

ANNEX A

COMPANY LAWS CONFORMITY WITH EU DIRECTIVES

European Union Directives

The Entities' company laws should also be consistent with modern practices as denoted in EU Directives. This will have the added benefit of bringing BiH in line with the important legal regulations and practices established by the European Union.

In general, the European Union more strictly regulates its business enterprises in comparison with other jurisdictions such as the United States. The European Community is composed of states with vastly different corporate principles and laws. In order to promote a globally competitive market, the EU has chosen to adopt a more regulatory corporate atmosphere in its attempt to harmonize the different corporate laws of Member States and eliminate barriers that impede freedom of the marketplace. (The US system, by contrast, relies more heavily on information disclosure to shareholders and a very rigorous set of accountancy requirements.) In order to achieve this harmonization, the EU has examined the various corporate laws in each of its Member States and has extracted provisions that are effective in promoting and harmonizing business among Member States. This process has required that Member States make concessions and modify or change well-established practices.

The European Union has several different types of legislation it promulgates. The most common forms of legislation are EU Directives, which instruct Member States to enact national legislation that is in compliance with the Directives. To a limited extent, this allows Member States to create laws on an individual basis that take into consideration the politics and practices of their respective states. Some variance from EU Directives and, under limited circumstances, non-compliance of Directives seems to be the general practice. However, Member States run the risk of being sanctioned in court for non-compliance with an EU Directive. EU Regulations, on the other hand, dictate the law to Member States, and EU members must adhere to Regulations more strictly than Directives. Proposed Regulations are not binding law in the European Union but they may act as indicators of future EU laws or at least identify a tendency towards certain trends in EU law.

In this report, four EU Council Directives will be examined in relation to corporate law in the Entities. The so-called First Company Law Directive articulates requirements for disclosure, validity of obligations, and nullity of limited liability corporations.¹ The so-called Second Company Law Directive concerns the formation and capitalization requirements of public and large companies, including a provision that increases in share capital are subject to shareholder approval with preemptive rights preserved.² The so-called Third Company Law Directive pertains to mergers between

¹ Council Directive 68/151/EEC, 1968, on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community.

² Council Directive 77/91/EEC, 1976, as amended by Directive 92/101/EEC on co-ordination of safeguards which, for the protection of interests of members and others, are required by Member States of

publicly held companies, setting forth procedural guidelines and providing safeguards for shareholders.³ The so-called Sixth Company Law Directive supplements the Third Directive and sets forth rules regarding the division of public limited companies that are wound up without liquidation.⁴

A. First Council Directive

Article 2(1) of the EU First Council Directive governs the requirements for disclosure of company documents and amendments to them; appointments and terminations; subscribed capital and any increases thereto; balance sheet and profit loss statements; transfer of the seat; winding up of the company, nullity of the company by the courts; appointment of liquidators and their powers; and, termination and liquidation of the company.

The Federation Company Law contains several disclosure clauses similar to the Directive that are dispersed throughout the Law.⁵ However, there is no single, unified article on disclosure requirements in the Federation's Company Law. A cohesive provision, which includes all of the necessary elements, would be more useful for business enterprises, while retaining the substantive provisions found in EU Directives.

Similarly, corresponding disclosure provisions are contained in Articles 11, 91, and 197 of the RS Company Law. Although disclosure requirements may be regulated by the Decree on Entry in the Court Register, the rules could also be stated in their entirety under one provision in the RS Company Law. As the RS Company Law currently stands, the company constitution is submitted with the application for registration⁶ as is the statute.⁷ However, there should be greater detail and specificity concerning the company register, for example, its location and under whose jurisdiction it falls. Moreover, disclosure in the Official Gazette is also needed in order to comply with Article 2 of the First Directive.⁸ The current text of Article 91 of the RS Company Law⁹

companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

³ Council Directive 78/855, 1978, concerning mergers of public limited liability companies.

⁴ Council Directive 82/891/EEC, 1982, concerning the division of public limited liability companies.

⁵ Corresponding provisions are contained in articles 23 to 31, 44, 55(1), 56, 57, 59(2), 71(1), 77, 123(12), 124(3), 134, 193, 216(2), 246(4), 259(4) of the Law on Business Companies.

⁶ See, LAW ON ENTERPRISES, art. 197(1).

⁷ See, LAW ON ENTERPRISES, art. 197(3).

⁸ Article 3(4) of Council Directive 68/151, 1968 states that "[d]isclosure of the documents and particulars . . . shall be effected by publication in the national gazette."

⁹ See, LAW ON ENTERPRISES, art. 91, which currently reads: "The following is entered in the register: firm activity, Head Office, representatives, founding deposit and founding capital (recorded and paid for) and other data defined by this law."

should be replaced by a comprehensive provision that fulfills the requirements of the Directive.

A suggested provision incorporating all the necessary elements under Directive Article 2(1) should be as follows:

The following documents and particulars shall be filed in the Register:

- (a) The Foundation Charter, and the statutes if they are contained in a separate instrument;
- (b) Any amendments to the instruments mentioned in (a), including any extension of the duration of the company;
- (c) After every amendment of the Foundation Charter or the statutes, the complete text of the Foundation Charter or statutes as amended to date;
- (d) The appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body:
 - (i) to represent the company in dealings with third parties and in legal proceedings;
 - (ii) take part in the administration, supervision or control of the company.

It must appear from the disclosure whether the persons authorized to represent the company may do so alone or must act jointly;

- (e) At least once a year, the amount of the capital subscribed, where the Foundation Charter or the statutes mention an authorized capital, unless any increase in the capital subscribed necessitates an amendment of the statutes;
- (f) The balance sheet and the profit and loss account for each financial year. The document containing the balance sheet shall give particulars of the persons who are required by law to certify it;
- (g) Any transfer of the seat of the company;
- (h) The winding up of the company;
- (i) Any declaration of nullity of the company by the courts;
- (j) The appointment of liquidators, particulars concerning them, and their respective powers, unless such powers are expressly and exclusively derived from law or from the statutes of the company;
- (k) The termination of the liquidation and the fact of any striking off the Register.¹⁰

Article 3 of the Directive pertains to the maintenance of a central, commercial or company register and the particular requirements mandated.¹¹ Articles 51 to 61 of the Federation Company Law pertain to the maintenance of a court register where companies are required to file documents with specific data prescribed in these Articles. Overall, the Federation Company Law complies with the requirements of Article 3 of the Directive, with one exception. The Federation Company Law fails to furnish a provision meeting the requirements of Article 3(6) of the Directive, which requires that data entered into the

¹⁰ See, Council Directive 68/151, art. 2(1), 1968.

¹¹ See, Council Directive 68/151, art. 3, 1968.

court register be considered authentic in cases of discrepancies between information published in the Official Gazette and data entered into the court register.

A provision meeting these requirements should be entered into the Federation Company Law as a separate provision in Article 52. The new paragraphs should read as follows:

The competent authority shall take the necessary measures to avoid any discrepancy between what is disclosed by publication in the Official Gazette and what appears in the court register or file.

However, in cases of discrepancy, the text published in the Official Gazette may not be relied on as against third parties; the latter may nevertheless rely thereon, unless the company proves that they had knowledge of the texts deposited in the file or entered in the register.

Although Articles 91 and 94 of the RS Company Law also contain information that correspond to EU Directives, there is no unified source of information that includes provisions on the requirement of a commercial register as well as the documents companies are required to file with the register. Although this information is set out in the Decree on Registration, Article 94¹² of the RS Company Law should be amended to include provisions mandating the maintenance of a commercial register containing company documents, the method by which such documents may be obtained and the requirements for publicly disclosing them, and when third parties may rely on such documents.

¹² Article 94 of the RS Company Law currently states simply, "[A]n enterprise reports all the changes to the data that needs to be entered into the register." *See, LAW ON ENTERPRISES, art. 94.*

The amended Article 94 of the RS Company Law should read as follows:

- (1) A file shall be opened in a central register, for each of the companies registered therein.
- (2) All documents and particulars that must be disclosed in pursuance of Article 91 shall be kept in the file or entered in the register; the subject matter of the entries in the register must in every case appear in the file.
- (3) A copy of the whole or any part of the documents or particulars referred to in Article 91 must be obtainable by application in writing at a price not exceeding the administrative cost thereof.
- (4) Copies supplied shall be certified as "true copies," unless the applicant dispenses with such certification. (This is an optional provision.)
- (5) Disclosure of the documents and particulars referred to in paragraph 2 shall be effected by publication in the Official Gazette, either of the full or partial text, or by means of a reference to the document which has been deposited in the file or entered in the register.
- (6) The documents and particulars may be relied on by the company as against third parties only after they have been published in accordance with paragraph 4, unless the company proves that the third parties had knowledge thereof. However, with regard to transactions taking place before the sixteenth day following the publication, the documents and particulars shall not be relied on as against third parties who prove that it was impossible for them to have had knowledge thereof.
- (7) The competent authority shall take the necessary measures to avoid any discrepancy between what is disclosed by publication in the press and what appears in the register or file.

However, in cases of discrepancy, the text published in the press may not be relied on as against third parties; the latter may nevertheless rely thereon, unless the company proves that they had knowledge of the texts deposited in the file or entered in the register.
- (8) Third parties may, moreover, always rely on any documents and particulars in respect of which the disclosure formalities have not yet been completed, save where non-disclosure causes them not to have effect.¹³

Article 4 of the EU Directive stipulates that companies undergoing the process of winding up are required to provide such information to third parties in letters and forms. Currently Article 21 of the Federation Company Law only designates that business correspondence and orders must contain the full company name and address of the head office of the company; there is no provision stating the requirements to provide information when the company is winding up. Additionally, Article 4 of the Directive requires that companies disclose whether capital of the company is subscribed or paid up in its documents filed with the court register, which is also not mentioned in Article 21. An amended paragraph containing this information should replace the existing Article 21 of the Federation Company Law.

¹³ This suggested amendment is taken almost verbatim from the First Council Directive and was tailored to the specific circumstances of the Entities. *See*, Council Directive 68/151, art. 3, 1968.

The new paragraph amending Article 21 of the Federation Company Law should read:

In business correspondence with third parties, letters, order forms, and other written communications shall state the following particulars:

- (a) full company name;
- (b) the legal form of the company;
- (c) the registration number assigned to the company by the court register;
- (d) the register in which the company file is kept;
- (e) the location of the company seat;
- (f) where appropriate, the fact that the company is being wound up;
- (g) where in these documents mention is made of the capital of the company, the reference shall be to the capital subscribed and paid up.

For the RS, a provision should be added to Article 95 of the Company Law.

Article 95 of the RS Company Law should be amended as follows:

Business enactments of the enterprise intended for third parties (memos, invoices, orders, etc.), in addition to the firm and Head Office, also contain, where appropriate, the fact that the company is being wound up, a mark of the court where the enterprise is listed in the register, registration entry number, account number and registration number, and it can also contain the mark of the auditor, and, for the joint stock company and limited liability company, also the amount of the capital stock and the amount of the still unpaid deposits.

