



**USAID**  
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**BOSNIA-HERZEGOVINA**

# CORE TRAINING MODULES FOR COLLATERAL LAW

USAID FOSTERING AN INVESTMENT AND LENDER-FRIENDLY  
ENVIRONMENT (FILE)

Contract #PCE-I-00-98-00015-00, Task Order #821 of the GBTI IQC

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development of the United States Government.

Submitted to:  
U.S. Agency for International Development

Submitted by:  
Chemonics International, Inc.  
Emerging Markets Group, Ltd.  
National Center for State Courts

## Introduction

Attached please find the Core Training Modules for Collateral Law pursuant to Section VI(A) of Task Order Number 821 and the workplan covering the same period. USAID's Fostering an Investment and Lender-Friendly Environment ("FILE") project has prepared the attached training modules for Collateral Law ("Core Modules") to serve as basic training module for all trainees.

These Core Modules, which include training materials on the Law on Enforcement, Civil Procedure Code, the Law on Notaries and a Glossary of Terms, serve as examples of FILE's approach to training. In this regard, each Core Module was designed to provide the trainee with in-depth knowledge of the subject matter. Further, the larger training modules contain flow-charts and indices to assist trainees in understanding the materials.

These Core Modules will be supplemented by additional modules at such time as the new Laws are enacted. We anticipate the following additional Core Modules:

- Law on Obligations
- Law on Property
- Law on Pledge Registry
- Creditor's Manual
- Business Package for Courts

# **Law on Enforcement Procedure Execution Against Real and Personal Property**

## **I. Introduction**

This document provides an in-depth analysis of the Law on Enforcement Procedure (“Law”) as it pertains to enforcement against real and personal property. It is based on the Law as it was enacted by Parliament on July 8, 2003, and the commentaries to the Law prepared by the Honorable Asaf Daupovic, Judge of the Sarajevo Municipal Court I. It is intended to give the reader a strong understanding of the basic procedural issues raised by the new enforcement scheme as it affects the foreclosure on real and personal property.

Before proceeding, it may be important to note what this document does not cover. This document does not cover employment issues, the enforcement of claims on bank accounts, enforcement against shares of stock or other registered securities, or, enforcement to satisfy non-monetary claims. Due to the detail of these particular areas, they will be covered by separate training materials.

## **II. Scope of Law**

The Law governs the procedure pursuant to which the courts of the Federation of Bosnia and Herzegovina (hereafter the “Federation”) enforce claims on the basis of enforceable and authentic documents, (hereafter “executive procedure”), unless such procedures are otherwise covered by a separate law. In this regard, the provisions of the Law do not apply to executive procedures, such as the proceedings for securing claims that are governed by the Law on Civil Procedure, or the enforcement provisions in bankruptcy, which are governed by the Law on Bankruptcy.

## **III. Basic Provisions**

### **A. Submissions and Hearings<sup>1</sup>**

The court shall act in accordance with submissions, pleadings and court filings. The Law contains specific provisions for scheduling specific types of hearings, but also grants the court the discretionary authority to schedule hearings when warranted. To avoid unnecessary delays in the process, the absence of one or both parties and/or participants at a hearing shall not prevent the court from acting.

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<sup>1</sup> Law on Enforcement Article 9

## **B. Notice and Service of Process**

### **1. Personal Service Required<sup>2</sup>**

Court writs are served according to the rules on delivery set forth in the Law on Civil Procedure, which limits the types of documents that must be personally delivered. These include:

- decision on motion for execution;
- decision on objection against the decision on execution;
- decision on pronouncement of fine; and,
- the conclusion on investigation of judgment debtor's assets.

### **2. Substitute Service Permitted<sup>3</sup>**

The Law provides an exception to the general rule requiring personal delivery in cases involving execution based on enforceable documents, when the party to whom the writ is to be delivered is neither at the address given in the motion, nor at the address, or seat, registered at the relevant body.

In such cases the writs shall be posted on the court notice board, even in cases when personal service is usually required. This provision was added to address the all too common situation when defendants would conceal their residence, or take other actions to avoid service, thereby stalling the executive proceedings considerably with the ultimate result of their dismissal.

## **C. Composition of the Court and Rulings<sup>4</sup>**

Taking actions and rendering decisions in executive proceedings may be conferred to an associate under the judge's authority, unless otherwise provided by the Law. The ability to delegate certain responsibilities will unburden enforcement judges, and enable them to focus on the work of deciding on objections and processing more complex cases. In certain situations, however, only the judge is authorized to act.

## **D. Timing Considerations**

A number of revisions were made to the timing requirement for court and party action. Parties should be aware that many of the previous deadlines have been significantly shortened. For a complete list of deadlines and timing requirements for action, refer to Exhibit "A" to this document.

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<sup>2</sup> Law on Enforcement Article 10

<sup>3</sup> Law on Enforcement Articles 82(3), 90, 92, 109(6), and 113(7)

<sup>4</sup> Law on Enforcement Article 11

## **IV. Pre-Filing Issues.**

### **A. Jurisdictional Issues<sup>5</sup>**

Territorial jurisdiction of courts is determined by the means of enforcement (enforceable vs. authentic documents) and object of execution (bank accounts, real property, and personal property) as set forth in the Law. The provisions on subject matter jurisdiction of the courts are included in the Laws on Courts.

As territorial jurisdiction is exclusively governed by the provision of the Law, parties are not entitled to negotiate the territorial jurisdiction of another court.

#### **1. Real Property Jurisdiction<sup>6</sup>**

When deciding on a motion for enforcement against real property and the execution of enforcement, the court where the property is located shall be the competent court.

#### **2. Movable Property Jurisdiction**

##### **a. Location of Property Known<sup>7</sup>**

The court in whose territory the movable property is located, as specified in the motion for execution, shall have territorial jurisdiction over making the decision for execution against the movable property.

##### **b. Location of Property Not Known<sup>8</sup>**

The judgment creditor may propose that the court issue a decision on enforcement of personal property without specifying the location of the property. The court where the permanent or temporary residence of the judgment debtor who is a natural person, or the head office of the judgment debtor which is a legal person is located, shall have territorial jurisdiction over the motion of decision of enforcement when the location of the movable assets is not known.

##### **c. Multiple Executions<sup>9</sup>**

In cases involving movable property located in more than one jurisdiction, the court that adjudicated the execution against the movable property in one territory may, upon completion of the execution, forward the decision on execution to another court for further enforcement. This process may continue until the full settlement of the judgment creditor. This practice directly benefits the judgment creditor in that he is not required to

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<sup>5</sup> Law on Enforcement Article 4

<sup>6</sup> Law on Enforcement Article 67

<sup>7</sup> Law on Enforcement Article 114

<sup>8</sup> Law on Enforcement Article 115

<sup>9</sup> Law on Enforcement Article 116

file several motions for execution with different courts having territorial jurisdiction, on the bases of the same enforceable document. At the same time, it avoids the possibility of excessive and double collection due to conducting two proceedings for collection of one claim.

## **B. Objects Subject to Execution<sup>10</sup>**

Except as otherwise provided by the Law, the objects of enforcement can include any property, real or personal, or any rights, which can be subject to lawful enforcement.

## **C. Right of Usufruct on Real Property<sup>11</sup>**

Usufruct is defined as the legal right of using and enjoying the fruits and profits of something belonging to another.

If the right of usufruct has been established on real property or on its percentage share of ownership, it may be a source of enforcement, provided that the judgment debtor satisfies his/her claims out of the fruits realized from such rights based on some legal relationship such as rent or lease. The law on enforcement against real property shall be applicable to the right of usufruct.

## **D. Object Exempted from Execution**

### **1. General Exemptions<sup>12</sup>**

Goods that may not be traded or turned over, as well as natural resources such as ore, are exempt from enforcement, as are facilities, armament and equipment used by the armed forces or police.

### **2. Exempted Real Property<sup>13</sup>**

Exemptions from execution with respect to real property have been narrowed. Now, the Law prohibits enforcement against a piece of farming property, which belongs to a farmer, that is smaller than a 5000 square meters. This prohibition does not, however, apply to enforcement of satisfying a monetary claim secured through a contractual lien on real property (mortgage).

### **3. Exempted Movable Property<sup>14</sup>**

Certain movable property is also exempted from execution. The Law specifically exempts items necessary for the judgment debtor and the members of his household to

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<sup>10</sup> Law on Enforcement Article 6(2)

<sup>11</sup> Law on Enforcement Article 69(11)

<sup>12</sup> Law on Enforcement Article 7

<sup>13</sup> Law on Enforcement Article 79

<sup>14</sup> Law on Enforcement Article 117

satisfy their daily needs. What qualifies for this exemption is left to the court to determine individually in each case. Other provisions stipulate that the following items may not be seized:

- food and fuel needed by the judgment debtor and members of his household for three (3) months;
- judgment debtor's cash regarding the claims exempted or limited from the execution as well as the cash of a judgment debtor who has regular monthly income up to the monthly amount exempted from the execution according to law, in proportion to the time remaining until the next income;
- decorations, medals, certificates of war service and other decorations and awards, wedding ring, personal correspondence, manuscripts;
- other personal documents of the judgment debtor, family photographs, personal and family documents and family portraits; and,
- postal delivery or postal money order directed to the judgment debtor may not be the object of execution before delivery.

## **V. Initiating Executive Procedures**

### **A. General Provisions<sup>15</sup>**

Executive procedure is typically initiated upon the motion of the judgment creditor, with the filing of a motion for execution, but it may also be initiated *ex officio*, as well as upon the motion of persons and organs when provided by law. When persons other than the judgment creditor files, such as an assignee of rights, they shall assume the position of the judgment creditor.

In general, the court must decide on a motion for enforcement within eight (8) days of receipt.

The court shall determine the enforcement solely on the basis of enforceable and authentic documents, unless otherwise prescribed by the Law. Because of the significant procedural differences of bringing action based on an enforceable document and an authentic document, they are discussed separately, when appropriate.

### **B. Enforceable Based on Enforceable Documents**

#### **1. Enforceable Documents - Defined<sup>16</sup>**

The definition of the term “enforceable document” has been broadened to include the following:

- Enforceable court rulings;

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<sup>15</sup> Law on Enforcement Article 3

<sup>16</sup> Law on Enforcement Article 23

- Enforceable court settlements;
- Enforceable rulings issued in an administrative procedure if it orders the payment of monetary obligation, (unless otherwise prescribe by law);
- The rulings of the Human Rights Chamber suitable for the court execution;
- The enforceable documents of notaries public as defined by the Law on Notaries; and,
- Other documents legally prescribed as enforceable documents.

## **2. Motion for Enforcement based on Enforceable Document**

A motion for execution based on an enforceable document shall contain the following provisions and information:

- A request for execution with reference to the enforceable document serving as the basis of the execution request;
- Identification of the judgment creditor and the judgment debtor;
- Identification of the claim to be settled;
- An indication of the means of enforcement of execution;
- The object of enforcement, and,
- Other information necessary for the enforcement of execution.

## **3. Enforceability Issues**

### **a. Court Rulings and Finality**

The enforceability of court rulings depends on what is ordered by the particular ruling. As such, if a settlement of a claim for a particular action is ordered, and the ruling stipulates that it is enforceable upon the expiration of the period of voluntary enforcement, then the ruling shall become final when the deadline for voluntary fulfillment has expired.

The deadline for determining enforceability starts to run as of day of delivery of the ruling to the judgment debtor, unless otherwise stipulated by law.

