

# World Universities Comparative Law Project

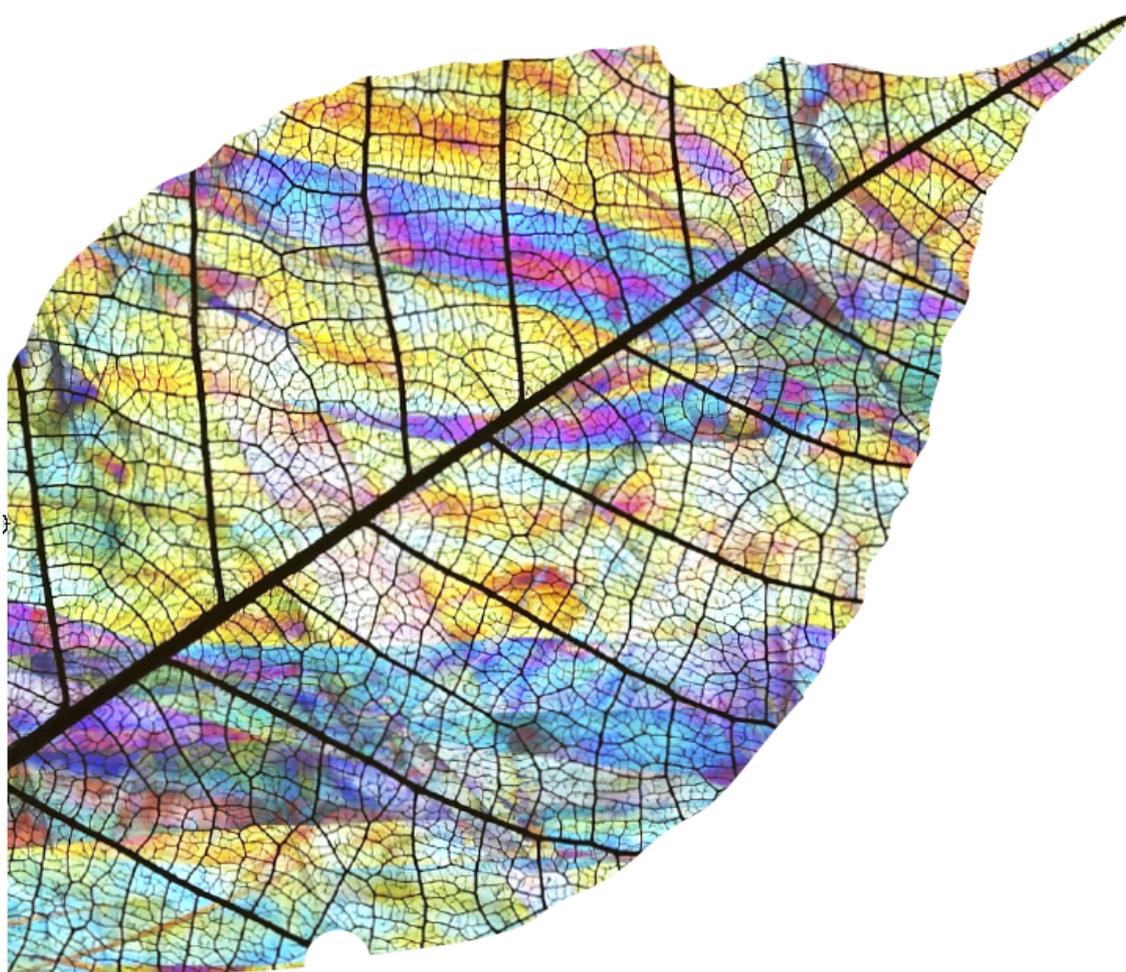
## Legal rating of Bosnia and Herzegovina

carried out by students at the University of Sarajevo

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A production of the Allen & Overy Global Law Intelligence Unit

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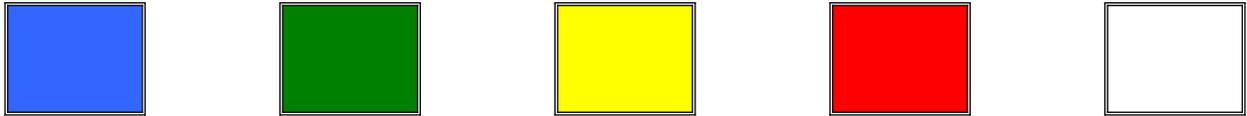


October, 2017

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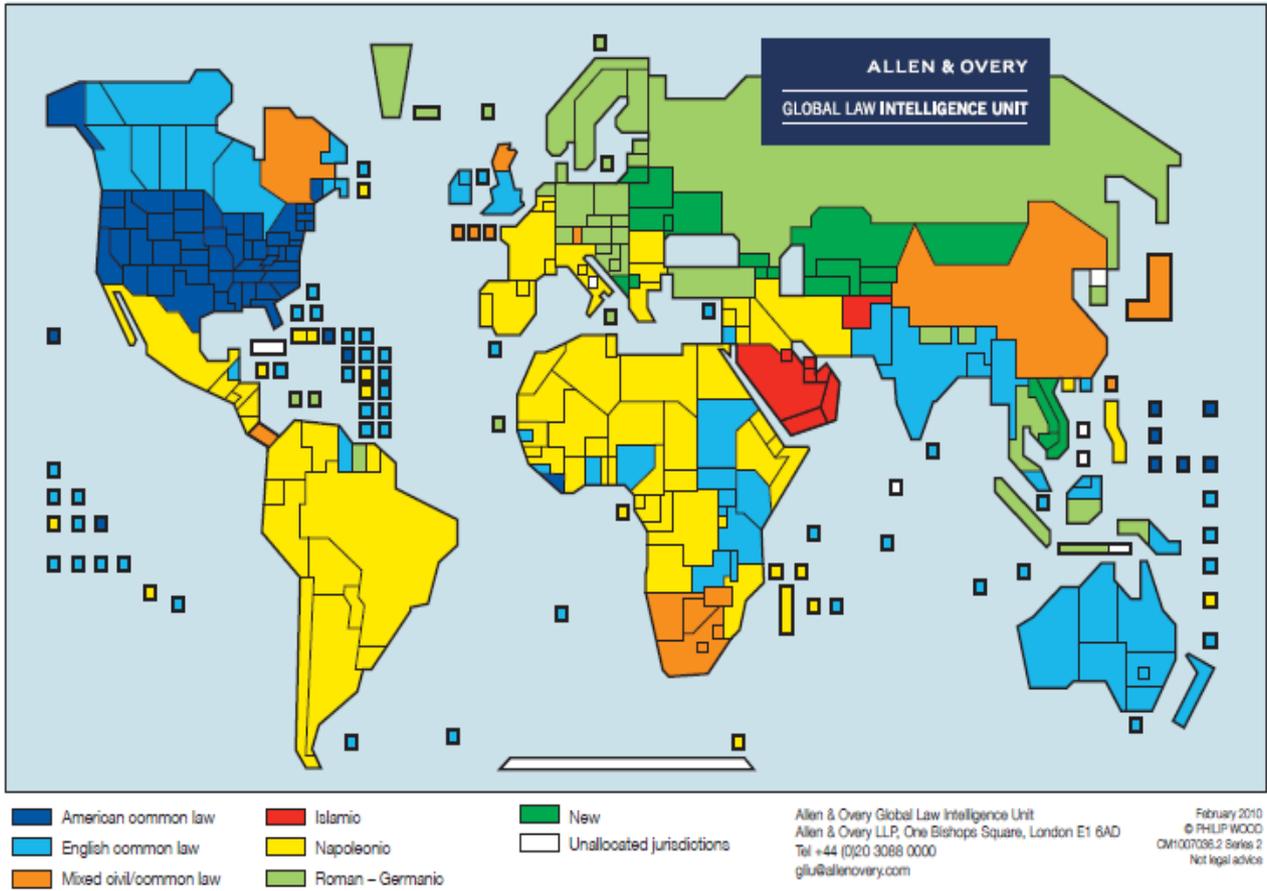
The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Bosnia and Herzegovina was carried out by students at the University of Sarajevo.

