

# Bosnia and Herzegovina

## Framework Pledge Law

(adopted on 21 May 2004, and subsequently amended in November 2004)

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### **Important Disclaimer**

This does not constitute an official translation and the translator cannot be held responsible for any inaccuracy or omission in the translation. The text should be used for information purposes only and appropriate legal advice should be sought as and when appropriate.

## **I - GENERAL PROVISIONS**

### **1 - Scope of the Law**

#### **Article 1**

This law regulates:

- a) the creation, registration, priority and enforcement of pledges as defined in Article 2 of this law;
- b) the registration, priority and enforcement of foreign real rights in the form of pledges as defined in Article 2 of this law;
- c) the registration and priorities of liens, of special ownership rights, of prior interests and of foreign real rights in the form special ownership rights as defined in Article 2 of this law; and
- d) the structure and operation of the Pledge Registry.

This law does not apply to transactions:

- a) that refer to property that is exempt from seizure as provided in any other law of Bosnia and Herzegovina (hereinafter referred to as BiH), and other governing bodies;
- b) that refers to salaries of a person except as provided in Article 10 of this law;
- c) governed by an international convention or treaty ratified by BiH to the extent that the convention or treaty deals with registration, priority and enforcement of a pledge, or special ownership right;
- d) that refer to pledges of interests in securities governed by other law;
- e) that refer to pledges of commercial paper except when the commercial paper is proceeds collateral as defined in Article 2 of this law.

### **2 - Definitions**

#### **Article 2**

Terms used in this law have the meaning given in this Article.

**Main terms:**

**“Special ownership right”** means the following rights:

- a) a seller under a sale with reservation of ownership agreement;
- b) lessor, under a lease of a duration of more than six months;
- c) a transferee, other than a pledgee, of one or more receivables; and
- d) a consignor of property under a consignment agreement where both the consignor and the consignee are regularly engaged in the business of dealing with property under a consignment agreements.

**“Prior Interest”** means a pledge, lien or special ownership right created under the law of BiH or other governing body before this law was applied.

**“Foreign real right”** (hereinafter referred to as: foreign right) means a right created under the law of a state other than BiH and that

- a) if it was created in BiH it would be a special ownership right; or
- b) if it was created and registered under this law it would be a pledge

**“Lien”** means any non-ownership real right on property that secures an obligation and that is created pursuant to any other law of BiH or of other any governing body. Lien includes but is not limited to the following; a real right on property securing obligation of owing of BiH or any institution of public government and real right (a pledge) on property created according to a court decision. Lien includes a pledge only if created by a court order according to any other law of BiH or of other any governing body. Lien does not include special ownership right, pledges created under this law, prior interests and a foreign real right as defined in Article 2 of this law.

**“Lease”** means any contract where lessor agrees to give possession of a property to the leaseholder for his use and the leaseholder in turn assumes the obligation of paying the agreed amount. It includes leases where the lessee becomes the owner or has the right to become the owner at the end of the lease period.

a) **“Lease of a duration of more than six months”** – means:

- a1) a lease that is of for a duration of more than six month;

- a2) a lease that is for a duration of six months or less but the lease provides that it is automatically renewed or is renewable at the option of one of the parties or by agreement of the parties for one or more terms and the total of the terms, including the original term, may exceed six months;

**b) But does not include:**

- b1) a lease involving a lessor who is not regularly engaged in the business of leasing property;
- b2) a lease of household furnishings or appliances as part of a lease of immovable property where the furnishings and appliances are incidental to the use and enjoyment of the immovable property.

**“Pledge”** means a real right in property created as provided in Article **Error! Reference source not found.** of this law, given by the pledgor to the pledgee in order to secure one or more present or future obligations. A possessory pledge is considered as the pledge according to this law only if it fulfills the conditions of this law.

**Other Terms:**

**“Building materials”** - means materials that are incorporated into a building, structure, erection, mine or work in such a way that their removal would necessarily involve the dislocation or destruction of some other part of the building, structure, erection, mine or work or exposing it to weather damage or deterioration, but does not include heating, air conditioning or conveyancing devices machinery installed for use in carrying on an activity in or on the building, structure, erection, mine or work.