### **b. Enforceability before Finality<sup>17</sup>**

The enforcement shall be ordered on the basis of a court ruling that has not become final and a ruling made in the administrative procedure that has not become binding, if the law prescribes that an appeal or any other legal remedy does not stay the enforcement of the ruling.

[Chart regarding enforceability to be inserted.]

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<sup>17</sup> Law on Enforcement Article 13

#### **4. Investigation of Debtors Assets<sup>18</sup>**

The Law provides that the judgment creditor may, in a motion for enforcement based on an enforceable document, request that the court, prior to issuing a decision on enforcement, gather information on the property of the judgment debtor. Such information may be gathered from the debtor himself and from other natural and legal persons, administrative and other authorities and organizations listed in the request. To obtain court approval, the creditor must make a credible argument that such persons possess information on the judgment debtor's assets.

A similar request may also be made after a decision on enforcement has been issued, if enforcement on the proposed object of execution was not successful.

The court shall issue a conclusion on the request for disclosure of the judgment debtor's assets, and persons with information on the judgment debtor's assets will be required to complete a form prescribed by the Federal Minister of Justice. The form requires disclosure of all information they have regarding the real and personal property of the judgment debtor and particularly on the type and amount of cash earnings and cash deposits of the judgment debtor. The completed and properly signed form must be delivered to the court within a period that the court establishes in its conclusion. Instead of requiring a written statement, the court may solicit testimony about the assets of the judgment debtor at a hearing before the court.

The court may fine persons who do not comply with the court's conclusion. Further, natural and legal persons providing information shall be held criminally liable for giving incomplete or false statements before the court on the property of the judgment debtor.

#### **5. Decision on Enforcement Based on Enforceable Document<sup>19</sup>**

A decision on enforcement, based on a motion on an enforceable document, shall contain the following information:

- a statement regarding the basis for execution, (type of enforceable document);
- identification of the judgment creditor and the judgment debtor;
- identification of the claim that is to be realized;
- the means and the object of execution; and,
- other information necessary for carrying out the execution.

#### **6. Land Book Entries<sup>20</sup>**

As soon as a decision on enforcement is issued, the court shall, ex officio, order that a note of enforcement be entered in the land book. In this regard, a change of ownership of

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<sup>18</sup> Law on Enforcement Article 37

<sup>19</sup> Law on Enforcement Article 39

<sup>20</sup> Law on Enforcement Article 72

the real property, based on actions of the judgment debtor shall be prohibited after entering the note on enforcement in the land book, regardless of when that action to dispose of the real property commenced.

Any actions undertaken prior to entry of the decision on enforcement in the land book remain in effect. The new owner may not, however, undertake such actions that the previous owner would not be allowed to take had a change in ownership not occurred.

The court shall, pursuant to a motion of the judgment creditor, pass a conclusion on the continuation of the executive proceedings against the new owner having the position of the judgment debtor in such procedure.

## **7. Collection of Default Interest<sup>21</sup>**

If the default interest changes after rendering the enforceable document or after a conclusion of settlement, the court shall, on motion of a party, issue a decision on enforcement which provides for the collection of such interest at the new rate for the period to which that change refers.

If the collection of default interest on the costs of proceedings has not been previously determined in a decision on enforcement, then the court shall, on a motion of the judgment creditor, issue a decision on enforcement providing for the collection of such interest at the prescribed rate from the day of issuing the ruling, or, from the day of conclusion of the settlement to the day of collection.

In cases where there the motion on enforcement provides for the collection of interest, the enforcing court will calculate the interest at the expense of the judgment creditor, unless the collection is being effectuated against the funds on accounts with banks. In those situations, the bank shall make the calculation of interest, at the expense of the judgment debtor.

### **C. Initiating Executive Procedures – Authentic Document**

#### **1. General Provisions<sup>22</sup>**

When the judgment creditor is attempting to enforce a monetary claim, enforcement is permissible on the basis of an authentic document. The definition of the term “authentic document” includes a bill of exchange or checks with protest and a reverse account, if they are required for establishing a claim, as well as receipts or excerpts from business books relating to the billing of utility services covering the water and heating supply as well as the garbage removal.

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<sup>21</sup> Law on Enforcement Article 28

<sup>22</sup> Law on Enforcement Article 29

An authentic document is suitable for enforcement if it contains the name and address of the judgment creditor and judgment debtor, and the subject, type, scope of, and time for performing the obligation.

## **2. Motion of Enforcement based on Authentic Document<sup>23</sup>**

According to the provisions of the Law, a motion for execution based on an authentic document shall contain the following:

- a request for enforcement that provides the information necessary to carry out enforcement pursuant to the motion;
- a request for the court to require the judgment debtor to settle the claim together with estimated costs within eight (8) days, or, in cases of disputes related to bills of exchange and checks, within three (3) day of the decision.

If enforcement against personal property is requested, the motion for enforcement need not specify the particular items sought at the time of original filing. As discusses below, however, it will eventually be rejected if the motion is not subsequently modified to include an object of enforcement.

## **3. Investigation of Debtor's Assets<sup>24</sup>**

If a request for determining the property of a debtor is submitted together with a motion for enforcement which is based on an authentic document, the judgment creditor will be informed by the court on the results of the investigation, and will provide him with a timeframe to complete and amend the motion submitted to reflect the results of the investigation, and identify specific objects of enforcement. (See Section IX of this manual for a more detailed discussion on obtaining information about the judgment debtor's property.)

Accordingly, the motion for enforcement will be rejected as incomplete if it does not have designation as to the object of enforcement, or if the judgment creditor did not complete or amend the motion upon notification of the court on the property of the debtor.

## **4. Decision on Enforcement based on Authentic Documents<sup>25</sup>**

In cases involving a decision on enforcement based on authentic document, the court shall demand that the judgment debtor settle the claims and pay prescribed expenses, within a period of eight (8) days. For disputes involving checks and bills of exchange, the court shall demand settlement within three (3) days as of receipt of the decision. The court shall also order the enforcement for the purpose of realizing the claims.

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<sup>23</sup> Law on Enforcement Article 36(3)

<sup>24</sup> Law on Enforcement Article 37

<sup>25</sup> Law on Enforcement Article 39

The decision on enforcement need not contain an explanation unless it completely or partially rejects or refuses the motion for enforcement. The decision may be issued by affixing the motion for execution by seal, a provision that expedites the work of courts. Finally, the decision on enforcement must provide instructions on a legal remedy available to the parties. (See Section VI of this Manual for a description of Legal Remedies available to the parties.)

## **5. Enforceability before Finality**

[Enforceability Chart to be inserted]

### **D. Delivery of Decision on Enforcement<sup>26</sup>**

The rules on delivery of a decision vary depending on the actions of the party and the disposition of the court.

- A decision approving the motion for enforcement shall be delivered to both the judgment creditor and judgment debtor;
- A decision rejecting or refusing a motion for enforcement, where no response was filed by the judgment debtor, shall be delivered only to the judgment creditor;
- A decision on enforcement on monetary claims shall be delivered to the judgment creditor, the judgment debtor and the judgment debtor's debtor;
- A decision on execution pertaining to funds on a judgment debtor's bank account shall be delivered to the judgment creditor, the judgment debtor, and the appropriate bank;
- A decision on execution issued on the basis of an authentic document shall be delivered to a bank after it has become final, except if the execution was ordered on the basis of a bill of exchange or check with protest and a reverse account, in which case the decision on execution is delivered immediately upon issuance for the purpose of seizure of funds on the account of the judgment debtor;
- A decision on enforcement on movables shall be delivered to the judgment debtor on the occasion of undertaking the first executive action. If a particular movable asset is not in the possession of a judgment debtor, the decision on enforcement shall also be delivered to the person who possesses the property;
- The court shall also inform the known lien holder of the issuance of a decision in an appropriate manner.

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<sup>26</sup> Law on Enforcement Article 40

## **VI. Legal Remedies**

The executive procedure provides for objection and appeal as ordinary legal remedies against first instance decisions.

### **A. Appeal by Judgment Creditor<sup>27</sup>**

The judgment creditor may appeal the decision by which the motion for enforcement is rejected or refused.

### **B. Objection by Judgment Debtor<sup>28</sup>**

Decision on execution, whether based on an enforceable document or an authentic document, may be contested exclusively by “objection”. An objection must be filed within eight (8) days from receipt of the decision on enforcement, and may not be accepted by the court if the filing deadline has expired.

In general, the court must decide on an objection within fifteen (15) days of the date of meeting the conditions precedent to making the decision.

### **C. Suspension of Enforcement**

Except as specifically provided by the Law, the filing of an objection does not suspend enforcement efforts based on an enforceable document, unless and until the process reaches the point relating to settlement of judgment creditor. (See Section X of this Manual for a discussion of the Settlement of Creditors.) Settlement of the creditor cannot proceed until the decision on enforcement becomes enforceable.

### **D. Grounds for Filing Objection<sup>29</sup>**

Specific grounds for filing an objection include:

- When the document on which a decision on enforcement was issued is not an enforceable document;
- When the document does not have the effect of enforceability;
- When the enforceable document has been repealed, annulled or altered, or in some other way rescinded, or has otherwise lost its validity or has been deemed to be invalid;

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<sup>27</sup> Law on Enforcement Article 12

<sup>28</sup> Law on Enforcement Article 12

<sup>29</sup> Law on Enforcement Article 47

- If the parties, on the basis of a public document or legally certified document made upon the issuance of enforceable document, have agreed in writing that they will not request enforcement on the basis of enforceable document, permanently or temporarily;
- If legal deadline for requesting enforcement has expired;
- If the enforcement was ordered on an asset which is exempt from enforcement, or on which the possibility of enforcement is limited;
- If the judgment creditor is not authorized to seek enforcement on the basis of the enforceable document, that is, if he is not authorized to request enforcement against judgment debtor;
- If any conditions set forth in the enforceable document have not been met, unless otherwise provided by law;
- If the claim became invalid, and the judgment debtor was unable to present the fact in the proceedings in which the decision was issued, or if the claim became invalid due to an event that occurred subsequent to the conclusion of court or administrative settlement;
- If, as a result of a fact that occurred at the time when the debtor was not able to present it in the proceedings in which the decision was issued, or if, as a result of a fact that occurred following to the court or administrative settlement, the satisfaction of the claim was postponed, prohibited, altered or in some other way prevented, either permanently or temporarily; or,
- if a claim decided on by an enforceable document has expired due to the statute of limitations.

An objection to a decision on enforcement based on authentic document must contain an explanation specifying which part of the decision is being contested. The court shall reject an objection that fails to specify which part of the decision is being contested.

As an objection must contain an explanation, it is treated by the court as a “complaint”. The response to the objection is, in turn, treated as a response to the complaint. This leads to a shortening of the procedure before civil court, in that rejection of an unexplained objection would be a continuation of the executive procedure. In considering the objection, the court shall proceed in accordance with civil procedure provisions.

**F. Objection Based on Authentic Document<sup>30</sup>**

Enforcement shall be postponed only if the execution is based on a bill of exchange or check. In other cases the enforcement shall start only after the decision of the civil court has become final. If the first-instance civil court rejects the statement of claim and rescinds the decision on enforcement in its contested part, the court shall also order dismissal of the executive proceedings. After the decision of the civil court has become final, the executive court shall state in a decision that the executive procedure has been dismissed and it shall rescind the actions taken in the executive procedure.

**G. Timing of Response<sup>31</sup>**

The response to an objection shall be filed with the court within three (3) days after service of the objection.