The member of the Faculty of Law at the University of Sarajevo who assisted the students was Assistant professor, Dr Darja Softic Kadenic.

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

## Families of law



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## Foreword

The Law Faculty of the University of Sarajevo as the oldest institution of high education in the country is teaching and preparing its students to deal with various challenges of the extremely dynamic developments of their domestic legal system, the European legal system as well as of law in general. It encourages them to engage in further research, in comparative law, international and transnational legal issues through different curricular and extracurricular activities.

The Bosnian-Herzegovinian legal system is a very complex legal system due to the complicated “four-level” state structure consisting of the state Bosnia and Herzegovina that is composed of three parts - the Federation of Bosnia and Herzegovina, the Republic Srpska and the District Brčko of Bosnia and Herzegovina. Each of these parts is equipped with very strong legislative powers especially in the field of private law, resulting in the fact that almost every legal matter is regulated separately and often also differently for each part of the state. The same complex four level structure applies to the organization of the executive and judicial powers. In addition to that, the Bosnian-Herzegovinian legal system in its today's form is a very young legal system, which arose from the transition from a former socialist country and which, during the manifold reforms during the past two decades, was formed and influenced by different international actors coming from different legal systems and proposing, but sometimes also imposing, their legal solutions. Furthermore, Bosnia and Herzegovina is a country striving to become a member of the European Union, thus it is taking over and implementing the EU acquis. For all those reasons, law students and lawyers in Bosnia and Herzegovina face very demanding challenges, but also are given the opportunity to play an important role in the future development of the law, the legal system and the country in general.

The World Universities Comparative Law Project gave the selected group of students the opportunity to present but also to rate parts of their own legal system according to objective criteria and to position it and compare it to other legal systems that were covered by the project. It also made it possible for the Law Faculty of the University of Sarajevo to be part of a global project among the most prominent law schools around the world. We as an institution are proud and grateful that our Faculty was recognized as a partner in this project.

The Dean of the Faculty of Law of the University of Sarajevo

Dr. Hajrija Sijerčić-Čolić, full professor



# Description of the legal rating method

## Introduction

This paper assesses aspects of the law in Bosnia and Herzegovina with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

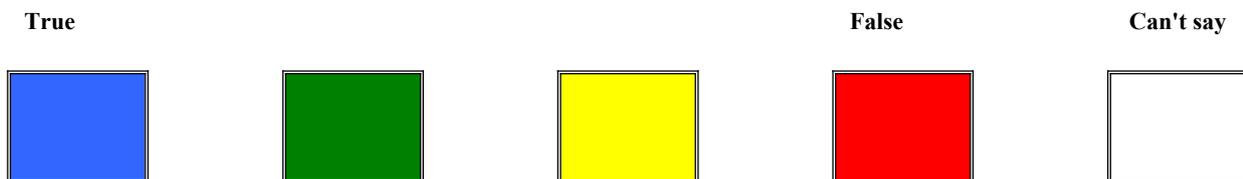
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at the University of Sarajevo. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of the University of Sarajevo, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

## Methodology

The survey uses colour-coding as follows:



**Blue** generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

**Red** generally means that there is intense legal intervention, usually in the form of a prohibition.

**Green** and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Bosnia and Herzegovina. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

## Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

## Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

## Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

## Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

# Banking and finance

## Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

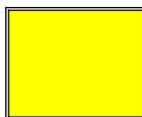
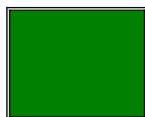
Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

## Insolvency set-off

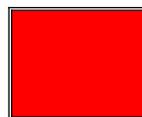
**Generally** If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

**Q1** In Bosnia and Herzegovina, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True



False



Can't say



### Comment:

The Law on Bankruptcy of the Federation of Bosnia and Herzegovina in Article 78 prescribes set off as permissible if claims are based on positive laws or contracts. Precisely, Article 78 of Law on Bankruptcy states that claims incurred before the bankruptcy are not to be affected with the state of bankruptcy of the debtor.

General admissibility of access to set-off claims is restricted in cases described by Article 79 of the Law on Bankruptcy of the FB-H. These situations include cases when:

- the creditor's right towards the bankruptcy estate arised after the opening of bankruptcy proceeding,
- the creditor's claim was transmitted from another creditor after the opening of bankruptcy proceeding,

- the creditor's set-off claim is based on action that may be rendered null and void,
- a creditor, whose claim should be fulfilled from debtor's assets that is not part of the bankruptcy estate, owes to the bankruptcy estate,
- the creditor is a related entity to the bankrupted company and debtor has a claim arising or due in the period of six months prior to the filing of a bankruptcy proceedings.

Regarding the jurisdictions of Republika Srpska and Brčko District of Bosnia and Herzegovina, it should be mentioned that the provisions of the Law on Bankruptcy of Republika Srpska stipulate the same as presented above (Article 132 and Article 133 of the Law on Bankruptcy of Republika Srpska, Official Gazette of Republika Srpska, number 16/16).