Additionally, to meet the requirements of Article 6¹⁴ of the Directive, if companies fail to comply with this disclosure provision, penalties should be provided for in Article 424 of the RS Company Law. Article 424 currently provides penalties for enterprises and other business bodies for violations of specific articles in the Law. However, it does not include penalties for companies that fail to disclose their status when they are in the process of winding up. As Article 424 currently stands, it is insufficient to meet the requirements mandated under Council Directive Article 6.

It is suggested to add the following specification to Article 424 of the RS company law:

¹⁴ Article 6 of the Directive states: "Member States shall provide for appropriate penalties in case of: - failure to disclose the balance sheet and profit loss account as required by Article 2(1)(f); - omission from commercial documents of the compulsory particulars provided for in Article 4." *See*, Council Directive 68/151, art 6, 1968.

An enterprise or another business body with the capacity of a legal person will be penalized for a violation with a fine of 4500 to 45,000 Convertible Marks:

14. for the omission from commercial documents of the compulsory particulars provided for in Article 95.

Similarly, the Federation Company Law contains no sanctions for failure to meet the disclosure requirements, as they are not currently included in the Law. Therefore, penalties should be provided in Article 375 of the Federation Company Law in such cases where companies fail to disclose the information required in Article 4 of the Directive.

Article 375 of the Federation Company Law should be amended to include the following provision:

1. fails to meet the mandatory disclosure requirements in correspondence with third parties, contrary to provisions of Article 21 of this Law.

Article 93 of the RS Company Law addresses circumstances when individuals or legal bodies may rely on the data entered into the register.¹⁵ Unless provided otherwise, it is assumed that everyone is aware of the data in the register.¹⁶ To comply with Article 8 of the Directive, a third paragraph should be added to Article 93 of the RS Company Law. This paragraph should designate that disclosure of particulars concerning authorized representatives of the company shall constitute an obstacle to any irregularity in a third party relying on their appointment, unless the company proves the third party had knowledge of it.

Paragraph (3) should state the following:

Completion of the formalities of disclosure of the particulars concerning the persons who, as an organ of the company, are authorized to represent it shall constitute a bar to any irregularity in their appointment being relied upon as against third parties unless the company proves that such third parties had knowledge thereof. *See*, Council Directive 68/151, art. 8, 1968.

The RS Company Law does not specifically state that actions taken by the organs of the company are binding, even if they fall outside the scope of the objects of the company, unless those acts exceed the powers that the law confers or allows to be conferred on those organs. In order to comply with Article 9 of the Directive, however,

¹⁵ Article 93(1) reads: "Those who, in the legal transaction, act conscientiously, relying on the data entered in the register, will not suffer harmful legal consequences that result from it. *See*, LAW ON ENTERPRISES, art. 93(1).

¹⁶ Article 93(2) states that "[n]o one can say that s/he was not aware of the data that is in the register, except if this law does not provide otherwise." *See*, LAW ON ENTERPRISES, art. 93(2).

this issue should be addressed. A third paragraph should be added to Article 80 of the RS Company Law to ensure compliance with the Directive.

This paragraph should read:

- (1) Acts done by the organs of the company shall be binding upon it even if those acts are not within the objects of the company, unless such acts exceed the powers that the law confers or allows to be conferred on those organs.

However, the company shall not be bound where such acts are outside the objects of the company, if it proves that the third party knew that the act was outside those objects or could not in view of the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.

- (2) The limits on the powers of the organs of the company, arising under the statutes or from a decision of the competent organs, may never be relied on as against third parties, even if they have been disclosed.

In Article 96 of the RS Company Law, the specific conditions when an enterprise is terminated or ceases its operations are delineated. However, the RS Company Law is deficient in a provision outlining the conditions when nullity of a company may be imposed. The Law should be amended to include a provision addressing nullity.

A model of the article on nullity should read as follows:

Nullity of companies may be ordered only in accordance with the following provisions:

- (1) Nullity of companies must be ordered by decision of a court of law;
- (2) Nullity may be ordered only on the following grounds:
 - (a) that no Foundation Charter was executed or the rules of preventative control or the requisite legal formalities were not complied with;
 - (b) that the objects of the company are unlawful or contrary to public policy;
 - (c) that the Foundation Charter or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company;
 - (d) failure to comply with the provisions of the law of Republika Srpska concerning the minimum amount of capital to be paid up;
 - (e) the incapacity of all the founder members;
 - (f) that, contrary to the law of Republika Srpska governing the company, the number of founder members is less than two.

Apart from the foregoing grounds of nullity, a company shall not be subject to any cause of non-existence, nullity absolute, nullity relative or declaration of nullity.

Additionally, the RS Company Law does not specify under what circumstances third parties may rely upon a nullity declared by a court. To meet the requirements of Article 12 of the Directive, an additional paragraph should be added to Article 96 of the Law. The Directive allows states to propose their own conditions as to the consequences

of nullity as between members of the company, which should be listed in Article 96 of the RS Company Law as well.

An example of a provision addressing nullity should read:

- (1) The question whether a decision of nullity pronounced by a court of law may be relied on as against third parties shall be governed by Article 94. Where the law of Republika Srpska entitles a third party to challenge the decision, he or she may do so only within six months of public notice of the decision of the court being given.
- (2) Nullity shall entail the winding up of the company, as may dissolution.
- (3) Nullity shall not of itself affect the validity of any commitments entered into by or with the company, without prejudice to the consequences of the company's being wound up.
- (4) The consequences of nullity as between members of the company are: _____.
- (5) Holders of shares in the capital shall remain obliged to pay up the capital agreed to be subscribed by them but which has not been paid up, to the extent that commitments entered into with creditors so require.

B. Second Council Directive

The Second Council Directive safeguards both shareholders and creditors in public limited liability companies by setting out requirements for the formation of such companies and the maintenance and alteration of their capital. The Second Directive specifies prohibitions on reductions of capital through distribution to shareholders when they are not entitled to it. It also imposes limits on the company's right to acquire its own shares. If a reduction in capital occurs, the Directive ensures that shareholders in the same position will be treated equally and that creditors whose claims exist prior to the decision to reduce the capital are protected.

Article 2 of the Second Council Directive governs the minimum information requirements in the statute of the company or the instrument of incorporation. The RS Company Law contains many of the Directive's required provisions in Articles 11 (governing the content of the articles of incorporation), 13 (duration of the company), and 215 (contents of the statute). However, some of the required items are not stated with sufficient specificity and others are not mentioned at all. For example, RS Company Law Article 11(4) requires that the Foundation Charter contain a provision on share capital, but this provision is too vague to meet the requirement of Article 2 of the Directive. It is recommended that RS Company Law Article 11(1) to (4) be amended to include the type and name of the company, the company objects, the amount of the subscribed capital, and the appointment procedures for representatives of the company.

Article 11(1) to (4) of the RS law should be amended to include the following provisions:

The Foundation Charter of the Enterprise should contain provisions on at least the following information:

- (a) the type and name of the company;
- (b) the objects of the company;
- (c) when the company has no authorized capital, the amount of the subscribed capital; when the company has an authorized capital, the amount thereof and also the amount of the capital subscribed at the time the company is authorized to commence business, and at the time of any change in the authorized capital, without prejudice to Article 91(1)(e);
- (d) in so far as they are not legally determined, the rules governing the number of and the procedure for appointing members of the bodies responsible for representing the company with regard to third parties, administration, management, supervision or control of the company and the allocation of powers among those bodies;
- (e) the duration of the company, except where this is indefinite.

In addition, the matters contained in Article 11(5) to (9) should remain in Article 11.

Article 6 of the Second Directive prescribes the minimum capital requirement of 25,000 "European units of account" that companies are obligated to subscribe before a company is authorized to commence business operations. On its face, the minimum capital requirements in the RS Company Law are insufficient to meet the requirements of the Directive.¹⁷ Minimum subscribed capital is not necessarily a desired addition to the law. However, if the RS wants to maintain consistency with EU Directives, then minimum subscribed capital should be set at 50,000 KM for simultaneously founded stock companies and 100,000 KM for successively founded stock companies. These figures are based on the current conversion rates as of September 15, 2000 of one Euro to approximately two KM¹⁸

Article 11 of the Directive lays down rules when the company acquires any new assets for payment of at least one-tenth of the subscribed capital of the company before the expiry of at least two years from the time the company is incorporated or is authorized to commence business. Under such circumstances the acquisition must be examined; the details must be published and it must be submitted for approval of the general meeting. Article 246 of the Federation Company Law fulfills the Directive's requirements with respect to the submission of acquisitions to shareholders at the general meeting. However, it should also stipulate that the acquisition must be evaluated and published.

Where there is a serious loss of subscribed capital of the corporation, a general meeting is mandated to be convened to determine what measures may be taken in accordance with Article 17 of the Directive.¹⁹ A serious loss of capital is defined as a

¹⁷Article 186 of the RS Company Law currently requires 10,000 convertible marks (KM) for a simultaneously founded stock company and 20,000 KM for a successively founded stock company, or a company that issues a public prospectus.

¹⁸ The exact rate of exchange on September 15, 2000 was 1 Euro to 1.95583 DM. The KM is tied directly to the DM at a rate of 1:1.

¹⁹ See, Council Directive 68/151, art 17(1).

loss of at least half the subscribed capital.²⁰ No corresponding principle currently exists in the RS Company Law, so an additional paragraph addressing this issue should be inserted in Article 245 of the Law.

The suggested amendment to Article 245 of the RS Company Law should contain the following paragraphs:

- (1) In the case of a serious loss of the subscribed capital, a general meeting of shareholders must be called by the Managing Board or by any Member thereof; the Supervisory Board or any Member thereof; or by any shareholder within _____ days of this fact becoming known to the Managing Board or to such Member, the Supervisory Board or to such Member, or to such shareholder, to consider whether the company should be wound up or any other measures taken.
- (2) The amount of loss deemed to be serious within the meaning of paragraph (1) is a loss of at least half the subscribed capital.

Article 10 of the Directive calls for reports to be drawn up for any consideration other than in cash before a company is incorporated or authorized to commence business. Most continental European countries accept the principle of valuation of non-cash consideration for shares, at least for large companies. The EU Second Council Directive requires that an expert appointed or approved by an administrative or judicial authority appraise non-monetary contributions to the corporation. The expert may be either a natural or legal person. Some Member States are not in compliance with this provision of the Directive. For example, Germany does not require an appraisal for non-monetary contributions, but the subject matter and the amount of the non-monetary contributions must be stated in the publicly-filed company agreement. A description of the assets, the methods of valuation used, whether the methods of evaluation used corresponds to the nominal value or the premium on the shares, and the publication requirements must be included in the report.²¹ To meet this requirement a provision could be added as a separate paragraph to Article 196 of the RS Company Law.

A model provision would provide:

- (1) A report on any consideration other than in cash shall be drawn up before the company is incorporated or is authorized to commence business, by one or more independent experts

²⁰ See, Council Directive 68/151, art 17(2).