**H. Court Options on Objection<sup>32</sup>**

Upon receipt of the response to the objection or upon expiration of the deadline for the response, the court may, depending on nature of the case, render a decision without scheduling a hearing. The court does, however, have the authority to hold a hearing to discuss the objection before ruling.

The judge shall decide whether the objection is approved, denied, or rejected as untimely, incomplete or inadmissible. If the objection is approved, the court may, depending on the nature of the case, dismiss the enforcement completely or partly, and also has the authority to cancel any enforcement actions previously undertaken.

**I. Objection Filed by Third Party<sup>33</sup>**

A person claiming to have a right pertaining to the object of enforcement that prevents the enforcement, has the right to file an objection against the decision on enforcement. An objection filed by a third party shall not prevent enforcement of the execution and settlement of judgment creditor, unless otherwise stipulated by this Law.

The court shall deliver the objection to the judgment creditor and judgment debtor. A response to the objection must be filed within eight (8) days of service.

The court shall direct the party that submitted the objection to initiate a lawsuit in order to realize his rights, unless the party submitting the objection is seeking to prove the validity of his objection by a final judgment. The executive court is authorized to rule on objections based on a final judgment and the filing of a civil case is not necessary.

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<sup>30</sup> Law on Enforcement Article 50

<sup>31</sup> Law on Enforcement Article 48

<sup>32</sup> Law on Enforcement Article 49

<sup>33</sup> Law on Enforcement Article 51

An objection by a third party may be filed anytime prior to the completion of the executive procedure.

#### **J. Co-Owner of Movable**

The Law does not allow a co-owner of movable assets to request that enforcement against his portion be disallowed. He shall, however, have right to settlement from the proceeds of the sale in the amount of the assessed value of his portion. Settlement of the co-owner of movable assets shall be made before the judgment creditor or other persons, and before the costs of the executive procedure are compensated. A co-owner may secure the return of his portion of the movable asset by paying the amount equal to the judgment debtor's portion of such object.

Civil proceedings shall be initiated only when the right to co-ownership has been contested, in cases where the third party has no judgment or lawfully equal document as evidence of the co-ownership or right to settlement. Again, the initiation of the civil procedure shall not stay the executive procedure and settlement of judgment creditor.

#### **K. Court Authority<sup>34</sup>**

The executive court shall have competence to rule on an objection filed by the judgment debtor and by a third party, if the party seeks to prove the objection on the basis of a final court decision, public document, or legally certified private document.

If the court directs the third party to file a civil lawsuit the procedure of execution shall not be stayed and that dismissal of the executive procedure may not be requested in the civil procedure. Upon positive finalization of the civil case, the third party would possess an enforceable document and could file motion for counter-execution against the judgment creditor or in case the requirements for counter-execution are not met, then a motion for enforcement.

### **VII. Enforceability**

#### **A. Generally<sup>35</sup>**

In an attempt to avoid the problems raised by the timing of the enforcement process, the Law has provisions stipulating when a decision on enforcement becomes "enforceable and final". These provisions provide as follows:

- a decision against which no objection has been filed within the specified period, shall become enforceable and final;

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<sup>34</sup> Law on Enforcement Article 52

<sup>35</sup> Law on Enforcement Article 13

- a decision against which an objection has been rejected shall become enforceable, and if the appeal is not allowed against such decision it shall become final;
- a decision rejecting an objection shall become final if the appeal is not filed within the deadline or if the appeal is rejected;
- if, however, the law prescribes that an appeal may be filed against the first instance decision, instead of an objection, that decision becomes enforceable, and it shall become final if the deadline for filing the appeal is not met, or if the appeal is rejected. The appeal does not suspend the enforcement proceedings.

**B. Enforcement before Finality<sup>36</sup>**

Enforcement may proceed even before the finality of a decision on enforcement, unless otherwise provided by this Law.

Specifically, a creditor may be settled even before the enforceability of a decision on enforcement (i.e., prior to deciding on an objection, or immediately upon the issuance of a decision on enforcement), in the following situations:

- cases of monetary claims when the enforceable document determines mandatory support; and,
- when the execution is enforced through the transfer of payment from the bank account of one legal person to a similar bank account of another legal person (judgment creditor).

**C. Execution based on an Enforceable Document**

Generally speaking, the settlement of a creditor, in cases involving an enforceable document, is settled before the finality of a decision on enforcement, or upon the enforceability of such decision, regardless of whether it involves a monetary or non-monetary claim, because an appeal to a decision on objection does not suspend the enforcement proceedings, unless determined otherwise by law for exceptional situations.

**D. Execution based on an Authentic Document<sup>37</sup>**

Execution ordered on the basis of an authentic document may not commence prior to the finality of a decision on execution, except as specifically provided by the Law. As such, if the judgment debtor files an objection with explanation in a timely manner, in which he also contests the part of the decision that orders his payment, the enforcement will be stayed.

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<sup>36</sup> Law on Enforcement Article 25

<sup>37</sup> Law on Enforcement Article 29

Again, the exception to this rule pertains to the enforcement based on a bill of exchange or check, whereby enforcement occurs immediately after issuance of the decision. Settlement of judgment creditor cannot, however, take place prior to finality of the decision.

If an objection has been filed only against a decision on enforcement in part that orders the enforcement, it is enforced in the same manner as an objection to a decision on execution passed on the basis of an enforceable document.

## **E. Postponement, Withdrawal and Dismissal**

### **1. Postponement<sup>38</sup>**

The Law does not allow the judgment debtor or a third party to file of motion for postponement of the enforcement execution.

The Law does, however, allow the judgment creditor to file for postponement. In cases involving several judgment creditors, and only some of them requested postponement, the court shall only postpone the enforcement pertaining to these judgment creditors. The court shall deposit the assets allocated for the settlement of such judgment creditor until the continuation of the procedure. If the procedure is not continued within the prescribed period, these assets will be used either to settle other judgment creditors or they will be handed over to the judgment debtor.

The judgment creditor requesting postponement must move to resume the executive procedure within thirty (30) days from the expiry of time for which the procedure was postponed, or the court shall dismiss the procedure.

### **2. Withdrawal of Motion<sup>39</sup>**

A judgment creditor may, without the consent of the judgment debtor, withdraw a motion for enforcement either fully or partially during a procedure. In such cases, the court shall dismiss the enforcement either fully or partially. The judgment creditor may, after withdrawing a motion, submit a new motion for enforcement.

### **3. Dismissal of Execution<sup>40</sup>**

Enforcement shall be dismissed if it has become impossible to accomplish, or if it cannot be enforced due to other reasons. Before issuing a decision on the dismissal of execution (pursuant to the above stated cases), the court shall summon the judgment creditor to file a motion on the new means and object of execution, within a period of fifteen (15) days of the day of receiving the notice.

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<sup>38</sup> Law on Enforcement Article 60

<sup>39</sup> Law on Enforcement Article 38

<sup>40</sup> Law on Enforcement Article 63

Enforcement on particular assets shall be dismissed on the motion of the judgment debtor if the court establishes after providing an opportunity for objection, that the assets specified in the decision on execution were exempted from execution, or the possibility of execution against them is otherwise limited. As discussed below, enforcement may also be dismissed due to insufficient cover, and failure to sell the property at the third auction. (See Section VIII.A.11 for a discussion of “Insufficient Cover”.)

A decision dismissing an enforcement proceeding shall revoke all executive actions undertaken if this does not impede the acquired rights of third parties.

## **VIII. Execution on Real Property**

### **A. General Provisions**

#### **1. Land Book**

##### **a. Required Entries<sup>41</sup>**

If the right to real property that is subject to enforcement is entered in the land book under a name other than that of the judgment debtor, the motion for execution can be satisfied only if the judgment creditor files an appropriate document for the entry of the rights of the judgment debtor.

This effectively shortens the procedure for establishing the execution by entering the transfer of ownership directly from the person reflected in the land book who is not the judgment debtor to the person to whom the real property is sold during the executive proceedings or to whom it was awarded as part of a sales procedure, and there are no further delays to the procedure.

##### **b. Regions with No Land Book<sup>42</sup>**

The Law addresses the execution against real property in areas where there is no land book. Instead of proof of ownership (the ownership excerpt from the Land Registry Office or adequate documents), the judgment creditor is obliged to specify in his motion for enforcement the location of the real property, its name, boundaries and size, as well as the cadastral survey data pertaining to that real property if entered into the land register.

The court shall make a seizure inventory of the real property against which a motion for execution has been filed, and shall summon to the hearing the judgment creditor and judgment debtor, as well as persons whose real property borders with that real property which is subject to enforcement. Information regarding the subject real property and the proposed hearing shall be posted on the court notice board and published in the Official

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<sup>41</sup> Law on Enforcement Article 70

<sup>42</sup> Law on Enforcement Article 113

Gazette of the Federation of Bosnia and Herzegovina. All interested parties will be directed to notify the court, orally or in writing, on the reasons why the execution cannot be carried out against this real estate.

The same provisions shall be applied to the enforcement against floors of buildings (referring to apartments and business buildings and premises) since the land books referring to the floors of the buildings have yet to be established.

## **2. Changing Object of Execution<sup>43</sup>**

Within three (3) days of the date the decision on enforcement is delivered, the judgment debtor may propose that enforcement be carried out against a different piece of real property or another asset. If, however, the judgment creditor has a lien on the real property which was the original object of execution, execution cannot be established on another object without the judgment creditor's consent.

### **a. Proposed Object – Real Property<sup>44</sup>**

As part of the filing for a change in object of enforcement from one parcel of real property to another, the judgment debtor must:

- provide the court with proof of the judgment debtor's right to property proposed as a substitute object of enforcement;
- make a credible claim that execution on the proposed real property would be especially unfavorable for him;
- explain that there was just reasoning for his failure to sell the proposed object of execution and settle the judgment creditor with the cash received;
- establish that the claim of the judgment creditor can be completely settled from the other object of execution that is proposed; and,
- convince the court that execution will not be significantly prolonged or complicated or that the judgment creditor could bear significant damages due to such change.

Regardless of whether another means or object has been approved for enforcement, the notice on enforcement on the real property shall remain in effect until the claim of the judgment creditor has been settled.

### **b. Proposed Object – Salary Garnishment, etc<sup>45</sup>**

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<sup>43</sup> Law on Enforcement Article 71

<sup>44</sup> Law on Enforcement Article 71

If the judgment debtor proposes garnishment on salary, pension, disability allowance or other constant form of regular earnings as a substitute object of enforcement, the court may accept the motion provided that the judgment debtor makes a credible claim that the judgment creditor will be settled within a period of one year of the court approving the motion.

**c. Compensation to Creditor for Change<sup>46</sup>**

The judgment creditor has three (3) days from the date of receiving the motion for changing the object of enforcement to file a request for compensation for expenses incurred in connection with enforcement against the original piece of real property. The judgment creditor may also request the provision of security for damages that he could suffer because the object of execution is changed.

**3. Inspection and Safekeeping of Real Property<sup>47</sup>**

The court shall issue a conclusion providing the time when a person interested in purchasing the real property can inspect it.

If the judgment debtor or any other person prevents or hinders an inspection of the real property, the court shall order that the judgment debtor and such other person be removed from the real property during the time of inspection. A conclusion on removal is enforced by the court referee, and if necessary, with the assistance of the police.

Further, to allow for the property's evaluation, examination, and protection, the judgment creditor may motion the court to order that the judgment debtor or any other person be either temporarily or permanently removed from the real property, entrust the real property to the judgment creditor or another person for safekeeping, and order other measures for the protection of the real property. The judgment creditor is required to secure in advance the funds necessary for the enforcement of the aforementioned measures.