**“Knowledge”** has the following meaning:

- a) an individual knows or has knowledge when information is acquired by the individual under circumstances in which a reasonable person would take cognizance of it;
- b) a partnership knows or has knowledge when information comes to the attention of one of the general partners or a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;
- c) a company knows or has knowledge:
  - c1) when information comes to the attention of a director of the company, or an employee with responsibility for matter to which the information relates under circumstances in which a reasonable person would take cognizance of it; or
  - c2) when information in writing is delivered by registered mail to the company’s registered place of business.

d) a government knows or has knowledge when information comes to the attention of a senior employee of the government with responsibility for matters to which the information relates, under circumstances in which a reasonable person would take cognizance of it.

**“Proceeds collateral”** is identifiable property that is derived directly or indirectly from dealing with the collateral. It also includes insurance or indemnity payments for loss or damage to collateral. Property that is derived directly or indirectly from dealing with proceeds collateral is also proceeds collateral.

**“Credit”** means a loan of money, a contractual obligation to loan money or a right to discharge an obligation in the future.

**“Collateral”** means property that is object of a pledge, a special ownership right, a lien a prior interest or a foreign real right. Collateral includes proceeds collateral.

**“Pledge Regulations”** means regulations issued by the Minister of Justice as provided in Article 17 of this law.

**“Registration, registering or registered”** relate to data authorized by the Pledge Regulations to effect or to amend a registration and which appear in the Pledge Registry database in accordance with Article 20 of this law.

**"Serial number", "ID number", "PB number" and "registration number"** - have the meaning provided in the Pledge Regulations.

**“Property”** means tangible and intangible movable property. Property includes both individually and generically identified property.

**“Pledge Agreement”** means a written signed agreement between a pledgee and a pledgor that provides for a pledge in favor of a pledgee on pledgor’s existing or future property or both described in the agreement according to this law. Notary certificate or authorization, or authorization of the court of municipal service is not needed for a pledge agreement to be valid.

**“Ordinary course of business”** means conduct in the operation of a business that is normal and common with respect to a business of that kind.

**“Crops”** means crops, whether matured or otherwise, and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land, and includes trees only if they:

a) are being grown as nursery stock;

- b) are being grown for uses other than the production of lumber and wood products; or
- c) are intended to be replanted in another location for the purpose of reforestation;

### **3 - The Object of a Pledge**

#### **Article 3**

A pledge may apply to the property in which a pledgor acquired ownership before the pledge agreement is signed and the property in which a pledgor acquired ownership after the pledge agreement is signed.

A pledge may secure one or more present or future obligation that has monetary value. The obligation may be of the pledgor or of another person.

## **II - THE PLEDGEE-PLEDGOR RELATIONSHIP**

### **1. The Creation of the Pledge**

#### **Article 4**

A pledge is created when the following four conditions are fulfilled, regardless of the order of their fulfillment:

- a) a registration relating to the pledge exists in the Pledge Registry;
- b) the person mentioned as pledgor and the person mentioned as pledgee in the registration from item a) of this paragraph have entered into a pledge agreement;
- c) the person mentioned as pledgor in the registration from item a) of this paragraph is an owner of the property which is the collateral according to the pledge agreement from item b) of this paragraph; and
- d) the person mentioned as pledgee in the registration from item a) of this paragraph or some other person pursuant to the pledge agreement from item b) of this paragraph or a related agreement has given or is obliged to give credit to the person mentioned as pledgor from item a) of this paragraph or third person.

The condition of Paragraph 1. item c) of this Article is fulfilled also if under an agreement creating a special ownership right on that property he is a buyer, lessee, transferor or consignee.

## **2 - Provisions of the Pledge Agreement**

### **Article 5**

The collateral may be described in the pledge agreement, specifically or generically, as long as the collateral can be identified at the time an issue relating to the validity, priority or enforcement of the pledge arises.

The following provisions in the pledge agreement are void if made by a pledgor before default in performance of the obligation secured by a pledge:

- a) an agreement to waive or limit his rights provided in this law;
- b) an agreement to allow seizure of the collateral by the pledgee as provided in Article 26 Paragraph 3. of this law.

## **3 - Pledge in Proceeds Collateral**

### **Article 6**

A pledge and a special ownership right and their priorities with respect to collateral extends to proceeds collateral of this collateral if:

- a) the registration relating to the pledge or special ownership right includes a description of the proceeds collateral that complies with Article 5 paragraph 1. of this law; or
- b) the proceeds collateral is money or a receivable payable pursuant to a policy of insurance or indemnity for loss or damage to collateral.

