Position Paper No. 6

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The FICIL's Position Paper on the Availability and Quality of Labour Force

1. Executive Summary

In this Position Paper on the Availability and Quality of Labour Force, the FICIL concludes that the shortage of a labour force in Latvia has increased, moreover, not only at the level of highly qualified specialists. There are still shortcomings in the legal framework and problems with opportunities of starting up a business in the regions, where there is a higher level of unemployment, therefore higher reserves of a labour force.

The FICIL wishes to emphasise in particular the acute shortage of a labour force in Latvia and the urgent need to solve the associated problems.

In the previous FICIL Position Paper on Availability and Quality of Labour Force prepared in 2015, the signs indicating a shortage of a labour force were already noted, as well as known problems with the legal framework and regional development.

2. Recommendations

The FICIL presents the following most critical matters and recommendations for making the workforce more accessible and developing the environment for investors:

1. **Making the workforce more accessible**

1.1. Promoting regional employment and regional development

The FICIL considers that regional employment may be promoted in two ways – by facilitating the attraction of a labour force from the regions to the cities, especially to Riga, and by supporting the economic growth of the regions themselves.

The high tax burden makes the attraction of a regional labour force to the cities economically unviable, especially in the categories of a lower paid workforce, who cannot afford to rent apartments in the cities.

The FICIL recommends that the government adopts changes in the regulatory enactments related to tax prescribing that the employer's contribution towards employees residing in the cities and for transport costs for travelling to work and back home to the regions shall not be considered to be taxable income of the employee. To support regional employment, the FICIL recommends that the government develops a support programme for entrepreneurs, who organise their economic

activities outside the largest cities in Latvia or have developed a system for employing the regional workforce in the cities.

1.2. Attraction of a labour force from third countries

In situations where employers have an acute shortage of a workforce in various skill level professions, the Latvian state should also consider the need to bring in foreigners, with the emphasis on attracting a workforce from third countries (outside the EU/EEC/Switzerland).

The FICIL recommends reducing the bureaucratic hurdles in the cases specified in this paper, which hinder the attraction of a labour force from third countries.

In order to mitigate the acute labour force shortage in several industries, where there is a shortage of lower qualified employees, the FICIL recommends that the means required by foreigners be reduced, setting it at a level no lower than the average gross remuneration for foreigners in the following employment sectors:

- Hospitality sector (hotels, restaurants etc.)
- Agriculture;
- Transportation by road;
- Construction;
- Logistics;
- Retail trade (insofar as a knowledge of the State language is not required to perform work duties).

1.3. Support for remigration

Although remigration is not an immediate solution for the acute shortage of a labour force in the state, the FICIL feels however, that this solution has greater potential in the long-term, if members of the Latvian diaspora regularly return to Latvia to a permanent place of residence. In order to promote the remigration of Latvia's diaspora, the FICIL recommends the following actions:

- Defining the priorities of the remigration plan and increasing the funding allocated thereto
- Measures involving the diaspora
- Strengthening public-private partnerships to encourage remigration

2. Formation of an environment appropriate for the creation and development of businesses, promoting the establishment of an appropriate infrastructure

Improvement of the infrastructure is required in order to attract investments and a labour force, including the construction of modern office buildings, the development of service hotels (hostels) and construction of new service hotels. The FICIL recommends supporting the development of the respective business fields:

- by supporting business demands for service hotels (waiving the requirement to pay PIT and social taxes for employees' rent expenses);
- by promoting offers to infrastructure developers (by way of co-financing or tax relief and public-private partnerships).

3. Organisation and improvement of regulatory frameworks

The FICIL recommends making changes to regulatory frameworks in matters related to employment, ensuring a regulatory framework appropriate for the modern, dynamic labour market environment. The FICIL has determined non-elasticity of the regulatory framework, which does not comply with market requirements and reduces the competitiveness of Latvia among its nearest neighbours. The FICIL recommends the following amendments to regulatory enactments:

- Limitations on the employer's liability in cases of distance working

- Reduction of extra payments for overtime work
- Reduction of the restrictions on the termination of an employment contract of a member of a trade union
- Extension of the rights of an employer to withdraw from restriction of competition
- Rights to receive unemployment benefit in parallel to compensation for restriction of competition
- Recovery of expenses for raising the qualifications of employees
- Revocation of the prohibition for terminating the employment contract of an employee with a disability
- Changes in respect of defining the time period for compensation for forced absence of work

3. Rationale for recommendations

The FICIL refers the government of Latvia to the acute shortage of a labour force in Latvia. According to the latest data of the Central Statistical Bureau, in the 3rd quarter of 2017, the unemployment level continued to drop, reaching the 8,5% mark.[1] The natural growth rate of the population of Latvia is still declining, moreover it is tending to decrease according to the Central Statistical Bureau's data.[2] The low birth rate indicators mean that the population group aged between 15-29 years continues to decrease at a rapid rate. For example, in 2010, there were 136 225 members of the population aged between 15-29 years, but in 2017, there were only 85 799. The same trend can be seen in the age group 20-24 years; in 2010, there were 163 497, but in 2017, just 102 510.[3] This data proves that in future an increase of the labour force, based on the natural growth rate of the population, cannot be anticipated. The government of Latvia should accordingly take the appropriate steps today, to solve this problem, which will become increasingly more acute.

With the continuation of the acute shortage of a labour force in Latvia, this also negatively impacts upon the competitiveness of Latvia and attractiveness in the eyes of investors, who choose to invest in any of the other Baltic States. Reviewing long-term solutions, improvement of the demographic situation is unequivocally needed, supporting a higher birth rate. However, in this paper the FICIL offers solutions which should produce results in the foreseeable future, taking into account that employers are already encountering the problems caused by a shortage of a labour force.

The FICIL proposes the following matters as the most important ones in connection with availability of a labour force, to which the government of Latvia should pay increased attention, in order to ensure the development of the investment environment of Latvia:

1. A shortage of a labour force – a shortage of a labour force is evident, not only in the highly qualified sector, but also in the lower qualified employee sector. The current shortage of a labour force can be considered to be critical. Therefore, the FICIL recommends evaluation of matters relating to:

1.1. Promotion of regional employment and regional development;

1.2. Attraction of a labour force from third countries;

1.3. Promotion of remigration.

2. Formation of an environment appropriate for the creation and development of businesses, promoting the establishment of an appropriate infrastructure;

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[1] Central Statistical Bureau. Unemployment indicators of the 3rd quarter, 2017. available: http://www.csb.gov.lv/notikumi/2017-gada-3-ceturksni-bezdarba-limenis-latvija-samazinajies-par-04-procentpunktiem-47061.ht

[2] Central Statistical Bureau. Population – main indicators. available: http://www.csb.gov.lv/statistikas-temas/iedzivotaji-galvenie-raditaji-30260.html (only in Latvian)

[3] Central Statistical Bureau. Number of permanent residents and age structure at the start of the year (by 5 year groups). available: http://data.csb.gov.lv/pxweb/lv/Sociala/Sociala__ikgad__iedz__iedzskaits/IS0022.px/table/tableViewLayout2/?rxid=d543db7b-f122-4e1f-aced-7a7707fd86e7. (only in Latvian)

3. Organisation and improvement of regulatory frameworks.

PROMOTING REGIONAL EMPLOYMENT

The promotion of regional employment and the general regional development of Latvia should be indicated as one of the most central aspects for combating the shortage of a labour force. In other words, the unemployment level in individual regions of Latvia is high. According to Central Statistical Bureau data, the unemployment level in the Latgale region in 2017 was 14,5%, in the Vidzeme region – 9,8% and in the Zemgale region 9,5%. Concurrently, in the Riga region the unemployment rate was only 7,9%. One can conclude that there is still a labour force potential in the regions of Latvia, which employers could make use of.

