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CIVIL PROCEDURE CODE

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CIVIL PROCEDURE CODE

I. Introduction

This document has been prepared to provide an in-depth analysis of the Civil Procedure Code (“Law”), currently in effect in Bosnia and Herzegovina. It is based on the Law as enacted by Parliament on October 23, 2003.

The Law, as revised, establishes a streamlined process for the handling of civil cases in the courts of Bosnia and Herzegovina. Of particular significance is the establishment of a two-step process, made-up of a preparatory hearing, followed usually within thirty days by a main hearing. The preparatory hearing provides the court and the parties with an opportunity to organize the case. The main hearing serves as the forum for the presentation of legal arguments and supporting evidence.

The recent revisions to the Law seek to improve the fairness, effectiveness and efficiency of the court system. In this regard, the courts are obliged to conduct proceedings without unnecessary delay, at the lowest possible cost, and with the goal of preventing any abuse of the proceedings by the parties.

This document focuses on the procedural issues raised by the new Law, as they pertain to business litigation. In this regard, it does not cover issues pertaining to criminal law, international disputes, or employment issues.

II. Scope

The Law governs the procedure pursuant to which the Municipal Courts, Cantonal Courts and the Supreme Court of the Federation of Bosnia and Herzegovina (hereinafter, the “Federation Supreme Court”) hear and decide on civil disputes, unless otherwise governed by a separate law.

III. General Provisions

A. Composition of the Court

First instance proceedings and proceedings seeking the reopening of a case, shall be adjudicated by a single judge. Second instance proceedings and proceedings requesting “revision” shall be adjudicated by a three-judge panel.

B. Jurisdiction, Pleadings, and Service

1. Agreement on Territorial Jurisdiction

The Law proscribes a number of jurisdictional provisions, including jurisdiction based on manufacturer’s warranty, litigation involving a branch office, inheritance disputes, labor disputes, trespassing of movables, real estate disputes, bankruptcy proceedings, etc.

If the law does not prescribe exclusive jurisdiction, the parties may agree to have their case tried by a first instance by a court which does not have territorial jurisdiction under the Law. The agreed upon court must, however, have subject matter jurisdiction. An agreement on jurisdiction must be concluded in writing and signed by all the parties to the dispute.

2. Court Pleadings

a. General Provisions

A complaint, response to a complaint, counter-claim, response to the counter-claim, filings seeking legal remedies, and other statements, motions and notifications, shall be submitted to the court in writing, in sufficient number for the court and the adverse party.

Each pleading must be comprehensible and contain all items necessary for the commencement of the action. Specifically, all pleadings must contain the name of the court, the name and addresses of the parties, an identification of any legal representatives or agents, the subject matter of the dispute, a statement of claim and the signature of the submitter.

Pleadings submitted by telegraph, facsimile or electronic mail must meet the requirements of written form, and shall be considered “signed” if the name of the sender is reflected on the document. Pleadings delivered by electronic mail must be verified by a qualified electronic signature.

b. Opportunity to Revise and Correct

Pleadings which the court deemed to be incomprehensible, or which otherwise do not contain all items required by the Law, shall be returned to the submitter. The court shall indicate what needs to be corrected, and set the time limit for resubmission of the corrected pleading. The time limit for resubmission may not exceed eight (8) days.

A corrected pleading resubmitted within the specified time limit shall be deemed to have been filed on the day when the original pleading was submitted. A corrected pleading which is not resubmitted within the prescribed timeframe shall be deemed to be withdrawn.

3. Service of Documents

a. General Provisions

The service of documents shall be made by post, through a legal person authorized and registered to conduct service or through an authorized court employee.

Service on Natural Persons. Service on natural persons shall be performed by delivering the document to the person to whom the service is directed, or as otherwise provided by Law.

Service on State, Legal Person or Branch Office. Unless otherwise provided by the Law, service on state bodies and legal persons shall be performed by delivering the document to the person authorized to receive service or, if such person is not available, to an employee who is found in the office or business premises of the legal person.

Service on a legal person with its seat abroad can be performed through its branch or representative office in Bosnia and Herzegovina. If a dispute arises from a legal relationship involving a branch of the legal person, service on that legal person may be performed through that branch.

Service on Legal Agent. If a legal representative or agent represents the party, the service shall be made on the legal representative or agent.

Service on Military Persons, etc. Service on military persons, police officers, persons employed with land, river, maritime or air traffic may be served through their headquarters or direct supervisor.

Service on Persons in Prison. Service on prisoners shall be made through the administration of the prison or through the administration of the institution for the execution of criminal and minor offense sanctions.

b. Service by Post

Service by post shall be performed by registered mail with an acknowledgement of receipt or, by ordinary letter containing a form for acknowledgement of receipt. In each case, the acknowledgement of receipt must be signed and returned to the court by the person to whom it was addressed.

c. Service by Authorized Persons

Service on an Adult. If a person to whom the service is directed is not found at his place of residence, the document shall be served on an adult household member who is obliged to accept it. If there are no household members, service shall be completed by serving the document on a landlord or a neighbor if they agree to accept it. If service needs to be made at the person's work place and the person is not there, the service can be made on his/her colleague, if he agrees to accept it.

Acknowledgement of Service. The recipient and deliverer shall sign the certificate of performed service ("Acknowledgement of Service"). The recipient shall write on the Acknowledgment of Service legibly, in letters, the date and place of receipt, his first and last name and in what capacity the person accepts the document.

Follow-up Written Notice. A written notice shall be sent by ordinary mail to the person on whom the service should have been made, informing that person that service was made on another person. The written notice shall contain the identification of the case, information on the nature of the document, date, hour and place of service of the document and the name of the person who received the document. The notice must be sent on the same day or on the first working day following service.

