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**Practical Solutions for Intractable Problems:  
FILE's Comprehensive Court Report for Bosnia and Herzegovina**

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## Summary of Recommendations

### I. SMALL COMMERCIAL CLAIMS

#### A. Laws and Regulations

- **Simplified Procedures:**
  - **Fewer Small Claims Steps.** Amend existing law to adopt a European system of simplified proceedings for small claims.
  - **Trustworthy Documents.** Extend the definition of trustworthy documents in the LEP to include other common commercial invoices.
- **Tax Related Filings:**
  - **Revise Article 4:** Eliminate the requirement for lawsuits prior to debt write-off.
  - **Public Education:** Launch a public information campaign for high-volume plaintiffs once the write-off rules have changed.
- **Statute of Limitations:** Extend the statute of limitations from 1 to 2-3 years.
- **Court Fees:**
  - **Fee Structure:** Rationalize court fees based on cost of services provided.
  - **Fee Collection:**
    - Law: Amend the laws to require pre-payment of fees and establish basis for relief from fees for economic necessity.
    - Practice: Prioritize claims so that paid cases are heard first.

#### B. Automated Case Processing

- **Pilot Project:** Roll out successful CMS from Mostar to all other courts.
- **Bundled Hearings:** Use CMS to organize and schedule bundled hearings on small claims for more effective disposition.
- **Electronic Filing:** Begin work with frequent filers to prepare for electronic filing as CMS is rolled out.

#### C. Reorganized Procedures

- **Specialized Functions:** Reorganize courts to create a specialized division or function for handling small claims apart from more complex litigation.
- **All-in-One Service Centers:** Establish special service centers for handling smaller claims at the court.
- **Organize Enforcement:** Use CMS, where available, to sort and group enforcement claims geographically. Where unavailable, require frequent filers to sort claims geographically when filing them.

#### D. Alternative Approaches

- **Encourage Better Collections:**

- **Proactive Judges:** Train judges to be more proactive in encouraging plaintiffs to improve their contracts and collections.
- **Redefine Ripeness:** Amend jurisdictional requirements for commercial claims so that they are not ripe for adjudication or enforcement if the plaintiff has not first used basic collection processes.
- **Mandatory Mediation:** Establish mandatory mediation for certain types of commercial claims.
- **Bills of Exchange:** Reform the practice of allowing objections to bills of exchange.

E. Stale Claims

- **Law.** Amend CCP to provide for dismissal of inactive claims for staleness.
- **Practice.** Adopt policy that aged, inactive claims are deemed abandoned unless re-activated by the parties.

F. Credit Information

- **Litigation Reporting.** Establish electronic reporting of claims directly to credit information bureaus, or simplify downloads of such information by credit bureaus.
- **Credit Scoring.** Work with credit information bureaus to establish a scoring system for credit information.
- **Public Education.** Develop public education campaigns to increase understanding of the impact of credit information on creditworthiness.

II. COLLATERAL LAW

A. Property Rights

- **Bills of Exchange:** Revise the LEP to recognize bills of exchange as enforceable documents.
- **Real Property:**
  - **Future Rights.** Amend laws to recognize rights in property to be constructed, prior to construction, to permit more latitude in construction financing.
  - **Improved Advocacy.** Assist the Bank Association and construction industry to advocate legal reforms more effectively.

## B. Registration

- **Leasing:**
  - Develop leasing law to permit registration of equipment leases under the pledge registry system.
- **Real Estate:**
  - **Create Mortgage Registry.** Revise law to permit registration of interests in real estate based on the Canadian model that treats such registration similar to pledge registration.
  - **Registration of Property.** Accelerate efforts to register commercial and residential properties.
  - **Effective Advocacy.** Engage banking and construction industries to advocate and drive reforms.

## C. Enforcement

- **Inappropriate Delays**
  - **Unallowable stays.** Retrain and monitor judges to ensure that enforcement actions are continued despite protests or appeals, in accordance with the new LEP.
  - **Unfounded objections.** Train judges to dismiss and deny frivolous or unfounded objections and appeals, and to award costs against the losing party.
- **Ineffective Procedures**
  - **Delivery of Documents:**
    - Address Requirements. Shift burden of providing correct addresses to parties and encourage increased use of contractual establishment of addresses for service of process.
    - Responsibility for Service. Develop regulations for private service of process
  - **Misallocation of Resources**
    - Filing. Enforcement officers should be relieved of all filing responsibilities, other than to place any documents they generate into the case file for return to central filing.
    - Logistical Support. Provide enforcement agents with official uniforms and with official transportation or reimbursement for use of personal vehicles.
    - Service of Papers. Limit the use of enforcement officials in serving papers to only those papers directly related to their enforcement activities.
  - **Seizure and Storage of Assets**
    - Warehousing. Continue to support the development of a private sector Auction Center for storage and sale of seized property.
    - Transport. Develop private sector services, chargeable to the debtor, for pick-up and storage of seized property. Such services could conceivably be offered by the Auction Center.

