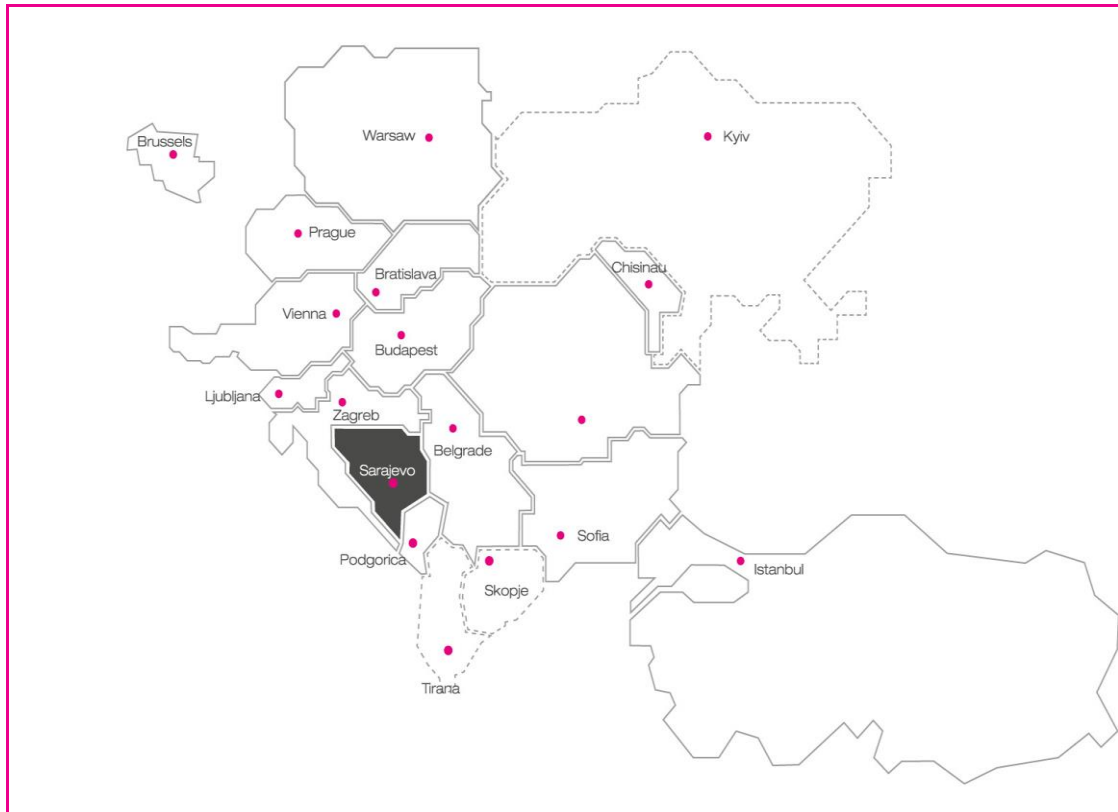


STUDY ON ACCOUNT BLOCKING IN WESTERN BALKAN COUNTRIES AND ITS IMPACT ON FINANCIAL RESTRUCTURING AND REORGANISATION

Country Report – Bosnia and Herzegovina



Prepared by



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1. Executive Summary

Bosnia and Herzegovina is organized as a complex state, having several legislative levels. Bosnia and Herzegovina is composed of two self-governed entities, Federation of Bosnia and Herzegovina and Republika Srpska and one district – Brčko District of Bosnia and Herzegovina. The matters regulated on the level of Bosnia and Herzegovina apply to the whole territory of the state. The matters not conferred by Bosnia and Herzegovina are regulated on the level of the entities and district. Therefore, the legislation in Bosnia and Herzegovina may be adopted on different levels that in practice may result in compliance requirements by several laws and regulations on different levels. In this case, the relevant legislation has been enacted mostly on the entities' level and is therefore subject to separate regulatory regimes. Nevertheless the position of the Federation of Bosnia and Herzegovina and Republika Srpska shares a number of similarities.

Herein we are providing information for Bosnia and Herzegovina with references to possible differences in the laws of the Federation of Bosnia and Herzegovina and Republika Srpska. However, please consider that this study does not comprise the laws applicable in Brčko District of Bosnia and Herzegovina.

Under the Federation of Bosnia and Herzegovina law, the following enforceable instruments have cash sweeping and account blocking powers: (i) tax and/or customs authority decisions, (ii) wage contribution claims, (iii) public revenue claims, (iv) enforcement decisions rendered by either a court or an administration authority and (v) creditors' orders on the basis of securities due, bills of exchange or authorizations given to a bank or a creditor by a debtor.

Under the Republika Srpska law, the following enforceable instruments have cash sweeping and account blocking powers: (i) public revenue claims (such are wage contribution claims, tax and/or customs authority decisions); (ii) court decisions and other deeds and orders on the basis of statutory authorizations; and (iii) creditors' enforcement orders on the basis of enforceable security, bills of exchange or authorizations given to a bank or a creditor by a debtor.

Bills of exchange are the only instruments out of the above-listed ones that are regularly offered as collateral for creditors. The remaining instruments either: (i) require court proceedings prior to cash sweeping and account blocking (i.e., court decisions within enforcement proceedings); or (ii) are instruments reserved for government authorities (i.e., tax and customs authority).

In fact, due to their direct cash sweeping and account blocking powers, bills of exchange have become the most popular security instrument among creditors in the Western Balkans and are widely used in everyday commerce and financial transactions. In Bosnia and Herzegovina, bills of exchange can be directly enforced through the centralised system mechanisms operated by the commercial bank where a debtor holds its main account.

Cash sweeping is a two-stage process. First, the proceeds on the debtor's bank account held at the bank to which bills of exchange are presented for enforcement are transferred to the creditor; if such proceeds are not sufficient to cover the creditor's

claim in full, proceeds up to the value of the claim are transferred to the enforcing creditor from any other bank accounts of the debtor.

Account blocking is activated only if cash sweeping does not satisfy a creditor's claim in full. It consists of the blocking of all payments from the debtor's bank accounts and the transfer of all proceeds that go into such bank accounts to the enforcing creditor until the creditor's claim is satisfied in full.

However, while neighbouring countries - such as Slovenia - have introduced new legislation that has, to an extent, reduced the strength of bills of exchange (i.e., their ability to lead to direct cash sweeping and account blocking), their Bosnia and Herzegovina counterparts remain regulated by the former Yugoslavia's 1946 legislation.

In addition to Slovenia, Montenegro has recently outlawed direct enforcement of bills of exchange. Namely, the strength of bills of exchange as an enforcement mechanism in Montenegro has been significantly reduced by a recent decision of the Montenegrin Constitutional Court which abolished provisions of the Montenegrin Enforcement Act that gave bills of exchange direct cash sweeping and account blocking powers. The Montenegrin Constitutional Court found direct enforcement of bills of exchange to be contrary to the Montenegrin Constitution, on a number of grounds including that it violated the debtor's basic right to property. The decision effectively requires bills of exchange to be enforced through court proceedings thus the Montenegrin Constitutional Court rendered enforcement of bills of exchange to be on equal footing with enforcement of any other monetary claim.

The applicable legislation in Bosnia and Herzegovina gives the holders of bills of exchange great power over the debtor's financial standing and the viability of its business, by giving bills of exchange the power to impact the debtor's cash flows.

The interference caused by cash sweeping and blocking of the debtor's future cash flows has an evident adverse effect on the debtor's business. For example, suppliers may be reluctant to proceed with their agreements if chances of recovery are low or non-existent, while employees may not receive their salaries.

The debtor's resulting illiquidity may also impact its counterparties, if their income relies on revenue generated from doing business with the debtor. The enforcement of bills of exchange could also trigger a downward spiral for the debtor's business, as other creditors may try to enforce their own bills of exchange before the debtor's cash reserves are depleted.

The chances of successful work-outs are also considerably hindered (if not rendered impossible) by the effects of enforcement of bills of exchange. For a debtor's business to be restructured, it must be viable in the first place. No viability is possible once bills of exchange have been enforced.

The court reorganisation in Bosnia and Herzegovina and the court led restructuring in the territory of Republika Srpska are based on a plan or arrangement with creditors and therefore less exposed to unilateral creditor action. The entire reorganisation or restructuring processes are carried out within formal court proceedings, during which a moratorium (i.e., automatic stay) halts actions by creditors to collect their claims from the debtor.

In contrast, voluntary out-of-court restructurings are not protected against unilateral creditor action throughout the process. Due to their voluntary nature, such restructurings are only obligatory for creditors wishing to participate, leaving the non-participating creditors free to enforce the bills of exchange they hold.

Pre-packaged reorganisations based on pre-packaged plans are exposed to the devastating effects of bills of exchange only during the preparatory and negotiation phases.

Therefore, in order to create a framework friendlier to out-of-court restructuring, court led restructuring and reorganisation, the powers and capabilities attached to bills of exchange must be reduced and/or gradually removed.

Due to the vast popularity¹ of bills of exchange among Bosnian creditors, any attempt to transition to a system where bills of exchange would not be capable of direct cash sweeping and account blocking should be undertaken in several phases, in order to avoid excessive market disturbance that may be caused by an abrupt change such as recently has occurred in Montenegro²

- **Phase 1** – Elimination of direct account blocking and strengthening of other cash collateral instruments³

In phase 1, account blocking would, through legislative reform, be eliminated as an inherent characteristic of bills of exchange, leaving bills of exchange as a tool that only has cash sweeping capabilities.

Given the weaknesses of the existing account pledge, the current legislation should also be amended to provide for a functional bank account pledge and new legislation should be introduced for financial collateral arrangements in line with EU Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (the “**EU Directive**”), which includes corporates within its scope⁴, to fill the void left by the gradual abolition of account blocking and cash sweeping powers of bills of exchange. (see paragraph 7.1.1. below for further analysis).

- **Phase 2** – Limitation of the capability of bills of exchange to directly sweep cash from a specific bank account only⁵.

¹ Market research evidences that 100% of commercial banks and 36% of companies as market participants request bills of exchange from their debtors. For further information, please see Section 4.11.1 below.

² Since September 2017, direct enforcement of bills of exchange is no longer possible in Montenegro due to such enforcement being declared unconstitutional. Further, all on-going proceedings before Central Bank of Montenegro (in charge for centralised cash sweeping and account blocking) were terminated and creditors were referred to enforcement before courts/bailiffs.

³ For further details, please see Section 7.1 below.

⁴ Article 1(2)(e) of the EU Directive provides that either the collateral taker or collateral provider can be a person other than a natural person, including unincorporated firms and partnerships, provided that the other party is an institution as defined in points (a) to (d) of Article 1(2).

⁵ For further details, please see Section 7.2.1 below.

Within 12 - 18 months of the introduction of a functional account pledge through legislative reform, the power of bills of exchange may be further reduced by limiting their cash sweeping capabilities to the debtor's account kept within the bank to which bills of exchange are submitted for enforcement, instead of cash sweeping across all debtor's bank accounts.

- **Phase 3** – Removal of the capability of bills of exchange to directly sweep cash from any bank account of the debtor⁶.

The final phase, to be implemented 12 - 18 months after the implementation of phase 2, (see paragraph 7.2.2. below for further analysis) would consist of eliminating the direct cash sweeping capabilities of bills of exchange. This would be achieved through the introduction of a requirement that bills of exchange only be enforced through a court ruling, rather than directly. Effectively, this change would place bills of exchange on an equal footing with other monetary claims (e.g., claims arising out of ordinary commercial agreements). During this Phase 3 final arrangements should be put in place for a new financial collateral regime in line with the EU Directive (as described above).

Deadlines for implementation of phases 2 and 3 are only suggested periods and are to be discussed with the regulators taking into account the duration of the legislative reform process, the immense popularity of bills of exchange, and the time required for account pledges to become market practice.

Defined terms are in Appendix 3 on pages 57 – 61.

2. Study Background and Methodology

Moravčević Vojnović i partneri AOD in cooperation with Schönherr (the "**Legal Consultant**") has been engaged by the European Bank for Reconstruction and Development ("**EBRD**") to prepare a study on the impact of bills of exchange (in particular, their cash sweeping and account blocking capabilities) on out-of-court work-outs (i.e., voluntary restructuring and consensual financial restructuring), court restructuring and reorganisation of corporate debtors in the Republic of Serbia, Montenegro, Bosnia and Herzegovina and FYR Macedonia.

The main objective of this study is to analyse the impact of cash sweeping and account blocking on out-of-court restructuring, court restructuring and reorganisation in Bosnia and Herzegovina, with a view to identifying ways to improve the environment for, and remove the obstacles that the capabilities of bills of exchange pose on, out-of-court restructuring, court restructuring and reorganisation, and making specific recommendations to tackle the identified shortcomings and impediments.

The manner in which publicly available data is collected and processed in Bosnia and Herzegovina, made it difficult to find examples and sources to support our statements throughout the study. For example, there is no publicly available information regarding the number of out of court restructurings and reorganisations.

⁶ For further details, please see Section 7.2.2 below.

The study also incorporates feedback from key market participants (i.e., commercial banks and companies operating in Bosnia and Herzegovina that responded to a questionnaire that is attached as Appendix 2, see pages 46 - 56).

The study has been prepared with a view to further discuss with: (i) the Federation of Bosnia and Herzegovina regulators, primarily the Banking Agency of the Federation of Bosnia and Herzegovina and the Ministry of Finance of the Federation of Bosnia and Herzegovina; and (ii) Republika Srpska regulators, primarily the Banking Agency of Republika Srpska and the Ministry of Finance of Republika Srpska, a potential cooperation on the gradual removal of cash sweeping and account blocking from the current legislation and their replacement with other forms of security over cash arrangements.

3. Legal Framework

This section provides an overview of the legal framework relevant for the purpose of this study.