## **III - PRIORITIES**

### **1 - General Priorities**

#### **Article 7**

Unless provided otherwise in this law, priority between pledges, liens and special ownership rights in collateral is determined on the basis of the order registrations appear in the Pledge Registry database. Priority is not determined on the basis of possession of the collateral.

A pledge that is registered before a lien is registered has priority over the lien only to the extent of credit advanced by the pledgee before the registration of the lien.

A lien has priority over a pledge to the extent of any credit advanced by the pledgee after the registration of the lien.

A pledgee has a right to give up from agreement and is released from an obligation of payment of the credit remaining part if a lien has priority under Paragraph 3 of this Article.

## **2- Special Priority**

### **Article 8**

Subject to the following paragraphs of this Article, a pledge or a special ownership right has priority over an earlier pledge and over an earlier registered lien with respect to property if:

- a) in the case of a later pledge, the credit secured by the pledge was actually used to acquire that property; and
- b) in the case of a later pledge or special ownership right, a registration was effected before the person mentioned in that registration as pledgor receives possession of that property from item a).

Priority between a pledge and special ownership right, meeting the conditions in items a) and b), Paragraph 1 of this Article, is determined on the basis of the order of registration.

Paragraph 1 of this Article does not apply to a special ownership right of a person who purchased the property from a person and then leased or sold that property under a sale with reservation of ownership agreement to the same person.

## **3 - Priority of Buyer and Leaseholder**

### **Article 9**

Subject to the following paragraphs of this Article;

- a) a pledge created according to Article 4 has priority over the right of a subsequent buyer or a leaseholder of the collateral; and
- b) a special ownership right or lien has priority over the rights of the buyer or leaseholder of the collateral if the special ownership right or lien was registered before the buyer or leaseholder acquired his rights in the collateral.

A buyer or leaseholder of collateral right has priority over the rights of alien or a special ownership right if the special ownership right or the lien was not registered before the buyer or leaseholder acquires his right in the collateral.

A buyer or leaseholder of collateral has priority with respect of any credit given by a pledgee after the pledgee acquires knowledge of the ownership of the buyer or leaseholder. The pledgee is released from the obligation to provide credit if the buyer or leaseholder of the collateral has priority under this paragraph

A pledge, lien or special ownership right ceases to exist on the property which a buyer buys from a seller acting in the ordinary course of his business. This is so even if at the time of the purchase of the property the buyer had knowledge of the existence or of registration of the pledge, lien, or special ownership right.

A lessee of collateral from a lessor acting in the ordinary course of his business has priority over a pledge, lien and special ownership right on the collateral. The leaseholder has this priority even if at the time he leased the collateral, he had knowledge of the existence or of registration of the pledge, lien or special ownership right.

A pledge, lien or special ownership right ceases to exist on the property purchased if the value of the property is equal or less than the amount mentioned in the Pledge Regulations. This is so whether or not the pledge, lien, or special ownership right is registered.

Article 9 does not apply to a right defined in Article 2 “Main Terms”, “Special ownership right” item of this law.

#### **4 - Priority of Employees of the Pledgor**

##### **Article 10**

Unless provided otherwise in Paragraph 2 of this Article, a claim of an employee of the pledgor for unpaid salaries has priority over a pledge but only to the extent of 6 unpaid salaries based on minimum salaries.

A pledge or a special ownership right with priority under the special priority rules from Article 8 Paragraph 1. also has priority over the claim of an employee of the pledgor for unpaid salaries.

#### **5 - Priority on Future Advances**

##### **Article 11**

Unless provided otherwise in this law, a pledge and the priority of it apply to the all credit amount granted before and after the signing of the pledge agreement and interest and credit charges, if they are provided for in the pledge agreement.

A pledge, lien or special ownership right and the priority of it apply to the costs of enforcing it and the expenses incurred in protecting and preserving the collateral.

## **6 - Priority on Movable Property Attached to Immovable Property**

### **Article 12**

A pledge, and a special ownership right or lien on collateral that is registered before the collateral is attached to immovable property has priority over any right in the collateral resulting from it being attached to the immovable property.

A pledge, special ownership right or lien on property ceases to exist if this property becomes building material.

A pledge on collateral that is a crop has priority with respect to the crop over any right in the immovable property that extends to the crop as a result of it being grown on the immovable property.

