

Decision Enacting The Law On Amendments To The Law On Banks Of The Federation Of Bosnia And Herzegovina

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1. (d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) “measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

Considering that the amendments and changes to the Federation Law on Banks which were adopted by the Federation Parliament

in July 2002 (Official Gazette of the Federation of Bosnia and Herzegovina 41/02) omitted to adopt certain important amendments, which were recommended by the working group concerned with the same;

Bearing in mind the necessity to improve transparency and accountability of those in charge of the conduct and management of banks in order to strengthen the confidence of the public and investors;

Bearing in mind the need to enlarge the powers available in the event of a provisional administration in order to better protect the interest of depositors and other creditors of a bank under provisional administration;

Having considered and borne in mind all the matters aforesaid, I hereby issue the following

DECISION

ENACTING THE LAW ON AMENDMENTS TO THE LAW ON BANKS OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Law which follows, and which forms an integral part of this Decision, shall come into effect pursuant to article 5 thereof, but on an interim basis until such time as the Parliament of the Federation of Bosnia and Herzegovina adopts the same in due form, without amendment and with no conditions attached.

This Decision shall come into effect forthwith and shall be published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina.

Sarajevo, 21 October 2002

*Paddy Ashdown
High Representative*

THE LAW ON AMENDMENTS TO THE LAW ON BANKS OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

**(Official Gazette of the Federation No. 39/98; 32/00; and
41/02)**

Article 1

Article 34a shall be changed to read as follows:

The Supervisory Board, Management and members of their immediate family who are living in the same household, or have joint investments are each required to file a signed disclosure statement, within thirty calendar days of the Supervisory Board or Management member concerned assuming position.

This disclosure statement will describe all assets, including information on all of the investments, any loans or credits of over 20,000 KM, and information on legal entities for which 5% or more of shares or equities with voting rights is owned, as well as any other information required by the Agency.

The form of the Disclosure Statement will be promulgated by the Agency. Each person, who is required to file a disclosure statement hereunder, must also file an annual update of this disclosure statement with the Agency as of the first day of each calendar year.

Article 2

Article 45 a, Paragraph 1, the words "legal entities" shall be deleted.

Article 3

Article 57 shall be changed to read as follows:

The Provisional Administrator shall be responsible for

conserving the assets and assuming control of the operation of the bank and making a determination as to whether to continue the operations of the bank.

During the tenure of the Provisional Administrator of a bank, the powers of the Supervisory Board, Audit Board, Management, and shareholders of the bank to take decisions or actions shall be suspended.

The Provisional Administrator shall have all the powers of such Supervisory Board, Audit Board, Management, and shareholders, in accordance with the Agency's decision on his/her appointment.

The Provisional Administrator may immediately suspend the powers of the bank representatives on the Supervisory Board, Management and General Meeting of Shareholders of the bank's Subsidiaries and in all of the bank's Participation Interests and exercise directly or through appointees all powers of such representatives.

The authorities of the provisional administrator include:

1. sell assets and purchase liabilities of the bank as may be necessary to conserve the appropriate value of the bank or to protect the interests of the depositors and other creditors of the bank;
2. cancel or unilaterally amend agreements the bank has signed, including suspension of interest accruals and change of interest rates, fees and maturity dates and may offset loans with deposits held by the same natural person or legal entity;
3. issue orders concerning dismissal, demotion or temporary removal from a position, or the distribution of responsibilities between the bank's employees;
4. suspend the acceptance of deposits by the bank;

5. sign any contracts and documents and accept liabilities in the name of the bank;
6. lodge claims in the name and interests of the bank, and represent the interests of the bank in court;
7. suspend the payment of any kind to members of the Supervisory Board, Management, Audit Board, and shareholders of the bank;
8. make the pay-out of deposits of natural depositors to such depositors, within the funds available and on a pro-rata basis if applicable.

Subject to the availability of reserves for priorities from points 1 and 2 of Article 63 of this Law, the maximum amount to be paid out per natural depositor shall be the aggregate of all of his or her deposits less any legal or contractual debt owed to the bank by the natural depositor or 5000 KM, whichever ever is smaller.

The deposits shall exclude funds kept in any account whereby the account title is not transparent as to its ownership or any non-nominative deposit or assets kept in a bank's safe deposit box. Also excluded shall be deposits, loans or any other transaction for which the natural depositor has obtained rates, whether preferential or otherwise, and/or any other financial concession from the bank which may have helped to aggravate the bank's financial condition.

The bank's Supervisory Board members, Management, shareholders of at least five (5) percent of the bank's capital and persons responsible for carrying out the statutory audits of the bank's accounting documents are not entitled to any pay-out.

The immediate family within the third degree of consanguinity or marriage of persons mentioned in the previous sentence as well as third parties acting on behalf of the same persons are also not entitled to any pay-out.

9. with the approval of the Agency, may make the pay-out of deposits of legal entities and other depositors on a pro rata basis after paying or reserving funds for the higher priorities and reserving funds for operation and expenses. The Provisional Administrator will comply with other requirements in item 8 of this Article;

10. file a request with the Agency for issuing a decision to all banks in the Federation of BiH to cease payments from accounts of defaulting debtors of the bank under provisional administration and/or those debtors' guarantors and their Related Entities, which they have in other banks, until those liabilities are fulfilled;

11. requiring that all transfers of common and preferred shares including the sale, assignment, or pledge must have the prior written approval of the Provisional Administrator and the Agency.

The Agency is required to review and act within 15 days in accordance with the Provisional Administrator's requests from paragraph 5, item 10 of this article.

The Agency's decision in Paragraph 5, item 10 of this Article and in Paragraph 6 of this Article, is to be implemented as the first priority claim before any other payment order and before any other collection as determined by other laws.

The Provisional Administrator may delegate some of his authority to others.

The Provisional Administrator is obliged to implement laws, regulations, and orders issued by the Agency.

Article 4

In all other aspects, the Law is unchanged.

Article 5

This Law shall enter into force on the eighth day after it is published in the "Official Gazette of the Federation of BiH".