**4. Appraisal**

**a. Conclusion on Valuation<sup>48</sup>**

Immediately upon the issuance of the decision on enforcement, the court shall, through a conclusion, decide on the method for determining the value of real property (appraisal). If necessary, the court shall, prior to issuing the conclusion, hold a hearing with the parties. The appraisal process generally starts after the decision on execution becomes enforceable. The judgment creditor may, however, propose that the valuation start

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<sup>45</sup> Law on Enforcement Article 71

<sup>46</sup> Law on Enforcement Article 71

<sup>47</sup> Law on Enforcement Articles 77 and 78

<sup>48</sup> Law on Enforcement Article 80

earlier, provided he is willing to advance the cost of the appraisal, and agrees to bear the expenses of appraisal even in the event that the execution is dismissed.

The court may request that the appraisal be made by an expert or by a representative from the tax administration. The court determines the value of the real property through the issuance of a conclusion on sale. As such, there is no process for filing an ordinary legal remedy with respect to the value of the real property.

**b. Joint/Common Ownership Appraisal Issues<sup>49</sup>**

In an enforcement against a joint ownership share, the appraisal shall provide both the value of the real property in its entirety and in its joint ownership form. In this regard, the appraisal should provide the values of both the joint ownership share and the property as a whole.

**c. No Appraisal Where Parties Agree to Value<sup>50</sup>**

The provisions on appraisal shall not apply, and an appraisal by an expert shall not be required, in the event the parties and/or other persons whose claims are to be satisfied in the enforcement procedure agree on the value of the property. It is believed that that provision may help establish realistic values for property, and in turn, help facilitate the ultimate sale of the property.

**5. Dismissal for Insufficient Cover<sup>51</sup>**

The judgment creditor should always be aware of the provisions on dismissal due to insufficient cover. If the determined value of the real property does not cover the amount of the judgment creditor's claim even partially, the case may be dismissed.

In the event the provisions on insufficient cover are exercised, the costs of the executive procedure will be borne by the judgment creditor who initiated the enforcement.

**B. Sale of Real Property – Sale Process**

**1. Conclusion on Sale<sup>52</sup>**

Upon completion of the appraisal process, the court issues a conclusion on the sale, which sets forth the value of the real property, establishes the method and the conditions of the sale, and if the sale is to be carried out by public auction, the time and the place of the sale.

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<sup>49</sup> Law on Enforcement Article 80(5)

<sup>50</sup> Law on Enforcement Article 80(6)

<sup>51</sup> Law on Enforcement Article 81

<sup>52</sup> Law on Enforcement Article 82

## **2. Joint and Common Ownership<sup>53</sup>**

In the case of enforcement over a joint ownership share, the conclusion on sale must contain separate data for both the entire property and the joint ownership share at issue. The same conclusion shall contain notification that the court will decide on the final object of the sale after considering the bids received for the property if sold as a whole, or as a joint ownership share.

## **3. Notice of Sale<sup>54</sup>**

In addition to the mandatory posting of the conclusion of sale on the court's notice board, a party may, at its own expense, announce the conclusion through the public media, and inform real estate agents.

At least thirty (30) days must pass between the date the conclusion on the sale is posted and the date of sale.

The Law requires that the conclusion on sale shall be delivered to the parties, persons who have the right to priority settlement or equal rights of settlement as the judgment creditor, persons who have registered rights or legal rights to pre-emptive purchase and to the competent tax administration authority.

## **4. Deposit Requirements<sup>55</sup>**

The Law requires that participants in the auction provide the court with a deposit. The potential participant must deposit an amount equal to the lesser of 1/10 of the asset value or the real property or 10,000KM. To increase the possibility of successful settlement, the court may accept deposits in a form other than cash, such as a bank guarantee, securities and valuables, provided the value can easily be estimated on the market, and cashed in easily and quickly.

Bosnia and Herzegovina and its entities, Brcko District, cantons, cities and municipalities and their organs and offices shall not be required to provide a deposit when they participate in the proceedings in capacity of parties.

## **5. Agreement of Parties<sup>56</sup>**

Before the hearing for sale, the potential purchaser and the lien holder may conclude an agreement with which the lien remains on the real property even after the sale of the property by the decision on award. As part of the agreement, the purchaser accepts the judgment debtor's debt towards such creditor in the amount that he would be allocated in

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<sup>53</sup> Law on Enforcement Article 69

<sup>54</sup> Law on Enforcement Article 82

<sup>55</sup> Law on Enforcement Article 86

<sup>56</sup> Law on Enforcement Article 74

the executive proceedings. This type of agreement represents an added option for the judgment creditor to succeed in settling his claim through the executive proceedings.

#### **6. One Bidder Postponement<sup>57</sup>**

A person who has the right to priority settlement in the enforcement may motion the court to postpone the hearing if only one bidder participates. The court shall issue its decision on the requested postponement in the form of a conclusion.

#### **7. Limitations on Bidders<sup>58</sup>**

The range of persons who are prohibited from participating in the sale has been expanded to include: the spouses of judges or other persons who officially participate in the sales procedure; related persons (ancestors, descendants, brothers and sisters and their spouses); and spouses of judgment debtors. It is believed that these provisions will limit the possibility of any potential misuses or irregularities in the sale of the property.

#### **8. Minimum Bid Provisions<sup>59</sup>**

Except in cases involving a separate agreement among the parties, real property cannot be sold at the first public auction for less than half of its determined (appraised) value, or at the second public auction for less than one third of its determined value. Bids made at the first auction in amounts less than one half of the determined value shall not be considered. There is no minimum bid imposed on the third auction.

As noted above, parties and persons who are entitled to receive a portion of the settlement upon sale, may enter into an agreement (through a recorded statement) providing that the real property may be sold for a price lower than one half or one third of the determined value. The provision allowing parties to agree on a lower sales price is also applicable to the sale of real property through private agreement.

#### **9. Auction and Sale<sup>60</sup>**

If the real property is not sold at the first auction, a second auction shall be scheduled. A second auction shall also be scheduled in the event the three bidders with the highest offers from the first auction have failed to pay the sales price within the time provided by the court. The second auction shall be held within a period of thirty (30) days of expiration of the deadline for payment of the price of the third bidder on the list.

If the real property is not sold at the second action, the court shall, within a period of at least fifteen (15) days and up to thirty (30) days at the most, schedule a third auction,

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<sup>57</sup> Law on Enforcement Article 87

<sup>58</sup> Law on Enforcement Article 88

<sup>59</sup> Law on Enforcement Article 89

<sup>60</sup> Law on Enforcement Article 84

which the real property may be sold without a limitation of the lowest price as to the determined value.

#### **10. Joint and Common Ownership Interests<sup>61</sup>**

If enforcement is conducted against a joint ownership share, the court shall simultaneously offer for sale the joint ownership share and the entire real property. After the highest bids for both offers are given and after an assessment of the conditions prescribed for the sale of joint ownership interests, the court shall, by its conclusion, decide on the final object of the sale.

#### **11. Dismissal for Inability to Sell<sup>62</sup>**

The executive proceedings shall be dismissed if the real property cannot be sold at the third hearing of public auction, or within the deadline determined in the agreement of private sale. The dismissal of execution for failure to sell does not prevent the initiation of a new executive proceedings for settlement of the same claim on the same real property.

#### **12. Pre-emptive Right of Purchase<sup>63</sup>**

If there are no pre-emptive rights holders pursuant to legally based or contractual pre-emptive rights entered in the land book, a person who has a right to priority settlement from the sales price acquires a pre-emptive right of purchase at the price achieved at the third auction. This provision reduces the possibility for these persons to be settled with insignificant amounts as compared to their claims, as the real property may be sold at a more realistic price.

#### **13. Posting Conclusion on Highest Bidder<sup>64</sup>**

The court issues a written conclusion identifying the highest bidder, which shall be posted on the court notice board. As a result of the new provision on “substitute” service, after three (3) days from the date of posting, the conclusion is deemed to have been delivered to all persons to whom the conclusion on sale is to be delivered and the participants of the auction.

The court shall also render a similar written conclusion in the event of sale through the direct bargain. The conclusion shall be issued as soon as the court establishes that the conditions for a valid sale have been satisfied. Again, the conclusion shall identify the “highest bidder”, and shall be posted on the court notice board. The conclusion shall be deemed to have been delivered to all required persons, as well as to the purchaser, three (3) days from the date of posting on the court notice board.

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<sup>61</sup> Law on Enforcement Articles 40 and 69

<sup>62</sup> Law on Enforcement Article 95

<sup>63</sup> Law on Enforcement Article 83

<sup>64</sup> Law on Enforcement Article 90

#### **14. Payment of Sale Price<sup>65</sup>**

The bidder with the highest offer is required to pay the total sales price (reduced for the amount of deposited security), to the court within a period of thirty (30) days of the day the conclusion on identifying highest bidders and sale of real property is posted on the court notice board.

#### **15. Defaulting Bidder(s)<sup>66</sup>**

If the highest bidder fails to deposit the sales price with the court by the specified deadline, the court shall, through a conclusion, declare the sale to such bidder as invalid and pass a new conclusion determining that the real property be sold to the next highest bidder. The next highest bidder, shall have thirty (30) days from the day he receives the conclusion to make payment of the sales price to the court.

If the second bidder does not deposit the amount within the specified period, the court shall apply the same rules for the third highest bidder. In the event that all three bidders with the best offers do not fulfill their obligations in reference to the payment of the sales price within the specified deadlines, the court may declare that the first auction was not successful and schedule a new auction.

#### **16. Expense of Failed Auctions<sup>67</sup>**

The expenses of unsuccessful auction will be covered by the security deposited by the first bidder, who did not pay the sales price within the specified deadline, whereas if these expenses cannot be fully settled out of the security deposited by the first bidder, the difference is settled out of the security deposited by the second bidder if he fails to purchase the real property. These rules are also applied in the event that the third bidder withdraws.

#### **17. Sale by Private Agreement<sup>68</sup>**

Parties and lien holders who have priority rights or the same rights to have their claims satisfied as the judgment creditor, may agree in writing until the time of the sale that the sale be consummated by private agreement within a specified deadline. Sale by private agreement may be made through an authorized real estate agent, court referee or in some other way. A person entrusted with a sale based on the court's conclusion shall enter into the agreement on behalf and for the benefit of a judgment debtor.

Unless otherwise prescribed by other applicable law, the contract of sale by private agreement shall be in writing, with the signatures of persons entering into such agreement

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<sup>65</sup> Law on Enforcement Article 92

<sup>66</sup> Law on Enforcement Article 92

<sup>67</sup> Law on Enforcement Article 92

<sup>68</sup> Law on Enforcement Articles 84(4) and 91

certified by an authorized body. Such agreement shall be effective as of the date of issuing the decision on award.

### **C. Sale of Real Property – Post Sale Proceedings**

#### **1. Decision on Award<sup>69</sup>**

The court awards the real property to the purchaser through the issuance of a decision on award. The decision on award serves to transfer the real property to the purchaser, and change the ownership rights in the Land Book. An objection may not be filed against a decision of award, though it may be contested through an appeal.

#### **2. Purchaser's Rights<sup>70</sup>**

The overturning or modification of a decision on enforcement after the enforcement of the decision on award (awarding the real property to the purchaser), does not affect the acquired ownership right of the purchaser.

#### **3. Encumbrances and Rights in Land Book<sup>71</sup>**

The Law stipulates that encumbrances and rights reflected in the land books shall be deleted by the decision on award, even prior to issuing of the decision on settlement. It is believed that this encourages bidders and increases the possibility of successful sale, in that the settlement of the judgment creditor's claim is effected in a more rapid and efficient manner.