Service by Posting. If the document cannot be personally served, and if the deliverer establishes that the person to whom the service was directed resides at the address, a written notice may be left in the person's apartment or work place, or posted on the door of the apartment or work place. The notice shall inform the person that the subject document will be held at the court for fifteen (15) days following the day service was attempted. The written notice shall contain the identification of the case, information on the nature of the document, date and hour when the notice was left and the name and address of the court where the document can be collected.

Service by Publication. If the defendant to whom the service is directed does not reside at his last known residence, and his current place of residence or work cannot be determined, service may be performed by simultaneous publication on the notice board of

the court and in at least one daily newspaper which is distributed in the Federation. Service shall be considered performed fifteen (15) days after the date of the publication.

Service by the Parties. A party to the action is permitted to serve the adverse party, except when the service involves the complaint, the counter-claim or legal remedies.

IV. Proceeding of the First Instance Court

A. Preparation for the Main Hearing

The court shall commence preparations for the main hearing immediately upon the receipt of the complaint. Preparations for the main hearing include an initial examination of the complaint, service of the complaint on the defendant, receipt of the defendant's response or counter claim, scheduling and holding a preparatory hearing and scheduling of the main hearing.

B. Complaint and its Contents

1. Required Information

Civil proceedings shall be initiated by a complaint. The complaint must contain:

- a) the grounds on which the plaintiff asserts the jurisdiction of the court;
- b) a specified claim (including legal remedy sought by the plaintiff) regarding the main matter and any subsidiary claims ("Statement of Claim");
- c) the facts on which the plaintiff is basing the Statement of Claim;
- d) the evidence corroborating those facts;
- e) the value of the dispute;
- f) the legal basis for the claim; and
- g) other data that must be contained in each written pleading, as is prescribed by the Law.

The court is not bound by the legal basis stated by the plaintiff in the complaint, and shall proceed upon the complaint even if the plaintiff failed to state the legal basis for the claim.

2. Value of the Dispute

The plaintiff is obliged to state the value of dispute, except in those cases when that value cannot be expressed in a monetary amount. The value of the dispute shall reflect only the main claim. Interest, contract penalties and other secondary claims shall not be included when determining the value of the dispute, unless they are a part of the main claim.

If the claim concerns the value of future installment payments, the value of the dispute shall be based on the total sum, but only up to the sum that equals the payments over a five-year period.

If the complaint requests only the security for a claim or the determination of a pledge right, the value of the dispute shall reflect that amount of claim that is secured. If the value of the pledged object is lower than the amount of the secured claim, the value of the dispute shall be the value of pledged object.

3. Complaint Filed for Determination

The plaintiff may file a complaint requesting a determination as to the existence or nonexistence of a right or legal relation, or the authenticity or falsity of a document.

Complaints requesting a limited determination are governed by special regulations, and may be submitted when the plaintiff demonstrates a legal interest in the court making such determination.

4. Stating Several Claims in One Complaint

The plaintiff may state several claims against the same defendant in one complaint, provided all claims arise from the same factual and legal basis. Claims involving the same parties, but which arise out of different factual and/or legal bases, may be stated in one complaint only when:

- a) the same court has subject matter jurisdiction over each of those claims;
- b) the same type of procedure is prescribed for all claims, and
- c) the court decides that stating these claims in one complaint will improve the efficiency of the proceedings.

If the court finds that stating several claims in one complaint does not contribute to the efficiency of the proceedings, it shall render a decision separating proceedings no later than the preparatory hearing.

C. Pre-Preparatory Hearing Preparations and Pleadings

1. Initial Examination of Complaint

Upon receipt of a complaint, the court shall conduct a preliminary examination of the various claims made in the complaint, and reject the complaint by decision, if it finds that:

- a) the adjudication of the case is not within the competence of the court;
- b) the complaint was not filed within the prescribed time limits;
- c) litigation concerning the same claim is ongoing;
- d) a final judgment has already been rendered on the subject matter;
- e) a judicial settlement has been reached on the subject matter;
- f) the plaintiff has expressly waived his claim before the court;
- g) the plaintiff has no legal interest in filing the complaint; and/or
- h) the complaint continues to have defects which the court previously identified.

The court shall render a decision declaring that it is not competent to hear the case if it does not have territorial or subject matter jurisdiction to adjudicate the case. In such cases, the court is required to forward the case to the appropriate court.

2. Amendment of Complaint

At any time before the conclusion of the preparatory hearing, or before the beginning of the main hearing (if the preparatory hearing was not held), the plaintiff may amend the complaint.

The complaint may be amended after the preparatory hearing, and up until the conclusion of the main hearing, with the permission of the court and the consent of the defendant, if the court concludes that the purpose of the amendment is not to delay the proceedings.

No interlocutory appeal is allowed against the decision allowing or refusing the amendment of the complaint.

3. Service and Response

Service of the complaint and any attachments, shall be made on the defendant within thirty (30) days after the court receives a correct and complete complaint. The defendant shall be obliged to give a written response to the complaint within thirty (30) days of receipt.

In the response, the defendant shall:

- a) state possible procedural objections;
- b) indicate whether the claim is accepted or contested;
- c) provide reasons for contesting the claim;
- d) state any legal basis for contesting the claim;
- e) provide any facts or evidence that corroborate his position; and
- f) include such other information that every written pleading must contain.

4. Counter-claim and Response

In addition to a response, the defendant is allowed to file a counter-claim to the matters raised in the statement of claim. Generally, the counter-claim should be filed as part of the defendant's response to the complaint. A counter-claim may also be raised at the preparatory hearing.

If the defendant seeks to file a counter-claim after the preparatory hearing, he may do so only with the consent of the plaintiff, and only upon the determination of the court that the filing of the counter-claim is not designed to delay the proceedings.

A counter-claim cannot be filed in the first instance court, if a higher court has the subject matter jurisdiction over the counter-claim.

D. Preparatory Hearing

1. When Preparatory Hearing is not Mandatory

Holding a preparatory hearing is mandatory except in cases when the court determines that there are no disputable facts (as reflected in the pleadings) or, due to the simplicity of the case, a preparatory hearing is unnecessary.

