



USAID | **BOSNIA-HERZEGOVINA**
FROM THE AMERICAN PEOPLE

COLLATERAL LAW COMMUNICATION AND EDUCATION CAMPAIGN

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

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

31 March 2004

This publication was produced for review by the United States Agency for International Development. It was prepared by Chemonics International Inc.

Submitted to:

U.S. Agency for International Development

Submitted by:

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

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.

BACKGROUND

Situation

The absence of effective bankruptcy and collateral law regimes impedes investor confidence and inhibits economic growth. Creditors who are uncertain whether their claims will be treated fairly if the enterprise fails tend to lend to and invest in only the most financially healthy enterprises. This lack of investment and long-term lending impedes the development of the private sector in Bosnia and Herzegovina (BiH), as well as the country's recovery from war and transition to a market economy.

Reports prepared by donor and other international organizations recommend improvements in collateral and bankruptcy systems, coupled with better-trained court personnel to deal with commercial cases. For example, the Foreign Investment Advisory Service (FIAS) report emphasized the importance of collateral as follows: "the use of collateral in the form of movable and immovable property to secure transactions is an essential element in a market economy. In the case of BiH the existing system for land registrations and the recording rights to land is largely outdated and inaccurate. Therefore, improved registrations of immovable assets are essential. Also, effective secured transactions laws governing non-possessory security over movable property and permitting investors to use moveable property to secure their indebtedness are necessary (p. 31)."

Reforms are under way to reduce substantive legal uncertainty with respect to property rights and secured transactions. These efforts should lead to effective bankruptcy and collateral systems and streamlined judicial processes that are critical to stimulating investment and lending.

Fostering an Investment and Lender-Friendly Environment (FILE)

In August 2003, USAID launched a commercial law reform project, *Fostering an Investment and Lender-Friendly Environment* (FILE), to address many of these issues. FILE aims to assist its BiH counterparts in three key areas: collateral law; bankruptcy and liquidation laws and procedures; and court administration and case management.

FILE's Collateral Law team is tasked with developing and implementing a range of training and education programs for critical stakeholders, including judges, lawyers, judicial associates, land registry officers, government officials, appraisers, bankers, notaries, enforcement officers, court clerks, and law school students. The team's work includes:

- Designing and implementing training and continuing professional education programs on Collateral Laws (on movables and immovables), with an emphasis on the Law on Enforcement Procedure;
- Developing and implementing training and professional education programs on the new codes on civil and enforcement procedures and other relevant laws;
- Developing and disseminating implementation resource materials (e.g., manuals, judges' desk book, appraisers' guidebook, creditors' handbook, etc); and

- Identifying or developing a website where training and communication outputs can be posted and archived, with an eye toward furthering knowledge and ensuring the sustainability of training activities.

Collateral Law Education and Communication Campaign

In order to efficiently and effectively approach the education tasks described above, FILE has developed a strategic education and communication plan. The plan has five parts:

1. **Research** — Reviews and consolidates research findings and outlines campaign constraints and parameters (pragmatic as well as political).
2. **Planning** — Lists and describes specific target audiences, lays out measurable objectives and strategies.
3. **Implementation** — Articulates key messages and lists specific tactics and tools.
4. **Evaluation** — Provides metrics for monitoring and evaluating education and communication efforts. Monitoring data can then be used to report successes or reevaluate strategies and tactics.
5. **Budget & timeline** — Lists when activities will occur and how much each will cost.

To be successful, campaign activities and products must be tailored to each audience. The attached Matrix, therefore, breaks down objectives, strategies, messages and tactics by audience.

Campaign Goal

The overarching goal of FILE’s education and communication campaign is to foster private sector growth and employment by (1) improving the implementation and enforcement of BiH’s collateral law regime and (2) increasing long-term lending and investment through efficiency, effectiveness, transparency and predictability in the collateral law regime.

More specifically, the campaign seeks to improve understanding, support, implementation, and enforcement of BiH’s new collateral laws. Campaign activities are designed to promote behavior that results in an increase of direct investments using movable and immovable property as collateral, an essential element in a market economy.