The FICIL considers that regional employment may be supported in two ways –by facilitating the attraction of a labour force from the regions to the cities, especially to Riga, and by supporting the economic growth of the regions themselves.

Attracting a labour force from the regions

Taxes on household and transport expenses for a regional labour force

With regard to attracting a labour force to Riga, it must be noted that a number of FICIL members[4] are already doing this, however, employers encounter hurdles that considerably hinder the attraction of this type of labour force. Unreasonable costs, connected with the attraction of a regional labour force, as well as a shortage of appropriate living areas in the cities, are the main hurdles.

In order to attract and employ a regional labour force, entrepreneurs have to solve practical issues related to housing and transport costs for employees. Where the employer reimburses these costs to an employee, these payments are considered to be taxable income, from which the employer must withhold the personal income tax (PIT) (at least 20%), as well as making the mandatory social insurance payments (35,09%). The high tax burden makes the attraction of a regional labour force to the cities economically unviable.

With this in mind, the FICIL recommends that the government makes changes to the tax regulatory framework, providing that reimbursement made by employers to employees for their accommodation in a city (hostel, service hostel or rented apartment) and transport costs to work and home in the regions are not considered to be the employees' taxable income.

In essence, such a framework would comply with the procedure that is already applicable to official trips by employees in accordance with Cabinet Regulation No.969 of 12 October 2010 "Procedures for the reimbursement of expenses relating to official travels". The attraction of a labour force from the regions of Latvia also has similar characteristics to official trips in the territory of Latvia.

Concurrently, by applying tax relief to PIT and mandatory state social insurance contributions, it would also be necessary to provide in the Law on Enterprise Income Tax that these costs are considered to be costs related to economic activities, within the meaning of Section 8 of this law. Otherwise, the purpose of applying the tax relief would not be achieved.

The FICIL wishes to highlight the successful step of applying PIT relief prescribed in 2017, which anticipates PIT relief for the catering expenses of an employee specified in the collective agreement and paid for by the employer, not exceeding 480 EUR per year. In this way, employers can more successfully resolve the matters related to the catering for a labour force that has been brought in, however a similar framework is also necessary with regard to the accommodation and transport costs of employees.

[4] FICIL, Sentiment Index 2017, p.44., available: https://www.ficil.lv/wp-content/uploads/2017/04/Ficil_Sentiment_Index_2017_report.pdf

Regional development

The FICIL highlights the difficulties which hinder businesses from expanding their economic activities in the regions. Matters related to supporting those businesses which commence their economic activities in the regions, at least in their first years of activity, should be evaluated from the government's side.

In order to encourage interest by employers not only to "bring in" a labour force from the regions in Riga, as a number of FICIL members[5] already do, state support for businesses who organise their economic activities outside of Riga would be necessary. Some good examples of businesses financed by foreign investors who are already working in the regions are, for example, Cemex, with their production plant in Brocēni and Fortum with a cogeneration plant in Jelgava. However, taking into account the potential of the existing labour force in the regions, the government, in cooperation with the local governments, should devise solutions for supporting entrepreneurial development in the regions.

If there was support from the state for such businesses, for example, by reducing the tax burden or applying tax relief, it would be more beneficial for foreign investors to start-up businesses in the regions of Latvia. This would support the inflow of investments to Latvia, as well as the problem of regional unemployment.

ATTRACTING A LABOUR FORCE FROM THIRD COUNTRIES

Given the situation where employers have an acute shortage of a labour force, the Latvian state should also endorse the attraction of foreigners. Considering the economic situation of Latvia and the attraction of competitive employees with other EU/EEC countries, in this context, special emphasis should be placed on attracting citizens from third countries (outside the EU/EEC/Switzerland). In its report of 2018 about Latvia, the European Commission has already indicated that the shortage of a labour force may halt the economic development of Latvia.

Moreover, investors would like to make recommendations with regard to the efficiency of the services provided by the Office of Citizenship and Migration Affairs (hereinafter – OCMA).

Procedural efficiency

The FICIL has identified a number of issues both in respect of the employing of a lower-qualified labour force from third countries and the employing of a qualified labour force, which could be improved. In Annex 2 to this Position Paper, the FICIL has compiled the issues that should be resolved, in order to speed up and simplify the process of attracting a labour force by digital means, as well as removing the potentially discriminatory conditions of regulatory enactments.

Registering job vacancies with the State Employment Agency (SEA)

The FICIL rates highly Cabinet Regulation No.108 of 7th March 2018 "Specialities (professions) in which a significant lack of labour force is forecast and in which foreigners may be invited to the Republic of Latvia for employment purposes". However, the obligation to publish job vacancies on the database of the State Employment Agency (SEA) has been identified as an obstacle to employing foreigners. This obligation only prolongs the process of inviting foreigners. Moreover, at a time when there is a shortage of a qualified labour force in Latvia, the obligation to publish job vacancies is contrary to the situation of the actual shortage of specialists, as the Latvian government has also acknowledged.

Confirmation of professional experience for the acquisition of a European Union Blue Card

The FICIL calls for the government to refer their attention to and support the faster adoption of the amendments to Cabinet Regulation No.564 of 21st June 2010 "On Residence Permits" in respect of the requirements for the receipt of the "Blue Card", submitted by the Ministry of Economics.

With these regulations it is anticipated to prescribe that an employer, when formulating an invitation request for a foreigner who wishes to receive the EU "Blue Card", but does not have a higher education in the respective profession, presents proof to the OCMA regarding the professional experience of the foreigner in the profession and sector in which he or she is to be employed in Latvia. With such procedure, the attraction of a highly qualified labour force to the labour market of Latvia would be practically facilitated.

Requirement for the average gross monthly work remuneration

Paragraph 5.3 of Cabinet Regulation No.225 of 25th April 2017 prescribes that the amount of necessary financial means for a foreigner, who has a visa and the rights to be employed in Latvia, is not lower than the average gross monthly work remuneration of working persons in the Republic of Latvia in the previous year. This same income has to be ensured for a foreigner who has requested or received a residence permit in the Republic of Latvia, in accordance with Paragraph 11.4. of this regulation.

The requirement in question does not create obstacles for highly qualified professions, in which the work remuneration overall is higher than the average work remuneration in the state. However, it is difficult to fulfil this requirement with regard to lower qualified professions, in which there is also a distinct shortage of a labour force, but whose remuneration, due to objective market conditions, is lower than the average remuneration in the country.

The corresponding condition for farmers, foresters and fish farmers in the harvest season in accordance with Paragraph 5.4 of the Cabinet Regulation No.225 of 25th April 2017, cannot however be considered to be a comprehensive solution of the situation. The FICIL welcomes the fact that the new Immigration Law will already be adopted in 2019, however, the FICIL wishes to emphasises that the government should facilitate the organisation of the legal environment for attracting a labour force from third countries, also taking into account that this is a much quicker mechanism for averting the shortage of a labour force than the implementation of the remigration plan.

Observing the abovementioned, the FICIL recommends reducing the necessary financial means, specifying that it is at a level no lower than the average gross monthly work remuneration in the anticipated employment sectors for foreigners:

- Hospitality sector (hotels, restaurants etc.)
- Agriculture;
- Transportation by road;
- Construction;
- Logistics;
- Retail trade (insofar as a knowledge of the State language is not required to perform work duties).