3.1 Legislation on cash sweeping and account blocking

The legal framework governing cash sweeping and account blocking is not encapsulated in a single law, but is spread over several statutes, bylaws and regulations. These are, specifically, the following:

- The **Internal Payment Operations Act of the Federation of Bosnia and Herzegovina** (*Zakon o unutrašnjem platnom prometu Federacije Bosne i Hercegovine*) and **Internal Payment Operations Act of Republika Srpska** (*Zakon o unutrašnjem platnom prometu Republike Srpske*) regulate collection within enforcement proceedings and therefore represent the key piece of legislation governing cash sweeping and account blocking. These Acts provide, among others, that bills of exchange can be directly enforced through the commercial bank where a debtor holds its main account.

In particular, the Internal Payment Operations Acts regulate the following aspects of cash sweeping and account blocking:

- the instruments capable of cash sweeping and account blocking;
 - the rights and obligations of the parties involved in proceedings for the enforcement of the instruments capable of cash sweeping and account blocking;
 - the legal requirements for proceedings for the enforcement of the instruments capable of cash sweeping and account blocking; and
 - the collection process within proceedings for the enforcement of the instruments capable of cash sweeping and account blocking.
- The Internal Payment Operations Acts are supplemented by: (i) the **Guidelines on the Manner and Procedure for Executing Enforced Collection Orders through Accounts held by Authorized Organisations of the Federation of Bosnia and Herzegovina** (*Uputstvo o načinu i postupku izvršenja naloga za prinudnu naplatu preko računa kod ovlaštenih organizacija Federacije Bosne i*

Hercegovine) adopted by the Ministry of Finance of Federation of Bosnia and Herzegovina; and (ii) the **Guidelines on the Manner and Procedure for Executing Enforced Collection Orders through Accounts held by Authorized Organisations of Republika Srpska** (*Uputstvo o načinu i postupku izvršenja naloga za prinudnu naplatu preko računa kod ovlaštenih organizacija Republike Srpske*) adopted by the Ministry of Finance of Republika Srpska, which regulate the technical aspects of enforced collection from debtors' bank accounts. These include: (i) electronic messages exchanged between the banks where debtors' accounts are held; (ii) software used to carry out the enforced collection; and (iii) the type of information that the commercial banks holding debtor's accounts exchange in the course of enforcement proceedings.

- Bills of exchange are regulated by the **Bills of Exchange Act of the Federation of Bosnia and Herzegovina** (*Zakon o mjenici Federacije Bosne i Hercegovine*) and the **Bills of Exchange of Republika Srpska** (*Zakon o mjenici Republike Srpske*). Since 2015 in Federation of Bosnia and Herzegovina, and since 2012 in Republika Srpska, the enforcement of bills of exchange in respect of all debtors' bank accounts have been centralised and carried out by the commercial bank where a debtor holds its main account.

The Bills of Exchange Acts regulate:

- different types of bills of exchange;
 - formal requirements for their validity;
 - transfer of bills of exchange; and
 - mutual rights and obligations of rightful holders of bills of exchange, issuers and drawees.
- The **Enforcement Procedure Act of the Federation of Bosnia and Herzegovina** (*Zakon o izvršnom postupku Federacije Bosne i Hercegovine*) and the **Enforcement Procedure Act of Republika Srpska** (*Zakon o izvršnom postupku Republike Srpske*) regulate the process in which court decisions within enforcement proceedings (*rješenje o izvršenju*) are issued by the competent court⁷.

3.2 Out-of-Court Restructuring Legislation

Companies facing bankruptcy or financial difficulty have various work-out procedures available to them, which vary in terms of the level of regulation (ranging from voluntary, informal processes to those that are formal, regulated and supervised).

The informal work-out method has its legal basis in general civil law. Namely, the **Obligations Act of the Federation of Bosnia and Herzegovina** (*Zakon o obligacionim odnosima Federacije Bosne i Hercegovine*) and the **Obligations Act of**

⁷ The creditors are entitled to initiate enforcement proceedings with the competent court in order to have its claim settled from remaining debtor's assets (including both movable and immovable assets). Such enforcement proceedings may be initiated based on a Bill of Exchange without the need for the creditor to prove any legal interest, since the mature Bill of Exchange is considered to be an authentic document in the enforcement procedure (*vjerodostojna isprava*).

Republika Srpska (*Zakon o obligacionim odnosima Republike Srpske*), which is underpinned by the freedom of contract, serve as the legal basis for contractual parties to both agree and amend their respective rights and obligations. Thus, parties wishing to rearrange their contractual rights and obligations may do so at any time, in accordance with the Obligations Acts and within the boundaries of Bosnia and Herzegovina legislation applicable to their relations (e.g., foreign exchange transactions).

The **Companies Act of Republika Srpska** (*Zakon o privrednim društvima Republike Srpske*) foresees the possibility of share capital increase by converting creditors' receivables in share capital of the debtor. Such increase of the share capital is limited to the amount of half of the share capital existing at the moment of decision-making by the shareholder's meeting.

Furthermore, unlike in Republika Srpska, under the **Companies Act of the Federation of Bosnia and Herzegovina** (*Zakon o privrednim društvima Federacije Bosne i Hercegovine*) debt to equity swap is not envisaged in ordinary circumstances, since it is unregulated.

The Companies Act of Federation of Bosnia and Herzegovina foresees the possibility of increasing share capital by converting creditors' receivables into share capital of the debtor in accordance with the **Companies Financial Consolidation Act of the Federation of Bosnia and Herzegovina** (*Zakon o finansijskoj konsolidaciji privrednih društava u Federaciji Bosne i Hercegovine*).

However, the Companies Financial Consolidation Act of the Federation of Bosnia and Herzegovina regulates the restructuring of companies' debts incurred no later than 30 September 2013, on the basis of health insurance contributions, unemployment insurance, taxes, unpaid wages, and unpaid water, electricity, gas and other utilities. It seems that this piece of legislation was adopted due to the financial crisis in the Federation of Bosnia and Herzegovina – and as such, it had limited scope and period of application. Namely, the companies were entitled to file debt consolidation applications to the relevant ministries until 10 December 2014 – which means that after 10 December 2014, financial consolidation was no longer available. The Act (as amended by amendments published in the Official Gazettes no. 36/2018) prescribes that initiated financial consolidation procedures shall terminate by 10 July 2019. The Companies Financial Consolidation Act of the Federation of Bosnia and Herzegovina incorporates the principles of (i) voluntariness that prescribes that financial consolidation is not mandatory and as agreed between the debtors and creditors; (ii) equal treatment of all creditors having the same priority rank; and (iii) the principle of free access to information. According to the Companies Financial Consolidation Act of Federation of Bosnia and Herzegovina, financial consolidation is defined as a procedure consisting of a range of measures, processes and steps that need to be taken by a company in order to return to solvency and liquidity.

3.3 Court reorganisation legislation

Reorganisation in bankruptcy is a court supervised process that may be undertaken in the form available under the **Bankruptcy Act of the Federation of Bosnia and Herzegovina** (*Zakon o stečajnom postupku Federacije Bosne i Hercegovine*) and the

Bankruptcy Act of Republika Srpska (*Zakon o stečaju Republike Srpske*). The Bankruptcy Acts provide that reorganisation may be undertaken either through reorganisation plans (*stečajni plan*), which are part of formal bankruptcy proceedings and are enforceable by court; and pre-packaged reorganisation plans (*unaprijed pripremljeni stečajni plan*), which may be considered as a mixed procedure since they are negotiated outside of formal bankruptcy procedures and adopted within formal bankruptcy proceedings.

3.4 Court restructuring legislation (applicable on the territory of Republika Srpska)

Under the Republika Srpska law, court restructuring is a court supervised process that may be undertaken pursuant to the **Bankruptcy Act of Republika Srpska**. Court restructuring is a process that is taken prior to the initiation of a bankruptcy proceeding, with the aim of restructuring the debtor at the financial and operational level and to ensure continuation of the debtor's business. The Bankruptcy Act of Republika Srpska provides that court restructuring may be undertaken pursuant to the financial and operational restructuring plan (*plan finansijskog i operativnog restrukturiranja*), consisting of a procedure of out-of-court negotiations and court negotiations with creditors and judicial approval of the plan.

4. Bills of exchange

4.1 Introduction

The Bills of Exchange Acts provide a very broad definition of a bill of exchange. Namely, the bill of exchange is defined as "*payment instrument and collateral for security of payments*". However, a more precise definition may be inferred from prevailing legal theory and legal doctrine, which define bills of exchange according to their features and elements stipulated in the Bills of Exchange Acts.

Therefore, bills of exchange are described as security instruments based on which their issuer unconditionally instructs a third party to pay the monetary amount stated in the bill of exchange to its rightful holder, or undertakes to itself pay such amount to the rightful holder of the bill of exchange.

The most common type of bill of exchange on the market is the blank bill of exchange. Its popularity is attributed to the flexibility it provides to the creditor. As their name suggests, blank bills of exchange do not include any information regarding the debt on the face of the document. Such information, and other information required by the Bills of Exchange Acts to ensure the validity and enforceability of the bill of exchange is filled in by the authorised creditor at the moment of its enforcement. The authorisation is proved by the authorisation letter issued by the debtor to the creditor at the time of issue of the blank bill of exchange.

Prior to further elaborating on bills of exchange, it is important to explain why they are more relevant for this study than the remaining enforceable instruments that have cash sweeping and account blocking capabilities (i.e. tax and/or customs authority decisions, wage contribution claims, public revenue claims, and enforcement decisions rendered by either a court or an administration authority), and to further describe these features.

4.2 Bills of exchange in comparison to other instruments capable of cash sweeping and account blocking

Although cash sweeping and account blocking are inherent features of tax and/or customs authority decisions as well as court's/administration authority's decisions on enforcement, bills of exchange are the only instruments authorising regular creditors to perform direct cash sweeping and account blocking.

In contrast to court decisions on enforcement, which are also available to regular creditors, bills of exchange do not require prior court proceedings; instead they authorise the creditor to sweep cash and block the debtor's bank accounts directly.

On the other hand, while tax and/or customs authority decisions, wage contribution claims, public revenue claims are also capable of direct cash sweeping and account blocking, they are not available to regular creditors.

Therefore, compared to the other instruments, bills of exchange have the greatest impact on out-of-court restructuring and/or reorganisation, as they constitute a direct and common practice and are available to all creditors.

4.3 Key features of bills of exchange - cash sweeping and account blocking

4.3.1 Cash sweeping

Cash sweeping is the first measure applied against the debtor's cash assets when enforcing bills of exchange. Cash sweeping is a two-stage process.

Firstly, all funds held in the debtor's bank accounts kept with the bank to which bills of exchange are submitted for enforcement are transferred to the benefit of the enforcing creditor.

Secondly, and only if the first step does not cover the entire creditor's claim, all funds held in all the debtor's bank accounts at the time of commencement of the enforced collection are transferred to the account of the enforcing creditor.

4.3.2 Account blocking

Where cash sweeping fails to satisfy in full the claim under the bill of exchange, the commercial bank where a debtor holds its main account activates the account blocking measure, which involves (i) prohibiting the debtor from disposing of any future income transferred to its bank accounts; and (ii) automatic transfer of such proceeds to the enforcing creditor.

4.3.3 A breakdown of cash sweeping and account blocking

Cash sweeping and account blocking may be broken down into the following key components:

	Cash Sweeping	Account Blocking
Legal basis for implementation	Both cash sweeping and account blocking are implemented based on the enforcement of bills of exchange.	
Form	Transfer of all funds held in a particular bank account (i.e. commercial bank where a debtor	<ul style="list-style-type: none"> Debtor prohibited from disposing of any future proceeds paid into his bank

	holds its main account), if collected funds are insufficient for satisfaction of the entire claim; transfer of all funds held in all debtor's bank accounts to the account of the enforcing creditor.	accounts; and <ul style="list-style-type: none"> • Automatic transfer of any future proceeds paid into the debtor's bank accounts to the enforcing creditor.
Implementation	Automatic implementation by the commercial bank where a debtor holds its main account.	Automatically implemented by the commercial bank where a debtor holds its main account if cash sweeping fails to satisfy in full the claim under the bills of exchange.
Termination	Automatically terminated when: (i) claims covered by the bills of exchange have been satisfied in full; or (ii) all funds held in all bank accounts of the debtor have been transferred to the enforcing creditor to satisfy the claims under the bills of exchange, and the enforcement process has transitioned to the account blocking phase due to the insufficiency of the swept funds to cover the entire claim under the bills of exchange.	In the ordinary circumstances, automatically terminated where the claim under the bills of exchange being enforced has been satisfied in full; In court restructuring or reorganisation – automatically terminated once bankruptcy proceedings have been opened (reorganisation is carried out in bankruptcy proceedings).

4.4 Applications of bills of exchange

The legal regime regulating bills of exchange and the ease and efficiency of their enforcement have led to their use as:

- payment instruments – bills of exchange are easily enforced and transferred; thus market participants often use them as payment instruments. A creditor holding bills of exchange may transfer them to its own creditors instead of payment.
- credit instruments akin to "I owe you" documents – the bill of exchange binds its issuer, or a third party drawing it, to pay the amount stipulated on the bill of exchange, as a result of which it is often used as a substitute to immediate

payment. In particular, the issued bills of exchange compel the debtor to repay to the creditor the monetary claim evidenced by them.

- collateral – Bosnian legal regime sets out simple perfection requirements, efficient enforcement and independence of bills of exchange from the underlying legal grounds applicable to secured claims. Due to this, bills of exchange are most commonly used as collateral for securing monetary receivables.

4.5 Bills of exchange as collateral

The principle that bills of exchange are independent from the underlying legal ground of the claim secured by them⁸, prescribed by Bills of Exchange Acts, as well as their above referenced qualities regarding perfection and enforcement, have greatly contributed to the widespread use of bills of exchange as quasi-collateral in Bosnia and Herzegovina.

The use of bills of exchange as collateral is also attributed to their comparable advantage over other collateral instruments (i.e., considerably greater efficiency of enforcement compared to other types of collateral, such as mortgages or pledges).

