

Secured Transactions in Bosnia and Herzegovina: Challenges in Practice



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A new secured transactions platform in Bosnia and Herzegovina has created a number of issues over the years, culminating with problems concerning the pledges made by foreigners.

Introducing the changes

In 2004, a radical new secured transaction system on the pledging of movable assets was introduced into Bosnia and Herzegovina legislation. In the traditionally civil law country, an interesting legal experiment has been unfolding ever since: the 2004 Framework Law on Pledge (Pledge Act) is heavily based on and modelled after the US UCC Article 9 notification system for perfecting security interests.

Since its introduction, the new pledge registration platform and its legal background have been met with a lack of understanding by local legal professionals and their clients. Lawyers with a civil law background have often shown little confidence in the pledge perfection system, which does not feature state authority reviewing all underlying documents and approving the registrations. Coupled with certain software platform and legislation deficiencies, this has led to many issues in the practical application of the new platform, discussed below.

Main characteristics

For a pledge to be enforceable, the Pledge Act requires similar thresholds required for attachment and perfection under UCC Article 9: (i) the value must be given for security interest (ie, there must be a valid loan agreement), (ii) the debtor must have proper rights over a collateral, (iii) the valid pledge agreement must be executed and (iv) the pledge must be registered with the Bosnian Pledge Registry. The pledge registration is performed by notifying the Pledge Registry of the basic information on the pledgor, pledgee and the collateral, via an easily accessible web-based platform.

The pledge is perfected and exists in Bosnia and Herzegovina only if all four of the above conditions are met and continue to be met. It depends on the secured debt (akcesornost) in the sense that such pledge will be valid only if and as long as the secured claims are valid claims of the secured party. Only monetary claims (novčana potraživanja) specified (određeni) or specifiable (odredivi) may be secured by a pledge.

Software platform deficiencies

One of the main practical issues potential creditors face in Bosnia and Herzegovina is the very limited options for searching the Pledge Register database. Existing pledges can be identified based on only three criteria: (i) the pledge registration number, (ii) the machinery serial number, if the collateral has one and (iii) the tax identification number of the debtor. The lack of a search option by keywords is often felt, especially in case of share pledges and other commercial transactions.

Further, although foreign pledgors have been regularly registered with the Pledge Registry since 2004, this option was eliminated in 2013 when Pledge Registry software was overhauled. At the moment, it does not technically allow pledge registration where the pledgor is a foreign entity—it is impossible to enter any country of the pledgor’s origin other than Bosnia and Herzegovina. Foreign natural or legal persons may own and freely dispose of their assets in Bosnia and Herzegovina, and thus may pledge them in the same manner as Bosnian persons. But due to the technical features of the Pledge Registry software, and possibly a wrong interpretation of the relevant legal framework by the Pledge Registry, pledge registrations where the pledgor is a foreign entity are not feasible in Bosnia and Herzegovina.

Floating lien type of collateral

The regulations allow general assets (*opća imovina*) to be pledged. General assets are defined as all movable assets owned by the pledgor at the time of signing the pledge agreement and all after-acquired movable assets during the pledge duration. Besides the commercial risk that the pledged general assets may deplete over time (which may be mitigated via collateral management arrangements), there is also a legal risk that the enforcement on the general assets may be protracted or even impossible due to a lack of sufficient practice with this type of “floating” collateral.

Joint creditor as security agent

Bosnia and Herzegovina law does not explicitly recognise the concept of a security agent. As an alternative, joint creditorship (*solidarno povjerilaštvo*) can be devised under the general civil law framework (the Obligations Act) so that the debtor may discharge its obligations by paying to one selected joint creditor. This joint creditor will be registered in the Pledge Registry as the holder of the security interest. Hence, the joint creditor as security agent would need to own claim against the debtor (eg, a fee claim). Also, setting up a structure whereby the security agent has a claim against the debtor by resorting to foreign (usually English) law governing parallel debt provisions is possible, although not sufficiently tested in practice.

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