²¹ See, Council Directive 68/151, art. 10.

appointed or approved by _____ (an administrative or judicial authority). Such experts may be natural or legal persons and companies or firms under the laws of the Republika Srpska.

- (2) The experts' report shall contain at least a description of each of the assets comprising the consideration as well as of the methods of valuation used and shall state whether the values arrived at by the application of these methods correspond at least to the number and nominal value and, where appropriate, to the premium on the shares to be issued for them.

However, on this issue, BiH may wish to deviate from European law and follow the US model, which does not require appraisals of non-monetary contributions. This practice is more efficient and convenient, and will promote investment opportunities for foreign and domestic entrepreneurs.

Article 15 of the Directive sets forth the limitations on the distribution of dividends to shareholders and the maintenance of reserves. Three new paragraphs should be added to Article 225 of the RS Company Law to set out the particulars of dividend allocation, including distribution of dividends to shareholder in cases when net assets are lower than the subscribed capital and limitations on the amount of dividends distributed not exceeding the amount of year-end profits. Conditions regulating interim dividends should also be specified in the RS Company Law.

The suggested text of this revision should read:

- (a) Except for cases of reductions of subscribed capital, no distribution to shareholders may be made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may not be distributed

under the law or the statutes.

- (b) Where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of subscribed capital referred to in paragraph (a).
 - (c) The amount of a distribution to shareholders may not exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes.
 - (d) The expression "distribution" used in subparagraphs (a) and (c) includes in particular the payment of dividends and of interest relating to shares.
7. The following conditions shall apply to the payment of interim dividends, the following conditions at least shall apply:
- (a) Interim accounts shall be drawn up showing that the funds available for distribution are sufficient,
 - (b) The amount to be distributed may not exceed the total profits made since the end of the last financial year for which the annual accounts have been drawn up, plus any profits brought forward and sums drawn from reserves available for this purpose, less losses brought forward and sums to be placed to reserve pursuant to the requirements of the law or the statutes.
8. Paragraphs 6 and 2 shall not affect the provisions of Republika Srpska law as regards increases in subscribed capital by capitalization of reserves.

Articles 19 and 20 of the Second Council Directive describe the circumstances under which a company may acquire its own shares. Should a company acquire its own shares in contravention of Articles 19 and 20, those shares must be disposed of within one year of their acquisition, according to Article 21 of the Directive. If shares are not disposed of within this time frame, they must be cancelled.²² The Federation Company Law differs from the Directive as it prescribes that when a company acquires its own shares, such shares shall be subject to revocation.²³ The Federation Company Law does not provide sanctions for companies that do not comply with companies that do not dispose of its share within a year of their acquisition. The Federation Company Law should be amended to meet the requirements of Articles 20(3) and 21 of the Directive.

A revised version of Article 229 of the Federation Company Law should state:

Shares acquired in contravention of Articles 175(3), 218, and 225 to 236 shall be disposed of within one year of their acquisition. If shares are not disposed of within this period, they must be cancelled.

²² See, Council Directive 77/91, art. 20(3), 1976.

²³ See, LAW ON BUSINESS COMPANIES, art. 229.

In Article 24, the Directive specifies that the acceptance of the company's own shares as security must be treated as an acquisition, but EU Member States may decide not to apply this rule to transactions concluded by financial institutions. A corresponding provision is contained in Article 238 of the Federation Company Law, which allows a joint stock company to accept its own shares as a security pledge. The Federation Company Law does not expand this provision to include a condition stating that such an acceptance constitutes an acquisition. An additional paragraph should be added to Article 238 of the Federation Company Law to comply with Article 24 of the Directive.

In addition to the existing provision, two new paragraphs should be added to Article 238 of the Federation Company Law:

1. The acceptance of the company's own shares as security in accordance with paragraph 1 of this Article, shall be treated as an acquisition.
2. Paragraph 1 of this Article does not apply to transactions concluded by banks and other financial institutions in the normal course of business.

Article 32 of the Directive outlines the rights of creditors in the case of a reduction of the subscribed capital. It provides protection of creditor's claim by giving them the opportunity to obtain security for their claims against the company which have not fallen due by the date of the publication of the decision to reduce the subscribed capital.²⁴ The Directive specifically contemplates that creditors should be protected under such circumstances by subordinating shareholders' payments to creditors' claims. The Federation Company Law does not specifically address this issue, and therefore does not fully protect creditors' claims in cases of a reduction of subscribed capital. Article 172 should be amended to include the items required in the Directive.

An additional paragraph should be added to the Federation Company Law, Article 172, which outlines creditors' rights:

In the event of a reduction in the subscribed capital of the company, no payment may be made for the benefit of the shareholders, until the creditors have obtained satisfaction or a court has decided that their application should not be acceded to.

In cases of a reduction of subscribed capital, Article 33 of the Directive places certain restrictions on the handling of such capital that was released due to the decrease in subscribed capital. The Directive specifically stipulates that such capital cannot be used for payment or distribution to shareholders. The Directive also instructs that such capital may not be used to release shareholders from their obligation to make contributions.²⁵

²⁴ Council Directive 77/91, art 32(2), 1976.

²⁵ See, Council Directive 77/91, art 33(2), 1976.

The Federation Company Law does not explicitly regulate the manner in which such capital is managed and therefore does not fulfill the requirements of the Directive.

To meet the requirements of Article 33 of the Directive, Article 172 of the Federation Company Law should be amended as follows:

The company shall ensure that the amounts deriving from the reduction of subscribed capital may not be used for making payments or distributions to shareholders or discharging shareholders from the obligations to make their contributions.

Article 37 of the Directive also insists that any reduction in the subscribed capital by the withdrawal of shares acquired by the company itself or by a person acting on behalf of the company must always be decided on by the general meeting. Article 38 of the Directive also mandates that when there are multiple classes of shares, the decision by the general meeting on such matters must allow for separate voting procedures for each class of shareholders whose rights are affected by the transaction. However, the Federation Company Law does not meet this condition when the company acquires stock by withdrawal of its own shares.²⁶ Article 175 specifically excludes the requirement of shareholder approval by casting votes for each of the classes of shares in the company under such circumstances.²⁷ To bring the Federation's Company Law in accord with the Directive, the law should be amended to exclude the final paragraph of Article 175, which stipulates that voting by the general meeting may be waived in cases where companies acquire their own stock through withdrawal.²⁸

Article 40 of the Directive²⁹ states that companies voting on pre-emptive rights,³⁰ a reduction in the subscribed capital,³¹ and a total or partial redemption of the subscribed capital,³² are required to have at least two thirds of the votes attached to the securities or the subscribed capital represented before making a final decision. When voting on these provisions, the Directive also requires that each class of shares be accorded separate voting rights.³³ This provision ensures that shareholders, especially minority

²⁶ See, LAW ON BUSINESS COMPANIES, art. 175.

²⁷ See, LAW ON BUSINESS COMPANIES, art. 169. Article 175 references to Article 169 to exclude voting rights by shareholders.

²⁸ The last paragraph of Article 175 of the Federation Company Law states, "Upon decrease of registered capital in a manner determined in paragraph 1 point 1 of this article provisions of article 169 paragraph 2 of this law shall not apply." Article 169 paragraph 2 stipulates that "Decisions on decrease of the registered capital shall be made by separate voting for each of the classes of shares and shall be published at least in one of the domestic newspapers, two times within 30 days from the day of its issuance.

²⁹ Article 40 of the Directive references Articles 29(4) and (5), 30, 31, 35 and 38.

³⁰ Pre-emptive rights are contained in Council Directive 77/91, art. 29(4) and (5), 1976.

³¹ See, Council Directive 77/91, art. 30, 1976.

³² See, Council Directive 77/91, art. 37, 1976.

³³ See, Council Directive 77/91, arts. 31 and 38, 1976.

shareholders, will not have their portion of control in the company diluted. The Directive gives Member States the option to elect to use a simple majority when voting on such matters. However, it is recommended that more stringent requirements be implemented in Bosnia and Herzegovina to better protect shareholders. Requiring a two-thirds majority will provide security and promote investor confidence.

The Federation Company Law should have two articles amended to comply with the Directive in this respect.

Article 149, paragraph 1 should be amended to read:

Right to preemption of shares may be denied or limited by the decision of the general meeting of shareholders of the joint stock company made by a two-thirds majority of represented shares with voting rights by each of the classes of shares.

Article 245, paragraph 1 should be revised as follows:

General meeting of shareholders may make decisions only if shareholders with more than two-thirds of the shares with voting rights are represented in person or through representative.

C. Third Council Directive

The Third EU Council Directive pertains to the regulation of mergers of public limited liability companies. This Directive was drafted to guarantee protection of the rights of shareholders of merging companies, as well as creditors and other third parties. In order to protect these rights adequately, the Third Directive places requirements to keep shareholders and creditors of merging companies adequately informed. The Directive also limits the circumstances in which nullity may be declared by providing that any defects may be remedied whenever possible and by restricting the time period within which nullification proceedings may be commenced in order to ensure certainty in the law.

Article 7 of the Third Council Directive outlines the requirements for approval of the general meeting of each of the merging companies. The decision to merge must be approved by at least two thirds of the votes attaching either to the shares or to the subscribed capital represented.³⁴ Where there are several classes of shares, the decision concerning a merger is subject to a separate vote by each class of shareholders whose rights will be affected by the merger.³⁵ Currently, the Federation Company Law provides for a two-thirds majority vote only for division and termination of a joint stock company; transformation of the joint stock company; and amendments of the statute.³⁶ A merger

³⁴ See, Council Directive 78/855, art. 7(1), 1978.

³⁵ See, Council Directive 78/855, art. 7(2), 1978.

³⁶ See, LAW ON BUSINESS COMPANIES, art. 246(8), (9) and (16).

with another enterprise should be included in the list of activities that require a two-thirds majority vote to come into compliance with the Directive.³⁷

Article 248 of the Federation Company Law should be amended as follows:

The general meeting of shareholders shall make decisions by majority of shares with voting rights, except for the issues mentioned in article 246 paragraphs 7, 8, 9 and 16 of this law on which decisions are made by two thirds majority of represented shares with voting rights.

Additionally, a provision guaranteeing that different classes of shares will be given separate voting procedures in the event of a merger needs to be included in the Law.

An additional paragraph should be inserted as the second paragraph of Article 63 of the Federation Company Law that reads:

Decisions on consolidation, merger, division and transformation of the company shall be made in accordance with the decision made by the general meeting of shareholders of the joint stock company, upon proposal of the supervisory board, by two thirds majority of the represented shares with voting rights, by each class of shares.

A key provision in the Third Directive is Article 20, which intimates the rules governing civil liability of the company's administrative or management body towards shareholders of the company being acquired. An important method for promoting accountability of the management and supervisory boards is holding members of these boards liable for misconduct in preparing and implementing mergers. Article 417(2) of the RS Company Law should be amended to include a provision that fulfills this objective.