Other types of collateral typically involve higher costs, greater uncertainties and longer enforcement periods. On the contrary, the enforcement of bills of exchange in Bosnia and Herzegovina is a straightforward process, which requires very limited involvement on the part of either the creditor or the debtor.

Their widespread use as collateral is evidenced by 100% of commercial banks and 36% of companies as market participants demanding bills of exchange as the instrument for securing their claims.

4.6 Inoperability of account pledge contributing to the use of bills of exchange as collateral

The absence of other reliable security instruments for cash assets under Bosnian law is another factor that significantly contributes to the widespread use of bills of exchange.

The provisions of the Pledge Act related to the pledge enforcement procedure are mostly tailored towards the forced collection of movable assets (the most frequent use of the pledge in practice) and do not contain detailed provisions regarding enforcement over the pledged accounts. Based on the general terms of the pledge enforcement legislation, the account pledge enforcement may be initiated by way of the submission of a proper enforcement request to the competent court and it requires adoption of the appropriate court's writ of enforcement in the court regulated procedure. Consequently, unlike enforcement of the bills of exchange, the account pledge enforcement is time-consuming procedure that involves higher costs and greater uncertainties for debt collection.

Although Bosnian law, in theory, recognises the concept of account pledge, it is in practice considered as inoperable. An account pledge is considered to be inoperable due to (a) the undeveloped practice related to enforcement of a pledge over the bank accounts; (b) while the account pledge is created and perfected in the same manner as any other type of pledge (i.e. by way of registration in the Pledge Register), its

⁸ A principle also applicable to instruments such as bank guarantees.

perfection and enforcement is more cumbersome, costly and time consuming in comparison with bills of exchange, which do not require any perfection formalities and costs associated therewith; (c) the similar legal tradition between Serbian and Bosnian legislation. Namely, the courts and authorities in Bosnia and Herzegovina tend to look at their Serbian counterparts when interpreting relevant legal issues. There is, therefore, a risk that Bosnian courts may find that the account pledge covers proceeds only up to the amount of proceeds that were in the debtor's account at the moment of pledge perfection (registration in the Pledge Register kept with the Ministry of Justice of Bosnia and Herzegovina)); and (d) existence of the software platform deficiencies of the Pledge Registry of the Ministry of Justice of Bosnia and Herzegovina (e.g. the software of the Pledge Registry (as it was updated in 2013) does not technically enable pledge registration whereby the pledgor is a foreign (i.e. non-Bosnian) entity). Due to the prescribed deficiencies of the Pledge Register and the undeveloped practice related to enforcement over pledged bank accounts, pledges over bank accounts typically:

- provide very limited security to creditors;
 - may be worthless if the amount in the debtor's bank account is insufficient;
 - require the debtor's approval to register a new pledge each time he receives financing;
 - may be worthless if the pledgor is foreign entity; and
- in respect of the Federation, keep the debtor's funds blocked during the repayment of the financing (although this renders the funds immune from enforcement by other creditors) and, in respect of the Republika Srpska, are not immune from enforcement against cash assets initiated by other creditors.

Over 70% of the 14 market participants interviewed have stated that they find account pledges to be inferior/less efficient than bills of exchange as security instruments over the debtor's bank accounts.

The above is primarily due to due to technical flaws of the Pledge Register software and its controversial practice; and potential inoperability of pledges over bank accounts in Bosnia and Herzegovina.

4.7 Enforcement of Bills of Exchange

The enforcement of bills of exchange is initiated by a creditor presenting a completed bill of exchange to the commercial bank where a debtor holds its main account. Thereupon, the enforcement process is handled by such bank and no further action is required of the creditor or the debtor.

Once a completed bill of exchange is presented before a debtor's bank, the bank verifies its validity and immediately sweeps the specified amount of cash the debtor's bank account and transfers it to the creditor.

The enforcement process is completed within minutes if the funds the debtor holds in its account at the bank to which the bills of exchange are presented for enforcement are sufficient to cover the amount stipulated under the bills of exchange being enforced.

However, if there are insufficient funds in the debtor's bank account to satisfy a creditor's claim in full as stated in the bill(s) of exchange, the bank transfers to the creditor the entire balance of the debtor's funds account kept with it.

Thereafter, based on the authorisation to manage and implement the enforced collection procedure (including cash sweeping and account blocking), the commercial bank where a debtor holds its main account sweeps cash from all the debtor's accounts by notifying and instructing other banks⁹ to transfer all funds held in the debtor's accounts to the debtor's main bank account.

The commercial bank where a debtor holds its main account transfers all funds up to the amount of the claim collected by it to the creditor.

If full repayment has not been achieved after all funds has been swept from all of the debtor's bank accounts, the commercial bank where a debtor holds its main account implements account blocking across all the debtor's bank accounts.

The debtor and its affiliates are prohibited from opening any new bank accounts until their existing ones have been unblocked (i.e., all the enforcing creditors have been satisfied in full).

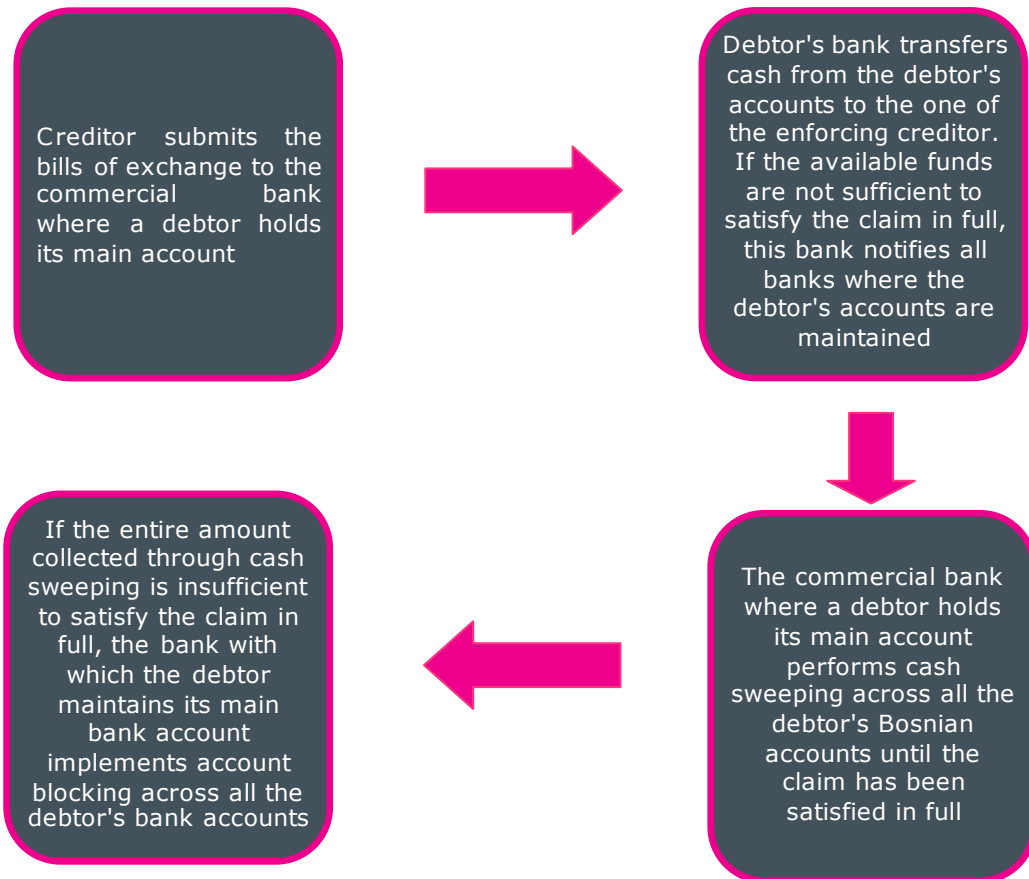
The ranking of other types of collateral, such as pledges and mortgages, is determined based on the time of collateral perfection (i.e., registration in the relevant collateral register). In contrast, bills of exchange are ranked according to the time of enforcement initiation.

Provided there is sufficient cash available to satisfy in full the enforcing creditor's claim, the priority of claims between creditors with regard to the balance in a specific bank account is determined according to the time of submission of the bills of exchange to the debtor's bank.

⁹ Incorporated and operating within territory of entire state of Bosnia and Herzegovina.

Such priority is only exercised where the funds in the debtor's bank account against which the bills of exchange have been submitted are sufficient to cover the claim in full. Otherwise, the commercial bank where a debtor holds its main account sweeps all cash from the debtor's Bosnian accounts. Therefore, where several creditors submit bills of exchange to different banks in which the debtor keeps its bank accounts, and such accounts hold insufficient funds to repay the respective amounts claimed by such creditors, priority is afforded to the creditor that was the first to present the bills of exchange to any of the debtor's banks.

4.7.1 Bill of exchange enforcement process



4.8 Comparative overview of bills of exchange in Bosnia and Herzegovina and in certain European Union Member States

In contrast to Bosnia and Herzegovina legal regime, the Austrian, German and Slovenian legal regimes governing bills of exchange and their enforcement do not allow for direct cash sweeping across all bank accounts of a debtor or equip bills of exchange with account blocking powers.

The enforcement of bills of exchange in the above-referenced jurisdictions does not result in the blocking of all the debtor's bank accounts, nor does it prevent the disposal of any future income or allow automatic transfer of such incoming cash flows to the enforcing creditor.

Austrian law provides for the enforcement of bills of exchange in a two-step court procedure, which may be followed by cash sweeping.

The enforcing creditor must seek the competent court to issue a payment order based on the bills of exchange. Once the payment order has become final and binding, the creditor obtains an enforcement title, which may then be enforced through the competent enforcement court. Priority over cash assets is afforded to the creditor which first obtains seizure order based on the enforcement title.

If the funds available in the debtor's account are insufficient to satisfy the full amount indicated in the court order, unlike in Bosnia and Herzegovina, this does not give rise to account blocking. The debtor is not barred from disposing of the available funds in his accounts and no automatic transfer of debtor's future income is available to the enforcing creditor.

The court may issue an attachment order and instruct the transfer of the debtor's receivables to the account of the enforcing creditor, resulting in direct cash sweeping or account blocking. But the enforcement of bills of exchange under Austrian law does not in and of itself allow for direct cash sweeping or account blocking.

Similarly, Germany does not have a centralised system that permits direct enforcement of bills of exchange resulting in cash sweeping or account blocking. Instead, the enforcement of bills of exchange is secured through a court ruling or a comparable title such as a court settlement, writ of execution or notarial certification with submission under immediate execution.

A judgement or comparable title is required for the competent government authorities to implement any enforcement measure, including the freezing of debtor's bank accounts and the transfer of debtor's receivables to an enforcing creditor.

Account blocking is also possible. However, after receiving a judgment in court proceedings, the creditor must first apply to the court for a temporary freezing of debtor's accounts to ensure non-depletion of cash assets; once this has been granted, the creditor may apply for attachment and the transfer of the debtor's cash receivables to the creditor's account.

In contrast to Austria and Germany, Slovenia recognises some of the legal concepts applicable in Bosnia and Herzegovina. Specifically, under Slovenian law, bills of exchange that indicate the place of payment and the payee (*domiciled bills of exchange*)

are deemed to include the debtor's authorisation to the creditor to issue a payment order to the debtor's bank and debit a specific bank account.

A Slovenian bank receiving bills of exchange from an enforcing creditor is only authorised and obliged to sweep cash from the debtor's account if the account holds sufficient funds to settle the full claim covered by the bill of exchange.

However, any further enforcement of bills of exchange under Slovenian law requires the enforcing creditor to initiate and conduct prior court proceedings.

Cash sweeping across all bank accounts of a debtor and transferring its future income to the benefit of the enforcing creditor requires a court ruling rendered in enforcement proceedings.

4.9 Recent changes in the Montenegrin legal framework

Until recently the Montenegrin legal framework for enforcement of bills of exchange permitted direct cash sweeping and account blocking based on bills of exchange.

On 29 September 2017¹⁰, the Montenegrin Constitutional Court ruled that direct cash sweeping and account blocking based on bills of exchange is contrary to the fundamental principle of enjoyment of private property as direct enforcement (instead of regular enforcement through the court system) cannot be justified on the grounds of public interest. Furthermore, the Constitutional Court found that direct enforcement does not provide sufficient protection for the debtor, due to the lack of legal remedies available to the debtor.

On, *inter alia*, the above grounds, the Constitutional Court of Montenegro abolished provisions of the Montenegrin Enforcement Act which allowed for direct enforcement based on bills of exchange. Such decision renders the enforcement of bills of exchange to be the same as enforcement of any other monetary claim and requires the creditor to enforce its claims through the court/bailiff system.

In addition, on-going proceedings before the Central Bank of Montenegro (in charge of centralised cash sweeping and account blocking) were terminated and creditors were referred to enforcement before the courts/bailiffs.

4.10 Summary of key features of bills of exchange and their realisation

The table below describes and explains the key features of bills of exchange under Bosnian law.

¹⁰ Adopted on a session held on 29 September 2017, published in the Official Gazette of Montenegro no. 76/2017 on 17 November 2017.