The Law on Bankruptcy, forced settlement and liquidation in the Brčko District of Bosnia and Herzegovina (Official Gazette of the Brčko District of Bosnia and Herzegovina, number 01/02) in Article 55 also allows set off, if incurred before notice of the insolvency.

Due to the fact that the Government of the Federation of Bosnia and Herzegovina introduced a draft of a new Law on Bankruptcy in November 2016, it is significant to point out that this *de lege ferenda* proposal in Article 137 and 138 won't bring any changes regarding the allowance of set off.

## Security interests

**Generally** Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

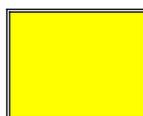
On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

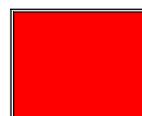
The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

**Q2** In Bosnia and Herzegovina, the law offers a security interest which is highly protective of the secured creditor.

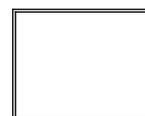
True



False



Can't say



**Comment:**

Bosnian law does not recognise universal security regime. However, different laws<sup>1</sup> prescribe protective security interest depending on the nature of the asset. Under these laws, different securities can be granted, including real estate mortgages, pledges over movables and property rights. In order to have priority over other creditors, one must register mortgage or pledge, as well as to enforce in court on secured assets, due to the fact that private enforcement does not exist. The most common and effective security interest for banks as creditors are mortgage loans, which, in order to take effect, need to be registered in the land register. Law prescribe protection of creditor in case of ownership change, so the mortgage debtor becomes personal debtor, and new owner of the real estate becomes a mortgage debtor. Role of court in mortgage security is significant due to the fact that realization of mortgage has to be done in court, i.e. real estate is being sold in order to protect creditor. The mortgage that is noted in land registry provides security to creditor from others with ex tunc effect.

Regarding security interests and bankruptcy, requirements for enforcement are prescribed with Law on bankruptcy of the Federation of Bosnia and Herzegovina (Article 38). In that sense, security interest is null and void in cases when it is established after the debtor became bankrupt.

**Universal trusts**

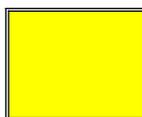
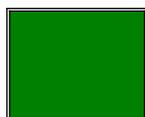
Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

**Q3** Bosnia and Herzegovina has a universal trust for all assets.

True



False



Can't say



**Comment:**

<sup>1</sup> Law on property rights - “Official Gazette of the Federation of Bosnia and Herzegovina ”, No. 66/13, 100/13 and “Official Gazette of Republika Srpska“, No. 124/08, 58/09, 95/11, Law on Bankruptcy - “Official Gazette of the Federation of Bosnia and Herzegovina”, No. 29/03, 33/04, 47/06 and “Official Gazette of Republika Srpska“, No. 16/16, Framework Pledge Law - “Official Gazette of Bosnia and Herzegovina”, No. 28/04, Law on enforcement procedure - “Official Gazette of the Federation of Bosnia and Herzegovina ”, No. 32/03, 33/06, 39/09 and “Official Gazette of Republika Srpska“, No. 85/03, 64/05, 118/07, 29/10, 57/12, 67/13.

The Bosnian and Herzegovinian legal system does not recognize the trust as a general legal concept, and yet, there are certain legal institutes in Bosnia and Herzegovina that contain elements of trust. Those are the notary credit accounts and the collective realization of copyrights that are individual relations that contain trust features, but have a narrower content and are applicable to a limited number of subjects only when compared to the trust.

## Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

## Corporations

### Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

### Director liability for deepening an insolvency

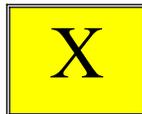
**Generally** If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4)

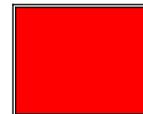
directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

**Q4** In Bosnia and Herzegovina the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True



False



Can't say



**Comment:**

According to Companies Act, directors of the company must act with the diligence of a prudent businessman and in a reasonable belief that they are acting in the best interests of the company. If they did act with the diligence of a prudent businessman and in the reasonable belief that they are acting in the best interests of the company, then they would not be personally liable for deepening the insolvency. Otherwise they will have personal liability. In order to establish personal liability of the director, it has to be proven that he did not act with the diligence of a prudent businessman and in the best interest of the company.

The duty of filing for insolvency exists in Federation of BiH, Republika Srpska, as well as in the Brčko District, but regulations concerning the legal deadline for doing it differ. In Federation of BiH, the legal deadline for filing for insolvency is 30 days after the occurrence of the insolvency; in Republika Srpska it is 60 days after the occurrence of insolvency, and in Brčko District 3 weeks after the occurrence of the insolvency.

Failure to file for insolvency in Federation of BiH and in Republika Srpska constitutes a minor offence, and penalty prescribed is 500,00 KM to 1.700,00 KM in Federation of Bosnia and Herzegovina, and 10.000 KM to 20.000 KM in Republic of Srpska.

**Financial assistance to buy own shares**

**Generally** Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

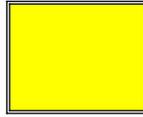
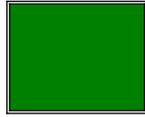
The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

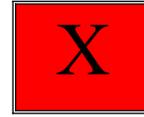
A contravening transaction is usually a criminal offence and void.

**Q5** Bosnia and Herzegovina permits a company to grant financial assistance for the purchase of its own shares.

True



False



Can't say



**Comment:**

In order to give a proper answer, it is the best to observe the Companies Act separately for Federation of BiH, Republika Srpska and Brčko District, rather than to give a general answer.

In the Companies Act of Federation of BiH, it is prescribed that the joint stock company cannot provide or guarantee advances, loans and credits in the process of selling its shares. Acting contrary to this provision constitutes a minor offence, and the penalty is prescribed both for the joint stock company and for the director. For the company, the penalty is between 500,00 KM to 200.000,00 KM, and for the director between 50,00 KM to 20.000,00 KM. For limited liability companies, there is a provision that the limited liability company cannot give loans, credit or insurance for the acquisition of its shares.

According to Law on Companies of Republika Srpska, a joint stock company cannot give loans, credits or other financial support or insurance for the acquisition of its shares. The limited liability company cannot directly or indirectly provide financial support of any kind for the purchase of its shares. For both the joint stock company and limited liability company, the restriction does not apply to on-going legal transactions of financial organizations, as well as on providing advance payments, loans or insurance for the acquisition of shares to employees of the company or employees of affiliated companies.

