



**Christian Schmidt**  
*The High Representative for  
Bosnia and Herzegovina*

Sarajevo, 8 April 2022

Foreign Investors Council of Bosnia and Herzegovina  
Association of Banks of Bosnia and Herzegovina  
Foreign Trade Chamber of Bosnia and Herzegovina  
Chamber of Commerce of the Federation of Bosnia and Herzegovina  
Chamber of Commerce and Industry of Republika Srpska  
Chamber of Commerce of Sarajevo Canton  
Chamber of Commerce of Tuzla Canton  
Chamber of Commerce of Zenica-Doboj Canton  
Chamber of Commerce of Una-Sana Canton  
Chamber of Commerce of Bosnia-Podrinje Canton  
Chamber of Commerce of Hercegovina-Neretva Canton  
Chamber of Commerce of Posavina Canton  
Chamber of Commerce of Central Bosnia Canton  
Chamber of Commerce of West Herzegovina Canton  
Chamber of Commerce of Canton 10  
Chamber of Commerce of Brcko District of Bosnia and Herzegovina  
Union of Employers' Associations of Republika Srpska  
Union of Employers' Associations of the Federation of Bosnia and Herzegovina  
Employers' Association of Brcko District of Bosnia and Herzegovina

Dear All,

I am writing to you with regard to the issue of State Property. At the outset let me be very clear:

*The RS Law on Immovable Property Used for Functioning of Public Authority is unconstitutional, against the Constitutional Court decisions, and is therefore anti-Dayton. It also goes against the *Temporary Prohibition of Disposal of State Property*, by which any such disposal of State property is null and void.*

The entry into force of the aforementioned Law would undermine the rule of law and erode the legal certainty and predictable business and investment environment in the Republika Srpska.

In the BiH Constitutional Court decision from July 2012 (Case No. U-1/11), the Court explicitly established the following:

- BiH is the titleholder of the entire State Property (including assets of the former SFRY and the former SRBiH, but also public goods)
- The competence to regulate this matter falls within the exclusive responsibility of the BiH Parliamentary Assembly.
- There is a true necessity and positive obligation of BiH to resolve this issue as soon as possible.

These views were reiterated in several other decisions of the BiH Constitutional Court related to agricultural land, forests and forestland, rivers and other public goods.

Regrettably, BiH still has no state-level legislation regulating State Property. The absence of the state law - combined with the evident refusal of the RS authorities to respect and implement the relevant decisions of the BiH Constitutional Court - create legal chaos and uncertainty in property relations in the RS itself and put at risk investments by a physical or legal person in that entity.

I urge you, as a representative of the business community in BiH, to advise your members to be aware of and abide by the existing legal regulations – including the State Property Disposal Ban and the relevant decisions of the BiH Constitutional Court – when planning or undertaking investments and other business activities in BiH, particularly in the RS.

This means thoroughly checking the legal/ownership status of properties and avoiding investments or any legal transactions involving State Property assets in BiH, again particularly in the RS.

Exercising due caution safeguards your best interest not only in the short term but also in the future as the strengthening of legal certainty and rule of law is the best guarantee of sustainable and profitable investments in Republika Srpska and by extension in Bosnia and Herzegovina.

I retain the necessary instruments to take intermediate measures as long as there is no State-level legislation in force.

Sincerely,



Christian Schmidt

Sarajevo, 8. april 2022. god.

Vijeće stranih investitora Bosne i Hercegovine  
Udruženje banaka Bosne i Hercegovine  
Vanjskotrgovinska komora Bosne i Hercegovine  
Privredna/gospodarska komora Federacije Bosne i Hercegovine  
Privredna komora Republike Srpske  
Privredna komora Kantona Sarajevo  
Kantonalna privredna komora Tuzla  
Privredna komora Zeničko-dobojskog kantona  
Privredna komora Unsko-sanskog kantona  
Privredna komora Bosansko-podrinjskog kantona  
Privredna/Gospodarska komora Hercegovačko-neretvanske županije  
Gospodarska komora Posavskog kantona  
Privredna komora Srednjobosanskog kantona  
Gospodarska komora Zapadno-hercegovačke županije  
Gospodarska komora Kantona 10  
Privredna komora Brčko Distrikta Bosne i Hercegovine  
Unija udruženja poslodavaca Republike Srpske  
Udruženje poslodavaca Federacije Bosne i Hercegovine  
Udruženje poslodavaca Brčko distrikta Bosne i Hercegovine

Poštovani,

obraćam Vam se u vezi s pitanjem državne imovine. Na samom početku, bit ću sasvim jasan.