A suggested amendment would read as follows:

(3) Members of the managing and supervisory boards of the overtaking company shall be liable to the shareholders of the company to be acquired for misconduct on the part of members of such managing and supervisory bodies in preparing and implementing the merger.

(a) Misconduct shall consist of those actions that are not lawful, negligent or are made with willful or negligent disregard for the best interests of the company.

³⁷ Paragraph 7 of Article 246 states, "General meeting of shareholders of joint stock company shall make decisions on . . . consolidation with other enterprises and merger of other enterprises by the joint stock company, except for consolidation or merger of the subsidiary company."

By including civil liability for misconduct of members of the managing and supervisory boards, shareholders are given greater protection of their investment, which, in turn, will promote shareholder confidence and increased investments.

However, it is important that BiH does not discourage risk taking by directors and managers by imposing strict liabilities on them such as personal liability for business mistakes. Foreign investors do not accept this type of liability in situations where directors and managers have acted in good faith and with no conflict of interest

EU Council Directives hold members of the administrative board, management board, or the supervisory board liable to the enterprise for damage sustained by the company as a result of wrongful acts committed in carrying out their duties. No personal liability is imposed to directors for business mistakes.

Additionally, under the laws of many Member States, directors are liable for breaches of the duty of demonstrating the requisite skill and care in performing their duties. In most jurisdictions, liability only extends to directors if they demonstrate willful, deliberate, or negligent performance of their duties. Moreover, in Belgium, France, Italy, and Luxembourg, directors of companies must exercise due diligence in the supervision of management activities. Directors are held personally liable for the faults of management when they fail to do so.

No jurisdiction within the European Community holds directors of companies personally liable for mistakes in business judgment when they are made in good faith. In general, personal liability only reaches directors when they have demonstrated negligence in the execution of their duties.

Shareholders also need increased information regarding the terms of a merger and what the impact of such terms will have on the shareholder's interest in the company. Article 10 of the Directive specifies that an expert must be appointed to evaluate the draft terms of the merger and to prepare a report for the shareholders. Such a report must include whether the share exchange ratio is fair and reasonable; the methods used to arrive at the share exchange ratio; whether such methods are adequate; and the values arrived at using such methods.³⁸ Article 409 of the RS Company Law mentions the use of experts to evaluate the rate of exchange of stocks or shares. However, the specific requirements that must be fulfilled in such a report to the shareholders needs to be stated with greater detail, as they are not currently regulated under RS Company Law.³⁹ Similarly, the Federation Company Law does not supply the right of shareholders to obtain a report on the draft terms of the merger. This right should be guaranteed to shareholders in Article 66 of the Federation's Company Law.

³⁸ See, Council Directive 78/855, art. 10, 1978.

³⁹ See the following box for the complete suggested amendment to Article 409.

A similar provision needs to be implemented regarding civil liability towards shareholders of the company being acquired of the experts responsible for drawing up the draft terms of the merger on behalf of the company when misconduct is present. Shareholders need the assurance that experts drafting a report evaluating the terms of a merger will be held liable for any misconduct while performing their duties. Article 409 of the RS Company Law and article 67 of the Federation Company Law should be amended to satisfy the requirements of Article 10 and Article 21 of the Directive.

Article 409 of the RS Company Law and Articles 66 and 67 of Federation Company Law should be amended to include the following:

- (1) One or more experts, acting on behalf of each of the merging companies but independent of them, appointed or approved by a judicial or administrative authority, shall examine the draft terms of merger and draw up a written report to the shareholders. At the request of the merging companies, one or more independent experts may be appointed for all the merging companies, if such appointment is made by a judicial or administrative authority. Such experts may be natural or legal persons or companies or firms.
- (2) In the report mentioned in paragraph (1) the experts must in any case state whether in their opinion the ratio is fair and reasonable. Their statement must at least:
 - (a) indicate the method or methods used to arrive at the share exchange ratio proposed;
 - (b) state whether such method or methods are adequate in the case in question, indicate the values arrived at using each such method and give an opinion on the relative importance attributed to such methods in arriving at the value decided on.
- (3) The report shall also describe any special valuation difficulties which have arisen.
- (4) Each expert shall be entitled to obtain from the merging companies all relevant information and documents and to carry out all necessary investigations.
- (5) Experts referred to in paragraph (1) shall be liable to shareholders of the company being acquired for any misconduct in connection with drawing up the report referred to in paragraph (2).
 - (a) Misconduct shall consist of those actions that are not lawful, negligent, or are made with willful or negligent disregard for the best interests of the company.

Shareholders should also be guaranteed access to company documents to ensure that they have sufficient information to protect their investment interests. Currently, Article 410(3) is the sole provision governing the release of documents in the RS Company Law, but it pertains only to those documents regulating mergers. Access to company information should be expanded to meet the requirements of Article 11 of the Directive. Shareholders should be given the right to gain access to documents regarding the draft terms of a merger, annual accounts and reports of the merging companies, accounting statements, reports of the administrative or managing bodies of the merging companies provided for in Article 408 of the RS Company Law, and the expert's report referred to in Article 409 of the Law.

An amended version of Article 410(3) that meets the requirements of Article 11 of the Directive should read as follows:

1. (a) the draft terms of the merger;
(b) the annual accounts and annual reports of the merging companies for the preceding three financial years;
(c) an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms of merger, if the latest annual accounts relate to a financial year which ended more than six months before that date;
(d) the reports of the administrative or management bodies of the merging companies provided for in Article 408;
(e) the reports provided for in Article 409.
2. The accounting statement provided for in paragraph 1(c) shall be drawn up using the same methods and the same layout as the last annual balance sheet. However,
 - (a) it shall not be necessary to take a fresh physical inventory;
 - (b) the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account; the following shall nevertheless be taken into account:
 - (i) interim depreciation and provisions,
 - (ii) material changes in actual value not shown in the books.
3. Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in paragraph 1.

D. Sixth Council Directive

The Sixth Council Directive⁴⁰ regulates the conditions under which companies may be acquired and the particular requirements associated with division of public limited companies that are wound up without liquidation. The Sixth Directive was enacted into law in the European Union in 1982 as a supplement to the Third Council Directive, which governs company mergers. The Sixth Directive is intended to give protection to shareholders and third parties under the circumstances of a company division and to insure that the guarantees given with respect to mergers cannot be circumvented. The Directive accords vital protection of rights of shareholders and third parties by ensuring that they are adequately informed by imposing specific disclosure requirements on companies.

A crucial element of preserving a shareholder's or a creditor's rights is to be apprised of major changes to the company, including divisions by acquisitions. The RS Company Law calls for the managing boards of companies that are involved in an acquisition to prepare a written report containing the terms of the acquisition and the rate

⁴⁰ See, Council Directive 82/891, 1982.

of exchange of stocks.⁴¹ However, to adequately inform those parties affected by the acquisition of the company, Article 408(2) should be amended to include the specific requirements that must be included in a written report to ensure compliance with Article 7 of the Directive.

Similarly, the Federation Company Law does not provide sufficient information to comply with Article 7 of the Directive as it does not confer on companies the obligation to generate a written report to explain the draft terms of the division. Additionally, companies have no duty to explain the legal and economic reasons for the division, the share exchange ratio, or any difficulties encountered with the valuation procedure.

Article 408(2) of the RS Company Law and Article 64, 65, and 66 of the Federation Company Law should be amended to include the following information:

- (3) Such written report shall contain at least the following elements:
 - (a) the draft terms of the division;
 - (b) the legal and economic grounds for them, in particular the share exchange ratio and the criterion determining the allocation of shares;
 - (c) any special valuation difficulties which have arisen;
 - (d) the preparation of the report on the consideration other than in cash referred to in RS Article 278 for recipient companies and the register where that report must be lodged.
- (4) The administrative or management bodies of a company being divided must inform the general meeting of that company and the administrative or management bodies of the recipient companies so that they can inform their respective general meetings of any material change in the assets and liabilities between the date of preparation of the draft terms of division and the date of the general meeting of the company being divided which is to decide on the draft terms of division.

This written report must be examined by an expert who is then required to draw up a report and submit it to the shareholders in order to meet the criteria in Directive Article 8. Neither the RS nor the Federation company laws supplies shareholders with an expert's report evaluating the draft terms of the division.

Article 409 of RS Company Law and Article 67 of Federation Company Law should be replaced by the following provision:

One or more experts acting on behalf of each of the companies involved in the division but independent of them, appointed or approved by a judicial or administrative authority, shall examine the draft terms of division and draw up a written report to the shareholders. Companies may appoint one or more independent experts for all of the companies involved in a division if such appointment is made by a judicial or administrative authority at the joint request

⁴¹ See, LAW ON ENTERPRISES, art 408(2).

of those companies. Such experts may be natural or legal persons or companies or firms.

To ensure that the information contained in the report is independent of influence by the company, the current Article 409(1)⁴² of the RS Company Law should be changed to allow only independent experts appointed or approved by a judicial or administrative authority to conduct the review.

In order to preserve shareholders' right to company information prior to a division, it is necessary to list all of the documents that shareholders have the right to inspect and the manner of such inspection. Article 410(3)⁴³ provides general access to documents pertaining to a division by acquisition, but it is not stated with sufficient specificity to meet the requirements of Article 9 of the Sixth Directive. Article 410(3) should be amended to include a list of the particular documents that shareholders are entitled to receive access to for review and the information that must be contained in those documents.

Article 410(3) should be amended to comply with the Sixth Council Directive, Article 9:

- (1) All shareholders shall be entitled to inspect at least the following documents at the registered office at least one month before the date of the general meeting which is to decide on the draft terms of division:
 - (a) the draft terms of division;
 - (b) the annual accounts and annual reports of the companies involved in the division for the preceding three financial years;
 - (c) an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms of division,

⁴² Article 409 currently reads, "Managing boards of companies that get into linking by overtaking appoint authorized evaluators for their companies or they may jointly appoint a common authorized evaluator or the court will do so acting on their proposal."

⁴³ Article 410(3) provides that "Stockholders and members of a company that participates in linking by overtaking are entitled to access to documents regulating linking."

if the latest annual accounts relate to a financial year which ended more than six months before that date;

- (d) the reports of the administrative or management bodies of the companies involved in the division provided for in Article 408;
 - (e) the reports provided for in Article 409;
- (2) The accounting statement provided for in paragraph (1)(c) shall be drawn up using the same methods and the same layout as the last annual balance sheet. However:
- (a) it shall not be necessary to take a fresh physical inventory;
 - (b) the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account;

Article 13 of the Sixth Council Directive regulates the scope of rights that holders of securities, other than shares, are entitled to during a division of a company. There is no corresponding provision assuring a preservation of such rights during a division, unless the holders of such securities approve an alteration to those rights. The guarantees provided in the Directive should be extended to the Federation Company Law as well.

An article should be added to the Federation Company Law, which clarifies the rights of holders of securities, other than shares:

Holders of securities, other than shares, to which special rights are attached, must be given rights in the recipient companies against which such securities may be invoked in accordance with the draft terms of division, at least equivalent to the rights they possessed in the company being divided, unless the alteration of those rights has been approved by a meeting of the holders of such securities, or by the holders of those securities individually, or unless the holders are entitled to have their securities repurchased.