2. Scheduling

As a rule, the court is required to schedule the preparatory hearing within thirty (30) days from the filing of the response or the expiration of the time limit for filing the response. Where an admissible counter-claim has been filed, the preparatory hearing will typically be scheduled within thirty (30) days from the receipt of the written answer to the counter-claim from the plaintiff.

The court shall, as a rule, consult the parties prior to setting the date for the preparatory hearing.

3. Course of the Preparatory Hearing

The preparatory hearing begins with a short presentation of the complaint by the plaintiff, followed by a presentation of the defendant's response or counter-claim. Other motions, pleadings and possible obstacles to the proceedings may also be raised. The court may request clarification from the parties regarding their statements and motions.

4. Decisions at the Preparatory Hearing

At the preparatory hearing, the court shall issue a decision on the following matters:

1. the date and time of the main hearing;
2. issues to be discussed at the main hearing;
3. the evidence to be presented by each of the parties at the main hearing;
4. the persons to be summoned to the main hearing;
5. the existence of any obstacles to the proceedings, and
6. a time limit for the submission of the expert's findings and opinion (if any).

There is no right to interlocutory appeal to this decision.

5. Complaint Considered Withdrawn

If a duly noticed plaintiff fails to appear at the preparatory hearing, the complaint shall be considered withdrawn. The defendant may, however, request the hearing be held in the plaintiff's absence.

If a duly summoned defendant fails to appear, the preparatory hearing shall proceed in his absence.

V. Main Hearing

A. Scheduling

As a rule, the main hearing shall be held within thirty (30) days after the conclusion of the preparatory hearing. Depending on the circumstances, the court may, however, order that the main hearing to be held immediately after the preparatory hearing.

B. Appearance by the Parties

The judge shall open the main hearing by announcing the subject matter, checking whether all summoned persons are present, and confirming whether there are any procedural obstacles to the to further proceedings. No interlocutory appeal is allowed with respect to the courts decision on obstacles.

If a duly summoned plaintiff fails to appear at the main hearing without justified reason, the complaint shall be considered withdrawn. The defendant may, however, enter an appearance at the hearing and present arguments on the main subject matter.

If a duly summoned defendant fails to appear without justified reason, the hearing shall be held in his absence.

C. The Course of the Main Hearing

The main hearing shall be conducted in the following order:

1. The plaintiff shall make a concise presentation of all the relevant matters pertaining to the complaint, including presentation of the evidence by reading documents;
2. The defendant shall make a concise presentation of his response to the complaint and respond to all relevant matters raised by the plaintiff;
3. Hearing of the parties, where proposed, shall start with the plaintiff, followed by the defendant;
4. The witnesses shall be examined, starting with the witnesses of the plaintiff, followed by the witnesses for the defendant;
5. Other evidence shall be presented, including any expert evaluation;
6. After all evidence has been presented, both parties, starting with the plaintiff, shall have the right to address the court by a closing argument summing up the legal and factual aspects of the case;
7. The court may allow the plaintiff to give a short response to the defendant's closing argument;
8. If the plaintiff has been allowed to make a reply to the defendant's closing argument, the defendant shall be entitled to give a brief response to plaintiff's final statements.

The court has the discretion to conduct the main hearing in a different order, if warranted by the circumstances.

D. Presentation and Preservation of Evidence

The parties may present evidence through the presentation of documents, testimony of witnesses, oral and written opinions of experts, and on-the-spot investigations.

1. Documents

A "public document" is a document issued in the prescribed form by a state body or by a legal person, in the exercise of its powers as a public authority. A party shall be allowed to prove that the facts in a public document have been falsely established, or that the document has been issued irregularly. Should the authenticity of the document be brought in question, a party may request the court to order the body which issued the public document to give a evidence on the matter.

2. Witnesses

Each person summoned as a witness shall be obliged to respond to the summons and testify at the main hearing, unless otherwise stipulated by this Law.

A witness may refuse to testify on:

- a) issues learned in his capacity as an agent to a party;
- b) issues confessed to him by a party or another person, in his capacity as a religious confessor;
- c) facts learned by the witness, in his capacity as an attorney at law or a doctor;
- d) facts learned during some other occupation or business, if there is a duty of confidentiality; and,
- e) if an answer to a particular question would cause danger of criminal prosecution to the witness, or certain relatives of the witness.

3. Experts

Upon the request of one or both of the parties, the court may decide to hear testimony from experts. Typically, the opinion of an expert is required when professional knowledge, which the court does not have, is necessary for the establishment or clarification of certain facts.

The party proposing the expert evaluation shall indicate the subject and scope of the expert evaluation, and propose a suitable expert to provide testimony. The adverse party shall give its opinion on the proposed expert. The court shall issue a decision on these matters.

Unless the court determines otherwise, the expert shall present his findings and opinion in writing, prior to the main hearing. The expert must always explain his opinion. The court shall deliver the expert's findings and opinion in writing to the parties at least eight (8) days prior to the main hearing.

4. On-The-Spot Investigation

An on-the-spot investigation shall be performed when the direct observation of the court is required for the determination of a fact or clarification of a circumstance relating to the dispute. An on-the-spot investigation may be conducted with the participation of experts.

5. Preservation of Evidence

In the case a party has a justified belief that a piece of evidence may not be available for presentation at the hearing, the party wanting to rely on the evidence may motion the court, to have the evidence preserved for presentation in the course of the proceedings ("preservation of evidence").

In the application requesting the preservation of evidence, the applicant shall state facts to be proved, evidence to be presented and reasons for believing that the later presentation of evidence will not be possible or shall be hindered. Name and surname of the adverse party shall be given in the pleading unless, under the circumstances, it can be concluded that he is not known.

Typically, the motion for preservation of evidence shall be delivered to the adverse party, with sufficient time to respond before the ruling by the court. In exceptional cases, where there is a danger to preservation of the evidence, the court shall decide on the motion without seeking a response from the adverse party.