## **7 - Priority on Movable Property attached to other Movable Property**

### **Article 13**

A pledge and a special ownership right or lien on collateral that is registered before the collateral is attached to other moveable property has priority over any other right that was created by the attachment but only in the case where the collateral can be removed without substantial damage to the other movable property.

## **8 - Priority Relating to Instruments under Other Laws**

### **Article 14**

A claim of a possessor of commercial paper that is proceeds collateral has priority over a pledge or special ownership right whether or not the pledge or special ownership right has been registered. This priority exists only if the possessor gives some value in exchange for the commercial paper and has no knowledge of the pledge or special ownership right at the moment when possession of the commercial paper is acquired.

## **9 - Priority Subject to Subordination**

### **Article 15**

A pledgee or a holder of a special ownership right or a lien may in a written agreement with the debtor or other person modify or forego the priority given by this law in favor of some other person or group of persons.

## **VI - THE PLEDGE REGISTRY**

### **1 - The Pledge Registry**

#### **Article 16**

The Pledge Registry shall be created for the purposes of registration and searches of pledges, special ownership rights, liens, prior interests and foreign real rights as provided by this law and rights that under any other law are required or permitted to be registered in the Pledge Registry.

The Pledge Registry maintains the Office for registry established as an office of the Ministry of Justice of Bosnia and Herzegovina.

The Minister of Justice or person designated by the Minister of Justice shall appoint a person as Chief Registrar, Deputy Chief Registrar and staff of the Pledge Registry as provided in the Pledge Regulations.

The Chief Registrar shall supervise the operation of the Pledge Registry.

### **2 - Regulations of Pledges**

#### **Article 17**

The Minister of Justice brings regulations to regulate and gives closer instructions for the following matters:

- a) the duties of the Chief Registrar;
- b) the location and hours of operation of the Pledge Registry;
- c) the fees payable for services of the Pledge Registry and the manner of payment of the fees;
- d) the form, content, and discharge of registrations;
- e) the form and content searches of registered information;
- f) the form and content of Pledge Registry Certificates including “Confirmation of Registration”, and “Search Result Certificate”;

- g) the manner in which property, including proceeds collateral, is to be described on a registration and prescribing the kinds of collateral that must be described by serial number;
- h) what constitutes a serial number, ID and PB numbers of legal entity;
- i) the length of time during which a registration is effective;
- j) the amount under Article 9 Paragraph 6 of this law (property of small value), the amount under of this law (a right for request for information), and the amounts under Article 23. Paragraphs 2. and 7. of this law (failure to discharge or amend a registration);
- k) the body or bodies designated to administer any operation of the Pledge Registry;
- l) defining for the purpose of registration any undefined term used in this Law if that is required;
- m) any matter or thing that is required for the efficient functioning of the Pledge Registry; and
- n) the requirements for the public or private sale of the collateral

### **3 - Registration**

#### **Article 18**

Registration, amendments to registrations and searches shall be allocated numbers indicating the time and sequence in which they occurred.

A registration can be effected before or after any of the conditions in Article 4 Paragraph 1 items b), c) and d) of this law is fulfilled.

A registration of a special ownership right can be effected before or after this right comes to existence.

Upon registration, a person may request a Pledge Registry Certificate in the form of Confirmation of Registration or Search Result Certificate.

The Chief Registrar shall issue a Pledge Registry Certificate so long as the person requesting the Pledge Registry Certificate tenders the required fees with or prior to the request.

The Pledge Registry with the database shall be available daily to the citizens that are interested for that at the entities Ministry of Justice, what is to be defined in the Pledge Regulations.

#### **4 - Searches of the Pledge Registry**

##### **Article 19**

A Search Result Certificate can be issued on the basis of following criteria:

- a) ID number of a natural person or PB number of legal entity;
- b) serial number of the property in the case of serial numbered collateral as defined in the Pledge Regulations; or
- c) registration number assigned to the registration by the Pledge Registry.

The Chief Registrar shall issue a Pledge Registry Certificate so long as the person requesting the Pledge Registry Certificate tenders the required fees with or prior to the request.

#### **5 - Validity of Registration**

##### **Article 20**

A registration, including amendment to registration, is valid only if all the following conditions exist:

- a) the registration has not expired or has not been discharged as provided in the Pledge Regulations;
- b) the description of the collateral on the registration is in accordance with the Pledge Regulations;
- c) when the registration relates to serial number collateral as defined in the Pledge Regulations, the registration can be retrieved from the Pledge Registry database by conducting search based on the serial number of this collateral; and
- d) when the registration relates to collateral other than serial number collateral as defined in the Pledge Regulations, the registration can be retrieved from the Pledge Registry database by conducting search based on the ID or PB of the person mentioned as pledgor in the registration.

