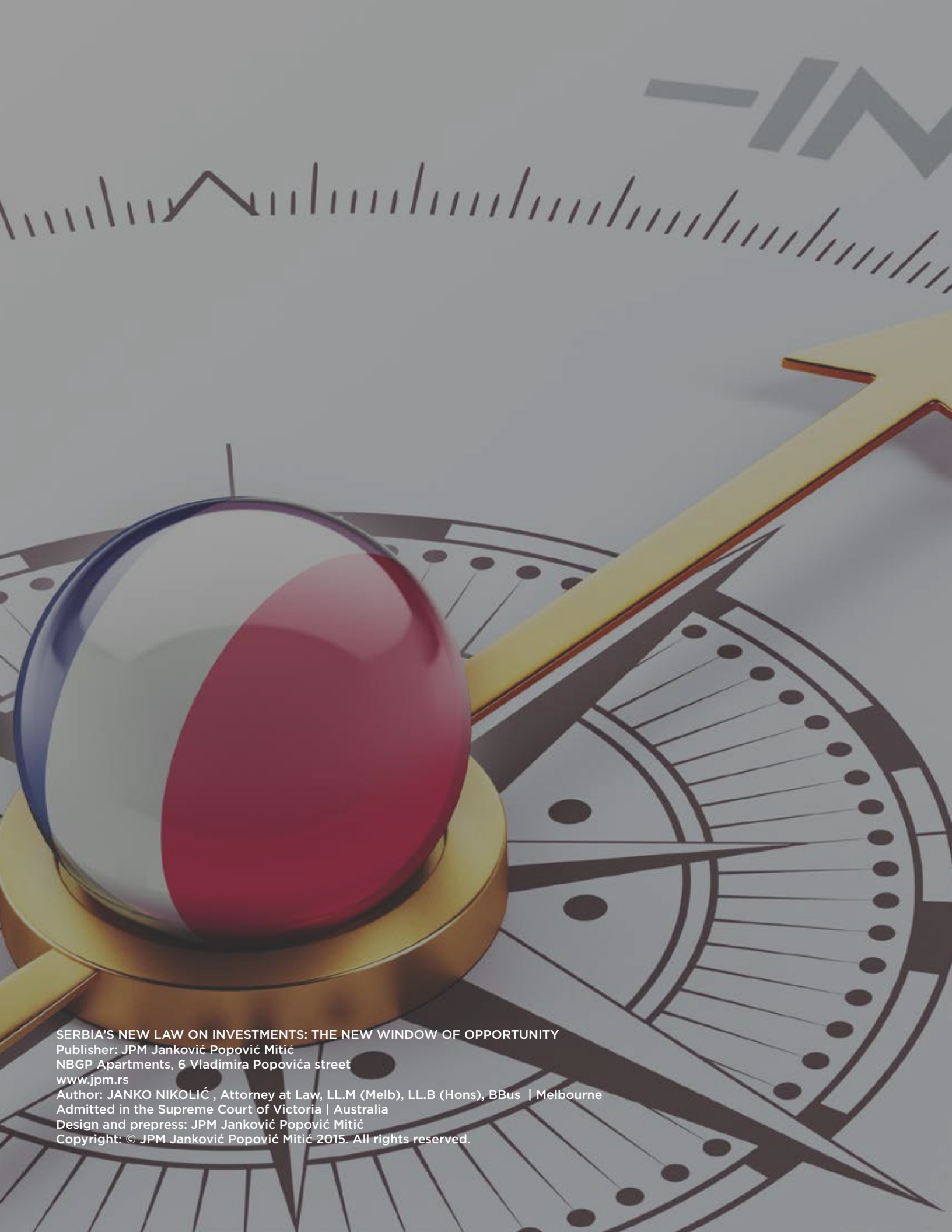




**SERBIA'S
NEW LAW ON
INVESTMENTS :
THE NEW WINDOW
OF OPPORTUNITY**

JPM

JANKOVIĆ POPOVIĆ MITIĆ



SERBIA'S NEW LAW ON INVESTMENTS: THE NEW WINDOW OF OPPORTUNITY

Publisher: JPM Janković Popović Mitić

NBGP Apartments, 6 Vladimira Popovića street

www.jpm.rs

Author: JANKO NIKOLIĆ , Attorney at Law, LL.M (Melb), LL.B (Hons), BBus | Melbourne

Admitted in the Supreme Court of Victoria | Australia

Design and prepress: JPM Janković Popović Mitić

Copyright: © JPM Janković Popović Mitić 2015. All rights reserved.

After number of consultation rounds with relevant institutions and professional bodies, having undergone both parliamentary and media scrutiny, followed by the acceptance of an amendment relating to a contentious provision in its original version, the Draft Law on Investments was passed by the Serbian Parliament on October 23rd. (“the Law”)

The accepted amendment to the disputed Article 24 is now incorporated in the Law and provides that access to information of public importance in relation to investments is realised in accordance with law governing free access to information of public importance. In that regard, the earlier envisaged discretionary right of the Government to decide whether or not information is to be disclosed, and which has caused some concerns, appears to have been diminished.

Although an objective evaluation of the Law and its material investment provisions has been overshadowed to a degree by the debate on Article 24, the Law on Investments provides number of significant changes to the investment framework in Serbia.

