

Pursuant to Article 5 of the Agreement Between the Government of the United States of America and the Government of the Federal Republic of Yugoslavia concerning economic, technical and related assistance signed in Belgrade on March 6, 2001, the Ministry of Justice of the Republic of Serbia and the Government of the United States of America have agreed, for the purpose of implementation to sign the following

## MEMORANDUM OF UNDERSTANDING

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE MINISTRY OF JUSTICE OF THE REPUBLIC OF SERBIA

### I. PURPOSE AND SCOPE

1. The Government of the United States of America, acting through the United States Agency for International Development (USAID), and the Ministry of Justice (MoJ) of the Republic of Serbia, hereinafter collectively referred to as the Parties, share the goal of further reforming the Serbian bankruptcy and enforcement system, as well as ensuring efficiency in the conduct of bankruptcies and enforcement proceedings. Legal security, a legislative framework in line with internationally recognized standards, as well as predictability of results, are conditions necessary for the creation of a modern market economy. Bankruptcy, as the collective and proportional settlement of creditors and an efficient tool for solving problems of companies facing serious financial difficulties, and enforcement, as a mechanism for individual settlement and a tool for ensuring successful completion of court disputes, are decisive factors for any foreign investor involvement. For these particular reasons, cooperation between the Parties in implementing the Bankruptcy and Enforcement Strengthening Activity (BES) Project should result in an improved regulatory framework and increased efficiency of the relevant implementing institutions, leading to increased foreign direct investments in Serbia, and contributing to the overall development of the Serbian economy. The Parties recognize the benefits of strong operational cooperation in advancing this goal.

### II. BACKGROUND ON BES

1. On May 31, 2006, USAID established BES, a comprehensive program of technical assistance to strengthen the regulatory and institutional framework crucial to the implementation of the bankruptcy system, and, in addition, provide assistance to strengthen the regulatory and institutional framework necessary for ensuring the successful enforcement of court judgments. The project also contemplates technical assistance and knowledge development in both areas.
2. BES may be presented through a description of its two key components: support to enforcement system reforms, aimed at ensuring better protection of creditor

rights, enforcement of Commercial Court judgments, including non-judicial enforcement and enforcement based on authentic documents; and support to bankruptcy system reforms, aimed at assisting the implementation of all features of new bankruptcy legislation, through both reorganization and liquidation of insolvent debtors, as well as accelerated privatization of insolvent state- and socially-owned enterprises (SSOEs) using bankruptcy as a privatization tool.

3. Key BES Counterparts include the Ministry of Justice in the enforcement segment, and the Ministry of Economy, the Privatization Agency Bankruptcy Unit (PABU), and the Bankruptcy Supervision Agency (BSA) in the bankruptcy segment. In addition, BES will cooperate with Commercial Court judges and enforcement officers, as well as with licensed bankruptcy administrators.

### III. SEPARATE MOU FOR BANKRUPTCY

1. As the BES bankruptcy component is primarily within the competence of Serbian Ministry of Economy, The Government of the United States of America is to sign a separate Memorandum of Understanding (MoU) with the Ministry of Economy, as the appropriate body for bankruptcy proceedings.

### IV. IMPLEMENTATION

1. To achieve the purposes of this MoU, the Parties, individually and subject to the availability of funds, will jointly cooperate on technical assistance. Consistent with the above goals, to the extent practicable, the Parties will support and cooperate with the BES project in carrying out its objectives. The nature of the assistance and coordination between the Parties is more fully described in the Annex attached to this MoU. In order to provide the assistance described in this MoU, USAID may enter into such contracts and other instruments with public and private parties as USAID deems appropriate. Because USAID's undertakings herein will be subject to such instruments, in the event of any conflict between the terms of such instruments and the terms of this MOU, the terms of such instruments shall prevail.

### V. BILATERAL AGREEMENTS

1. The assistance discussed in this MoU is part of the United States' program of assistance to the Republic of Serbia within the scope of the Agreement Between The Government of the United States of America and the Government of the Federal Republic of Yugoslavia Concerning Economic, Technical and Related Assistance, dated 6 March 2001, and is subject to the terms and conditions of that agreement, including provisions relating to exemptions from taxes and customs duties.

### VI. AVAILABILITY OF FUNDS

1. All undertakings of the U.S. Government pursuant to this MoU are subject to the availability of funds and to further agreement between USAID and such public and private parties, regarding the provision of in-kind assistance. This MoU is not intended to effect an obligation of funds by USAID.

## VII. COMPLIANCE WITH US LAW AND REGULATIONS

1. USAID shall obligate, commit and expend funds and carry out operations pursuant to this MoU only in accordance with the applicable laws and regulations of the United States.

## VIII. INFORMATION AND IMPLEMENTATION LETTERS

1. USAID and the Ministry of Justice of the Republic of Serbia shall provide each other with such information as may be needed to facilitate provision of the assistance and to evaluate the effectiveness of this assistance. USAID may periodically, two times per year, issue implementation letters to provide additional information on matters discussed in this MoU. The Parties may also use jointly agreed letters to confirm their mutual understandings with respect to implementation of this MoU, including changes in elements of the attached Annex.

## IX. AMENDMENT AND MODIFICATION

1. This MoU may be amended or modified by written agreement of the Parties. Elements of the attached Annex may be changed by written agreement of the Parties without formal amendment of this MoU.