In Brčko District, the restriction exists just for joint stock company. It is prescribed by the Law on Companies that the legal transaction by which joint stock company obtains an advance or a loan for the acquisition of shares, is null and void. This provision shall not apply to the activities of financial organizations in the normal course of performing their activities or to activities by which employees acquire shares of the company or an affiliated company. Such legal actions are null and void, if the company is unable to establish a fund for their shares without reduction of capital or fund, which by law or statute cannot be used for payments to shareholders. There is no restriction for limited liability company, so we can conclude that it is an exception in Bosnia and Herzegovina, because only in Brčko District and just for limited liability company it is permitted to grant financial assistance for the purchase of its own shares.

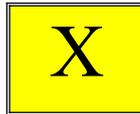
## Public takeover regime

**Generally** A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

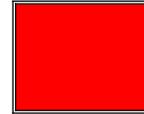
The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

**Q6** Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Bosnia and Herzegovina is open and has few restrictions.

True



False



Can't say



**Comment:**

The public takeover regime in Bosnia and Herzegovina shows characteristics of the restrictive regime. There is an obligation for the bidder to make a mandatory bid in cash when a threshold of shares in the target is reached. In Federation of BiH threshold is prescribed as 25 % of all voting shares, while in Republika Srpska threshold is 30 % of all voting shares, with the exception of voting shares owned by the issuer. In Brčko District threshold is 1/3 of the total number of votes given by voting shares.

For every share of the same class the bidder must pay the same price. There is also an obligation for the bidder to provide proof of certain funds to implement the offer.

The bidder is required to conclude a contract with a bank with respect to the payment of the purchase price for the shares that are subject to the tender bid. This can be done either by obtaining a bank guarantee or depositing cash into the account (Federation of BiH). In Brčko District and Republika Srpska it is also possible to prove the ability to pay with a bank loan.

Compulsory acquisition of dissenting minorities (squeeze-out) is regulated in both Federation of Bosnia and Herzegovina and in Republika Srpska, so just Brčko District has no rule concerning it. There is also fixed timetable for all of the acts in process of takeover.

It is important to mention that managers have no ability to frustrate a bid without shareholder approval, and the regulation concerning it is the same in Federation of BiH, as in the Republika Srpska and Brčko District.

**Other indicators**

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

**Commercial contracts**

**Introduction**

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in

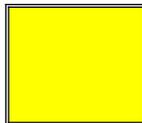
business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

## Exclusion of contract formation

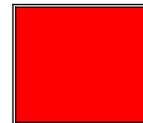
**Generally** Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

**Q7** In Bosnia and Herzegovina, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True



False



Can't say



### Comment:

Under Bosnian law, "heads of terms" is not a defined legal notion. It can be considered as one of the stages during the negotiation of a contract that is to be concluded between the parties. Since there is the principle of *falsa nominatio non nocet*, the binding or non-binding character has to be decided from case to case, depending on the true intent of the parties, the principle of good faith (*culpa in contrahendo*) and all other relevant circumstances. If the parties expressly state that the heads of terms as „subject to contract“, they would generally have a non-binding effect. However, if heads of terms can be considered as a precontract, than it represents an obligation for parties to conclude a parent contract, thus they are binding when adopted into the parent contract and subsequently agreed upon. However, parties are bound to heads of terms in situations when heads of terms include essential terms of a parent contract (*essentialia negotii*). Based on a request of one party, a court can order to the other contracting party to conclude a parent contract within a deadline determined by the court. Further, heads of terms will not be binding for parties when circumstances have significantly changed, so that the parties would not have concluded heads of terms if those circumstances existed in time of stipulation.

## Termination clauses

**Generally** Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

**Q8** In Bosnia and Herzegovina, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True



False



Can't say



**Comment:**

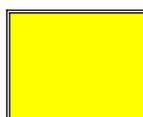
Bosnian and Herzegovinian jurisprudence upholds freedom of contract and if the parties have agreed on termination clause that includes events that are concerned trivial, the court will generally uphold it. However, the general limitation to party autonomy has to be respected, meaning, that the must not be contrary to the Constitution of Bosnia and Herzegovina, mandatory legal rules and morality of society.

**Exclusion clauses**

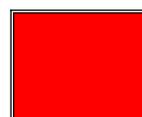
**Generally** Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

**Q9** In Bosnia and Herzegovina, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True



False



Can't say



**Comment:**

The parties in commercial contracts are free in the arrangement of a contractual relationship, and the party autonomy is a basic principle in the regulation of the contractual relationship between the parties. The only restriction which arises in this regard is that the contractual relationships cannot be arranged contrary to the Constitution of Bosnia and Herzegovina, cogent regulations and morals. The contractual parties are free to arrange their contractual relationships, within the limits of cogent regulations, public order, and good customs. The exclusion of liability in principle can be arranged within the contract, in accordance with the principle of party autonomy. Exclusion of contractual liability must be observed with regard to two general principles: the principle of good faith and the prohibition of creation and exploitation of a monopoly position. This means that these provisions on the exclusion of contractual liability are generally valid, if they are clearly agreed in the contract, except if such provision was contrary to the principle of good faith and in the case if provisions are stipulated as a result of abuse of monopoly position.

## Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

## Litigation

### Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

### Governing law clauses

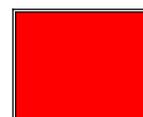
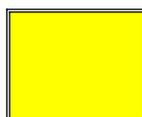
**Generally** Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

**Q10** The Bosnian and Herzegovinian courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Bosnian and Herzegovinian public policy and mandatory statutes.

True



False



Can't say



### Comment:

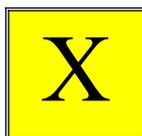
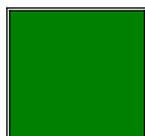
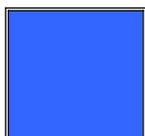
In Bosnia and Herzegovina contracting parties may choose the law applicable to the contract. According to the Art. 19 of the Law on Resolution of Conflicts between Laws and Provision of other Countries (“Official Gazette of SFRY” no.43/082 I 72/82 – 1645, “Official Gazette of R BiH” 2/92 to 5.13 / 94-189), the parties can choose foreign law as mandatory law in contractual obligations, including the loan contract.