#### **4. Rent and Lease<sup>72</sup>**

The contracts for rent and lease of real property that are concluded and entered into the land book prior to acquiring the lien or right of settlement for which the enforcement is being sought, do not cease with the sale of the real property. Similar contracts that were not entered into the land book shall cease when the decision on award becomes final, unless otherwise agreed by the purchaser and the lessee. A right to occupancy, however, acquired before the enforcement action, does not cease with the sale of the real property. The purchaser shall become the landlord. Finally, the Law prescribes that a final decision on award represents an enforceable document with respect to eviction.

#### **5. Loss of Right to Possession<sup>73</sup>**

The sale of real property, whether at auction or by private agreement, results in the judgment debtor, and other persons who do not possess any valid written legal basis for

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<sup>69</sup> Law on Enforcement Article 110

<sup>70</sup> Law on Enforcement Article 94

<sup>71</sup> Law on Enforcement Article 75

<sup>72</sup> Law on Enforcement Article 76

<sup>73</sup> Law on Enforcement Article 110

the use of real property, losing the right of possession to the real property. As such, upon delivery of the decision on award, such persons are obliged to transfer the real property over to the purchaser, unless otherwise provided by law or by the agreement with the purchaser.

Further, after rendering the decision on award, the court shall, at the request of purchaser, order, by a conclusion, that the real property be vacated and transferred to the purchaser. Execution in the above case is carried out in accordance with this Law on execution by vacation and transfer of the real property, and the purchaser shall act as a judgment creditor upon filing a motion (or request) for vacation and transfer of real estate.

## **IX. Execution against Movable Assets**

Enforcement against personal property shall be executed by seizure, appraisal, sale and payment to the judgment creditors from the proceeds of sale.

### **A. Notice of Action<sup>74</sup>**

As a rule, before seizure is commenced, a court referee shall serve the decision on enforcement on the judgment debtor and instruct him to pay the amount for which the enforcement has been ordered. Depending on the circumstance of each situation, the court may, however, decide to deliver the decision on execution at the time of inventory and seizure of judgment debtor's objects. In certain cases, especially those involving seizure of property based on authentic documents, a two-step process of service and seizure would be superfluous.

The judgment creditor may request to be informed of the time and place of the seizure, but his absence will not prevent the seizure from taking place.

### **B. Inventory and Seizure<sup>75</sup>**

Inventory is the method of designating movable assets subject to seizure, and is performed upon commencement of the seizure of movable property.

### **C. Assets Subject to Inventory<sup>76</sup>**

The items subject to inventory and seizure include:

- items on the judgment debtor's person;
- items that are on or in the judgment debtor's real property (apartment and business premises); and,
- items of the judgment debtor's spouse.

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<sup>74</sup> Law on Enforcement Article 119

<sup>75</sup> Law on Enforcement Article 120

<sup>76</sup> Law on Enforcement Articles 120 and 121

Further, object's belonging the judgment debtor may be inventoried even when they are in possession of a third person, but only upon the third person's consent. If the third person does not consent to the inventory, the court shall by conclusion, transfer the judgment debtor's right to possession of the property to the judgment creditor.

Assets which can be easily liquidated, shall be put on the inventory list first. As many assets as are necessary to satisfy the judgment creditor's claims and cost of enforcement shall be included on the inventory list.

**D. Unsuccessful Attempt at Seizure<sup>77</sup>**

The court shall inform the judgment creditor if no personal property against which enforcement may be made is found during a seizure. The judgment creditor may file a motion that another seizure be attempted within three (3) months of service of the notice or of the date the first seizure was attempted.

**E. Appraisal<sup>78</sup>**

An appraisal of personal property shall be performed at the time of inventory and seizure. If the court has not assigned a court appraiser or special expert to perform the appraisal, it shall be completed by the court referee. A party has the option of filing a motion requesting an expert appraisal, but must advance the cost of the expert within a deadline established by the court.

A party may, within three (3) days after the appraisal is performed, move the court to set a value for the seized property that is either higher or lower than what is reflected in the appraisal. The court shall rule on the motion by conclusion.

**F. Safekeeping and Frustrated Seizures of Property<sup>79</sup>**

The inventoried assets shall be left with the judgment debtor for safekeeping. The judgment creditor may, however, motion the court to transfer possession of the assets to the judgment creditor or a third party for safekeeping. The judgment creditor will bear the risk of destruction and damage to the assets while they are in his possession or the possession of a third party, unless such destruction was caused by force majeure.

Cash, securities and valuables shall be delivered to the court for safekeeping.

Any person who is in the possession of has control over the inventoried and seized objects may not dispose of them without a court order.

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<sup>77</sup> Law on Enforcement Article 125

<sup>78</sup> Law on Enforcement Article 126

<sup>79</sup> Law on Enforcement Articles 122 and 123

## **G. Sale of Movable Property**

### **1. Timing<sup>80</sup>**

The sale of movable assets may commence upon enforceability of the decision on execution, and at least fifteen (15) days after the date of making the seizure of inventory. The sale may be carried out before the expiration of the fifteen (15) day period, if:

- the judgment debtor agrees to an earlier date of sale;
- the items subject to enforcement are perishable;
- there is danger of considerable drop in the price of the items, or,
- the judgment creditor gives security for the damages he would be obligated to reimburse to the judgment debtor in case that the decision on execution does not become enforceable.

### **2. Manner of Sale<sup>81</sup>**

The court shall determine the manner of sale by a conclusion. A sale through public auction shall be ordered if the objects in question are of considerable value and it is expected that they will be sold at a price exceeding their appraised value. The sale of objects shall be announced on the court notice board in a timely fashion, and may also be advertised to the public at the expense of the party doing the publication.

### **3. Minimum Bid Provisions at Auction<sup>82</sup>**

Except in cases involving a separate agreement among the parties, movable property cannot be sold at the first public auction for less than half of its determined value. Bids made at the first auction in amounts less than one half of the determined value shall not be considered. There is no minimum bid imposed on the second auction.

### **4. Auction and Sale<sup>83</sup>**

A court referee or other person appointed by the court shall perform the public auction.

If the movable property is not sold at the first auction, a second auction shall be scheduled, on the motion of any party, within a period of eight (8) days after the failed auction.

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<sup>80</sup> Law on Enforcement Article 129

<sup>81</sup> Law on Enforcement Article 130

<sup>82</sup> Law on Enforcement Article 131

<sup>83</sup> Law on Enforcement Article 130

## **5. Payment of Sale Price<sup>84</sup>**

The bidder with the highest offer is required to pay the total sales price (reduced for the amount of deposited security), immediately after the results of the auction are announced, unless the court decides otherwise by conclusion.

## **6. Defaulting Bidder(s)<sup>85</sup>**

If a highest bidder fails to deposit the sales price with the court, immediately after the results are announced or, in accordance with the courts conclusion, the next bidder shall be declared the buyer and shall pay the price offered.

If the second bidder does not deposit the amount within the specified period, the court shall apply the same rules for the third bidder, and so on down the list. In the event that none of the bidders are willing to fulfill their obligations in reference to the payment of the sales price, the court may declare that the first auction was not successful. Again, a party may move the court to schedule a new auction within a period of eight (8) days after the failed auction.

## **7. Expense of Failed Auctions<sup>86</sup>**

The expenses of unsuccessful auction will be covered from the security deposited by the first bidder, who did not pay the sales price within the specified deadline, whereas if these expenses cannot be fully settled out of the security deposited by the first bidder, the difference is settled out of the security deposited by the second bidder if he does not purchase the assets.

## **8. Sale by Private Agreement<sup>87</sup>**

A sale through private agreement shall be concluded between the purchaser and the court referee or a commission agent. Movable assets may not be sold through private agreement for a price less than one third of the determined value.

## **9. Delivery of Asset Prior to Payment<sup>88</sup>**

The court referee shall deliver the objects even if the purchaser has not deposited the purchase price, provided that the judgment creditor and participants who have priority right in settlement, consent to the delivery. The judgment creditor and the participants bear the risk of delivery of the property before payment, in that it may decrease the

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<sup>84</sup> Law on Enforcement Article 131

<sup>85</sup> Law on Enforcement Article 131

<sup>86</sup> Law on Enforcement Article 131

<sup>87</sup> Law on Enforcement Article 130

<sup>88</sup> Law on Enforcement Article 132

amount they will receive from the purchase price if the purchaser does not deposit the purchase price within the specified period.

The above persons may petition the court in the same proceedings to order the purchaser to pay them the price and to propose the execution against him after the decision has become final and enforceable.

#### **10. Dismissal for Failed Sale<sup>89</sup>**

Pursuant to the provisions of the Law, the court shall dismiss the proceedings if none of the parties files a motion for the second public auction to be held within the specified period, or if the objects could not be sold at the second auction or through private sale.

#### **H. Provision Applying to the Sale of Real Property<sup>90</sup>**

As a general rule, the provisions of this law on execution against real property, except for the provisions on change of object of execution, shall be appropriately applied also in the procedure of execution against movable assets, if not otherwise stipulated by the provisions of the Law.

#### **X. Settlement of Creditors<sup>91</sup>**

The court shall commence the settlement of creditors after the decision on award is made and after the decision on enforcement becomes enforceable. The ability to move the proceeding forward is a consequence of the general rule that once the decision on enforcement is “enforceable” an appeal shall not stay the execution of a decision.

#### **A. Contesting Claims<sup>92</sup>**

A person being paid out of the sales price may contest the existence, amount or priority of another claim, if it affects the amount of his payment. The contesting of a claim must be made no later than at the distribution hearing.

If such person is able prove the contesting of the claim with a final judgment from the first instance court, public document, or lawfully certified private document, the court may rule on the claim in the enforcement procedure. The court shall also rule on the challenge in the enforcement procedure if the facts on which the issuance of a ruling depends, are undisputed. If a ruling depend on disputed facts, and the person is able to make a credible claim, then court may issue a conclusion instructing such person to initiate a civil lawsuit in the first instance court. The filing must be made with in a specified time, but not longer than fifteen (15) days.

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<sup>89</sup> Law on Enforcement Articles 63, 81, 95

<sup>90</sup> Law on Enforcement Article 135

<sup>91</sup> Law on Enforcement Article 96

<sup>92</sup> Law on Enforcement Article 102

That enforcement court shall postpone the issuance of a decision on settlement of the person whose claim was contested, until the termination of the civil suit.

The court may condition the issuance of the decision on settlement and the actual settlement of such person by security to be deposited. The amount relating to the contested claim shall be paid to the court deposit; and if the person who was directed to initiate a lawsuit does not prove that he has initiated a lawsuit within a stipulated deadline, the claim shall be deemed to be uncontested.

**B. Claims that Have not Become Due<sup>93</sup>**

Special provisions on the manner of settling claims that have not become due, including claims on periodic income for legal support, compensation of damage due to disability, etc., that have been secured by a lien and are due after the date of issuing a decision on settlement, shall be paid at the express request of the person entitled to such income. Such claim shall be calculated in the same manner as the reimbursement for personal easement.

**C. Compensation for Personal Easements<sup>94</sup>**

If the holders of personal easements and other rights ceasing with the sale, and the judgment creditors who follow them in the order of settlement, cannot agree as to the amount of reimbursement for such easements, the amount of reimbursement shall be determined by the court. In making the determination, the court shall take into special consideration the time for which those rights would still be active, their value and the age of the holder of such rights.