The court may appoint a temporary representative for an adverse party who is unknown or whose place of residence is not known, for participation in the hearing for presentation of evidence. This appointment does not have to be noticed.

VI. Postponement, Adjournment and Stay of Proceedings

A. Postponement

Eight (8) days before the scheduled date of the main hearing, the court shall check whether the legal requirements for holding the hearing have been fulfilled. If the requirements have not been satisfied, the court may postpone the hearing.

The judge is required to notify the Court President regarding every postponement of the main hearing. The court president shall keep a record of postponements and adjournments for each judge.

Except in certain limited cases, the main hearing cannot be postponed or adjourned for a period of more than thirty (30) days.

B. Adjournment

A party may motion the court to adjourn a hearing under the following circumstances:

- 1) if through no fault of the party who proposes the adjournment, a piece of evidence which is important for reaching a correct ruling and whose presentation was previously agreed to by the court, is not available; or
- 2) both parties propose the adjournment in order to attempt to reach an amicable settlement or Judicial Settlement of the dispute.

A party may request an adjournment on the same basis, only once.

When the hearing is adjourned, the court shall immediately provide the parties notice regarding the place and time of the new hearing. The court is not be obliged to notify the party not present at the adjourned hearing about the place and time of the new hearing.

The judge is required to notify the Court President regarding every adjournment of the main hearing. The Court President shall keep a record of postponements and adjournments for each judge.

C. Stay of Proceedings

The proceeding shall be stayed, and all applicable time limits stopped, when:

- 1) a party that has no legal representative dies or loses litigation capacity;
- 2) a party's legal representative dies, and the party is left with no agent in the litigation;
- 3) a party who is a legal person ceases to exist;
- 4) the action is affected by the legal consequences of a bankruptcy procedure;
- 5) the court ceases to function due to war or other causes;
- 6) the court has decided not to resolve a preliminary issue on its own;
- 7) a party is located in the region which is not accessible by the court due to extraordinary conditions such as flood and the like; and
- 8) other occurrences that may be stipulated by law.

During the stay of proceedings, the court shall not commence any actions in the proceedings regarding the case. If, however, the stay became effective after the completion of the main hearing, the court may render a ruling on the basis of that hearing. The stayed proceedings shall resume at the motion of a party as soon as the reasons for the stay cease to exist.

Litigation actions commenced by one party during the stay of proceedings shall have no legal effect upon the other litigant.

Appeals against decisions that determine the stay of proceedings shall not delay enforcement of the decision. No interlocutory appeal shall be allowed against the court's decision denying the motion to stay the proceedings.

VII. Judgments and Decisions

The court shall issue rulings in the form of judgments or decisions. The court's ruling on the Statement of Claim shall be made in the form of a judgment. The court shall decide on all other issues by decision.

A. Judgments

1. Rendering, Drafting and Delivering the Judgment

The court shall render a judgment in writing no later than thirty (30) days after the conclusion of the main hearing.

A written judgment shall contain an introduction, operative part, reasoning and instructions regarding the right to a legal remedy against the judgment. The operative part of the judgment shall contain the ruling on the main matter, subsidiary claims, and any claim for compensation. The reasoning section of the judgment shall contain the claims of the parties, facts on which these claims are based, the evidence and evaluation of evidence, and the regulations upon which the court based the judgment.

If a judge exceeds the prescribed time limit for issuing a judgment, he shall be obliged to provide the Court President with a written explanation regarding the delay in issuing the judgment.

2. Supplementary Judgment

If the court does not decide on all issues raised in the complaint and discussed at the main hearing, a party may motion the court to issue a supplementary judgment within thirty (30) days from the date of the receipt of the judgment.

The court shall render a supplementary judgment within eight (8) days of determining it is justified. The issuance of a supplementary judgment does not require the reopening the main hearing.

3. Default judgment

As part of the complaint, the plaintiff may request a "default judgment" whereby the court accepts the plaintiff's claim, without further action, when the defendant fails or refuses to file a timely response. In this regard, if a defendant, who was duly served, fails to submit a timely written response the court shall issue a default judgment, unless the claim is obviously unfounded.

Appeal against the default judgment shall not be allowed, but the defendant may file the request for the return to status quo ante in accordance with the provisions of this law. If the case is returned to status quo ante, the defendant shall reimburse all reasonable costs of the proceedings that have been incurred before the Default Judgment was issued.

4. Finality of the Judgment

The court is bound by its judgment as soon as it is rendered. A judgment is considered final when it cannot be further contested by an appeal.

The judgment shall become effective as between the parties on the date it is issued or on the date it is served.

B. Decision

The judge issues decisions in the course of the preparatory or main hearings.

A decision that rejects the motion of a party or rules on the contradictory motions of the parties must contain an explanation. The court may include explanations in other types of decisions, when deemed appropriate and/or necessary.

A certified copy of the decision that has been rendered at the hearing shall be served on the parties only if a separate appeal against that decision is allowed. A party may request immediate enforcement of the decision.

VIII. Ordinary Legal Remedies

A. Appeal against Judgment

1. Timing

Parties may file an appeal against the first instance judgment (including judgment by admission and judgment by waiver, etc.) within thirty (30) days from the day of rendering the judgment or, if the judgment is served in accordance with provisions on service of this Law, within thirty (30) days from the service of the judgment, unless a different time limit is set by this Law. In disputes concerning bills of exchange and cheques, the time limit for filing an appeal is fifteen (15) days.

Appeals filed within the prescribed time limits prevent the part of the judgment which is contested from becoming final. The second instance court shall decide on an appeal against the judgment of the first instance court.

