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SELF-REPRESENTATION GUIDE

FOR MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES
IN REPUBLIKA SRPSKA

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**FOR MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES
IN REPUBLIKA SRPSKA**

SECOND EDITION

February 2021

Please note that this Guide cannot replace a legal advice of qualified experts, but only provides an overview of basic information of individual stages of court proceeding. The Guide neither provides full information on every particular procedure or institution mentioned in it nor does it refer to all possible situations that can arise in a particular court procedure.

Legal aid



You can seek legal advice in matters related to the procedural actions mentioned in the Guide from:

Union of Employers' Associations of Republika Srpska (UUPRS)

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FOREWORD

This Self-Representation Guide for Micro, Small and Medium-Sized Enterprises (MSMEs) in Republika Srpska (the Guide) is produced under the Bosnia and Herzegovina (BiH) Commercial Justice Technical Assistance Project (Project) implemented by the World Bank and funded with UK aid from the UK Government. The objective of the Project is to support justice institutions in implementing reforms that improve efficiency and access to commercial justice in BiH, building on the recommendations of the UK-funded 2016 Feasibility Study on Improving Commercial Case Management in the Federation of Bosnia and Herzegovina. The Project is part of a broader World Bank initiative to raise awareness of reform opportunities and inform policy dialogue on the efficiency, quality, and access to justice across countries in the Western Balkans, with a view to improve the performance of justice systems in these countries.

The Project comprises five components: (1) strengthening commercial departments and commercial courts in Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS), respectively, through analysis of caseloads and workloads, and providing recommendations to re-engineer processes, reduce backlog and strengthen court management; (2) fast-tracking small claims, based on results of comparative legal analysis of civil procedure in BiH and in several countries of the European Union; (3) increasing access to justice for Micro, Small and Medium-Sized Enterprises (MSMEs) through developing guides to increase legal literacy among firms; (4) capacity building through developing and implementing peer-led counseling and supplementary training for commercial judges; and (5) implementing procedural reforms to close loopholes and reduce bottlenecks in case processing through proposals for legislative amendments.

This Guide is delivered under Project Component 3 - Increasing Access to Justice for MSMEs. Its purpose is to help the MSMEs in the RS to better understand court processes and gain basic knowledge necessary for self-representation at courts. The Guide provides answers to questions that the MSMEs might have before deciding whether to litigate. The Guide is designed for MSMEs in the RS which do not possess formal knowledge in this area. A Guide of identical scope, structure and contents has been produced for MSMEs in the FBiH, reflecting specific features of the FBiH legal system and relevant regulation.

The contents of the Guide and the topics addressed were defined based on broad consultations with representatives of business and legal community and the needs of the

larger target audience. The Guide does not address all topics that might be of interest to some MSMEs, such as international litigations or labor disputes. The first edition of the Guide was published in December 2019 and widely distributed among the business community. To reflect the users' feedback as well as lessons learnt from the impact of COVID-19 pandemics, this second edition was prepared to include a chapter on administrative disputes and provide additional information on liquidation and bankruptcy proceedings.

The Guide uses a simple legal language and is written in a colloquial style, addressing directly a business person that considers using of court services.

The first three chapters of the Guide introduce the notion of self-representation at courts and provide overview of the litigation procedure and organization of the court system in the RS. Chapters IV-VIII explain the rules of litigation step-by-step, providing guidelines for filing and responding to a lawsuit, preparing and participating at court hearings and filing an appeal. Chapters IX and X provide overview of special procedures that are important for businesses, such as liquidation and the bankruptcy procedure. Chapter XI explains the enforcement procedure, since implementation of judicial decisions is critical part of the judicial procedure. Chapter XII provides basic information on administrative disputes and proceedings in the RS. Finally, Chapter XIII gives information on alternative dispute resolution methods, including characteristics, advantages and disadvantages of mediation and arbitration. Basic terms of litigation procedure are provided in the last chapter. Annex 1 provides links to the legislation on court fees and calculators of court fees and costs of proceedings. Annex 2 provides contact details of courts as well as organizations or institutions that can provide additional referrals. Annex 3 provides table of templates' examples.

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ACRONYMS

ADI - Association of Democratic Initiatives

BAM - The Bosnian Convertible Mark

BiH - Bosnia and Herzegovina

COVID-19 - Coronavirus Disease - 19

CPC - Civil Procedure Code

FBiH - Federation of Bosnia and Herzegovina

IDDEEA - Agency for Identification Documents, Registers and Data Exchange of Bosnia and Herzegovina

MSME - Micro, small and medium-sized enterprises

RS - Republika Srpska

TARS - Tax Administration of Republika Srpska

UK - United Kingdom

USA - United States of America

UUPRS - Union of Employers' Associations of Republika Srpska

VMD - Value of the matter in dispute





I.

ABOUT SELF-REPRESENTATION

I ABOUT SELF-REPRESENTATION

Legal entities regardless of their size can be faced with a problem that needs to be solved in court. Micro, small and medium-sized enterprises without a legal affairs department or a lawyer may lack appropriate expert knowledge to help in this process.

Law provides for a right to be self-represented and does not require you to hire an attorney. By representing yourself or your company you will avoid attorney's fees. However, given the lack of professional expertise the decision to self-represent should be made with caution, this particularly if the adverse party is represented by an attorney. Court procedures are not simple and often require involvement of professionals. Also, if you lose the case you will bear all litigation costs (own costs, the costs of the adverse party and court costs).



So, before embarking on self-representation one should think about the following:

- Can the dispute be settled amicably (e.g. by admonishment, settlement or similar)?
- Depending on complexity of the case do I have enough knowledge and know-how necessary to self-represent?

Please note that if the value of the matter in property claims exceeds BAM 50 000, legal entities are required to be represented by a person who has passed the bar exam. Also, companies may file a request for a revision but only through an attorney.



II.

THE COURSE OF A LITIGATION PROCEDURE IN THE REPUBLIKA SRPSKA

THE COURSE OF A LITIGATION PROCEDURE

IN THE REPUBLIKA SRSPKA

PHASE I FIRST INSTANCE PROCEDURE



If you are suing
natural person(s)

BASIC COURT

If you are suing only
legal entity/entities

DISTRICT
COMMERCIAL
COURT

STEP 1 - LAWSUIT FILED BY THE PLAINTIFF

OR STEP 3
SUPPLEMENTING/
CORRECTING THE
LAWSUIT

STEP 3
REJECTING THE
LAWSUIT

STEP 2
PRELIMINARY
EXAMINATION OF
THE LAWSUIT

PHASE II

PREPARATORY HEARING

STEP 4
DELIVERY OF THE
LAWSUIT TO THE
DEFENDANT FOR
RESPONSE

STEP 5
THE DEFENDANT
DID NOT PROVIDE A
RESPONSE TO THE
LAWSUIT

OR STEP 5
THE DEFENDANT
DELIVERS A
RESPONSE TO THE
LAWSUIT

STEP 6
PASSING COURT
DECISION FOR
FAILURE TO ACT, IF
THE DEFENDANT
HAS NOT
RESPONDED TO
THE LAWSUIT

OR STEP 6
THE COURT
DELIVERS A
NOTIFICATION OF
THE SCHEDULED
PREPARATORY
HEARING

STEP 1
PRESENTATION OF THE
LAWSUIT BY THE PLAINTIFF

STEP 2
PRESENTATION OF
THE RESPONSE
TO THE LAWSUIT
BY THE DEFENDANT

STEP 3
PROPOSING EVIDENCE TO
BE PRESENTED AT THE MAIN
HEARING, AND
DETERMINING THE DATE OF
THE MAIN
HEARING/HEARINGS

PHASE III

MAIN HEARING

STEP 1

THE PLAINTIFF PRESENTS THE LAWSUIT AND EVIDENCE

STEP 2

THE DEFENDANT PRESENTS A RESPONSE TO THE LAWSUIT AND EVIDENCE

STEP 3

HEARING OF THE PARTIES (IF A MOTION FOR THE HEARING OF THE PARTIES AS EVIDENCE HAS BEEN FILED)

STEP 4

THE EXAMINATION OF WITNESSES

STEP 5

THE PRESENTATION OF OTHER EVIDENCE INCLUDING THE EXPERT WITNESS'S ASSESSMENT

STEP 6

CLOSING ARGUMENTS OF THE PLAINTIFF AND THE DEFENDANT

STEP 7

COURT RENDERS THE DECISION

STEP 2 THE COURT ISSUES A DECISION ON EXECUTION

STEP 3 DEBTOR/OBLIGOR SUBMITS AN APPEAL

STEP 4

THE SECOND INSTANCE COURT (DISTRICT COURT OR HIGH COMMERCIAL COURT BANJA LUKA) MAKES A DECISION ON THE APPEAL

STEP 8
THE PARTIES OF THE PROCEEDINGS TAKE COURT DECISION

PHASE IV SECOND INSTANCE PROCEDURE

STEP 1

UNSATISFIED PARTY SUBMITS AN APPEAL TO A COURT OF SECOND INSTANCE (DISTRICT COURT OF HIGH COMMERCIAL COURT BANJA LUKA) THROUGH A COURT OF FIRST INSTANCE (DISTRICT COMMERCIAL OR BASIC COURT)

STEP 2

EXAMINATION OF THE APPEAL BY THE FIRST INSTANCE COURT

STEP 3

REJECTION OF THE APPEAL

OR STEP 3

REFERRING OF THE APPEAL TO OTHER PARTY FOR THE PURPOSE OF DELIVERING A RESPONSE TO THE APPEAL

STEP 4

DELIVERING OF THE CASE TO THE SECOND INSTANCE COURT

STEP 5

DECISION RENDERED BY THE SECOND INSTANCE COURT

PHASE V EXECUTION OF A COURT DECISION

STEP 1

ENFORCEMENT PETITIONER SUBMITS A MOTION FOR ENFORCEMENT TO THE FIRST INSTANCE COURT (DISTRICT COMMERCIAL OR BASIC COURT)

STEP 5 THE SECOND INSTANCE COURT ISSUES A DECISION ON THE APPEAL

STEP 6

EXECUTION OF THE COURT DECISION



COURTS IN REPUBLIKA SRPSKA

III COURTS IN REPUBLIKA SRPSKA

3.1. What court should I address in case of a dispute?

To know where to file the lawsuit it is necessary to know which court has jurisdiction to hear the case. Courts of general jurisdiction in Republika Srpska are basic courts, while district commercial courts adjudicate commercial cases.

You will lose valuable time if you file a lawsuit to a wrong court.



If you file a lawsuit to a court that is not competent to review it, the court will then forward the lawsuit to the competent court. However, this will significantly slow down the procedure.

The easiest way to determine jurisdiction is to think about whether you are filing the lawsuit against a natural person or a legal entity:

- District commercial courts have jurisdiction in almost all disputes between legal entities - companies (limited liability company, joint-stock company), businesspersons, or other legal entities (citizens' associations, foundations, national bodies, units of local self-government).
 - o Exception: Basic courts will have jurisdiction for damage claims if damages do not derive from an agreement.
- Basic courts have jurisdiction in every proceeding where the defendant is a natural person. Even if you file a single lawsuit against three companies and a natural person, the court having jurisdiction will be the basic court.
 - o Exception: District commercial courts have jurisdiction to settle all disputes where at least one defendant is in bankruptcy.

Once you determine the type of court to file a lawsuit to, the next step is to determine the location of the court that will hear the case (territorial jurisdiction).

- First, if you have a contract concluded with the party you wish to sue, and this contract regulates issues that are the subject of a dispute, check if the territorial jurisdiction of a particular court has been agreed to in the contract. If so, file the lawsuit with the court specified in the contract,

- Second, if the contract says nothing on territorial jurisdiction or no contract is relevant for the dispute then the competent court is, in most cases, determined based on the location of defendant's seat of business (headquarters). In these circumstances the competent court may also be determined by the place where the damage occurred or arose, by the consumer's place of permanent residence or by the office of company's establishment. Namely, there are instances when you can file the claim with different courts but this depends on the subject-matter and the nature of the dispute. For example, a lawsuit concerning labor and employment disputes can be filed with the court on which territory the employment was realized,
- Third, if you are filing a lawsuit concerning immovable property, the court on which territory the immovable property is located has exclusive jurisdiction to decide on a case,
- Fourth, in case of bankruptcy proceeding or enforcement proceeding (once you come to that) the court on which territory the bankruptcy or enforcement proceedings are conducted has exclusive jurisdiction to decide on a case.

Please note that the court with which you have filed your lawsuit will not check whether it is by territory competent to review the case. However, the defendant can contest territorial jurisdiction no later than in the response to the lawsuit. Keep this in mind if you are the defendant.

ADVICE!



You can be proactive and when negotiating a contract with a business partner agree territorial jurisdiction of the court that is most suited for your needs. Setting the territorial jurisdiction of the court in a contract does not mean that you do not trust your business partner, but quite the opposite, this is a sign that you are doing business conscientiously.

3.2. What are the court fees for individual actions in the proceeding?

Court proceedings are not free of cost for self-representation. If you are filing a lawsuit it is important to know that you are obligated to pay the court fee. The fee does not have to be paid at the time of the lawsuit. But before you undertake any further steps in the procedure the court will send you an order for payment of the fee.

Once the judgment is rendered you will have to pay a judgment fee. If you are not satisfied with court's decision and decide to file an appeal, you will have to pay an appeal fee. You have to pay the court fee even if you subsequently withdraw your lawsuit or if the lawsuit is dismissed by the court.



Fee amounts are set forth by the Law on Court Fees of the RS. The fee amount depends on either the value of the matter in dispute or the type of the dispute. The Law prescribes the following fees by the value of the matter in dispute:

Value of the matter in dispute	Fee Amount (BAM)
Up to BAM 1,500	50
Over BAM 1,500 up to BAM 3,000	100
Over BAM 3,000 up to BAM 10,000	200
Over BAM 10,000 up to BAM 50,000	500
Over BAM 50,000 up to BAM 100,000	1,000
Over BAM 100,000	1 percent of the value of the matter in dispute, but not more than BAM 10,000

The appeal fee is twice the lawsuit fee while the lawsuit fee is twice less than the motion for enforcement fee.

Fees are paid within the deadline set in the order for payment. The order is sent by the court. In case you fail to pay the fee, you risk having the enforcement proceeding brought against you by the RS Tax Administration (TARS). In this case, TARS will increase for additional 50 percent of the amount of the court fee prescribed by the law, plus costs of administrative procedure and legal default interest rate. In case you win the case, you are entitled to collect the litigation costs from the adverse party.¹

¹ The deadline for voluntary payment of expenses is the same as the deadline for payment of a principal debt. If the decision is only about costs, the deadline is 15 calendar days (dispute value up to 5,000 BAM) or 30 calendar days (dispute value over 5,000BAM).



IV.

**PLAINTIFF - I WANT TO FILE
A LAWSUIT:
WHAT SHOULD I KNOW IN ADVANCE?**

IV PLAINTIFF - I WANT TO FILE A LAWSUIT: WHAT SHOULD I KNOW IN ADVANCE?

4.1. Filing lawsuit

Litigation procedure is initiated by the filing of a lawsuit.



The court does not monitor the statute of limitations periods *ex officio*. However, an objection against the lawsuit could be brought forward by the defendant during the proceeding.