Objectives

The four main objectives of the campaign are:

- To increase awareness of the collateral-related regime and promote its benefits, thus increasing a number of asset-based loans and investments;
- To increase awareness about the roles and powers of collateral laws practitioners, as stipulated in relevant legislation, and encourage practitioners to execute them effectively;
- To increase awareness of the rights of creditors and encourage them to exercise these rights in the system; and

- To creating a sustainable dialogue forum for continuous exchange of ideas among target audiences;

Process

The FILE Public Education and Communication Specialist, working closely with the Collateral Law team, will develop and implement this campaign. Local experts and partners, gathered in the “Putokaz” advocacy group, will act as the campaign’s spokespeople and will be continuously consulted in the design and implementation of the campaign, as well as in the decision making process. Other relevant projects will be consulted on the development of campaign materials, and USAID will provide final comment and approval prior to the dissemination of such materials.

RESEARCH

The education campaign for the collateral law component of the project will strengthen several weaknesses identified during research conducted by the FILE team. FILE project intends to overcome these weaknesses by:

- Implementation of new Land Registries Law and registries for moveable property;
- Training court personnel in enforcement procedures;
- Expanding information related to collateral available to the public;
- Changing misperceptions of new collateral laws and procedures (based on old practices and experiences);
- Improving the exchange of information pertaining to standards on fair market values property appraisals; and
- Improving the exchange of information between the stakeholders.

Constraints and Parameters

Following is a list of constraints and parameters that must be taken into account in developing and implementing the campaign.

- Human resources – The Communications Specialist is the only person specifically assigned to coordinate the education campaign (the Collateral Law team will assist as and when appropriate, but will dedicate the majority of its time and effort to developing and delivering training programs and resource materials);
- Client requirements - The status and needs of key partners may not be complimentary to or consistent with FILE’s efforts, and FILE’s inability to address needs that are not within its mandate could affect relationships with stakeholders and their willingness to cooperate;
- Other campaigns organized by other contactors - The involvement of numerous institutions/agencies in collateral law reform, and potentially competing public awareness campaigns, could affect FILE’s efforts;
- Budget constraints;
- Lack of commitment/capacity of stakeholders - Due to numerous and various activities in this field, issues with absorption capacity, “project fatigue” and/or reluctance to make ongoing commitments could occur; and
- Legal framework – The collateral law regime necessary for effective secured transactions and direct investments is still developing (e.g., land registries exist only in several regions of the country; the Law on Pledges has not been adopted, and the related pledge registry is not yet active; additional education and training programs on the new Law on Enforcement Procedure are required), which could hamper or delay educational programs.

PLANNING

Target Audiences and Partners

1. Collateral Practitioners Many entities have a practical effect on the collateral law regime, though not all are within the scope of FILE's program. The following entities impact on the program :

- **Judges** — Many judges lack experience and/or training in application of collateral laws. Although a difficult challenge to overcome, this presents an excellent opportunity to implement FILE's education campaign - new judges with little or no bias on the new legislation may be easier to educate..
- **Bankers** — Investment in BiH is our ultimate goal. The education and communication campaign efforts should focus on gaining their trust and feedback on the project's collateral law component.
- **Lawyers** — Lawyers in BiH do not specialize in a particular practice area, such as secured transactions. However, many attorneys are involved in implementing the collateral laws. The project's collateral law component aims to increase the number of lawyers handling collateral law cases and further educate them on changes in the legislation.
- **Appraisers** — In BiH, appraisers can be both court associates and professionals working in a variety of fields, such as economics and engineering. Currently, there are neither standard practices for appraisers nor a national institution to supervise appraisers' activities. Consequently, appraisers often perform evaluations and appraisals that contradict market values. This makes it difficult for bankers and other creditors to collect on their investments. Appraisers' training will be instrumental in modifying their practices.
- **Notaries** — Currently, a law on notaries has been enacted in the Federation, but not in the RS. While the Federation has a notaries law, there are no certified notaries. However, their role in the collateral law regime is critical, and education efforts could increase the efficiency and predictability of their work.
- **Investors** — Investors need to understand that the climate for investment is improving due to changes in the collateral law regime and stakeholder practices. The best way to reach investors is through networking events, newsletters, media, e-mail correspondence and the project website.
- **Judicial Associates** – Judicial associates perform many duties of judges in the adjudication and enforcement process. Therefore, in terms of training and education they should be approached in the same fashion as judges.
- **Land registry officers** – Land registry officers should receive additional education on new laws and practices in order to improve their skills and increase efficiency.
- **Enforcement officers** – The final outcome of collateral cases rests with enforcement officers. Judges, bankers, as well as other participants in the process have a vested