Raising the limit of non-taxable health insurance

The FICIL recommends that the non-taxable cap of health insurance be raised, as it has not changed in years and is EUR 426,50. If the authorities of Latvia raise the non-taxable insurance cap, an employer, who employs someone from outside the Community, must cover the costs of health and accident insurance cases for this employee, as well as his or her life companion and children (if any). This cap should be raised, in order for employers to offer better insurance policies to their employees, in addition to which if an employee has a life companion and/or child/children, the employer would not have to pay social tax for them, and the employee himself would not have to

pay income tax and social tax. The employer himself would pay for the insurance itself, without burdening the state budget.

SUPPORT FOR REMIGRATION

On surveying those members and becoming acquainted with research on the shortage of a labour force, the FICIL suggests that, as one of the solutions that should receive special attention, support be offered to the diaspora that have emigrated from Latvia to return to Latvia. Research has shown that attracting remigrants could be more effective than bringing in a labour force of other foreigners, for the following reasons, among others:

- There are no bureaucratic procedures connected with attracting third country nationals (especially those outside the European Union (EU))
- Fewer problems with recognition of education/qualifications
- A good knowledge of both Latvian and English or another foreign language;
- Quite often, remigrants are prepared to work for lower salaries than citizens of other European countries (taking into account the emotional or subjective value added to returning).[5]

The main hurdles hampering the promotion of remigration that should be noted are, a significantly lower salary, as well as a lack of centralised information about employment opportunities in Latvia and support programmes for starting business activities. The level of remuneration in Latvia, with the rapid growth of the economy, is approaching a level that may make remigration measures more effective. In turn, State institutions could invest significantly by improving informative measures.

Local government support in finding and securing accommodation, information about the collation of social insurance system services in foreign countries and in Latvia and specific allocated support personnel for helping solve issues related to returning, would be useful.

The significance of reducing emigration and supporting remigration to the sustainability of Latvia's social system and economic competitiveness is unequivocal. However, there are at least three aspects which attest that the remigration policy should become one of the government's priorities straightaway.

Firstly, there are over 370,000 representatives of the Latvian diaspora living, working and studying throughout the world.[6]. Therefore, it is important to concentrate on raising the level of welfare and economic growth in Latvia, but a consistent policy should be developed straightaway, which demonstrates to potential remigrants and their children the advantages of Latvia in the global labour market.

Secondly, residents who have left Latvia gain new work experience as well as education, which would be a valuable resource for Latvia's employers and the national economy overall. The involvement of these residents and their gradual return would help ensure a labour force with international experience for foreign and local employers, ensure a transfer of knowledge and strengthen the potential for innovation.

Thirdly, the most recent remigrant surveys[7] show that remigrants improve the situation in Latvia's labour market, not only as employees, but also as employers, increasing the proportion of

[5] Inta Mieriņa, Laura Bužinska, Rasa Jansone, Provision of information on Latvia's labour market to the diaspora. University of Latvia's Diaspora and migration research centre, Rīga:2017, pg. 79. available: https://www.diaspora.lu.lv/fileadmin/user_upload/lu_portal/projekti/diaspora/petijumi/Zinojums.pdf (only in Latvian)

[6] 2016, Foreign ministry's prepared informative report on the foreign ministry's activities in the field of the diaspora between 2013-2015. Available: http://www.mfa.gov.lv/data/file/aminfo_040213.pdf

[7] Mihails Hazans, University of Latvia's Diaspora and migration research centre, "Returning to Latvia: results of the remigrant survey", Rīga, 2016.

entrepreneurs and self-employed persons. Every fifth remigrant plans to establish their own business or practice in the next 6 months, and among those who are already self-employed, this proportion is 45%. This result attests to a very high desire and potential for entrepreneurship among the potential remigrants.[8]

On becoming acquainted with the previously developed and carried out remigration support measures, and with the most recent research and surveys about remigration to Latvia, the FICIL has formulated three of the most important points, whose effective implementation is possible and critical, so that in the near future foreign and local employers could consider Latvia's diaspora not only as a resource for support, but also as realistic potential employees in Latvia.

1. **Defining the priorities of the remigration plan and increasing the funding allocated**

Now that the "Remigration Support Measure Plan 2013-2016", overseen by the Ministry of Economics, has concluded and been assessed, it is not clear which ministry is responsible for subsequently driving this policy forward. It is also unclear whether, and when, specific aims, measures and a budget to support remigration, will be formulated.

The FICIL calls for the government to continue the planning and implementation of the remigration measures, within the competence of the Ministry of Economics, as primarily, this can be regarded as a matter of the economic competitiveness of Latvia. The FICIL calls for the work to be continued and, by consulting with social partners and examining research, to continue improving the support measures, not just for those who are still considering their options for returning (the implementation of an effective "one-stop agency", consultations at state and local government level), but also for those who have returned, to help them settle in Latvia (support for learning the Latvian language, finding accommodation, finding schools and preschools for their children, and other support measures.

2. **Measures for involving the diaspora and formulation and adoption of the Diaspora Law**

The Foreign Ministry of the Republic of Latvia has defined that a unified and coordinated support for the diaspora of Latvia is one of the priorities for this year. This priority also includes the formulation and adoption of a new Diaspora Support Law this year. The FICIL supports the formulation and adoption of this law and calls for the law to be formulated in close cooperation with social partners – the Latvian diaspora organisations and organisations that consolidate remigrants in Latvia. The FICIL calls for the clear and straightforward division of responsibilities and practical tasks to be implemented, in the short-term and mid-term, to be formulated and included in the law.

3. **Strengthening public-private partnerships to encourage remigration**

Finally, the FICIL concedes that not all the solutions offered by the state are equally effective in all fields. Previously offered solutions, although considered and developed, have turned out to be heavy and ineffective. It must also be taken into account that, especially in the field of remigration, which to a great extent is linked to the trust by the population in the state and its growth, the state formulated policies may meet with a low level of response and trust.

Unequivocally, in the context of remigration the positive experiences of other remigrants would be regarded as a positive sign and persuasive argument also for others to return. The FICIL accordingly recommends that private-public partnership opportunities and solutions are used in remigration issues.

[8] Mihails Hazans, University of Latvia's Diaspora and migration research centre, "Returning to Latvia: results of the remigrant survey", Rīga, 2016.

As an additional resource in the field of education, a special school integration programme is necessary for the children of remigrants, to help them adapt to the education system of Latvia. Among other things, these integration measures would anticipate opportunities for learning the Latvian language through intensive courses, before the start of the school year. Reform and development of the general education, but in particular the higher education, systems is needed. The FICIL's recommendations in the field of education can be seen in more detail in the position paper of the FICIL's education work group.

DEVELOPMENT OF INFRASTRUCTURE

Members of the FICIL have not only established a shortage of human resources in the labour force, but also respective infrastructure problems in Latvia. That is, there is a distinct shortage of commercial space, especially office space. In order for entrepreneurs to consider Latvia as a potential place for starting a business, it is also necessary to ensure that the founding of a company is quick and straightforward. The ability to quickly find suitable commercial space is one of the aspects that is considered before founding a company.

The European Commission's 2018 report on Latvia has also indicated that regional mobility, especially in the direction of Riga, is hindered by the limited options for good quality accommodation for rent. The limited market has meant that rental costs have risen considerably. The FICIL also wishes to emphasise that there is not only a shortage of commercial space in Latvia, but also a shortage of housing stock, especially for the lower-paid employee categories, who cannot afford to rent apartments in cities. Even if an employer manages to attract employees from the regions, it is difficult and disproportionately expensive to provide them with living space. It is financially non-viable for employers themselves to maintain such social facilities as communal living spaces, and preschools for the children of their employees. Therefore, if the government wishes to encourage regional mobility, there will need to be a sufficient amount of social facilities.

In order to attract employees, the development and building of service hotels (hostels) is needed. The FICIL does not consider that the state should use only their own resources for the mass construction of service hotels, however, the state can support the development of the respective field of entrepreneurship. This can be achieved by supporting requests for service hotels (waiving PIT payments and social tax payment duties for the employee rent costs), as well as supporting the offers, such as through co-financing or tax relief.