4.1.1. Basic elements of a lawsuit

You have to be careful when writing a lawsuit and make sure that the lawsuit contains the following elements:

- a. Court designation,
- b. Name of the plaintiff and defendant (name of a legal entity or natural person) with residence addresses i.e. with address of office seat in case of legal entities, and name of the legal representative of the company (if any),
- c. Indication of the value of dispute,
- d. Claim,
- e. Facts on which the plaintiff rests the claim,
- f. Evidence that establish the facts,
- g. Signature (of authorized person of the plaintiff).

How to obtain defendant's address?



If you are filing a lawsuit against a natural person and you are not sure that you have the correct address of the defendant, you can request this information from the BiH Agency for Identification Documents, Registers and Data Exchange of Bosnia and Herzegovina (IDDEEA), based on the Law on Freedom of Access to Information in BiH and the Law on the Protection of Personal Data of BiH. In your request you must explain the legal basis (interest) which you believe establishes your right to obtain the information requested. If you are filing a lawsuit against a legal entity, you can request the Department for registration of legal entities of the court before which the opposite party has registered its enterprise to provide you with the name of the legal entity or its registered office. Furthermore, you can search all court electronic registers of business entities: the Register of Business Entities of the Brčko District of BiH, the Register of Business Entities of the FBiH and the Register of Business Entities of the RS by using the following link: <https://bizreg.pravosudje.ba/pls/apex/f?p=183:20:2819398751671453>.

When writing a lawsuit, you need to formulate your request as follow:

- First, explain the facts on which the claim is based. For example, if you are suing for debt settlement, it is important to describe the legal basis of the debt (e.g. invoices and the like) and to state that the debt has not been settled. It is important that the court understands presented facts.
- Second, list the evidence that you will use to prove the facts (e.g. contracts as proof of contractual relation, bills of lading as proof that the goods were delivered, police minutes/reports – as proof that an employee had severely breached his/her duties, etc.). You must have evidence for all your assertions, and you are solely responsible to obtain this evidence. If you cannot substantiate your statements, then your claim will not be successful.

Evidence can be documents, hearing of litigants (i.e. plaintiff and/or defendant) or witnesses. Also, when it is necessary to clarify certain facts it is possible to propose on-the-spot investigation and/or an expert evaluation.

Costs of expert evaluation and costs of witnesses summoned for the hearing are initially borne by the party that proposed this evidence. Once the judgment is rendered, all these costs are borne by the party that lost the dispute. If both parties propose the same expert evaluation (e.g. economics expert) the court will decide which party is to bear expert evaluation costs.

To be able to reason merits of your assertions get to know relevant legislation pertinent to the disputed matter.

Request the court to render a default judgment if the defendant fails to submit a written response to the lawsuit within the prescribed deadline. Such request is not a mandatory element of the lawsuit, but if you submit such a request and the defendant fails to provide written response on time, the court can render a judgment in your favor.

All communication with the court has to be in one of three official languages² used in Bosnia and Herzegovina. If you are submitting documents in another language, attach a translation drawn by a court certified interpreter.

The list of court certified interpreters can be found on the official website of the RS Ministry of Justice.³

Example 1: Lawsuit (related to debt collection)

DISTRICT COMMERCIAL COURT IN BANJA LUKA
BANJA LUKA

Bijeljina, 05.10.2018

PLAINTIFF: "PROMET" Ltd Bijeljina, ID number 1234567890123, 10 Privrednička Street, 76300 Bijeljina, represented by the legal representative Petar Petrović, director

DEFENDANT: "KOMERC" JSC Banja Luka, ID number 0123456789012, 233 Berzanska Street, 78000 Banja Luka, represented by the legal representative Mitar Mitrović, director

² Three official languages in Bosnia and Herzegovina are Bosnian, Croatian and Serbian, official scripts Latin and Cyrillic alphabet.

³ The list of court certified interpreters and expert witnesses in the RS can be found here: <https://www.pravosudje.ba/vstv/faces/jpsvjestaci.jsp?ins=10001&modul=7694&k.at=10507>

LAWSUIT

For: debt

Value of the matter in dispute: BAM 19,333.60

Grounds for court's jurisdiction are Articles 28 and 29 of the Civil Procedure Code (Official Gazette of Republika Srpska, number: 58/03, with subsequent changes and amendments, hereinafter: CPC), and Article 33 of the Law on Courts (Official Gazette of RS, number: 37/12).

- *List all the facts on which you rest your claim*
- *List all evidence that established above-listed facts.*

For example:

Evidence: Agreement to pay debt by instalments of 19.12.2017.

Article 4 of the Agreement to pay debt by instalments reads that if the defendant defaults on payment of any of the instalments, the remaining amount of the debt is considered to have fully matured. The plaintiff is entitled to claim from the defendant an appropriate interest at rate set by the law.

Thereafter, make a conclusion, as for example:

Thus, the plaintiff claims from the defendant the amount of BAM 19,333.60 on the basis of the Agreement of 19.12.2017, together with appropriate interest at the rate set by the law accruing from debt maturity date 01.02.2018, until the final repayment.

As the defendant failed to settle the debt, the plaintiff is forced to collect the claim by an action before the court. Pursuant to Article 17 of the Law on Contracts and Torts, and in conjunction with Article 262, paragraph 1 and Article 277, paragraph one of the same Law, the plaintiff proposes that after the completion of the proceeding the court renders the following:

Formulate your claim, for example:

JUDGMENT

The defendant is OBLIGATED to pay to the plaintiff the amount of BAM 19,333.60 with interest at the rate set by the law, accruing from debt maturity date 01.02.2018

until the final repayment, and to reimburse the plaintiff for litigation costs, all within 15 calendar days following the day the judgment becomes final, under threat of enforcement.

The plaintiff proposes that the court renders a default judgment if the defendant fails to timely submit a response to the claim in line with Article 182, paragraph 1 of the CPC.

Attached: two copies of the lawsuit and evidences as listed in the lawsuit

SIGNATURE OF THE PLAINTIFF

4.1.2. How to formulate the claim?

It is important to know how to formulate the claim, as it reflects your requests to the court. In principle, present your claim clearly and precisely but only after you elaborate the facts on which your claim will be based and list the evidence substantiating the facts. Do not forget to submit any additional requests (such as payment of interest, reimbursement of litigation costs, expert evaluation costs, court fees and the like). See in the example above the sub-heading "Judgment".

4.1.3. How to precisely define the claim?

If you cannot define the claim precisely at the moment of drafting because you cannot for example establish or assess exact amounts, you can request an expert evaluation that will be done by an expert who has the necessary knowledge. This could be an expert in economics who will, during the proceedings, set the value of the claim by evaluation (calculation). Based on such expert report, you will be able to precisely define the claim. You can define the claim more precisely and amend it with defendant's consent up until the end of the main hearing.

4.1.4. Basic steps to file a lawsuit



- Draft the lawsuit.
- Print multiple copies of the lawsuit: one for the court and one for the adverse party; if you are suing multiple parties submit one copy with evidence for every defendant; always make one copy for your records.
- Sign all copies: lawsuit has to be signed by a person authorized to represent the company and it has to bear company's seal.
- Photocopy all evidence in the same number of copies as the number of copies of the lawsuit: please note that only a simple copy of all evidence is required, the court might request to view the originals at a later stage (at the request of the other party).
- Put everything in an envelope.
- Send the envelope by mail: Sending by post is treated the same as direct submission to the court, make sure you send it by registered mail with a return receipt; you can also hand the lawsuit over to the court's registry office; keep a copy of the confirmation receipt for yourself.

In all subsequent submissions to the court you should refer to the case file number that the court has assigned to your case. This number will be provided by the court on the confirmation of receipt. If you are submitting the lawsuit in person at a court filing office the case file number will be given in the upper left corner of the confirmation receipt. If you are submitting the lawsuit by mail you will learn the case file number once the court addresses you in writing. The case file number will be given in the upper left corner of the letter you receive.

Please note that you cannot file lawsuits always and for everything. Once the court receives the lawsuit it will first examine it. If the court finds any of the following it will dismiss the lawsuit:



- a. Dispute does not fall under court jurisdiction, i.e. if some other authority is competent for the matter (e.g. asking the competent tax authority for reimbursement of incorrectly collected tax),
- b. There was a deadline by which you had to file the lawsuit and you have missed the deadline. For example, as a shareholder in a limited liability company you can challenge a decision of the company's assembly against which you voted within 30 calendar days following the day the decision was made,
- c. If the same dispute is subject of another litigation between the same parties,
- d. If there is already a final judgment concerning the same dispute,
- e. If the dispute was already resolved by a judicial settlement,
- f. If you have earlier withdrawn the same claim before the court.

If the court determines that the lawsuit is not clear or that it does not contain all elements prescribed by the law, the court will return it and instruct you to supplement and amend it. The court will give you up to 8 calendar days to do this. Take this deadline seriously, because if you fail to meet it, the lawsuit will be dismissed, and you will have to pay the court fee.

Once you submit a lawsuit, the court will inform you in writing about further course of action. If the adverse party submits a response to the lawsuit, the court will forward it to you. The court will also inform you in writing about the date of the preparatory hearing. You can also follow the case online - ask the court's registry office for a code to track the case in the court electronic system.⁴

4.2. How can I secure my claims?

If there is a risk that the defendant could prevent or substantially impede the realization of your claims by disposing of, concealing, encumbering or otherwise disposing of property or altering the existing state of affairs or otherwise adversely affecting it, you

⁴ Instructions on how to file a request to get a code, along with template of a request can be found at: <https://www.pravosudje.ba/vstv/faces/vijesti.jsp?id=16803>.

to the court an interim measure.⁵

You may submit your proposal in writing before the initiation and during the court proceedings, as well as after the conclusion of the proceedings, until the time the execution of a court decision has been completed. If you proposed interim measures before filing a lawsuit, in its decision on interim measure the court will give you 30 calendar days to file a lawsuit. If your proposal is related to an ongoing civil procedure, you can present it orally at the hearing. For both, written and oral proposals, you must clearly state the proposal, indicating:

- The claim for which you are seeking an interim measure,
- The specific measure you are seeking,
- The means and subject of the interim measure, and
- The facts on which your claim is based.

You also need to attach the supporting evidence.

The decision on the interim measure is made by the court acting in the first instance, and by the higher court when the motion for its adoption was filed after the case was submitted to that court for the purpose of deciding on the legal remedy. After the hearing, the court will, by a special decision, revoke the decision on the interim measure or replace that decision with a new decision on the interim measure. In the decision, the court will determine the type of measure, the means by which it will be enforced and the subject matter of the interim measure, with appropriate application of the rules of judicial enforcement proceedings. The court shall, *ex officio*, deliver a decision on the interim measure to the court responsible for its enforcement and to appropriate public registers for filing.

As the proponent of the interim measure, you are entitled to general property rights, such as the right to compensation for damage caused to you by the failure of the persons who were obliged to act on the decision on the interim measure.⁶

5 If you decide to file a request for an interim measure, we recommend to consult an attorney, given the complexity of the process

6 Civil Procedure Code of RS, Articles 268 - 290, available at: <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-parnicnom-postupku.html>



V.

**I AM BEING SUED -
WHAT DO I NEED TO KNOW?**

VI AM BEING SUED - WHAT DO I NEED TO KNOW?

5.1. What to do when you receive a lawsuit?

When you receive a lawsuit the first step is to respond to it.

Delivery of judicial documents (summons, decisions, conclusions and other official documents) can be made by:⁷

- a) Post office,
- b) Legal entity registered for delivery services, and
- c) Court delivery service.

The person who delivers shall, at the request of the person to whom the delivery is made, prove the capacity of person authorized to deliver judicial documents.

Delivery can be made any day, at any time, to home or workplace address of a natural person, to headquarter of a public institution, to office or business premises of a legal person, or to the court if the person to be served is at the court premises. Delivery to a person to whom the judicial document is addressed can be made at any place, if it is done in person.

Delivery receipt is signed by both, the recipient and the delivery person. The recipient needs to clearly indicate the date of receipt and his/her name and capacity on the delivery receipt. If the recipient is illiterate or unable to sign, the delivery person shall note the reason of the recipient not signing the receipt.

Avoiding acceptance of judicial documents will only delay the court procedure.

⁷ More about delivery methods of judicial documents is available at: <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-parnicnom-postupku.html>, Civil Procedure Code of RS, Heading XVII, Articles 337 - 355.

5.1.1. How to write a response to the lawsuit?

First, you should carefully read the lawsuit and identify statements, facts and evidence with which you disagree as to be able to challenge them. Then, write your arguments contesting the lawsuit and make sure you have the evidence to prove your arguments. There is no court fee for submitting a response to a lawsuit.

5.1.2. Elements of a response to a lawsuit

A response to a lawsuit must contain:



- a. Court designation,
- b. Names of the plaintiff and defendant with residence addresses, i.e. address of office seat in case of legal entities,
- c. Case reference number,
- d. Possible procedural objections,
- e. Reasons why the claim is challenged,
- f. Facts on which the assertions are based,
- g. Evidence that ascertain these facts, and
- h. Signature.

In the introduction of the response, it is important to indicate whether you are contesting the claim in its entirety or in part (depending on the particular case) and to list the reasons for doing so. Thereafter present the facts on which your arguments are based as well as the evidence that ascertain these facts.

5.1.3. What objections I may/must state in the response to the lawsuit?

Objection is an instrument that you have at your disposal to protect your rights.

You can object indicating existence of certain procedural irregularities. For example, the same dispute is subject of another litigation between the same parties; plaintiff has earlier waived its right to the claim; the court has no jurisdiction to decide on the matter. These are so-called procedural objections.

Further, you can object indicating existence of certain facts (so-called substantive objections). The following substantive objections occur in practice:

- Objection regarding the lack of active legitimation (if the plaintiff is not eligible to be the plaintiff).
- Objection regarding the lack of passive legitimation (if the defendant is not eligible to be the defendant).

Example of lack of active legitimation: Person A sued Person B for damages that person B made to person C. Person B has the right to object indicating lack of active legitimation of person A. Person A is not the person who suffered the damages (C is) and is not entitled to file a lawsuit.

Example of lack of passive legitimation: Person A sued Person B for damages, and Person B did not cause the damage, damages were caused by Person C. Person B has the right to object its passive legitimation and state that it cannot be the defendant in the dispute.

- Objection noting that the statute of limitations period for enforcing a claim has passed. The statute of limitation periods are deadlines by which plaintiff may seek enforcement before the court. These deadlines are defined by the Law on Contracts and Torts,⁸ and should be consulted in order to check if the claim is time-barred.
- Objection to the “ripeness of the claim” – “claim is not ripe” for adjudication if the debt is not due for payment, i.e., if deadline in which you were obligated to settle the debt for which you are being sued did not pass.
- Objection to non-performance of the contract – you were required to perform your contractual obligation but only upon or simultaneously with performance of the other party, and the other party has failed to perform.
- Objection concerning validity of documents submitted by the other party. You can make an objection if, for example, submitted document has no seal or was not drafted in a prescribed form.

8 Article 77, the Law on Contracts and Torts, available at the following link: <http://www.nados.ba/dokumenti/hr/zakon/Zakon-o-obligacionim-odnosima-FBiH-RS.pdf>

5.1.4. What to ask from the court?

The response to the lawsuit has to contain an instruction/request to the court on what to do with the lawsuit. If you are claiming procedural irregularities in your response, then you should seek dismissal of the lawsuit. In all other instances, you should request the court to reject the lawsuit as unfounded. Look at the example of the response to the lawsuit in heading "Judgment".

5.2. Submitting response to the lawsuit



The court does not monitor the statute of limitations periods *ex officio*, both parties have to do this themselves. You have 30 calendar days following the receipt of the lawsuit to submit your response.