- **Police Support.** Expand and improve the use of police support for enforcement officers who must seize property or evict tenants, combined with computerization described in the next item.
- **Computerization.** As part of court automation, design software that permits enforcement officers to organize enforcement actions by street address for more efficient use of time and resources.
- **Appraisals and Auctions**
  - **Appraisals.** Reform the LEP to eliminate appraisals for the court.
  - **Single Auctions.** Reform the LEP to eliminate minimum-price, multiple auctions in favor of a single auction with no appraisal or appraised price.
  - **Auction Schedules.** Establish judicial practice of holding auctions at a fixed time and date to improve public awareness of auctions and development of a market for auctioned goods, either through the Auction Center or through the courts (in locations without Auction Centers).
- **Payment of Funds**
  - **Account Settlement.** In connection with court automation and other FILE judicial reform, expressly reform procedures for payment of proceeds collected through enforcement actions to provide for prompt settling and distribution of accounts.
- **Special Problems with Real Property**
  - **No Market.**
    - **Banking Rules.** Banking regulators need to establish appropriate rules for coverage ratios and evaluation rules for use of rural and village property as collateral in recognition of the undeveloped market.
    - **Market Development.** Banking and real estate industries should develop solutions for holding rural and village property through resale to avoid holding unsaleable property in their portfolios.
  - **Taxation.** Revise tax regulations to reduce or delay tax on foreclosure sales.

### III. UNPAID UTILITY BILLS

#### A. Improving Payment of Bills

- **Existing Remedies**
  - **Report Delinquencies.** Develop electronic means for immediate reporting of delinquent accounts to credit agency.
  - **File Liens.** File liens with the pledge registry for all adjudicated but unenforced claims.
  - **Invoices.** Revise invoices to clearly state all penalties and fees connected to delinquent payments.
- **Improved Collection Procedures**
  - **Existing Procedures.** Conduct an analysis of existing collection procedures to determine any gaps or weaknesses.

- **New Procedures.** Introduce improved procedures with training for responsible staff.
- **Updated Records.** Utility companies should update their records to eliminate reportedly high percentages of incorrect account names. Utilities may use this opportunity to inform delinquent customers of changes in their contracts.
- **Improved Filing of Claims**
  - **Registered Claims.**
    - Invalid claims. Analyze registered claims (2004 and earlier) and withdraw all claims that have been paid since filing.
    - Bank information. Utilities obtain banking information from the register of transaction accounts and file a new request with the court to enforce against those accounts.
    - Other claims. Wait on new claims
  - **Unregistered Claims.** Courts cannot and should not process the utilities backlog. Instead, utilities should withdraw the cases and refile them as new claims described below.
  - **New Claims.** Claims should be sorted and organized as follows:
    - Bank Information: Utilities should check the register of transaction accounts to determine banking information (and certify to the court that they have done so), and group all claims against bank accounts.
    - Addresses. Enforcement actions should be grouped by building and filed on a building-by-building basis to increase efficiency and effectiveness of enforcement operations.
    - Media Campaign. Utilities should hire public relations experts to conduct a public education and media campaign about payment and enforcement of bills. Many of the changes will have little impact without a substantial public information effort.
  - **Pilot Project.** The Sarajevo Municipal Court is willing to create an enforcement pilot project incorporating the recommendations under new claims. This should be supported and pursued with all stakeholders.

## B. Reforms of Contracts and Laws

- **Reforming Contracts**
  - **Revise Standard Contracts.** For all new customers and for customers in default, introduce new contracts with at least the following terms:
    - Right to attachment. Establish contractual right of utilities to attach bank accounts for delinquencies without court intervention.
    - Right to lien. Establish grant of lien or pledge of movable property to satisfy delinquencies with filing in pledge registry.
    - Right to report. Establish permission to report delinquencies to credit bureau.
    - Banking information. Obtain customer bank account information at time of application.

- Address for Service. Establish contractually that the address for service of legal papers is the same as the billing address, unless otherwise indicated.
- Form of Service. Establish contractually that any papers served in connection with a claim may be served by the utility company.
- Schedule of Penalties. Clearly state increasing fees and penalties for default and delinquency. (Also put these on utility bills as standard boilerplate.)
- **Establish Incentives**.
  - Amnesty. Create a one-time program of positive benefits (such as forgiveness of penalties) for all who pay off delinquent accounts.
  - Preferential Rates. Establish and publicize a system of preferential rates for those who pay on time, with higher rates (as well as penalties) for those who do not.
  - Prepayment. Establish special rates for those who prepay their accounts.
- **Combined Billing**. Examine the feasibility of unified utilities bills that allow for disconnection of any disconnectable services in event of non-payment.
- **Reforming Laws**
  - **Framework Utility Law**. In concert with courts and consumer organizations, establish improved collection and enforcement rights (including use of enforcement procedures under Pledge Law and enforcement against communal buildings) through a framework utility law.
  - **Code of Civil Procedure**.
    - Delivery of Documents. Establish private services for delivery of court documents.
  - **Law on Enforcement Procedure**.
    - Law. Improve status of utility claims by permitting enforcement of utility claims under Pledge Law simplified proceedings.
    - Practice. Train and monitor judges for more effective dismissal and denial of unfounded claims.
  - **Obligations Law**. Extend the statute of limitations from one to three years for utilities claims.
  - **Framework Regulations for Private Collections**. Promulgate regulations for the establishment and operations of private collection agencies.
  - **Communal Dwelling Regime**. Shift responsibility for individual payment to communal dwelling for utilities that cannot be separately metered.
- **Reforming Subsidy Policy**
  - **Analyze Incentives**. Review existing incentives to determine whether they encourage irresponsible or ineffective collection behavior by utilities.
  - **Amend Incentives**. Require utilities to adopt certain standard collection and receivables management practices as a pre-condition for subsidies.

