

**Recommendations to the Ministry of Justice  
of the Federation of Bosnia and Herzegovina (FBiH)  
Regarding the Establishment of a Comprehensive Legal Framework  
for the Registered Pledge System  
in Bosnia and Herzegovina<sup>1</sup>**

**1. Introductory Considerations**

We have reviewed the draft Law on Registered Pledges and the Pledge Registry of the Federation of Bosnia and Herzegovina (FBiH).

Upon review of the proposed draft Law, we conclude that this legislation would establish a modern and effective instrument to securitize claims in a professional manner.

During production of the draft Law, the authors analysed legislation of other countries concerning registered pledges; this enabled them to propose practical measures necessary for establishment of the legal framework for registered pledges and a pledge registry. For example, they drafted a closed catalog of objects that may be pledged, precisely regulated legal priority of pledges and outlined tax consideration resulting from enforcement of a pledge.

**2. Recommendations to the Ministry of Justice of FBiH regarding the Establishment of a Comprehensive Legal Framework for the Registered Pledge System in Bosnia and Herzegovina**

We recommend:

- A detailed comparative analysis of the draft Law under parliamentary consideration in FBiH and the Law passed in Republika Srpska. The goal of this analysis is a determination that a single registry system for both entities may be established.
- A long period of time before the legislation comes into effect (*vacatio legis*). (We realize that the proposed period is one year.)
- The establishment of a synchronized working group (consisting of information technology specialists, legislative drafting specialists of the Ministry of Justice, judges and bankers) to develop the necessary legal framework required to establish the registered pledge system.

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<sup>1</sup> On Friday, July 13, 2001 Judge Jacek Czaja, Judge Walentyna Dlugaszewska and Judge Jacek Widlo, Ph.D. met with USAID banking and democracy building specialists as well as representatives of the Ministry of Justice of the Federation of Bosnia and Herzegovina (FBiH). The purpose of this assessment visit was to respond to a formal request of the Ministry of Justice of FBiH to assist in the drafting of necessary implementing legislation for the pledge registry system.

- An online testing program (for example at one Cantonal court) for judges, staff of the Cantonal court and staff of the central database to test the system during the developmental phase of the pledge registry.
- A similar online testing program for bankers (future users of the system) during the developmental phase of the pledge registry.
- The draft of a procedural timetable for a similar court procedure (for example, registration of a company), including reference to relevant articles of legislation establishing such procedure. A similar timetable for registration of a pledge should also be drafted, and the two timetables should be compared. The goal of this comparative exercise is to establish the most simple and efficient method for registration of a pledge.
- The goal of a registered pledge system is to establish a modern and effective instrument to securitize claims in a professional manner. With this in mind, we propose that the system be created from the outset in an efficient technological manner. All documentation should be stored on microfiche or CD Rom. Upon final registration of a pledge (through the final judgement of the court), the physical documentation should be returned to the applicant, whereas the file should be forwarded electronically to the central database. The Ministry of Justice of FBiH should make it clear that the goal of the registered pledge system is not to collect and store supporting documentation such as contracts, etc. This is also an important cost consideration.'
- Evaluation of the possibility of using special legal staff (such as *Rechtspfleger* or *Referendant* in the German legal system) to operate the pledge registry, under supervision of the registry judge.

### **3. Recommended List of Necessary Implementing Legislation and other Documentation**

- Legal Act establishing a registered pledge division in each of the Cantonal Courts.
- Legal Act regulating the functioning of the registered pledge division in each of the Cantonal Courts.
- Legal Act establishing the central database, regulating its operations and regulating its financing scheme.
- Legal Act establishing the method for obtaining information for the registry and disseminating information from the registry.
- Legal Act establishing the content and appearance of the application forms for the registry.
- Legal Act establishing the catalog of objects that may be pledged.

- Legal Act establishing the court costs of the registry and the fees charged for use of the registry.
- Legal Act establishing the method for archiving registry documentation.
- Model contract between pledgor and pledgee. (Widespread usage of a model contract would simplify and speed-up the registration process.)

#### **4. Provision of Requested Technical Assistance**

The Partners for Financial Stability (PFS) Program, in cooperation with the Polish Know How Foundation, will endeavor to provide translations into Bosnian of the Polish legislation regulating the above-mentioned issues.

Judge Jacek Czaja  
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Sarajevo  
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