The court will inform you of this deadline when sending the lawsuit. The 30-day deadline is calculated so that all (even non-working days) are counted from the first day following the day the lawsuit was received by the court. If the last day of the deadline falls on a non-working day (Sunday or a national holiday) then the deadline expires the next working day.

It is very important to submit the response to the lawsuit on time. If you fail to do so, the court can render a judgment in favour of the plaintiff.

Response to the lawsuit is submitted in the following manner:

- You submit the response to the court, and not to the plaintiff,
- Make sure you submit sufficient number of copies: one copy for the court and one for the plaintiff(s); keep one copy of the response and evidence for your records - you will need it during the proceedings,
- Cite the case file number on the response,
- Response to the lawsuit, together with printed evidence, can be submitted either in person in court (it will be imprinted with a seal of receipt at the Court) or by registered mail with a return receipt.

The claim can be contested in its entirety or in part. Depending on approach, the response will differ in terms of procedural objections listed, reasons for which the claim is contested and the facts on which the statements are based. The key difference will be your request to the court, i.e., what are you asking the court to do.

See examples of different evidence and request formulations in the example below, chapter “Judgement”.

Example 2: Response to a lawsuit

DISTRICT COMMERCIAL COURT IN BANJA LUKA
BANJA LUKA

Reference: (insert case file number)

Banja Luka, 12.10.2018.

PLAINTIFF: “PROMET” Ltd Bijeljina, ID number 1234567890123, 10 Privrednička Street, 76300 Bijeljina, represented by the legal representative Petar Petrović, director

DEFENDANT: “KOMERC” JSC Banja Luka, ID number 0123456789012, 233 Berzanska Street, 78000 Banja Luka, represented by the legal representative Mitar Mitrović, director

RESPONSE TO THE LAWSUIT

For: debt

Value of the matter in dispute: BAM 19,333.60

The defendant received the lawsuit on 10.10.2018 and is hereby filing a response to the lawsuit within the set deadlines. The defendant points out that the lawsuit is unfounded in _____ *(add if the lawsuit is unfounded in its entirety or in part).*

- *List all procedural objections and reasons why the claim is contested (see heading 5.1.3.).*
- *List all evidence substantiating above-mentioned facts.*

Example of evidence when claim is contested in its entirety:

Evidence: review of the Agreement to pay debt by instalments of 19.12.2017.

However, the defendant has settled the entire debt of BAM 20,000 on 03.03.2018, and the plaintiff has no claim against the defendant. The defendant has settled the entire obligation towards the plaintiff which is evident from the defendant's bank statement of 03.03.2018. Evidence: Bank Statement as of 03.03.2018.

Example of evidence when claim is contested in part:

Evidence: review of the Agreement to pay debt by instalments of 19.12.2017.

Furthermore, the defendant raises the objection to the *ripeness of the claim*. The Agreement to pay debt by instalments of 19.12.2017 sets forth the number of instalments and maturity date of every instalment. Given the date when the lawsuit was filed it is clear that not all instalments were due for payment and that the defendant has no obligation to pay the entire debt.

Finally, the defendant asserts to having paid a larger portion of the debt due on 03.03.2018. The defendant deems that at the moment of providing the response he owes only the amount of BAM 1,500.

Evidence: Bank Statement as of 03.03.2018.

Thus, a larger portion of the debt has not become due for payment while the portion of the debt sought in the lawsuit has already been settled.

The defendant proposes that after the completion of the proceeding the court renders the following:

JUDGMENT

Formulate your request in terms of what you want the court to do, for example:

Example when you are contesting the claim in its entirety:

The plaintiff's claim is rejected as unfounded in its entirety.

The plaintiff is obligated to reimburse the defendant for litigation costs, all within 15 calendar days following the day the judgment becomes final, under threat of enforcement.

JUDGMENT

Example when you are contesting the claim in part:

The plaintiff's claim is rejected as unfounded in the part in which the claim exceeds the outstanding debt balance of BAM 1,500.

The plaintiff is obligated to reimburse the defendant for litigation costs, all within 15 calendar days following the day the judgment becomes final, under threat of enforcement.

- Attached: two copies of the response to the lawsuit, evidence listed in the response to the lawsuit

SIGNATURE AND SEAL OF THE APPLICANT

5.3. What can I do if the plaintiff requested interim measures?

If the plaintiff has proposed interim measures⁹ to the court against you (see section 4.2), the court will provide you with a proposal for an interim measure, together with attachments and a notice that you can submit a written response to the proposal for an interim measure within 8 calendar days. The court may order an interim measure without notifying you and without a hearing. This will happen if the proponent of the interim measure has made it probable that the interim measure was justified and urgent, and if the purpose of the interim measure would otherwise be lost. In this case, the court will inform you about the decision immediately. You have the right to challenge the reasons for ordering an interim measure within 3 calendar days, in which case the court must schedule a hearing within the next 3 calendar days.

Under the general rules of property law, you are entitled to a compensation for damage caused to you by the interim measure which was determined as groundless or not justified by the proponent.¹⁰

⁹ If the plaintiff filed a request for interim measures, or the decision on interim measures was already brought by the competent court, we recommend you consult an attorney, given the complexity of the process.

¹⁰ Civil Procedure Code of RS, Articles 268 – 290, available at: <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-pannicnom-postupku.html>



COURT HEARINGS

VI COURT HEARINGS

After the defendant submits a response to the lawsuit, the court will schedule a preparatory hearing. At least two, if necessary, more hearings will be held in the litigation proceedings. First, the preparatory hearing will be held (see 6.1.2.), and after the completion of a preparatory hearing the main hearing will take place (see 6.1.3.). Both the preliminary and the main hearing could be held as one or more meetings at the court.

6.1. How to prepare the presentation, what to bring to court, where is the courtroom?

The objective of the preparatory hearing is to prepare both parties and the court for the main hearing. The court will send you a written notice about the date and the time of the hearing as well as the number of the courtroom where the hearing will be held.



You should bring with you everything that will help you discuss the case. Apart from the lawsuit and the response to the lawsuit, you should bring all evidence that will support your arguments and that you will use in the courtroom.

6.1.1. What if I fail to appear to the preparatory hearing?

- If you are the plaintiff and you have been properly informed of the time and date of the preparatory hearing, but you fail to appear without providing prior justification, the lawsuit will be deemed withdrawn. In this case, you will bear the costs of the procedure.
- If you are the defendant and you have been properly informed of the time and date of the preparatory hearing, but you fail to appear without providing prior justification, the hearing will be held without you. You will bear the costs of the procedure only in case the court rules in favor of the plaintiff.
- If, for an objective reason, you are prevented from attending the preparatory hearing you can request the court to postpone the hearing. The request to postpone has

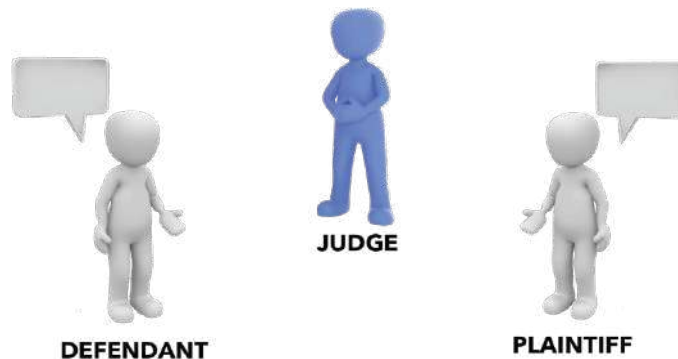
to be made before the scheduled hearing.¹¹ In addition to presenting reasons that prevent you from attending the hearing, you have to also support these reasons with evidence. If the court grants the request and postpones the hearing it will inform the parties of the new date. Otherwise, if the request to postpone is not accepted the hearing will be held as originally scheduled.

6.1.2. What is the course of a preparatory hearing?

This is the first occasion for you to meet the judge and the person who represents the other party.

Please keep in mind to be in front of the courtroom on time and wait to be called to enter the courtroom.

Courtroom Layout: Who Sits Where?



¹¹ The request of the party (plaintiff or defendant) for postponement on the grounds of existence of justified reasons or force majeure must be submitted by the end of the working day after the occurrence of such reasons or force majeure. The request will be considered by the court as soon as possible after the expiry of two days from the date of filing the request. In the case that the court receives the counterparty's reply before the deadline expires, it will consider the request as soon as possible after receiving the reply.

The hearing commences

The judge conducts the proceeding. At the very beginning he/she notes who is present and who are the parties to the proceeding and requests presentation of the lawsuit and of the response to the lawsuit. If you are not changing the statements you made in the lawsuit/response to the lawsuit, you only need to state this shortly and concisely. During the entire proceedings the judge will dictate the statements to the court recorder who takes the minutes.

Throughout the entire proceedings the judge will address you when wanting to hear your statement, you do not have to worry as to when it is your turn to speak.

If you do not understand the judge's question, feel free to ask him/her to clarify.

If you want to say something or to make an objection address the judge, do not address the other party directly. Make sure to be respectful when you address the court and that you are standing when doing so. Generally, the judge will take into account the fact that you are not a professional litigant and will inform you of your rights during the proceedings.

If a judge deems that you cannot articulate your position clearly the judge will warn you that you should hire an attorney¹².

The preparatory hearing is also the last chance for you to propose additional evidence. Citing and presenting new evidence will not be allowed after the preparatory hearing. Exceptionally, the parties may present new facts and new evidence after the preparatory hearing and during the main hearing. But only if they prove that it was not their fault that they were unable to propose them earlier.



If you are the plaintiff, you can modify the lawsuit at the preparatory hearing.

At the preparatory hearing, the court will decide on items to be discussed and evidence adduced. Therefore, when presenting the evidence, point out and explain why you have

¹² If the party (plaintiff or defendant) decides to hire an attorney, the court will postpone the hearing and schedule a new one, which should be held within the legal deadline of 30 calendar days.

offered certain evidence and what circumstances and facts are being supported by it. If you fail to explain to the court why certain evidence was offered the court might not allow you to use it.

If the adverse party submits new evidence during the preparatory hearing you may request the court to postpone the hearing so you would have time to go through this evidence and give your opinion on it.¹³ The court will not allow postponement request for documents already proposed in the lawsuit/response to a lawsuit.



Both the plaintiff and defendant should take a copy of the minutes at the end of the hearing.

6.1.3. What happens at the main hearing, what is the course of the main hearing?

As a rule, the court will set time and date of the main hearing at the preparatory hearing. The court will also summon the witnesses at the address you proposed/provided. If you have proposed witnesses and the court, during the preparatory hearing, schedules to hear their testimonies at the main hearing, you can inform the witnesses verbally about the date of the main hearing.

The main hearing is conducted in the following order:



- a. The plaintiff makes a concise presentation of all relevant matters set in the lawsuit, including presentation of the evidence by reading documents,
- b. The defendant makes a concise presentation of his/her response to the lawsuit, including presentation of the evidence by reading documents,
- c. If hearing of the litigants was proposed as evidence the litigants are heard; the plaintiff first and then the defendant,
- d. The witnesses are examined, first plaintiff's witnesses and then defendant's witnesses.

¹³ The minimum time required for a request is 8 calendar days, and a new hearing should be held by law within 30 calendar days.

A party is first questioned by its attorney and then by the adverse party. If a party does not have an attorney, questioning is done by the court.

A witness is first questioned by the party that proposed the witness and then by the adverse party. If necessary, the party that proposed the witness can question the same witness again. When questioning a witness, focus on the questions that are important to you in order to prove the facts and circumstances on which you rely on. When questioning a witness proposed by the other party, focus on asking questions that will support your statements and rebut the adverse party claims.

Suggestive questioning as well as asking irrelevant questions is not allowed and you may file an objection if you notice that the adverse party is posing such question. The court is also entitled to question the witnesses.

e. Adducing other evidence, including expert evaluation

If you are the party proposing an expert evaluation, you are obligated to indicate the subject and the scope of the expert evaluation, as well as to propose the expert witness. The court will decide on the proposed expert evaluation and this decision cannot be appealed. However, you are entitled to object in the minutes and the judge may decide on the objection immediately at the hearing or in the judgment.

If an expert evaluation is accepted as evidence in trial, the expert witness will always be summoned and heard at the main hearing. The court is obligated to inform the parties of expert's finding and opinion no later than 8 calendar days prior to the hearing.

f. Write down the closing remarks

After all evidence is heard, both parties, starting with the plaintiff, have the right to deliver a closing argument by which all legal and factual aspects of the case are summarised. Summarise statements of both parties and try to explain why your arguments are correct and the arguments of the other party are not. Do this by listing the facts and evidence you submitted during the proceeding. Quote witness statements to draw judge's attention to key issues. It is important to convince the court of accuracy of your statements. Also, closing argument is an excellent opportunity to draw judge's attention to everything you find important.

The court may allow the plaintiff to give a short response to the closing argument of the defendant. If you are the plaintiff and you wish to add something with regards to the defendant's closing argument, you can do so.



Everything you say will be entered into the minutes and will be important for rendering the judgment. Example of the minutes is available at the following link, page 177: <http://adi.org.ba/wp-content/uploads/2019/10/Primjer-sudskog-zapisnika-str.-177.pdf>.

If the plaintiff is allowed to reply to the defendant's closing argument, the defendant will be entitled to give a brief response to plaintiff's final statements.

If, as a defendant, you think it is necessary to respond to the plaintiff's final statements, you can do so.

6.2. Judgment

Following the hearing, the judge renders the judgment on the case. The court decides on the subject matter of the dispute and on all other issues - supplementary party requests. If there are several requests, the court will decide on all of them in a single judgment. The judgment contains the following: court designation, introduction indicating composition of the court and the names of litigants, operative part of the judgment - the decision, rationale and information on the available legal remedy. Example of the judgment is available at the following link: http://adi.org.ba/wp-content/uploads/2019/10/Primjer-presude_privredni-spor.pdf.

Please note that: Parties, i.e., their representatives or attorneys, must collect the judgment at the court, the court will not deliver the judgment to them.



VII.

**POTENTIAL SCENARIOS AFTER THE
JUDGMENT IS RENDERED**

VII POTENTIAL SCENARIOS AFTER THE JUDGMENT IS RENDERED

7.1. How to file an appeal to the second-instance court?

If you are not satisfied with the outcome of the proceedings, regardless of whether you are a defendant or a plaintiff, you can file an appeal against the first instance judgment to the appellate court (see Chapter II - The course of a litigation procedure in the RS).



The court does not monitor the statute of limitations periods *ex officio*, both parties have to do this themselves. You can file an appeal against the first instance judgment within 30 calendar days from the day of delivery of the judgment. Deadline for appeal against first-instance judgment in disputes concerning promissory notes and cheques is 15 calendar days.

The deadline for submission of the appeal is written in the legal remedy section of the judgment.

Please note that: If the parties were properly informed of the date on which the judgment would be rendered, the deadline for appeal against the judgment starts to run the first next day after this date.



If you file an appeal, the judgment will not become final in part contested by the appeal. And the judgment will not become final at all if you challenge the judgment in its entirety. This means that the other party will not be able to enforce the challenged (part of the) judgment.

Second instance court decides on appeal filed against the first instance judgment. For example, if the judgment was rendered by the District Commercial Court in Banja Luka, appeal will be decided by the High Commercial Court. The appeal is submitted by post or in person and is submitted to the first instance court that rendered the first instance judgment. Appeal should be submitted in sufficient number of copies for the court and the adverse party.