2. Grounds for appealing a Judgment

A judgment can be appealed on the following grounds:

- a) **Procedural Errors.** A procedural error shall exist if, in the course of the proceedings, the court failed to apply or improperly applied a provision of this Law, and the error affected the rendering of a lawful and correct judgment.
- b) **Erroneously or incompletely determined facts.** Erroneously or incompletely determined statement of the facts occurs when the court has incorrectly established or otherwise failed to determine a decisive fact. An incompletely determined statement of the facts may be established by the presentation of new evidence or facts (see paragraph 3 below regarding the types of “new” evidence or facts that can be presented).

- c) **Misapplication of the substantive law.** Misapplication of substantive law occurs when the court fails to apply, or misapplies, a provision of the substantive law.
- d) **Delusion, duress or deceit.** An appeal against a judgment based on admission or express waiver may be appealed on the grounds of procedural errors, or that the admission or express waiver was given under delusion, duress or deceit.

3. Content of Appeal

An appeal must contain:

- 1. an indication of the judgment against which the appeal is filed;
- 2. a statement explaining whether the judgment is contested entirely or partially;
- 3. reason for the appeal; and
- 4. signature of the appellant.

Generally, new facts and evidence cannot be presented in the appeal unless the appellant proves that he was unable to present those facts or evidence, with no fault of his own, prior to the conclusion of the main hearing.

4. Service and Response

A copy of a timely, complete and admissible appeal shall be served by the first instance court on the adverse party immediately but no later than eight (8) days from the date of the receipt of the appeal in the court. The adverse party shall submit a response to the appeal within eight (8) days from the date of its receipt.

A copy of the response to the appeal shall be served on the appellant by the first instance court immediately but no later than eight (8) days from the date of the receipt of the response to the appeal.

Following the receipt of the response to the appeal, or after the expiration of the time limit for the response to the appeal, the court shall forward the appeal and response to the appeal if filed, together with the entire case file, to the second instance court within eight (8) days at the latest.

B. Decision on Appeal by Second Instance Court

When the case file, upon appeal, is forwarded to the second instance court, a referee judge shall be designated. The second instance court shall decide on the appeal in a panel session or at the hearing.

The second instance court shall examine the part of the first instance judgment that has been contested by the appeal, within the limits of the reasons stated in the appeal, having due regard *ex officio* to the misapplication of substantive law and procedural errors concerning the litigation capacity of the parties and the representation.

C. Hearing

The panel session or the hearing shall be held within forty-five (45) days from the date of receipt of the case file from the first instance court.

If necessary, the second instance court shall set a hearing to properly determine: the state of the facts; if it is necessary to determine new facts or to hear new evidence; or, to re-hear already presented evidence before the second instance court. The referee judge may, when required, request the report from the first instance court on the procedural errors and request a review of the facts in order to determine those errors.

Parties, their legal representatives or agents shall be summoned to the hearing, as well as those witnesses and experts whom the court decides to hear. If the appellant fails to appear, the hearing shall not be held, and the ruling shall be made based on the arguments stated in the appeal and the response to the appeal. If the appellee fails to appear in the hearing, the court shall hold a hearing and make a ruling.

D. Rulings of the Second Instance Court on Appeal

Second instance ruling shall be rendered within thirty (30) days from the panel session where the second instance court deliberated the case, or, if a hearing was held, within thirty (30) days from the conclusion of the hearing.

The rulings of the second instance court shall be rendered by vote after the deliberation. Only the members of the panel and recorder may be present in the room where the deliberation and voting are conducted. When a ruling about simple issues is required, the panel may reach the ruling at the session.

The second instance court may, at the panel session or on the basis of a hearing:

1. Reject the appeal as untimely, incomplete or inadmissible;
2. Dismiss the appeal as unjustified and confirm the first instance judgment;
3. Reverse the judgment and remand the case to the first instance court;
4. Reverse the first instance judgment and reject the complaint; or
5. Overrule the first instance judgment.

1. Reverse and Remand

The second instance court shall, in a panel session or on the basis of a hearing, reverse the first instance judgment and remand the case for a new main hearing to the same first instance court if it determines that:

1. the court, contrary to the provisions of this Law, rendered a judgment based on admission or judgment based on express waiver;
2. through an unlawful act, especially a faulty service, a party was not given the opportunity to be heard and this act affected the rendering of a lawful and proper judgment;
3. the court rendered judgment without holding the main hearing; or,
4. a judge who should have been exempted according to the law, rendered the judgment.

2. Reverse and Reject

The second instance court shall reverse the first instance judgment and reject the complaint if it finds that the first instance court ruled on a claim which is out of the court's jurisdiction; or the claim concerns an ongoing litigation or was effectively decided on; or the claim was waived by the plaintiff or settled before the court.

3. First Instance Court Hearings

The first instance court shall be obliged, immediately upon receiving the second instance decision, to schedule the preparatory or the main hearing, which shall be held no later than thirty (30) days from the day of receiving the second instance decision, and conduct all procedural actions and discuss all disputed issues which the second instance court listed in its decision.

4. Overrule First Instance Court

The second instance court shall overrule the first instance judgment if it determines that:

- a) a procedural error was made;
- b) based on a different evaluation of documents, the panel session determines that the facts of the case are different than what was determined by the first instance judgment;
- c) based on a new evidence or re-presented evidence, the hearing determines that the state of the facts are different than what was determined by the first instance judgment;
- d) the state of facts in the first instance judgment was correctly determined, but the first instance court misapplied the substantive law; and/or
- e) that the first instance judgment exceeded the statement of claim.

The second instance court shall forward its ruling to the parties, other interested persons and the first instance court.

B. Appeal against Decision

An appeal against the first instance court decision is allowed unless this Law prescribes otherwise. A timely filed appeal shall stay the enforcement of the decision, unless this Law prescribes otherwise.

The decision against which a separate appeal is not allowed may be executed immediately.