When a person identified as pledgor in a registration relating to collateral, other than serial number collateral, changes his ID or PB or transfers his ownership of the collateral to another person, the registration remains valid. However the registration becomes invalid if the person identified in the registration as a pledgee acquires knowledge of the change of the ID or PB or transfer of the ownership and does not amend the registration to include the new ID or PB within 15 days from the day he acquired the knowledge.

## **6 -Evidence of Pledge Registry Information**

### **Article 21**

The existence and contents of any information in the Pledge Registry database can be proved only by delivery a Pledge Registry Certificate.

Unless there is convincing evidence to the contrary, a document in the form prescribed by the Pledge Regulations that purports to be a Pledge Registry Certificate is proof that it has been issued by the Pledge Registry and of facts recorded on it and that it is a public document.

## **7 - The Right to Request Information**

### **Article 22**

A person who appears in a registration as pledgor or a person authorized in writing to act as his agent for this purpose, has the right to request that a person who appears in the same registration as pledgee:

- a) give a copy of the pledge agreement or agreement under which the special ownership right, prior interest or foreign real right arose;
- b) give a written statement of the terms of repayment as of the date specified in the request;
- c) approve or update a list of collateral as of the date specified in the request; and
- d) approve or update a statement indicating the amount of the obligation secured by the pledge or owing under the agreement creating the special ownership right, prior interest or foreign real right as of the date of the request.

The person to whom the request is made according to this Article shall comply with a request within 15 days after he receives the request. The fee for each request under this Article is specified in the Pledge Regulations. During any six-month period, a person who submitted request according to this Article is entitled to one free response from the person who received the request according to this Article.

When the person to whom the request is made according to this Article, without reasonable excuse, fails to comply with the request as required by Paragraph 2 of this article, the person making the request may apply to the court for a decree requiring that the registration relating to the pledge special ownership right, prior interest or foreign real right in the property identified in the request be discharged.

When the decree of the court is delivered to the Chief Registrar, the Chief Registrar shall discharge the registration as required by the decree.

## **8 - Discharge of Registration**

### **Article 23**

When a registration relates to property used by the person identified in the registration as pledgor for personal, family or household uses, the registration must be discharged by the person identified in the registration as pledgee not later than 15 days after all obligations to which the registration relates have been performed.

A person, who fails to comply with Paragraph 1 of this article, must pay to the person identified as pledgor in the registration the sum specified in the Pledge Regulations and any compensation for actual loss suffered by him.

The person identified as pledgor in a registration or any other person who is an owner of property to which the registration relates, may give a written request to the person identified as pledgee in the registration, requesting a discharge or amendment, as is appropriate, of the registration when:

- a) all of the obligations to which the registration relate have been performed;
- b) the description of the property contained in the registration refers to:
  - b1) an account that has not been transferred; or
  - b2) property that is not subject to a lien in favour of the person identified as pledgee in the registration; or
  - b3) property that is not collateral under a pledge agreement, or agreement providing for a prior interest or foreign real right between the person identified as pledgee and the person identified as pledgor in the registration; or
  - b4) property that is not property under an agreement creating a special ownership right between the person identified as pledgee and the person identified as pledgor in the registration; or

- c) no pledge agreement or agreement providing for special ownership right, a prior interest or foreign real right exists between the person identified as pledgor and the person identified as pledgee in the registration.

The person identified as pledgee in the registration shall comply with the request from Paragraph 3 of this article not later than 15 days after the request is given. No fee or expense shall be charged, and no amount shall be accepted, by a person for compliance with these obligations.

When the registration is not discharged or amended pursuant to the request, the person making the request from Paragraph 3 of this article may apply to the court for a decree requiring discharge or amendment of the registration as is appropriate.

The court shall issue the decree within 8 days from the date the application for the decree is filed with the court.

A person, against whom a decree is made by the court, must pay to the person who has made the request the sum specified in the Pledge Regulations and compensation for loss suffered.