An appeal must contain:



- a. Indication of the judgment against which the appeal is filed (give number and date of the judgment),
- b. Statement explaining whether the judgment is contested in its entirety or in part (indicate the part of the judgment that is being contested),
- c. Reason(s) for the appeal,
- d. Signature and the seal of the appellant.

If the appeal does not contain the listed elements it will be considered incomplete. In that case, the court will ask you to supplement the appeal. If you do not supplement the appeal as requested, the court will reject the appeal.

New facts and evidence cannot be presented in the appeal. Exceptionally, you can introduce new facts and evidence at the time of the appeal, but only if you prove that you were unable to present them, with no fault of yours, prior to the conclusion of the main hearing.

Appellant can contest first instance judgment for the following reasons:



- a. Violation of the provisions of the civil procedure code. For example: court rendered a judgment without scheduling a main hearing; court based the judgment on evidence that could not have been used as evidence, because e.g. this evidence was not proposed at the preparatory hearing.
- b. Erroneously or incompletely determined state of facts. Court failed to correctly determine the state of facts.
- c. Misapplication of substantive law. Court improperly applied provisions of the law e.g. applied a law that cannot be applied to the matter of the dispute (e.g. the Law on Consumers' Protection is applied to a dispute between legal entities).

The first instance court will, before transferring the appeal to a second instance court, send the appeal to the other party for response.

Second instance court will examine the first instance judgment in the part that is contested by the appeal and will be limited by reasons listed in the appeal.

Example 3: Appeal

HIGH COMMERCIAL COURT IN BANJA LUKA
BANJA LUKA
Through
DISTRICT COMMERCIAL COURT IN BANJA LUKA

Reference number: (enter the case file number)
Bijeljina, 30.05.2019

PLAINTIFF: "PROMET" Ltd Bijeljina, ID number 1234567890123, 10 Privrednička Street, 76300 Bijeljina, represented by the legal representative Petar Petrović, director

DEFENDANT: "KOMERC" JSC Banja Luka, ID number 0123456789012, 233 Berzanska Street, 78000 Banja Luka, represented by the legal representative Mitar Mitrović, director

APPEAL

District Commercial Court in Banja Luka had rendered the judgment number (case file number) on 20.05.2019 accepting the plaintiff's claim in its entirety as founded. Unsatisfied with such a decision the defendant is filing an appeal against the judgment for:

- *List the reasons for contesting the first instance judgment, for example:*

- o Violation of the provisions of the civil procedure code;
- o Erroneously or incompletely determined state of facts;
- o Misapplication of substantive law,

- *State your proposal to the court, for example:*

You propose the second instance court to amend the above-mentioned judgment and reject the claim in its entirety as unfounded, or to annul the first instance judgment and refer the procedure back to the first instance court for a decision.

Make sure you list all legal provisions, factual and material evidence on which you base your appeal.

- State what you seek the court to do, for example:

Accordingly, the defendant suggests that the second instance court accepts the defendant's appeal in its entirety as founded, and to, amend the first instance judgment as to (i) reject the plaintiff's claim in its entirety as unfounded or to (ii) partially grant the plaintiff's claim in the amount of BAM 19,333.60 together with appropriate interest at the rate set by the laws, and in any event to obligate the plaintiff to reimburse the defendant for litigation costs, all within 15 calendar days following the day the judgment becomes final.

SIGNATURE AND SEAL OF THE APPELLANT

7.2. Do I have to file a response to the appeal and what should a response contain?



Response to the appeal is not mandatory. It will, however, be useful if you respond to the appeal with counterarguments to the assertions presented by the appellant.

The court does not monitor the statute of limitations periods *ex officio*, both parties have to do this themselves. Response to the appeal is submitted within 8 calendar days following the receipt of the appeal.

Example 4: Response to an appeal

HIGH COMMERCIAL COURT IN BANJA LUKA
BANJA LUKA
Through
DISTRICT COMMERCIAL COURT IN BIJELJINA
BIJELJINA

Reference number: (enter the case file number)

Bijeljina, 09.06.2019

PLAINTIFF: "PROMET" Ltd Bijeljina, ID number 1234567890123, 10 Privrednička Street, 76300 Bijeljina, represented by the legal representative Petar Petrović, director

DEFENDANT: "KOMERC" JSC Banja Luka, ID number 0123456789012, 233 Berzanska Street, 78000 Banja Luka, represented by the legal representative Mitar Mitrović, director

RESPONSE TO THE APPEAL

The plaintiff received an appeal against the Judgment of the District Commercial Court on 10.11.2018, number provided above dated 05.11.2018, and in timely manner and within the deadline provided by the law states the following:

- *Indicate the reasons for rebutting the complaint, for example:*

- o Violation of the provisions of civil procedure,
- o Erroneously established factual situation,
- o Misapplication of substantive law,
- o Evidence to substantiate the above facts.¹⁴

- *State your proposal to the court, for example:*

Thus, it is clear that the defendant's appeal is completely unfounded, and accordingly the plaintiff proposes that the court rejects the appeal in its entirety as unfounded as to oblige the defendant to reimburse the plaintiff for the costs incurred in compiling this Response to the appeal. (State the cost estimate if there were additional costs for drafting of the response to the appeal).

14 Detailed examples of the reasons for dismissing the appeal can be found at:
http://adi.org.ba/wp-content/uploads/2019/09/Odgovor-na-%C5%BEalbu_primjer.docx



VIII.

**WHAT HAPPENS IF I MISS
THE DEADLINE DURING
THE PROCEEDING?**

VIII WHAT HAPPENS IF I MISS THE DEADLINE DURING THE PROCEEDING?

8.1. Filing a motion for the return to *status quo ante*

If you miss a hearing or a deadline (e.g. you do not appear for a hearing or you fail to submit an appeal on time etc.) and because of this you lose the right to perform an action before the court, you may file a motion for the return to *status quo ante*.

Example 5: Motion

District Commercial Court in Banja Luka

Reference number: (enter case file number)

In line with Articles 328 and 329 of the Civil Procedure Code of Republika Srpska I, within the prescribed time limit, hereby submit

MOTION FOR RETURN TO STATUS QUO ANTE

On 02.11.2018 I received the Decision of the Basic Court in Banja Luka by which the lawsuit in the case number _____ is considered withdrawn. Namely, I did not appear at the preparatory hearing scheduled on 01.10.2012 and the judge, acting in line with Article 84, paragraph 1 of the CPC issued the Decision on considering the lawsuit in this legal matter withdrawn.

- *List the facts substantiating the motion, such as for example poor state of health.*
- *Submit the evidence to the court, for example:*

Evidence: Medical report of a specialist from the University Clinical Center in Banja Luka

- *State what you want the court to do, for example:*

Based on facts and submitted evidence, I suggest the court to act on this Motion in line with Article 332, paragraph 2 of the CPC i.e. to schedule a hearing to decide on the motion for the return to *status quo ante*, and to ultimately grant the return to *status quo ante* i.e. return to the preparatory hearing stage in this legal matter.

SIGNATURE AND SEAL OF THE APPLICANT

The court may grant the motion for the return to *status quo ante* if it deems that you failed to act for justified reasons that could not have been foreseen or avoided (e.g. sudden illness, car accident, etc.).



When the return to *status quo ante* is allowed, the procedure is returned to the state it was before the omission to act.



The court does not monitor the statute of limitations periods *ex officio*, both parties have to do this themselves. The motion for return to *status quo ante* can be submitted within 8 calendar days from the day the reason that caused the omission ceased to exist.

If the party learned about the omission on some later date, the counting of days shall start from that date. Where 60 calendar days have passed from the day of the omission, the return to *status quo ante* may not be granted.

If you omitted action and have filed a motion for the return to *status quo ante* you should conduct the omitted action simultaneously with the filing of the motion. For example, the motion to return to *status quo ante* must be accompanied with a response to the appeal.

The court will schedule a hearing concerning the motion for the return to *status quo ante*, except in case when the facts on which the motion is founded are well known. At the hearing, you have to make an oral presentation of the reasons for omission and to submit evidence thereon.

8.2. What decision can the court make?

The court can either grant or reject the motion for the return to *status quo ante* and will inform the parties to the proceeding thereon.

8.3. Can I file an appeal and to which court?



The court does not monitor the statute of limitations periods *ex officio*, both parties have to do this themselves. An appeal against the decision rejecting the motion for return to status quo ante can be filed within 8 calendar days following the receipt of the decision.

The decision by which the motion for the return to *status quo ante* is rejected will contain information on available legal remedies, deadline and the court to which the remedy (appeal) can be submitted.



IX.

**LIQUIDATION
PROCEEDING BASICS**

IX LIQUIDATION PROCEEDING BASICS

9.1. How is the liquidation procedure initiated?

Liquidation of a company is a process of closing of the business and bringing it to its end. It is a process of settlement of relations with business partners, government, employees, co-owners of the company and investors. Liquidation is carried out when the company is solvent (i.e. when company assets are in excess of its liabilities).

Liquidation is carried out:

- When the court prohibits company's operations. When a state body imposes a measure to permanently prohibit any further activity of a company. In this case a representative of the state body submits the motion to initiate liquidation proceeding before the competent court;
- When registration in the court registry or establishment of a legal entity was declared null and void by a final court decision. In this case, the court that has declared nullity forwards its decision to the liquidation court which initiates the liquidation proceeding *ex officio*;
- By petition to open a liquidation proceeding – by a decision of company's general assembly to initiate liquidation. In this case, the shareholder if holding powers of representation or a company body authorized to represent the company must file a petition to initiate the liquidation proceeding.

9.2. What documents must accompany the petition to open liquidation?

The following documents must be submitted in order to initiate liquidation proceeding in court:

- a. Decision to liquidate the company issued by the authorized representative, a final decision of the competent authority imposing prohibition of operations, a final decision of the competent court determining termination of the business entity, or

- a final decision of the competent court imposing the sentence of termination of the legal entity,
- b. A valid excerpt from the court register issued within 15 days from the day of submission of the proposal for initiation of liquidation proceedings,
 - c. Company's balance sheet and income statement for the previous fiscal year,
 - d. A certificate of the company's account balance by the BiH Central Bank or the RS Agency for Intermediary, Information Technology and Financial Services issued within 8 days from the day of submission of the proposal for initiation of liquidation proceedings,
 - e. A certificate of settled obligations by the Tax Administration issued within 15 days from the day of submission of the proposal for initiation of liquidation proceedings,
 - f. A certificate of settled obligations by the BiH Indirect Taxation Authority issued within 15 days from the day of submission of the proposal for initiation of liquidation proceedings,
 - g. Correct mailing address, and
 - h. A proof of payment of court fee.

The documents should be submitted to the district commercial court on whose territory office seat (headquarters) or the permanent place of residence of the petitioner is located.

Example 6: Petition to open a liquidation procedure

DISTRICT COMMERCIAL COURT IN BANJA LUKA

2 Vladike Platona Street, Banja Luka

Banja Luka, 23.04.2019

PETITIONER "KOMERC" JSC Banja Luka, ID number 0123456789012, 233 Berzanska Street, 78000 Banja Luka

FOR: liquidation

PETITION TO OPEN A LIQUIDATION PROCEDURE

Dear Sir/Madam,

Pursuant to Article 4 of the Law on Liquidation Procedure of RS, the Petitioner, in the capacity of a shareholder, proposes to initiate liquidation of "KOMERC" JSC Banja Luka, and to appoint Petar Perić as a liquidator in the forthcoming liquidation procedure.

As the Company is not performing its registered activity, the shareholder hereby proposes to initiate the liquidation of the Company. For the purpose of determining the facts relevant for opening the liquidation procedure, please find attached: (*see sub-heading 9.2. list of documents*).

The Petitioner proposes that the court grants this petition to open liquidation procedure in its entirety and in line with Article 4 of the Law on Liquidation Proceeding to issue a:

DECISION

I. Liquidation of the company KOMERC JSC Banja Luka, at the address 233 Berzanska Street, Banja Luka, registered in the companies' register of the District Commercial Court in Banja Luka under number 0123456789012 is initiated.

II. Petar Perić is appointed liquidator.

SIGNATURE AND SEAL OF PETITIONER

Advice:

- If it has been a while since you have taken a certificate from the Tax Administration, you should submit the request for the certificate at least 2-3 months before you decide to initiate the liquidation. We recommend this because there is a possibility that your internal records do not correspond with the records of the Tax Administration. If the internal records do not match, you will either need to pay your debts or provide the Tax Administration with a proof that you have already paid them.
- Consult your accountant on liquidation date, because the accountant will need to make the initial liquidation calculation on this date. You will be required to submit this calculation to the court.
- The court will immediately print/issue a confirmation of receipt, which you will photocopy and notarize and use to deregister the director at the Tax Administration. This will end your obligations to account for employees' salaries after the liquidation date.

Company should not have any ongoing disputes in court or administrative bodies. The liquidation proceeding will not end until these disputes are settled with a final decision of the competent authority.

9.3. Who can be a liquidator?

Typically, a person proposed by the initiator of the proposal for liquidation proceedings. If the initiator has not done so, the court may appoint a liquidation from the list of bankruptcy trustees, determined by the Minister of Justice of the Republika Srpska. The liquidator shall be appointed immediately in the decision on opening the liquidation procedure. This decision is submitted to the register of business entities in order for the liquidator to be registered as a person authorized to represent, and the name of the liquidation debtor to be added the mark "in liquidation".

9.4. Role and obligations of liquidator

The liquidator is obliged to submit to the liquidation judge a report on financial position and operations of the company, consisting of i) list of assets, ii) list of creditors, iii) initial balance sheet and iiiii) other documentation related to financial position and operations of the company. The company's liabilities include the rights of third parties (for example, banks) to property items.

Should the liquidation value be insufficient to cover for creditors' claims, the liquidator is obliged to cash the company's assets in order to settle these claims.

From the company's assets, the liquidator is obliged to first settle costs of the liquidation procedure, including court costs and fees, administrative and other fees related to the liquidator's engagement, as well as other expenditures necessary for the engagement. Once these costs are settled, the liquidator will settle the creditors' claims in proportion to their shares. Any remaining assets will be divided between the company's founders in proportion to their ownership shares.

If there are disputable claims for which no executive title is available, the liquidation judge will, at the proposal of the liquidator, refer the creditor to initiate the litigation procedure to prove such claim. The creditor will be required to initiate the litigation procedure within 30 calendar days from the day the claim was disputed. If the creditor does so, the liquidator will retain the amount due for that particular claim during the division of assets. Should the sufficient funds not be available to settle the claim, the division will not proceed until the litigation procedure has become final. If the creditor does not initiate the litigation procedure within the stated deadline, his/her claim will not be considered during the division process.

The liquidator shall submit to the liquidation judge a proposal for the division procedure. Following the completion of the proceeding, the liquidator shall submit to the liquidation judge a report on all actions taken during the proceeding along with evidence of creditors' settlements, as well as a report on costs of the liquidation proceeding.

The liquidator is personally responsible for any wrongful violation of his/her obligations to liquidate the property in the best possible way and to distribute the collected amount properly.

9.5. How to represent yourself in court?

It is the liquidator that provides all necessary information to the liquidation judge aimed at conclusion of the liquidation proceeding.

9.6. What is the course of the proceeding in terms of procedure?

The court schedules an examination hearing after it receives a motion to initiate a liquidation proceeding. The judge checks if all conditions to initiate the liquidation proceeding are met before the examination hearing. If the court concludes that all conditions are met it will order the liquidator to publish a call in the RS Official Gazette, inviting all potential creditors to report their claims to the court within 30 calendar days. At the same time the court schedules the next hearing.