Key Feature	Comment
No perfection requirements	Unlike other collaterals, the validity and enforceability of which is contingent upon their perfection (typically, registration with competent registers), this is not the case with bills of exchange i.e. perfection is not required
Efficient tool for sweeping cash from a particular bank account	If there is sufficient cash in the debtor's bank account against which the bills of exchange have been submitted, the bank performs cash sweeping from such account within minutes of the bills of exchange being submitted for enforcement
Efficient tool for cash sweeping across all debtor's bank accounts	If there is not sufficient cash in the debtor's bank account against which bills of exchange have been submitted to cover in full the claim under the bills of exchange, the bank with which the debtor maintains its main bank account automatically sweeps cash from all of the debtor's bank accounts in Bosnia and Herzegovina within 24 hours of being notified of the submitted bills of exchange
Limited involvement required of the creditor in the enforcement process	The creditor is only required to fill in the blank bills of exchange and submit them for enforcement to the debtor's bank
Account blocking capability	In case the total amount collected through cash sweeping across all debtor's bank accounts in Bosnia and Herzegovina is not sufficient for repayment of the entire amount stipulated in the bills of exchange, all bank accounts of the debtor are blocked until the enforcing creditor's claim has been satisfied in full. Any amount credited to the debtor's account will be automatically transferred to the enforcing creditor and applied towards repayment of its claim
Safe and reliable form of collateral	The creditor is not required to prove the existence of a valid underlying obligation prior to enforcing a bill of exchange, nor can the debtor challenge the existence of such obligation. No court involvement is required
Priority between creditors is	In practice, priority between enforcing

determined based on the time of presentation of bills of exchange for payment	creditors of the same debtor is determined according to the time of commencement of their respective enforcement proceedings (i.e., according to the time of submission of bills of exchange to the bank)
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4.11 The effects of bills of exchange

4.11.1 Race between creditors and chain reaction

The ranking of creditors according to the time of enforcement of bills of exchange, cash sweeping and account blocking may combine to trigger a race between creditors to submit their respective bills of exchange in order to ensure better prospects of satisfying their respective claims.

Payment priority ranking may encourage first movers to race for the cash available in the debtor's bank accounts in Bosnia and Herzegovina. In addition, first movers may also reserve all future cash receivables of the debtor until satisfaction of their claims in full *via* account blocking.

The issues associated with first movers among creditors in submitting bills of exchange are not prevalent in Austria, Germany and Slovenia, since the legal regimes of these countries do not equip bills of exchange with the power of direct (i.e. without court proceedings) cash sweeping across all debtor's bank accounts, and/or account blocking.

Besides triggering a race between creditors, the payment priority ranking and the account blocking capability of bills of exchange also lead to creditor chain reactions: Once a creditor has enforced its bills of exchange, other creditors typically follow suit and initiate enforcement in order to reserve as much of the future cash flows to the debtor's account as possible.

4.11.2 Potential bankruptcy of a debtor

The chances of bankruptcy proceedings being initiated are increased once bills of exchange have been enforced and accounts have been blocked, as all payments from these accounts are hence prohibited, except those made in favour of the creditors enforcing their bills of exchange.

Grounds for opening bankruptcy proceedings will be satisfied in the event of debtor's insolvency, i.e. default on all payments for 30 consecutive days in the Federation of Bosnia and Herzegovina; or default on all payments for 60 consecutive days or its bank account has been blocked for 60 consecutive days.

The opening of bankruptcy proceedings against the debtor is detrimental for the debtor's business as it could, *inter alia*, also trigger the revocation of the operating licenses for the debtor's business, where the debtor's business is subject to licensing requirements.

Specifically, the Capital Markets Act of the Federation of Bosnia and Herzegovina and the Capital Markets Act of Republika Srpska govern certain regulated market activities, such as investment services. Under these Acts, the

licenses granted for specific regulated activities are automatically revoked upon the initiation of bankruptcy proceedings over the licensed entity.

Based on the feedback received from key market participants, 66% of banks would initiate bankruptcy proceedings against a debtor whose accounts were blocked, while only 18% of Chambers of Commerce and Industry members would do the same.

However, there is little comfort for the debtor's business or his prospects of achieving successful out-of-court restructuring or reorganisation in the reluctance of non-bank creditors to initiate bankruptcy proceedings, as the state of being blocked, in itself, also leads to the demise of the business.

4.11.3 Deterioration of the debtor's business and businesses of its transacting counterparties

Due to the account blocking feature of bills of exchange, all payments from the debtor's bank accounts, other than those made in favour of the enforcing creditor, are suspended, which may have adverse effects on the debtor's business.

The discontinuation of the debtor's payments inevitably leads to his inability to acquire goods and services for its day-to-day business, as most suppliers are reluctant to supply goods/services where there is a risk of not being paid.

In most cases, businesses also cease operating due to employee work stoppages stemming from increasing uncertainty associated with account blocking.

In addition, suspension of payments by the debtor may also adversely affect the financial standing of the debtor's transacting counterparties, including the creditors who have not enforced their bills of exchange.

Furthermore, account blocking may lead to the debtor's transacting parties being unable to service their own debts, especially if their income heavily relies on revenue generated from doing business with the debtor.

While the surveyed market participants concur that enforcement of bills of exchange has adverse effects on the debtor's business, they fail to acknowledge that enforcement of such instruments also negatively impacts the prospect of achieving successful out-of-court restructuring and/or reorganisation of the debtor.

4.11.4 Fraudulent behaviour

Pursuant to applicable legislation in Bosnia and Herzegovina, a debtor whose bank accounts are blocked is prohibited from assigning its claims/debts or setting off its rights and liabilities.

In practice, this prohibition leads to fraudulent behaviour by debtors, which devise various schemes to diminish the effects of account blocking. These schemes include, amongst others, debtors redirecting their cash receivables/liabilities to their affiliates through claim/debt assignment in order

to circumvent the restrictions imposed on their bank accounts¹¹ or debtors operating through the bank accounts of related parties.

Such fraudulent behaviour of the debtors is frequently accompanied by a reluctance to share business-related information with their creditors as such information sharing could reveal the fraud.

4.12 Facts and figures

4.12.1 Questionnaires

A research conducted among market participants - 3 commercial banks and 11 companies, i.e. members of the Chamber of Commerce and Industry currently operating in the Bosnian market - revealed the following:

- 100% of commercial banks and 36% of companies as market participants require their potential debtors to provide bills of exchange as collateral, failing which they are unwilling to provide financing. Yet, they are reluctant to depend solely on the bills of exchange for securing their claims and will also require other sources of security, such as mortgages, pledges or bank or personal guarantees.
- The payment of existing and future proceeds from the debtors' bank accounts is contributes to better recovery, although 61% of companies disagree with this view, as they find it to be detrimental to the debtor's day-to-day business and believe it may result in forced collection by other creditors.
- Bills of exchange are a convenient, swift and efficient security instruments, whose enforcement allows for collection against all cash assets of the debtor (i.e., by way of cash sweeping and account blocking) without prior court proceedings; at the same time, they enable enforcement against all assets of the debtor through court proceedings.
- The enforcement of bills of exchange does not necessarily secure a good rate of recovery.
- Where bills of exchange are the only security available and there is cash in the debtor's bank accounts, 66% of commercial banks will generally enforce bills of exchange to satisfy their claims, but only after they have exhausted all other methods, including participating in out-of-court restructuring of the debtor.
- Commercial banks maintain a cooperative policy towards their debtors, whereby they tend to rely on the account blocking feature only if no other collection method is available (i.e. 66% of commercial banks will not typically enforce bills of exchange at the first sign of financial distress of the debtor). In comparison, only 18% of companies as lenders would enforce bills of exchange at the first sign of financial distress of the debtor,

¹¹ Prohibiting the debtor from disposing of any future proceeds paid into its bank account; and automatic transfer of such proceeds to the creditor enforcing its cash sweeping/account blocking instrument.

the remaining 82% finding that reducing the debtor's business operability and liquidity is not the best recovery option for the creditor.

- While 66% of commercial banks would not generally be among the first movers to enforce their bills of exchange, they would be inclined to enforce their bills of exchange if other creditors were enforcing or threatening to enforce. This is particularly the case where enforcement by other creditors has affected the financial and business standing of the debtor, which is determined on a case-by-case basis.
- 66% of commercial banks will generally initiate bankruptcy proceedings on the ground of the debtor's accounts being blocked, if, upon careful examination of the debtor's financial standing and his position vis-à-vis his other creditors, they determine that repayment prospects are low. On the other hand, 81% of companies in Bosnia and Herzegovina would not initiate insolvency proceedings against their debtors on these grounds¹².

5. Out-of-court restructuring, court restructuring and reorganisation

Before analysing the impact of bills of exchange and account blocking on out-of-court restructuring, court restructuring and reorganisation in greater detail, we will attempt to explain the importance of these procedures and provide some background in form of Bosnian legislation regulating them and the internationally recognised standards applicable to such procedures, provided by:

- the World Bank's 'Principles for Effective Insolvency and Creditor/Debtor Regimes'¹³;
- the European Commission's Recommendation 'On a new approach to business failure and insolvency'¹⁴; and
- the proposal for a Directive of the European Parliament and of the Council on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency and Discharge Procedure and Amending Directive 2012/30/EU¹⁵.

5.1 Importance of out-of-court restructuring, court restructuring and reorganisation

The purpose of out-of-court restructuring, court restructuring and court reorganisation (in particular, based on the pre-packaged reorganisation plans) is to ensure that viable enterprises in financial difficulty are able to restructure at an early stage, with a view to preventing their liquidation in bankruptcy and thereby maximising the overall value to creditors, employees, owners and public revenue authorities¹⁶.

¹² The statistics have been developed based on a questionnaire completed by 3 banks and 11 companies.

¹³ <http://pubdocs.worldbank.org/en/919511468425523509/ICR-Principles-Insolvency-Creditor-Debtor-Regimes-2016.pdf>

¹⁴ http://ec.europa.eu/justice/civil/files/c_2014_1500_en.pdf

¹⁵ <http://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:52016PC0723&from=EN>

¹⁶ Provided by the European Commission Recommendation 'On a new approach to business failure and insolvency'.

In contrast to liquidation in bankruptcy, where the debtor's estate is sold or realised to satisfy the creditors' claims, the maximisation of value to creditors is achieved at an early stage of financial difficulty in out-of-court restructuring, court restructuring and/or reorganisation, by giving the debtor a chance to generate revenue by continuing to carry on its business.

This fundamental difference also ensures a positive impact on employment, the debtor's transacting counterparties and public revenue, which all benefit from the debtor remaining in business.

Therefore, the continuation of the debtor's business, which is a key characteristic of out-of-court restructuring, court restructuring and reorganisation, is beneficial to the economy as a whole, as it leads to:

- (i) no or limited employee redundancies;
- (ii) continued contribution to public revenues (e.g. through taxes);
- (iii) benefits for debtor's suppliers and customers; and
- (iv) reduced pressure on the judicial system, which is overburdened with bankruptcy proceedings.

These characteristics distinguish out-of-court restructuring, court restructuring and reorganisation from liquidation in bankruptcy, and underpin the importance of the former three.

5.2 Consensual financial restructuring in Bosnia and Herzegovina

Consensual financial restructuring in Bosnia and Herzegovina may be carried out under the Obligations Acts.

Voluntary restructuring is performed based on the fundamental principle of contracting freedom under the Obligations Acts. Specifically, parties are free to choose their contractual counterparties; decide whether to enter into a contract; and include suitable provisions to regulate their contractual relations, provided such provisions are in line with mandatory rules of law (e.g. foreign exchange rules).

By the same token, the parties that have already entered into contracts are free to amend their terms and conditions without the intervention of any governmental or judicial authority.

It is important to note that, pursuant to the Obligations Acts, agreements are only binding *inter partes* and will have no legal effect on any third party. As a result, a voluntary restructuring plan would not be binding on any creditor that has not agreed to, for example, a standstill agreement.

Consensual financial restructuring in Bosnia and Herzegovina could be described as a voluntary process in which the creditors and the debtor may renegotiate and redefine their relations based on the principle of good faith, provided that the debtor's business is viable.

5.3 Court reorganisation

Under the Bankruptcy Acts, one of the outcomes of bankruptcy proceedings is court reorganisation. Bankruptcy proceedings in Bosnia and Herzegovina are conducted in form of reorganisation or liquidation in bankruptcy. As defined in the Bankruptcy Acts, liquidation in bankruptcy is the process of satisfying creditors' claims by means of realising the debtor's estate.

Reorganisation (*reorganizacija*) is the process of satisfying creditors' claims in accordance with an approved reorganisation plan/pre-packaged reorganisation plan (*stečajni plan*) by way of redefining debtor-creditor relations, status changes to the debtor or any other method determined in the reorganisation plan/pre-packaged reorganisation plan. The process is aimed at achieving a more favourable settlement of creditors' claims than liquidation in bankruptcy, where there are economically viable conditions for the continuation of the debtor's business.

The Bankruptcy Acts provide for two forms of reorganisation (i.e., reorganisation carried out based on a reorganisation plan or a pre-packaged reorganisation plan).

The stage at which either form of reorganisation plan is prepared and negotiated represents the crucial difference between the two forms of reorganisation.

Reorganisation plans are typically negotiated, submitted and adopted as part of formal bankruptcy proceedings, by the bankruptcy debtor; bankruptcy receiver; secured creditors; and unsecured creditors.

The preparation and negotiation of reorganisation plans is protected from unilateral enforcement or collection actions from creditors by means of a moratorium (i.e., automatic stay) applicable as of the opening of the bankruptcy proceedings. During preparation and negotiation debtors are also protected against creditor's actions on their accounts, including account blocking.

Reorganisation based on a pre-packaged reorganisation plan falls under the category of so-called 'hybrid work-out procedures'. Such reorganisation attempts to combine the advantages of both formal proceedings (i.e. reorganisation) and consensual out-of-court restructuring. The pre-packaged reorganisation plans are negotiated prior to the formal bankruptcy proceedings in which they are submitted and adopted.

The stage at which the pre-packaged reorganisation plan and reorganisation plan are prepared and negotiated *vis-à-vis* the moment of opening of the bankruptcy proceeding leads to a critical difference between those two forms of reorganisation. While preparation and negotiation of the reorganisation plan is protected from unilateral creditor action as it is done during the application of automatic stay on creditor action (including account blocking) imposed as of the moment of opening of the bankruptcy proceedings, negotiations around the pre-packaged reorganisation plan are not protected from unilateral creditor action as there is no stay on creditor action until bankruptcy proceedings are opened.

Debtors and creditors alike increasingly recognise the benefits of the hybrid nature of pre-packaged reorganisation plans. For them, these plans eliminate the pressure of negotiation failure due to creditors' actions (once the court has awarded stay on creditor action on debtor's request) and cram-down options afforded to hold-out creditors, while also providing the security of judicial approval for intended activities.

