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**Collective Redress
in CEE & SEE**

Bosnia & Herzegovina

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The State of Bosnia and Herzegovina (“BiH”) consists of two separate entities – the Federation of Bosnia and Herzegovina (“FBiH”) and Republika Srpska (“RS”) – as well as an autonomous district under the direct sovereignty of the State – Brcko District of BiH (“BDBiH”). Separate legal regimes are essentially applicable in each of these entities and in the BDBiH, although certain matters are regulated by State-wide laws. Unless otherwise indicated, the answers provided below apply to the entire territory of BiH.

a) Current collective redress regime

• What forms of collective redress are available in Bosnia and Herzegovina?

The entities (FBiH and RS) and the BDBiH each have their own Law on Civil Proceedings (together the “**Laws on Civil Proceedings**”)¹, which set out rules regulating special civil procedures for the protection of collective rights and interests. These rules provide that associations, bodies, institutions and other organisations established under the terms of the statute may file an action for the protection of collective interests and rights against any natural or legal person who, through certain activities or generally through their actions or omissions, severely violates or seriously endangers such collective interests and rights. The registered or legally prescribed activities of the entity bringing the claim must include the protection of legally established collective interests and rights of citizens, and such authorisation must be explicitly provided for by a special law and under the conditions prescribed by statute.

The Laws on Civil Proceedings also regulate the matter of co-litigants.

In addition, the BiH Consumer Protection Act², adopted at a State-wide level, also provides for a collective redress mechanism. Under the BiH Consumer Protection Act, many administrative bodies, in addition to consumer associations and a specialised Ombudsman for Consumer Protection, have the right to initiate legal proceedings before the competent court(s).

Another collective redress mechanism for consumers is provided by the BiH Competition Act³, which is also adopted at a State-wide level. Under this Act, consumer associations can initiate procedures for consumer protection before the BiH Competition Council, which is the authority competent to take measures against distorted market competition. If these associations are not satisfied with the BiH Competition Council’s ruling, they can bring an administrative dispute against the ruling before the courts of BiH.

1 Law on Civil Proceedings (“*Official Gazette of FBiH*”, Nos. 53/03, 73/05, 19/06 and 98/15); Law on Civil Proceedings (“*Official Gazette of RS*”, Nos. 58/03, 85/03, 74/05, 63/07, 105/08, 45/09, 49/09, 61/13, 9/2021 and 27/24); Law on Civil Proceedings of BDBiH (“*Official Gazette of BDBiH*”, Nos. 28/18 and 6/21).

2 BiH Consumer Protection Act (“*Official Gazette of BiH*”, Nos. 25/06 and 88/15).

3 BiH Competition Act (“*Official Gazette of BiH*”, Nos. 48/05, 76/07 and 80/09).

b) Key features of collective redress in Bosnia and Herzegovina

- **Is collective redress available in all areas of law or only in certain sectors?**

The collective redress mechanism and joint litigants, as defined in the Laws on Civil Proceedings, are permitted in all areas of law and in all claims that can be pursued before the civil courts. The Laws on Civil Proceedings explicitly provide that collective redress is available for the protection of interests that concern the environmental, moral, ethnic, consumer, anti-discrimination and any other interests that are guaranteed by law and that are violated or endangered in an egregious manner by the actions of the person against whom the action is filed.

On the other hand, legal actions brought under the BiH Consumer Protection Act and the BiH Competition Act are restricted to those particular areas of law.

- **Who is entitled to bring an action (e.g. individuals, groups, qualified entities)?**

Individuals are entitled to file individual claims. However, collective actions can be brought by institutions, bodies and associations that are authorised by special laws to file for collective redress on condition that their registered or legally determined duties include the protection of legal interests.

For example, under the BiH Consumer Protection Act, a right to bring an action before the court lies with the BiH Ombudsman for Consumer Protection, consumer protection associations and other authorised institutions and interested parties.

Furthermore, under the BiH Competition Act, consumer associations can initiate consumer protection procedures before the BiH Competition Council. In addition, the BiH Competition Council is entitled to initiate these proceedings *ex officio*.