At the second hearing the court will, if no creditor reported a claim, issue a decision on removing the company from the register and will forward the decision to the companies register. If there are claims that cannot be settled from the assets of the company (liquidation estate), the court will inform the liquidator that he/she is obligated to, within 15 calendar days, file a motion to initiate the bankruptcy proceeding.

9.7. Removal of the company from the register - end of liquidation

Following the submission of the proof of completion of the property division, the court will dismiss the liquidator from duty and conclude the liquidation procedure. The conclusion of the procedure will be published on the court's information board and the website of the RS Agency for Intermediary, Information Technology and Financial Services. The operative provisions of the decision will be published in the RS Official Gazette. Once the conclusion of the procedure has become final, the court will determine removal of the company's name from all public registries.



X.

**BANKRUPTCY
PROCEEDINGS BASICS**

X BANKRUPTCY PROCEEDING BASICS

Bankruptcy proceeding is carried out when the company is insolvent i.e. the company has an active account but has no funds to pay outstanding debts to its creditors. As a rule, it is considered that a company (debtor) is unable to make payments if the company fails to pay its outstanding payment obligations for 30 calendar days.

Bankruptcy is a special non-contentious procedure that is conducted for the purpose of satisfying the bankruptcy creditors. Creditors are satisfied collectively through sale of company property and distribution of proceeds to the creditors.

10.1. How is bankruptcy procedure initiated?

The bankruptcy proceeding is initiated by a petition of the debtor and/or a petition of any creditor who has justified legal interest to open the bankruptcy proceedings.

The court must consider the petition within 15 calendar days following its receipt. Within this timeframe the judge will pass a decision on the amount of deposit that is necessary for funding of the preliminary hearing.

10.2. What documents must be submitted together with the petition to open the bankruptcy proceedings?

In the petition, the creditor is obliged to show that it has a claim against the debtor and that the debtor is unable to make appropriate payments. This should be done by attaching appropriate documentation - invoices, final decisions which are basis for the debt and alike.

10.3. Filing of the claim, what is it and what are its elements?

During bankruptcy, creditors should report their claims against the debtor to the bankruptcy court. This way the bankruptcy court and the bankruptcy trustee will learn about the amount and type of claims against the company and the reported claims will be categorised and ranked according to payment priority. The decision on opening of bankruptcy proceedings will invite creditors to report their claims to the

bankruptcy court within 30 calendar days.¹⁵

When filing a claim, one must indicate the following:

- Name and address of the creditor,
- Legal grounds (judgment, administrative decision, decision of the competent administrative body, invoices, etc.) and amount of the claim,
- Number of creditor's transaction account,
- ID number (if legal entity) or the Unique Personal Identification Number (if natural person).

If claims are in a foreign currency, they should be expressed in the local currency.

The bankruptcy trustee will catalogue claims of the debtor's employees up until the date of opening of the bankruptcy procedure.

If a court or any other procedure is conducted in relation of a claim, the creditor will state the body before which such procedure is conducted and the case file number under which the claim was filed.

The claim is filed in two copies, one for the court and one for the bankruptcy trustee.

Example 7: Claim

DISTRICT COMMERCIAL COURT IN BANJA LUKA

- reference number: XY St ...

In accordance with Article 169 of the Law on Bankruptcy of the RS ("Official Gazette RS" No. 16/16) I am submitting, in a timely manner

THE CLAIM

- Bankruptcy proceedings against a company (name of company)

15 See Article 100, paragraph 1 of the RS Law on Bankruptcy Procedure, available at : https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/planoviintegriteta/infoobuke/Documents/Zakon_o_stecaju.pdf

Pursuant to the Decision of the addressed court, rendered in the case number above, (date), we hereby declare the monetary claims of the creditor (name of the creditor) against the bankruptcy debtor (name of the company), with the registered office at (address), and according to the information given below.

Bankruptcy creditor: (Name);
Residence of the Bankruptcy creditor: XY
ID number of the Creditor: 000000000000
Bank account of the Creditor: 000000000000

opened at XY;

Type of claim: 1. Monetary claim for unpaid performed services (specify) determined by final and enforceable court decision;
2. Monetary claim for compensation of costs of court procedure determined by a final and enforceable court decision;
3. Statutory default interest on the claims referred to in items 1 and 2 (incidental monetary claim).

Legal basis of the claim: Judgment for the omission of the Banja Luka Basic Court, reference number XY Mals ... (date).

AMOUNT OF THE CLAIM: XY BAM

1) Principal claim - based on unpaid performed services (specify) in the amount of XY BAM

2) Statutory interest on the amount of the principal claim referred to in the preceding paragraph, for the period as follows:

- for the amount of XY BAM, from (date), to (date);
- for the amount of XY BAM, from (date), to (date);
- total amount of XY BAM;

3) Statutory interest on the claim from the previous point, for the period from (date), to (date), total amount of XY BAM

Evidence: The final and enforceable Decision on waiver, District Commercial Court in Banja Luka number XY Mals ... (date);

Banja Luka,

(date)

Bankruptcy creditor

by the attorney:

Attachments:

- Power of Attorney
- Final and enforceable Decision on waiver of the Banja Luka Basic Court, number XY Mals ... (date);
- Calculation of statutory interest on the principal claim and costs of court proceedings

10.4. What are the consequences of failing to file a claim?

Claims filed after the expiration of the filing deadline may be examined at examination hearing, if proposed so by the bankruptcy trustee.

Claims filed after the expiration of the filing deadline that were not examined at examination hearing as well as claims filed within three months after the first examination hearing but not after the publication of the summons for the final hearing, may be examined at one or more of special examination hearings based on proposal of creditors who have not reported their claims in a timely manner. Such special examination hearings will be determined by a decision of a bankruptcy judge, provided that creditors who filed the claims jointly make advance payment to cover the cost of the hearing within 15 calendar days. If the payment is not made within the deadline, special examination hearing will not be held and claims filed in an untimely manner will be rejected.

Claims that were not filed within three months after the first examination hearing as well as claims that were filed after the publication of the summons for the final hearing will be rejected.

The bankruptcy judge will decide on rejection of untimely submitted claims by a decision. The decision will be published on the courts' information board and delivered to the claimant, the bankruptcy trustee and the bankruptcy creditor who proposed the rejection of the claim.

The claimant has the right to appeal against the decision to reject the claim. The bankruptcy trustee and any of the bankruptcy creditors have right to appeal against the decision establishing that the claim was filed in a timely manner.

10.5. Can a filed claim be disputed and by whom?

A filed claim can be disputed by the bankruptcy trustee, a bankruptcy debtor or a creditor.

If the bankruptcy trustee has disputed a claim, the creditor will be referred to a litigation to determine the disputed claim.

If the claim for which there is an enforceable title has been disputed, the bankruptcy trustee will be obliged to file a lawsuit to prove the merits of the dispute.

If the bankruptcy debtor or the creditor has disputed the claim at examination hearing, they may initiate a litigation to prove the merits of the dispute.

The party obliged to initiate litigation related to a disputed claim must do so within 30 calendar days from the day of examination hearing at which the claim was disputed. If the party fails to do so, it will be considered that the party has waived its right to initiate the litigation.

10.6. What happens to employment contracts and workers' rights after the opening of bankruptcy proceeding?

Following the opening of the bankruptcy proceeding, employment contracts with employees will be terminated by force of law. The bankruptcy trustee will be obliged to inform the employees in writing about the termination of employment. The bankruptcy trustee may however create new employment contracts with persons that he or she needs in order to continue with business operations or with the bankruptcy proceedings.

Employees' claims that may arise from the termination of employment contract, such as those related to compensation of damage from early termination of employment contract or to severance pay can be realized only as bankruptcy claims of the general

payment order (see 10.8. - What is claim payment priority).¹⁶

Should the bankruptcy debtor have requirements for new employment, preference will be given to employees whose employment contracts were terminated after the opening of the bankruptcy proceeding, subject to meeting the job requirements.

10.7. How will the bankruptcy trustee be appointed?

Bankruptcy trustee is a person who passed the bankruptcy trustee exam and is on the list of bankruptcy trustees. The lists are kept with the district commercial courts. Bankruptcy judge appoints the bankruptcy trustee.

10.8. What is claim payment priority?

Claims are paid from the existing unencumbered assets of the company (bankruptcy estate) in line with the following priority order:

- Bankruptcy creditors of higher payment priority – claims of higher priority order are (i) claims from the period of interim administration, (ii) labor-related claims of employees for the last 12 months prior to the day bankruptcy procedure was opened – in the amount of minimum salary including social contributions, and (iii) damage claims for accidents at work or occupational illnesses,
- Bankruptcy creditors of general payment priority - the creditors who, at the time of the opening of the bankruptcy procedure, have a justified property claim against the debtor (bankruptcy creditors),
- Bankruptcy creditors of lower payment priority - for example: interest on creditors' claims from the moment the bankruptcy proceeding was opened, costs of certain creditors incurred by their participation in the proceedings, claims related to some of the debtor's free of cost services, etc.

16 Article 86 of the RS Law on Bankruptcy Proceeding

Creditors with lower payment priority will have their claims paid only after the creditors of the higher payment priority have their claims paid in full. The bankruptcy creditors of the same payment priority have their claims paid *pro rata*.

The bankruptcy court must record in a table each filed claim and its amount. The table, together with the accompanying reports and documents, is made available at the court's premises no later than 8 calendar days before the examination hearing.

10.9. How can interested parties find out what is happening with a particular bankruptcy proceeding?

Court's decision on initiating preliminary proceedings; appointing a bankruptcy trustee or a temporary bankruptcy trustee; opening, suspending or concluding bankruptcy proceedings; or rejecting a proposal to open the bankruptcy proceedings is published on the court's information board and in the RS Official Gazette. Interested parties can obtain information on the course of the bankruptcy proceedings directly from the court office. The parties in the proceedings can obtain more information online via the court's website by using access code provided by the court (see 4.1.4. - Basic steps to file a lawsuit).

10.10. Conclusion of the bankruptcy proceeding

Immediately after distribution of assets the bankruptcy judge passes a decision on conclusion of the bankruptcy proceeding. The decision, as well as the reasons for conclusion of the bankruptcy proceeding is published in the RS Official Gazette.

Example 8: Decision on conclusion of a bankruptcy proceeding

District Commercial Court in East Sarajevo, judge XY, in bankruptcy proceeding against the debtor XY, (address), outside the hearing, 26.4.2018 brought the following

DECISION

1. Bankruptcy proceeding is concluded against the debtor in bankruptcy proceeding against (name and address of the company), due to lack of bankruptcy estate, pursuant to Article 191 of the Bankruptcy Law of the Republika Srpska.
2. Bankruptcy trustee's duties (name, surname and address of the trustee) are dismissed.
3. This Decision shall be published in the Official Gazette of the Republika Srpska and on the information board of this Court.
4. Upon the validity of this Decision, the same shall be submitted to the Registry Division of this Court, which is ordered to remove the debtor from the court register.
5. The bankruptcy debtor and the trustee are informed that the legal consequences of the conclusion of the bankruptcy proceeding will occur 15 days after the publication of this Decision in the Official Gazette of the Republika Srpska.

Rationale

By the Decision of this Court, number: (Decision number), dated 2/27/2018 bankruptcy proceeding was opened over the property of the legal entity (name and address of the company), and (name, surname and address of the trustee) was appointed as the bankruptcy trustee. The announcement on the opening of bankruptcy proceeding was published in the Official Gazette of the Republika Srpska, number (number of Official Gazette), dated XX. On 4/19/2018 the Court held examination and reporting hearings at which the bankruptcy trustee submitted to the Court a report on the filed claims of the bankruptcy creditors, and the Court accepted it.

The total reported claims of creditors against the bankruptcy debtor amount to BAM XX, of which were determined and recognized claims in the amount of BAM XX, and the disputed claims in the amount of BAM XX. In the higher payment order, the declared claims in the amount of BAM XX were recognized. In the general payment order of reported claims, the amount of BAM XX was recognized, of which claims are recognized in the amount of BAM XX and the disputed claim in the amount

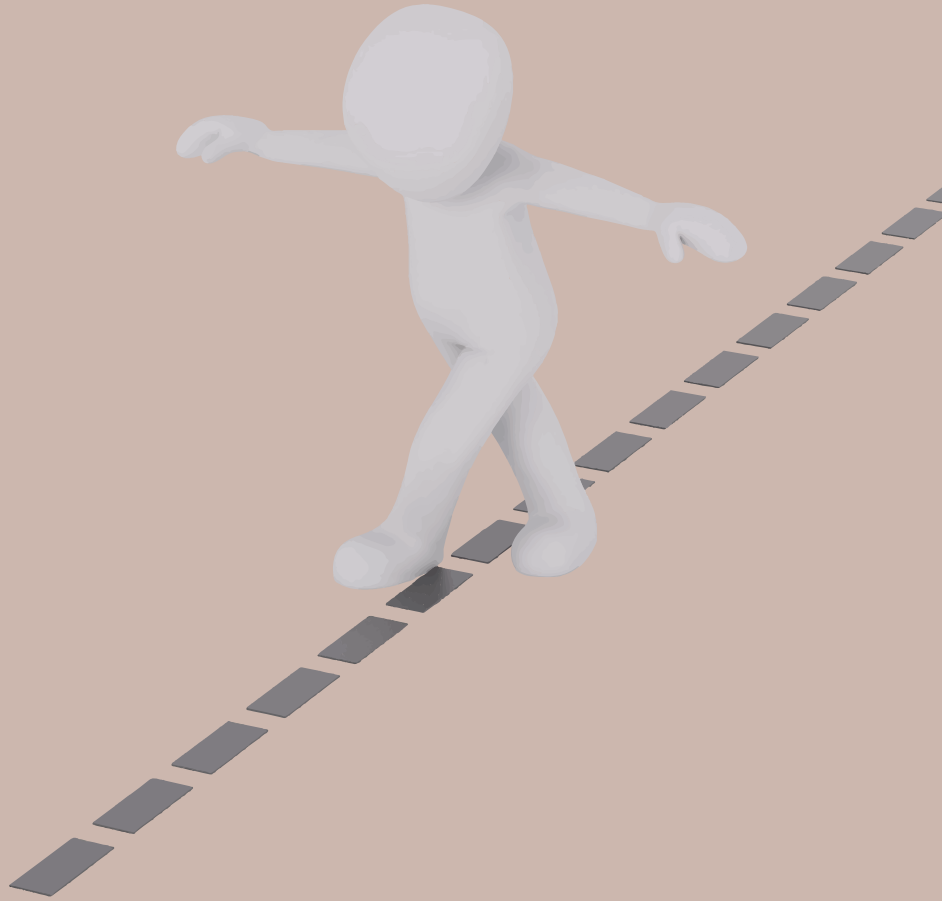
of BAM XX. The bankruptcy trustee also suggested that since the bankruptcy debtor (company name) has neither permanent nor current assets from which the obligations of permanent nor current assets from which the obligations of creditors would be fully settled, the bankruptcy procedure should be concluded in accordance with Article 191 of the Bankruptcy Law and that, upon the validity of the Decision is deleted from the court register.

On the basis of all aforementioned facts, the Court is, pursuant to Article 191, in conjunction with Article 55 and 97 of the Law on Bankruptcy of the Republika Srpska ("Official Gazette of the Republika Srpska"), on 2.3.2016, decided as it was stated in the Decision.