5.4 Court restructuring in the Republika Srpska

Court restructuring is defined in the Bankruptcy Act of Republika Srpska (while the court restructuring is not regulated in the Federation of Bosnia and Herzegovina), as a process that is taken prior to the initiation of a bankruptcy proceeding, with the aim of restructuring the debtor at the financial and operational level. The debtor or creditor (with the debtor's consent) may file a restructuring petition with the competent court accompanied by a financial and operational restructuring plan (*plan finansijskog i operativnog restrukturiranja*). Court restructuring falls under the category of so-called hybrid work-out procedures as it attempts to mix the advantages of both formal proceedings (i.e. reorganisation) and consensual out-of-court restructuring. The financial and operational restructuring plan is negotiated outside of formal court proceedings; however, it is adopted as part of restructuring court proceedings.

Prior to opening of court restructuring proceedings, preparation and negotiations of financial and operational restructuring plan is not shielded by an automatic stay. However, as of the opening of the court restructuring proceedings, the preparation and negotiation of financial and operational restructuring plan is protected from unilateral enforcement or collection actions from creditors by means of a moratorium (i.e., automatic stay).

5.5 Implementation of internationally accepted standards for functional out-of-court restructuring, court restructuring and reorganisation in Bosnia and Herzegovina legislation

The fact that Bosnia and Herzegovina out-of-court restructuring, court restructuring and reorganisation legislation could be characterised as legislation enabling such work-out procedures further substantiates the claim that bills of exchange undermine successful implementation of work-outs.

The implementation in Bosnia and Herzegovina legislation of internationally accepted standards for functional out-of-court restructuring and reorganisation, provided by the World Bank's 'Principles for Effective Insolvency and Creditor/Debtor Regimes' and the European Commission's Recommendation 'On a new approach to business failure and insolvency' is detailed in Appendix 1.

6. Ramifications of bills of exchange on the various stages of reorganisation, court restructuring and out-of-court restructuring

The following sections describe the impact of the bill of exchange enforcement on the prospect of achieving a successful reorganisation and/or out-of-court restructuring and/or court restructuring by reference to the critical stages of these proceedings.

6.1 Assessing the feasibility of reorganisation, court restructuring and out-of-court restructuring

The preparation to commence a reorganisation, court restructuring or an out-of-court restructuring entails an assessment of the viability of the debtor's business, a statutory precondition for both proceedings under both the Obligations Acts and the Bankruptcy Acts¹⁷.

Out-of-court restructuring, court restructuring and reorganisation proceedings are an option only if a debtor's business is viable. Otherwise, any attempt to maximise value for creditors through redefining debtor-creditor relations would only delay an inevitable liquidation in bankruptcy.

Cash sweeping and account blocking capabilities of bills of exchange diminish the prospect of a successful outcome for reorganisation and out-of-court restructuring, as they negatively affect the viability of a debtor's business in a number of ways.

6.1.1 Adverse effect on debtor's business

Cash sweeping and account blocking represent a major uncertainty for the business of a financially distressed debtor, which may at any time come to a halt if payments are discontinued as a result of the enforcement of bills of exchange.

6.1.2 Possible bankruptcy

As mentioned in Section 4.11.2 above, the viability of a debtor's business is also diminished by the high prospects of bankruptcy (and its effects), which could occur as a consequence of illiquidity caused by the enforcement of bills of exchange.

6.1.3 Run on the debtor

Given the priority ranking of bill of exchange holding creditors and the consequences of enforcement, as explained in Section 4.10.1 above, first movers may alert other creditors to enforce their own bills of exchange.

Further enforcements effectively lead to an increase in the blocked amounts, thereby diminishing the chances of the debtor's business continuing.

¹⁷ This precondition is also envisaged in the European Commission Recommendation 'On a new approach to business failure and insolvency'; the World Bank's 'Principles for Effective Insolvency and Creditor/Debtor Regimes'; and the proposal for a Directive of the European Parliament and of the Council on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency and Discharge Procedure and Amending Directive 2012/30/EU.

6.2 Negotiation of pre-packaged reorganisation plan/out-of-court restructuring plan

Amongst other elements, the stability of the debtor's business and the availability to creditors of complete and accurate information on the debtor and its business are essential for successful negotiation of pre-packaged reorganisation plans and out-of-court restructuring plans.

6.2.1 Stability of debtor's business

The existence of a standstill agreement in the context of an out-of-court restructuring, or a stay on creditors' actions as part of court reorganisation, is critical for stabilising a debtor's business.

Standstill agreements ensure that the viability of the debtor's business is not exposed to the risk of creditors' enforcement actions¹⁸, and that assets required for successful reorganisation are not depleted by creditors' enforcement of bills of exchange.

With reference to Section 5.3 above, it should also be noted that, while reorganisation is shielded from all creditors by an automatic stay resulting from the opening of bankruptcy proceedings, due to the voluntary nature of out-of-court restructuring, in the latter proceedings debtors are only protected against actions of those creditors that signed a standstill agreement.

Bills of exchange could be an obstacle to out-of-court restructuring negotiations, as they prompt their holders to enforce them, thereby discouraging other creditors from participating.

The benefit of claim recovery from cash available in all the debtor's bank accounts through cash sweeping and the reservation of all future cash flows into the debtor's bank accounts through account blocking, afforded to the first enforcing creditor, incentivises the enforcement of bills of exchange, rather than the participation in the negotiations of out-of-court restructurings.

Creditors are also motivated to enforce their bills of exchange by the fear that another creditor may do so, and that they will reduce/forfeit their chance of recovery by choosing not to enforce. Such risk leads to runs on the debtor, triggering a further downward spiral for its business and financial position.

Such behaviour is particularly common among commercial banks, as evidenced by the questionnaires. They show that, while 66% of commercial banks would not typically enforce at the first sign of debtor's financial trouble, their inclination to enforce increases as a result of other creditors enforcing their bills of exchange. In such a case over 66% of commercial banks would attempt to increase their chance of recovery through enforcement, which could be jeopardised by other creditors' enforcing their bills of exchange in case of limited availability of funds in the debtor's accounts.

¹⁸ Please see Section 5.2 above.

Commercial banks, being more sophisticated than other, non-institutional creditors, such as the members of the Chamber of Commerce and Industry might otherwise be inclined to participate in work-out solutions.

However, under the pressure of enforcement by other creditors and depending on the degree such enforcement threatens the bank's position the bank is likely to opt for enforcing its bills of exchange.

These incentives for the enforcement¹⁹ of bills of exchange also discourage creditors that do not hold bills of exchange, and those who do but would normally opt for out-of-court restructuring, from actually doing so. Due to the stay not being compulsory for non-participating creditors, negotiations are exposed to the issue of hold-out creditors, which are capable of undoing the conclusion of an out-of-court restructuring plan.

The negotiations for out-of-court restructuring or pre-packed reorganisation plans are not protected against non-participating creditors²⁰; therefore, the viability of debtor's business is uncertain and the assets required for successful out-of-court restructuring or pre-packed reorganisation plans are at a constant risk of enforcement.

Creditors wishing to participate in out-of-court restructuring or pre-packed reorganisation plans are discouraged from doing so by the risk that non-participating creditors could enforce their bills of exchange, which could in turn:

- lead to the debtor being declared bankrupt;
- cause the debtor's business to wind up; and
- deplete the debtor's asset base required for out-of-court restructuring.

On the other hand, reorganisation plans are not affected by bills of exchange, as negotiations are always protected by an automatic stay, triggered by the initiation of bankruptcy proceedings (reorganisation plans being negotiated within bankruptcy proceedings).

Furthermore, failure to adopt a reorganisation plan does not lift the automatic stay. Thus creditors holding bills of exchange are not inclined to vote against the reorganisation plan, tempted by the prospect of enforcing their bills of exchange after the lifting of the automatic stay as a result of failure to adopt a reorganisation plan.

6.2.2 Information sharing

Out-of-court restructuring plans, financial and operational restructuring plans and pre-packaged reorganisation plans must be based on complete and accurate information about the debtor and its business in order to be viable. Namely, a plan based on inaccurate or incomplete information is susceptible to

¹⁹ Enforcing creditors "take" all current cash balances and "reserve" all future income of the debtor for their benefit.

²⁰ Standstill agreement is only binding upon creditors signatories of the agreement.

fail, as the forecasts and measures envisaged therein would be inappropriate and incapable of achieving the intended outcome of the work-out.

Debtors whose bank accounts have been blocked typically devise and implement schemes consisting of the re-directing of cash receivables/liabilities, in order to minimise the negative effects of account blocking on their business.

The above-referenced schemes are in direct contravention to the Bosnian legislation, which prohibits claim/debt assignment, and are classified as a criminal offences under the Criminal Codes.

It cannot be reasonably expected that debtors who have engaged in such schemes and thereby violated statutory rules have fully and accurately disclosed all information to their creditors.

This issue is less relevant in the case of reorganisation plans, as such plans are prepared and negotiated as part of bankruptcy proceedings (i.e., at the time of their preparation and negotiation an independent bankruptcy receiver is appointed to manage the company and oversee the information provided).

6.3 Implementation of out-of-court restructuring measures

The World Bank and the European Commission, as well as Bosnian legislation, all dictate that a functional work-out or restructuring and reorganisation in a bankruptcy environment requires an enabling framework.

A framework is considered to be enabling if, *inter alia*, it provides for a wide range of measures for re-defining debtor-creditor relationships. Such measures typically include debt/claim assignment and set-off.

Considering that claim/debt assignment is prohibited, as is the set-off of rights and liabilities of a debtor whose accounts are blocked²¹, once account blocking is in place, out-of-court restructuring plans may envisage neither claim/debt assignment nor set-off as a measure for re-defining debtor-creditor relationships.

Therefore, unless supported by all creditors, some measures typically used for redefining debtor-creditor relationships will not be available as part of an out-of-court restructuring once account blocking has been put in place.

6.4 Adoption of the pre-packaged reorganisation plan/financial and operational restructuring plan/out-of-court restructuring plan

The adoption of the out-of-court restructuring, financial and operational restructuring plan or pre-packaged reorganisation plan is correlated to the participation of the key creditors in out-of-court restructuring/court restructuring/reorganisation negotiations.

The question of whether creditors holding bills of exchange will vote for the adoption of an out-of-court restructuring plan is redundant, since such plans are not binding on them without their consent, while incentives presented by bills of exchange encourage them to take unilateral action (i.e., enforcement), rather than participate in collective action (i.e., out-of-court restructuring).

Conversely, creditors holding bills of exchange are not incentivised to vote against reorganisation plans, as non-adoption of a reorganisation plan pre-packaged reorganisation plan does not lead to the lifting of the automatic stay, but to the debtor's liquidation in bankruptcy.

6.5 Facts and figures

As confirmed by the questionnaire results²², market participants are generally willing to participate in pre-packaged reorganisation plans/financial and operational restructuring/out-of-court restructuring plans with their debtors.

Furthermore, over 60% of market participants are willing to participate in both bilateral and out-of-court restructuring with other creditors, except in cases of uncooperative debtors (i.e., debtors that transfer their business to new companies and attempt to defer and even entirely avoid payment of their liabilities towards creditors, etc.).

²¹ In accordance with the Payments by Legal Entities, Sole Proprietors and Non-Business Persons Act.

²² The statistics have been developed based on a questionnaire completed by 3 banks and 11 companies.

They are also willing to participate in out-of-court restructuring or court reorganisation, even if bills of exchange have already been enforced by other creditors, as long as there is some chance of recovery.

However, most market participants have said that they will not participate in these schemes if the debtor's accounts are likely to remain blocked for an extended period of time and/or out-of-court restructuring is not likely to result in successful repayment of their claims.

7. Key recommendations for mitigating the impacts of bills of exchange on the various stages of reorganisation, court restructuring and out-of-court restructuring

Having in mind all of the foregoing obstacles posed by the bill of exchange enforcement in various stages of reorganisation, court restructuring and out-of-court restructuring proceedings in Bosnia and Herzegovina, we consider it advisable to rank the enforcement of bills of exchange at the same level as the enforcement of any other monetary claim.

However, given the long standing popularity of bills of exchange and their widespread use as collateral (evidenced by the market survey, which shows that 100% of commercial banks require bills of exchange as collateral), replacing bills of exchange or reducing their direct cash sweeping and account blocking capabilities would likely be strongly opposed by both market participants and potentially also the authorities, which might be unwilling to introduce changes to the current regime governing bills of exchange because of fears that this will reduce even further the existing low credit activity of market participants.

Therefore, the improvement of the out-of-court restructuring, court restructuring and reorganisation environment by eliminating obstacles arising from the unique features of bills of exchange must be carefully structured and gradually implemented.

At the same time, account pledges should be brought in line with their European counterparts²³, and other cash collateral used to secure trade finance receivables should be considered in order to "weaken" bills of exchange and generally promote more secured credit.

The following three phases are suggested to achieve the goal of eliminating the reliance of the market on directly enforceable bills of exchange.

7.1 Initial Phase

7.1.1 Phase 1 – Removal of the direct account blocking capability of bills of exchange

Considering that the direct account blocking capability of bills of exchange, more than their cash sweeping capability, represents a significant obstacle to the prospect of achieving a successful outcome in reorganisation/out-of-court restructuring/court restructuring, it is recommended that the direct account blocking feature be eliminated leaving the bill of exchange as a tool that only

²³ With regard to legal issues stemming from the inoperability of the account pledge, please see Section 4.6 of this Study.

has cash sweeping capabilities, as a first step towards mitigating the issues raised by bills of exchange.

