



27 May 2016

## **Progress report of FICIL's recommendations on Investment Protection**

### **1. Assessment of the current situation and retrospect to the progress achieved**

Sustainable business environment bound by the rule of law is one of the fundamental cornerstones of investment protection. Year upon year the FICIL has been issuing recommendations intended to improve the quality of business and investment framework, and although a lot has been accomplished over the several past years, movement towards further improvement and quality of the system is essential.

#### **1.1. Fully or partly implemented recommendations**

Many of the recommendations proposed by the FICIL in its previous position papers have already been implemented, wholly or partially and thus have improved the Latvian investment environment. The following are just a few examples.

- **Amendments to the Civil Procedure Law**

Major amendments have been adapted to Civil Procedure Law designed to bolster the discipline of parties to a civil proceeding, by reducing delays and postponements, introducing stricter requirements to submission of evidence, etc. The length of proceedings has been reduced by extensive use of written proceedings in several categories of civil cases (including appeal proceedings) and diversified approach to application of State stamp duties.

Amendments to Civil Procedure Law have improved the conduct of communications between parties to a civil proceeding by use of declared place of residence and additional address (if any) for correspondence purposes, and by implementing a procedure for submission of electronic documents and evidence, signed by means of secure electronic signature.

- **Improving the means of alternative dispute resolution**

The quality of alternative dispute resolution has been considerably enhanced, primarily, thanks to introduction of new laws on arbitration and mediation proceedings. In addition, pursuant to FICIL request, requirements to qualification of arbitration judges have been made more stringent. Certain requirements to founders of arbitration courts and arbitration awards included in the previous position papers of the FICIL have been partially incorporated into the Law on Arbitration Courts. The right to access documents electronically has also been implemented.

- **Enhancing authority of courts**

Several proposals on the enhancement of authority of courts and court judgments have been partially implemented. The validity, substantiality and adherence by judgments to the principles of justice and fairness are attained through the holding of professional trainings, conferences, discussion panels and other continuous professional development of judges, judicial employees and state officials.

Uniformity of court practice is ensured by making court judgments accessible to public. A new analytical department of the Supreme Court was created with the aim of digesting practice of the court and issuing periodical summaries. In addition, the recommendations of FICIL were taken into account to balance out the workload of national courts by delegating the handling of certain litigations to courts facing a lesser workload.

## **1.2. Recommendations in progress**

A part of recommendations (in particular, the recommendations expressed in the latest position papers) may be regarded as undergoing a review. They are presently being examined by governmental authorities and are made part of various future policy initiatives.

- **Enhancing protection of shareholders' rights**

The recommendations include improvement of the legal framework governing procedures dealing with shareholder registers, protection of shareholders' rights and enforceability of shareholder agreements as part of statutory provisions of the Commercial Law. All of these proposals have been included into the Action Plan on Improvement of Business Environment for 2014-2015.

- **Introducing of attorney process in civil proceedings**

In an effort to improve the quality of judicial system in general, the Ministry of Justice is involved with introduction of mandatory legal representation before the courts of first and second instance.

Some other matters have not been addressed or implemented, for instance, the matter revolving around the legal effects of arbitration clauses in assignment agreements.

The FICIL Investment Safety and Protection Working Group continues its work on the path of elaboration of the necessary and preferred modifications to the regulatory framework currently in force and promoting the importance of a consistent and predictable law enforcement, to ensure a level playing field safeguarding and protecting the interests of investors and improving the business environment in Latvia in general.

## 2. Matters that need immediate attention

Based on the above considerations the FICIL Investment Protection Group has been concerned with the available possibilities for improvement of the general investment protection environment in Latvia and in doing so, finds it appropriate to advance the following:

- 1) conclusions and recommendations towards improvement of efficiency of the judicial system (including recommendations with respect to procedural law); and
- 2) the necessary amendments intended to address specific practical problems arising in the area of commercial law.