## **9 - Refusal, Amendment or Discharge of Registration**

### **Article 24**

The Chief Registrar may refuse to accept a registration, when, in the opinion of the Chief Registrar, it does not comply with the requirements of this law or the Pledge Regulations. The Chief Registrar must give a notice in digital form to the registering person setting up the reasons for refusing to register a registration notice.

When, in the opinion of the Chief Registrar, the circumstances are such that it is not practical to provide one or more Pledge Registry services including performing registrations and searches, the Chief Registrar may suspend one or more of the services of the Pledge Registry for the period of time during which, in the opinion of the Chief Registrar, those circumstances prevail.

A registration shall be amended or discharged from the database of the Pledge Registry by the Chief Registrar when;

- a) the registration has expired;
- b) he receives a valid request to amend or discharge a registration; or
- c) he receives a court decree ordering him to amend or discharge a registration.

## **V - DEFAULT OF THE OBLIGATIONS UNDER THE PLEDGE AGREEMENT AND ENFORCEMENT**

### **1 - Application of Chapter V of the Law and Jurisdiction**

#### **Article 25**

Chapter V of this law applies only to enforcement of the rights and remedies under a pledge agreement or under an agreement creating a foreign real right in the form of a pledge. Chapter V of this law applies to other rights and remedies if another law provides that it applies to such rights.

Execution under this law is under the jurisdiction of the court of the entities and Brčko District of Bosnia and Herzegovina (hereinafter referred to as: Brčko District)

Provisions of execution law of the entities and Brčko District apply to the extent that they are not in conflict with the provision of this law.

No appeal is allowed for a court decision under Chapter V of this law unless in accordance with this law.

Unless otherwise provided in this Chapter;

- a) a submission of application according to of this law, shall not affect any execution proceedings under this Chapter; and
- b) execution proceedings may be affected only by a decree issued by the court according to of this law.

Any person who suffers damages or loss as a result of execution proceedings that are in violation of this law may protect his rights by lawsuit in civil proceedings. Commencing of civil proceedings shall not affect the execution proceedings under this law.

Any notice referred to in Chapter V shall be in written form and may be delivered only in person, by fax, registered mail or courier.

### **2 - Execution**

#### **Article 26**

Execution proceedings are initiated by the pledgee after the pledgor defaults under the pledge agreement. An execution under Chapter V of this law is possible only if the pledgee submits to the court of enforcement the pledge agreement and the Pledge Registry Certificate in the form of Confirmation of Registration. A Pledge Registry Certificate in the form of Confirmation of Registration of a pledge, is an executive title.

The pledgee seeking a court decree must do one of the following:

- a) apply to the court for a decree for seizure of the collateral by an execution officer appointed by the court and sale of the collateral by the pledgee, or
- b) apply to the court for a decree for seizure and sale of the collateral by an execution officer appointed by the court.

Upon default by the pledgor under a pledge agreement the pledgee may seize the collateral himself without the assistance of an execution officer appointed by the court but only after the pledgor provides a written consent. Notary certificate or authorization, or authorization of the court of municipal service is not needed for this consent to be valid.

When the pledgee submits an application under Paragraph 2 item a) of this article, the court must issue a decree within 8 days from the date of the submission of the application. Such decree of execution shall direct the execution officer to seize the collateral described in the pledge agreement and deliver it to the pledgee or the person authorized by him for the purpose of sale of the collateral.

When the pledgee submits an application under Paragraph 2 item b) of this article, the court must issue a decree within 8 days from the date of the submission of the application. Such decree of execution shall direct the execution officer to seize and sale the collateral described in the pledge agreement.

Not later than 8 days form the day a decree is made according to Paragraphs 4 or 5 of this Article, the execution officer must seize the collateral, regardless of whether an application under was submitted. The execution officer must submit to the pledgor the court decree on execution at the moment of seizure of the collateral and need not give prior notice of seizure to any person including the pledgor.

The execution officer may enter upon immovable property where the collateral is located in order to take possession of it.

Not later than 8 days after the pledgee obtains possession of the collateral according to any of the provisions of this Article, he shall give a notice on obtaining possession to the pledgor and to any person who is identified as pledgee on any registration which describes the collateral and was recorded in the Pledge Registry database prior to the date the notice on possession is given.