To promote shareholder confidence and accountability, managers, administrators and experts, should be held liable for misconduct in connection with the performance of their duties during a company division. Article 417 of the RS Company Law lists the responsibilities of members of the managing and supervisory boards but it does not include civil liability of such members to shareholders of the companies being divided. To meet the criteria laid out in Article 18 of the Directive, Article 417 of the RS Company Law should be amended to include civil liability of members of the managing and supervisory boards, as well as the experts engaged to write up the report evaluating the terms of the division referred to in Article 409 of the RS Company Law.

The Federation Company Law is similarly deficient in providing for civil liability of members of the managing and supervisory boards and experts required by the Directive. Article 67 of the Federation Company Law limits the civil liability incurred to such participants in a division exclusively to the moment of determining the rations for

exchanges of rights.⁴⁴ Civil liability should extend throughout the entire procedure of dividing the company, including preparation and implementation of the plan.

Article 417 should be amended to include:

- (1) Members of the administrative or management bodies of a company being divided shall be held civilly liable towards the shareholders of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the division.
- (2) Experts responsible for drawing up for that company the report provided for in Article 409 shall be held civilly liable towards the shareholders of that company in respect of misconduct on the part of those experts in the performance of their duties.
- (3) Misconduct shall consist of those actions that are negligent, not lawful, or are made with willful disregard for the best interests of the company.

⁴⁴ See, LAW ON BUSINESS COMPANIES, art. 67.

ANNEX B

DIVISION OF RESPONSIBILITY: TAX ADMINISTRATION
AND FINANCIAL POLICE

According to CAFAO, the following table summarizes the current division of responsibility between Tax Administration and the Financial Police in the Federation and the proposed allocation in the R.S.

**Table 1. Division of Responsibilities between
Tax Administration and Financial Police**
February 2001

| | Federation | Republika Srpska |
|---|---|---|
| Federation Taxation Administration and R.S. Public Revenue Administration | <ul style="list-style-type: none"> • Receiving tax returns • Recording tax liabilities and payments • Tax assessments • Control, audit and collection of tax liabilities <p><u>Being established:</u></p> <ul style="list-style-type: none"> • Investigation and Intelligence concerning tax evasion • Systematic control of Large Tax Payers • Enforced Collection | <ul style="list-style-type: none"> • Receiving tax returns • Recording tax liabilities and payments • Tax assessments • Control, audit and collection of tax liabilities from physical persons <p><u>Being established:</u></p> <ul style="list-style-type: none"> • Investigation and Intelligence concerning tax evasion • Systematic control of Large Tax Payers • Enforced Collection |
| Financial Police | <ul style="list-style-type: none"> • Investigation of suspected cases of corruption, misappropriation of public funds, money laundering and other cases of economic crimes.¹ | <ul style="list-style-type: none"> • Control, audit and collect legal entities' tax liabilities.² |

Source: CAFAO, February 2001.

Note 1: Up to recently the Federation Financial Police was heavily involved in tax control and audit resulting in very considerable overlaps between the Federation Tax Administration and the Federation Financial Police. The latest information received by CAFAO indicates that the Financial Police has ceased to operate within the tax area and is now focusing on the mentioned activities.

Note 2: It is expected that the Republika Srpska Financial Police will merge with the Public Revenue Administration.

ANNEX C
SUMMARY OF RECOMMENDATIONS

| Summary of Recommendations | | | | | |
|--|---|-------|---------------------|-------------|------------------------|
| Issue | Recommendations | State | Federation | R.S. | Priority ⁴⁵ |
| <i>Commercial Legal Framework</i> | | | | | |
| Structure of the Government and the impact on the multi-tiered administrative system | Rationalization of functions and harmonization of laws and regulations | X | X | X | 1 |
| Company Law – corporate governance and shareholders rights | Harmonization of Entity laws <ul style="list-style-type: none"> - Election of directors (one-tier structure) and supervisory board members (two-tier structure) by stockholders - Protection of minority shareholders rights - Derivative shareholder actions - Clarification of legal provision on competitive activities - Consistency with EU directives | | X X X | X X | 1 |
| Law on the Policy of Foreign Direct investment | Harmonization of the Entity laws on Foreign Direct Investment Recommendations for specific changes in the laws are specified in the text | | X | X | 1 |
| Law on Bankruptcy | Harmonization of the Entity laws Establish a certification program for trustees Provide bankruptcy law training for judges, trustees, and attorneys | | X X X | X X X | 2 |
| Law on Secured Transactions | Harmonization of the Entity laws Court administrators, rather than judges, should be assigned responsibility for the registration of pledges Resources must be allocated to the courts for implementation Effective enforcement mechanisms must be introduced | | X | X | 1 |

⁴⁵ 1=high; 2=medium; 3=high.

| Summary of Recommendations | | | | | |
|--|--|-------|-----------------|---------------------|------------------------|
| Issue | Recommendations | State | Federation | R.S. | Priority ⁴⁵ |
| Judicial System | Strengthen the capacity of the judicial system to uphold the law | X | X | X | 1 |
| | As an interim measure, establish extra-judicial mechanisms to provide efficient and immediate recourse for commercial disputes | | X | X | 1 |
| | Reform the civil procedure code and the law governing the execution of civil judgments | X | X | X | |
| (a) Business Registration and Approvals | | | | | |
| Duplicative or redundant registration procedures: <ul style="list-style-type: none"> • Ministry of Defense • Federation Ministry of Foreign Trade/ Ministry of Economy in the R.S. • State Ministry of Foreign Trade and Economic Relations • Office of Statistics Company stamp • Inspections | Establish objective criteria and procedures for court registration Eliminate unnecessary procedures: <ul style="list-style-type: none"> • Approval by the Federation Ministry of Defense • FDI Registration at the State and Entity levels and harmonize laws⁴⁶ • Company stamp • Inspection by Cantonal Ministry of Economy • Inspection by municipality in the R.S | X | X X X | X X X | 1 |
| Complex and registration procedures | Streamline and simplify the remaining procedures Introduce a unique business identification numbering system Establish a centrally-coordinated business registration procedure Make certain registration approval decisions automatic subject of fulfillment of specific, objective criteria | X | X X X | X X X | 1 |

⁴⁶ Recommendations for changing the language of the laws have been provided.

| Summary of Recommendations | | | | | |
|-----------------------------------|---|-------|------------|------|------------------------|
| Issue | Recommendations | State | Federation | R.S. | Priority ⁴⁵ |
| | | | X | X | |
| <i>Locating</i> | | | | | |
| Land Ownership and Administration | <ul style="list-style-type: none"> • Errors and omissions in the cadastre and land register have compromised the official records • Conflicting regulations and inconsistent implementation of land use regulations • Entity Governments right of first refusal on land sales undermine the operation of an open property market | | X | X | 1 |
| | <ul style="list-style-type: none"> • Strengthen the legal framework for property ownership and transfer • Clean up the property registers; integrate the land register and the cadastre | | X | X | 1 |
| | <ul style="list-style-type: none"> • Establish clear and consistent land use regulations at the Entity, municipal and cantonal levels | | X | X | 2 |
| | <ul style="list-style-type: none"> • Remove the Entity governments right of first refusal on land sales | | X | | 2 |
| | <ul style="list-style-type: none"> • Establish a land commission to lead the reform of the land use and management system | | | | |
| Site Development | <ul style="list-style-type: none"> • Permits should be rationalized and consolidated | | X | X | 2 |

| Summary of Recommendations | | | | | |
|--|--|-------|--------------------------------------|--------------------------------------|------------------------|
| Issue | Recommendations | State | Federation | R.S. | Priority ⁴⁵ |
| <ul style="list-style-type: none"> • Urban development and construction permits are largely duplicative • Beneficial role of the Institutes of Construction is unclear • Costs of permits are high • Difficulty in obtaining readily available serviced sites | <ul style="list-style-type: none"> • Maximum processing time should be mandated by law • Site preparation and development should be opened up to private sector activity and the Institutes of Construction should be abolished • Fee structure should be reviewed. A consistent schedule of fees should be introduced • The establishment of privately-operated industrial parks should be encouraged | | X | X | |
| (i) Employment | | | | | |
| <u>Expatriate Labor</u> <ul style="list-style-type: none"> - Process of obtaining residence permits and extensions is lengthy - Documentation required for labor permits is excessive - Penalties for non-compliance are unreasonable <p style="text-align: center;">a. Local Labor</p> <ul style="list-style-type: none"> - Payroll taxes and costs of social contributions are high - Unclear mandates of the Employment Institutes - System for labor inspections lacks clear rules and reasonable remedies for | <ul style="list-style-type: none"> - Streamline and consolidate the residence and work permit processes - Review the application requirement and enforce time limits - Abolish the requirement for the determination of the unavailability of local labor - Review penalties for non-compliance - Review level of wage taxes and social contributions - Limit the authority of the municipalities to impose ad hoc taxes on wages - Review the role of the Employment Institutes and eliminate their monopoly on arbitration services - Reorganize the labor inspection system | | X X X X X X X X | X X X X X X X X | 2 |

| Summary of Recommendations | | | | | |
|---|---|-------|------------|------|------------------------|
| Issue | Recommendations | State | Federation | R.S. | Priority ⁴⁵ |
| violations | <ul style="list-style-type: none"> - Introduce clear rules - Increase the accountability of labor inspectors to minimize corruption | | | | |
| (ii) Business Operations | | | | | |
| Taxation <ul style="list-style-type: none"> - New role of the financial police is unclear to members of the private sector - Lack of information about ongoing reforms fuels uncertainty - Difficulty in obtaining interpretation of tax regulations | <ul style="list-style-type: none"> - Encourage public discussion and dissemination of information on the changing role of the financial police - Organize public/private sector consultative mechanism on tax reform - Assign responsibility for the interpretation of taxation regulations to a specific office in the Ministry of Finance | | X | X | 2 |
| Tax Assessment and Payment <ul style="list-style-type: none"> - Perception of taxation administration system and tax regulations as unfair and non-transparent - Rules for assessing tax obligations of businesses places an unreasonable burden on the taxpayer - System for refunding tax payments is not objective - Taxation inspectors are viewed as corrupt - Inspections appeal process is non- | <ul style="list-style-type: none"> - If these perceptions are incorrect, they need to be addressed with appropriate public statements and documentation. If they are correct, then appropriate action must be taken to strengthen the tax administration to ensure equitable treatment - The practice of estimating the Corporate Income Tax liability and requiring payment on the basis of those estimates should be eliminated - The existing tax refund system should be replaced with an objective and efficient method for refunding taxes. The system should be entrusted to a board and not to any individual, including the Minister of Finance | | X | X | 1 |

| Summary of Recommendations | | | | | |
|---|---|-------|--|--|------------------------|
| Issue | Recommendations | State | Federation | R.S. | Priority ⁴⁵ |
| transparent - Inadequate information frequent changes in tax laws and regulations | <ul style="list-style-type: none"> - Introduce and enforce a code of conduct for tax inspectors; increase public accountability - The process should be changed, made more transparent and independent of the of the financial police - Establish a mechanism for providing information to the general public in a timely manner | | X X | X X | |
| Customs and Customs Administration - Administrative procedures are cumbersome and costly - Corruption of customs officials increases the cost of moving goods across the border - Lack of consistent and timely information on customs regulations | <ul style="list-style-type: none"> - Expedite the system of refunds and repayments. - Eliminate deposit requirements where importers already have guarantees. - Review and enforce the rules for FTZs to ensure that the zones are not utilized to import or produce goods for the local market. - Adopt customs registration numbers that are valid across entities. - Improve computer systems in all offices and develop a state-wide network. - Establish a mechanism for the timely the publication and dissemination of changes in the customs legislation and regulations of each Entity. - Establish an independent appeals body for the review of unfavorable Customs decisions. - Develop a forum and process for consultation with the private sector, e.g., a Customs/Business consultative council. - Codify the authority of all institutions on the border. - Establish external auditing and performance review mechanisms. | | X X X X X X X X | X X X X X X X X | 2 |
| Inspections - Lack of clear rules and objective criteria for inspections | <ul style="list-style-type: none"> - Make an inventory of all inspectorates functioning in each entity and establish a process for rationalizing inspections and coordinating the activities of the inspectorates. Eliminate | | X | X | 2 |