- **Which mechanism applies – opt-in, opt-out or both?**

The Laws on Civil Proceedings are silent on whether collective proceedings should follow the “opt-in” or “opt-out” principle. Considering the restrictive wording of the law, it should be assumed that the legislator has followed the “opt-in” approach. However, the law has not defined how consumers should opt into collective proceedings, how they will be informed or what kind of effects judgments will have on consumers who have not opted in, all of which would be valuable to enable the functioning of this mechanism in practice. The lack of court practice relating to collective redress, as well as limited analysis of this matter in legal theory, gives rise to uncertainties over how these issues will be addressed in the future.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

Under the Laws on Civil Proceedings, associations, bodies, institutions and other organisations can file for collective redress where they meet the following conditions: (i) they are authorised by special laws to file for collective redress; (ii) their registered or legally determined duties include the protection of legally established collective interests and the rights of citizens; (iii) there is a serious infringement of a collective interest or a serious threat of infringement. There is no minimum threshold for claims.

Joint litigation is permissible if (i) joint litigants are legally united regarding the subject matter of the dispute or if their rights or obligations arise from the same factual and legal basis (material joint litigants), or (ii) the subject of the dispute involves claims or obligations of the same type and which are based on essentially the same factual and legal basis, and if the same court has both subject-matter and territorial jurisdiction for each claim (formal joint litigants); or (ii) if so specified by another law.

- **What remedies are available (e.g. monetary compensation, injunctive measures, redress measures)?**

The collective redress measures available to consumers under the Laws on Civil Proceedings include: (i) declaratory relief determining that consumers' rights have been violated; (ii) prohibition of certain actions that violate or infringe upon consumers' rights or interests, including prohibition of the use of certain contractual provisions or business practices; (iii) condemnatory relief ordering the performance of actions to mitigate damage or to prevent further damage; and (iv) the publication of the judgment in the media. In addition, an injunction may be sought before or during the proceedings.

The Laws on Civil Proceedings exclude the possibility of filing collective claims for damages. In fact, the law explicitly stipulates that only individual claims for damages may be filed. In this sense, the findings issued in the judgments on collective actions (*i.e.* that consumers' rights have been violated) have a binding effect only for future individual claims for damages. However, this does not exclude the right of multiple individuals / entities to file a joint claim provided that the statutory conditions for joint litigants are met.

Collective claims for damages are, however, permitted under the BiH Consumer Protection Act, although this Act does not further specify how the damage to the collective interest of the consumers should be calculated. Due to the legal gaps preventing this mechanism from being implemented and the exclusion of collective claims for damages as an available remedy for collective redress under the Laws on Civil Proceedings, the provisions on collective claims for damages under the BiH Consumer Protection Act currently seem to be unachievable. The lack of court practice relating to collective redress, as well as limited analysis of this matter in legal theory, give rise to uncertainties over how these issues will be addressed in the future.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

In general, all damage needs to be determined and proven on a case-by-case basis. Indeed, the determination of one claim does not determine the remaining claims but could be used as material evidence in other proceedings based on similar factual and legal circumstances.

- **What types of damage is recoverable (e.g. economic loss, damage to property)?**

General rules on compensation of damage apply in this respect. In this sense, damage is defined as a reduction of property (direct damage) and/or a prevention of an increase of property (loss of profit), as well as the infliction of physical or psychological pain or fear on another person (non-material damage).

- **How are damages quantified? On what basis are damages divided among claimholders?**

Damages are typically assessed based on the specific circumstances of the case, including the extent of harm suffered by each individual claimant (in the case of joint litigants). This also means that each plaintiff is awarded redress equal to the actual damage suffered. The objective is to place the injured party in an equal or similar situation to that which he or she would have been in if the damaging event had not occurred.

- **What is the settlement structure, if any?**

No standardised settlement framework exists for collective redress. Settlements may be reached at any juncture, either extrajudicially through private agreements or within the courtroom, resulting in a court-issued protocol of the agreement formulated by the parties before the judge. However, court approval is not required.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

Where a collective action is brought before a competent court, the general rules relating to litigation in that court apply.

In cases of collective redress, the company against whom the collective action has been filed may, under the Laws on Civil Proceedings, file a claim for: (i) declaratory relief determining that consumers' rights have not been violated; (ii) damages from both the organisation filing the collective action and/or the alleged victims in whose name the action has been filed; and (iii) the publication of the judgment in the media.

The company/alleged perpetrator may also file a claim for compensation of “special damage”, which will be quantified at the court’s discretion if the collective action is found to be “obviously unfounded” and if, because of the proceedings and the media coverage, the reputation and business interests of the relevant company have been seriously harmed.

- **Is there a deadline by which claimholders must join proceedings?**

Claimholders can join proceedings until the end of the preliminary hearing phase. If the request to join proceedings is submitted after the defendant has entered a response to the action, the defendant’s consent will be required.