Therefore, the attention of the government should be drawn to direct investment and promotion of investment in development of the employment infrastructure. Currently, housing and facilities are among the biggest obstacles deterring large companies from operating their business in Latvia.

For example, Ober-Haus prepared a report on the commercial premises market for the 4th quarter of 2017 which noted that, in 2018, the proportion of free premises in Class A and B office sectors will continue to fall.[9] The same is recognised in the Latio report on the office market for the 4th quarter of 2017. Namely, "there is an insufficient offer of good quality office space suitable for contemporary market requirements".[10] The rectification of the shortage of commercial space, including office space, is not a direct task of the government of the Republic of Latvia, however, the government of Latvia should support the construction process, as well as the development of the infrastructure in the commercial premises sector. Otherwise, this may result in investors losing interest in Latvia as an investment market.

[9] Ober-Haus Real Estate Advisers. Report on commercial premises, 4th quarter, 2017. Available: http://www.ober-haus.lv/tirgus-apskat/komercplatibu-tirgus-parskats-q4-2017/

[10] SIA "Biroju Tirgus", report on the 4th quarter, 2017. Available: http://latio.lv/lv/pakalpojumi/tirgus-analize/komercipasumu-tirgus/152/latio-biroju-tirgus-parskats-2017-4-ceturksnis.pdf.

The shortage of commercial space also causes an unjustified increase in the cost of rent. This also negatively impacts upon competitiveness and hinders foreign investors from choosing Latvia as a suitable place for investments and development of economic activities in Latvia. For example, in their research about the market in the Baltic States, Colliers International indicates that an increase in the rental costs for office space in Latvia is expected. In contrast, in Lithuania the trend is that the rental costs are falling (for example, for Class A offices). If comparing Latvia and Lithuania in the 2016-2017 period, there is a higher proportion of newly built premises in Lithuania, as well as the number of projects for planned office space construction.[11] Accordingly, it may be concluded that Lithuania is more appealing to investors, also from the point of view of new office space, which consequently ensures lower rental costs and a more attractive environment for investments and the founding of new companies.

The Employers' Confederation of Latvia has also marked that the development of infrastructure is one of the most important aspects that hinders the attraction of new investments. Access to infrastructure is a significant hurdle, from one point of view, for attracting new investments, but from the other point of view, also for the growth of existing business activities. This also applies to access to road infrastructure and engineering communications.[12] The FICIL also agrees that a shortage of commercial space is just one of the aspects in the matter of infrastructure development, because roads of poor quality also hinder the growth of business activities, including regional growth, which could also ensure the employment of the labour force in the regions, without "transporting" residents to the territories of Riga.

Within the context of infrastructure, the FICIL also wishes to note that the implemented tax policy has transpired to be extremely complicated and the tax burden imposed on employers may impede the competitiveness of the state. The European Commission's report of 2018 also indicates that the rapidly rising cost of the labour force is causing concerns about the competitiveness of prices in Latvia.

AMENDMENTS REQUIRED TO LAWS AND REGULATIONS

The FICIL has established that there continue to be shortcomings in legal frameworks, including those on which the social partners had not agreed during the process of formulating the latest amendments to the Labour Law, and which were repeatedly submitted to the National Tripartite Cooperation Council for review. The FICIL has determined non-elasticity of the regulatory framework, which does not comply with market requirements and reduces the competitiveness of Latvia among its nearest neighbours.

The FICIL wishes to emphasise that there may also be situations in matters of amending laws and regulations where the government must take the decision, especially in those matters which have been highlighted as problematic for many years, for example, the need for trade unions to agree in cases of dismissal, the work remuneration for overtime worked and terminating the employment contract of an employee with a disability. The FICIL therefore once again points to the shortcomings of laws and regulations in the aforementioned matters, and calls for the review of other recommendations for improving the legal frameworks.

The FICIL's recommendations for amendments to laws and regulations include the following matters (the detailed grounds for the need for the amendments and recommendations for the wording of laws and regulations are contained in Annex No.1)

[11]Colliers International. Research & Forecast Report, Latvia, Lithuania, Estonia, 2017. , available: http://www.colliers.com/-/media/files/emea/latvia/research/2017/real_estate_market_overview_2017_lq_sf.pdf?la=en-LV

[12]Employers' Confederation of Latvia. Study: Business activities in the regions in Latvia, cooperation, competitiveness". Available: http://www.lddk.lv/wp-content/uploads/2015/03/Re%C4%A3ionu-p%C4%93t%C4%ABjums_Rel%C4%ABze.docx.

1. Restrictions on the employer's liability in cases of distance working
2. Reduction of extra payments for overtime work
3. Restriction of competition
3.1. The rights of an employer to unilaterally withdraw from an agreement restricting competition following the termination of legal employment relationships
3.2. The restriction of competition regulation in the Law On State Social Insurance
4. Reimbursement of training expenses to employers
5. The prohibition of an employer to terminate the employment contract of an employee with a disability
6. Termination of an employment contract of a member of a trade union by an employer
7. Changes in respect of defining the time period for compensation for forced absence of work

THE FICIL'S RECOMMENDATIONS FOR AMENDMENTS TO LAWS AND REGULATIONS

1. Restrictions on the employer's liability in cases of distance working

The Labour Law (hereinafter – LL) prescribes the duty of an employer to ensure employees with fair and safe working conditions that are not harmful to health, whereas the Labour Protection Law prescribes in detail the duties and rights of an employer, ensuring safety at work. The employer has the duty to organise a work protection system, which, among others, includes the internal supervision of the work environment and risk assessment of the work environment. The employer must ensure the measures required for the provision of first aid, fire extinguishing and evacuation of employees and other persons.

The employer may fulfil the duties referred to only if the employee is under his or her "control" that is, working in the work space or premises indicated by the employer. In situations where an employee is distance working, outside the employer's premises, and has no fixed work station (the so-called "mobile office"), the employer has no real opportunity to assess the place of work or assess whether there are any risks. Similarly, the employer cannot ensure measures for the provision of first aid or evacuation of the employee, where the employee is located in a place unknown to or unreachable by the employer. However, formally, the duty of the employer to ensure safe working conditions that are not harmful to health and to ensure a work protection system continue to apply.

In such situations, the requirements prescribed to an employer are incommensurate and unable to be implemented. Thanks to the opportunities provided by modern technology, an increasing number of work duties may be fulfilled without the physical presence of an employee in the employer's work premises. In the case of distance working, an employee performs his work duties from anywhere that is convenient for the employee, mostly using only mobile communication devices (telephone, laptop), and he or she chooses their own location and conditions for carrying out the work. This means that more responsibility for observing regulations about work safety and health protection should rest with the employees themselves. In turn, the employer fulfils his duty prescribed by the law, organising measures and providing employees with clear instructions (for example, formulating internal regulations regarding rest periods, work with computer screens, and other issues pertinent to distance working), the subsequent observation of which the employees themselves are responsible for.

Considering the aforementioned, necessary amendments to the laws are required, to restrict the liability of employers for work safety.

We recommend the following amendments:

1) LL Section 28, Paragraph 2:

Section 28. Employment legal relationships and contracts of employment

(...)

(2) With an employment contract the employee undertakes to perform specific work, subject to specified working procedures and orders of the employer, while the employer undertakes to pay the agreed work remuneration and to ensure fair and safe working conditions that are not harmful to health. In cases of distance working, where an employee performs the work outside the premises of the employer, freely deciding his or her place of performing the work, and type thereof, the employer shall

inform the employee about safe working conditions that are not harmful to health, but the employee shall undertake full responsibility for observing the employer's instructions.