7.1.2 Potential benefits

- Removal of the direct account blocking capability from the bill of exchange enforcement mechanics would reduce the ramifications of account blocking on the viability of the debtor's business²⁴. Namely, although in such a scenario bills of exchange would still be able to sweep cash across all debtor's bank accounts, they would not have the ability to "reserve" future inbound proceeds to such accounts for the benefit of a single creditor. Instead, future proceeds could be freely disposed of to meet the debtor's day-to-day business obligations and thus bills of exchange would not bring a debtor's business to a halt.
- The chances of stabilising a debtor's business during the preparation and negotiation of a pre-packaged reorganisation plan/out-of-court restructuring plan would be significantly improved if creditors were not incentivised to take unilateral action by "reserving" the debtor's future cash receivables for their benefit.

In other words, the elimination of the account blocking capability would make creditors holding bills of exchange less incentivised to enforce them, as they would have to carefully balance whether a work-out would yield a higher repayment rate versus cash currently in the debtor's account (available to them through the cash sweeping measure).

- Considering that the prohibition of claim/debt assignment is triggered by account blocking, the removal of the account blocking capability of bills of exchange would eliminate the ramifications of the prohibition on out-of-court restructuring (i.e., debt/claim assignment would remain available to creditors as a measure for re-defining debtor-creditor relations)²⁵. Furthermore, information sharing would not be an issue since debtors would no longer be violating the statutory prohibition on debt/claim assignment.

7.1.3 Method

The direct account blocking capability of bills of exchange could be abolished by way of amendments to the Internal Payment Operations Acts, whereby any cash sweeping instrument would trigger cash sweeping, but where only a tax or customs authority decision or a court decision on enforcement would trigger account blocking.

Such amendments would effectively render account blocking contingent on a prior court ruling to that effect by removing the direct account blocking capability of bills of exchange.

7.1.4 Result

²⁴ Please see Section 6.1 above.

²⁵ Please see Section 4.10.4 above.

Under this solution, bills of exchange should remain a tool capable of direct and accelerated one-off cash sweeping across all debtor's accounts on creditors' request. At the same time, the solution limits the negative ramifications of bills of exchange on the prospect of achieving a successful outcome to reorganisation/out-of-court restructuring/court restructuring. This would bring Bosnia and Herzegovina legal regime governing bills of exchange closer to that of Austria, Germany and Slovenia.

7.1.5 Parallel actions

In parallel to any limitation of the enforcement powers of bills of exchange, including removal of their account blocking capability, it is recommended that:

- (A) appropriate amendments to the account pledge legislation and the software platform deficiencies of the Pledge Registry should be introduced in order to render account pledges operable. Such amendments should, *inter alia*, explicitly allow for the account pledges to also cover any future proceeds on the debtor's accounts, and not just the amount on the debtor's accounts at the time of the creation of the pledge;
- (B) appropriate amendments to the Internal Payment Operations Act of Republika Srpska should be introduced in order to carve out an account pledge from cash sweeping and account blocking triggered by bills of exchange and court decisions on enforcement. At the moment the pledged accounts are not immune from enforcement over the debtor's cash assets by third parties. Therefore, enforcement against debtor's cash assets by other creditors could render the account pledge to be economically worthless. In this respect, explicit provisions ring fencing the pledged accounts from enforcements should be considered; and
- (C) Bosnian legislation should be harmonised with EU Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 in order to introduce financial collateral arrangements, including where either the collateral provider or taker is a legal person e.g. a company and to provide for easier enforcement of financial collaterals.

The current inoperability of account pledges has led to 60% of the market participants being reluctant to replace bills of exchange with account pledges. However, proposed amendments of legislation may considerably ease the transition away from the bills of exchange as significant enforcement instruments.

7.2 Further Phases

7.2.1 Phase 2 – Removal of the capability of bills of exchange to directly sweep cash across all debtor's accounts

At a later stage, further consideration should be given to aligning Bosnian legislation with that of Slovenia by preventing cash sweeping across all of the debtor's accounts.

The mechanism of direct cash sweeping across all accounts of a debtor should be limited to cash sweeping from a specific debtor account (i.e., the account to which the bills of exchange are linked).

The reason to consider this solution is that, under the present arrangements, cash sweeping deprives the debtor of all current working capital, which also has ramifications on the prospect of achieving a successful outcome of out-of-court restructuring/reorganisation.

The proposed timeline for the implementation of changes in Bosnia and Herzegovina legislation is currently estimated at 12 to 18 months from the introduction of functional account pledges.

This is mainly due to the difficulties expected to arise as a result of reduction of the powers of bills of exchange, as described by market participants in their response to our questionnaire, detailed in Section 4.12 of this study.

The Legal Consultant expects that the amendment to legislation/enactment of new Bills of Exchange Acts may require numerous discussions with all the stakeholders, followed by a lengthy statutory procedure for the amendment/enactment of laws.

It should also be noted that the current Bills of Exchange Acts of Federation of Bosnia and Herzegovina have not been amended in over 15 years in Federation of Bosnia and Herzegovina i.e. over 17 years in Republika Srpska, therefore, albeit change is necessary, it is likely to be strongly opposed by market participants.

The Legal Consultant further considers the introduction of a functional account pledge a necessary pre-condition, which must be met prior to initiating any amendments of the current legislation governing bills of exchange.

7.2.2 Phase 3 – Removal of the capability of bills of exchange to directly sweep cash from any account of a debtor

The final phase in mitigating the effects of bills of exchange would involve the removal of all their direct cash sweeping capabilities, by way of introduction of a requirement that bills of exchange may only be enforced through/based on a court ruling, rather than directly. The vast popularity of bills of exchange as enforcement instruments, afforded by quick and effective enforcement, would thus be significantly reduced.

The Legal Consultant expects that the amendment of the legislation/enactment of the new Bills of Exchange Acts may require up to a further 12 to 18 months following the limitation of cash sweeping powers of bills of exchange. It is expected that the second amendment of the legislation will be more readily accepted, and therefore Phase 3 is more likely to be implemented swiftly than Phase 2.

Phase I

Removal of the direct account blocking capability of bills of exchange

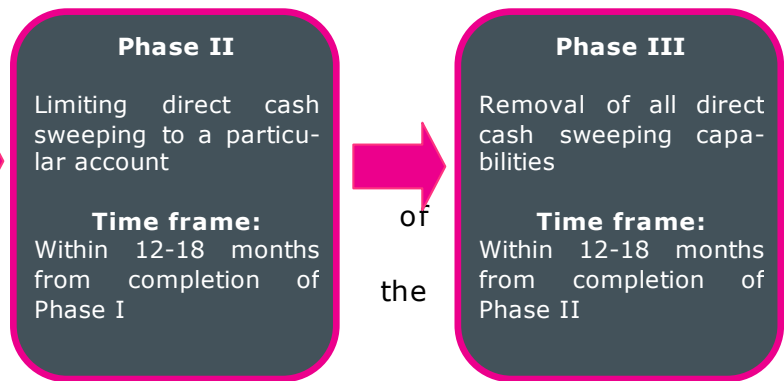
Parallel action:

Correction of the software platform deficiencies of the Pledge Registry and introduction of appropriate account pledge and financial collateral arrangements legislation

In addition to the above recommendations, which aim to minimise the adverse impact of exchange and their enforcement mechanism on the prospect of achieving successful out-of-court restructuring and/or

reorganisation, it is also strongly recommended that EBRD and the Legal Consultant discuss the availability of further statistical data with the regulators (in particular the Central Bank of Bosnia and Herzegovina); the discussion may serve as empirical confirmation of the legal analysis made and conclusions reached in this study.

Such data could include historical data concerning companies with blocked bank accounts, such as the number of companies currently blocked; the number of companies where the block was lifted; the number of companies that were blocked in the past; and, in regard to the type of bankruptcy proceedings initiated, the number of companies that were blocked and subsequently went through out-of-court restructuring, court restructuring and/or reorganisation.



Appendix 1 – Implementation of internationally accepted standards for functional out-of-court restructuring, court restructuring and reorganisation in Bosnia and Herzegovina legislation

Prior to assessing the implementation of internationally accepted standards for functional out-of-court restructuring, court restructuring and reorganisation in Bosnian legislation, it is important to first explain the elements that are, according to such standards, considered to characterise the functional framework that enables work-out procedures.

A. Elements characterising functional framework that enables work-out procedures

1. Enabling framework

A functional framework should facilitate out-of-court restructuring and reorganisation by providing various measures available to creditors and debtors, and enable achievement of out-of-court restructuring and reorganisation through their application. Such measures should include debt-to-equity swaps, debt write-off, set-off, amendment of debt obligations and priority for new financing providers.

In addition to introducing these measures, a functional framework should also incentivise both debtors and creditors to accept them. Such incentives should range from the relaxing of bad debt provisioning for banks to tax benefits.

Finally, regardless of the functionality of out-of-court restructuring, court restructuring and reorganisation legislation, other legislation should also incentivise out-of-court restructuring and reorganisation rather than hinder these work-out procedures.

2. Neutral forum

A functional out-of-court restructuring, court restructuring and reorganisation legal environment should facilitate these work-out procedures by providing for a neutral forum where both creditors and debtors can negotiate, explore arrangements and overcome their opposing interests with a view to implementing out-of-court restructuring, court restructuring and reorganisation.

3. Participants

Out-of-court restructuring, court restructuring and reorganisation have in common the indebtedness of the debtor towards numerous creditors of varying financial and risk profiles. It is therefore paramount that the key creditors, whose collateral could lead to the debtor's liquidation in bankruptcy, or affect restructuring measures, be involved in negotiations and included in the out-of-court restructuring plan or reorganisation plan. The feasibility of such plans is contingent on the creditors' not jeopardising work-out by exercising the rights arising out of their arrangements with the debtor.

4. Coordination

Typically, a debtor has numerous creditors, whose actions tend to be disorganised and contradictory; this can frustrate the out-of-court restructuring, court

restructuring and reorganisation process. Thus, for a functional work-out, it is essential that the actions of creditors be coordinated and uniform. Such coordination could be achieved through the creation of coordinating bodies with delegated authority from groups of creditors having a common denominator.

5. Stabilisation

In order to prevent unilateral action by creditors intending to realise their individual interests, triggered by the debtor's financial difficulties, a functional out-of-court restructuring, court restructuring and reorganisation environment must provide for a contractual or statutory stay of action against the debtor. This step should have a stabilising effect on the debtor and his creditors, as it ensures that the debtor's assets will not be subject to enforcement during negotiation of the work-out plan, and will be included in the process once the plan is adopted.

6. Access to new money

Most unsuccessful out-of-court restructurings, court restructuring and reorganisations fail due to a lack of liquidity, which is crucial for implementing the necessary measures. The parties to the process are unwilling to inject further cash into a financially distressed debtor, and so are new investors. A functional legal framework should provide incentives for injecting new money into financially distressed companies.

Such incentives could be in the form of priority payment, collateral ranking or deferral of outstanding liabilities. In particular, the debtor may offer his creditors to repay, in the long term, more than they were originally entitled to, in return for their agreement to extend the maturity of their claims and maintain their business relationship with the debtor.

7. Information

The out-of-court restructuring, court restructuring and reorganisation process can only be effective if all key participants have access to key information regarding the debtor's affairs. Otherwise, the plan would be based on unconfirmed or false presumptions, making it susceptible to failure.

8. Legal effects

Ideally, the out-of-court restructuring plan, financial and operational restructuring plan and reorganisation plan should be binding on all constituencies whose actions could result in liquidation in bankruptcy of a financially distressed debtor. Where there are creditors not bound by the plan, out-of-court restructuring, court restructuring and reorganisation envisaged thereunder may be at a risk of the debtor's liquidation in bankruptcy resulting from unilateral action by such creditors.

Implementation of the elements characterising functional framework that enables work-out procedures into the Bosnian legislation

Elements of a functional environment ²⁶	Voluntary Restructuring	Court Restructuring (applicable in Republika Srpska)	Reorganisation	Comments
<p>Enabling Framework</p>	<p>✓</p>	<p>✓</p>	<p>✓</p>	<p>Voluntary / Out-of-Court Restructuring</p> <p>While voluntary restructuring is not institutionalised in a special legislation (i.e., voluntary restructuring is not codified), the provisions of general civil and corporate law could be used as the legal basis for the implementation of work-out measures (e.g. debt/claim assignment may be agreed pursuant to the RS Obligations Act). However, Republika Srpska laws are limiting application of the debt-to-equity swap. On the other hand, in the Federation of Bosnia and Herzegovina, debt-to-equity swap is not envisaged in ordinary circumstances (out of insolvency) as a restructuring measure since it is unregulated.</p> <p>Court Restructuring</p> <p>The Bankruptcy Act of Republika Srpska provides for a financial and operational restructuring plan based on which debtor-creditor relations can be redefined.</p> <p>Reorganisation</p> <p>The Bankruptcy Acts contain a wide range of measures that are available to creditors and debtors to agree upon and redefine their relations accordingly.</p> <p>Such measures include: (i) allowing the insolvency debtor to retain all or part of its assets so that its</p>

²⁶ Please see Appendix 1 for explanation of elements of a functional Out-of-Court Restructuring, Court Restructuring and Reorganisation environment.