### **3 - The Rights of Parties to Protection**

#### **Article 27**

Only after seizure of the collateral, any person whose rights involved or are affected by enforcement of a pledge, may apply to the court of enforcement to:

- a) stop proceedings on the basis of fact that the pledgor is not under default of the pledge agreement and order return of the property to the pledgor ;
- b) temporary or permanently suspend the rights of a pledgee sell the collateral;
- c) give directions to a pledgee, regarding any aspect of the enforcement of a pledge, or requiring any such person to comply with one or more procedural requirements of this law;
- d) relieve any person from compliance with one or more procedural requirements of this law when it is impracticable or unreasonable to require compliance;
- e) extend any time period with which the pledgee must comply with in Chapter V of this law; or
- f) require a person to reimburse any other person for costs incurred by that person as a result of an unjustified Court Proceedings.
- g) amend the distribution of money received from the sale of the collateral as set out in the notice pursuant to.

The court shall issue a decree within 8 days from the date the application pursuant to Paragraph 1 of this article is filed with the court.

#### **4 - Collection of Receivables or Instruments**

##### **Article 28**

When the collateral is in a form of a receivable, the pledgee may give a notice to the receivable debtor to make payment to the pledgee, and the receivable debtor must pay the pledgee the amount of the receivable.

When the collateral is an instrument, the pledgee may give a notice the person obligated under the instrument to make payment to the pledgee, and such person must pay to the pledgee the amount of the instrument according to its terms.

When the pledgee is also the receivable debtor or the person obligated under the instrument, he may make the payment without notice.

A pledgee shall apply the money received as a result of the operation of Paragraph 1, 2 or 3 of this article to the obligation secured by the pledge after deducting reasonable expenses of collection.

## **5 - Notice of Sale and Sale of the Collateral**

### **Article 29**

Not less than 15 days prior to sale of the collateral, the person whom the court directed to sell the collateral, shall give a notice of sale to the pledgor, to any person with interest on the collateral known to him as well as to any other person who is identified as pledgee on any valid registration prior to the date the notice of sale is given.

The notice of sale shall contain:

- a) a description of the collateral;
- b) the unpaid amount of the obligation secured by the pledge;
- c) the amount of the applicable expenses or, where the amount of the expenses has not been determined, a reasonable estimate;
- d) a statement of the entitlement to redeem the collateral as provided in this law;
- e) a statement that, unless the property is redeemed, it will be sold; and
- f) the day, time and place of a sale by public auction or the place to which closed tenders may be delivered and the day after which closed tenders will not be accepted.

The notice of sale is not required when:

- a) the collateral will decline substantially in value if it is not disposed of immediately;
- b) the cost of care and storage of the property is disproportionately large in relation to its value; or
- c) the court makes a decree dispensing with the notice.

Collateral may be sold as a whole or in commercial units:

- a) by public sale, including public auction or closed tender conducted by an enforcement officer or by the pledgee; or
- b) by private sale conducted by the pledgee when the pledge agreement provides for private sale or the court orders a private sale.

Unless the court orders otherwise, the pledgee shall conduct a public or private sale in a manner that meets standards generally acceptable in the market for sales of property of the same kind as the collateral.

The pledgee has not obligation to use court appraiser to determine the value of the property. The requirements for the public or private sale shall be those set out in Pledge Regulations.

The pledgee may purchase the property or any part of it only at a public sale conducted by an enforcement officer.

Any person who has priority over the pledgee in possession of the collateral has a priority to take or retain possession and sell the collateral whether or not enforcement measures have started.

## **6 - Money from the sale of the collateral**

### **Article 30**

The pledgee, or enforcement officer who has disposed of collateral shall deposit the amount, in excess of the expenses of taking possession, maintaining and sale of the collateral, recovered from the sale in a specially designated account at a bank in BiH as provided in the Pledge Regulations.

The amount of money allocated to expenses mentioned in Paragraph 1 of this article shall be paid immediately to the person who incurred the expenses.

## **7 - Rights of buyer in good faith**

### **Article 31**

A person who buys collateral in a sale under Article 29 of this law in good faith and who takes possession of it acquires the property free from any claim whether or not the requirements of this law have been complied with by the seller.

## **8 - Distribution after Sale**

### **Article 32**

Within 8 days after disposing of collateral, a pledgee or enforcement officer shall give a notice containing the following information to the pledgor, to any person with interest on the collateral whom he has knowledge of, as well as to any person who is identified as pledgee on any valid registration prior to the date the notice is given:

- a) the amount of money received from the sale of the collateral and the name and location of the bank in which the money received from the sale of the collateral was deposited as required by this law;
- b) the amount applied to expenses mentioned in this law;

- c) the manner in which the money received from the sale will be distributed; and
- d) that, unless an application to the court is made pursuant to Article 27 item g) within 15 days from the date the notice was given, the money received from the sale of the collateral will be distributed as set out in the notice.