Summary of Recommendations

| Issue | Recommendations | State | Federation | R.S. | Priority ⁴⁵ |
|---|--|-------|--|--|------------------------|
| <ul style="list-style-type: none"> - Multiplicity of inspectorates and lack of coordination - Overlapping mandates and authority - Unreasonable application of penalties | <p>duplication and overlap. Implement initiatives for joint training and information sharing.</p> <ul style="list-style-type: none"> - Articulate and publish the legally established mandate of each inspectorate. - Halt extra-legal inspectorate activity. - Eliminate on-site payments. - Establish and enforce procedures for conducting visits and provide training for inspectors. - Introduce a code of conduct for inspectors. - In the Federation, introduce legislation to delay the effectiveness of a penalty until the completion of the appeals process, except where the health and safety of the public are threatened. | | <p style="text-align: center;">X</p> <p style="text-align: center;">X X X</p> <p style="text-align: center;">X X</p> | <p style="text-align: center;">X</p> <p style="text-align: center;">X X X</p> <p style="text-align: center;">X</p> | |

ANNEX D

ACTION PLAN FOR REMOVING ADMINISTRATIVE BARRIERS TO
INVESTMENT
IN BOSNIA AND HERZEGOVINA

*Council of Ministers of BiH
Government of the Federation of BiH
Government of the Republika Srpska*

Action plan for removing administrative barriers
to investment in Bosnia and Herzegovina

Sarajevo, October 2001

I Introduction

Council of Ministers of BiH, in cooperation with the entity governments has for the first time developed a Global Framework of Economic Development Strategy of BiH (GFEDC). The intention of the Council of Ministers and entity government is to involve the general public in defining strategic directions of economic development in near future. The main goal of this effort is to achieve sustainable economy that would eliminate the high level of poverty that currently exist in the BiH population.

An important message of GFEDC is that the international assistance to Bosnia and Herzegovina (BiH) is declining, and it is certain that the country will have to rely more on its own forces in future economic development. For that reason, it will be necessary to improve business environment to stimulate domestic and foreign investment. In this sense, one of the most important tasks is further development of private sector and reduction of corruption.

Two studies were done in cooperation with the World Bank and Foreign Investment Advisory Group (FIAS) that have given many answers related to creation of more favorable business environment for domestic and foreign investment. Those were the Study of Administrative Barriers to Investment in BiH and Diagnostic Survey of Corruption in BiH. In future, the Council of Ministers of BiH, together with entity governments, shall work on implementation of recommendations given in both of the studies, and related to that, separate structures will be established within the existing institutions.

In parallel with this, the World Bank and Governments of BiH prepare a new Budget Assistance Credit (BAC) the purpose of which is to support the measures that will improve business climate for domestic and foreign investment.

Finally, in the future, due attention will be paid to development of Poverty Alleviation Strategy in BiH (PRSP), based on GFEDC, which, among other things, indicates the necessity of removing all barriers to domestic and foreign investment

II Business Environment

The first priority in implementation of GFEDC is improvement of business environment for domestic and foreign investment. The first task to that goal is establishment of a single economic space on the territory of the whole country.

The achieved results in attracting foreign investment are far from satisfactory and BiH is currently at the bottom of the list of countries successful in creating favorable business environment and attraction of foreign investments.

Complex government structure and regulative framework, in combination with the widespread corruption and political instability, are the main obstacles to larger scale of

domestic and foreign investment. As a result, there are many administrative barriers and unclear legislation that puts off the investments. Among the most important administrative barriers identified are:

1. *absence of harmonized and foreseeable legal environment;*
2. *absence of clear and connected administrative procedures;*
3. *absence of efficient judicial system;*
4. *corruption.*

Council of Ministers of BiH, Governments of the Federation of BiH (FBiH) and Republika Srpska plan to take series of concrete steps to remedy the current situation:

- a) ***Business legislation:*** the existing company laws will be amended to incorporate experiences of similar laws from developed countries, and in particular, to be harmonized with the EU directives. Legal framework for this area must ensure equal conditions on the whole territory and remove all barriers and discrimination in operation of companies. Main principle that will be followed is the principle of open market and single economic space.

Special attention will be paid to regulations in connection with insurance of transactions. Entities will establish a training system for the persons participating in those operations.

It will be important to establish a single registry of companies, for the purpose of reducing bureaucracy, increasing efficiency and transparency in operations of both Entities.

Due attention will be paid to harmonization of legislation between the two Entities in terms of Bankruptcy and liquidation of commercial entities.

- b) ***Foreign investment:*** the existing Law on Foreign Investment Policy is a good basis. In addition to the state level laws, there are entity laws (RS) and regulations (FBiH), what is confusing for investors and increases administrative procedures. In practice, the Law on Foreign Investment Policy is not fully implemented at the entity level. In future, the whole areas will be legally clearly defined at the level of BiH and both Entities to provide full protection of foreign investors and simplification of the registration procedures.

Promotion of possibilities to invest in BiH will be an important part of activities. In this sense, the State Agency for Foreign Investment Promotion (FIPA) will be reorganized and stable sources of financing ensured.

- c) ***Legal system:*** any interference of political and government structures must be eliminated from the legal system. Reorganization and reinforcement of the legal system is an important task and process that in only one part covers the

area of improving business climate for domestic and foreign investments. It is very important to ensure financial stability in operation of legislative system and improve capacities of court system to be able to perform its function.

For the purpose of ensuring as efficient as possible resolution of disputes, it will be necessary to establish alternative institutions, for instance, in the area of business arbitration and mediation. The possibility of reestablishment of operation of commercial courts in resolution of commercial disputes or establishment of specialized commercial departments within the existing courts. This decision will be based on general strategy of judicial system reform.

- d) Administrative system:* according to the information provided in the FIAS study, the procedures of company registration in BiH is one of the most complex of all countries in the region. Consequently, the costs of establishing companies are high, what does not make BiH attractive area for foreign investment. In future, efforts will be made to streamline procedures and in that sense, a series of measures will be taken. One of the most efficient ways is introduction of a single identification number and establishment of a single registry of companies, as well as a single form for company registration in the whole country. In particular, attention will be paid to harmonization of regulation on registration of national and international companies, and resolution of the problems related to use of land.

The existing organization of Chambers of Commerce is based on the earlier concept of ownership relationships and requires speedy revision to adjust this institutions to the contemporary needs of private sector. Also, legislation will be adopted to enable creation of independent association of business people at all levels, including the level of BiH (a similar law has already been approved by the Council of Ministers).

- e) Labor:* in cooperation with the World Bank, a reform of labor legislation will be implemented to enable higher level of flexibility of labor. Special attention will be paid to reduction of tax duties and contributions on the labor payable by the employers. Additionally, it will be possible to streamline the procedure for obtaining residence permits for foreign labor to enable foreign investors to hire foreign, qualified workforce in the lack of the domestic one.
- f) Tax systems and customs administration:* in addition to consideration of reduction of tax duties for the private sector, a lot of work has been done to increase efficiency of tax and customs administrations and reduce corruption. According to the information available from CAFAO and Ministry of Foreign Trade and Economic Relations, there is no satisfactory cooperation between entity customs administration, and there is a lot of room for improvements. Measures will be taken that are expected to streamline procedures and establish mechanisms of external auditing of custom services. Two customs

administration operate as competitors and apply the single customs policy inconsistently, what leads to diminished total customs revenues and permanent abuses. Serious analysis needs to be undertaken in connection with future organization of customs services, including consideration of introduction of customs administration at BiH level, which is the option that might resolve many of those problems and make the customs system much more efficient and transparent.

- g) Inspections:* work of inspection services is particularly dependant on implementation of laws and regulations, what is, at this time, one of the weakest points of the whole system. Because of multi-layered organization of government, there is the overlapping of responsibilities in performance of inspections. For that reasons, due attention will be paid to adoption of legislative the purpose of which will be to clearly demarcate the authorities between different levels of governments and regulations that will increase the accountability of the inspections. In this sense, the work on establishment of Code of Conduct for inspection service will be started.

III Combating Corruption

According to the WB diagnostic study of corruption, the BiH general public is very much concerned with the level of corruption, and there is very low level of trust in public intuitions at all levels. Influence of politics to public companies, and in some extent, to private companies, is still significant. More and more, citizens are forced to give bribe for services the public institutions provide. Businessmen, including foreign investors, more and more frequently tend to resolve the problems in surmounting the complicated regulations bribing government officials. All this adds to cost of operation in the country, making it less attractive for domestic and foreign investments.⁴⁷

Governments of both entities have adopted strategies to fight corruption. Of particular importance is termination of the payment services, that had been, in part, used as instruments to control private sector by the political structures.

In future, it will be important to implement the conclusions. Strengthening the role of civil society (non-governmental organizations, media) in creation of daily politics is one of the important prerequisites for lowering corruption. In the Federation of BiH, it will be necessary to eliminate all forms of parallel government structures.

On their part, the Council of Ministers and entity governments will take measures to increase transparency of operation of public institutions. One of the most important measures will be establishment of more efficient system of public

⁴⁷ According to the conclusions of the Study, companies allocated around 18% of total expenditures for bribing government officials and political structures, while the managers spend at average 10% of their time in communication with government officials to deal with bureaucratic issues.

revenues management in order to prevent excessive spending and create stable system of financing public administration. It will be necessary to strengthen trust of the general public in public institutions. In that sense, the regulations will be adopted that will improve protection of citizens alarming of the corruption.

Adoption of legislation that will prevent money laundering is also a high priority.