Interlocutory appeals are not permitted against the following decisions:

- a) a decision allowing or refusing the amendment of the complaint;
- b) a decision issuing direction to the parties on the management of the proceedings;
- c) a decision on a party's objection regarding the existence of an obstacle to the proceedings;
- d) a decision rejecting certain motions, which the court does not believe are necessary to the rendering of a final decision;
- e) a decision regarding the consolidation or separation of cases involving the same parties;
- f) a decision rejecting a party's objection regarding procedural obstacles for further proceedings;
- g) a decision regarding the court's decision regarding the management of the proceedings;
- h) a decision postponing or adjourning the main hearing or a decision refusing the motion of the parties to postpone or adjourn the main hearing;
- i) a decision to exclude the public from a proceeding;
- j) a decision entrusting the hearing of evidence to another court;

- k) a court's decision requiring the possessor of a document to produce it within a prescribed time frame;
- l) a decision regarding a witness' refusal to testify;
- m) a decision approving the exemption of an expert;
- n) a decision settling a dispute regarding the value of a dispute;
- o) a decision permitting the return to the status quo ante;
- p) a decision denying a request for the exemption of a judge;
- q) a decision accepting the participation of an intervenient; and/or
- r) a decision to continue with proceedings after denying a motion for stay;

When deciding on appeal, the second instance court may:

1. reject the appeal as untimely, incomplete or inadmissible;
2. dismiss the appeal as unfounded and confirm the first instance decision;
3. admit the appeal and overrule or reverse the decision and remand the case as necessary.

An appeal against a decision is subject to the same rules that govern an appeal against a judgment, except that, the provisions on holding the hearing before the second instance court shall not apply to an appeal against a decision.

C. Return to Status Quo

A party that loses the right to initiate action for failure to attend a hearing or otherwise missing a time limit may motion the court to subsequently commence that action (return to status quo ante). The court must decide that the party's omission was caused by factors that could not have been foreseen or avoided.

In some situations the motion for return to the status quo ante must be requested within sixty (60) days of the omission, or the right is lost.

When court approves the return to status quo ante, the litigation shall be reverted into the state that existed before the omission took place. As such, all court rulings issued after the omission shall be void.

IX. Extraordinary Legal Remedies

A. Revision (Against Second Instance Court)

1. General Provisions

The parties may file a request for “revision” of final second instance rulings (judgments or decisions) within thirty (30) days from the day of service. Revisions are not allowed in cases where the value of the contested part of the final ruling does not exceed 10,000 KM.

Unless provided otherwise by the Law, the revision proceeding is subject to the same rules that govern an appeal against a judgment, except that the provisions on holding the hearing before the second instance court shall not apply to a request for revision.

A request for revision shall be filed with the first instance court, and decided by the Federation Supreme Court. The first instance court may reject requests for revision as untimely or incomplete without holding a hearing.

As part of the request for revision, the parties are entitled to state new facts and propose new evidence, provided such information is linked to the procedural errors in the second instance proceedings.

A request for revision does not operate to stay the enforcement of the final judgment against which the request for revision was filed.

2. Grounds for Revision

Revision may be requested for the following reasons:

- a) Procedural errors committed in the second instance proceeding, which affected the rendering of a lawful correct judgment;
- b) Misapplication of substantive law; and/or,
- c) Exceeding the Statement of Claim in the second instance judgment.

A revision may not be requested due to wrongly or incompletely determined state of facts.

3. Service and Response

A copy of a timely and complete request for revision shall be served on the adverse party by the first instance court.

The adverse party shall submit its response to the request for revision within eight (8) days from the day of receipt of the request for revision.

After receiving the response to the request for revision, or after the expiration of the time limit for the response, the first instance court shall forward the request for revision and the response, if submitted, along with the entire file of the case, to the revision court.

A copy of revision request and response to it shall be forwarded to the second instance court.

4. Ruling on Revisions Request

The revision court shall rule on the request for revision without holding a hearing. The revision court may:

Overrule. If the request for revision is justified due to procedural errors, the revision court may overrule the second instance judgment or reverse the second instance judgment, in whole or in part. The case will be remanded to a panel of the second instance court or another competent court. If the revision court determines that the claim has been exceeded by the final second instance judgment, it shall issue a judgment overruling the contested judgment.

Reverse and Reject. If the revision court determined that the underlying claim: (1) falls outside of the court's jurisdiction; (2) has been waived by the plaintiff; or (3) was otherwise settled before the court, the rulings of the first and second instance court will be reversed and the complaint rejected.

Misapplication of Law. If the revision court finds that the substantive law has been misapplied, it shall render a judgment admitting the request for revision, and overrule the contested judgment.

Reverse and Remand. If the revision court determines that the state of facts has been incompletely determined due to the misapplication of the substantive law or to procedural errors, and as a result the requirements for overruling of the contested judgment have not met, the revision court shall issue a decision admitting the request for revision, reversing the second instance judgment entirely or partially, and remanding the case for retrial to the same or a different panel of the second instance court.

The revision court shall serve its rulings on the parties, and deliver them to the first and second instance courts.

B. Reopening of the Proceedings

1. General Provisions

A motion for reopening a case may be filed with the court that rendered the first instance ruling, within thirty (30) days after the rendering of the judgment. The first instance court may reject a request for reopening as untimely, incomplete, and/or inadmissible, without holding a hearing. If the first instance court does not reject the motion, it shall serve the copy of the motion on the adverse party who is entitled to give the response within a time limit of fifteen (15) days.

A single judge from the second instance court, who did not participated in rendering the second instance ruling, shall decide on the motion for reopening.

2. Grounds for Reopening

A party may request the reopening of a proceeding if a final court ruling has been issued, in the following situations:

- a) if a judge, who should have been exempted according to the provisions of this law, participated in the rendering of the ruling;
- b) if due to the unlawful conduct of the court, a party was not given the possibility to be heard before the court;
- c) if a person who cannot be a party in the proceedings due to lack of authority, litigation capacity or otherwise, participated in the proceedings in the capacity of plaintiff or defendant;
- d) if the court ruling was based on false testimony, a forged document or a document where the false content has been certified;
- e) if rendering the court ruling involved a criminal act by the judge, the legal representative, or agent for a party, adverse party or a third party;
- f) if a party learns new facts or evidence which would have led to a more favorable ruling if those facts or evidence had been presented in the previous proceedings.

