YUGOSLAV FOREIGN INVESTMENT LAW – A NEW ATTITUDE?

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In November 1988 Yugoslavia made important amendments to the Federal Constitution, which signalled a departure from present economic and political policy in that the Constitution now:

a) allows different forms of ownership over means of production and introduces western style companies, hitherto unknown to the socialist system.

b) provides for diminishing state control of the economy.

c) enshrines the principles of further strengthening of the market economy which should enable Yugoslavia to participate more successfully in international trade.

All these far reaching changes, particularly those in respect of ownership and control over means of production, signify a fundamental departure from the basic socio-political tenets of social property and self-management. The reason for such changes must be sought, economic crisis aside, in the realisation that Yugoslavia, along with many other socialist states, is unable to lessen the gap between its industrial development and that of the capitalist states without help from foreign investment.

1. Službeni List No.70/88.
Yugoslavia was one of the first socialist states to introduce foreign investment, although not without great socio-political debate. The first federal law on foreign investment was passed as early as 1967 and subsequently Yugoslavia changed this law in 1978, 1984, 1986, and as recently as 1988. All these numerous enactments represented a more and more liberal approach towards foreign investment which culminated in the latest legislation, introducing radical changes: i.e., it allows western style companies to be used as the vehicle for foreign investment.

Since the introduction of foreign investment twenty-two years ago, Yugoslavia has not been successful in attracting foreign capital in any significant measure, partly due to the fact that successive laws have not given the prospective foreign investor enough business and legal security. For twenty-odd years the Yugoslav system has allowed only one form of foreign investment: the foreign investor concluded a joint-venture contract on the basis of which he invested in a domestic work organisation, that owned and managed it as a social property. This meant that the foreign investor lost his rights of ownership since the investment became part of social property and subject to self-management rights of the workers. Foreign investors had certain rights in decision making but only to the extent that it did not conflict with the workers' right to manage the enterprise. Although in practice the Workers Council did take into account foreign investors' requests, a foreign investor was legally denied the right of decision making in the highest decision making forum — the Workers Council.

All the laws, including the present law, have guaranteed the foreign investor the right of return of his investment, the right he had hitherto to secure for himself in the joint-venture contract. He equally had the right to share in the profit, which was calculated according to the legal requirements for domestic enterprises and was therefore subject to heavy social deductions and taxation. The foreign investor had the right to transfer eventual profit but the exercise of this right was rather uncertain, due to unstable foreign-exchange laws and lack of foreign currency reserves.

2. Law on Foreign Investment Službeni List No.77/88.