Operation of governments at all levels will be made more transparent, and special code of ethics will be adopted for public officials and politicians for the purpose of defining clear rules concerning possible involvement in corruption. Special attention will be paid to strengthening transparency in financing political parties.

VI Mechanisms for Implementation of Action Plan

Implementation of the GFEDC part that relates to establishment of encouraging climate for domestic and foreign investment requires well elaborated mechanisms of implementation and monitoring. As a part of preparations for development of the Poverty Alleviation Strategy (PRSP) in BiH there is a mechanism that would, among other things, have an important role in implementation of conclusions of two mentioned studies of the World Bank, as conditions for approval of new World Bank loans (BAC Credit)

Coordination team at high level needs to provide political leadership and to show the commitment of BiH and Entities in approaching the problems. They will adopt: Action plan and all of its future changes and amendments, coordinate activities with OHR and international community, follow implementation and request accountability of the participants in the process.

Prime Ministers of the Federation of BiH and Republika Srpska, together with the Minister of Foreign Trade and Economic Relations of BiH, have already appointed the individuals to follow implementation of the conclusions of the study on administrative barriers and participate in preparations for new budget assistance credit (BAC). The entity governments have established joint groups, headed by the Coordinators in charge of implementation of this Action Plan. A technical team shall: prepare Action Plan, collect relevant information, identify and cooperate with stakeholders in the process of consultations, make a cross-section and analysis of up-to-date activities in different areas (various existing work forums), propose establishment of new work groups (if necessary), inform the Coordination Team and prepare its sessions.

The existing work groups will continue their work (unless Coordination Committee decides otherwise), and new ones will be established in accordance with needs. Special attention will be paid to establishment of adequate dialogue between state agencies and private sector.

Implementation of Action Plan requires resources that our Governments can not provide that easily, and this could slow down the implementation. Therefore, we expect from international community to assist implementation by providing appropriate technical assistance. Our proposal is that the World Bank, in cooperation with other donors, considers the possibility of creating a consulting fund that would be placed at disposal to the joint coordination team. The fund would be used for strengthening technical capacities of the joint coordination team and short-term employment of domestic consultant.

Summary of Action Plan Goals

| Problem | Goals | Comment | | | | Responsible agency | Deadline | Priority ⁴⁸ |
|--|---|--|-----|-----|----|------------------------------|---|------------------------|
| | | | BiH | Fed | RS | | | |
| Economic legal framework | | | | | | | | |
| Government structure and its influence on multi-level administrative system | Rationalization of functions and harmonization of laws and regulations | RS Government appointed the Commission for drafting: <ul style="list-style-type: none"> - Law on Public Administration - Law on Ministries - Law on Working Relationships in Administrative Agencies | X | X | X | RSMALSA and other ministries | 31.04. 2002. | 1 |
| Law on Commercial Companies (Company Law) – managing corporations and rights of shareholders | Harmonization of entity laws or adoption of laws at BiH level. <ul style="list-style-type: none"> - Election of director (one-tier structure) and members of the Supervisory Board and members of Supervisory Board (two-tier structure) by the shareholders - Protecting the minority shareholders - Derivative action of the shareholders - Clarification of legal provisions on competitive activities - Harmonization with EU directives | Law at the level of BiH is unacceptable for RS. Harmonize laws before adoption of the final version of the law in RS It would be advisable that the Working Group starts working on: <ul style="list-style-type: none"> o Company Law (Commercial Companies) o Bankruptcy law o Law on Independent Businesses (crafts) | | X | | FMEIM RSMIT RSMJ | 30.08. 2002. (RS - 31.12. 2001.) | 1 |
| Law on Crafts | | For the time being, foreseen only in the Federation | | X | | FMT | 31.12. 2001. | |
| Law on Direct Foreign Investment Policy | Harmonization of entity laws on direct foreign investment or adoption of a law at the level of BiH, in accordance with the recommendation for specific changes of the laws given in the FIAS study. | In the Federation, draft law is harmonized with the Law on the BiH level, which is in parliamentary procedure RS Government does not accept the Law at BiH level, while the change of entity law planned for 2001 is ongoing. | | X | X | FMT RSMERROC | 31.12. 2001. | 1 |

⁴⁸ 1=high; 2=medium; 3=low.

| Problem | Goals | Comment | BiH | Fed | RS | Responsible agency | Deadline | Priority ⁴⁸ |
|---|---|--|-----|-----|----|-----------------------|--------------------|------------------------|
| | | | | | | | | |
| Law on Bankruptcy and Liquidation | <p>Harmonization of entity laws, developing the Law in the Federation, drafting new law in RS</p> <p>Establishment of the program of verification of trustees</p> <p>Offer training on the Law on Bankruptcy for judges, trustees and attorneys</p> <p>What needs to be incorporated:</p> <ul style="list-style-type: none"> - Longer deadline for initiating bankruptcy (60 days) - Softer terms for initiating the bankruptcy - Evaluation of non-liquidated debts - Cancellation of advance payment of costs of bankruptcy - Management status - Appointing bankruptcy trustees without influence of the liquidation judge | <p>Harmonize laws in accordance with recommendations of FIAS study.</p> <p>In RS a work group for preparation of draft new Law has been established</p> | | X | X | FMF, FMJ, RSMIT, RSMJ | 30.06.2002. | 2 |
| <p>Law on registered pledges (secured transactions)</p> <p>Law on registered pledges of movable assets and partners' shares</p> | <p>Harmonization of entity laws</p> <ul style="list-style-type: none"> - Court administrator, not the judges, should take over registration of pledges - Courts must be provided with adequate resources for implementation - Efficient mechanisms for implementation of laws must be introduced - Establishment of a single registry (12 – 18 months) | <p>Law on Registered Pledges is before Parliament of FBiH.</p> <p>Similar law has already been adopted in RS, but has not been implemented because of lack of funds (Norwegian NRD provides assistance).</p> <p>RS refuses establishment of a single registry.</p> | | X | X | FMJ RSMJ | 30.06.2002. | 1 |
| | | | X | X | X | | 30.06.2003. | |

| Problem | Goals | Comment | | | | Responsible agency | Deadline | Priority ⁴⁸ | | |
|-----------|---|---|-----|-----|----|---|---------------------|------------------------|---|--|
| | | | BiH | Fed | RS | | | | | |
| Judiciary | <ol style="list-style-type: none"> 1. Strengthen the capacity of judiciary to implement laws, 2. Establish alternative system of resolving business disputes (arbitrage, mediation). 3. Reform the Code of Civil Proceedings (CCP) and Law on Execution Procedures (LEP) by adopting modern and efficient solutions. 4. Consider the possibility of reviving commercial courts or strengthen the commercial departments in the existing courts. | <ol style="list-style-type: none"> 1. The procedure of establishing Court of BiH is ongoing. -The Law on Training Institutions of Judges and Prosecutors is in the Parliamentary procedure. -The Law on Federation Prosecution is being developed - Draft law on budget for judiciary and prosecution has been submitted to the Federation Government - RS needs to survey the current situation and needs. 2. Law on Chambers of Commerce of FBiH regulates establishment of commercial arbitrage under the chamber of commerce of FBiH. The professional and material assistance to the Chamber is required. 3. Project of developing Code of Civil Proceedings and Law on Execution Proceedings is lead by the Independent Judiciary Commission 5. At this stage, the commercial court are given up, it is necessary to survey the existing situation and needs, improve internal organization of courts and, if necessary, strengthen it in terms of personnel. <p>The work on developing draft Law on Courts in the Republika Srpska is ongoing.</p> | X | X | X | MCAC, FMJ, RSMJ, Cantonal Ministries of Justice | 30.06. 2002. | 1 | | |
| | | | | | | | | | 1 | |
| | | | X | X | X | | | | | |
| | | | | X | X | | | | | |
| (b) | <i>Registration and operation permits</i> | | | | | | | | | |

| Problem | Goals | Comment | BiH | Fed | RS | Responsible agency | Deadline | Priority ⁴⁸ |
|---|-------|------------------------|-----|-----|----|--------------------|----------|------------------------|
| | | and objective criteria | | | | | | |
| Real estates and seat (location) | | | | | | | | |

| Problem | Goals | Comment | | BiH | Fed | RS | Responsible agency | Deadline | Priority ⁴⁸ | | |
|---|--|---|--|-----|-----|----|--------------------|----------|------------------------|--|--|
| | | | | | | | | | | | |
| <p>Ownership and land management</p> <ul style="list-style-type: none"> • Errors and omissions made in the cadastre have compromised official records • Conflicting regulations and inconsistent implementation of regulations on use of land • Purchasing priority of the entity governments to buy land undermine functioning of the open real estate market | <ol style="list-style-type: none"> 1. Strengthen legal framework for transfer of ownership of real estates 2. Clean up the land books, integrate land books and cadastre 3. Establish clear and consistent regulations on land use at the entity, municipal and cantonal level 4. Terminate priority for purchase of land of the entities (priority to buy land under same conditions) 5. Establish a land commission to lead the reform of land use and management system 6. Law on Concessions | <ol style="list-style-type: none"> 1. In the Federation, the working draft of the Law on land books and Law on Cadastre has been done. In RS, development of working draft of the Law on Land Books and Law on Cadastre is being drafted. 2. Activity conducted in cooperation with GTZ, significant material assets required . 3. Adoption of the regulation under point 1 is expected to remedy the obstacle. 4. Same as under 3, provide it as an exception, not as a rule. 5. Establishment of special administration under FMJ planned. 6. Working draft of the Law on Concessions has been made, in RS the prepared draft Law awaits adoption by the end of 2001. <p>At the level of BiH, the Law on Concessions is currently in the Parliamentary procedure. (proponent - MFTER)</p> | | | | | | | | | |
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| Problem | Goals | Comment | | | | Responsible agency | Deadline | Priority ⁴⁸ |
|--|---|--|-----|-----|----|-------------------------|-----------------------------|------------------------|
| | | | BiH | Fed | RS | | | |
| <p>Infrastructure development of locations</p> <ul style="list-style-type: none"> Urbanistic and construction permit overlap in a large extent Priority role of the Construction Institute is not clear Costs of issuing permission are too high There are difficulties in finding ready locations | <ul style="list-style-type: none"> Permits must be rationalized and consolidated Maximum deadline for processing should be prescribed by law Preparation and infrastructure development of the location should be open for the activities of private sector, and the Construction Institutes should be terminated The fee structure must be revised. Introduce consistent plan of fees Support establishment of private industrial parks | <p>In the Federation, Law on Physical Planning and Law on Construction are in the adoption procedure. They resolve the existing problem with division of responsibilities between the Cantons and Entities, and the Construction Institutes are under cantonal responsibility</p> <p>In the Republika Srpska, drafting of the Law on Building Land and Law of Physical Planning is ongoing, and the assessment of the law is expected by the end of 2001.</p> <p>Drafting of the new Law on Physical Planning should be started, and the set of laws on environment protection should be finalized and brought in accordance with the EU directives.</p> <p>Institutional strengthening of agencies responsible for urbanism and physical planning, environment, land survey and property issues is necessary.</p> | | X | X | FMPHO, RSMUHCEE Cantons | 30.04. 2002. | 2 |
| (i) | | | | | | | | |
| <p><u>Foreign labor</u></p> <ul style="list-style-type: none"> Procedures for obtaining and extending residence permits | <ul style="list-style-type: none"> Streamline and consolidate the procedures of issuing residence permits and work permits Consider conditions for submission of application and respect | <p>The analysis of the regulations from this area is ongoing in the light of the FIAS recommendation. In late 2000, the following laws entered force in the</p> | | X | X | FMSPDPR RSMRSWVL | for all 30.06. 2002. | 2 |