Elements of a functional environment 26	Voluntary Restructuring	Court Restructuring (applicable in Republika Srpska)	Reorganisation	Comments
				business can continue; (ii) transferring all or part of the insolvency debtor's assets to one or more existing legal entities or legal entities that will be incorporated; (iii) merging the insolvency debtor with one or more legal entities; (iv) disposing of all or part of the insolvency debtor's assets, subject to or free of any lien; (v) distributing all or part of the insolvency debtor's assets among the creditors; (vi) converting debt to equity; (vii) determining the manner of satisfying the insolvency creditors; (viii) satisfying or modifying the rights of secured creditors; (ix) reducing or postponing payment of the insolvency debtor's liabilities; (x) turning the insolvency debtor's liabilities into credits; (xi) issuing a guarantee or providing other kinds of security for satisfaction of the insolvency debtor's liabilities; (xii) determining the insolvency debtor's liability once insolvency proceedings have closed; (xiii) issuing new shares, etc.
<p>Neutral Forum</p>	<p>✓</p>	<p>✗</p>	<p>✗</p>	<p>Voluntary restructuring</p> <p>Given that voluntary restructuring is not codified, there are no explicit provisions governing the forum for such work-outs. However, there are no obstacles to parties, based on general civil law, agreeing on a forum in which the work-out shall be performed.</p> <p>Court Restructuring / Reorganisation</p> <p>The court or bankruptcy court do not get involved in the preparation of the financial and operational restructuring plan / reorganisation plan. The role of the courts is limited to verifying the legality of a financial and operational restructuring plan / reorganisation plan and supervising/facilitating voting.</p>

Elements of a functional environment ²⁶	Voluntary Restructuring	Court Restructuring (applicable in Republika Srpska)	Reorganisation	Comments
<p>Ensured Participation of Key Constituencies</p>	<p>X</p>	<p>✓</p>	<p>✓</p>	<p>Voluntary restructuring</p> <p>As voluntary restructuring is binding only upon its participants, and that there is no legislation prescribing other mechanisms to ensure the participation of all creditors (e.g. Bankruptcy Acts), voluntary restructuring is undertaken and effective only between parties wishing to engage in it.</p> <p>Court Restructuring / Reorganisation</p> <p>All parties wishing to realise their claims must participate in the restructuring proceedings / bankruptcy proceedings, the financial and operational restructuring plan / reorganisation plan must include all claims and its terms are imposed on every creditor, regardless of whether the creditor is for or against such plan (i.e. cram-down).</p>
<p>Coordination/organisation of creditors</p>	<p>X</p>	<p>X</p>	<p>X</p>	<p>Voluntary restructuring</p> <p>There are no explicit provisions regulating coordination/organisation of creditors. However, parties may, based on general civil law, agree on the manner of coordination, delegate authority (based on power of attorney).</p> <p>Court Restructuring / Reorganisation</p> <p>The Bankruptcy Acts do not explicitly regulate the coordination of creditors in respect of preparation and negotiation of the financial and operational restructuring plan or reorganisation Plan.</p>
<p>Stabilisation</p>	<p>X</p>	<p>✓</p>	<p>✓</p>	<p>Voluntary restructuring</p> <p>Given the inter-party legal effect of contractual</p>

Elements of a functional environment 26	Voluntary Restructuring	Court Restructuring (applicable in Republika Srpska)	Reorganisation	Comments
				<p>obligations, standstill agreements reached in the course of voluntary restructuring are binding only upon their signatories.</p> <p>Court Restructuring– applicable only in Republika Srpska</p> <p>Preparation and negotiations of financial and operational restructuring plans are not shielded by an automatic stay prior to initiation of restructuring proceedings. Automatic stay is triggered only once restructuring proceedings is initiated based on submission of a financial and operational restructuring plan.</p> <p>Reorganisation</p> <p>Reorganisation, based on a reorganisation plan, is protected from hold-out creditors' unilateral actions due to an automatic stay on such actions triggered at the moment of initiation of bankruptcy proceedings.</p> <p>On the other hand, considering that the preparation and negotiation of the pre-packaged reorganisation plan occurs prior to initiation of bankruptcy proceedings and application of automatic stay, preparation and negotiations of the pre-packaged reorganisation plans are not protected from hold-out creditors' unilateral actions by automatic stay.</p>
Information	✓	✗	✗	<p>Voluntary restructuring</p> <p>Based on the Obligations Acts principles, contracting parties must, in the course of negotiations, act in good faith and with due care. Furthermore, the Obligations Acts prescribe prohibition of causing damage and obligation to compensate for damage occurring as</p>

Elements of a functional environment <small>26</small>	Voluntary Restructuring	Court Restructuring (applicable in Republika Srpska)	Reorganisation	Comments
				<p>breach of good faith negotiations.</p> <p>Court Restructuring / Reorganisation</p> <p>While there is an obligation to share information during implementation of the financial and operational restructuring plan or reorganisation plan, there is no obligation to share information in the course of the preparation of the financial and operational restructuring plan or pre-packaged reorganisation plan.</p>
<p>Legally Binding on all Creditors</p>	<p>X</p>	<p>✓</p>	<p>✓</p>	<p>Voluntary restructuring</p> <p>Agreements concluded in the course of Voluntary restructuring, due to the inter-party legal effects of contractual relationships (and lack of specific legal regime regulating voluntary restructuring), are binding only upon their signatories.</p> <p>Court Restructuring / Reorganisation</p> <p>The Bankruptcy Acts oblige all creditors to participate in the restructuring or bankruptcy proceedings (that could be carried out as reorganisation), thus participation of all creditors is ensured in the court restructuring or reorganisation by the mandatory provisions of the Bankruptcy Act. Furthermore, Bankruptcy Acts provide for a cram-down of dissenting creditors by providing that the court restructuring and reorganisation are binding upon all creditors if enacted with the required majority of votes.</p>

Appendix 2 – Questionnaires completed by market participants

Background

This questionnaire is provided to you within the context of a study conducted by the European Bank for Reconstruction and Development together with its consultants Moravčević Vojnović i partneri AOD in cooperation with Schönherr on account blocking and its impact on debtor-creditor relations in the Western Balkans (i.e. Bosnia and Herzegovina, the Republic of Serbia, Montenegro, as well as in FYR Macedonia).

The ability to restructure or reorganise financial obligations is immensely important for debtors and creditors and for the wider economy, particularly in financially challenging times. Out-of-court restructuring, court restructuring and court-led reorganisation can maximise value to creditors by ensuring that viable debtors in financial difficulty continue operations rather than enter into unplanned liquidation in bankruptcy (*stečaj*). They can also preserve employment of the debtor's staff and ensure continuation of the business of the debtor's business partners and suppliers, as well as the debtor's ability to pay taxes and contribute to the public revenue.

Cash sweeping and account blocking on the basis of bills of exchange have existed as an effective means of quasi-security for creditors in Bosnia and Herzegovina for a long time and are perceived to be important in the absence of effective account pledge security instruments. Nevertheless, preliminary evidence suggests that this practice can reduce the incentives for creditors (and their debtors) to cooperate on out-of-court restructuring, court restructuring and court-led reorganisation in bankruptcy (*reorganizacija*), since it gives rise to a 'first to act' advantage²⁷.

The purpose of this questionnaire is to gather stakeholder feedback on the effects of account blocking on out-of-court restructuring, court restructuring and court-led reorganisation in bankruptcy and to obtain stakeholder views on whether any changes are needed to the existing legal framework for account blocking to support out-of-court restructuring, court restructuring and/or court-led reorganisation.

Please note that this questionnaire is voluntary and you are not obliged to answer every question. If you do not know the answer to a particular question or do not wish to answer, please leave this blank.

²⁷ First movers benefit from (i) any available cash balance on the debtor's accounts at the moment of enforcement, through the ability of bills of exchange to sweep cash from all of the debtor's accounts in the jurisdiction and (ii) "reserving" all future cash receivables of the debtor by the account blocking mechanism.

Questionnaire – Association of Banks

1. Questions - Bills of Exchange

1.1 Does your financial institution typically require bills of exchange from borrowers as a form of collateral for providing financing? Please tick one box as applicable.

Yes Yes, with reservations No No, with reservations

1.2 Do you consider bills of exchange to be essential collateral, without which your financial institution is not willing to provide financing? Please tick one box as applicable.

Yes Yes, with reservations No No, with reservations

1.3 If your answer to the above question is positive, please briefly explain why you consider bills of exchange to be essential collateral for providing financing.

1.4 The account pledge is not popular in Bosnia and Herzegovina due to difficulties in creating effective security over a debtor's bank account(s). If the account pledge were fully effective, would you be willing to rely on the account pledge rather than bills of exchange as collateral? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

1.5 In your experience, does the enforcement of bills of exchange by your financial institution secure a good rate of recovery i.e. 60% or above of the original debt? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

1.6 Do you agree with the following statement "The cash sweep and the payment of existing proceeds from the debtor's accounts are important for the overall recoveries of my financial institution"? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

1.7 Do you agree with the following statement "Account blocking and the payment of future proceeds from the debtor's accounts are important for the overall recoveries of my financial institution"? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

1.8 Does your financial institution typically enforce bills of exchange at the first sign of financial distress of the debtor? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

1.9 Does your financial institution typically enforce bills of exchange as a result of other creditors enforcing or threatening to enforce their bills of exchange? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

1.10 Does your financial institution initiate insolvency proceedings in respect of a debtor on the grounds of the debtor's accounts being blocked? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

2. Questions - Out-of-Court Restructuring / Court Restructuring / Reorganisation

2.1 Does your financial institution ever participate in bilateral out-of-court restructuring of a debtor? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

2.2 Does your financial institution ever participate in out-of-court negotiations for restructuring and reorganisation of a debtor with other creditors (including preparation and negotiation of financial and operational restructuring plans and pre-packed reorganisation plans under the applicable bankruptcy legislation in Bosnia and Herzegovina)? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

2.3 When your financial institution participates in an out-of-court negotiations for restructuring and reorganisation and hold bills of exchange, does it typically:

- enforce any bill(s) of exchange first and then engage in out-of-court restructuring and reorganisation negotiation;
- engage in out-of-court restructuring and reorganisation negotiation first but hold onto bills of exchange as a leverage tool for the negotiations; or
- other/ none of the above.

Please tick one box above as applicable and provide any additional comments below.

2.4 In your opinion, does the possession of bills of exchange by creditors undermine out-of-court negotiations for restructuring or reorganisation? Please tick one box above as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

2.5 Does your financial institution typically participate in out-of-court negotiations for restructuring and reorganisation even if bills of exchange by creditors (including your financial institution) have been enforced²⁸? Please tick one box above as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

²⁸ Cash standing on account of debtor, at the time of enforcement, has been transferred to the enforcing creditor and account receivables of the debtor are automatically being transferred to the benefit of enforcing creditor.

2.6 Do bills of exchange in any other way effect your decision whether to participate in out-of-court restructuring / court restructuring / court-led reorganisation process and why? Please tick one box above as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

2.7 Does existence of bills of exchange in any way affect out-of-court negotiations for restructuring and reorganisation? Please tick one box above as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

2.8 If the answer to the above question 3.7 is positive, could you please elaborate on how bills of exchange effects out-of-court negotiations for restructuring and reorganisation?

2.9 If you see bills of exchange and the effects of their enforcement (i.e. account blocking) as an obstacle for a chieving successful out-of-court restructuring / court restructuring / court-led reorganisation, could you please suggest any potential solutions to overcoming this obstacle?

2.10 Would you generally support a reform of the legal regime for bills of exchange which would strengthen out-of-court restructuring, court restructuring and court-led reorganisation? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

Questionnaire – Chamber of Commerce and Industry

1. Questions - Bills of Exchange

When in capacity of the creditor

- 1.1 Do you typically require bills of exchange from your business partners as a form of collateral for your monetary claims against your business partners? Please tick one box as applicable.

Yes Yes, with reservations No No, with reservations

When in capacity of the debtor

- 1.2 Do your business partners typically require bills of exchange from you as a form of collateral for their monetary claims against you? Please tick one box as applicable.

Yes Yes, with reservations No No, with reservations

When in capacity of the creditor

- 1.3 Do you consider bills of exchange to be essential collateral, without which you are not willing to provide your business partners with a loan/trade credit? Please tick one box as applicable.

Yes Yes, with reservations No No, with reservations

When in capacity of the creditor

- 1.4 If your answer to the above question is positive, please briefly explain why you consider bills of exchange to be essential collateral for providing loan/trade credit.

When in capacity of the debtor

- 1.5 Do your business partners/creditors consider bills of exchange to be essential collateral, without which they are not willing to provide you with a loan/trade credit? Please tick one box as applicable.

Yes Yes, with reservations No No, with reservations

When in capacity of the debtor

- 1.6 If your answer to the above question 1.5 is positive, please briefly explain why you consider bills of exchange to be essential collateral for providing loan/trade credit.

General question (i.e. regardless of whether you are in capacity of the creditor or the debtor)

1.7 The account pledge is not popular in Bosnia and Herzegovina due to difficulties in creating effective security over a debtor's bank account(s). If the account pledge were fully effective, would you be willing to rely on the account pledge rather than bills of exchange as collateral? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

General question (i.e. regardless of whether you are in capacity of the creditor or the debtor)

1.8 In your experience, does the enforcement of bills of exchange secure a good rate of recovery i.e. 60% or above of the original debt? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

General question (i.e. regardless of whether you are in capacity of the creditor or the debtor)

1.9 Do you agree with the following statement "The cash sweep and the payment of existing proceeds from the debtor's accounts are important for overall recoveries"? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

General question (i.e. regardless of whether you are in capacity of the creditor or the debtor)

1.10 Do you agree with the following statement "Account blocking and the payment of future proceeds from the debtor's accounts are important for overall recoveries"? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

When in capacity of the creditor

1.11 Do you typically enforce bills of exchange at the first sign of financial distress of the debtor? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

When in capacity of the debtor

1.12 Do your creditors typically enforce bills of exchange at the first sign of your financial distress? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

When in capacity of the creditor

1.13 Do you typically enforce bills of exchange as a result of other creditors enforcing or threatening to enforce their respective bills of exchange? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

When in capacity of the debtor

1.14 Do your creditors enforce bills of exchange as a result of other creditors enforcing or threatening to enforce their respective bills of exchange? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

When in capacity of the creditor

1.15 Do you initiate insolvency proceedings in respect of a debtor on the grounds of the debtor's accounts being blocked? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

When in capacity of the debtor

1.16 In case your account were ever blocked, have any of your creditors initiated insolvency proceedings on the grounds of your accounts being blocked? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

2. Questions - Out-of-Court Restructuring / Court restructuring / Reorganisation

When in capacity of the creditor

2.1 Do you ever participate in bilateral out-of-court restructuring of a debtor? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

When in capacity of the debtor

2.2 If you were in situation of financial distress, have you ever engaged in bilateral out-of-court restructuring with your creditors? Please tick one box as applicable and provide any additional comments below.

