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BOSNIA-HERZEGOVINA

**BiH BANKRUPTCY
AND LIQUIDATION LAWS:**

**Bankruptcy Judges Deskbook
(Outline)**

**Contract Number
PCE-I-00-98-00015-00 TO 821**

**Submitted to:
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I. Explanation of Outline and Concept for the Book

This outline sets forth the issues that will be covered in the book and the structure of the book. The book is meant to be a practical manual that can be used on a daily basis by sitting commercial court judges in BiH. It will provide them an easy to use reference for applicable laws. It will also provide them forms to use in their practice.

The undeveloped state of the bankruptcy system in BiH and the urgent need for more accelerated implementation have helped shape the Judges Desk Book. The manual must be structured from the beginning as a work in progress, to be continuously updated and revised as the insolvency regime takes root. Thus the book will be published in loose leaf (notebook), and electronic formats. Loose leaf versions will be distributed to all commercial court judges in BiH by mail or hand-delivery. Electronic versions will be distributed via the FILE Project website and on CD Rom. The electronic versions will include links to forms and the underlying law discussed in the text of the book.

The next step in the process of preparing this book is to obtain input from Bosnian judges so that we are certain that it meets their needs. We will also continue to collect forms and examples of pleadings that are being used in bankruptcy practice in BiH. We then will commence drafting of the entire book.

II. Introduction to Outline of Bankruptcy Judges Desk Book

The new Bankruptcy and Liquidation laws in Bosnia and Herzegovina (BiH) will not be successfully implemented unless the key players are able to properly perform their roles. Undoubtedly judges' ability to apply the laws and manage the procedures are crucial in the FILE Project's work to successfully implement the laws. The judge has the final decision on the legal, procedural, and factual issues that will arise in the case and is charged with administering the case. Thus it is critical that Bosnian judges have access to reliable and accurate reference materials, specifically a "Desk Book."

Section III (Needs & Interventions) of Task Order Number 821 (the "TO") requires FILE under "Bankruptcy & Liquidation Tasks" activity 4 asks to "Develop Implementation Resource Materials – Deskbook for Judges."

III. Background

A main objective of FILE is to contribute to the improvement of the lending environment in BiH's two entities by strengthening the efficiency of the judiciary system, with special emphasis on the bankruptcy and collateral law regimes. FILE's activities in this area will be an ongoing and multi-faceted.

A critical step in the bankruptcy area is developing a cadre of competent, knowledgeable and effective bankruptcy judges with the skills and tools necessary to deal efficiently with the numerous issues they will face daily in carrying out their roles. A number of obstacles will have to be addressed to achieve this goal:

- The Law on Bankruptcy Proceedings is relatively new. Accordingly, it is not well understood by the professionals who must implement it, including judges, trustees, attorneys, and appraisers.
- Little exists now in the way of reference materials to guide stakeholders through the bankruptcy process. Judicial precedents, rules of practice and procedure, and forms and other tools readily available in more developed bankruptcy systems are lacking in BiH.

Several tasks in the TO for FILE's bankruptcy component are intended to address these obstacles and develop a cadre of capable judges.

IV. Outline

Preface – State purpose of the book, acknowledge contributors and USAID.

Introduction – Provide an overview of the Federation and R.S. bankruptcy and liquidation laws and fundamentals of bankruptcy procedure. Explain how to use the book and where in the book various information can be found. Define terms.

- I. Overview of the Bankruptcy Process
 - A. Role of Bankruptcy in a Market Economy
 - B. Nature of the Proceedings
 - C. Relationship of Bankruptcy Laws to other Relevant Laws
- II. Overview of the Judge’s Role in Bankruptcy Proceedings
 - A. Jurisdiction
 - 1. General authority
 - 2. Specific authority
 - B. Venue
 - C. The Six “Institutions” of the Bankruptcy Proceeding
 - 1. Bankruptcy Judge
 - 2. Bankruptcy Trustee
 - 3. Interim Bankruptcy Trustee
 - 4. Creditors’ Assembly
 - 5. The Interim Board of Creditors
 - 6. The Board of Creditors
 - D. Relationship to the Trustee
 - 1. Appointment
 - a. Interim trustee
 - b. Bankruptcy trustee
 - 2. Supervision
 - 3. Compensation
 - E. General Duty to Supervise the Proceedings
 - 1. Hold Hearings
 - 2. Investigate the Debtor and its Circumstances
 - 3. May Make Substantive Business Decisions if Creditors Assembly Fails to Do So at Two Consecutive Meetings or Board of Creditors Vote is Equally Divided
 - 4. May Dismiss a Member of Board of Creditors
 - 5. Appoints an Auditor
 - F. Primary Decisions
 - 1. Opening the Proceeding
 - 2. Recording and Determining Claims
 - 3. Closing the Proceeding
 - 4. Reorganization
 - a. Approval or rejection of the Plan