#### IV. INSURANCE CLAIMS

- **Regulation.** Advocate improved regulation of insurance industry to ensure timely payment of claims.
- **Market Incentives.** Work with journalists and reputable insurance companies to launch a public information campaign about reputable insurance companies and how to move policies to companies that pay claims. This could include establishing indicators to rate and compare companies.
- **Insurance Ombudsman.** Establish a state office for hearing and pursuing claims against insurance companies for inappropriate denial of claims.

## V. PRIVATIZATION OF COURT FUNCTIONS

- **Private Sector Services**
  - **Service of Process.** Develop regulations for establishing, operating and monitoring private sector service providers for service of court documents.
  - **Transportation and Warehousing of Seized Assets.**
    - Transportation. Place burden of transport on plaintiff by requiring them to provide transport for seized assets.
    - Warehousing. Continue to support the Auction Center initiative.
- **Shifting Burdens**
  - **Addresses:** Inaccurate addresses result in wasted judicial resources.
    - Verified Address. Require plaintiffs to verify the address for service of process, with costs assessed for any documents returned due to invalid address.
    - Contractual Address. Establish program (with court encouragement) for adoption of standardized contract clauses providing address for service of process in the contract.
  - **Private Collection Agencies.** Encourage the formation of private collection services to handle small or high-volume claims on behalf of companies.

## VI. COMMERCIAL DISPUTE RESOLUTION

### A. Law and Regulation

- **Implementing Regulations.** Develop and pass implementing regulations required by the Mediation Law.
- **Enforcement.** Develop enforcement mechanisms to ensure compliance with CDR decisions.

### B. Operating Structures

- **CDR Centers.** Develop CDR services through private sector providers such as business associations.
- **Court-referred CDR Programs.** Establish programs for court-referred mediation in connection with the courts.

### C. Training and Public Awareness

- **Training.** Develop and implement targeted training programs to improve skills and expand rosters of qualified CDR service providers.
- **Public Education Campaign.** Establish public education campaigns to increase awareness of CDR options among commercial disputants.

## VII. SHORT-TERM INITIATIVES, PILOT PROJECTS AND ONE-TIME INTERVENTIONS

### A. Short-Term Initiatives

- **Revised Tax Write-Off Requirements.** Monitor proposed changes to the tax laws for eliminating litigation as a prerequisite to tax write-offs; if there is substantial delay, seek an interim special exception for utility companies.
- **Improved Fee Payment through Prioritization.** Encourage court presidents to improve fee payment (and thus reduce filing of trivial claims) by prioritizing cases so that fee-paid cases are processed before unpaid cases.

### B. Pilot Projects

- **Judicial Practice Pilot.** Improve judicial practice under existing law by enforcing judgments during appeal, rejecting unfounded claims, issuing default judgments and awarding fees and costs.
- **Small Claims Pilot.** Use scheduling and space allocation to reduce the burden of small claims on the courts.
- **Auction Center Pilot.** Improve transportation, storage and sale of seized goods through a collaborative Auction Center managed by the Banking Association under the supervision of the courts
- **Utilities Pilot.** Reduce the number and burden of utilities enforcement cases through prioritized filing and focused enforcement actions.
- **Commercial Arbitration/Mediation Pilot.** Provide increased dispute resolution options through services sponsored by the Chamber of Commerce.
- **Labor Cases Mediation or Med-Arb Pilot.** Include labor cases in CDR through special training and administration of CDR Centers.

### C. One-Time Special Initiatives

- **Withdrawal of Stale Claims.** Eliminate inactive claims by adopting and enforcing standards for dismissal, but start immediately by declaring all inactive cases “stale” – and therefore subject to dismissal – unless re-activated by claimants.
- **Frequent Filer Electronic Interface.** During roll-out of CMS, work with frequent filers to develop appropriate interfaces for electronic filing.
- **Prioritize High Value Claims.** Use the staleness initiative, have frequent filers stagger their re-activations so that high-value claims are received (and thus prioritized) before low-value claims.