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IFC SmartLessons

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How to Change a Law in Six Months: Improving Auction Procedures for Immovable Collateral under Foreclosure

In Albania, auction procedures for immovable collateral under foreclosure are very time-consuming and complicated. Due to provisions in the Civil Procedural Code (CPC), if there is no other bidder, the creditor must buy the goods in the second auction at a fixed price set at 80 percent of the "assessed" market value of the collateral. In some cases, the amount that the creditor must pay is higher than the debt to be recovered; if so, the creditor (i.e., the bank) must pay the difference to the debtor. In addition, due to Bank of Albania regulations, banks have to sell the building purchased through these auctions immediately, and it may happen that the resale has a negative result for the bank. This SmartLesson describes how SPI Albania (see box) succeeded in preparing a regulatory proposal to address these problems that was subsequently enacted by the Parliament through a law amending several articles of the CPC.



Background

Between February and March 2008, the Albanian Association of Banks (AAB) asked that the newly established SPI Albania undertake a project to improve the auction procedures for immovable collateral under foreclosure. This was not a new issue, as the Ministry of Justice had already prepared amendments to the CPC in 2006. Because the proposed amendments did not fully meet the needs of the banking sector, the AAB Legal Committee released its own counterproposals. However, the Parliament failed to discuss the Ministry of Justice's proposal because of a lack of political will at the time for tackling the contentious issue of balancing protection of borrowers vs. safeguarding creditors' rights.

The SPI Albania Secretariat identified three areas of reform: (i) the CPC on auction procedures, as it provides a regulatory framework for auction procedures; (ii) the bailiff office, as it implements the foreclosure process; and (iii) the appraising standards. (The lack of standards used in evaluating the

buildings raised suspicions about the fairness of the value given to the foreclosed collateral.) The SPI Committee approved the inclusion of this project in SPI Albania's 2008 Financial Modernization Program.

Based on the discussion with the AAB Secretariat, the SPI Secretariat drafted the terms of reference for the project—according to a methodology built on the European Union's (EU) "Better Regulation" concept.¹ The AAB appointed the National Commercial Bank's chief executive officer, Mr. Seyhan Pencapligil, as Project Owner.² He, in turn, assigned the Project Manager's responsibilities to his Legal Department director, Ms. Veronika Prifti, while the Bank of Albania appointed Ms. Rudina Gurishti, the deputy director of the Legal Department as Co-Manager. Other

¹ The EU "Better Regulation" concept refers to building an evidence-based regulatory framework following extensive consultations with all stakeholders. The methodology involves a sequence of key steps, such as: (1) scoping the problem, (2) identifying possible solutions, (3) assessing the impact of these solutions on regulated firms, authorities and consumers, (4) conducting policy consultations, and (5) formulating final recommendations.

² National Commercial Bank (BKT) is a long-standing IFC client in Albania.

What Is SPI Albania?

With the support of the World Bank's Convergence Program^a, the Bank of Albania and the Albanian Association of Banks joined forces in January 2008 to create the Special Projects Initiative (SPI) Albania, a public-private partnership for mobilizing local expertise to address financial-sector modernization opportunities that were unmet by donor assistance. SPI Albania's objective is to develop management processes and methodological tools to support a multi-annual large-scale financial-sector modernization program. The partnership is led by an SPI Committee composed of high-level officials from the partner institutions: the Bank of Albania, the Albanian Association of Banks, the Financial Supervision Authority, the Ministry of Finance, and the Consumer Protection Agency (part of the Ministry of Economy, Trade, and Energy). The SPI Committee approves an Annual Financial Modernization Program, prepared by the SPI Secretariat after extensive consultations with local stakeholders and the donor community, reviews work in progress, and endorses the final outputs of the program. The Annual Financial Modernization Program is executed by [working groups](#) composed of local experts from the public and private sectors. Each team is led by a [Project Owner](#) assisted by a [Project Manager](#) and a [Project Co-Manager](#) (together the Project Management Team). The team carries out analyses and prepares proposals for regulatory changes based on the European Union's Better Regulation methodologies. Proposals are signed off on by the Project Management Team and eventually endorsed by the SPI Committee before being transmitted to relevant authorities for their consideration. A permanent two-person SPI Secretariat (Director for Operations and the Director for Financial Modernization Program and Analytics) and other part-time experts support the partnership activities. The SPI Secretariat acts as a convener, performs studies of the international experience, undertakes regulatory impact assessments, and conducts surveys and consultations as well as prepares all project documents, including drafting the final recommendations coming from the different working groups.