3. Service and Response

Following the receipt of the response to the motion or expiration of the time limit for response, the court shall, within eight (8) days, deliver the motion, the response to the motion (if submitted) and the entire case file to the second instance court.

The second instance court shall decide on the motion for reopening, as a rule, without a hearing.

No appeal is allowed against the second instance court's decision admitting the motion for reopening. Appeal against the second instance decision dismissing the motion for reopening shall be filed with the same court, which shall decide in the panel of three judges.

The judge that previously adjudicated the case may not adjudicate the new re-opened trial at the first instance court.

The first instance court shall schedule a preparatory hearing immediately, and not later than eight (8) days upon the receipt of the second instance court's decision.

X. Court Security Measures

A security measure is a procedure whereby a party may request that the court order the protection or safekeeping of property which may be used to settle an obligation or claim.

A. General Provisions

A motion for security measure may be filed before the initiation of litigation, in the course of court proceedings, and after the termination of such proceedings until the judgment is satisfied.

The motion shall be submitted in writing. If the motion relates to a pending action, it may be presented orally in the main hearing.

In the motion requesting a security measure, the security seeker must state in detail the nature of the security requested, the type of measure requested, and the means and object of the security measure. The motion shall contain evidence corroborating the claim. A security seeker shall, if feasible, submit the evidence together with the motion to the court.

The security seeker may move the court to order a temporary security measure, *ex parte*, without giving notice to the security contester, if the security seeker establishes that the security measure is justified and urgent and that otherwise the purpose of the security measure would be defeated.

The security contester may, in his response, challenge the reasons for ordering the temporary security measure. Where the security contester raises such a challenge, the court shall, within three (3) days, schedule a hearing. The security contester's response must contain an explanation.

An appeal may be filed against a first instance decision on security measure within eight (8) days from the day of serving the decision. An appeal is not allowed against the decision on security measures issued by a cantonal court or by the Federation Supreme Court in the first instance.

B. Grounds for Security Measure

A security measure for the purpose of securing a claim or right may be ordered:

- 1) if the security seeker establishes that he has a credible claim; and
- 2) if there is a danger that without such measure the security contester could prevent or hamper collection of the claim by selling, concealing, encumbering or otherwise disposing of his assets, or would in some way change the current status quo or adversely affect the rights of the security seeker.

Unless otherwise provided by law, the court shall order a security measure only if the security seeker provides, within the time limit set by the court and pursuant to the rules of the Law on Enforcement Procedure, a deposit/guarantee for the damage that might be inflicted on the security contester by ordering and enforcing a security measure. Should the security seeker fail to provide the deposit/guarantee within the time limit set, the court shall reject the motion for security.

Upon application, the court can dispense with the requirement for the security seeker to furnish a guarantee if the court finds him financially incapable to do so.

Bosnia and Herzegovina, its Entities, Brcko District, cantons and municipalities are exempted from the obligation of providing a deposit/guarantee when requesting a security measure.

C. Securing Monetary Claims

For the purpose of securing a monetary claim, the court may grant an order for any of the following measures:

1. Prohibiting the security contester from conveying, concealing, encumbering, or otherwise disposing of particular assets sufficient in value to secure the security seeker's claim. Such prohibition shall be entered into the appropriate public registers.

2. Safekeeping of the assets subject to the prohibition under the previous subparagraph by depositing such assets, where feasible, with the court or by handing over such assets to the possession of an independent third party.
3. Prohibiting the security contestor's debtor from paying the outstanding debt or handing over an object to the security contestor, as well as prohibiting the security contestor from receiving an object, collecting a claim and disposing of it. Such prohibition may be pronounced to any such other person from whom the security contestor may request payment or handing over of an object.
4. Advance registration of a lien or right on real property belonging to a security contestor, up to the value of the main claim awarded to include interests and costs.

The measure against real property may be ordered only if the judgment creditor's claim has already been decided by a court ruling that has not become enforceable.

D. Claims Related to Property

For the purpose of securing a claim related to a certain object or piece of property, the following security measures may be ordered:

- 1 A prohibition on the security contestor against conveying, concealing, encumbering or otherwise disposing of the property that is the subject of the security seeker's claim. Such prohibition shall be entered into the appropriate public registers, where the assets are located in Bosnia and Herzegovina.
- 2 Safekeeping of the assets by depositing such assets where feasible with the court or to an independent third party.
- 3 A prohibition on the security contestor to refrain from taking certain action which might inflict damages to property subject to claim or an order to the security contestor to take certain action in order to preserve the property or to maintain the current status quo.
- 4 An authorization of the security seeker to undertake certain activity.

The security measures referred to in this Article shall not regulate the claim to which they refer.

E. Sale of Perishable Goods

If security measures have been pronounced, the court, upon the motion of the security contestor or person entrusted with safekeeping the assets, shall order the sale of perishable items among the seized movables or of items for which there is a danger of substantial decrease in price. Sale of items shall be done in accordance with the provisions governing the enforcement on movable assets.

The sum obtained through selling movables or collection of the claim shall be deposited with the court until the security measure is discharged or until the security seeker requests the enforcement, but not longer than thirty (30) days after the claim has become enforceable.

A security seeker may, in the motion requesting imposition of a security measure or subsequently, make a statement that s/he is satisfied with the security contestee providing certain guarantee instead of ordering a security measure.

XII. Parties and Their Legal Representatives

Any natural and legal person may be a party in the proceedings. A party with full legal competence may conduct actions in the proceedings itself (litigation capacity). A party that does not have litigation capacity shall be represented by its legal representative.