Instruction on legal remedy

An appeal against this Decision may be delivered to the High Commercial Court of Banja Luka within eight days from the day of publication of the Decision in the Official Gazette of the Republika Srpska through this Court. The appeal is filed in two copies.

(Reference number of the Decision)



XI.

**ENFORCEMENT
PROCEDURE BASICS**

XI ENFORCEMENT PROCEDURE BASICS

11.1. How is enforcement procedure initiated and what are the elements of the motion for enforcement?

Enforcement procedure is a court process which is to compel an entity or a person to adhere to its obligations set out in an enforceable document. An enforceable document is usually a court judgment but could also be a notarial document or other document that the law has identified as enforceable.

Enforcement procedure is initiated by a judgment creditor's motion. A judgment creditor is a person (natural or legal) who initiates the procedure and who has an enforceable document. A judgment debtor is a person (natural or legal) against whom enforcement procedure is initiated.

The motion to initiate enforcement must contain the name of the court where the enforcement is initiated, name of the judgment creditor and the name of the judgment debtor. Additionally, the motion must specify the enforceable document and must also provide a proposal of the method of enforcement of the decision to be rendered in the enforcement proceedings. It is critical to indicate what is the subject of enforcement (movables or immovable property).

For example, if the enforcement is requested by forced collection from the judgment debtor's account it is necessary to list the numbers of accounts and the name of the bank where the accounts are open. If the enforcement is requested by sale of movables it is necessary to list where the movables are located and to have a court referee make an inventory of movable items.

Before you file a motion for enforcement it is necessary that the enforceable document has a clause of *law binding enforceability*¹⁷ and that the enforceable document with the relevant clause is filed with the motion. If you have no clause, the court will not consider the motion.

¹⁷ The first instance body (court) competent to administratively enforce the decision on administrative procedure puts the clause of law binding enforceability.

Example 9: Motion for enforcement

DISTRICT COMMERCIAL COURT IN BANJA LUKA

JUDGMENT CREDITOR: "PROMET" Ltd Bijeljina, ID number 1234567890123, 10 Privrednička Street, 76300 Bijeljina, represented by the legal representative Petar Petrović, director

JUDGMENT DEBTOR: "KOMERC" JSC Banja Luka, ID number 0123456789012, 233 Berzanska Street, 78000 Banja Luka, represented by the legal representative Mitar Mitrović, director

MOTION FOR ENFORCEMENT BASED ON AN ENFORCEABLE DOCUMENT

- on funds on the bank account -

4 copies, power of attorney enclosed

I. Based on the final and enforceable judgment of the District Commercial Court in Banja Luka number (provide case file number) of (date), the judgment debtor is obligated to pay to the judgment creditor the costs of the procedure in the amount of BAM 19,333.60 with the interest at rate set by the law accruing from the day judgment was rendered until the final payment.

Evidence:

- Judgment with clause of law binding enforceability;

II. The judgment debtor failed to voluntarily within set deadlines meet its obligation referred to in point I of the motion.

III. The judgment debtor has funds in its bank account:

- no.: _____ opened with _____

IV. As the judgment debtor failed to act in line with an enforceable judgment, i.e., it has not up to date voluntarily paid the debt set by the aforementioned decision, the judgment creditor proposes that the court in line with Article 23, paragraph 1, point 1 and 166 of the RS Law on Enforcement Procedure, and in conjunction with enforcement costs in line with Article 16, Article 4 and Article 28, paragraph 2 of the same Law, issues an

ENFORCEMENT DECISION

Pursuant to final and enforceable judgment number and date _____, for collection of judgment creditor's claims namely the costs of the procedure in amount of BAM 19,333.60 with the interest at the rate set by the law accruing from the day judgment was rendered until the final payment,

enforcement is granted

by the way of seizure (confiscation) of funds that the judgment debtor has in the bank account:

- no.: _____

and by transfer of these funds to the bank account of the judgment creditor number _____ opened with the bank.

XY bank is ordered to transfer the seized amount of funds from the aforementioned account to the bank account of the judgment creditor number _____ opened with the bank, until complete settlement of judgment creditor's claims.

The judgment creditor request reimbursement of costs of enforcement procedure as follows:

- court fees for the motion and enforcement decision

DATE, SIGNATURE AND SEAL OF THE PETITIONER

11.2. Who can initiate the enforcement procedure?

A judgment creditor can initiate the enforcement procedure. Judgment creditor is a person who either initiated a procedure for the purpose of satisfying a claim, or a person for whose benefit such proceeding was initiated *ex officio*.

11.3. What is enforcement decision and what are the elements of the decision?

Enforcement decision is a decision by which a motion for enforcement is completely or partially granted or by which the enforcement is ordered *ex officio*. The decision is submitted to the parties to the proceeding and the entities that conduct enforcement (the bank, employer, Pension and Disability Insurance Fund, etc.).

The court orders enforcement over assets and items that are listed in the motion for enforcement. The enforcement decision must match the contents of the request for issuing the enforcement decision given in the motion (see part 11.1.).

11.4. Legal remedies: complaint and appeal

Complaint and appeal are regular legal remedies¹⁸ in an enforcement procedure.

The complaint is filed after you receive a first instance decision on enforcement.

The court does not monitor the statute of limitations periods *ex officio*, both parties have to do this themselves. It is filed with the court which issued the decision within 8 calendar days from the day the decision was delivered.

If there are reasons which are preventing enforcement a complaint against the enforcement decision could be filed. A complaint could particularly be filed if:

- The document, used to pass the decision on enforcement, is not an enforceable document or if the document has not become enforceable,
- An enforceable document, based on which the decision on enforcement was issued, was cancelled, annulled, modified, or repealed, i.e. if it lost its effectiveness/was determined ineffective,
- The parties agreed not to seek enforcement at all or within a certain period of time and this was agreed in a public document or a legally notarized document prepared after the enforceable document was issued,

18 Listed in the Decision

- The legal deadline, in which enforcement could have been requested, expired.¹⁹

An appeal can be filed against the court decision on the complaint within 8 calendar days from the day the decision was delivered.

The appeal is a legal remedy that can be used only when the motion for enforcement was dismissed or rejected. The second instance court will decide on the appeal.

11.5. How to efficiently collect a claim?

In order to enforce the claim efficiently and successfully, you should first check if the debtor has any property.

First, it is advised to request from the Central Bank of BiH access to information on legal entity's accounts. Namely, the report of the Central Bank of BiH can show if the debtor's accounts are closed or frozen. If the accounts are not frozen, you can propose enforcement over funds available at the bank accounts of the debtor.

In case that the state is the debtor, the procedure is the same. Still, in this case you should investigate with the competent Ministry of Finance which account is the main account and from which you are to request enforcement. Enforcement over funds of the RS, the FBiH or a canton's budget will be carried out in the amount set at a particular budget line and in line with the Law on Execution of the Budget.

Second, if the debtor's accounts are closed or frozen, you should then investigate whether the debtor has any other property. There is a possibility that the debtor has movable or immovable property. To check if the debtor owns immovable property you should send a request to access information to the competent Land Registry Office. To check if the debtor has movable property and particularly vehicles you should send a request to the competent Ministry of Interior or the IDDEEA. A request template is available at the IDDEEA website, and you can simply populate it.²⁰

The judgment creditor chooses means of enforcement that he/she believes will ensure

¹⁹ Additional complaints can be found in Article 47 of the Law on Enforcement Procedure of Republika Srpska, <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-izvrsnom-postupku.html>

²⁰ The request template and instructions are available at the following website: https://www.iddeea.gov.ba/index.php?option=com_content&view=article&id=448%3Aacces-to-information&catid=36%3Acat-modules&Itemid=94&lang=bs

collection of claims. The law prescribes multiple means of enforcement, while in practice settlement is most frequently done by seizing funds available at the debtor bank account, from the value of seized movables, or by sale of debtor's real estate.

a. Settlement through bank account

The most favourable situation for the judgment creditor, who wants to enforce a claim, is a solvent debtor whose bank accounts are known to the creditor. Information on debtor's main bank account is obtained from the RS Agency for Intermediary, IT and Financial Services.

If there are funds available at the debtor account, the court will order to the bank to transfer the enforced amount from the debtor's account to the creditor's account.

In case there are no funds or funds are insufficient, the court will order the bank to submit a report on all transactions - changes in the account which occurred 30 calendar days before the decision on enforcement was issued.

If the debtor has no funds in the account, the bank will keep the decision on enforcement and transfer the funds to the creditor once and if any new funds become available. If funds are not available permanently, the court will stop the procedure, informing the creditor and the bank about the reasons. If the debtor has multiple accounts with several banks, the bank where no funds are available will forward the decision on enforcement to the next bank.

If enforcing against the government, the petition for enforcement will not contain an account, but it will indicate that the account number belongs to the Ministry of Finance. The government makes payments voluntarily, every year, in line with the payment priority at the moment of receipt of the decision on enforcement because budget accounts cannot be frozen.

b. Settlement through sale of movable property

Enforcement could also be done via sale of movables (most frequently sale of motor vehicles). The information on motor vehicles registered to the debtor can be received from the IDDEEA as noted above.

Also, if the creditor does not have information on movables in debtor property, he/she can file a petition for enforcement without specifying exactly which movable assets he/she wishes to enforce over. In this case the court executor will make an inventory of

movables and will value them, and the creditor will be paid from the funds generated through the sale of these confiscated items.

c. Settlement through sale of real estate

Enforcement can also be done by sale of real estate. Information on real estate owned by the debtor can be obtained from the RS Administration for Geodetic and Legal-property Affairs by reference to the address of debtor's office seat or place of residence. The value of immovable property is determined by expert evaluation or information from the Tax Administration.

At the first hearing for auction, the real estate cannot be sold for an amount less than half of its appraised value. If the first sale was unsuccessful, at the second hearing the real estate will not be sold below one third of its appraised value. Parties and other creditors which claims are being settled can agree to sell the real estate for a price lower than the aforementioned, but this agreement has to be entered into the minutes. The highest bidder makes the payment within the time period set by court. Please note that the lienholders (rights based on a registered mortgage) are paid before the petitioner.

The judgment creditor can change initial means of enforcement if he/she believes that a different method would be more efficient for enforcement.



XII.

**ADMINISTRATIVE DISPUTE
BASICS**

XII ADMINISTRATIVE DISPUTE BASICS

An administrative dispute denotes proceedings whose main function is judicial control over the legality of final administrative act passed by an administrative body in administrative proceedings. The primary purpose of administrative dispute is to ensure judicial protection of the legality, rights and legal interests of individuals and persons who believe that their rights have been violated by a decision of an administrative body.

A final administrative act is a resolution or a decision by which an administrative body adjudicates on a certain right or obligation of a person or a legal entity in an administrative matter.

Administrative dispute and administrative proceedings – differences

Area	Administrative dispute	Administrative proceedings
Competent body	Court	Administrative body (e.g. Municipality of Trebinje)
Person conducting proceedings	Individual judge, i.e. a panel of three judges	Civil servant, i.e. employee of an administrative body before which proceedings are conducted
Parties in proceedings	At least two parties, namely applicant and sued party	There can be only one party - applicant (a person at whose request proceedings were instituted, i.e. against whom administrative proceedings were instituted)
Position of parties	Parties have equal position	Administrative body has a superior position over parties in administrative proceedings as it decides on exercising their rights

Nature of proceedings	Legal remedy proceedings are instituted because a party/stakeholder believes that decision/action of an administrative body has violated his/her particular right or legal interest	Ordinary first instance proceedings
Instituting proceedings	Cannot be instituted <i>ex officio</i> , but only by filing a lawsuit	By way of a proposal/ application, as well as <i>ex officio</i> in cases prescribed by administrative proceedings law
Course of proceedings	Administrative dispute cannot be continued in case of a lawsuit withdrawal	If a person who instituted administrative proceedings withdraws from the proceedings, the body before which the proceedings are conducted can continue conducting the proceedings <i>ex officio</i> or at the request of the opposing party.
Outcome of proceedings	A case does not have to be definitely adjudicated (on merits, i.e. substance) and can be returned to administrative body by way of a court ruling to repeat the proceedings.	A case is definitely adjudicated (on merits, i.e. substance)
Legal remedy	A party is not entitled to file an ordinary legal remedy (an appeal) against a decision on closing administrative dispute. A party can only file an extraordinary legal remedy (application for repeated proceedings and application for extraordinary review of court decision).	Typically, a party can file ordinary legal remedy (appeal) against a decision.

The subject matter of an administrative dispute is decision-making on the legality of individual and general final acts passed by administrative bodies in administrative proceedings, wherein your rights and obligations were decided on.²¹

The subject matter can also be the silence of the administration, that is the failure of a second instance body to pass a decision within the legally defined period, or of a first instance body when no appeal is permitted.²²

12.1. Types of administrative disputes

There are two types of administrative disputes in the case-law:

A legality dispute - the court only assesses legality of a decision passed by an administrative body, and is not authorized to revoke it or pass a decision that would modify the administrative body's decision. If the court finds the administrative body's decision not to be in accordance with legal regulations, it will annul/revoke it and return the file to the administrative body so that the administrative body can pass a new decision on that particular case.

A full jurisdiction dispute - the court assesses legality of a decision passed by an administrative body and adjudicates in the administrative matter. If the court finds the administrative body's decision not to be in accordance with legal regulations, it will annul/revoke it and issue its own decision. The court's decision will replace the decision of the administrative body in its entirety.

21 Article 1 of the RS Law on Administrative Disputes (RS Official Gazette 109/05 and 63/11) stipulates that in administrative disputes courts decide on the legality of acts by which the RS administrative bodies and organizations, bodies of local self-government units (municipalities and cities), companies, institutions and other legal entities exercising public authority, resolve on rights and obligations of natural and legal persons or other parties in individual administrative matters.

22 A second instance administrative body is the body authorized to make a decision on an appeal filed against the decision of the first instance administrative body.

12.2. Instituting administrative dispute

You can institute an administrative dispute against an administrative act passed by a second instance administrative body (the final administrative act).

You can also institute an administrative dispute against the first instance administrative act, if you have no right of appeal in administrative proceedings against such act.

Administrative dispute cannot be conducted:



- Against acts passed in matters wherein judicial redress is ensured outside of administrative dispute;
- Against acts passed in matters that cannot be subject to administrative dispute as per explicit legal provisions;
- In matters directly decided by the RS National Assembly or the President or one of the Vice-Presidents of the RS, based on their constitutional powers and provided that they have not overreached their powers.

An administrative dispute can also be instituted when a competent body (a second instance body, or a first instance body if no appeal is permitted) has failed to pass an appropriate administrative act in the administrative proceedings in response to a party's claim or an appeal (a lawsuit over the silence of the administration).

Parties in administrative dispute are:

- Applicant (a natural person or a legal entity) that believes that an administrative act has infringed some of its rights or direct personal interests provided by law. Although it does not have the status of a legal entity, an administrative body, an administrative unit, an undertaking establishment of a business entity, a community or a group of individuals etc., can also institute an administrative dispute provided that it can be a holder of rights and obligations that were subject to adjudication in the administrative proceedings. An authorized Attorney General can also institute an administrative dispute if an administrative act has infringed the law to the detriment of the RS, city or municipality that he or she represents by law.
- Sued party - administrative body that passed the final administrative act.
- An interested party - a natural person or a legal entity who has not instituted the proceedings (the proceedings were instituted by another party), who had participated in the administrative proceedings for the sake of protecting its rights or legal interests, and who believes that the final administrative act has infringed its rights or legal interests.

As in litigation, you can represent yourself in an administrative dispute.