interest in their skills. New rules, procedures and practices should be available for enforcement officers through training, resource materials, etc.

2. Economic Leaders

- **Chambers of Commerce** - Chambers of Commerce should be engaged to address the lack of confidence among potential investors, business managers and the public that justice will be served equitably and in a timely fashion.
- **Business managers** – Business managers should be educated the collateral law regime and the benefits they could derive from its efficient and timely implementation.

3. Journalists - Most education campaigns view journalists as a means to reach audiences. In BiH, journalists have a limited understanding of the new collateral laws and their implementation. They must be educated on the new legislation, its benefits, constraints and significance for the market-based economy. Only then can journalists be an effective channel to reach the audiences discussed in this education campaign.

4. Law Faculty - Educating Law faculties on the importance and benefits of the new collateral laws regime can ensure that education efforts continue beyond the life of the project. Targeted training sessions, other stakeholder training sessions, resource materials, newsletters and the project website are an effective means to prepare faculty to takeover future education and training.

5. Implementing partners

In addition to the partners described above, it is important to closely coordinate the education and communication campaign with other domestic and international institutions working in the field, particularly those conducting or contemplating similar programs. FILE, of course, will retain the flexibility to pursue its own actions and course, but will seek the input and cooperation of several local institutions and implementing partners, including: banking agencies, justice ministries, judicial training centers, the High Judicial and Prosecutorial Council, USAID's Financial Sector Business Advisory and Training (FSBAT) and Pledge Registry projects, GTZ, the American Bar Association/Central European and Eurasian Law Initiative (ABA/CEELI), and The Deutsche Stiftung Fur internationale rechtliche Zusammenarbeit e.V (IRZ).

Strategies

Campaign strategies include:

- Utilizing “Putokaz” advocacy group members for relevant audiences;
- Educating stakeholders on practices in developed collateral law regimes/systems;
- Using success stories to illustrate efficient collateral law implementation/enforcement procedures;
- Utilizing case studies and fact patterns to familiarize technical stakeholders with potential solutions to the difficulties which commonly stymie collateral laws/commercial cases;

- Partnering with local institutions to ensure sustainability of the campaign; and
- Organizing networking events for all stakeholders that would encourage sustainability of information exchange and education process.

IMPLEMENTATION

Key Messages

Overall campaign messages are as follows:

1. The nature and scope of FILE's basic objective, which is training investors and lenders in originating loans and in remedies available for non-performing loans in order to build investor confidence together with other stakeholders' efforts.
2. Improvements in efficiency of courts/institutions on the quality of secured transactions is the essence of investor confidence, and they include:
 - Improvements in efficiency of work of land registries and registration of mortgages;
 - Preparation for implementation of law and efficient work of pledge registries;
 - Improvement in market efficiency and market mechanisms for evaluation of property; and
 - Improvement in work of banks in BiH, which are potential investors

Tactics/Tools

The following is an outline of overall tactics/tools. Targeted tactics for each audience group are outlined in the Audience Matrix that follows.