2) **Section 3 of the Labour Protection Law:**

Section 3. Scope of Application of the Law

This Law shall be applicable in all fields of employment if other laws do not prescribe otherwise. In cases of distance working, where an employer performs work outside the premises of the employer, freely deciding on his or her location and type for performing their work, the regulations of this Law shall not be applicable.

1.2. LL Section 40, Paragraph two, Clause 7 – clarification

The requirement contained within Section 40 of the LL to include in the employment contract the agreed daily or weekly working time causes the risk of ambiguous interpretation in situations where employees are employed in accordance with a work schedule with a record of aggregated working time.

In the service sector and, in particular, the retail trade sector, the aggregated working time is determined, as a great number of employees are unable to indicated the length of working time, either in days or weeks. This is determined by the condition that retail trade businesses, when planning the work schedules for their store and warehouse employees, must observe seasonality, the purchasing habits of buyers and other aspects which affect the number of employees needed at the same time, in order to ensure the normal functioning of the store or warehouse. For example, it must be taken into account that during pre-holiday periods, consumers buy more intensively, and also it must be taken into account that during morning hours consumers shop less than during the time when traditionally the working day finishes in establishments and commercial companies; nor can the impact of marketing campaigns on consumer behaviour be ignored, when the number of buyers grows as a result of advertised discounts.

Among other things, this model of working time and working time recording allows employees from further regions to be employed in the larger cities. The employer ensures accommodation for employees in the city, however, the employee's permanent place of residence is retained in the region. In such way, employees are more interested in working more hours when they have travelled to the city in which they are employed, and receive more holidays (rest time), in order to spend less time travelling from their place of residence to work and spend more time continuously in their permanent place of residence. Moreover, such a working time model allows the retail trade to employ such groups of employees who find a flexible work schedule important, for example, students.

Currently, the LL does not anticipate exceptions with regard to the information to be shown in an employment contract for those employees who are employed according to a work schedule with an accounted aggregated working time; concurrently in the FICIL's opinion the norms of the LL, taking into account the theological and systematic method, allows for the daily or weekly working time not to be defined in the employment contract for such employees.

However, in practice, there are such situations where State officials apply regulations very literally and set the requirement to indicate an accurate daily or weekly working time in the employment contract, also with regard to employees who are employed in accordance with a work schedule with an accounted aggregated working time, notwithstanding that this is not possible due to the reason described above. In such situations, retail trade businesses have to use their administrative resources in order to prove their opinion and to appeal against unjustified administrative acts.

In the situation described, for legal certainty and for the certainty of the parties involved in employment legal relationships, a more accurate and clearer legal framework should be supported, which would contain clear and unambiguous indications as to which LL norms shall apply with corrections or exceptions, in employment relations with employees who are employed in accordance with a work schedule with an accounted aggregated working time.

Therefore, the FICIL recommends that Section 40, Paragraph one, Clause 7 be reworded as follows:

"7) the agreed daily or weekly working time, or - for employees working an aggregated working time – the average number of working hours in the review period.

2. Reduction in supplements for overtime work

The FICIL recommends starting a dialogue with social partners about reducing the minimum supplements for overtime work determined by the law. Currently, in accordance with Section 68, Paragraph one of the LL, this supplement may not be less than 100 per cent of the hourly or daily wage rate or piecework pay specified for the employee.

As the current wording of the LL anticipates that the supplement for overtime work is 100 per cent of the hourly or daily wage rate or piecework pay specified for the employee, there are frequent occasions where the recording of overtime work is not even performed in compliance with the regulatory enactments, presumably because of the financial burden placed upon the employer. Unequivocally, this does not support competitiveness or the development of the business environment in the state, as firstly, a foreign investor, as an employer, has to reckon with these financial costs and, secondly, foreign investors are often placed in an unequal situation with businesses that do not carry out accounting of overtime work.

For example, in Lithuania, Estonia and Poland, the supplement for overtime work is in the amount of 50 per cent in relation to the normal work remuneration, whereas in Germany the normal work remuneration rate is applied for overtime work.

In order to support the improvement of the competitiveness of employers and the development of the business environment, it is advisable that the supplement for overtime work is reduced to 50 per cent of the employee's salary. Respectively with the offered recommendation, the regulations of Latvia would be comparable with the regulations of the other Baltic States. This would develop the competitiveness of Latvia's entrepreneurs not only at Latvia's level, but all the Baltics.

Simultaneously, the FICIL wishes to note that, in order to support the social protection of employees, the government should pay particular attention in order to ensure that employers perform the recording of overtime work carried out by employees in good faith and in accordance with the requirements of regulatory enactments. This could be achieved, for example, by organising information campaigns for employees about their rights to receive supplements for all overtime work, as well as encourage employees to notify the State Labour Inspectorate about all incidents of overtime work that are not recorded.

This would promote competitiveness among employers, as all employers would be in equal positions. Currently, employers who do not perform proper recording of overtime work use unfair advantages compared with competitors, who duly observe the requirements of regulatory enactments.

The FICIL points out that currently draft amendments to the Labour Law have been submitted to the Saeima, which anticipate that the supplement for overtime work may be set in the amount of 50 per cent, if a general agreement has been entered into in the sector. In the opinion of the FICIL such regulation is insufficient and the restriction is determinable as a general rule, taking into

account the insignificant number of general agreements in Latvia. Such a selective approach to defining the amount of overtime work remuneration does not exist in other Baltic States.

In this regard, the FICIL recommends:

1. amending Section 68 of the LL, reducing the amount of supplements for overtime work to 50 per cent.

The FICIL recommends amending Section 68, Paragraph one of the LL, using the following wording:

"An employee who performs overtime work or work on a public holiday shall receive a supplement of not less than 50 per cent of the hourly or daily wage rate specified for him or her, but if piecework pay has been agreed upon, a supplement of not less than 50 per cent of the piecework rate for the amount of work done.
An employee who performs work on a public holiday shall receive a supplement of not less than 100 per cent of the hourly or daily wage rate specified for him or her, but if piecework pay has been agreed upon, a supplement of not less than 100 per cent of the piecework rate for the amount of work done."

3. Restrictions on competition

3.1. The rights of an employer to unilaterally withdraw from an agreement regarding restrictions on competition following termination of employment legal relationships

In accordance with the wording of the current LL, an employer is entitled to unilaterally withdraw from an agreement regarding restrictions on competition only prior to the termination of employment legal relationships: in case of notice of termination by an employer – prior to or concurrently with the notice of termination, but in other cases – prior to the termination of an employment contract (the version with amendments that came into force on 16th August 2017). However, in practice, there are several possible scenarios, where it would not be fair to request that an employer continues to pay compensation, even where the employee formally observes the agreement regarding the restrictions on competition, especially in situations where the longest possible time period for restrictions on competition has been defined:

- the employer decides not to continue the respective direction of commercial activities;
- the employer is a branch of a commercial company in a foreign country, which suspends its activities in Latvia;
- the liquidation of the employer is commenced;
- the employer has changed technologies, working methods and expertise, wherewith the restriction on competition is no longer valid.

It must be noted that Section 25 of Estonia's Employment Contract Law anticipates a much more favourable solution for employers, that is, the employer has a duty to inform an employee regarding unilateral withdrawal from an agreement regarding restrictions on competition not later than 30 days beforehand, also including after the termination of an employment contract.