A legal entity can be represented by a legal representative or a proxy (attorney, legal entity's employee). A natural person (apart from self-representation) can be represented by an attorney, a spouse or a common-law marriage partner, a relative by blood (to any extent in direct line and up to and inclusive of the fourth degree in a collateral line), or a relative by marriage (up to and inclusive of the second degree). A natural person can also be represented by an institution that provides free legal aid, in case he or she cannot afford an attorney for financial reasons.

You can reduce costs of the proceedings by self-representing yourself. However, given that the administrative proceedings challenge the legality of an act passed by an administrative body, lack of knowledge on your side may affect the final outcome. It is therefore essential that you make a decision on self-representation carefully.

An administrative dispute is instituted by way of a lawsuit. Below are some important guidelines on how to successfully draft and file a lawsuit.

A lawsuit is filed to the competent District Court determined based on the seat of the first instance body or its organizational unit against which's decision the administrative dispute is being instituted. The lawsuit is filed directly to the court – either through the court's Registry Office or via registered mail.

If you have submitted the lawsuit to a body other than court, and if the lawsuit arrives at the competent court after the expiration of the filing deadline, the lawsuit will be considered as filed in a timely manner if such submission to another body can be attributed to ignorance or an honest mistake of the applicant.

The deadline for filing a lawsuit in an administrative dispute is 30 calendar days from the date the administrative act has been delivered to the applicant.

You can challenge an administrative act:

- If it includes deficiencies that prevent the assessment of its legality or make it null and void;
- If it demonstrates an inappropriate or incomplete application of a law, a regulation based on a law, or a general act;
- If it was passed by an incompetent body;

- If the administrative proceedings that preceded the act had not complied with the rules of procedure, in particular, if case facts have not been fully or properly established, or if the wrong conclusion on case facts has been drawn from established facts; or
- If the competent body has, in its discretionary adjudication, overstepped the bounds of the authorities vested in it by legal provisions, and passed a decision that is contrary to the objective of vesting the authority.

The lawsuit must specify:

- First name, surname and place of residence, that is name and seat of the applicant and the sued party;
- Number and date of the administrative act against which the lawsuit is filed;
- Legal reasons for challenging the administrative act, including to what extent and in which direction the revocation of the administrative act is proposed;
- The applicant's signature;
- If the lawsuit seeks return of a thing or compensation for damage, a specific request must also be attached.

The lawsuit must be submitted along with the original or a copy of the administrative act. Copies of the lawsuit and all of its enclosures should also be provided along with the lawsuit for sued party and each of the interested parties (if any).

Typically, you will not be able to present new facts or propose new evidence. Nonetheless, this is possible if such new facts or evidence undoubtedly indicate that the case facts are obviously different from those established in the administrative proceedings, provided that you provide evidence that you were not able to present or propose such facts by the completion of the administrative proceedings without your fault.

Example 10: Lawsuit in an administrative dispute

APPLICANT: Applicant's first name, last name and place of residence, that is name and seat

SUED PARTY: Name and seat of sued administrative body

OVER: Revocation of administrative act (administrative dispute)

LAWSUIT

against Decision no. _____ of the _____ (enter *Decision number and administrative body's name*) dated (enter *date*)

I. STATEMENT OF THE FACTS WITH REFERENCE TO THE NUMBER AND DATE OF THE ADMINISTRATIVE ACT AGAINST WHICH THE LAWSUIT IS FILED

E.g.:

On _____, the sued party passed the decision no. _____, whereby it rejected as unfounded the applicant's appeal against the decision of _____ (name of first instance administrative body) no. _____ dated _____, rejecting the applicant's application _____ (indicate what the application consisted of and reason of rejection).

II. STATUTORY REASON FOR CHALLENGING THE ADMINISTRATIVE ACT

The first instance and second instance decisions are irregular and illegal, as they were passed due to misapplication of the substantive law, namely the provisions of Articles _____ and _____ of the Law on _____.

The first instance body has not presented all necessary evidence proposed by the applicant, which was fully upheld by the sued party as the second instance body, also resulting in infringement of the administrative procedure rules, all to the applicant's detriment. (Provide statement of the facts of the case.)

EVIDENCE

1. Decision _____ no. _____ dated _____.
2. First instance body's decision.

III. Considering that it is clear from all the above that the administrative procedure rules and principles have been infringed, the applicant proposes for the Court to pass the following

RULING

Decision _____ dated _____ IS HEREBY REVOKED in its entirety and the case shall be returned to the first instance body to repeat the proceedings.

(Applicant's signature)

12.3. Proceedings

Typically, the court decides in administrative disputes non-publicly, meaning no hearing is held. The court can decide to hold an oral hearing in case of a complex matter of contention, or if it finds it necessary for better clarification of the matter.

Administrative disputes in the territory of the RS are tried by an individual judge. Exceptionally, complex cases are tried by a panel of three judges.

If the hearing is held, it is managed by the president of the panel.

At the hearing, the floor is first given to a rapporteur member of the panel to present the status and substance of the dispute, without providing his or her own opinion. Thereafter, the floor is given to the applicant to state the reasons of the lawsuit, and finally to representative of the sued party and other interested parties to elaborate their viewpoints

The minutes of the hearing will be kept. The minutes will include only material facts and circumstances, as well as operative provisions of the decision.



If the hearing is held, the court will be obliged to pass a decision and produce an authenticated copy of such decision within 30 calendar days from the date of the conclusion of the hearing.

If at the public hearing the court establishes case facts different from those established in the administrative proceedings and remedies the infringements of the administrative procedure rules, the court will revoke the challenged administrative act as well as the first instance administrative act which contained the same deficiencies, and adjudicate the administrative matter itself.

12.4. Outcome of administrative dispute

The court adjudicates a dispute by way of a ruling. The ruling will either uphold the lawsuit or reject it as unfounded.

If the lawsuit is upheld, the ruling will revoke the administrative act and adjudicate the administrative matter. The ruling will replace the revoked administrative act entirely i) if the court during the hearing establishes different case facts and adjudicates the administrative matter itself, or ii) if the court adjudicates the dispute based on the facts established in administrative proceedings.

If the lawsuit is filed over the silence of the administration and the court finds it to be justified, the court will uphold the lawsuit by its ruling and mandate the competent body to pass an appropriate decision.

The court may also throw out a lawsuit in administrative dispute by way of a decision if:

- The lawsuit is untimely, premature (silence of the administration) or filed by an unauthorized person;
- The act challenged by the lawsuit is not an administrative act;
- It is obvious that the administrative act does not prejudice the applicant's right or their direct personal interest that is based on law;
- The administrative act that is being challenged by the lawsuit could have been appealed, but this has not happened;
- The matter is such that it cannot be subject to administrative dispute; or
- There is already a final court decision on the same matter.

12.5. Legal remedies

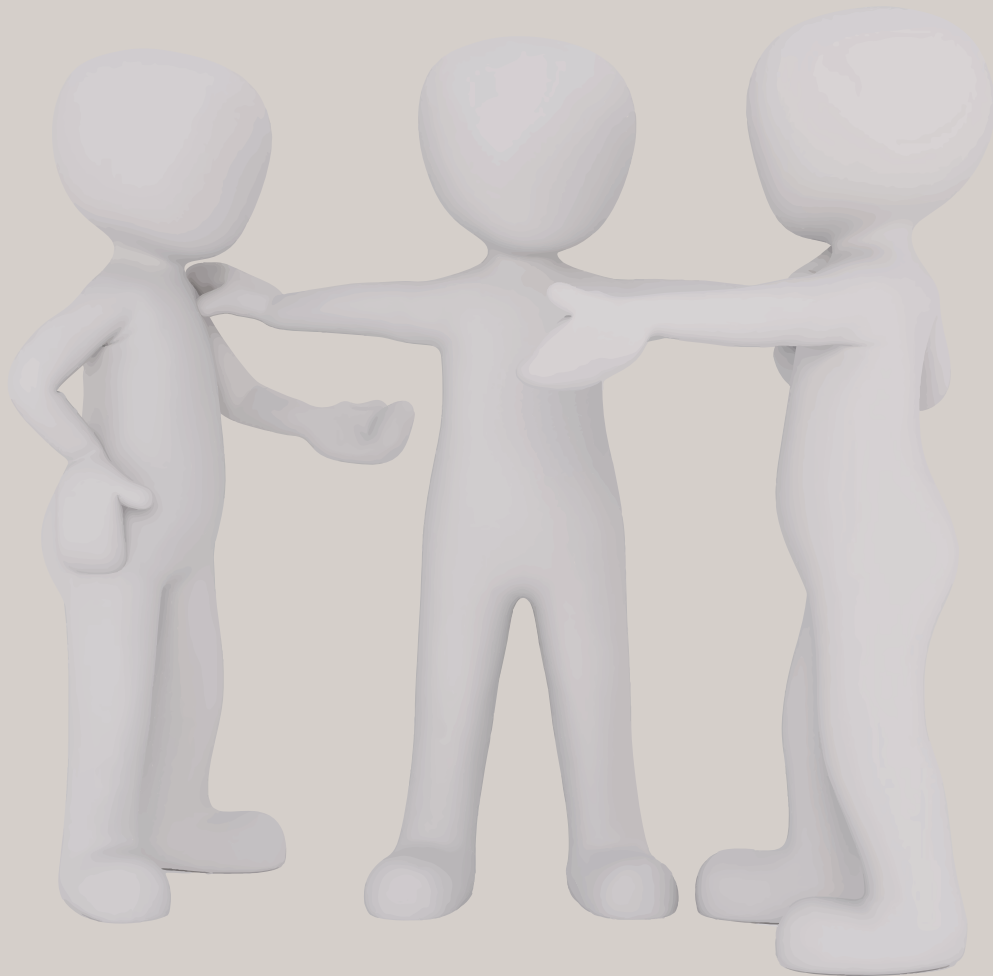
Since the decision passed in administrative dispute cannot be appealed, the parties can use the following legal remedies:

- A request for an extraordinary review of the court decision, which should be filed to the RS Supreme Court through district court that ruled in the administrative dispute.
- A request for retrial, which should be filed to district court that ruled in the administrative dispute.

12.6. Costs of administrative dispute

Administrative disputes proceedings are not free of cost for self-representation. The court will instruct you to pay the court fee before undertaking any further steps in the proceedings. Costs of administrative dispute are regulated under the RS Law on Court Fees as follows:

Type of submission	Court fee (BAM)
Lawsuit against an administrative act	100
Lawsuit in disputes related to health, pension and disability insurance, child allowance, guardianship, adoption and social assistance	20
Lawsuit for retrial	100
Request for an extraordinary review of a court decision in an administrative dispute	Twice the amount of a lawsuit fee
If the lawsuit against the administrative act is accompanied by a request for postponement of the execution of the administrative act	150
Ruling in administrative dispute proceedings where the subject matter of the dispute is appraisable	1 percent of the value of the matter of dispute but not less than BAM 100 and not more than BAM 5,000
Ruling in administrative dispute proceedings where the subject matter of the dispute is not appraisable	100
Ruling in administrative dispute proceedings for health, pension and disability insurance, child allowance, guardianship, adoption and social assistance disputes	20



XIII.

ALTERNATIVE DISPUTE RESOLUTION

XIII ALTERNATIVE DISPUTE RESOLUTION

Alternative methods of dispute resolution are a good solution for dispute settlement. They preserve good relations between the parties in dispute, help keep permanent business relations and decrease economic and social costs.

13.1. Mediation - basic characteristics

Mediation²³ in BiH is regulated by uniform laws across the country. Mediation is a process in which a third neutral person (a mediator) assists the parties to reach a mutually acceptable solution to their dispute. The parties may initiate mediation even during the court proceeding. If the court finds it appropriate the court may propose to the parties to settle the dispute by mediation.

The advantage of mediation over court settlement of disputes is that mediation is considerably faster, more favourable and a cost-efficient way for the parties to settle the dispute.



Mediation is a suitable option for resolution of the disputes if: you feel passionate about restoring good relations with the adverse party; you have an interest to stay in working relations with the adverse party even after your dispute is resolved (business partners, co-owners, founders, co-authors); you wish to settle the dispute because this is in the interest of third parties and yourself; you want to use a dispute resolution mechanism in which you can actively participate.

²³ For more information about mediation in BiH please visit the website of the Association of Mediators in Bosnia and Herzegovina www.umbih.ba and see the Guide on mediation in Bosnia and Herzegovina at: http://www.mpr.gov.ba/web_dokumenti/Vodi%20kroz%20medijaciju%20u%20BIH.pdf

Experience on use of Mediation in Dispute Resolution²⁴

The parties that used mediation highlight the following positive experiences:

- Speed of dispute resolution - most of the mediations were completed within two hours; the process, including preparation, lasted several days or weeks. All parties that have reached an agreement in mediation testify to significant time savings.
- Agreements are observed by parties in mediation - most of the agreements reached in the mediation process are observed by the relevant parties because they were in line with each party's interest. Agreements were reached in line with the interests of each party. Solutions are permanent and stable, and about 90 percent of the parties are satisfied with their contents.
- Savings - parties made substantial savings in terms of lower costs of the procedure and faster realization of claims.
- Parties keep good standing relations - in a large number of cases, parties have remained in good relations and continued to cooperate.
- The majority of the parties that failed to reach an agreement in mediation process have still not settled the dispute.²⁵

The mediation process is led by an individual mediator or a council of three mediators, depending on the will of the parties.

The parties jointly select the mediator from the list of mediators kept by the Association of Mediators. If the parties cannot agree on the mediator, the mediator is appointed by the Association of Mediators.

The mediation process is initiated by a written mediation contract signed by the parties to the dispute and the mediator. After the mediation contract is signed, the mediator, in agreement with the parties, determines the time and the best place to hold a mediation meeting.

The settlement agreement in the mediation process has the power of a writ of execution i.e. it is equivalent to a court decision.

²⁴ "From dispute to agreement - evaluation of two years of regular application of mediation in BiH", Association of Mediators in BiH link: https://www.umbih.ba/images/publikacije/od_spora_do_dogovora.pdf

²⁵ Association of Mediators in Bosnia and Herzegovina, From dispute to agreement, Evaluation of two years of regular application of mediation in BiH", Association of Mediators in BiH and Canadian Judicial Reform Project Canada - Bosnia and Herzegovina, 2009. Available at: https://www.umbih.ba/images/publikacije/od_spora_do_dogovora.pdf

Costs of the mediator as prescribed by the document of the Association of Mediators²⁶ are paid in equal shares by the parties unless otherwise specified in the mediation contract.

13.2. Arbitration - basic characteristics

Arbitration²⁷ is one of the alternative ways of dispute resolution where the decision on the dispute is rendered by an arbitrator or the arbitration council. There is always an odd number of arbiters. Arbiters are appointed from the list of arbiters. The list is kept by the Steering Board of the RS Chamber of Commerce.²⁸ Each party can select an equal number of arbiters, and arbiters selected by the parties elect the president of the arbitration council. If a party does not select an arbiter, the arbiter will be appointed by the court. The Rulebook on Foreign Trade Arbitration with the RS Chamber of Commerce sets forth the remuneration for arbiters.²⁹

The provisions on arbitration are contained in the RS Civil Procedure Code. However, the parties are allowed to contractually exclude application of domestic procedural law in case of an arbitration.

The arbitration procedure is different from mediation. If arbitration is agreed, court proceeding will not be initiated, while the mediation can be initiated even during the court proceeding. The arbitration procedure is formal and it follows special rules agreed between the parties. Mediation is more flexible and an informal manner of dispute resolution.

