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BOSNIA-HERZEGOVINA

**BiH BANKRUPTCY
AND LIQUIDATION LAWS:**

**Manual for Bankruptcy Trustees
Working in BiH (Outline)**

**Contract Number
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I. Introduction to Outline of Bankruptcy Trustees Manual

In order to implement the New Bankruptcy and Liquidation laws in Bosnia and Herzegovina (BiH) successfully, the key players in a modern bankruptcy system have to be identified and trained to perform their roles. Accordingly, there is a clear need to pay special attention to the central figures in the bankruptcy process: the trustees. A “trustee” is the professional whose job it is to take actual control of the assets of the bankruptcy estate, to preserve its value, to bring about its liquidation or transformation into other assets or ownership, and to cause an appropriate distribution to the creditors (and others) rightfully entitled to such distributions.

Although there are other actors in the bankruptcy proceeding (a judge has the final say on all matters of significance, bankers have significant claims, and attorneys may advocate the rights and interests of various parties in interest), the trustee’s competence and commitment to the process are necessary for it to yield an efficient and economical result.

As bankruptcy implementation is dependent on the competence and availability of bankruptcy trustees more than on any other group of professionals destined to play roles in the bankruptcy process, it is critical that trustees and people interested in becoming trustees have access to reliable and accurate reference materials, specifically a “Trustees Manual.”

Section VI (Tangible Results and Benchmarks) of Task Order Number 821 (the “TO”) requires FILE to “Prepare a program for the complete legal and regulatory framework for the professions of trustees and appraisers, for their educational requirements, exams and certification . . .” Further, FILE’s workplan for the six-month period ending June 30, 2004 tasks FILE with (1) developing a plan aimed at educating trustee candidates and (2) developing materials to support training and testing of trustee candidates by the appropriate examining body.

The discussion that follows provides a brief background of how development of this Trustees’ Manual fits into the context of related tasks, describes the approach and objectives of the manual, and then presents the proposed outline.

II. Background

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

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

- The Law on Bankruptcy Proceedings is relatively new. Accordingly, it is not well understood by the professionals who must implement it, including trustees, judges, attorneys, and appraisers.
- Little exists now in the way of reference materials to guide stakeholders through the bankruptcy process. Judicial precedents, rules of practice and procedure, and forms and other tools readily available in more developed bankruptcy systems are lacking in BiH.
- Regulations for trustee compensation are not adequately developed. Uncertainty surrounding compensation was cited by some experienced trustees as the reason for their unwillingness to work under the new bankruptcy law. (See, Assessment Report on the Status and Capabilities of Bankruptcy “Trustees” (and Potential “Trustees”) as of Year End 2003, Jan. 6, 2004, p. 11.) Given the risks that trustees undertake, and the technical knowledge required, it is essential that implementing regulations and practice establish a compensation regime that is comprehensive, reliable, and sufficient in amount to attract and retain quality professionals.

Several tasks in the TO for FILE’s bankruptcy component are intended to address these obstacles and develop a pool of capable trustees in mutually reinforcing ways, referenced in the Trustees Manual:

- Section VI (Tangible Results and Benchmarks) requires the Project to prepare “a program for the complete legal and regulatory framework for the professions of trustees and appraisers, for their educational requirements, exams and certification, and develop at least 8 training sessions specific to each profession.” The manual will provide content for the trustee training program, which will in turn inform Trustees’ use of the manual.
- Task 3 of the TO, “shepherd select pilot cases for liquidation and reorganization that will serve as learning modules for other state-owned enterprises,” provides a valuable opportunity to test the law, create appropriate judicial precedents, pioneer model practices and procedures, and generate standardized forms that can be used in other bankruptcy cases. These developments will provide a continuous stream of new materials for inclusion in the manual.
- Task 4, preparation of “implementation resource materials for bankruptcy system users,” will facilitate the work of Trustees, not only by providing them with a

manual, but by increasing the sophistication and technical competence of other bankruptcy participants, including judges, appraisers, company managers, and creditors.

III. Approach and Objectives of the Trustee Manual

The undeveloped state of the bankruptcy system in BiH and the urgent need for more accelerated implementation have helped shape the Trustee Manual in two ways:

- The manual must be structured from the beginning as a work in progress, to be continuously updated and revised as the insolvency regime takes root. Accordingly, the manual will be published in loose leaf format to facilitate supplementation as new forms, standard procedures and judicial precedents are developed, and to permit working Trustees to add their own materials gained in the practice of their profession.
- The first version of the manual must take account of the current context, and the need for materials to help would-be Trustees prepare for and pass the certification examination, and acquire the basic information necessary to perform in pilot restructurings.

The initial materials will be developed with the following objectives in mind:

- To the extent possible, the contents of the manual will be designed to achieve multiple objectives. For example, they will provide materials for the trustee training program and some of the contents will also be incorporated into implementation resource materials for other stakeholders.
- The manual will be organized to follow the sequential stages of the bankruptcy proceeding, not the sometimes meandering path of the bankruptcy law. Consolidating treatment of related provisions scattered throughout the law will facilitate the Trustees training program and provide working Trustees with concise, integrated information about each step of the process.
- The initial emphasis will be on providing Trustees with tools that help them deal efficiently and effectively with issues as they arise. Examples of such tools include: procedural maps with deadlines; checklists for securing property of the estate and investigating creditors' claims; tables of appealable issues that indicate who can appeal and whether implementation is stayed; and forms for presenting the inventories of assets and creditors, etc.

- Although the Bankruptcy Law provides all the features of a modern bankruptcy law, the practical procedures that develop through practice and usage are missing. Accordingly, the manual will focus on introducing best practices and efficient procedures from the outset.

V. Outline for the Bankruptcy Trustee Manual

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