- Designing and implementing education/training programs for judges, lawyers, court staff, and other interested parties.
- Designing and implementing training and educational programs for collateral laws practitioners the Law on Enforcement Procedure, Code on Civil Procedure and other commercial and relevant laws regulations, procedures and practices;
- Developing manuals, handbooks and other resource materials for counterparts tasked with implementing the new laws;
- Identifying or creating website where matters relating to the training and implementation resource materials could be posted and regularly updated;
- Creation and dissemination of project's newsletter;
- Flow-chart illustrating collateral law relevant efficient processes.

EVALUATION

Monitoring progress and evaluating results is an important aspect of the education and communication campaign. This process will track delivery of the education and communication campaign's outputs and outcomes, with the aim of refining implementation in order to provide the client with measurable evidence of progress. In most instances, this plan will align with the project's collateral law component deliverables.

The Communications Specialist will keep an updated log of all activities undertaken by the education and communications campaign. Examples of the content of this log include: The number of targeted audience who attend a training event, the number of adjudicated bankruptcy cases measured against the baseline study, a qualitative assessment of training events; and the number of resource materials disbursed during a training event. Additionally, a monitoring plan for communications activities will be developed by FILE's Monitoring and Evaluation Specialist, who will closely monitor, evaluate and report on campaign activities and strategies.

Audience Matrix

Target	Strategies & Objectives	Tactics	Messages & Messengers
Collateral Practitioners			
Judges	<p>To increase the efficient resolution of collateral law cases</p> <p>To accelerate enforcement process</p>	<p>Educate on the FILE project and its activities</p> <p>Educate on options and practices stipulated by the collateral laws and showcase examples of success stories</p> <p>Involve judges in training/education activities</p> <p>Disseminate information and communication support materials</p> <p>Create forums for exchange of ideas, obstacles and experiences</p> <p>Update on FILE activities</p>	<p>Differences between the old and new laws and practices and benefits that stem from them</p> <p>Full, efficient and timely adjudication and enforcement of collateral law cases improves quality of secured transactions and is the only guarantee for investments</p> <p>Messenger – experienced judges</p>
Bankers	<p>To boost confidence in the collateral laws enforcement regime</p> <p>To increase the number of collateral-based loans</p>	<p>Educate on the FILE project and its activities</p> <p>Involve bankers in training/education activities</p> <p>Disseminate information and communication support materials</p> <p>Create a forum for exchange of ideas, experiences</p> <p>Gather feedback on enforcement of asset-based loans</p>	<p>Improved work of banks and close cooperation with courts lead to new investments</p> <p>Messenger: experienced in-house Bank lawyers, “Putokaz” advocacy group, FSBAT</p>
Lawyers	<p>To improve skills and number of lawyers involved in collateral related cases</p>	<p>Educate on the FILE project and its activities</p> <p>Involve them in advocacy group “Putokaz”</p> <p>Educate and promote the role of lawyers in new collateral regime</p> <p>Involve lawyers in training/education activities</p> <p>Disseminate information and communication support materials</p>	<p>Lawyers play a critical role in collateral law regime and increase efficiency of the system</p> <p>Messenger: experienced lawyer or advocacy group</p>

Target	Strategies & Objectives	Tactics	Messages & Messengers
Appraisers	To improve appraiser's skills to include utilizing modern standards and market values while performing appraisals	<p>Educate on the FILE project and its activities</p> <p>Consult appraisers on training programs and assess their needs</p> <p>Utilize case studies and international experts to educate appraisers</p> <p>Create a forum for exchange of ideas and experiences</p> <p>Disseminate information and communication support materials</p> <p>Provide regular update on development in this field in advanced collateral law regime environments</p>	<p>Appraiser play a critical role of providing up to date information necessary for successful collateral secured transactions</p> <p>Utilizing modern standards to appraise properties provides accurate information that supports an efficient enforcement process</p> <p>Messenger: International/domestic appraiser</p>
Notaries	To train/educate notaries on the new legislation	<p>Educate on the FILE project and its activities</p> <p>Provide regular update on developments in this field in advanced collateral law regime environments</p> <p>Utilize case studies and international experts to educate appraisers</p> <p>Disseminate information and communication support materials</p> <p>Create a forum for exchange of ideas and experiences</p>	<p>Notaries play a crucial role in the new collateral law regime of providing efficient and timely support to adjudication and enforcement of collateral law cases</p> <p>Messenger: "Putokaz" advocacy group notaries, senior judicial representatives</p>
Target	Strategies & Objectives	Tactics	Messages & Messengers
Investors	<p>To increase confidence in new collateral law regime</p> <p>To increase investments</p>	<p>Educate on the FILE project and its activities</p> <p>Organize networking opportunities for investors and business managers</p> <p>Disseminate information and communication support materials</p> <p>Create forums for exchange of ideas and experiences</p> <p>Regular update on the investment environment and opportunities</p>	<p>Efficient implementation of collateral law regime improves environment for investments</p> <p>Differences between the old and new practices and benefits that stem them</p> <p>Messenger – Chambers of commerce representatives, FILE, business managers, successful investors</p>