| Problem | Goals | Comment | | | | Responsible agency | Deadline | Priority ⁴⁸ |
|--|---|---|-----|-----|----|--------------------|----------|------------------------|
| | | | BiH | Fed | RS | | | |
| <ul style="list-style-type: none"> - are too long - Documentation necessary for issuing work permits are too extensive - Penalties for not respecting the law are disproportional | <ul style="list-style-type: none"> the deadlines - Terminate the requirement of determining inexistence of local work force - Revise the penalties | Republika Srpska: <ul style="list-style-type: none"> - Labor Law - Employment Law | | X | X | | | |
| | | | | X | X | | | |
| | <ul style="list-style-type: none"> - Reconsider the level of salary tax and social contributions - Restrict authority of municipalities to impose ad hoc salary taxes - Reconsider the role of the Employment Institute and eliminate its monopoly on arbitrage services - Reorganize the labor inspection system - Introduce clear rules - Increase accountability of the labor inspectors with the aim to reduce the corruption | | | X | X | | | |
| | | | | X | X | | | |
| | | | | X | X | | | |
| | | | | X | X | | | |
| | | | | X | X | | | |
| <ul style="list-style-type: none"> - Salary tax and costs of social contributions are too high - Unclear mandate of the Employment Institute | | | | | | | | |

| Problem | Goals | Comment | | | | Responsible agency | Deadline | Priority ⁴⁸ |
|--|--|---|-----|-----|----|--------------------|----------|------------------------|
| | | | BiH | Fed | RS | | | |
| - System of Labor Inspection is not based on clear rules and reasonable remedying of irregularities | | | | | | | | |
| (ii) | | | | | | | | |
| (iii) | | | | | | | | |
| Taxation - New role of the Financial Police is not clear to the representatives of private sector -Insufficient information on | <ul style="list-style-type: none"> - Encourage public discussion and share of information on the new role of the Financial Police - Organize a mechanism of consultations on tax reform between the public and private sector - Assign responsibilities for interpretation of tax regulations to a specific office under the Ministry of Finances | <p>In FBIH, the Financial Police will be transformed to mainly deal with corruption and crime</p> <p>Consultations on tax reform between private sector and public sector is done in cooperation of FMF, Chamber of Commerce of FBiH and Chamber of Commerce of BiH</p> | | X | X | FMF RSMF | | 2 |
| | | | | X | X | | | |
| | | | | X | X | | | |

| Problem | Goals | Comment | | | | Responsible agency | Deadline | Priority ⁴⁸ | |
|---|---|---|-----|-----|----|--------------------|--|------------------------|---|
| | | | BiH | Fed | RS | | | | |
| - Inadequate information, frequent changes of tax laws and regulations. | | <p>Adoption of the Code of Conduct of the tax inspectors and all other inspector is required.</p> <p>Tax returns will be made more efficient depending on the tax payer, who may choose to have the surplus tax paid recognized as advance payment of future taxes.</p> <p>The issue of disharmony of the sales tax with the Brcko district.</p> | | | | | | | |
| <p>Customs and customs administration</p> <ul style="list-style-type: none"> - Administrative procedures are awkward and expensive - Corruption of customs officials increases costs of transport of goods across the border - Lack of consistent and timely information on customs regulations. | <ul style="list-style-type: none"> - Accelerate the return system. - Improve coordination between customs administrations of the entities, and consider taking initial steps towards establishment of the custom administration at the level of BiH - Eliminate the requirement to pay a deposit when the importer already has the guarantee. - Consider and implement the rules of free trade zone in order to ensure that such zones are not used for import or production of goods for domestic market. - Adopt customs registration numbers that would be valid in both entities. - Upgrade computer systems in all offices and develop the network that would cover the whole country. - Establish mechanisms of timely information on changes to the laws and regulations of each entity. - Establish an independent appellant body to consider negative decisions of the Tax Administration. - Establish a forum and procedures for conducting consultations with private sector, for instance, consultative council of customs administration and business association. - Codify authority of all institutions operating at the border. | <p>System of custom duty returns shall be expedited with introduction of the Treasury.</p> <p>FBiH supports establishment of a single customs administration at the BiH level, but Republika Srpska finds it unacceptable on the grounds of non-constitutionality. Introduction of ASICUDO system for monitoring flows of goods and collection of duties will improve coordination between the customs administrations.</p> <p>In future, deposits will be completely replaced by bank guarantees.</p> <p>In FBIH, there are 7 operating free zones, in the RS there are no operating free zones. BiH Law is in parliamentary procedure (MFTER).</p> <p>FBiH supports introduction of single customs registration and upgrade of the computer system.</p> <p>In addition to publication of customs regulations in official gazette, there is the Customs Gazette that would exclusively deal with the customs-related issues, and is available at the web page of the Customs Administration of FBiH.</p> | | X | X | X | MFTER, FMF, RSMF Customs Administration of FBIH, RS Customs Administration | April 2002. | 2 |

| Problem | Goals | Comment | | | | Responsible agency | Deadline | Priority ⁴⁸ |
|---|--|--|-----|-----|----|--------------------|---------------------|------------------------|
| | | | BiH | Fed | RS | | | |
| | <ul style="list-style-type: none"> - Establish mechanisms of external auditing and following the performances. | <p>Consultations with private sectors are organized in cooperation with the Chambers of Commerce of FBiH and Chamber of Commerce of BiH.</p> <p>Changes to the Law on Customs Service in FBiH will establish a more effective customs service, while the Sector for prevention of import frauds, that is foreseen under this service, will have the power to conduct external audit too.</p> | | X | X | | | |
| <p>Inspections</p> <ul style="list-style-type: none"> - Inexistence of clear rules and objective criteria for inspections - Number of inspections and lack of their mutual coordination - Overlapping mandates and authorities - Unacceptable use of penalties | <ul style="list-style-type: none"> - Make an inventory of all inspections operating in both entities and establish the process of rationalization of inspection and coordination of their activities. Eliminate duplication and overlapping. Implement initiatives for joint training and share of information. - Articulate and publicize the mandate of each inspection as defined by law. - Stop the activities of inspections that go beyond the laws. - Eliminate payments at the site. - Establish and implement procedures for conducting visits and organizing training of the inspectors. - Introduce code of conduct of inspectors. - In the Federation, introduce the law that the execution of punishments is postponed until after completion of appellant procedures, except where the health or public security are in jeopardy, or large scale damages are threaten (reduce number of exceptions !!!) | <p>A working draft of the Law on Market Inspection has been developed in FBiH to clearly define the responsibilities of various level of inspection.</p> <p>In RS, the Law on Market Inspection is in the Parliamentary procedure. Further development and drafting the bylaws necessary for implementation of those goals is required.</p> | | X | X | FMT RSMTT | 30.06. 2002. | 2 |

| Problem | Goals | Comment | | | | Responsible agency | Deadline | Priority ⁴⁸ |
|---|---|--|-----|-----|----|--------------------|---|------------------------|
| | | | BiH | Fed | RS | | | |
| Corruption - public concern because of widespread corruption - public distrust in public institutions - widespread bribery - high operation expenses caused by bribing the state officials | 1. Implementation of Strategy of Combat against Corruption 2. Reinforcing transparency in work of state agencies, particularly in the area of public revenues administration 3. Strengthening all aspects of civil society 4. Adoption of Laws on changes to criminal legislation 5. Adoption of Law on Prevention of Money Laundering 6. Adoption of Anti-Corruption Law 7. Adoption of the Law on Public Procurement 8. Adoption of Legislation Strengthening the Role of Public Prosecutor 9. Adoption of the Law on Financing Political Parties 10. Adoption of Law on Obligations | In FBiH, the adoption or adoption of changes and amendments of the following laws is currently ongoing: - Criminal Code - Code of Criminal Procedures - Law on Prevention of Money Laundering (being drafted together with RS) - Law on Responsibility of Legal Persons and Resp. Persons in Legal Person for the Criminal Offenses of Corruption, Organized Crime and Money Laundering (being drafted together with the Republika Srpska) - Law on Combating Corruption (being developed together with RS) - Law on Changes and Amendments to the Law on Federation Prosecution In RS, the following activities are under way: - Law on Public Procurement (7) has been adopted - Law on prevention of Money Laundering (5) and Law on Combating Corruption (6) are in parliamentary procedure - Criminal Code (4) and Code of Criminal Proceedings (8) are being developed in cooperation with OHR and others - Law on Financing Political Parties adopted (9) - Identical Entity Laws on Obligations are being finalized by entity commissions. (10) Inexistence of single framework for obligations-related matter makes problems to business on the whole territory. RS believes that regulation of obligations-related matters at the level of BiH is in contravention with the constitution. | | | | FMJ, RSMJ | For all FBiH 31.12. 2001., RS 30.04. 2002. | |

| Problem | Goals | Comment | BiH | Fed | RS | Responsible agency | Deadline | Priority ⁴⁸ |
|---|--|--|-----|-----|----|--------------------|--------------------|------------------------|
| Associations of business people -associations prevail that are formed on ethnic principle – Chambers of Commerce have monopoly | <ul style="list-style-type: none"> - enable establishment of business association at the level of BiH - Reorganize Chamber of Commerce | In FBiH, a draft (common with Republika Srpska) is under preparation. In RS the Law on Association and Law on Chamber of Commerce are in the parliamentary procedure, and those laws incorporate modern solutions. | X | X | X | RSMIT RSMULS | 31.01.2002. | |
| Abbreviations: MCAC - Ministry of Civil Affairs and Communications MFTER -Ministry of Foreign Trade and Economic Relations RSMALSA - Ministry of Administration and Local Self-Administration of RS RSMIT . Ministry of Industry and Technology of RS RSMJ – Ministry of Justice of RS RSMERROC – Ministry of Economic Relations and Relations with Other Countries of RS RSMUHCEE – Ministry of Urbanism, Housing, Civil Engineering and Ecology of RS RSMRSWVL – Ministry for Issues Related to Soldiers, War Victims and Labor RSMTT – Ministry of Trade and Tourism of RS RSMF – Ministry of Finances of RS FMJ- Federation Ministry of Justice FMT – Federation Ministry of Trade FMEIM – Federation Ministry of Energy, Industry and Mining FMF – Federation Ministry of Finances FMSPDPR – Federation Ministry of Social Policy, Displaced Persons and Refugees FMPHO – Federation Ministry of Physical Planning and Environment | | | | | | | | |