**D. Hearing on Partition of Sale Proceeds<sup>95</sup>**

If there is more than one judgment creditor or third person entitled to settlement, the judge shall schedule a hearing for the partition of the proceeds of sale, once all legal pre-conditions to holding the hearing have been met. All persons who, according to the facts of the case, have a right to be paid from the sales proceeds shall be summoned to the hearing.

**E. Decision on Settlement<sup>96</sup>**

After holding the hearing on partition, the judge shall rule, without delay on the payment of claims. Implementation of the decision on settlement shall commence after the expiration of the deadline for filing an appeal.

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<sup>93</sup> Law on Enforcement Article 104

<sup>94</sup> Law on Enforcement Article 100

<sup>95</sup> Law on Enforcement Article 108

<sup>96</sup> Law on Enforcement Article 109

## **F. Priority of Settlement<sup>97</sup>**

The following claimants shall have priority to be paid out of the proceeds of the sale in the order indicated:

- the costs of enforcement procedure;
- claims of lien holders with a superior right to the judgment creditor;
- the claim of the judgment creditor on whose motion the enforcement was ordered;
- inferior lien holders;
- the claim of a holder of a personal easement that ceases to exist with the sale; and,
- the judgment debtor.

If there are multiple creditors referred to in the same categories of priority, they shall be paid in the order they acquired their lien or right to settlement or personal easements.

## **G. Appeal against Decision on Settlement<sup>98</sup>**

If an appeal against the decision on settlement is filed within a specified period, it shall be delivered to the parties and to the participants in the proceedings. The decision shall, however, be enforced if the judgment creditor fails to file a motion within three (3) days from receipt of the appeal to postpone the execution. The opportunity to postpone the enforcement process until receipt on appeal by the second instance court is allowed because the appeal does not suspend the proceedings.

## **XI. Counter- Execution (Real and Personal Property)**

### **A. Counter-Execution by Judgment Debtor<sup>99</sup>**

After an enforcement has been executed, the judgment debtor may, in the same executive procedure, request that the court order the judgment creditor to return what was obtained by the execution (counter-execution). The basis for counter-execution includes discovery that:

- the enforceable document has been finally rescinded, altered, annulled, repealed or otherwise been established without effect;
- the decision on enforcement has been finally revoked or altered; or
- during the enforcement procedure the judgment debtor satisfied the judgment creditor's claim out of court so that the judgment creditor would receive double compensation.

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<sup>97</sup> Law on Enforcement Article 98

<sup>98</sup> Law on Enforcement Article 109

<sup>99</sup> Law on Enforcement Article 54

The judgment debtor, in the motion for counter-execution, may also request the payment of lawful default interest from the date of collection of cash.

The motion for counter-enforcement may be filed within thirty (30) days of the date the judgment debtor became aware of the grounds for filing the counter-enforcement, and one year after the conclusion of the enforcement procedure, at the latest.

If the judgment creditor opposes the motion, the court shall rule following a hearing on the matter. In cases where the judgment creditor fails to make a statement on the motion within the prescribed deadline, the court shall assess whether to rule on the motion without holding a hearing. The court shall, in the decision accepting the motion, order the judgment creditor to return to the judgment debtor what he has obtained through execution within eight (8) days of the ruling.

### **B. Counter-Enforcement by Third Party<sup>100</sup>**

A person against whom a claim of the judgment creditor has been settled, without being determined as a judgment debtor under the decision on execution, may file a motion for counter-execution within the deadlines applicable to the judgment debtor for return of the property seized.

## **XII. Ancillary Procedural Issues**

### **A. Death of a Party<sup>101</sup>**

The Law includes special provisions for dealing with the death of either a judgment creditor or a judgment debtor, when the deceased party does not have an agent or a legal representative.

In the event of the death of a judgment creditor (who is not represented by an agent), any heirs or interested persons may move the court, at their own expense, to appoint a temporary representative to the heirs, for a period of time, in order that the enforcement proceeding may continue. This affords time to locate and identify the true heirs. The court will appoint a representative within a period of eight (8) days of filing such motion. If a motion requesting the appointment of a representative has not been filed within thirty (30) days of notice of the death of the judgment creditor, the court shall dismiss the proceedings.

In the event of the death of a judgment debtor (who is not represented by an agent), the judgment creditor may move the court, at his own expense, to appoint a temporary representative from among the persons who possess the property subject to enforcement and proceed with the enforcement proceeding. The court shall appoint a temporary representative within eight (8) days of the filing of such motion. The judgment creditor

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<sup>100</sup> Law on Enforcement Article 58

<sup>101</sup> Law on Enforcement Article 34

must file the motion for appointment of a temporary representative with fifteen (15) days as of the date he received the court notification on the death of the judgment debtor, or the court shall dismiss the proceedings.

All expenses of the judgment creditor in the aforementioned case are settled out of the property of the judgment debtor. Each heir may apply to take over the procedure by application to the executive court. The court rules on the heirs taking over the proceedings and on the dismissal of the temporary representative through a conclusion.

## **B. Fines and Coercive Measures<sup>102</sup>**

The court may assess fines and penalties against parties who fail to fulfill obligations to the court or to other parties to the action.

### **1. Non-Monetary Claim of Judgment Debtor**

In the event the judgment debtor fails to fulfill a non-monetary obligation as prescribed by an enforceable document, the court shall, on motion of the judgment creditor, determine an appropriate period of time for the judgment debtor to comply. The court shall advise the judgment debtor, that should he fail to comply, he shall be obliged to pay a specified amount of money to the judgment creditor for each day of delay.

### **2. Assessing Fines<sup>103</sup>**

The court may assess fines against a natural person in amounts ranging from 100 KM to 5000 KM, while legal persons may incur fines ranging from 1000 to 100 000 KM (depending on judgment debtor's financial capacity). Fines ranging from 500 KM to 5000 KM may also be levied against the responsible person of a legal person. A fine levied under these previous provisions may not be converted into a prison sentence.

The court may levy fines as a means to promote enforcement and compel cooperation. Specifically, the fines may be levied:

- in case of enforcement by vacation and hand over of immovables;
- in order to fulfill an obligation for an action that only a judgment debtor may fulfill;
- for an obligation to forbear and to restrain from action;
- for the case of repeated trespassing;
- for returning an employee to work or office;
- in cases of hiding or disclosing false information about the judgment debtor's property by judgment debtor himself as well as by third parties, and,
- in accordance with application of the provisions of the Law on Civil Procedure and in case of contempt of court.

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<sup>102</sup> Law on Enforcement Article 17

<sup>103</sup> Law on Enforcement Article 17

Fines may not be applied if the judgment debtor is Bosnia and Herzegovina and its entities, Brcko District, cantons, cities, municipalities and administrative organizations, as well as the bodies of these legal persons, whereas the provisions on punishment of responsible persons shall be accordingly applied unless otherwise provided by law.

Prior to pronouncing a fine, the court shall allow the judgment debtor to make a statement and, if necessary, shall hold a hearing to present the evidence. When adjudicating the amount of fine, the judge shall pronounce a fine and the deadline for payment by a decision, taking into consideration the significance of the action the judgment debtor was obliged to perform as well as other relevant circumstances of the case.

An objection may be filed against the decision within eight (8) days from the day of receipt of the decision. The person against whom the fine has been pronounced shall bear all costs incurred due to the pronouncement and enforcement of such fine. After the decision has become final, the fine shall be collected by the court *ex officio*, to the benefit of the budget out of which the executive court is funded.

### **C. Partition of Objects<sup>104</sup>**

The provisions on the partition of objects stipulate that the court at which territory an object is located shall have territorial jurisdiction over deciding on motion for execution by partition of a common object and over enforcement of such execution, and that for the physical partition of a common object the court shall decide if such partition has been foreseen by an enforceable document.

Particular actions of physical partition shall be undertaken by a judge or an associate or a court referee authorized by the judge, depending on circumstances, and the court shall summon the participants to be present in carrying out the partition, and if necessary the court shall order an expert opinion on the partition.

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<sup>104</sup> Law on Enforcement Article 218

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## Action Timeframes

| Procedure                                | Timeframe                                              | Article       |
|------------------------------------------|--------------------------------------------------------|---------------|
| Filing objection                         | 8 days after service (unless law stipulates otherwise) | Article 12(3) |
| Filing appeal against objection          | 8 days from date of service of decision on objection   | Article 12(4) |
| Court decision on motion for enforcement | 8 days                                                 | Article 15    |

|                                                                                                                     |                                                                                                  |               |
|---------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|---------------|
| Court decision on objection                                                                                         | 15 days of date conditions are met                                                               | Article 15    |
| Submission of request for compensation                                                                              | 15 days after conclusion of enforcement proceedings                                              | Article 16(6) |
| Filing of objection against decision imposing fines                                                                 | 8 days after receipt of decision imposing fines                                                  | Article 17(6) |
| Appointment of temporary representative after death of judgment creditor                                            | 8 days after filing motion                                                                       | Article 34(3) |
| Appointment of temporary representative after death of judgment debtor                                              | 8 days after filing motion by judgment creditor                                                  | Article 34(4) |
| Filing of motion by judgment debtor seeking revocation of cert. of enforceability found to be without grounds       | 8 days after receipt of decision on enforcement                                                  | Article 35(4) |
| Response to an objection                                                                                            | 3 day from the date of delivery of the objection                                                 | Article 48(2) |
| Response to third party objection by judgment creditor and judgment debtor                                          | 8 days from receipt of objection                                                                 | Article 51(3) |
| Motion for Counter-Enforcement                                                                                      | 30 days of the date when the judgment debtor become aware of the grounds for counter-enforcement | Article 54(3) |
| Judgment creditor's response to motion for counter-enforcement                                                      | 3 days of service of process                                                                     | Article 55(1) |
| Court order to judgment creditor to return property after approving motion for counter-enforcement                  | 8 days                                                                                           | Article 55(3) |
| Dismissal of proceeding that were postponed                                                                         | 30 days following the expiration of the period of postponement                                   | Article 62    |
| Filing of motion by judgment creditor of new method or object of enforcement when enforcement has become impossible | 15 days after service of the order by court                                                      | Article 63(4) |
|                                                                                                                     | 8 days                                                                                           | Article 63(6) |
|                                                                                                                     | 30 days                                                                                          | Article 63(6) |

|                                                                                                         |                                                                                       |               |
|---------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|---------------|
| Filing by judgment debtor requesting enforcement be made against a different process of real property   | Within 3 days after service of the decision on enforcement                            | Article 71(1) |
| Filing of response by judgment creditor to request change in object of enforcement                      | 3 days after date of service                                                          | Article 71(2) |
| Request by judgment creditor for reimbursement of expenses for enforcement against first parcel         | “Within same period” presumably within 3 days response filing period                  | Article 71(2) |
| Court decision on judgment debtors motion for change in object                                          | Within 8 days from receipt of judgment creditors response                             | Article 71(3) |
| Filing of motion for the dismissal of enforcement due to insufficient settlement                        | Within 8 days from the date of service of the conclusions on sale                     | Article 81(2) |
| Sale of real property                                                                                   | At least 30 days from date the conclusion on sale is posted on the court notice board | Article 82(5) |
| Period of time within which a purchaser must pay the purchase price for real property                   | Not to exceed 30 days from date of sale                                               | Article 85(2) |
| Scheduling of second foreclosure sale, if property is not sold at the first                             | Within 30 days of first sale                                                          | Article 89(3) |
| Scheduling of third foreclosure sale, if property is not sold at the second                             | Between 15 and 30 days of second sale                                                 | Article 89(5) |
| Period of allowed postponement of foreclosure if the decision on enforcement has not become enforceable | Period not exceeding 30 days                                                          | Article 90(1) |
| Service of conclusion of sale on all necessary persons                                                  | Upon expiration of 3 days following posting on court’s notice board                   | Article 90(7) |
| Period of allowed postponement of issuance of conclusion of private sale                                | Period not exceeding 30 days, if decision on enforcement has not become enforceable   | Article 91(2) |
| Period for highest bidder to                                                                            | Within period ordered by                                                              | Article 92(1) |

|                                                                                 |                                                                         |                |
|---------------------------------------------------------------------------------|-------------------------------------------------------------------------|----------------|
| make payment to the court                                                       | the court, but not exceeding 30 days                                    |                |
| Return of security deposits to losing bidders                                   | 3 days after date sale price was paid to the court                      | Article 92(7)  |
| Service of decision on award to all necessary persons                           | Upon expiration of 3 days following posting on the court's notice board | Article 93(4)  |
| Time for court to instruct filing of civil lawsuit by contesting party          | Within specified deadline of not longer than 15 days                    | Article 103    |
| Implementation of decision on settlement                                        |                                                                         | Article 109(8) |
| Filing of request for the establishment of a land register by judgment creditor | Within 15 days from date decision on enforcement was rendered           | Article 113(5) |
| Filing of motion to set a higher or lower value on seized personal property     | Within 3 day after the appraisal in performed                           | Article 126(6) |
| Date of sale of personal property                                               | At least 15 days after making seizure inventory                         | Article 129(1) |
| Scheduling of second action upon failure of first                               | Upon motion of party, within a period of 8 days of the failed auction   | Article 131(3) |