A. Legal Representatives

The legal representative may, on behalf of the party, commence all actions in the proceedings; but if special regulations prescribe that the legal representative must have special authorization in order to undertake certain actions, reach a settlement or undertake other actions in the proceedings, the legal representative may undertake those actions only if he has such authorization.

B. Temporary Representatives

The court shall appoint a temporary representative to the defendant if it finds, in the course of the proceedings before the first instance court, that the regular procedure for the appointment of the legal representative to the defendant could last so long that it could result in harmful consequences for one or both parties. The temporary representative shall have all rights and duties of the legal representative in the proceedings for which s/he has been appointed.

The court shall appoint a temporary representative to the defendant, particularly in the following cases:

1. If the defendant has neither litigation capacity nor legal representative;
2. If there is conflict of interests between the defendant and his/her legal representative;
3. If both parties have the same legal representative;
4. When the temporary place of residence of the defendant is unknown and the defendant has no authorized agent; or,
5. If the defendant or his/her legal representative are abroad and have no authorized agent in the Federation, and the service could not be carried out.

The court shall, without delay, inform the guardianship body, also the parties when possible, on appointment of the temporary representative. In some cases, the appointment of a temporary representative must also be published in the Official Gazette.

C. Authorized Agents

The parties may commence actions in the proceedings in person or through an authorized agent.

A party's agent may be an attorney; a law firm; an employee of the free legal aid service; for legal entities, an employee of that legal entity; or for natural persons, the party's spouse, life partner or relative by blood or by marriage.

D. Power of Attorney

If a party issues a power of attorney to a lawyer for conducting the litigation and does not specify the scope of authorization, the lawyer shall, on the basis of such power of attorney, be authorized to:

1. perform all actions in the proceedings and, in particular file, withdraw or respond to the complaint, acknowledge or expressly waive the statement of claim, reach a settlement, submit a request for, expressly waive or withdraw a legal remedy and request issuing of the security measures;
2. file an application for enforcement or security measures, and commence necessary actions in the proceedings with regard to that request;
3. receive awarded compensation for costs from the adverse party;
4. authorize another lawyer in a written form to commence only particular actions in the proceedings.

At any time, a party may terminate a written power of attorney and an agent may cancel it.

Termination of the existence of the legal entity shall also cause the cessation of the power of attorney issued by that entity. In the event of bankruptcy, the power of attorney issued by the bankrupt debtor shall be terminated when, in accordance with valid regulations, legal effects of the bankruptcy proceedings commence.

XIII. Ancillary Provisions

A. Exemption of Judge

A judge may not adjudicate a particular case if:

- 1) He is the party, legal representative, authorized agent, co-agent, co-debtor, regressive debtor, or has taken or was called to take the stand as a witness or court expert;
- 2) The party, legal representative or authorized agent is his blood relative; or if they are spouses or relatives, regardless of whether or not the marriage has been terminated;
- 3) He is the guardian, adoptive parent or adopted child of a party, party's legal representative or agent;
- 4) He has participated in reaching the judgment of the lower instance court or another organ in the same case; and/or,
- 5) There are other circumstances that call into questions his impartiality.

A party shall submit the request for the exemption of the judge as soon as it learns that a reason for exemption exists and before the conclusion of a hearing at the latest and, if a hearing has not been held, until rendering the ruling. A party can put forward the request for exemption only for a judge who is assigned to the case, and is obliged to specify the circumstances considered as the legal basis for exemption.

The Court President shall decide on the request for exemption of a judge. If a party requests the exemption of the court president, the president of an immediately higher court shall render the decision thereon. Parties' request for exemption of the Federation Supreme Court President shall be decided at the general session of that court.

B. Costs of Proceedings

Generally, each party shall, individually and in advance, cover the costs incurred by his/her litigation actions, including, but not limited to court costs and attorney fees. The Law provides the following guidance with respect to the payment of other fees and expenses:

C. Contempt of Court

In the course of proceedings, the court shall impose a fine in the amount ranging from 100 KM up to 1,000 KM on the party, legal representative, agent or intervenient who has abused the rights recognized by this Law through his/her civil actions.

The court may impose additional fines as follows:

Amount	Offense
100 up to 1,000 KM	Insulting the court, a party or other participants in the proceedings relating to the pleadings.
100 up to 1,000 KM	Agent for receipt of process who fail to inform the court about a changed in address.
100 up to 1,000 KM	Refuses to receive a document, or obstructs the service of documents, preventing or hampering the application of the provisions of this Law on service.
100 up to 1,000 KM	If the duly summoned witness fails to appear as well as to justify his/her absence, or if s/he leaves the place of hearing without permission or justified reason.
100 up to 1,000 KM	Refusal to testify or to answer a certain question in spite of the warning about the consequences, and the court determines that his/her reasons are unjustified.
Possible Imprisonment	Continued refusal to testify.
100 up to 1,000 KM	Expert failing to deliver findings and opinions within the set time limit or unjustifiably fails to appear at the hearing, although duly summoned.

If a person, fined under the provisions of this law, fails to pay the fine within the set time limit, the fine shall be replaced by prison sentence the duration of which the court shall determine in accordance with the amount of fine and pursuant to the provisions of the Criminal Code, but not longer than fifteen (15) days

XIV. Mediation and Judicial Settlement

At the preparatory hearing at the latest, the court may, if it finds it appropriate with regard to the nature of the dispute and the circumstances, propose that the parties resolve the dispute through mediation proceedings, as prescribed by a separate law.

The parties may jointly put forward such proposal until the conclusion of the main hearing.

At any time during the proceedings the parties may settle their dispute (“Judicial Settlement”). At the preparatory hearing, but also at any time during the proceedings, the court shall try to get the parties to settle the case in a way that does not compromise its impartiality. When the court finds it justified it may also make a proposal to the parties as to how to settle the case.

A Judicial Settlement may pertain to the whole claim or to a part thereof. It shall be enforceable, and may only be contested by a complaint in a new lawsuit if such settlement was reached under delusion, duress or deceit.