## X. SUSPENSION

1. In the event –
  - the Ministry of the Justice of the Republic of Serbia withdraws from or fails to comply with any provision of this MoU;
  - USAID determines that a situation has occurred which impedes accomplishment of the goal of this Memorandum;
  - USAID determines that continuation of assistance would result in a violation of U.S. law or regulations; or
  - USAID determines that suspension is in the best interest of the U.S. Government, USAID may, at its option for the reasons stated above, take steps to immediately suspend, in whole or in part, provision of assistance under this MoU and provide prior written notice of its actions to the Ministry of Justice of the Republic of Serbia.
2. In the event of partial suspension, such notice shall specify affected activities. If after sixty (60) days from the date of such notice, USAID determines that the cause or causes for suspension have not been corrected, USAID may terminate assistance and provide written notice of its action to the Ministry of Justice of the Republic of Serbia.

## XI. TERMINATION

1. Either Party may terminate this MoU, in whole or in part, by giving the other Party thirty (30) days written notice. In the event of partial termination, such notice shall specify affected activities. Termination of this MoU will terminate any responsibilities of the Parties to provide financial or other resources for this activity, except for payments which they are committed to make pursuant to non-cancelable commitments entered into with third parties prior to the termination of this MoU.

XII. PUBLICITY

1. The Parties agree that the assistance provided under this MoU will be given appropriate publicity as a program to which the U.S. government has contributed.

XIII. AUTHORIZED REPRESENTATIVES

1. The Parties shall be represented by those holding or acting in the offices held by the signatories to this MoU. Each Party may, by written notice, identify additional representatives authorized to represent that Party for all purposes other than executing formal amendments to this MoU.

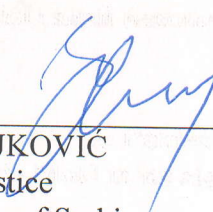
XIV. LANGUAGE

1. This MoU is prepared in both the English and Serbian languages, in two copies each, one copy in each language respectively.

XV. EFFECTIVE DATE

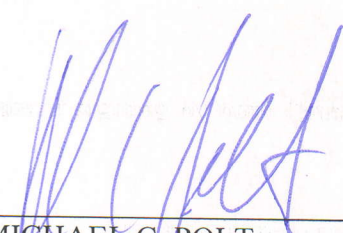
1. This MoU shall become effective on the date of signing by both Parties.

In witness whereof, the Parties, each acting through their duly authorized representatives, have caused this MoU to be signed in their names and delivered as of January 18<sup>th</sup>, 2007.



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ZORAN STOJKOVIĆ  
Minister of Justice  
of the Republic of Serbia



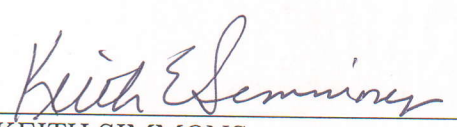
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MICHAEL C. POLT  
U.S. Ambassador  
to the Republic of Serbia



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RADOMIR LAZAREVIĆ  
President of the High Commercial Court



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KEITH SIMMONS  
USAID Mission Director

## ANNEX

Consistent with the above goals, to the extent practicable, the Parties will support and cooperate with the USAID-funded BES project in carrying out its objectives. The nature of the support and coordination between the Parties is detailed below.

The Ministry of Justice agrees to cooperate and assist in implementing BES project activities, including:

1. Cooperation and support in promoting and discussing the main findings of the comprehensive BES Baseline Assessment Report on the current state of the enforcement proceedings, both in terms of the existing legal framework and its implementation; The Assessment includes presentation and evaluation of enforcement regimes in the region;
2. Cooperation and support in establishment of a Key Enforcement Leadership Group that will consider key issues for reform in the Serbian enforcement system in coordination with BES enforcement experts;
3. Cooperation and support in BES Project's efforts to determine the weaknesses of the existing system, propose the changes necessary for the proper and effective functioning of the system, and consensus-building activities that should result in broader support to the enforcement system overall reform, including publishing of the surveys, analysis and recommendations made;
4. Cooperation and support in BES Project's activities aimed at determining whether there is a need for the introduction of a Draft Law on Private Bailiffs and Enforced Collection Agency or other regulatory authority for private enforcement officers;
5. Cooperation in and support for an initiative to amend or change the current Enforcement Law, in an endeavor to ensure improved, functional and effective enforcement system, including support for the formation of a working group to draft amendments, laws or regulations, if necessary;
6. Exchange of information and data between the Parties, as well as support to access to and exchange of information and data between the BES project and other institutions from within the purview of the MoJ, including any and all information and data necessary for the realization of aims defined in this MoU;
7. Appointment of an MoJ official as a direct counterpart to the BES project, to be available for consultation on project implementation on a regular basis, and to meet periodically at the request of either Party, to share information on project progress;
8. Support, cooperation and participation in meetings and conferences, and in promotional and other activities aimed at ensuring a more active role of the professional community and the general public in enforcement proceedings, as

well as foster broader-based social consensus relating to possible changes to present legislative framework;

9. Implementation of other agreements, as necessary, further detailing cooperation necessary for the successful undertaking of BES project activities.

This Annex contains nine (9) provisions.