- **Are there any time limits on initiating court proceedings?**

There is no time limit for bringing collective actions. However, general statutes of limitations apply and are observed by the courts where the defendant raises a statute of limitations objection (since the courts do not apply statutes of limitations *ex officio*).

The limitation period depends on the type of claim. However, the general limitation period is five years in FBiH and BDBiH, and ten years in RS, from the moment the claim arose.

For damages claims (individual claims or collective claims for damages), the limitation period is three years from the moment the damaging act, the perpetrator and the damage itself were discovered (subjective limitation period) and five years from the moment the damage occurred (objective limitation period).

- **Is pre-trial discovery available?**

The Laws on Civil Proceedings do not provide for a pre-trial discovery process akin to that in common law jurisdictions like the United States. Civil judicial procedure in BiH typically involves the exchange of evidence during the proceedings, with parties submitting relevant documents and information to the court as part of their pleadings and during the preliminary hearing. However, during civil proceedings, the courts – at the request of a party – can order the opposing party or third parties to disclose certain documents.

d) Costs and funding of collective actions

- **Is there a rule as to who has to bear the court fees / legal fees? Does the “loser pays” principle apply?**

The “loser pays” principle applies, with the unsuccessful party required to bear the prevailing party’s costs of the proceedings. Consequently, the successful party is entitled to recover necessary and appropriate costs, encompassing court fees, other incidental expenses and their own legal costs based on the lawyer’s tariff (in FBiH, the attorney fees recoverable from the opposing party cannot exceed the average net monthly salary in FBiH per legal action, valid at the time the action was performed). If the parties only win in part, the legal costs are divided between the parties on a *pro rata* basis.

- **How are the costs of proceedings shared among class members?**

As a general rule, the costs of proceedings are borne by the co-litigants in equal shares. If there is a significant difference in the co-litigants’ shares in the subject matter of the dispute, the court will determine the share of the costs that each co-litigant will bear according to their proportionate share. Co-litigants are not liable for the costs caused by the special litigation actions of individual co-litigants.

- **Is third-party litigation funding permitted in Bosnia and Herzegovina?**

Although not explicitly regulated, third-party litigation funding is generally permitted in BiH.

- **Are there any restrictions on third-party litigation funding?**

As there are no special rules regulating third party funding, there are no prescribed restrictions that would apply.

- **Are contingency fees permitted in Bosnia and Herzegovina?**

In general, contingency fee arrangements between clients and attorneys are not permitted. However, an additional success fee may be negotiated. This may involve agreeing to a certain markup on the attorney’s regular fees in the event of success.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

The BiH Consumer Protection Act provides that where a contract has been concluded in BiH between a domestic consumer and a foreign trader, there is an obligatory prorogation of jurisdiction in favour of the BiH court. Any clause that is contrary to this provision is deemed null and void under the BiH Consumer Protection Act. Any contract between a domestic consumer and a foreign legal or natural person or any contract on distance sales, regardless of the merchant's headquarters, will be considered a contract concluded in BiH.

This provision suggests that BiH courts have exclusive jurisdiction over every consumer contract concluded in BiH, and that every contract concluded with a consumer that is a national of BiH is considered a contract concluded in BiH. However, it remains unclear if this obligatory prorogation of jurisdiction in favour of the BiH court applies only to individual consumer claims or also to actions for collective redress filed by associations or institutions for the purpose consumer protection. As far as we are aware, there are no published legal precedents on this matter.

- **Can claims be brought by residents of other jurisdictions?**

Generally speaking, the international jurisdiction of BiH courts is not limited to parties residing in BiH. However, the limitations of international jurisdiction in cross-border cases require that, in the absence of a jurisdiction agreement between the parties, a connection must exist with the jurisdiction of the BiH courts. Such a connection arises, for example, when the place of damage is in BiH or when a company against which the claim is filed is seated or registered in BiH.

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

The Representative Actions Directive (EU) 2020/1828 requires further reforms in BiH, especially with regard to introducing collective claims for damages, which, in turn, will likely enhance the effectiveness of the collective redress mechanism in BiH. It is unclear, however, when these reforms will be implemented in BiH.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

Collective redress is rarely sought in BiH. Currently, they are most often seen in the area of public utility services (telecommunications, electricity supplies and heating) and the banking sector, and their popularity is growing in activities related to environmental protection.

However, given that collective redress has only been regulated by civil procedure legislation for a few years, we can expect these types of claims to increase in the future.

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

Low risk.

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