*Zakon Republike Srpske o nepokretnoj imovini koja se koristi za funkcionisanje javne vlasti je neustavan, protivan odlukama Ustavnog suda, te je stoga antidejtonski. On je takođe protivan i Privremenoj zabrani raspolaganja državnom imovinom, po kojoj je svako takvo raspolaganje državnom imovinom ništavo.*

Stupanjem na snagu navedenog zakona narušila bi se vladavina prava i ugrozila pravna sigurnost te predvidivo poslovno i investiciono okruženje u Republici Srpskoj.

Odlukom Ustavnog suda BiH iz jula 2012. godine (Predmet br. U-1/11) Sud je izričito utvrdio sljedeće:

- BiH je titular cjelokupne državne imovine (uključujući i imovinu bivše SFRJ i bivše SRBiH, ali i javna dobra),
- kompetencija za uređivanje te materije u isključivoj je nadležnosti Parlamentarne skupštine BiH,
- postoji istinska potreba, a i pozitivna obaveza da BiH ovo pitanje riješi što je prije moguće.

Ovi stavovi ponovljeni su u nekoliko drugih odluka Ustavnog suda BiH koje se odnose na poljoprivredno zemljište, šume i šumsko zemljište, rijeke i druga javna dobra.

Nažalost, BiH još uvijek nema zakon na državnom nivou kojim se uređuje oblast državne imovine. Nepostojanje državnog zakona – u kombinaciji s evidentnim odbijanjem vlasti Republike Srpske da poštuju i provedu relevantne odluke Ustavnog suda BiH – stvara pravni haos i nesigurnost u imovinsko-pravnim odnosima u samoj Republici Srpskoj i dovodi u opasnost ulaganja od strane fizičkih ili pravnih lica u tom entitetu.

Pozivam Vas, kao predstavnika poslovne zajednice u BiH, da savjetujete svoje članove da budu svjesni i da se pridržavaju postojećih zakonskih propisa – uključujući i zabranu raspolaganja državnom imovinom i relevantne odluke Ustavnog suda BiH – prilikom planiranja ili preduzimanja investicija i drugih poslovnih aktivnosti u BiH, a posebno u Republici Srpskoj.

To znači temeljnu provjeru imovinsko-pravnog statusa imovine i izbjegavanje ulaganja ili bilo kakvih pravnih poslova koji uključuju državnu imovinu u BiH, opet posebno u Republici Srpskoj.

Opreznim postupanjem štitite svoje najbolje interese ne samo kratkoročno već i u budućnosti, jer je jačanje pravne sigurnosti i vladavine prava najbolja garancija održivih i profitabilnih investicija u Republici Srpskoj, a samim tim i u Bosni i Hercegovini.

Zadržavam neophodne instrumente u cilju poduzimanja privremenih mjera sve dok na državnom nivou nema na snazi odgovarajućeg zakona.

S poštovanjem,

Christian Schmidt  
Visoki predstavnik

### 1. What does State Property include?

- Property of the former SFRY (property that belongs to the State of BiH pursuant to the international Agreement on Succession Issues, i.e. “succession assets”)
- Property of the former SRBiH (for which the right of disposal and management belonged to the former Socialist Republic of Bosnia and Herzegovina or its legal predecessors before 31 December 1991)
- Certain categories of the former “general people’s property” or “socially owned property”, such as agricultural land
- Public goods such as forests and forest land, rivers and waters, etc.

### 2. Who owns State Property? How should the State Property be apportioned and regulated?

Bosnia and Herzegovina, as the legal successor of the former (Socialist) Republic of Bosnia and Herzegovina, is the titleholder and owner of the entire State Property.

BiH Parliamentary Assembly has the exclusive competence to adopt legislation regulating relevant issues related to State Property, primarily its distribution between various levels of authority.

As the Entities do not have the constitutional competence to regulate the ownership over State Property, any unilateral adoption of laws or other unilateral actions of an Entity – as seen in case of Republika Srpska – or any lower level of authority is unconstitutional and counter-productive for achieving acceptable and sustainable solution for State Property.

