salary increased by seniority;
- Employment related paperwork should be simplified by introducing electronic delivery of documents and electronic data bases and implementation of the electronic signatures rules. In relation to that paragraph 5 of Article 122 of the law should be deleted;
- In case of professional inadequacy there should be no need to form committee but employer can evidence the reason for termination in other suitable manner. The dismissal period should not be longer than 15 days;
- Amend the Law to reduce the deadline for issuing the annual leave decision to 5 days prior to the commencement of annual leave or even less in specific cases. In dynamic, fast-changing work environments, such as foreign companies, annual leave is often agreed upon on short notice, especially when it comes to management;
- The employment regulations should provide for the possibility of persons on maternity leave to start working on a part time basis during the leave and achieve maternity benefits on a pro rata basis;
- The contributions to regional chambers of commerce should be unified throughout Serbia;
- The employees protected from termination based on redundancy should have the right to give their consent to such termination, in which case they would be entitled to unemployment benefits;
- The business trip in the country should be defined as any trip outside the place of work made at employer’s request and for the purpose of performing certain job. However, such trip should not be construed as business trip if the nature of employee’s job position entails frequent trips outside the place of work (e.g. professional drivers, regional sales specialist etc.);
- Stipulate that outside the cases listed in Article 171, annex to employment contract can be signed also in other cases, based on mutual agreement of the employer and employee.

## HUMAN CAPITAL

### CURRENT SITUATION

Labour market in Serbia is showing the same trend as the rest of the economy- it has shrunk. In order to reduce expenses, many companies have decided to reduce their headcount. The Government had to balance between growing budgetary deficit and companies' needs to receive support through salary tax incentives which could help to control or slow down downsizing processes. However, comparing to previous years, number of unemployed citizens of Serbia has officially been increased by more than 2%.

In such circumstances, unlike in previous years and only due to a decreased demand, supply of qualified workforce has been improved, especially of fresh college graduates.

In times of crisis and economic downturn, human capital becomes increasingly important. Although the demand on the labour market has been reduced, and therefore there are less job opportunities, retention of key personnel is in the focus of HR professionals more than ever, as this is the key to survive the crisis. Therefore, mature companies tend to defend their high-potentials even more, and it's still difficult to find both suitable and immediately ready candidates to take over important strategic positions in companies.

Mindset of young people, entrants to the Serbian labour market is changing with time. They pay more and more attention to the companies which will provide them with up-to-date functional knowledge and trainings, which they were not able to get as a part of their formal education. Also, the mobility of young people is increasing, slowly but surely. There are many companies with very good business practice and solid reputation outside Belgrade, and young people are increasingly ready to move in order to work for them. However, Belgrade remains the most attractive location for young people to live at. There is also a risk for "brain-drain", as many young people wish to leave and work outside the country.

There are certain changes in the education system. Universities and colleges are now in a competitive market, and most of them recognized this fact. They started with changes in

order to position themselves as well as possible with regard to their competitors. Serbia has introduced the Bologna Process which will surely bring positive changes to the education system. Still, not many faculties are able to provide practical knowledge, which obliges the companies to invest significant funds in education and training of hired fresh graduates.

### POSITIVE DEVELOPMENTS

The Serbian Government has introduced some proactive measures in the crisis times. When it comes to human capital, Ministry of Economy and Regional Development has launched initiative to sponsor employment of 10,000 apprentices, which was very well accepted by the business community as well as the young graduates.

Ministry of Youth and Sports has brought National Youth Strategy, which was adopted by the Government. Main aim of the strategy is youth activism and their participation in all social processes. Young Talents Fund has granted more than 2,200 scholarships, number of active Municipal Youth Offices was increased from 5 to 88, over 43,000 young people were engaged in different activities, such as different projects, entrepreneurship training etc. Main aim of all these activities is to raise employment capacity of young people and to motivate them to stay in Serbia.

Implementation of the Bologna Process has been rated with mark of 3,8 which ranks Serbia as 24 out of 46 countries that implemented Bologna Declaration.

Department of Occupational Health and Safety from the Ministry of Labour and Social Politics has continued their efforts to promote safe and healthy working environment, by facilitating different activities, such as campaigns, seminars, trainings, meetings etc. Work on transposition and implementation of European OH&S standards has continued in 2009.

### REMAINING ISSUES

Minister of Labour and Social Politics has extended validity of General Collective Agreement to all employers in Serbia. This extension has two main implications. First, values that are promoted in GCA are obsolete, and many parts of the Agreement are not referring to employees' rights at all, and still, they are

being imposed to all companies in Serbia. Second, GCA creates additional burden to all employers in Serbia, which could be counter-productive in the crisis and could lead to either reduction of salaries, or even headcount reduction in those companies which are not able to spend more money in labour costs. This extension has been rated quite negatively by the business community, both in Serbia and abroad, because it decreases predictability of the legal framework in Serbia, which can discourage potential investors.

Grey and black labour market in Serbia has increased in 2009. Since there are a number of companies which aren't paying their obligations to the State, in order to cover budgetary deficit the Government is occasionally announcing new salary taxes. This would affect those employees whose companies are paying all their salaries and appropriate taxes regularly. Instead of additionally burdening them, it would be more effective to reduce grey and black labour market by increasing Labour Inspection activities in the field.

Development of human capital is one of the most important tasks, it has very broad implementation on country's progress, and therefore all stakeholders should be devoted to it. Nowadays, quality and structure of work force on the market could make a difference in company's decision to invest in certain country.

The Education system still has to be improved and better connected to business community. By doing so, the gap between education and competency requirements of companies would be reduced, and image of Serbia as potential investment location would be improved.

Negative demographic trends should also be mentioned. Population of Serbia is getting older, right now Serbia is ranked 6<sup>th</sup> among countries with oldest population in the world. Also, population is getting more and more grouped in the northern part of the country. The Government has recognized these trends, but the situation hasn't been improving. This situation will further reduce chances of certain parts of Serbia to attract new investments.

### FIC RECOMMENDATIONS

- Detailed revision of the Labour Law is needed in order to balance most important interests of employees, employers and the State, which would bring more stability and predictability to the labour issues. This revision could only be done in social dialogue between all relevant stakeholders, and through reaching consensus in the most important issues;
- The Government should stop extension of the GCA for all employers who are not members of the Serbian Association of Employers;
- Positive measures which stimulate employment should be continued;
- Education system should be improved. Regular contact between FIC and the Government, ministries of Education and Youth, as well as with the universities, is crucial for that. Business community and FIC members are ready to provide support and expertise;
- Continue joint proactive engagement of the FIC and Ministry of Diaspora in order to attract highly skilled and educated workforce currently abroad, to return to Serbia.