Subject to Article 27 Paragraph 1. of this law, the money referred to in of this law shall be distributed in accordance with the priority provisions established under this law.

Unless the court of enforcement order otherwise according to Article 27 Paragraph 2. of this law, a pledgee, who does not distribute the amount received form the sale as required in Paragraph 2 of this article is indebted to any person who made an application to the court pursuant to Article 27 item g) and who suffered loss as a result of such failure.

## **9 - Retaining the Property**

### **Article 33**

After default under a pledge agreement, the pledgee, may propose to the persons entitled to notice under Article 29 of this law to take the collateral in satisfaction of all or a part of the obligation secured by the pledge.

If a notice of refusal is given to the pledgee within 15 days after receiving the proposal under Paragraph 1 of this article the pledgee may not retain the collateral and shall sell the collateral as required by this law.

If no notice of refusal is given to the pledgee, the pledgee at the expiration of the period mentioned in Paragraph 1 of this article is deemed to have irrevocably elected to take the property in satisfaction of the obligation secured by it as proposed. The pledgee gets ownership of the collateral free of any claim of a person to whom the proposal was made.

## **10 - The Right to Redeem**

### **Article 34**

At any time before sale of the collateral, the pledgor or any person with a subordinate interest on the collateral may discharge the pledge, by fulfilling the outstanding part of the obligation secured by it.

## **VI - TRANSITION AND FINAL PROVISIONS**

### **1 - Private International Law Rules**

## **Article 35**

The validity of a foreign real right in collateral that is tangible property is determined under the law of a state where the collateral was situated when the right was created.

The validity of a foreign real right in collateral that is receivable is determined under the law of the state where the pledgor or transferor was located when the right was created.

Unless otherwise provided in this Article, foreign real right shall be treated for registration, priority and enforcement purposes as pledge or special ownership right created in BiH.

A foreign real right in collateral that is tangible property that is registered in the Pledge Registry within 15 days after the collateral has been brought into BiH shall be treated as having been registered at the moment when the property entered BiH.

A foreign real right in collateral in the form of a receivable that is registered in the Pledge Registry within 15 days after the pledgor established his residence or main office on the territory of BiH shall be treated as having been registered at the moment when the pledgor established his residence or main office on the territory of BiH .

A buyer or leaseholder of collateral has priority over a foreign real right in the collateral if the foreign real right is not registered in the Pledge Registry before the buyer or leaseholder acquires his right in the collateral. In this case Paragraphs 4 and 5 of this article do not apply.

## **2 - Prior rights**

### **Article 36**

This law does not govern:

- a) the creation, validity or enforcement of a prior interest; and
- b) priorities between competing prior interests or other interests created under entity law before this law comes into force.

This law regulates priorities between a prior interest and:

- a) a pledge, lien or special ownership right created after this law comes into force and
- b) a foreign real right registered as provided in this law.

A prior interest registered in the Pledge Registry within 210 days after this law comes into force shall be treated as having been registered when this law comes into force.

The buyer or leaseholder of collateral has priority over a prior interest in this collateral if the prior interest is not registered in the Pledge Registry before the buyer or leaseholder acquires his right in the collateral. In this case Paragraph 3 of this article does not apply.

### **3 - Standards of Performance**

#### **Article 37**

All rights, duties and obligations contained in this law or that arise out of a pledge agreement, a special ownership right agreement or an agreement creating a foreign real right must be exercised and discharged in good faith and in accordance with standards of conduct generally acceptable in the market in which the transaction took place.

### **4 - Conflict with other laws**

#### **Article 38**

When there is a conflict between this law and any other law in BiH this law prevails.

### **5 - Coming into force**

#### **Article 39**

This law comes into force 8 days after its publication in the “Official Gazette of BiH”.

This law will also be published in Official Gazettes of entities and District Brčko of BiH.

This law is applied 90 days after it comes into force.

President of  
House of representatives  
Parliamentary Assembly of BiH  
Martin Raguž

President of  
House of people  
Parliamentary Assembly of BiH  
Mustafa Pamuk