### Foreign jurisdiction clauses

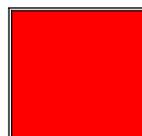
**Generally** Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

**Q11** The Bosnian and Herzegovinian courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

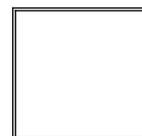
True



False



Can't say



**Comment:**

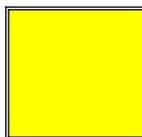
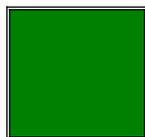
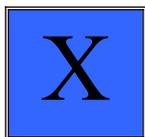
In order for parties to choose jurisdiction of the court of a foreign country there has to be a connection between the country and the contract and Bosnia and Herzegovina must not have exclusive jurisdiction in that dispute matter. According to the Article 49 of the Law on Resolution of Conflicts between Laws and Provision of other Countries, parties can choose jurisdiction of the courts of a foreign country only in the case that one party has foreign country's nationality or its seat in foreign country and if the dispute is not in the exclusive jurisdiction of the Bosnia and Herzegovina.

**Arbitration recognition**

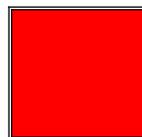
**Generally** Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

**Q12** In Bosnia and Herzegovina, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Bosnian Herzegovian courts.

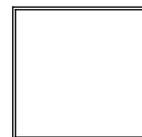
True



False



Can't say



**Comment:**

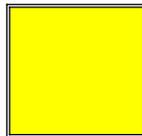
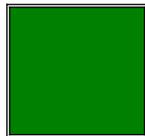
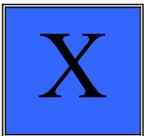
It is possible in Bosnia and Herzegovina to submit a contract dispute to a foreign arbitral tribunal if the dispute does not fall under the exclusive jurisdiction of a court of law. The recognition of the foreign arbitral award in Bosnia and Herzegovina will be done by New York Arbitration Convention rules (if the foreign country is a contracting state), or rules of Law on Resolution of Conflicts between Laws and Provision of other Countries if the country is not a member of the Convention.

## Class actions

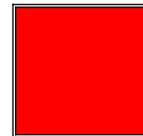
**Generally** In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

**Q13** In Bosnia and Herzegovina, class actions where the class is bound if they do not opt out are generally not allowed.

True



False



Can't say



### Comment:

A scarcely developed concept of class actions exists under Bosnian law, particularly as a group action that includes members of the group that have opted in. Unlike Common law tradition, class action does not oblige claimants to opt out in any situation if they would like to avoid the binding character of court's decision. However, there are few positive laws that prescribe the possibility of class actions: The Law on prohibition of discrimination in B&H (Article 17), The Law on consumers protection in B&H (Article 103), The Law on consumers protection in Republika Srpska and procedural laws – Law on civil procedure in FB&H (Article 453) and Law on civil procedure in Republika Srpska (Articles 135 and 136). The Law on civil procedure of the Brčko District of Bosnia and Herzegovina does not regulate class actions.. It should be mentioned that Law on consumer protection in B&H introduce the role of „Consumer Ombudsman“, an independent public authority supervising that consumers are adequately protected, and who is entitled to raise class action in order to protect collective interest of consumers. The abovementioned laws on civil procedures represent *lex generalis* for class actions and allow individuals and legal entities to file new lawsuits based on the judicial decision from class action. These individual lawsuits are main mechanism in utilization of class actions.

## Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

## Real property

### Ownership of land

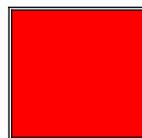
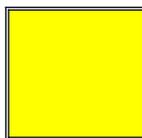
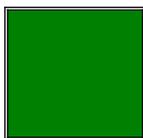
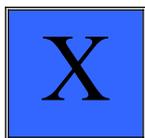
**Generally** In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

**Q14** In Bosnia and Herzegovina nationals and local corporations are entitled to own land absolutely.

True

False

Can't say



**Comment:**

Generally, nationals and local corporations are entitled to own land absolutely. Laws proscribe limitations that are similar to other countries. Limitation number one exists regarding public and common goods that cannot be owned, neither by a private nor by a public legal subject. They are defined as parts of nature that should serve to everybody (general goods) and those which should serve to everyone under equal conditions (public goods). Parts of the nature could be owned only if they are separated from the rest of nature and if a proper licence or concession is obtained. The other limitation exists regarding so called goods in general interest, such as construction land and agricultural land, forest and protected parts of the nature, enjoy a special protection. They can be privately owned, but the owner can be restricted by certain limitations regarding his powers.

**Security of land title and land registers**

**Generally** Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

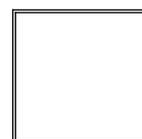
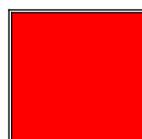
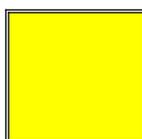
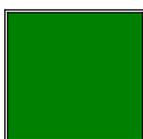
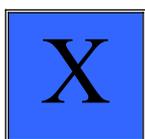
Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

**Q15** Most land in Bosnia and Herzegovina is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True

False

Can't say



**Comment:**

Most of land in Bosnia and Herzegovina is registered in land registers – land books. Yet, there still are some parcels that are not registered. This is because for some small parts of the country, land books have never been established, or they have been established but were destroyed during World War Two or the latest war.

The land registers in Bosnia are land books of the Austrian/German type. Ideally, all land parcels and all property rights on them are registered in the land book. The land register has three sections: A, B and C. Section A contains information about cadastral parcel number, description and culture of the parcel, its size, merge and division of land-register body, property rights and rights established for the benefit of land-registry body. Section B is the ownership section. It contains information about following: legal basis of ownership registration, the name of the land-register body owner, in case of multiple people ownership of land-register body, information on whether it is joint or co-ownership and finally limitations of right of disposals of land-register body owner and records about the ownership. Section C is called encumbrances. It contains encumbrances and limitations. In accordance with laws on land registers, following interests are recorded: a) ownership, information on joint ownership and co-ownership, b) mortgage and land debt, c) judicial lien, sub-mortgage e) the right of long term rental and leasing, pre-emption right and pre-emptive rights, e) easements, f) usufruct, g) property encumbrances.

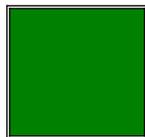
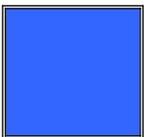
Currently, the process of harmonization of land and cadastre registers is being conducted. It is implemented as a Real Estate Registration Project and supported by World Bank. It started in 2013 and will last for five years.