## 3. Recommendations:

The FICIL Investment Safety and Protection Group has reached conclusions and come up with recommendations regarding the necessary changes and suggestions concerning legislation and its enforcement intended to improve the business environment in Latvia.

These conclusions and recommendations are as follows:

### 3.1. Conclusions and recommendations in the area of commercial law:

- Improved maintenance of records related to capital shares. Maintenance of electronic registers of shareholders should be permitted. The possibility to delegate maintenance of electronic registers of shareholders of limited liability companies and registers of shareholders of joint-stock companies to a third party (institution) should also be introduced. The mechanism whereby a third party (institution) would be responsible for electronically recording all transfers of title to capital shares would serve to attain the purposes of shareholder rights' protection.
- More flexible legal framework covering capital shares of limited liability companies. The FICIL proposes to develop the provisions of Commercial Law applicable to capital shares of limited liability companies (for instance, allowing for share categories). The law needs to be updated to develop options of using the limited liability company form towards conduct of holding company activities or special purpose vehicle activities (with respect to project finance or investment).
- Simplified reorganisation regulations. In the opinion of the FICIL, the regulatory framework governing company restructurings (reorganisation) could be simplified. The waiting periods set forth by the Commercial Law with respect to conversions of limited liability companies into joint stock companies could be reduced. This is particularly true in light of the fact that no harm would arise to creditors or other stakeholders of a company as a result of change of company form.
- Relaxed restructuring requirements for group companies. The restructuring procedure itself may need to be relaxed with respect to acquisitions as a form of restructuring, in the instances where the entire share capital of the target company is owned by the acquiring company.

- Introduction of electronic system of records related to capital shares, which would facilitate creation of pledges and other encumbrances over capital shares and enable maintenance of electronic shareholder registers.
- Establishment and recognition of a uniform “mirror signature” practice. There is a need for establishment, recognition and application by the State institutions of the so-called „mirror signature” practice, whereby each party can sign an identical copy of a document with a notary.
- Rational use of electronic documents and digital signatures. In the opinion of the FICIL, there should be established a process of transition to a more rational use of digital signatures, allowing the use of digital signatures to sign all files (objects) comprised in EDOC containers.
- Recognition and regulation of shareholder agreements. The FICIL takes the view that there is the necessity of amendments to the Commercial Law establishing a set of rules governing the validity, legal effects and enforceability of shareholder agreements, along with other aspects of such agreements.
- Revision of restructuring regulations. The provisions of the Commercial Law requiring that transactions by a company subject to restructuring be recorded on the books of the acquiring company from the moment specified in the restructuring agreement should be revised.
- Regulations accommodating start-up companies. In addition to the possibility for establishment of companies with reduced amount of share capital and eligible for microenterprise tax, further administrative measures and tax incentives are needed to accommodate the interests of start-up companies involved in manufacture of high added-value products and supply of high value-added services.
- Public access option to shareholder registers of joint stock companies. The making of shareholder registers publicly accessible (in the event if company Articles of Association provide for that) would facilitate creation of pledges and other encumbrances over capital shares in joint stock companies. The public at large would have an opportunity to check the legal status of a particular shareholder and capital shares held by the shareholder.
- Duly authorised persons may also sign the shareholder’s registry. According to the Commercial Law, the Board is the only body authorized to sign shareholder register. The Commercial Law stipulates no exceptions from this rule. For these reasons, a change of company shareholder may prove to be impossible if the Board is reluctant to make an entry or update the shareholder register accordingly. It is, therefore, recommended that other duly appointed and authorized individual(s) should have the authority to do so.
- Liability for unjustified refusal to make an entry or update to shareholder register. The Commercial Law stipulates liability of Board members for unjustified refusal to make an entry or update to shareholder register. The Commercial Law should extend these provisions to apply to joint stock companies and stipulate liability for unjustified refusal to make an entry or update to shareholder register of a joint stock company.