- Yes Yes, with reservations No No, with reservations
-

When in capacity of the creditor

2.3 Do you ever participate in out-of-court restructuring of a debtor with other creditors (including preparation and negotiation of the financial and operational plan for restructuring and restructuring plan (before opening of the insolvency), in accordance with the insolvency legislation in Bosnia and Herzegovina)? Please tick one box as applicable and provide any additional comments below.

- Yes Yes, with reservations No No, with reservations
-

When in capacity of the debtor

2.4 If you were in situation of financial distress, would you invite your creditors to join out-of-court restructuring (including preparation and negotiation of the financial and operational plan for restructuring and restructuring plan (before opening of the insolvency), in accordance with the insolvency legislation in Bosnia and Herzegovina)? Please tick one box as applicable and provide any additional comments below.

- Yes Yes, with reservations No No, with reservations
-

When in capacity of the creditor

2.5 When you participate in an out-of-court restructuring and hold bills of exchange, do you typically:

- enforce any bill(s) of exchange first and then engage in out-of-court restructuring (including negotiation of a standstill agreement);
- engage in negotiation of a standstill agreement first but hold onto bills of exchange as a leverage tool for the negotiations; or
- other/ none of the above.

Please tick one box above as applicable and provide any additional comments below.

When in capacity of the debtor

2.6 In case you have ever been subject of out-of-court restructuring, did your creditors holding bills of exchange:

- enforce bill(s) of exchange first and then engage in out-of-court restructuring (including negotiation of a standstill agreement);

- engage in negotiation of a standstill agreement first but held onto bills of exchange as a leverage tool for the negotiations; or
- other/ none of the above.

Please tick one box above as applicable and provide any additional comments below.

General question (i.e. regardless of whether you are in capacity of the creditor or the debtor)

- 2.7 In your opinion, does the possession of bills of exchange by creditors undermine negotiations on restructuring or reorganisation? Please tick one box above as applicable and provide any additional comments below.
- Yes Yes, with reservations No No, with reservations

When in capacity of the creditor

- 2.8 Do you typically participate in out-of-court restructuring even if bills of exchange by creditors (including yourself) have been enforced? Please tick one box above as applicable and provide any additional comments below.
- Yes Yes, with reservations No No, with reservations

When in capacity of the debtor

- 2.9 In case you have ever been subject of out-of-court restructuring, did your creditors participate in out-of-court restructuring even if bills of exchange by other creditors have been enforced? Please tick one box above as applicable and provide any additional comments below.
- Yes Yes, with reservations No No, with reservations

When in capacity of the creditor / debtor

- 2.10 Do bills of exchange in any other way effect your decision whether to participate in out-of-court restructuring / court-led restructuring / court-led reorganisation process and why? Please tick one box above as applicable and provide any additional comments below.
- Yes Yes, with reservations No No, with reservations

General question (i.e. regardless of whether you are in capacity of the creditor or the debtor)

- 2.11 Does existence of bills of exchange in any way affect negotiations or voting of creditors on the financial and operational plan for restructuring (*plan finansijskog i operativnog*)

restrukturiranja) and restructuring plan (*stečajni plan*)? Please tick one box above as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

General question (i.e. regardless of whether you are in capacity of the creditor or the debtor)

- 2.12 If the answer to the above question 2.11 is positive, could you please elaborate on how bills of exchange affect negotiations or voting of pre-packaged reorganisation plan?
-

General question (i.e. regardless of whether you are in capacity of the creditor or the debtor)

- 2.13 If you see bills of exchange and the effects of their enforcement (i.e. cash sweeping/account blocking) as an obstacle for achieving successful out-of-court restructuring/court-led reorganisation, could you please suggest any potential solutions to overcoming this obstacle?
-

General question (i.e. regardless of whether you are in capacity of the creditor or the debtor)

- 2.14 Would you generally support a reform of the legal regime for bills of exchange which would strengthen out-of-court restructuring and court-led reorganisation? Please tick one box as applicable and provide any additional comments below.

Yes Yes, with reservations No No, with reservations

Appendix 3 – Definitions and Abbreviations

Account Bank	Commercial bank in the Federation of Bosnia and Herzegovina where a debtor holds its main account;
Account Blocking	Measure prescribed under the Internal Payment Operations Act and implemented by the Account Bank consisting of: (i) prohibiting the debtor from disposing of any future proceeds paid into its bank account; and (ii) automatically transferring such proceeds to the creditor which has enforced its Recognised Monetary Claim, where the amount of proceeds in the debtor's account at the time of enforcement of the claim are insufficient to repay the creditor's claim in full;
Bankruptcy Act of the Federation of Bosnia and Herzegovina	Bankruptcy Act of the Federation of Bosnia and Herzegovina (<i>Zakon o stečajnom postupku Federacije Bosne i Hercegovine</i>) ("Official Gazette of the Federation of Bosnia and Herzegovina", Nos. 29/03, 32/04, 42/06 and 52/18) ²⁹ ;
Bankruptcy Act of Republika Srpska	Bankruptcy Act of Republika Srpska (<i>Zakon o stečaju Republike Srpske</i>) ("Official Gazette of Republika Srpska" No. 16/16);
Bankruptcy Acts	Jointly the Bankruptcy Act of the Federation of Bosnia and Herzegovina and the Bankruptcy Act of Republika Srpska;
Bills of Exchange Act of Federation of Bosnia and Herzegovina	Bills of Exchange Act of Federation of Bosnia and Herzegovina (<i>Zakon o mjenici Federacije Bosne i Hercegovine</i>) ("Official Gazette of the Federation of Bosnia and Herzegovina", Nos. 32/00 and 28/03);
Bills of Exchange Act of Republika Srpska	Bills of Exchange Act of Republika Srpska (<i>Zakon o mjenici Republike Srpske</i>) ("Official Gazette of Republika Srpska" No. 32/01);
Bills of Exchange Acts	Jointly the Bills of Exchange Act of Federation of Bosnia and Herzegovina and the Bills of Exchange Act of Republika Srpska;
Capital Markets Act of the Federation of Bosnia and Herzegovina	Capital Markets Act of Federation of Bosnia and Herzegovina (<i>Zakon o tržištu vrijednosnih papira Federacije Bosne i Hercegovine</i>) ("Official Gazette of Federation of Bosnia and Herzegovina", Nos. 85/08, 109/12, 86/15, and 25/17);

²⁹ According to publicly available information, as of the date of this study, the competent authorities have brought forward amendments to bankruptcy legislation in the Federation of Bosnia and Herzegovina. Currently, only an official draft of the new Bankruptcy Act is available, which remains subject to amendments in parliamentary procedure. Consequently, considering the draft status of the respective bankruptcy legislation, we are not in a position to analyse its potential effects on this study, although it should be anticipated that the new bankruptcy legislation and underlying by-laws might affect our findings herein.

Capital Markets Act of Republika Srpska	Capital Markets Act of Republika Srpska (<i>Zakon o tržištu hartija od vrijednosti Republike Srpske</i>) ("Official Gazette of Republika Srpska", Nos. 92/06, 34/09, 30/12, 59/13, 86/13, 108/13 and 4/17);
Cash Sweeping	Measure prescribed under the Internal Payment Operations Act and implemented by the Account Bank that entails the transfer of all funds held in all a debtor's bank accounts at the moment of commencement of the enforced collection of a Recognised Monetary Claim to the benefit of the enforcing creditor;
Companies Act of the Federation of Bosnia and Herzegovina	Companies Act of Federation of Bosnia and Herzegovina (<i>Zakon o privrednim društvima Federacije Bosne i Hercegovine</i>) ("Official Gazette of the Federation of Bosnia and Herzegovina", No. 81/15);
Companies Act of Republika Srpska	Companies Act of Republika Srpska (<i>Zakon o privrednim društvima Republike Srpske</i>) ("Official Gazette of Republika Srpska", Nos. 127/08, 58/09, 100/11, 67/13 and 100/17);
Companies Financial Consolidation Act of Federation of Bosnia and Herzegovina	Companies Financial Consolidation Act of Federation of Bosnia and Herzegovina (<i>Zakon o finansijskoj konsolidaciji privrednih društava u Federaciji Bosne i Hercegovine</i>) ("Official Gazette of the Federation of Bosnia and Herzegovina", Nos. 52/14, and 36/18);
Court Restructuring	Applicable only in Republika Srpska; Court Restructuring is defined in the RS Bankruptcy Act as a process that is taken prior to the initiation of a bankruptcy proceeding, with the aim of restructuring the debtor at the financial and operational level and to ensure continuation of the debtor's business;
Guidelines on Enforced Collection	Guidelines on the Manner and Procedure for Executing Enforced Collection Orders through Accounts held by Authorized Organisations (<i>Uputstvo o načinu i postupku izvršenja naloga za prinudnu naplatu preko računa kod ovlaštenih organizacija</i>) ("Official Gazette of the Federation of Bosnia and Herzegovina", No. 83/15);
EBRD	European Bank for Reconstruction and Development;
Enforcement Procedure Act of the Federation of Bosnia and Herzegovina	Enforcement Procedure Act of Federation of Bosnia and Herzegovina (<i>Zakon o izvršnom postupku Federacije Bosne i Hercegovine</i>) ("Official Gazette of the Federation of Bosnia and Herzegovina", Nos. 32/03, 33/06, 39/06, 39/09, 35/12, 46/16);

Enforcement Procedure Act of Republika Srpska	Enforcement Procedure Act of Republika Srpska (<i>Zakon o izvršnom postupku Republike Srpske</i>) ("Official Gazette of Republika Srpska", Nos. 59/03, 85/03, 64/05, 118/07, 29/10, 57/12, 67/13, 98/14, 5/17 and 66/18);
Internal Payment Operations Act of Federation of Bosnia and Herzegovina	Internal Payment Operations Act of Federation of Bosnia and Herzegovina (<i>Zakon o unutrašnjem platnom prometu Federacije Bosne i Hercegovine</i>) ("Official Gazette of the Federation of Bosnia and Herzegovina", No. 79/15);
Internal Payment Operations Act of Republika Srpska	Internal Payment Operations Act of Republika Srpska (<i>Zakon o unutrašnjem platnom prometu Republike Srpske</i>) ("Official Gazette of Republika Srpska", No. 92/12);
Internal Payment Operations Acts	Jointly Internal Operations Act of Federation of Bosnia and Herzegovina and Internal Operations Act of Republika Srpska;
Legal Consultant	Moravčević Vojnović i partneri AOD in cooperation with Schönherr;
Liquidation in Bankruptcy	Liquidation in Bankruptcy (<i>stečaj</i>) is the process that achieves satisfaction of creditors' claims through sale of the debtor's assets;
Market Participants	3 banks and 11 companies in their capacity as creditors comprising the representatives of market participants;
Out-of-Court Restructuring	Out-of-court financial restructuring between parties on a voluntary basis, which takes place outside of a formal statutory framework, subject to general rules and conditions established by the Obligations Act;
Obligations Act of Federation of Bosnia and Herzegovina	Obligations Act of Federation of Bosnia and Herzegovina (<i>Zakon o obligacionim odnosima Federacije Bosne i Hercegovine</i>) ("Official Gazette of the Socialist Federative Republic of Yugoslavia", Nos. 29/78, 39/85, 45/89, 57/89; "Official Gazette of Republic of Bosnia and Herzegovina", Nos. 2/92, 13/93, 13/94; and "Official Gazette of the Federation of Bosnia and Herzegovina", Nos. 29/03 and 42/11);
Obligations Act of Republika Srpska	Obligations Act of Republika Srpska (<i>Zakon o obligacionim odnosima Republike Srpske</i>) ("Official Gazette of the Socialist Federative Republic of Yugoslavia", Nos. 29/78, 39/85, 45/89, 57/89; "Official Gazette of Republic of Bosnia and Herzegovina", Nos. 2/92, 13/93, 13/94; and "Official Gazette of Republika Srpska", Nos. 17/93, 3/96 and 74/04);

Obligations Acts	Jointly the Obligations Act of Federation of Bosnia and Herzegovina and Obligations Act of Republika Srpska;
Pledge Act	Framework Pledge Act of Bosnia and Herzegovina (Official Gazette of BH, Nos. 28/04; and 54/04);
Pre-Packaged Reorganisation Plan	Pre-Packaged Reorganisation Plan is plan for redefinition debtor-creditor relations, status changes to the debtor or any other method, as negotiated outside of formal bankruptcy proceedings; however, it is adopted as part of bankruptcy proceedings and may be submitted only by a debtor provided that the conditions for initiating bankruptcy proceedings are satisfied;
Recognised Monetary Claim	A monetary claim arising in respect of: (A) (i) a tax and customs authority decision; (ii) any unpaid wage contributions (iii) any unpaid taxes or public revenues (iv) an enforcement decision rendered by either a court or an administration authority and/or (v) creditors' orders on the basis of securities due, bills of exchange or authorizations given to a bank or a creditor by a debtor in the Federation of Bosnia and Herzegovina; or (B) (i) public revenue claims (such are wage contribution claims, tax and/or customs authority decisions); (ii) court decisions and other deeds and orders on the basis of statutory authorizations; and (iii) creditors' enforcement orders on the basis of enforceable security, bills of exchange or a authorizations given to a bank or a creditor by a debtor in Republika Srpska;
Reorganisation	Reorganisation (<i>reorganizacija</i>) is considered as the process of satisfying creditors' claims in accordance with an approved Pre-Packaged Reorganisation Plan/Reorganisation Plan (<i>stečajni plan</i>); by way of redefining debtor-creditor relations, status changes to the debtor or any other method determined in the Reorganisation Plan or the Pre-Packaged Reorganisation Plan; and
Reorganisation Plan	Reorganisation Plan is plan for redefinition debtor-creditor relations, status changes to the debtor or any other method, as negotiated, submitted and adopted as part of formal bankruptcy proceedings and may be submitted by a bankruptcy debtor or bankruptcy receiver.