- b. Concluding the Proceeding
 - G. Appeals
 - 1. Limited to Specified Decisions
 - 2. Judge May Determine Appeal Himself if He Agrees
 - 3. Usually, Appeals Heard by Second Instance Court
- III. Opening the Bankruptcy Proceeding
 - A. Actions Prior to Opening
 - 1. Establish Security Measures
 - a. May appoint Interim Trustee for Closed Business
 - b. Must Appoint Interim Trustee for Active Business
 - 2. Enforce Obligation of Debtor to Cooperate
 - 3. Determine Amount of Deposit to Cover Costs of Proceeding
 - 4. May Appoint Experts
 - 5. May Order Interim Trustee to Continue Business
 - 6. May Order General Ban on Debtor's Conduct of Hearing Pending Opening of Proceeding
 - 7. May Decide to Suspend Operations of Debtor on Recommendation of Interim Trustee
 - 8. Review Report and Recommendations of Interim Trustee
 - 9. Makes Orders concerning Management in Public Register
 - 10. May Appoint an Interim Board of Creditors
 - B. Grounds for Opening
 - 1. Hearing
 - a. Scheduling the hearing
 - b. Holding the hearing
 - c. Decision on Opening
 - C. Direct Opening without a Hearing
 - D. Decision on Opening the Proceeding
 - 1. Timing of Decision
 - 2. What the Decision must Contain
 - 3. Notice of the Decision
 - a. Public Announcement on Court Notice Board
 - b. Direct notice of debtor and creditors
 - c. Direct notice to Proposer
 - d. Notice to Public Prosecutor
 - E. Setting Subsequent Hearings
 - 1. Reporting Hearing
 - 2. Investigation Hearing
 - F. Entry of Decisions in Public Registers
 - G. Appointment of Trustee
 - 1. Qualification of Trustee
 - 2. Certification of Trustees
 - 3. Insurance Requirements
 - H. Supervision of Trustee

1. General Duty of Supervision
2. Ability to Request Additional Information
3. Approval of Significant Decisions
4. Compensation
5. Sanctions
6. Removal
- I. Legal Consequences of Opening the Proceedings
 1. Bankruptcy Estate Created
 2. Unmatured, Condition and Non-Case Claims Become Due
 3. Trustee Succeeds to the Debtor's Rights and Assets
 4. Debtor Divested of Right to Transfer or Deal with Assets
 5. Limited Imposed on Bankruptcy Creditors
 6. Limited Imposed on Other Parties to Debtor's Agreements
 7. Stay on Actions to Enforce Claims Against the Debtor or Property Owned or Used by the Debtor
 8. Labor Contracts May be Terminated
 9. Powers of Attorney Revoked
- IV. Required Hearings
 - A. Reporting Hearing
 1. Setting the Hearing
 2. Timing of the Hearing
 3. Trustee's Report
 - B. Investigation Hearing
 1. Setting the Hearing
 2. Timing of the Hearing
 3. Examination of Claims by the Judge
 4. Subsequently Filed Claims
 - a. Decisions of the Judge
 - b. Appeal
 - C. Creditors' Assembly
 1. Judge May Determine Contested Voting Rights
 2. Judge Chairs the Creditors' Assembly
- V. Determination of Claims
 - A. Creation of Table by Judge
 - B. Uncontested Claims
 - C. Contested Claims
 1. Procedures
 2. Jurisdiction of Court
 - D. Certification of Proposed Distribution
- VI. Closing of the Proceedings
 - A. Timing of closing
 - B. Publication in Official Gazette
 - C. Termination for Inadequate Assets
 1. Procedure

2. Role of Judge
3. Appeal
- VII. Reorganization
 - A. Determination to Reorganize
 - B. Preparation and Submitting of Plan
 - C. Mechanisms for Implementation of Plan
 - D. Legal Requirements of Plan
 1. Preparatory and Implementation Sections of Plan
 2. Classification of Creditors
 3. Creditors with Right of Separate Settlement
 4. Principle of Equal Treatment
 - E. Consideration of Plan
 1. Voting by Creditors
 2. Opinions on Plan
 - F. Acceptance and Approval of Plan
 1. Hearing
 - a. Timing of Hearing
 - b. Matters to be Considered at Hearing
 2. Necessary Voting Majorities
 3. Approval of Plan if a Class of Creditors Objects
 - a. Standards for Approval
 - b. Role of Judge
 4. Approval or Rejection of Plan by Judge
 - a. Protection of Creditors
 - b. Voting
 - c. Feasibility of Implementation Proposals
 - d. Compliance with Legal Requirements
 5. Announcement of Decision
 6. Appeal
 - G. Legal Effect of Approval of the Plan
 1. Binding Effect
 2. Failure to Perform in Accordance with Plan
 - a. Legal Effect
 - b. Role of Judge
 - H. Conclusion of the Proceedings
 - I. Supervision of Plan
- VIII. International Bankruptcy Proceedings
 - A. Authority of Court in BiH
 - B. Authority of Foreign Courts
 - C. Recognition of Foreign Court Decisions
 - D. Authority of Foreign Bankruptcy Trustee
- IX. Forms