Target	Strategies & Objectives	Tactics	Messages & Messengers
Legal Associates	To improve skills to perform while assisting judges in processing/preparing collateral related cases	<p>Educate on the FILE project and its activities</p> <p>Educate on the differences between the old and new laws, procedures and practices and highlight their roles and powers</p> <p>Create forums to exchange ideas and experiences with trustees from other countries</p> <p>Disseminate support information and resource materials</p>	<p>Legal Associates are necessary support to efficient, timely and predictable adjudication/enforcement of collateral law cases process</p> <p>Messenger: "Putokaz" advocacy group, experienced legal associate</p>
Court Clerks	To improve skills in case management and applying uniform procedures, practices and regulations	<p>Educate on FILE and its activities</p> <p>Educate on changes in practices according to the new collateral legislation, highlighting importance of their role</p> <p>Facilitate networking events with other participants in the adjudication and enforcement process</p> <p>Disseminate support information and resource materials</p>	<p>Court clerks are necessary support to efficient, timely and predictable adjudication/enforcement of collateral law cases process</p> <p>Messenger: "Putokaz" advocacy group, FILE Court administration team, experienced clerks</p>
Land Registry Officers	To improve skills to include utilizing modern standards, practices and facilities in handling newly establishes land registries	<p>Educate on FILE and its activities</p> <p>Educate on changes in practices according to the new collateral legislation, highlighting importance of their role</p> <p>Utilize case studies and international experts to educate on land registry application</p> <p>Disseminate support information and resource materials</p>	<p>Land registry officers play a critical role of providing up to date information and services necessary for successful collateral law implementation.</p> <p>Utilizing modern standards and practices in land registries provides accurate information that supports an efficient collateral law processes</p> <p>Messenger: "Putokaz" advocacy group, GTZ</p>

Target	Strategies & Objectives	Tactics	Messages & Messengers
Enforcement Officers	<p>To increase number of enforcement officers</p> <p>To increase number of enforced cases</p>	<p>Educate on the FILE project and its activities</p> <p>Educate on changes in practices according to the new collateral legislation, highlighting importance of their role</p> <p>Disseminate support information and resource materials</p>	<p>Enforcement officers play a crucial and very difficult role in final phase of the collateral law cases process.</p> <p>Efficiency in the work of the enforcement officers represents a crown on the entire judicial process thus supporting overall efficiency, effectiveness and predictability of the judiciary as a whole as well as country's economy</p> <p>Messenger: experienced enforcement officers, judges, "Putokaz"</p>
Chambers of Commerce	<p>To set up sustainable information gathering and dialogue capacity for entrepreneurs</p> <p>To increase level of information dissemination</p>	<p>Educate on FILE project and its activities</p> <p>Provide examples of successful collateral law cases</p> <p>Seek their support in public awareness activities</p> <p>Disseminate support information and resource materials</p> <p>Provide updates on FILE Collateral law team and relevant activities</p>	<p>Efficient legal framework represents grounds for protected investments</p> <p>Messengers: Respected business managers, Chambers of Commerce and associations of employers, "Putokaz"</p>
Business Managers	<p>To increase the number of companies utilizing collateral system for growth and development</p>	<p>Educate on the FILE project and its activities</p> <p>Create a forum for exchange of ideas and experiences</p> <p>Disseminate information and communication support materials</p> <p>Regular update on the investment environment and opportunities</p>	<p>Utilizing an efficient legal framework represents grounds for protected investments</p> <p>Quality secured transactions are only guarantee for investments</p>