The aims of the Law are set out in Article 2 of the Law:

- Enhancing investment environment in Republic of Serbia;
- Providing stimulus to direct investments, aimed at strengthening economic development, employment growth and general social welfare;
- Providing for equal treatment of foreign and domestic investors;
- Attaining improved efficiency and improving service delivery by public authorities with respect to investments;
- Creating more attractive business environment for foreign and domestic investors alike

The Law categorises investments based on importance in two categories:

- Investments of special importance for Republic of Serbia
- Investments of local importance

The criteria used for categorisation of investments are:

- Number of jobs created
- Investment type and amount
- Impact of an investment on Serbia’s Balance of Trade (BOT) and impact on individual industries and targeted export markets
- Duration of an investment
- Creation of high value or high added value by an investment
- Demonstrated credibility and references provided by an investor

THE NEW INVESTMENT FRAMEWORK

The Law abolishes Law on Foreign Investment as a whole, as well as Chapter VIII of Foreign Trade Law and Articles 27-30 of Law on Regional Development.

The Law makes it practically mandatory for a state authority (through one of its investment support entities i.e. 'investment support subjects' (as defined in Part IV of the Act) to actively assist an investor.

The investment support subjects as set out in the Law include: Ministry of Economy, Council for Economic Development, Development Agency of Serbia and Autonomous Provinces and local municipalities, including Units for Local Economic Development and Investment Support, being dual development/investment support operational units of Autonomous Provinces and local municipalities.

Obligations are now imposed on an Authority at a municipal/provincial level to establish a project team to assist an investor and to prepare an investment plan for an investor, containing a complete list of documents that an investor needs to submit in order to obtain all necessary permits and documents necessary for making an investment.

Council for Economic Development ("the Council") is to be formed pursuant to Article 25, as the Government body tasked with monitoring investments, economic development, granting State investment support, providing investment incentives and reporting annually on its results and findings to the Government. All functions of the Council requiring provision of professional expertise, technical knowledge and administrative tasks are wholly delegated to and performed by Development Agency of Serbia.

Development Agency of Serbia is now given mandate to execute professional, operational and development functions associated with direct investments, export promotion and economic development. Ministry of Economy performs oversight functions in respect of matters relating to the Agency and its work.

The Law importantly provides for unification of functions previously exercised by Serbian Investment and Export Promotion Agency ("SIEPA") and National Agency for Regional Development. Development Agency of Serbia takes over roles, functions and responsibilities previously within the professional domain of SIEPA and National Agency for Regional Development. Hence, SIEPA and National Agency for Regional Development are to be abolished no later than 120 days from the Law entering into legal force.

WHAT IT MEANS IN PRACTICE?

According to the Law, all investors may successfully realise a range of investment incentives, in line with separate Acts governing State Support, Tax and Customs Relief Measures.

The new framework sets out duties and responsibilities of Council for Economic Development, Development Agency of Serbia, Autonomous Provinces and local municipalities.

It appears that one of the aims of the Legislator was to effect proactive communication, collaboration and coordination between a municipal/provincial authority and an Investor, aimed at reaching a mutually beneficial investment success story.

Pursuant to the Law there is a duty of a municipal/provincial authority to jointly (with an investor) identify investment pre-requirements and timeframes and ensure uninterrupted and urgent processing of all documents relating to issuance of permits and public authority documents, which essentially means providing practical, on-the ground assistance to an investor. In that regard, Articles 22 (Formation of a Project Team) and 23 (Investment Program) of the Law provide new practical solutions to assist an investor at a municipal/provincial level. These provisions impose number of obligations onto municipal/provincial authorities, reinforced further by Article 16 (Duty of an Authority and Urgency of Conduct), stating that an urgent processing obligation is imposed on a municipal/provincial authority.

In addition, Article 18 stipulates that if a municipal/provincial authority fails to act in accordance with Article 16, an investor has the right to lodge a complaint to Development Agency of Serbia. This Agency is in turn obliged to assist an investor by verifying allegations contained in the investor's complaint and to act within the scope of its authority as set out in Article 36, so to rectify proven contraventions of Article 16. In that regard, Development Agency of Serbia must inform an investor of its findings no later than 15 days after receiving a complaint from an investor.

A NEW WAY FORWARD

By conducting a legislative overhaul of the investment framework in Serbia, the Parliament's intention appears to have been making an attempt to provide practical and tangible assistance to potential investors which is certainly commendable. By introducing novel provisions on project teams and investment plans, by imposing duties and responsibilities on relevant authorities and making grievance redress mechanisms available to an investor, the new Law has potential to become an investment game-changer for Serbia and the region.

As a cautionary remark, the previous experience in Serbia tells that many well-conceived laws and regulations have failed, or only partially succeeded, due to inconsistent practical application, lack of political will, frequent changes in political structures and non-negligible incompetency of public servants.

Taken as a whole, the overall impact of the Law remains to be demonstrated in practical application and measured by new levels of investment following its implementation. The Law is too vital for Serbia's economic development to be applied arbitrarily or to become a casualty of damaging political considerations and compromises. To realise full potential of the Law, as impressively stated in its aims, the Authorities tasked with its implementation will need to adopt highly proactive, highly impartial and highly professional approach to its implementation.



JPM JANKOVIĆ POPOVIĆ MITIĆ
NBGP Apartments, 6 Vladimira Popovića street
11070 Belgrade
Tel: +381 11 207-6850, Fax: +381 11 207-6899
E-mail: office@jpm.rs, Online: www.jpm.rs



JANKOVIĆ POPOVIĆ MITIĆ