## Land development restrictions

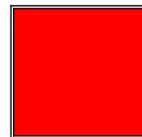
**Generally** Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

**Q16** In Bosnia and Herzegovina apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True



False



Can't say



### Comment:

According to the entity laws on construction land, it is up to the municipality/city councils to determine which land is urban construction land. For an urban construction land to be determined as such, it is necessary to adopt a spatial or urban plan. Urban construction land is allocated for the use, for the purpose of construction, on the basis of public competition that is published in the public media.

Change of use of land is not regulated by state law, but by legislation in FB&H, RS and BD. In all three cases, this question is regulated by a number of laws. More precisely, change of use of forestland is subject of law on forests and change of use of agricultural land is subject of law on agricultural land.

When it comes to change of use of forest land, the main rule is that such change is prohibited. FB&H Draft Law on forests, as well as BDB&H and RS laws on forests recognize certain exceptions from this rule. The change can only happen in strictly listed cases and with fulfilment of conditions proscribed by the laws. Permission for the change of the forest land is provided by the Ministry of Agriculture, Water management and Forestry in FB&H and RS & in BD by the Department of Agriculture, Forestry and Water Management.

Validation of the permission is limited to two years (in FB&H) or one years (in BD B&H). A special compensation, calculated in accordance with the laws, is paid.

The three existing laws on agricultural land contain provisions which firstly list out cases in which it is prohibited to change the use of agricultural land. Two conditions are requested in prior to change of use of the land: it has to be done in according to physical planning act and agricultural consent has to be obtained. The consent in FB&H is issued by cantonal ministries; in BD B&H by Department for urbanism and in RS in most of cases by a body of local self-government. As it is the case with the change of use of forest land, special compensation has to be paid. The compensation amount is calculated based on criteria proscribed by the laws.

Some laws proscribe a deadline for issuing the permits for change of use of land, while others do not. That effects how fast one can obtain the necessary permits. Obviously, a compensation for the change of use is paid in both cases: change of use of forest land or agricultural land, while its amount varies.

### Other indicators

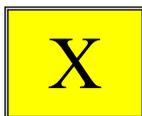
Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

## Employment law

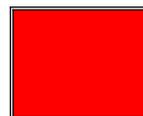
**Generally** The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

**Q17** In the law of Bosnia and Herzegovina, there are few controls on hiring and firing employees or on the terms of employment.

True



False



Can't say



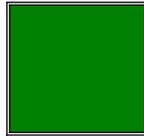
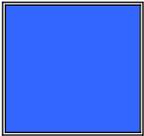
### Comment:

Labour law of FBiH in Article 1 states that “This law shall govern the conclusion of labor contract, working hours, salaries, termination of labour contract, exercise of rights and obligations arising from employment...”. Similar provisions can be found in Labour law of RS and BD. The labour laws in BiH proscribe the conditions for conclusion of a labour contract, different modalities of labour laws, a detailed content of a labour contract, the conditions for the termination of a labour contract at the initiative of the employer/employee etc. This leads us to the conclusion that the hiring and firing of employees, as well as the terms of employment, are regulated in detail in the relevant laws in Bosnia and Herzegovina (FBiH, RS and BD BiH).

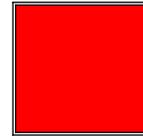
## Environmental restrictions

**Q18** In Bosnia and Herzegovina, the rules governing the environment and liability for clean-up are very light and relaxed.

True



False



Can't say



### Comment:

In Bosnia and Herzegovina there are several laws on national level regarding environment protection, but those most important (Law on water, Law on forests, Law on protection of air, Law on nature protection) are on the entities level. It should be mentioned that there is no state Law on protection of environment, even though it is one of the conditions on the path of European integration. Existing laws prescribe that any establishment, vehicle or vessel dealing with the treatment, transportation or disposal of waste and oil, or any activity that may have an effect on the environment, being land, water, or air, shall have special licences or certificates, and in accordance with positive laws. In *Progress Report for Bosnia and Herzegovina* from 2016, European Commission noticed that „there is still no national policy and strategy on the environment.“ Report indicates how slightly progress has been made in following fields: air quality, waste disposal, water quality, and no progress has been made in the field of nature protection. Rules governing the environment and liability for clean-up impose a set of fines for the violators of environmental rules, but *de facto* use and general prevention often fall behind.

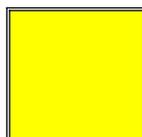
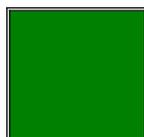
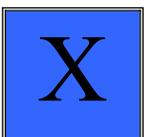
## Openness to foreign business

**Generally** These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

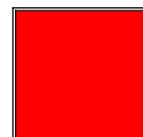
### Foreign direct investment

**Q19** In law of Bosnia and Herzegovina foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True



False



Can't say



### Comment:

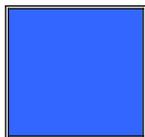
Article 3 of The Law on the policy of foreign direct investment in Bosnia and Herzegovina stipulates that “foreign investors shall be entitled to invest, and to reinvest profits of such investments into any and all sectors of the economy of Bosnia and Herzegovina, and in the same form and under the same conditions as

defined for residents of Bosnia and Herzegovina under the applicable laws and regulations of Bosnia and Herzegovina and the Entities and Brčko District of Bosnia and Herzegovina”. The exceptions are given in Article 4, which states that foreign equity ownership of business entity engaged in the production and sale of arms, ammunition, explosives for the military use, military equipment and media shall not exceed 49% of the equity in that business entity. The law on foreign investment of FBiH, RS and BD (in Brčko District this law is under the name “The law on stimulation of economic development in Brčko District”, but it’s content is identical to the content of entity laws on foreign investment) all prescribe that "founding rights of foreign individuals shall include right to establish and manage companies under terms and conditions applicable to domestic investors”.

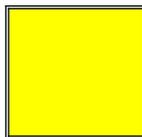
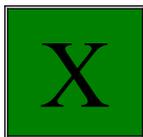
## Exchange controls

**Q20** In the law of Bosnia and Herzegovina there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

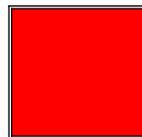
True



False



Can't say



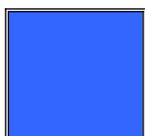
### Comment:

Law on foreign exchange operations of Federation of Bosnia and Herzegovina prescribes that both residents and non-residents may keep foreign exchange in a Bank in a foreign exchange account with a bank or sell it to the bank. Similar provisions can be found in the Law on foreign exchange operations of Republika Srpska and Brčko District. All three of these laws prescribe that a bank may not grant a loan in foreign exchange to a resident except a resident legal person or entrepreneur to pay for imported goods and services. The law on the policy of foreign direct investment in Bosnia and Herzegovina sets out that foreign investors shall have the right to transfer abroad, freely and without delay, in freely convertible currency, proceeds resulting from their investment in Bosnia and Herzegovina.