Target	Strategies & Objectives	Tactics	Messages & Messengers
Journalists	<p>To increase information on collateral related issues available to the media and public through media</p> <p>To develop a positive image of collateral laws system through coverage and presentation of issues relating to collateral</p>	<p>Educate on FILE and its activities</p> <p>Promote benefits of efficient collateral law system to the country's economy</p> <p>Involve the media in activities that raise public awareness of collateral matters</p> <p>Send regular updates to the media on FILE's activities</p> <p>Invite them to the collateral related training/education events as well as to networking events</p> <p>Disseminate information and communication support materials</p> <p>Encourage presentation of information on other projects' activities related to collateral issue</p>	<p>Efficient legal framework represents grounds for protected investments and is a key to development of a country's economy</p> <p>Rights and obligations of participants in collateral laws procedures</p> <p>Relevant resource materials</p> <p>Messenger – Business and legal journalists</p>
Academics			
Law Faculty	<p>To create sustainable education and communication capacity</p>	<p>Educate on the FILE project and its activities</p> <p>Present new bankruptcy legislation and highlight the benefits</p> <p>Invite to collateral training sessions, Train-the-Trainers activities and networking events</p> <p>Encourage active participation in the education/training events</p> <p>Disseminate information and resource materials, with regular updates</p> <p>Create a forum for exchange of ideas and experiences</p>	<p>Adequate interpretation of certain legislation provisions</p> <p>Rights and obligations of participants in collateral laws procedures</p> <p>Best practices</p> <p>Relevant resource materials</p> <p>Messengers– experienced law and economic professors and senior students</p>

Target	Strategies & Objectives	Tactics	Messages & Messengers
Banking Agencies	To create a sustainable exchange of information and experiences capacity	<p>Educate on FILE project's activities</p> <p>Initiate joint efforts in organizing education/training and networking events</p> <p>Disseminate information and communication support materials</p> <p>Regular update them on FILE's activities</p> <p>Create a forum for discussion with other participants in collateral laws procedures</p>	<p>Full an deficient implementation of collateral laws improves country's economy</p> <p>Messenger – senior, credible representatives of Banking agencies, "Putokaz", FSBAT, FILE</p>
Justice Ministries	To provide continuous support in efficient legislation implementation and professional education	<p>Educate on FILE project's activities</p> <p>Coordinate training/education activities and networking events</p> <p>Encourage active participation at training/education, exchange of information and experiences and networking events</p> <p>Disseminate information, communication and resource materials</p>	<p>Improvements in efficiency of courts/institutions on quality of secured transactions is the only guarantee for investments</p> <p>Messenger: representatives of the ministries, JTC, "Putokaz"</p>
Judicial Training Centers	To establish sustainable education and training capacity for collateral and related issue	<p>Educate on FILE project's activities</p> <p>Initiate joint efforts in organizing education/training and networking events</p> <p>Encourage active participation at training/education, exchange of information and experiences and networking events</p> <p>Disseminate information and communication support materials</p> <p>Regular update them on FILE's activities</p>	<p>Improvements in efficiency of courts/institutions on quality of secured transactions is the only guarantee for investments</p> <p>Messenger: JTC directors, trainers, FILE, "Putokaz"</p>
High Judicial and Prosecutorial Council (HJPC)	To provide continuous support for independent, efficient, timely and predictable adjudication of collateral related cases		<p>Improvements in efficiency of courts/institutions on quality of secured transactions is the only guarantee for investments</p> <p>Messenger: HJPC representatives, senior judges, trainers, FILE, "Putokaz"</p>