Considering the aforementioned, it would also be necessary to introduce a similar regulation in Latvia, by making amendments to Section 85 of the LL, prescribing a longer period of notice, in order to give an employee the timely opportunity to find a new job, if the employee has not been employed during the period of the restrictions on competition being in force. Observing the aforementioned, the FICIL recommends wording Section 85, Paragraph one of the Labour Law as follows:

"Section 85. Unilateral withdrawal from an agreement to restrict competition

(1) In case of notice of termination by an employer an employer may unilaterally withdraw from an agreement to restrict competition only prior to or concurrently with the notice of termination, but in other cases of termination of employment legal relationships – prior to the termination of an employment contract. Following the termination of employment legal relationships, an employer may unilaterally withdraw from an agreement to restrict competition, notifying the employee accordingly in writing, not later than three months beforehand".

3.2. Regulation of restriction on competition in the Law On State Social Insurance

In accordance with the Support for Unemployed Persons and Persons Seeking Employment Law, the status of unemployed person and person seeking employment and the associated benefits may be acquired by persons who among other things are not working (not regarded as an employee or self-employed in accordance with the Law On State Social Insurance). In turn, in accordance with Section 1, Clause 2, Sub-clause "o", of the Law On State Social Insurance, an employee is also a person who after the termination of the employment legal relationship has an agreement regarding the restriction of the occupational activity of the employee (restriction on competition).

It must be emphasised that the aim of restriction on competition is not protection of the employer against competition as such, which would prevent a former employee seeking other employment opportunities, but the ensuring of protection against such potential competition which is based on the protected information of an employer at the disposal of an employee. In such a way, the existing definition of an employee prevents a person, who has agreed to restriction on competition, to acquire the same support as other persons seeking employment and unemployed persons. The compensation by an employer for observing restriction of competition is not meant to provide those opportunities and benefits which the state should be obliged to provide.

Moreover, the FICIL indicates that the amount of compensation for restriction of competition is not specified in the Labour Law. In strictly applicable cases the amount of compensation could be comparatively small, for example, in the amount of 10 per cent of a person's previous work remuneration. In such situation, compensations cannot ensure the means subsistence of an employee following the termination of employment relationships, but the person cannot receive unemployment benefit.

Moreover, the current regulation places into an extremely unequal situation those employees who, following the termination of employment relationships with their former employer soon enter into new employment relationships and those employees who do not find new employment immediately. Those employees who enter into new employment relationships, in addition to their new salary, also receive compensation for the restriction of competition, but persons seeking employment are entitled only to receive compensation, without receiving unemployment benefit.

The current regulation not only restricts the rights of an employee to receive benefit from the state, but also employers to effectively apply the restriction of competition, thereby also restricting the daily activities of an employer, their rights to protection of commercial secrets and competitiveness in the market.

In order to remove this unfair situation, the FICIL recommends deleting Section 1, Clause 2, Sub-clause "o", of the Law On State Social Insurance.

4. Recovery of costs for training by an employer

If occupational training or measures for raising of qualifications are regarded as such which, according to the circumstances, are related to the work performed by the employee, yet such occupational training or raising of qualifications (for the purpose of enhancing the employee's competitiveness) does not have decisive importance for the performance of the contracted work, the employer and the employee may enter into a separate agreement on the employee's occupational training or raising of qualifications and covering the related expenses (hereinafter

– agreement on training).

The restriction provided for in Section 96, Paragraph two of the LL that employers may not recover the expenses for occupational training or raising of qualifications, if these have decisive importance for the performance of the contracted work, has no legal grounds. On the contrary, it unnecessarily delays the opportunity for employees to acquire the qualification required for work. In fact, in this situation the employees themselves suffer, as the employers do not wish to risk and pay for such type of training with no guarantee that it will be possible to recover these expenses, if the employee gives notice to terminate the employment contract. If an employer is unable to retrain existing employees in Latvia, as a result they are forced to look for a labour force abroad. Therefore, the deletion of the restriction anticipated in Section 96, Paragraph two of the Labour Law would also support the retraining of the existing labour force in Latvia instead of inviting foreigners.

Criteria are specified in Section 96, Paragraph four of the LL, which must be observed in order for the agreement between an employer and employee regarding training, which has no decisive importance for the performance of the contracted work, to be permissible. In such a way, a formal opportunity is concurrently provided for an employer to request compensation from an employee, if the criteria in question have been fulfilled. However, Paragraph four, Clause 4 of the Section in question, in conjunction with Paragraph seven of the same Section, significantly restricts the right of an employer to actually recover expenses for training. Quite often an employer is restricted so far that the opportunity for recovering expenses is not applicable or the sum to be recovered is negligible.

It is important to note that the opportunity for recovering expenses is already restricted in the Labour Law, not only in terms of amount, but also based on the type of training, that is, it is not possible to recover costs for training which has decisive importance for the performance of the contracted work, irrespective of the time period or grounds for terminating employment relationships following the receipt of this training. Thereby a situation arises where an employer, supporting the employee, invests into the training of the employee, from which the employer does not receive direct benefit, however on the premature termination of employment relationships the employer does not receive economic returns, as the training costs covered and the work salary paid during the period of training has been a greater investment than the return that the employee has been able to provide to the employer on completion of the training.

In accordance with Section 96, Paragraph four, Clause 4 of the LL, the amount to be reimbursed shall not exceed 70 per cent of the total amount of expenses for occupational training or raising of qualifications. In order for an employer to be interested in the training of employees and to undertake to cover the costs of such training, the amount of the costs to be recovered should be connected to the period of time the employee has worked, thereby reducing the risk that the employee, into whom resources have been invested to develop his or her knowledge and skills, terminates employment relationships soon after the training which has been paid for.

Concurrently, there are currently opportunities for different interpretations of Section 96, Paragraph seven of the LL. The regulation in question, among other things, determines: "If the total expenses for occupational training or raising qualifications during one year exceed the minimum salary specified by the State, the employer has the right to request that the employee reimburses to the employer the part of the expenses that exceeds the minimum salary specified by the State". In addition, there is no definition in the existing regulation of Section 96, Paragraph four, Clause 4 of the LL as to whether the 70 per cent shall be calculated from the total cost of expenses in the full amount, moreover the minimum wage is additionally deducted from the remaining amount or from the amount that is acquired from the total amount of expenses deducting the minimum wage. Taking into account that the aim of Section 96, Paragraph seven

of the LL is to ensure that an employee is not obliged to reimburse expenses in the amount of the minimum wage, then respectively when performing the calculation of the expenses to be reimbursed, in the first instance the minimum wage should be deducted from the total amount of expenses and only then the percentage calculation applied.

Wherewith, in order to ensure the opportunity to implement the options for reimbursement of training expenses, as well as support employers investing in the further education of their employees, the FICIL recommends that the following amendments be made to Section 96, Paragraphs two and four of the LL:

Section 96. Occupational training or raising of qualifications

[..]

(2) If occupational training or measures for raising of qualifications are regarded as such which, according to the circumstances, are related to the work performed or to be performed by an employee, the employer and employee may enter into a separate agreement on the employee's occupational training or raising of qualifications and the reimbursement of the related expenses (hereinafter – agreement on training).

(4) An agreement on training between an employer and employee shall be admissible only where the agreement in question corresponds to the following characteristics:

[..]

2) the term of agreement does not exceed three years, starting from the issuance date of an education document certifying the occupational training or raising of qualifications;

[..]

5. Prohibition of an employer to terminate the employment contract of an employee with a disability

Section 109, Paragraph two of the LL prescribes that an employer is prohibited from giving a notice of termination of an employment contract to an employee who is declared to be a disabled person except in cases set out in Section 47, Paragraph one and Section 101, Paragraph one, Clauses 1, 2, 3, 4, 5, 6, 7, and 10 of this Law.