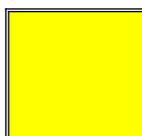
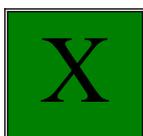
## Alien ownership of land

**Q21** In the law of Bosnia and Herzegovina, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

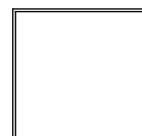
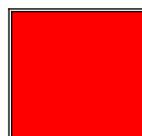
True



False



Can't say



**Comment:**

The law on resolution of conflicts between laws and provisions of other countries in certain relations prescribes that the legal entity is considered domestic if it is founded in Bosnia and Herzegovina. The law on foreign investment of FBiH, RS and BD (in Brčko District this law is under the name “The law on stimulation of economic development in Brčko District”, but it’s content is identical to the content of entity laws on foreign investment) all prescribe that a foreign investor may establish a company under the same terms and conditions applicable to domestic investors according to the respective Company Law. Given the provisions of the two abovementioned laws, it can be concluded that foreign controlled companies have the same rights as nationals or residents to own or lease land without permit, as long as they found a domestic legal entity in BiH.

If, however, a domestic legal entity is not formed (i.e. if the foreign-controlled company has not gained a status of a domestic legal entity), there are certain limitations given by the Law on proprietary rights of FBiH and RS. These two laws state that foreign individuals, natural or legal entities, can own land on the territory of FBiH/RS, only if there is a reciprocity between the country of origin of the individual at hand, and FBiH/RS. The law on ownership and other proprietary rights of Brčko District is less strict than the entity laws, and it prescribes that a foreign individual who has a permanent residence or performs a business in the District has the same ownership and other rights on land as a domestic natural/legal entity.

**Generally**

The new property Acts in FBiH introduces a liberal regime regarding the acquisition of land by foreign physical or juridical persons. The only prerequisite being reciprocity. Foreign investors, according to the Law on the policy of foreign direct investment are granted national treatment, regardless of reciprocity.

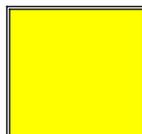
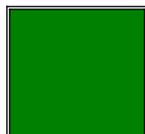
It is also worth noting that in BiH, a foreign company can found a branch/subsidiary, in order to perform business. While this possibility is enabled in the RS, the system of registration of foreign subsidiaries is yet to start its activity in the FBiH, which in turn leaves the foreign individuals with the sole option of founding domestic legal entities in the FBiH. This possibility also seems to be the more popular one in the whole of BiH, because the liability of a branch/subsidiary is extended to the company as a whole, while the liability of a domestically formed legal entity is limited to the domestic legal entity itself.

**Q22** In Bosnia and Herzegovina, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

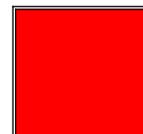
True



False



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**Comment:**

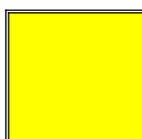
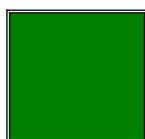
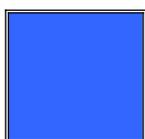
Based on a survey conducted among lawyer’s offices we can conclude that in labour cases, lower courts favourite workers, as weaker party, regardless weather the case is against local or foreign company. This is usually corrected by higher courts. Although one big office has claimed that courts are inclined to local

businesses, most of them have claimed that courts do not favour local companies because they “pay attention on their investments and how many people such companies employ”. Finally, minority of offices have stated that in disputes between companies “their power sees the light of the day.”

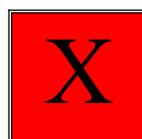
## Costs and delays of commercial litigation

**Q23** The costs and delays of commercial litigation in the higher courts in Bosnia and Herzegovina are not considered materially greater than in other comparable countries.

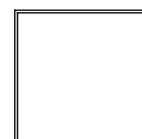
True



False



Can't say



### Comment:

According to “Feasibility Study: Improving Commercial Case Management in the Federation of Bosnia and Herzegovina”, delivered by the World Bank in collaboration with the UK Government, the court system appears to impact the business climate in BiH more than almost anywhere else in Europe and Central Asia. According to the Business Environment and Enterprise Performance Survey (BEEPS) in 2014, 18 percent of firms report that the court system is a moderate, major or severe obstacle to their business operations in BiH, and one of the reasons for it is the length of commercial litigation. The surveys have shown that only 13 percent of firms reported that the court system is quick, less than half the average for the Western Balkans and Europe and Central Asia.

Jurisdiction over commercial cases in FBiH resides in ten Municipal Courts, ten Cantonal Courts, and the Supreme Court of FBiH. In FBiH, Municipal Courts proved more efficient in resolving commercial cases than higher instance courts. For example, in the period between 2012 and 2015, the number of unresolved commercial cases in FBiH decreased by six percent, largely due to resolutions at the Municipal Courts.

In terms of courts efficiency, there are evident problems in court backlogs and long disposition time. Efficiency in Cantonal Courts and the Supreme Court of FBiH decreased from 2012 to 2015, increasing backlogs and prolonging disposition times. Growing cantonal backlogs were primarily the result of appeals from Municipal Courts in litigation and enforcement cases. The Supreme Court of FBiH also experienced a growing backlog and prolonged disposition times, predominantly due to extraordinary legal remedies cases which comprise the main share of the court’s caseload. For the Supreme Court of FBiH, the average duration of commercial cases in 2015 was 374 days for disposed cases and 384 days for pending cases. The average duration of the commercial case in 2015 in all cantonal courts was 397 days for disposed cases and 576 days for pending cases.

Statistically, the most problematic commercial case types in FBiH are enforcement, business registration, small claims and bankruptcy cases. Processing of these types of cases is especially lengthy.

In Republika Srpska, in 2010 specialized commercial courts were established, in an effort to improve efficiency and quality of commercial case management. RS established five District Commercial Courts and

one Higher Commercial Court in Banja Luka. For example, as a result of specialization, RS courts process cases more quickly than in FBiH, such as in appeals of litigious cases where the average case duration is four times shorter.