## **Highlights of the Law on Executive Procedure**

**Purpose.** The following is a training document design to give a brief overview of the provisions of the Law on Executive Procedure, as recently revised, and specifically as it pertains to enforcement against real and personal property as collateral for a loan.

It was prepared for those trainees who have a solid grasp of the old law, who have already received training on the new law, or who, for one reason or another, do not need an in-depth understanding of the new law.

**Introduction.** The recent changes to the Law on Executive Procedure were enacted as a means to address a wide-range of inefficiencies and inequities reflected in the previous version.

Specifically, the previous law was deemed to be excessively protective of judgment debtors, and as a result worked as a disincentive to the extension of credit and potential investment. The revisions were designed to make the protection of creditors quicker and more efficient, but at the same time not to differ significantly from the previous

principles of court executive procedure. It is believed that the final version better serves the interests of both the judgment debtor and the judgment creditor.

### **Part One – Basic Provisions**

**Scope of Law.** The Law has been significantly narrowed in its scope. In its revised form, the Law governs only the enforcement on claims based on “enforceable” and “authentic” documents. In this regard, except in special cases provided by law, the Law does not accommodate the rendering of rulings which are otherwise governed by the Code of Civil Procedure, or other related laws.

**New Terms.** The Law includes a number of new terms, such as “judgment creditor” and “judgment debtor” which were added to clarify the procedural status of each of the parties to the procedure.

**Jurisdiction.** The territorial jurisdiction of courts is determined by the means and object of execution. In this regard, parties are not entitled to negotiate the territorial jurisdiction of another court (unlike in civil procedure).

**Means and Object of Execution.** Means and Object of execution are no longer determined by listing them separately based on the type of claim and the object of execution. Now, the means and object of execution have been defined in general terms, regardless of the type of claim.

**Notice and Service of Process.** The Law prescribes specific provisions regarding notice and service of process. Of particular interest is the new “substitute” service provision, which allows certain notices to be made through “posting” on the courts notice board.

**Composition of the Court and Rulings.** The law prescribes that certain actions of the court may be conferred to an associate under the judge’s authority. (Law Article 10)

**Objection and Appeal as Legal Remedies.** The Law has retained the provisions on objection and appeal as legal remedies with a number of important changes. For example, the creditor may contest the decision on execution solely by an appeal. Further, an objection must include the party’s basis for the object. (Law Article 12)

**Limited Suspension of Process.** The new Law contains limited provision for the suspension of process. For example, the filing of an objection does not suspend the commencement of enforcement execution based on a decision concerning an enforceable document. An objection does, however, suspend the commencement of enforcement with regards to the action of enforcement relating to settlement of judgment creditor. It is believed that these provisions will keep the process moving forward. (Law Article 12)

**Third Party Right to Object.** The Law gives certain third parties the right to object to the enforcement of execution. But these provisions are significantly different from the

previous law, and may require the filing of a civil suit. (Law Article 51) The co-owner of movable property may not, however, take advantage of these provisions.

**Grounds for Objection.** The law stipulates 10 specific examples of grounds for filing objection. (Law Article 47)

**Enforceability and Finality.** The Law introduces and defines the terms of “enforceability” and “finality”, aiming to avoid the mentioned dilemmas about the time of conduct of enforcement. (Law Article 13) Specifically, the Law stipulates as follows:

- a decision against which no objection has been filed within the specified period shall become enforceable and final;
- a decision against which an objection has been rejected shall become enforceable, and if an appeal is not allowed against such decision it shall become even final;
- a decision rejecting an objection shall become final if the appeal of such decision is not filed within the deadline or if the appeal is rejected;
- if an appeal instead of objection may be filed against the first instance decision, that decision becomes enforceable, and it shall become final if the appeal is not filed within the deadline or if the appeal is rejected.

**Fines.** There court may assess fines as a coercive measure against parties who fail to adhere to court standards or demands. Fines may range from 100 KM to 5000 KM for natural persons; 1000 to 100,000 KM for legal persons, and 500 KM to 5000 KM for responsible persons of a legal person. Fines may not be converted into a prison sentence. (Law Article 17)

**Deposits/Guarantees.** Only persons who have posted a guarantee in advance may participate in a public auction. (Law Article 86). Guarantees (auction deposits) may be given in the form of bank guarantee, securities and valuables which value can easily be estimated on the market and which can be cashed in easily and quickly. (Law Article 86)

## **Part Two – Enforcement Procedures**

**Enforceable and Authentic Documents.** The court shall determine enforcement solely on the basis of an enforceable or authentic document. (Law Article 22)

**Enforceable Document - Defined.** In accordance with passage of the new laws, the term “enforceable document” now includes certain documents prepared by notaries public. The Law on Notaries Public defines which documents prepared by a notary public qualify as “enforceable documents” for the purpose of executive procedure. (Law Article 23)

**Authentic Document - Defined.** The definition of the term “authentic document” has been modified to include fewer types of documents, and now includes a bill of exchange or checks with protest and reserve account. (Law Article 29)

**Realizing Monetary Claims.** It is now possible to order execution for realizing a monetary claim on the basis of an authentic document for both legal and natural persons. Previously only legal persons were covered by these provisions.

**Death of Judgment Creditor or Judgment Debtor.** The law contains specific provisions on dealing with the death of one of the parties through the appointment of a temporary representative. These provisions were designed to avoid the previous approach which allowed interruption of the proceedings. In certain cases, the judgment creditor must bear the costs of these provisions, and failure to act can result in dismissal of the action. (Law Article 34)

**Initiating and Carrying Out an Executive Procedure.** The Law contains revised requirements for filing a motion for execution. It is interesting to note that as the judgment creditor may not have sufficient information on the assets of the judgment debtor it is not mandatory that the judgment creditor state the object of enforcement when seeking enforcement against movable property. (Law Article 36)

**Determining Judgment Debtor’s Property.** In a motion for enforcement based on an enforceable document or an authentic document, the judgment creditor may request that the court gather information on the property of the judgment debtor. The information shall be requested from the debtor himself and from other natural and legal persons, administrative and other authorities and organizations. The judgment creditor must be able to make a credible argument that such persons and legal entities possess such information. A similar request may be made after a decision on enforcement has been passed if enforcement on the proposed means of execution was not successful. (Law Article 37)

**Counter-Execution.** In cases where the basis for the execution has changed, the judgment debtor may, in the same executive procedure, request the court to order the judgment creditor to return to him what was obtained by the execution (counter-execution). A third party may similarly take advantage of the counter-execution process if the judgment creditor satisfied his claim against the property of that person. (Law Articles 54, 55, 56, 57, and 58)

**Postponement.** The law no longer allows a judgment debtor to file a motion of postponement of execution. Judgment creditors, however, are still allowed to file for

postponement. In cases that involve several judgment creditors, and only some of the judgment creditors request postponement, the court shall only postpone the enforcement pertaining to the requesting judgment creditors. If the judgment creditor who requested postponement, does not move, the court shall dismiss the procedure. (Law Articles 60, 61, and 62)

**Dismissal Due to Impossibility.** The execution shall be dismissed if it has become impossible or otherwise cannot be enforced. However, prior to passing a decision on the dismissal of execution, the court shall summon the judgment creditor to file a motion on the new means and object of execution. (Law Article 63)

### **Execution on Real Property**

**General.** Enforcement against real property shall be executed through a notice on enforcement entered in the land book, appraisal, sale and settlement of the judgment creditor out of the proceeds of the sale. (Law Article 68)

**Territorial Jurisdiction.** When deciding on a motion for enforcement against real property and the execution of enforcement, the court where the property is located shall be the competent court. (Law Article 67)

**Ownership Issues.** Generally, execution against real property can only be made against the parcel as a whole, as determined by the regulations governing ownership and other real rights entered in the land books. If co-ownership is established with respect to a parcel of real property, the co-ownership share of the real property may be subject execution for debts of the other co-owner. (Law Article 69)

**Right of Usufruct.** The right to usufruct may be an independent object of execution. (Law on Ownership, Principles, Subject and Titles of Ownership, Article 31)

**Land Book Revision.** If the land book reflects a name other than that of the judgment debtor, the judgment creditor may motion for the filing of an appropriate document for the entry of the rights of the judgment debtor, thus shortening the procedure for establishing the execution by entering the transfer of ownership directly from the person entered in the land book who is not the judgment debtor, on to the person to whom the real property was sold during the executive proceedings. (Law Article 70)

**Change in Object of Enforcement.** Under certain conditions, the judgment debtor may propose that execution be carried out on another object of execution. The judgment debtor must submit proof of his right to such other object and meet numerous additional requirements, including compensating the judgment creditor for expenses incurred. (Law Article 71)

**Easements and Encumbrances.** Not all easements, encumbrances and construction rights on real property cease when the real property is sold. Personal easements that are

entered into the land book continue, while personal easements which are not entered in the land book cease with the enforcement of the decision on award. (Law Article 75)

**Rent and Lease Contracts.** Similarly, contracts for rent and lease of real property, that are entered into the land book do not cease upon the sale of real property in connection with a settlement. Contracts for rent and lease that are not entered into the land book terminate when the decision on award become final. (Law Article 76)

**Inspection of Real Property.** The court shall, through a conclusion, determine the time when a person interested in purchasing the real property can inspect it. If the judgment debtor or any other person prevents or hinders an inspection of the real property, the court shall order that the judgment debtor and other person be removed from the real property during the time of inspection. (Law Article 77)

**Exemption from Execution.** Exemptions from execution have also been narrowed with respect to real property. The object of execution may not be smaller than a 5000 square meter piece of farming land belonging to a farmer, unless the property is secured through a contractual lien on real property (mortgage). (Law Article 79)