The current wording of the law restricts the rights of an employer to terminate employment legal relationships with an employee who has a disability, in cases where job cuts are being made. In practice, there have been several instances where employees with a disability misuse the prohibition provided for in the LL. That is, in cases where there are employee cuts, disagreeing to amend the profession, as a result of which the employer is forced to pay these employees work remuneration, although the profession of these employees has been liquidated in the company. In such cases, employers are forced to bring the matter before the court with a claim for terminating the employment legal relationships, which is a lengthy process also requiring additional resources.

Similarly, the prohibition prescribed in Section 109, Paragraph two of the LL to terminate the employment of a person with a disability, where an employee has been reinstated, who previously performed the respective job, unnecessarily incurs additional costs to the employer. The aim of such prohibition is unclear, as a result of which the employer becomes a hostage to the situation, as it is necessary to find the employee with a disability another profession in the company, which moreover will be appropriate for his or her abilities. The prohibition prescribed in Section 109, Paragraph two of the LL to terminate the employment of a person with a disability, if this employee has not performed their work for more than 6 months due to their temporary incapacity, also does not support the inclusion of an employee with a disability in the labour market, as the

employer usually has difficulties finding a temporary employee who would be prepared to perform the duties of the employee during their period of temporary incapacity, the length of time of which is moreover impossible to predict, in the case of an employee with a disability, as the LL does not allow the termination of employment legal relationships after 6 months.

Such restrictions for the termination of employment legal relationships with a person with a disability do not exist in other European Union states (for example, there is no such restriction in Germany, Belgium, Finland, and others). At the same time, there are support measures for employers in other European Union states, in order to promote the employing of such employees, for example, in Sweden there are governmental as well as non-governmental programmes whose financing helps to adapt the work environment for such employees. In Belgium, there is a programme which provides grants for employers for their expenses in adapting the work environment, as well as covering part of the work remuneration payable to persons with a disability, related to a decrease in productivity. Accordingly, the FICIL considers that it would be necessary to focus on measures to support the inclusion of employees with a disability in the labour market and to support employers who employ such employees.

It can be concluded that this restriction causes difficulties both for employers, and employees – persons with a disability. Moreover, contrary to the initial aim, the existing legal framework does not protect employees with a disability, but quite the opposite, it deters employers from employing such employees, as employers do not wish to undertake the risk that, where necessary, it will not be possible to terminate employment legal relationships, due to the restriction prescribed in Section 109, Paragraph two of the LL.

At the meeting of the National Tripartite Cooperation Council (NTCC) on 12th April 2018 it was decided to continue the discussion at NTCC sub-council level regarding the implementation of amendments to this Section. The FICIL stresses that the need for an amendment to Section 109, Paragraph two of the LL has been emphasised for several years, moreover these restrictions are a significant obstacle to employing persons with a disability. The FICIL calls for other solutions to be sought for the protection of employees with a disability, giving up the regulation, which does not meet the initial aim and unjustifiably restricts the rights of employers.

Therefore, the FICIL recommends deleting Section 109, Paragraph two of the LL.

6. Notice of termination of an employment contract to a member of a trade union

In accordance with Section 110 of the LL an employer is prohibited from giving a notice of termination of an employment contract to an employee – member of a trade union – without prior consent of the relevant trade union. Exceptions are allowed in the following cases: (i) when giving notice during the employee's probation period, (ii) where the employee is under the influence of alcohol, (iii) in connection with the reinstatement of an employee who previously performed the work or (iv) the liquidation of the employer.

In practice, the FICIL members often meet with situations in which the employee trade unions use these rights dishonestly refusing to consent to the notice of termination of employment in cases where the employee has committed a violation or where employee numbers are being cut, or – using these rights to "blackmail" the employer, in an attempt to achieve a considerable severance pay for employees, even when the employment legal relationships are to be terminated in connection with significant violations of the employment contract.

In such cases where a trade union refuses to consent to the notice of termination of employment by an employer, the only alternative provided for in the LL is to take the matter to court, bringing an action for the termination of the employment contract. The refusal by a trade union not only causes lengthy court proceedings, but also financial losses to employers, comprised of work

remuneration, which is paid to the employee during the period of the court proceedings, as well as the costs of the trial.

The FICIL considers that currently the LL prescribes an excessively high protection level for members of trade unions. The regulatory enactments regulating employment rights in other countries, including other Baltic states, do not anticipate such a regulation in respect of any member of a trade union.

The FICIL considers that the level of protection currently defined in the LL should be applicable only to authorised officials of trade unions, who have rights and who actually represent the trade unions and the rights and interests of the members thereof in relationships with employers. Such persons are at considerably greater risk from the self-interests and unfavourable consequences caused by employers. However the respective level of protection need not be applicable to other trade union members.

Simultaneously, the FICIL considers that special protection for members of trade unions (or authorised persons) is not applicable in the case of the termination of an employment contract specified in Section 101, Paragraph one, Clause 11 of the LL, as these grounds for terminating employment relationships can in no way be related to the potential arbitrary dismissal by the employer of an employee – a trade union member (official).

The suggested amendments concurrently prescribes the duty of the trade union to justify the refusal to give consent to the termination of an employment contract, as well as prescribing the responsibility of the trade union for an unjustified refusal.

The FICIL notes that at the meeting of the National Tripartite Cooperation Council (NTCC) on 12th April 2018 it was decided to direct the amendments to this Section to the Saeima for further approval, in accordance with which consent is required for the notice of termination of an employment contract for such trade union members who have been trade union members for more than six months. The FICIL considers that such regulation is insufficient, as it does not resolve the distinct lack of balance between an employer and employee – the rights of trade union members in the case of termination of an employment contract. The length of time that an employee has been a trade union member is not important (although it reduces the risk of using the rights in bad faith), but the undue level of protection of rights as such, and the fact that the trade union is not required to justify its refusal to provide consent for the issuance of notice and there is no liability anticipated for trade unions for unjustified refusals.

In this connection the FICIL recommends:

1) restricting the additional legal protection provided for in Section 110 of the LL only in respect of elected trade union representatives, who represent the interests of employees in relationships with the employer;

2) to delete the listing of the case provided for in Section 110, where the prior consent of the trade union is required, and Section 101, Paragraph one, Clause 11 of the LL, where the notice of the employer is issued in connection with the prolonged sick leave of an employee (as in this case the only condition for the issuance of notice is the specific length of sick leave of the employee);

3) to prescribe the duty of the trade unions to provide a justified refusal in cases where the trade union of an employee does not agree with the notice of the employer;

4) to prescribe the liability of the trade union (for example, for the losses of the employer) in cases where the employment legal relationships are terminated as a result of legal proceedings, thereby determining by way of court judgment that the refusal of the trade union was unjustified.

The FICIL recommends that Section 110 of the Labour Law be worded as follows:

"Section 110. Notice of termination of an employment contract to an authorised official of an employee trade union,

(1) An employer is prohibited from giving a notice of termination of an employment contract to an employee – an authorised official of an employee trade union within the meaning of Section 13 of the Trade Union Law – without prior consent of the relevant trade union except in the cases set out in Section 47, Paragraph one and Section 101, Paragraph one, Clauses 4, 8, 10 and 11 of this Law.

(2) The employee trade union has a duty to inform the employer of its decision in good time, but not later than within seven working days from the receipt of a request from the employer. If the employee trade union does not inform the employer of its decision within seven working days it shall be deemed that the employee trade union consents to the employer's notice of termination. The refusal of a trade union to consent to the notice of termination of an employment contract must be justified.

(3) An employer may give a notice of termination of an employment contract not later than within one month from the date of receipt of the consent of the employee trade union.

(4) If the employee trade union does not agree with the notice of termination of an employment contract, the employer may, within one month from the date of receipt of the reply, bring an action in court for termination of the employment contract. If the court satisfies the claim of the employer regarding the termination of the employment contract by a judgment which has become final, the trade union, that has unjustifiably refused to consent to the termination of the employment contract, shall reimburse the losses incurred by the employer, including the work remuneration for the employer during the period of the court proceedings".