In Brčko District, as well as in Federation of Bosnia and Herzegovina, there are no specialized commercial courts, so the jurisdiction in commercial cases have Basic Court of Brčko and Appellate Court. There is no relevant information about the length of commercial litigation in Brčko District.

The cost of litigation is high and consequently increases as delays occur. For example, court fees are extremely complex in FBiH, since there are 14 laws on court fees and fee tariffs which apply in BiH depending on court jurisdiction.

World Justice Project marked dispute resolution time as the priority issue of the BiH judiciary. According to the World Justice Project Rule of Law Index 2016, BiH scores 0.56 out of 1 on accessibility and affordability of civil justice.

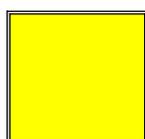
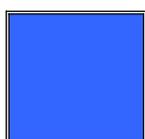
Taken altogether, commercial litigation is one of issues of BiH judiciary, observed from the aspects of its costs and delays, and it certainly makes an obstacle for business climate in BiH.

## Overall ranking

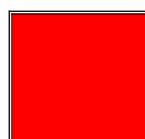
This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

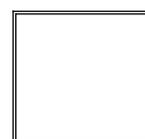
**True**



**False**



**Can't  
say**



## Commentary and suggestions for change

Constitutional and political order of Bosnia and Herzegovina reflects complexity of jurisdictional background of state. Thus, major improvements should be done in the field of harmonization of positive legislation of entities and through more efficient reception of *acquis communautaire*.

It would be of great importance for legislation in the field of private law in Bosnia and Herzegovina to equalize, or at least approximate, the provisions prescribed by the law regulating the same legal issues. The fact is that, in the field of private law, there are laws separately for Federation of BiH, Republika Srpska and District Brčko (with some exceptions), which are not always the same. The example are the penalties in company law, prescribed for minor offences, where the amounts of penalty differ in Federation of BiH, Republika Srpska and District Brčko, constituting a different legal status of the ones committing a minor offence. It has a great impact on business environment, since it may influence the business decision-making.

Further, there is an urgent need for harmonization of legislation on commercial development and change of use land, within Bosnia and Herzegovina. Current difference are obstacles for bigger investments, special the foreign one. It could be done by simply adopting laws with same text in entities and BD B&H, or by adopting framework law on state level.

Keeping in mind that EU accession will lead to the application of the EU private law, special attention should be devoted to this process so it would be a simple copy-paste phenomena, but implementation of a EU law in accordance to the B&H legal culture and heritage.

However, current issue of non-compliance of BiH regulations with EU legislation lies in the Bosnia and Herzegovina's complex political structure, which greatly complicates the process of harmonization of regulations. It is necessary to initially align the regulations at the entity level, the state level, and to devote more seriously to the process of monitoring the application of international documents in order to ensure the compliance of what we have obliged to and what is being applied in practice.

## Profiles

The survey was carried out by the following students:

### Tahir Herenda



Tahir Herenda is a Master's student at the Faculty of Law of the University of Sarajevo, where he previously obtained his Bachelor's degree. His main field of interest is civil law.

Tahir has joined many extracurricular activities throughout his studies, most notably being the Treasurer of ELSA Sarajevo and Director for academic and social program and member of the Organisation Committee of 3rd Sarajevo Summer Law School held in July 2017, and he has participated in Price Media Law Moot Court Competition in Oxford in 2015. Tahir has also been a student's assistant at the Faculty of Law of the University of Sarajevo, and he has been rewarded with the Golden badge of the University of Sarajevo (accolade given to students whose average grade is above 9.50, 10.0 being the highest possible).

### Harun Išerić



Harun Išerić is a postgraduate student at University of Sarajevo, Faculty of Law. His areas of interest are constitutional judiciary, constitutional law and human rights. He is director of Legal Clinic in International and European Human Rights Law of European Law Student's Association Sarajevo. Harun can be contacted at [harun.iseric@gmail.com](mailto:harun.iseric@gmail.com).

**Nihad Odobašić**

Nihad Odobašić is a postgraduate student of the University of Sarajevo, Faculty of Law. He graduated in 2016 and got enrolled at the LL.M. programme in EU Law at the Faculty of Law in Sarajevo. Currently he is writing his master thesis within a field of EU competition law, primarily focusing on the - Role of EU Court in abuse of a dominant position. With other colleagues he represented University of Sarajevo in a moot court competitions in Media Law at national, regional and international level, as well as in other students' competitions. Additionally, as an undergraduate student, he was involved in a work of students' association – ELSA Bosnia and Herzegovina, precisely as a co-founder and president of 2016 edition of Sarajevo Summer Law School. After graduation he got recognition of Golden Badge of University of Sarajevo.

**Kanita Pruščanović**

Kanita Pruščanović is a recent graduate of Faculty of Law, University of Sarajevo. She is going to continue her master studies at the same faculty, in the field of criminal law. Her main interests are criminal law and human rights. Kanita can be contacted at [kanita.pruscanovic@hotmail.com](mailto:kanita.pruscanovic@hotmail.com).

**Enida Šaćirović**

Enida Šaćirović just finished her postgraduate studies at University of Sarajevo. She obtained a MA degree in Civil Law. Her main field of interest are civil law, commercial law and intellectual property law. Enida has been an active student throughout her five years at Faculty of Law. She has been a president of the

European Law Students' Association in Sarajevo and the member of the board of European Law Students' Association in Bosnia and Herzegovina (ELSA). She was a co-founder and the member of the organizational committee of Sarajevo Summer Law School, which is the biggest and most important project of ELSA Bosnia and Herzegovina. She has also participated in many competitions as the member of the faculty's team. Most important one is the Willem C. Vis International Commercial Arbitration Moot in Vienna, which is considered as one of the most prestigious moot court competitions in the world. She has undertaken a summer internship at "Karanovic & Nikolic" Law Firm and currently is working at Intellectual Property Firm "Linea Susic".

Enida can be reached at [enida.sacirovic@gmail.com](mailto:enida.sacirovic@gmail.com).

## The faculty member managing the survey



Dr Darja Softić Kadenić is an assistant professor of civil law at the University of Sarajevo Law Faculty. She is teaching General part of Civil law, Property Law and Succession Law with personal research focus in the fields of property law, secured transactions, trust law and estate planning.

### **Allen & Overy Global Law Intelligence Unit**

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Philip R Wood CBE, QC (Hon) BA (Cape Town), MA (Oxon) LLD (Lund, Hon)

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Yorke Distinguished Visiting Fellow, University of Cambridge  
Visiting Professor, Queen Mary University, London

Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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