a In July 2005, the World Bank's Financial and Private Sector Vice Presidency launched the pilot Convergence Program, co-funded with a €1.5 million Trust Fund contributed by Italy's Ministry of Economy and Finance, focusing on Southeastern Europe. The Convergence Program helps create a country institutional infrastructure with incentives and skills (analytical, consultative, and implementation) that support large-scale financial sector modernization programs. Feedback from market participants and financial product users, using Regulatory Impact Assessment and market consultation techniques, is essential to designing regulatory measures that effectively address market failures. IFC conducted an independent evaluation of the Convergence Program activities as part of a global review of public-private partnerships for private and financial sector development in early 2009.

project stakeholders (banks, Ministry of Justice, Bailiff Office, Appraisers' Association, etc.) were invited to be part of the Project Working Group (PWG) responsible for executing the project. The Albania IFC Access to Finance officer was also invited to join the PWG to facilitate coordination with other ongoing IFC activities.

In its first meeting, the PWG decided to revisit the 2006 AAB proposals, which covered 18 CPC articles affecting bank-lending activities. The SPI Secretariat aggregated the proposed amendments and supporting arguments submitted by PWG members with information about other countries' legislation in order to facilitate consensus building. Importantly, to facilitate negotiations with the Ministry of Justice, the SPI Secretariat regrouped the 18 proposed changes into four clusters of decreasing strategic importance: a) seven core changes that increase the efficacy of the enforcement system, b) another seven changes that further improve the efficacy of the system, and c) four further changes that achieve fairness and equal treatment among borrowers.³ The proposed amendments were then subject to a qualitative and quantitative cost-benefit analysis and subsequent consultations among PWG member institutions. The PWG discussed the feedback gathered through consultations and agreed on the final recommendations, which were later endorsed by the SPI Committee. The SPI Secretariat invited an international expert of the EU judiciary reform mission to Albania (EURALIUS) to act as peer reviewer and provide support to PWG members in formulating the amendment proposals. After four meetings between July and October 2008, the PWG finalized its recommendations on two of three project

components: amending the auction procedures in the CPC, and improving the proposed law on the private bailiff.⁴

Project Impact

The project had as its main outputs the following five [documents](#): a) detailed [Terms of Reference](#) for the project, b) background notes on [enforcement of collateral](#) and on the [international bailiff experience](#), c) a questionnaire on [banks' difficulties in dealing with the Bailiff Office](#), d) a [summary of the main findings](#) from a Regulatory Impact Assessment Questionnaire, and e) the PWG final recommendations on [amendments to the Civil Procedural Code](#) and on [improving the bailiff service](#).

In December 2008, the Albanian Parliament approved a law amending the CPC containing 15 of the 18 PWG's recommendations and a law on the private bailiff service, drawing extensively on the PWG's analytical work. The most immediate and visible effect of the amendment proposals will be a reduction of the enforcement process by 120 working days. According to the Regulatory Impact Assessment performed with the banks' support, the five-year benefits for the banking community are estimated to be €15.5–18.5 million. On an annual basis, these benefits amount to 5 to 7 percent of the banks' operational expenses. According to the estimates, the PWG recommendations would improve the ranking for Albania by seven positions in the Contract Enforcement indicator of the World Bank Group's Doing Business reports.

³ Details can be found in Annex 1 (page 7) of the [final recommendations](#).

⁴ The third component (improving the appraisal standards) was undertaken by the IFC Access to Finance (A2F) team.

Lessons Learned

1) Map your project against other similar or related initiatives to avoid overlapping and to better use existing resources.

The problem addressed by the project affected multiple stakeholders, including not only national and international financial institutions (such as the European Bank for Reconstruction and Development), but also other donors. Moreover, the issue was one that could be affected by interventions of other organizations, due to its impact on the Doing Business indicator on enforcing contracts. Because of this, the SPI Albania Secretariat was in extensive [communication](#) with other international financial institutions and the Ministry of Justice in order to align the project with similar initiatives, to coordinate all stakeholders' efforts in solving the problem, to avoid eventual overlapping, and to better use existing resources. Through this round of consultations, the SPI Albania Secretariat found no parallel initiatives for improving the auction procedures, although there was an IFC intention to start a project on appraising standards for buildings in the future. Consequently, the SPI Albania Secretariat asked IFC to undertake this latter project directly.