**Appraisals.** The court shall, through a conclusion, decide on the method for determining the value of real property immediately upon issuing a decision on execution. If necessary, the court may hold a hearing prior to issuing the conclusion. The court may request the determination of the value of the real property from the competent authority of the tax administration office. The duration of the procedure for the determination of the value of real property is significantly reduced. (Law Article 80)

**Dismissal – Insufficient Cover.** The enforcement may be dismissed pursuant to the objection of a person who has the right to be settled out of the sales price of the real property, who comes before the judgment creditor in the priority order, if the determined value of the real property does not cover the amount of the judgment creditor’s claim even partially. (Law Article 81)

**Conclusion on the Sale of Real Property.** The court issues a conclusion on the sale of the real property, which sets forth a significant amount of information about the subject property, including its appraised value. It also establishes the method and the conditions of sale, as well as the time and place of the sale if the sale is carried out through a public auction. (Law Article 85)

**Sale of Real Property by Direct Bargain.** The judgment creditor, certain parties and lien holders can reach an agreement, permitting the sale of real property through a direct bargain by an authorized real estate agent, court referee or in another manner. Signatures of the persons who are entering into the contract must be certified by the competent authority, and the sale must occur within a specified date. (Law Article 91)

**Sale of Real Property by Public Auction.**

**One Bidder:** at the request of the judgment creditor, the court may postpone the hearing for sale if only one bidder participates. (Law Article 84)

**Persons Excluded from Bidding:** The range of persons who cannot bid at public auction has been expanded, and now includes the spouses and other persons related to the judge. (Law Article 88)

**Minimum Sales Price/Sale:** Generally, real property cannot be sold at the first auction for less than half of its appraised value. Initial offers made at the first hearing amounting to less than the required amount will be disregarded. If real property is not sold at the first auction, a second auction will be scheduled within thirty (30) days. At the second sale, the property may not be sold for less than one third of the appraised value. If the property cannot be sold at the second auction, a third auction will be schedule within thirty (30) days, at which the property maybe sold at a price without regard to appraised value. (Law Article 89)

**Less than Minimum Bid:** The parties may agree that the real property may be sold at a public auction for a price lower than one half or one third of the determined value.

**Sale to Highest Bidder:** The bidder who offered the highest bid at the auction sale shall pay the sales price, reduced by the amount of the security deposit, within the time designated by the court, but not exceeding thirty (30) days.

**Defaulting Bidders/New Auction:** If the highest bidder fails to make payment within the specified time, the sale will be deemed void, and the property will be offered to the second highest bidder. If the second highest bidder does not make payment within the time prescribed, the property will be offer to the next highest bidder. If the third highest bidder does not purchase the property, a new auction will be scheduled. The costs of an unsuccessful sale shall be paid out of the security deposit of the first bidder who failed to make payment. The cost of the new sale will be paid on a proportional basis by the three bidders who failed to purchase the property. (Law Article 92)

**Dismissal for Failure to Sell:** The executive proceedings shall be dismissed if the real property could not have been sold even at the third hearing. In the event of sale through a direct bargain, the court shall dismiss the execution if the real property was not sold within the deadline determined in the agreement. The dismissal of execution does not prevent the initiation of a new executive proceeding for settlement of the same claim on the same real property. (Law Article 95)

**“Decision on Award”.** The term “decision on award” replaces the term “decision on hand over” used in the previous version of the Law. Now, the court only passes one decision, this being a decision awarding real property to the purchaser, thus combining the previous decision on award and the decision on hand over of real property to the

purchaser. As such, the purchaser acquires ownership and possession of immovable property more quickly. (Law Article 90)

**Settlement of Creditors.** The court shall commence the settlement of creditors after the decision on award is made and after the decision on execution becomes enforceable. (Law Article 96).

**Priority of Settlement.** The Law contains detailed provisions regarding the priority of payments. The costs of the enforcement procedures are always paid first, followed by the claims of the lien holders with superior rights to the judgment creditor, the claim of the judgment creditor on whose motion the enforcement was ordered, inferior lien holders, and the claims of holders of personal easements that cease to exist with the sale, with any remaining amounts to the judgment debtor. (Law Articles 97 and 98)

**Contesting Claims.** The new provisions of the Law allow the court to rule on certain contested claims. In other cases, the court shall advise the contesting person to initiate a civil lawsuit. (Law Articles 102 and 103)

**Settlement of one Creditor.** If only one creditor is being paid from the sales price, then the court shall, without holding a hearing order the payment of the costs of execution, interest up to the date the objects were cashed in, and the main claim. (Law Article )

**Settlement of more than one Creditor.** If several creditors are to be paid in the enforcement procedure, they shall be paid out of the sale price according to priorities that apply to the sale of real property – See Article 98.

**Partition Hearing.** Enforcement of the decision on settlement shall commence after a deadline for filing an appeal by the authorized persons has expired, and if an appeal against the decision on settlement is filed within a specified period. (Law Article 108)

**Eviction.** The judgment debtor loses the right of possession of the real estate and is obliged to transfer it over to the purchaser immediately after delivery of the decision on award of real estate, unless otherwise provided by law or by the agreement with the purchaser. Upon rendering the decision on award of the real estate the court shall, at the request of purchaser, order, by a conclusion, the real estate to be vacated and transferred to the purchaser. (Law Articles 110, 111 and 112)

**Execution Where There is No Land Book.** The Law contains provisions for the execution against real property where there is no land book. In this regard, the judgment creditor is obliged to specify in his motion for execution the location of the real estate, its name, boundaries and size, as well as the cadastral survey data pertaining to that real estate if entered into the land register. A hearing involving interested parties shall be held after due notice and opportunity for objection. The provisions on execution against real estate in the region where there is no Land Book shall be adequately applied to the execution against the floors of buildings (referring to apartments and business buildings and premises) since the Land Books referring to the floors of the buildings have not been

established yet, and according to the regulations of this Law, the execution against apartments in the Book of Registered Contracts (apartments which were subject to purchase by previous holders of tenancy rights) may be enforced, which has already been equated with the Land Book in the practice of the executive court. (Law Article 113)

### **Execution against Movable Assets**

**General.** Execution against movable assets shall be enforced by their seizure, assessment, and sale, and by settling a judgment creditor from the proceeds of the sale.

**Territorial Jurisdiction.** The court, in whose territory the movable assets are located, as specified in the motion for execution, shall have territorial jurisdiction over issuing a decision on the motion for execution against the movable assets. The judgment creditor may, however, propose that the court issue a decision on enforcement without specifying its location. The court where the permanent or temporary residence of the judgment debtor, who is a natural person, or the head office of the judgment debtor who is a legal person, is located shall have territorial jurisdiction over the motion for enforcement. (Law Articles 114 and 115)

**Service for Additional Enforcement.** A court that adjudicated enforcement against personal property in its territory, may serve another court for further enforcement action until the judgment creditor's claim is satisfied. (Law Article 116)

**Exemption for Enforcement.** The law identifies a number of movable assets that are exempt from execution. The list of exempted items include: items necessary to satisfy daily needs; food and fuel needed for three (3) months; certain types of cash and income; decorations, medals, certificates of war service and other decorations and awards; certain personal effects; and postal delivery or postal money orders directed to the judgment debtor. (Law Article 117)

**Notice of Seizure.** As a rule, notice will be given to the judgment debtor before a seizure is commenced. Depending on the circumstances, however, the court may decide that notice shall be given at the time of seizure. Absence of the judgment creditor shall not prevent the seizure. (Law Article 119)

**Inventory List and Object of Seizure.** The seizure shall be carried out by making an "inventory list" of the items on the judgment debtor's person, as well as those items found in, or on his real property (residence and business). An inventory will also be made of the movable assets owned by the judgment debtor's spouse, as they are considered as equal co-owners of such assets. Further, judgment debtor's objects that are in the possession of a third person shall also be inventoried with the consent of that person. As many items shall be included on the inventory list as are necessary to satisfy the judgment creditor's claims and the costs of enforcement. (Law Articles 120 and 121)

**Unsuccessful Seizure.** If no personal property is found that may be subject to enforcement, the judgment creditor may file a motion that the seizure be conducted again within three (3) months of the date of original service. (Law Article 125)

**No Change in Object of Enforcement.** The Law no longer provides the judgment debtor with the opportunity to motion for a change of object. This procedure is still available when the object of enforcement is real property. The court may, however, subsequently order the execution against another object, and not against the one which was inventoried at the proposal of the judgment creditor.

**Safekeeping of Seized/Inventoried Objects.** The inventoried objects may be left with the judgment debtor for safekeeping, unless, pursuant to a motion by the judgment creditor, the court directs the objects to be submitted to the judgment creditor or a third person for safekeeping. (Law Article 122)

**Prohibition on Disposal.** Any person who is in possession or has control over the inventoried objects may not dispose of them without court order. (Law Article 122)

**Appraisals.** Appraisal of personal property shall be conducted at the same time as the inventory of the seizure, by a court appraiser, or if not appraiser is appointed, by the court referee. A party may file a motion for an expert appraiser. If the first appraisal was not preformed by an expert, a party may move the court to set a higher or lower value of the seized objects, or to order a new appraisal. (Law Article 126)

**Conclusion on the Sale of Movable Property.** The court issues a conclusion on the sale of the movable property, which sets forth the method and the conditions of the sale, as well as the time and the place of the sale if the sale is carried out through a public auction. The court's conclusion on method of sale will be based on the method that will obtain the most favorable sales price. A court referee or other person appointed by the court shall conduct the public auction. (Law Article 130)

**Sale of Movable Property by Private Agreement.** The judgment creditor, certain parties and lien holders can reach an agreement, permitting the sale of movable property through a direct bargain by authorized real estate agent, court referee or in another manner. A sale by private agreement may be entered into by the purchaser and the court referee or a commission agent. (Law Article 130)

**Sale of Movable Property by Public Auction.** A sale through public auction shall be ordered if the objects in question are of considerable value and it is expected that they will be sold at a price exceeding their appraised value. (Law Article 130)

**Timing:** At least fifteen (15) day must elapse from the date of making the seizure inventory to the date of sale, unless the judgment debtor agrees that the sale may be held earlier, or the seized items are perishable, and there is a danger of a substantial loss in their value. (Law Article 129)

**Minimum Sales Price/Sale:** Generally, movable property cannot be sold at the first auction for less than half of its appraised value. Initial offers made at the first hearing amounting to less than one half of the appraised value will be disregarded. If no person is willing to pay the accepted bid, or no bid is made, a second auction may be scheduled, on the motion of the parties within eight (8) days of the original auction. At the second sale, the property may not be sold for less than one third of the appraised value. (Law Article 131)

**Provision Pertaining to the Sale of Real Property.** The sale of movable assets shall be subject to the provisions regarding the sale of real property including: the ability to postpone the sale if only one bidder participates; the list of persons who are excluded from bidding; the ability of the parties to agree on less than minimum sales price; contesting claims; settlement of claims not due; etc.

### **Ancillary Procedural Issues**

**Death of a Party.** The Law provides specific provisions for continuing the case, through the appointment of temporary representatives, in cases when either the judgment creditor or judgment debtor dies. In the case of the death of the judgment debtor, the judgment creditor must motion the court to appoint a temporary representative and agree to pay the costs of the appointment.

**Fines and Penalties.** The court may assess financial penalties and fines against a party who fails or refuses to comply with a court order or other wise fulfill his legal obligation to the court or other party. The court may assess fines against a natural person in amount ranging from 100 KM to 5000 KM, while legal persons may incur fines ranging from 1000 to 100000 KM. Fines ranging from 5000 KM may also be levied against the responsible person in a legal person. A fine levied by the court may not be converted into a prison sentence.