### 3.2. Conclusions and recommendations in the area of procedural law:

- Amendments to the State system of stamp duties and litigation expenses. To help reduce the relatively high amount of courtroom disputes, attorneys involved in administrative disputes should be entitled to compensation of costs. Moreover, the determination of the amount of stamp duty should be driven by the nature of dispute, including as to whether the dispute concerns pecuniary interests.
- Fostering circulation of electronic documents. The manner for conducting communications between courts and litigants needs to be improved, in order to enable more efficient and transparent case reviews. Digital communication and circulation of courtroom documentation in electronic form is, therefore, recommended for courts and litigants alike.
- Opportunity for plaintiffs to seek securing of a claim with a court or judicial authority in the country of their residence. The FICIL sees it as a necessary step toward improvement of the regulatory framework in the area of procedural law to enable the bringing up of claims for security in disputes adjudicated on the merits in courts of a different jurisdiction.
- Protection of debtors in non-contentious enforcement proceedings. The FICIL draws attention to the necessity to elaborate amendments to the Criminal Law ensuring comprehensive regulation of the rights and obligations of owners of property affected by criminal proceedings, ensuring the protection of legitimate interests of property owners.
- Improved cooperation with Money Laundering Prevention Authority. Further regulation is necessary to ensure that, whenever Money Laundering Prevention Authority conducts an investigation and criminal charges are likely to be brought up against a specific individual, company or organization, the victims should be notified of the fact of ongoing investigation in a regulated way.
- Acts by court bailiffs towards enforcement of court judgements adapted in EU member states in accordance with the European Parliament and Council Regulation 1215/2012. Whenever bailiffs seek enforcement of court judgments, without regard to applicable recognition procedures, a voluntary compliance notice will usually be sent out following seizure of funds on bank accounts of a defendant. Because of this, foreign investors in Latvia may incur losses and suffer as a result of lengthy proceedings necessary to recover the funds transferred for the benefit of a plaintiff. It would, therefore, be appropriate to limit the powers of bailiffs.

### 3.3. Conclusions and recommendations to improving efficiency of the judicial system:

- Publication of all court judgments electronically. In order to maintain consistent and uniform court practice and promote public trust and confidence in the judicial system, there should be established a comprehensive and efficient means of gaining access and conducting search in respect of all court rulings (including those of the Supreme Court) powered by reliable and modern search engines.
- Solutions for improving overall qualification of judges. There should be introduced a uniform state examination aimed at enhancement of legal qualification; the present system for the appointment of judge candidates to available judge vacancies should undergo a re-assessment.

- Sharing of best practices among State institutions. The quality of court judgments should be improved not only at the level of courts but also at the level of law enforcement and, primarily, the police. Law enforcement is the forefront representative of the national legal system. Quality, predictability and transparency of judgments, along with public perception of judgments, could be improved by means of interactive training, recognition and sharing of best practices among State institutions.
- Comprehensive adherence to the “apply once” principle. The requirement of submitting all information to State and governmental bodies in the form of duplicates should be repealed.
- More proactive operation by Advisory Council of the Register of Enterprises. The Advisory Council does exist, however proactive measures should be taken to restore its operation, so as to foster the development of Register of Enterprises functionality, support, and uniform practice in the application of law.
- Compensation in civil proceedings. The FICIL observes that no damages or other compensation is set by law with respect to harm caused to a party (defendant or third party), whose “illegal proceeds” have been seized; we, propose introduction of amendments to the Criminal Procedure Law addressing the matter.
- New regulations for holders of property. The FICIL proposes to elaborate new regulations which would establish a legal procedure for the appointment of holders/custodians of assets, the scope of their rights and obligations, a mechanism for monitoring of their activities, and liability for failure to fulfil (or improper performance) of duties assigned to them.
- Amendments to the Criminal Procedure. There is a necessity of amendments to the Criminal Procedure Law, including with regards to comprehensive regulation of the scope of rights and obligations of owners of property affected by criminal proceedings, aimed at protecting the legitimate interests of such owners.