7. Changes in respect of compensation for the determination of forced absence

In the 2014 annual report of the Supreme Court "*On application of the law, on settlement of disputes in court that are related to the termination or amending of an employment contract"*, it is explained that compensation to an employee for forced absence from work may only be recovered for the period from the day of dismissal recognised as unlawful to the day of the settlement of the dispute in court, if during this time period the employee has not worked for another employer. In turn, if during this time period the employee has worked for another employer for lower work remuneration than in the previous job (from which he or she has been unlawfully dismissed), for the respective time period the difference in the average earnings earned by the employee from another employer and the income that he or she could have earned from his or her previous employer if he or she had not been dismissed from work to the benefit of the employer, may be recovered.

Although recently the courts have consistently recognised this judgment, on encountering such claims, businesses face practical difficulties and problems applying the court judgment in question, which leads to an unfair outcome in all matters which are reviewed in the employee's claim for compensation during the period of forced absence.

In the first instance, not all businesses are familiar with this court practice. As a result, taking into account that the court has no obligation itself to determine the information regarding the income of the employee during a period of forced absence, or, by observing the principle of adversarial proceedings, prescribed by the Civil Procedure Law, when determining the amount of compensation adjudged to the employee for the period of forced absence, the employee's earnings which have been earned during the period of forced absence from another employer, are not taken into consideration in all cases.

Secondly, the acquiring of information regarding the income of an employee from other employers during the period of court proceedings means a considerable use of resources. That is,

a company has to request that the court requests this information from the employee or the State Revenue Service. Consequently, the court has to delay the examination of the case. In such a way, the court proceedings are unnecessarily delayed, which incurs additional costs to the employee, court and company and lengthens the period of legal uncertainty in respect of the matter to be resolved in the case pending.

Thirdly, there are difficulties acquiring the most up to date information. For example, evidence (information regarding other income of an employee during the court proceedings) must be submitted to court at least 14 days prior to the court hearing; the court reaches a final judgment within one month of the date of the last court hearing, etc. From the moment that the information is acquired regarding alternative income of an employee until the moment that a final court judgment is made, the amount of the income received by the employer has already changed. Thereby, in the court judgment, when specifying the compensation to be paid to an employee in the amount of the period of forced absence, for practical reasons it is not possible to take into account the actual income of the employee from other employers. As a result, an unfairly large compensation is recovered from the company for the period of forced absence, which also includes a part of the compensation which the employee has already received (from another employer). As a result, the employee receives this part of the compensation in twice the amount.

It should be taken into account that in Latvia's neighbouring states – Lithuania and Estonia – the regulation regarding this issue is clearly defined in the laws analogous to the LL of these states.

For example, in Estonia, in the case of dismissal of an employee there is only a very limited category of employees (employee representatives, pregnant women, employees on maternity leave) that may request to be reinstated to their job as such. Moreover, if such employee, in accordance with a court judgment is reinstated in their former position at work, the income (work remuneration or income that the employee has earned on the basis of a service contract) that the employee has earned during forced outage is deducted from the compensation due to them for forced outage. This is provided for by Section 108 of Estonia's Labour Law.

In turn, in Lithuania, a general limit for compensation has been set, that an employee is entitled to receive as compensation for not working during a period of forced outage – in the amount of 12 monthly salaries of the employee (Section 2018 of Lithuania's Labour Code). In addition, in accordance with the practice of Lithuania's Supreme Court, other income earned by an employee during the period of forced outage is deductible from the compensation to be paid to the employee for not working during a period of forced outage.

In order to rectify this unfair situation, amendments need to be made to Section 126 of the LL, with the following wording in Paragraphs two and three:

Section 126. Compensation for forced absence from work or for performance of work of lower pay

"(2) An employee who has been transferred illegally to other lower paid work or an employee who, during the period of forced absence from work has earned other income for remunerated work or service provision to another person on the basis of any other contract and is afterwards reinstated in his or her previous job shall in accordance with a court judgment be disbursed the difference in average earnings for the period when he or she performed work at lower pay.

(3) The court, prior to making a judgment of a case, shall obtain from the State Revenue Service information regarding the income of an employee during a period of forced absence, referred to in Paragraph two of this Section, and in accordance with the court judgment the difference in average earnings for the period of forced absence shall be reduced by the amount indicated in the notice of the State Revenue Service."

ISSUES DETERMINED BY THE FICIL FOR IMPROVING THE EFFICIENCY OF ATTRACTING A LABOUR FORCE FROM THIRD COUNTRIES

1. Improving the efficiency of electronic services

The FICIL emphasises that nowadays the use of electronic services is becoming increasingly more widespread. Therefore, state authorities should also facilitate the ability to provide their services online. Although currently there is an option to submit OCMA documents electronically, that is, signed with a secure electronic signature, the FICIL calls for the government to find solutions for the establishment of a unified digitalised system, which would reduce the need for attending in person at the OCMA and make the procedure of attracting a labour force more efficient.

Within this system, the FICIL recommends ensuring the following functional options:

a. Submission and initial processing of invitations online.
b. The option of companies registering on an online system, so that the OCMA would have access to signatory rights (authorisation) etc. In this way, OCMA employees would be able to effectively check the conformity of a company and the authorisation with the requirements of regulatory enactments for the attraction of a labour force.
c. A form which has an automatic control function, that is, it is not possible to submit an invitation if the offered remuneration is lower than the minimum defined for the respective position.
d. The opportunity to check online with the OCMA if an employer has any tax or mandatory social contribution debts, and whether the relevant payments have been made for an employer in the amount specified by regulatory enactments.
e. A more simplified process which OCMA must perform in order to identify the corresponding advertisement published on the SEA. Currently, an OCMA consultant has to check online, by surveying a considerable number of advertisements. The rights of the OCMA to perform the respective automated check could be determined in regulatory enactments.
f. An option to make payments on an online payment processing system.
g. The annual invitation "renewal" online, also including the option to register the promotion of an employee online without having to repeat the entire registration procedure.

2. The possibility of allowing unpaid leave for an attracted labour force

Paragraph 87 of Cabinet Regulation No. 564 "Regulations regarding Residence Permits", prescribes that in the event that the foreigner's stay in the Republic of Latvia is related to employment or a business activity, or the foreigner is a self-employed person, the authority shall check information regarding payments of personal income tax and state social security contributions and the amount thereof. The personal income tax and mandatory state social security payments must be paid from the income specified by the foreigner when submitting the documents to apply for a residence permit.

In the presence of such a procedure, citizens from states outside the Community have no practical opportunities to receive unpaid leave (for example, training leave) without leaving the territory of Latvia, as in such situations their income for the specific time would be lower than the amount of monthly income indicated.

It is significant that according to the practice of OCMA, this legal provision does not differentiate the total annual amount of income and is equally applicable to the foreigners who receive the

minimum permitted salary and those who receive several times more. During the unpaid leave, no personal income tax and no social security contributions will be paid in respect of the foreigner, as a result whereof the requirement of Cabinet Regulation No. 564 that they must be paid from the income specified in the documents for receipt of a residence permit will not be met.

To prevent this inequality among the citizens of Latvia and EU/EEA and residents of third countries, the FICIL proposes to amend Paragraph 87 of the Cabinet Regulation No. 564 providing that the OCMA has a duty to verify whether during the year the personal income tax payments and social security contributions for the foreigner have been made in the amount which is not less than the minimum payments which must be made for the foreigner within a year. Such provision would prevent the possibility to exercise the rights in bad faith, at the same time eliminating discrimination of foreigners.