### 3. How can the State Property be disposed of?

Notwithstanding the provisions of any other law or regulation, State Property, as defined in the Law, may be disposed of only in accordance with the provisions of the Laws on the Temporary Prohibition of Disposal of State Property. Any decision, act, contract or other legal instrument disposing of State Property concluded contrary to provisions of the disposal ban shall be null and void.

A decision disposing of or transferring certain State Property assets can only be adopted by competent institutions of BiH, pursuant to the Constitution of BiH and relevant decisions of the Constitutional Court of BiH.

### 4. What should I keep in mind as an investor?

**Please be informed and aware of the existing legal regulations and limitations. Act prudently when planning or undertaking investment / business activities. Make sure that you clarified and verified the legal status of the property you plan to invest in. Conduct a thorough review of relevant property records, primarily the land book excerpts and cadastral copies. When reviewing the most recent registration, check the quoted legal basis. Request to see the history/overview of previous registrations, to make sure that the assets in question do not include State Property that is under the Disposal Ban and/or subject to relevant decisions of the Constitutional Court of BiH. For additional information and assistance, turn to competent institutions such as the Office of the Public Attorney of BiH.**



### 1. Šta podrazumijeva pojam državna imovina?

- Imovina bivše SFRJ (imovina koja pripada državi BiH na osnovu međunarodnog Sporazuma o pitanjima sukcesije, tj. "imovina iz sukcesije")
- Imovina bivše SRBiH (na kojoj je pravo raspolaganja i upravljanja pripadalo bivšoj Socijalističkoj Republici Bosni i Hercegovini ili njenim pravnim prednicima prije 31.12.1991. godine)
- Određene kategorije nekadašnje "općenarodne imovine" ili "društvene imovine", poput npr. poljoprivrednog zemljišta
- Javna dobra poput šuma i šumskog zemljišta, rijeka i voda, itd.

### 2. Ko je vlasnik državne imovine? Kako bi se državna imovina trebala raspodijeliti i regulisati?

Bosna i Hercegovina, kao pravni slijednik bivše (Socijalističke) Republike Bosne i Hercegovine, jeste titular i vlasnik cjelokupne državne imovine.

Parlamentarna skupština BiH ima isključivu nadležnost za donošenje zakona kojima se regulišu relevantna pitanja u vezi s državnom imovinom, prvenstveno njena raspodjela između različitih nivoa vlasti.

Budući da entiteti nemaju ustavnu nadležnost da regulišu vlasništvo nad državnom imovinom, svako jednostrano donošenje zakona ili druge jednostrane radnje entiteta – kao u slučaju Republike Srpske – ili od strane bilo kojeg nižeg nivoa vlasti je neustavno i kontraproduktivno za postizanje prihvatljivog i održivog rješenja za pitanje državne imovine.

### 3. Kako se može raspolagati državnom imovinom?

Bez obzira na odredbe bilo kojeg drugog zakona ili propisa, državnom imovinom se, prema definiciji iz Zakona, može raspolagati isključivo u skladu s odredbama Zakona o privremenoj zabrani raspolaganja državnom imovinom. Svaka odluka, akt, ugovor ili bilo koji drugi pravni instrument kojim se raspoložuje državnom imovinom, a koji su zaključeni suprotno odredbama Zabrane raspolaganja, ništavi su. Odluku o raspolaganju ili prenosu određene državne imovine mogu donijeti isključivo nadležne institucije BiH, u skladu s Ustavom BiH i relevantnim odlukama Ustavnog suda BiH.

### 4. Šta trebam imati na umu kao investitor?

Molimo da se informišete i upoznate s postojećim zakonskim propisima i ograničenjima. Postupajte oprezno kada planirate ili preduzimate investicione/poslovne aktivnosti. Pobrinite se da prethodno razjasnite i provjerite imovinsko-pravni status imovine u koju planirate investirati. Obavite detaljan pregled relevantnih imovinskih evidencija, prvenstveno zemljišnoknjižnog uložka i posjedovnog lista. Kada pregledavate najnoviji upis, tj. uknjižbu, provjerite navedeni pravni osnov. Tražite na uvid historijat/pregled ranijih upisa, kako biste se uvjerali da predmetna imovina ne sadržava državnu imovinu koja je pod zabranom raspolaganja i/ili je predmet relevantnih odluka Ustavnog suda BiH. Za dodatne informacije i pomoć obratite se nadležnim institucijama, kao što je Pravobranilaštvo BiH.