2) Enhance the chance of success from the early stages of the project by working with the key local institution in charge of enactment.

The SPI Albania Secretariat raised the Ministry of Justice's awareness on this project from the beginning. The result of the three successive invitation letters was the appointment of a representative from the Ministry of Justice as a member

of the PWG. This representative was able to facilitate cooperation with the respective departments involved and the correlation of actions between SPI Albania and the ministry. Because of its participation in the PWG, the Ministry of Justice felt comfortable including in the draft law for amending the CPC most of the SPI Albania PWG recommendations. In addition, these consensus-building activities facilitated the eventual enactment by the Parliament of the Ministry of Justice's amendment proposal.

3) Combine local public-private expertise and international technical assistance as the main source of ideas to find solutions.

Because the PWG carried out the analyses and prepared the proposals for regulatory changes, the identified solutions could fit real needs, as they were formulated by the people facing difficulties. In addition, the promoters assumed ownership of the amendment proposals and acted for their enactment. However, in order to facilitate identification of the solutions and to reach consensus among various stakeholders, the PWG needed international benchmarking and independent technical assistance. The most practical approach was to look first to already established assistance programs operating locally. In this project case, EURALIUS (the European Assistance Mission to the Justice System in Albania) acted as peer reviewer, providing international experience and opinions on the documents produced under this project, as part of their own activities (that is, there was no out-of-pocket cost to SPI Albania).

4) Achieve a balanced composition of the working group members in order to have all stakeholders' interests addressed.



Project Manager Veronika Prifti briefs the audience. Edvin Libohova, President of the Association of Albanian Banks, and Ramona Bratu are in attendance. (Photo taken by Anuela Ristani, SPI Albania).

To ensure that technical consensus was reached by all stakeholders, thus increasing the chances of smooth enactment of the final proposals, the SPI Albania Secretariat invited all private and public institutions involved in this issue (i.e. banks, the Central Bank, Ministry of Justice, Appraisers' Association, Ministry of Finance, and IFC) to take part in the project by appointing representatives to the PWG. In determining the representatives from the banks, SPI Albania addressed the invitations following consultations with and through the AAB Secretariat, taking care to ensure a fair representation of the market segments (large, medium, and small banks).

5) Leverage project management team expertise and leadership to summarize the work of the multiple stakeholders.

The task of revising the CPC and formulating amendment proposals that had to be agreed upon by more than 10 different members of the working group was quite challenging and time-consuming. In such cases, project management team expertise and leadership are crucial for assuming the responsibility of formulating draft proposals for the working group's consideration and for building up a consensus on commonly acceptable solutions. For this project, the Project Manager and Co-Project Manager met and together formulated, based on the individual proposals of the PWG members, a set of draft PWG proposals facilitating this consensus building.

6) Increase the efficiency of the project by using a structured approach and standard documents.

As mentioned above, the SPI Albania Secretariat used a [project management technique](#) inspired by the EU Better Regulation methodology.⁵ According to it, the design of quality regulations should follow a sequence of four main steps⁶ to encourage a systematic consideration of local conditions (and avoid unintended consequences arising from "cut and paste" solutions adopted in other countries). For each of these steps, the SPI Secretariat prepares a standardized document for PWG discussion. With each document discussed and approved in a single PWG meeting, the final solution can be reached after four PWG meetings in about three months.

⁵ While universally applicable because it is based on the well-known "market failure" analysis, this methodology is particularly relevant for countries, such as Albania, that aspire to join the EU. "Better Regulation" is quickly becoming the "language" of EU business environment and financial regulators.

⁶ See footnote #2.

Conclusion

This project, which addressed one of the banks' priority concerns, will have an important effect on the Albanian economy. Its story and successful finalization were disseminated to the financial community at a conference in January 2009.

SPI Albania plans to follow up on the enactment of the amendments to the CPC with a seminar to review the challenges to both the authorities and the banks of implementing the new CPC articles. It also plans to perform an assessment of the impact of the amendments on the banking system after one year of implementation.



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