The parties must conclude an arbitration agreement or incorporate an arbitration clause into a contract under dispute in order to be able to start an arbitration.³⁰ The arbitration agreement may be concluded with respect to a particular dispute but also in respect to any future disputes that may arise from a particular business relationship. The arbitration

26 More information on costs of mediation can be found at: https://www.umbih.ba/dokumenti/pravilnici/pravilnik_o_nagradi_i_naknadi.pdf.

27 More information on arbitration in BiH can be found on the website of the Association of Arbiters www.associationarbitri.com.

28 See Article 5 of the Rulebook on Foreign Trade Arbitration with the Chamber of Commerce of Republika Srpska <http://komorars.ba/wp-content/uploads/2015/07/Pravilnik-o-Spoljnotrgovinskoj-arbitrazi-pri-PKRS.doc>.

29 Article 60 of the Rulebook on Foreign Trade Arbitration

30 Recommended arbitration clause can be found here: http://www.komorabih.ba/wp-content/uploads/2019/05/Preporucena_arbitrazna_klauzula.pdf

agreement is valid only if it is concluded in writing and signed by all parties. The arbitration agreement is considered concluded in writing when it is finalized by exchange of letters, telegrams, and facsimile or by other telecommunication means that provide written evidence of a contract.

The advantages of arbitration include, *inter alia*, confidentiality of the procedure, lower costs, speed of dispute resolution, decisions, and expertise of arbitrators, easier recognition and enforcement of arbitral awards.

Arbitration is a much cheaper and more efficient way of dispute resolution. An arbitral award is also a writ of execution i.e. it is equivalent to a court decision.



XIV.

**BASIC TERMS
OF LITIGATION PROCEDURE
AND ADMINISTRATIVE DISPUTE**

XIV BASIC TERMS OF LITIGATION PROCEDURE AND ADMINISTRATIVE DISPUTE

It is important to know basic terms of litigation procedure and administrative dispute. Below you can find a short overview of the terms that you could encounter during court proceeding.

Active legitimation/ legal standing Administrative body	Person's authorization to be a plaintiff in a particular proceeding. Administrative bodies are ministries, administrations, agencies, institutes, centers, offices, establishments and directorates established at all levels of government in the RS, including at entity and city/municipal level.
Arbitration	Arbitration is one of the alternative ways of dispute resolution in which the decision on the dispute is made by an arbitrator or the arbitration council (more information in Chapter Arbitration – basic characteristics).
Attorney	Authorization for representation that a person has received from the principal by a letter of attorney. Attorney can be a legal entity or a natural person.
Bankruptcy court	Court with substantive jurisdiction to conduct bankruptcy proceedings on which territory the seat of a legal entity or the residence of an individual debtor (i.e. a general partner in a partnership) is located.
Bankruptcy creditor	Creditor that at the time the bankruptcy procedure is opened has a property claims against the bankruptcy debtor.
Bankruptcy debtor	Legal entity or natural person (i.e. general partner in a partnership) against whose property bankruptcy procedure is opened. Bankruptcy debtor is subject of the bankruptcy procedure.
Bankruptcy judge	Decides on opening and closing of the bankruptcy procedure, appoints bankruptcy trustee, provides directions to the bankruptcy trustee and supervises his/her work.

Bankruptcy trustee	A natural person (who has a university degree and has passed the bankruptcy trustee exam and is on the list of bankruptcy trustees) appointed by the bankruptcy judge to run the business of the bankruptcy debtor and report to the bankruptcy judge during the conduct of the bankruptcy procedure.
Claim	Mandatory part of the lawsuit, part of the lawsuit in which the plaintiff details what it requests the court.
Commercial dispute	A dispute relating to rights and obligations on transactions of goods, services, securities, ownership and other property rights, as well as on rights and obligations arising from securities in which both parties to the proceeding are legal persons or natural persons in the capacity of independent entrepreneurs or persons in any other capacity who perform commercial or other registered activity as primary or secondary business activity.
Costs of proceeding	Costs of proceeding are court costs (lawsuit fees, judgment/settlement fee, expert evaluation fee and attorney's fees).
Creditor of bankruptcy estate	Person who has claims against the bankruptcy estate (costs of bankruptcy proceeding and debts of the bankruptcy estate).
Defendant	Legal entity or a natural person against whom the lawsuit is brought.
Dismissal of the lawsuit	The decision of the court to reject the lawsuit without review of the subject matter of the dispute because of procedural issues related to the lawsuit.
Enforceable document	A document that is the basis on which the claim of the judgment creditor is based. Enforceable documents are: court judgment, executive notary documents, etc.
Enforcement procedure	A procedure in which the courts conduct coercive collection of claims (procedure of enforcement).

Evidence produced and offered	Items used to prove assertions set out in the lawsuit. Evidence can be documents, witness or party testimonies, expert evaluation, on-the-spot investigation.
<i>Ex officio</i>	Powers exercised by an officer (for example a judge) which are not specifically conferred upon him/her. A judge has <i>ex officio</i> powers of a conservator of the peace.
Expert evaluation	Type of evidence when an expert's finding and opinion should be obtained as to establish and to assess an important fact.
Final administrative act	An act passed by an administrative body in administrative proceedings which deciding on rights/obligations of natural persons or/legal entities, and against which no appeal is allowed. As a rule, these are acts of second instance bodies passed based on an appeal in the administrative proceedings, or acts of first instance bodies passed in administrative proceedings (when an appeal is not allowed).
Final judgment	A judgment that cannot be appealed but can be contested with extraordinary legal remedies.
First instance court	Court adjudicating in the initial (first) procedure.
First instance settlement of disputes	A procedure before the court from the moment lawsuit is filed until rendering of the first instance judgment.
Hearing	The time at which the parties to the proceeding come to a designated place (usually the court) to discuss matters of significance for dispute resolution.

Interim measure	Interim measures are measures which are used to secure claims which can be brought before courts in FBiH/RS. The types of interim measures available in the BiH are interim measures relating to: (i) monetary claims; (ii) non-monetary claims relating to particular property or part(s) of property; and (iii) the securing of other rights or regarding the maintenance of an existing state of affairs.
Judgment creditor	A judgment creditor is a person (natural or legal) who initiates the procedure and who has an enforceable document.
Judgment debtor	A judgment debtor is a person (natural or legal) against whom enforcement procedure is initiated.
Lawsuit	An action to initiate a court proceeding.
Legal entity/person	"An artificial person" that has legal rights and obligations such as: legal possibility of drafting contracts, to sue or to be sued, to perform its activity, etc. It is a person, most commonly an organization or a company (business).
Legal remedy	An instrument at parties' disposal used to request competent court to re-examine a court decision.
Liquidation	A procedure by which a solvent company ceases to exist.
Liquidation court	District Commercial Court where liquidation procedure is conducted.
Liquidator	A person conducting liquidation, i.e. examining property, claims and obligations of the company facing liquidation.
Litigants	Parties to the proceeding, i.e. plaintiff and defendant.
Litigation proceeding	A court procedure in which the court discusses and adjudicates civil law disputes (e.g. collection of claims arising from sales contract, etc.).

Main hearing	Represents a series of procedural actions by the parties and the court undertaken to determine facts to which the court will apply law when delivering the decision. It is necessary for delivering of first instance decision, except in cases expressly prescribed by the law.
Maturity	Represents a moment when a claim can be collected.
Mediation	Mediation is a process by which a third neutral person (a mediator assists the parties in an effort to reach a mutually acceptable resolution of the dispute.
Minute	Document that contains information on everything that happened at a particular hearing. The minute is drawn by a court recorder based on statements that the judge dictates during the hearing.
Natural person	A human being or a person that holds legal capacity.
Non-final judgment	A judgment against which either plaintiff or a defendant can file an appeal.
Passive legitimation	Person's authorization to be defendant in a particular procedure.
Plaintiff	Legal entity or natural person who files a lawsuit before a court and demands that the other party fulfills obligation or the court to determine certain state of affairs.
Precisely defining the claim	Defining a claim during the course of proceeding depending on evidence and discovered facts. The claim can be defined more precisely in part concerning e.g. amount of the claim, date at which interest starts accruing, child visiting model, amount of proceeding costs, etc.
Preparatory hearing	First hearing during which, typically, evidence to be heard at the main hearing is proposed and during which the timeframe of the proceeding is determined.
Response to the lawsuit	A written response where the defendant responds to the assertions made by the plaintiff in the lawsuit.

Second-instance court	High Commercial Court of District Court deciding on the appeal filed.
Settlement	An agreement between the parties on the matter of dispute (in terms of entire or a portion of the claim). It can be court settlement (if concluded before competent court) or an out of court settlement.
Statute of limitations	A period after which it is no longer possible to perform an action or a period after which certain right is lost.
Submission	A document submitted to the court. Submissions can be lawsuit, countersuit, reply to the lawsuit and legal remedies.
Substantive and territorial jurisdiction	Substantive jurisdiction of the court is determined in relation to the subject matter of the dispute, and territorial jurisdiction in relation to the parties' place of residence/office seat location.
Timeliness	Acting within the time limit (deadline).



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**ANNEX I Links to the laws on
court fees, calculators
of court fees and costs of proceeding**

ANNEX I Links to the law on court fees³¹, calculators of court fees and costs of proceeding

District Commercial Court in Banja Luka: <https://www.pravosudje.ba/vstv/faces/taxCalculator.jsp?ins=161&modul=8258&kat=8292&kolona=8293>

District Commercial Court in Bijeljina: <https://www.pravosudje.ba/vstv/faces/taxCalculator.jsp?ins=162&modul=8432&kat=8469&kolona=8470>

District Commercial Court in Doboj: <https://www.pravosudje.ba/vstv/faces/taxCalculator.jsp?ins=163&modul=8505&kat=8542&kolona=8543>

District Commercial Court in East Sarajevo: <https://www.pravosudje.ba/vstv/faces/taxCalculator.jsp?ins=164&modul=8578&kat=8615&kolona=8616>

District Commercial Court in Prijedor: <https://okprivsud-prijedor.pravosudje.ba/vstv/faces/kategorijevijesti.jsp;jsessionid=4ad4f666fb2e51a0112a41b343bc313bf4b87082929e627804b8974ba331c13c.e34TbxyRbNiRb40Pch4QbxmQchj0>

District Commercial Court in Trebinje: <https://www.pravosudje.ba/vstv/faces/taxCalculator.jsp?ins=165&modul=8651&kat=8688&kolona=8689>

Cost of proceeding calculator: <https://www.pravosudje.ba/vstv/faces/TariffCalculator.jsp>

31 Page 5, Tariff no. 1, Law on Court Fees of Republika Srpska, available at: http://www.poreskaupravors.org/dokumenti/zakoni/Zakon-o-sudskim-taksama-SLGL-73_08.pdf



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**ANNEX II Contact details of courts
and organizations or institutions
that can provide additional referrals**

ANNEX II Contact details of courts and organizations or institutions that can provide additional referrals

District Commercial Court Banja Luka

Address: Gundulićeva 108, 78000 Banja Luka

Phone: 051/303-250, 051/340-460

Fax: 051/340-451

Website: <https://okprivsud-banjaluka.pravosudje.ba/>

E-Mail: okpsud-banjaluka@pravosudje.ba

Commercial District Court Doboj

Address: Svetog Save 22, 74000 Doboj

Phone: 053/241-833, 053/226-912

Fax: 053/226-923

Website: <https://okprivsud-doboj.pravosudje.ba/>

E-mail: okpsud-doboj@pravosudje.ba

District Commercial Court Bijeljina

Address: Majora Dragutina Gavrilovića 10, 76300 Bijeljina

Phone: 055/207-601

Fax: 055/207-512

Website: <https://okprivsud-bijeljina.pravosudje.ba/>

E-Mail: okpsud-bijeljina@pravosudje.ba

Commercial District Court East Sarajevo

Address: Vojvode Radomira Putnika bb, 71123 East Sarajevo

Phone: 057/327-317

Fax: 057/327-313

Website: <https://okprivsud-istocnosarajevo.pravosudje.ba/>

E-mail: okpsud-istocnosarajevo@pravosudje.ba

Commercial District Court Trebinje

Address: Kralja Petra I Oslobođioca 48, 89101

Trebinje

Phone: 059/245-301

Fax: 059/245-330

Website: <https://okprivsud-trebinje.pravosudje.ba/>

E-mail: okpsud-trebinje@pravosudje.ba

Commercial District Court Prijedor

Address: Jovana Raškovića 6

Prijedor

Phone: 052/490-615

Fax: 052/212-248

Website: <https://okprivsud-prijedor.pravosudje.ba>

Email: okpsud-prijedor@pravosudje.ba

Note: Contact details of all Basic and District Courts in Republika Srpska can be found at: <https://www.pravosudje.ba/vstv/faces/vijesti.jsp?id=17083>

For additional information³², you can contact the following institutions/organizations:

Trade Chambers / Agencies:

- Agency for Development of the Municipality of Modriča, <http://www.raomd.org/>
- Agency for Economic Development of the City of Prijedor, www.preda.rs.ba
- Agency for Local Economic Development of the Municipality of Kotor Varoš, <https://alerk.biz/>
- Agency for the Development of Small and Medium Enterprises in RS, www.rars-msp.org
- Agency for the Development of Small and Medium Enterprises Ljubinje
- Agency for the Development of Small and Medium Enterprises of the City of Bijeljina, www.agencijamsp.com
- Agency for the Development of Small and Medium Enterprises of the City of Trebinje, www.msptb.net
- Agency for the Development of Small and Medium Enterprises Srbac, www.apissrbac.wordpress.com
- Agency for the Development of Small and Medium Enterprises Ugljevik, www.ugramsp.com

32 The organizations/institutions listed do not necessarily provide legal aid but may provide additional information/advice or make a referral.

- Chamber of Commerce and Industry of Republika Srpska, www.komorarars.ba
- City Development Agency Banja Luka, www.cidea.org
- City Development Agency East Sarajevo, www.rais.rs.ba
- Development Agency Čelinac Municipality, www.racelinac.com
- Development Agency Gradiška, www.raga.ba
- Economic Development Agency of Municipality of Mrkonjić Grad, www.azprmg.co.nr

Associations:

- Association Arbitri, www.associationarbitri.com
- Association for Democratic Initiatives (ADI), www.adi.org.ba
- Association for Development NERDA, www.nerda.ba
- Association of Bankruptcy Trustees of BiH
- Association of Judges of RS, www.udruzenjesudijars.org
- Association of Legal Associates and Advisors in the Courts and Prosecutor's Offices in BiH, <https://ussbih.pravosudje.ba/>
- Association of Mediators in Bosnia and Herzegovina, www.umbih.ba
- Association of Women Judges in BiH, www.uzsbih.ba
- Law Institute in Bosnia and Herzegovina, www.lawinstitute.ba
- Union of Employers' Associations of Republika Srpska, www.unijauprs.org
- Vaša prava BiH, www.vasaprava.org

Bar associations:

- Bar Association of Republika Srpska, www.advokatskakomora.ba
- Information and Educational Center of the Bar Association of Republika Srpska in Bijeljina
- Information and Educational Center of the Bar Association of Republika Srpska in Doboj
- Information and Educational Center of the Bar Association of Republika Srpska in East Sarajevo³³

33 Contact information of information and educational centres can be found on the following website: http://advokatskakomora.ba/latn/?page_id=1027



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**ANNEX III Table of templates'
examples**

ANNEX III Table of Templates' Examples

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