



Vlasic, 26<sup>th</sup> and 27<sup>th</sup> May 2005

**Rights of Foreigners to Acquire  
Ownership in BiH, and Transfer of  
Nationalized Property**

# Rights of Foreigners in Purchase of Bankruptcy Debtor's Property I

- According to ZOVO (FBIH), art. 88, foreign individual or legal entity **operating in FBIH**, can acquire ownership over **real property** in FBIH
- According to ZOSPO (RS) 82a, foreign individuals and legal entities **operating in RS** can acquire ownership over business buildings, premises, machines, apartments, and residential buildings, under the conditions of **reciprocity**
- According to both laws, foreign individuals (**who do not and who do operate in FBIH/RS**) are not limited in acquisition of **moveable property** FBIH art. 87, RS 82, under the same conditions as our citizens, and in FBIH, foreign legal entities as well (in RS, only legal entities that operate, and according to the reciprocity – art. 82 and 82a)

# Rights of Foreigners in Purchase of Bankruptcy Debtor's Property II

- Foreign individual with **permanent residency** in FBIH/RS can acquire ownership over an apartment or a residential building (FBIH art. 89, RS 82b)
- In both entities, foreign individuals and legal entities can be limited in their rights (**FBIH** only for **real property**, and in RS for **moveable property as well**), under the conditions of reciprocity (RS 82a and 82b, FBIH 91, par. 1)

# Rights of Foreigners in Purchase of Bankruptcy Debtor's Property III

- In order for foreign individuals and legal entities to appropriately acquire rights (over real property in FBiH, or real and moveable property in RS) over property of a bankruptcy debtor, during the purchase (tender, free deal, or public auction) they should present evidence of reciprocity (FBiH Ministry of Justice issues such certificates, RS?)
- By the end of March 2005, BIH Ministry of Foreign Affairs was supposed to have gathered data on existence of contractual or actual reciprocity, and submit it to the Ministries of Justice of FBiH/RS for issuance of reciprocity certificates

# Law on Foreign Investment Policies

- BIH regulation (17/98), which regulates investments of foreign individuals and legal entities non-resident and not operating in BiH, with aim to establish control over a company in BiH, in percentage higher than 10% of equity of domestic legal entity
- This regulation, therefore, regulates rights of foreigners when, by their acquisition of property (real and moveable), they acquire a share in a legal entity in BiH higher than 10% of the company's equity
- According to art. 12, foreigners can acquire the same rights as domestic legal entities, where only for citizens of former Yugoslavia countries, reciprocity is required
- According to article 19 of the Law, all provisions of other laws (hence the provisions of ZOVPO/ZOSPO too) contrary to this Law cease to apply

# Question?

- Should we insist on existence of reciprocity certificate before approaching public sale, or only to pay attention to it in execution of contract or order on award?

# Ban on Transfers of Nationalized Property

- According to the Law on Transfer of Real Property (Official Gazette “SFRJ”, 38/78, 29/80, 4/89, 22/91, Official Gazette “RBIH” 21/92, 3/93, 13/94, 18/94), articles 16a, 16b, 16c, in FBIH there is ban on transfer of real property acquired in nationalization, agrarian reforms, regrouping of holdings, land consolidation etc
- Legal transactions and other documents executed contrary to these provisions are void (art. 16e)
- In RS, there is no such ban in the Law on Transfer of Real Property (Official Gazette “SFRJ” 38/78, 29/80, 4/89, 22/91 and Official Gazette RS no. 29/94), and transfer of such property is allowed
- Today, can property indicated in articles 16a, 16b, 16c be transferred in FBIH?

# Ban on Transfers of Nationalized Property

- By Law on Initial Balance of Businesses and Banks (OG FBIH 12/98, 40/99) it is stipulated in article 3, par. 4 that “registered disposal right becomes ownership of that in whose favor the disposal right was registered”
- Law on Construction Land from 2003 has prescribed that owner of a building also becomes the owner of the land underneath and around the building, which is necessary for its regular use
- These two laws practically derogate the provisions of articles 16a, 16b, i 16c of the Law on Transfer of Real Property in regard to real estates over which companies had registered disposal right, and construction land underneath and around the building, according to the principle that “**subsequent law derogates the earlier one**”



# Question?

- How does one get an insight in documentation showing the legal basis of public (state) ownership?
- In FBIF, what do you do with that property in bankruptcy? Subsequently found property?