**Terms of Reference and Scope of Services**

##### REPUBLIC OF CROATIA

#### **Ministry of Justice**

##### JUSTICE SECTOR SUPPORT PROJECT (JSSP)

**IBRD Loan No. 78880-HR**

#### **Consulting services**

for

**Technical Assistance in Operationalizing the**

**Personal Insolvency Framework – Training of Professionals**

**Background**

1. The Republic of Croatia has received a Loan from the International Bank for Reconstruction and Development (IBRD) towards the Justice Sector Support Project (JSSP). The JSSP is intended to be a key vehicle for a multi-year program to modernize the judiciary and prosecutors’ offices in the Republic of Croatia. The over-arching goal of the JSSP is to strengthen the efficiency of the justice sector. The JSSP will be implemented by the Ministry of Justice (MOJ) of the Republic of Croatia.

**The Problem**

1. Global development of crediting industry resulted in significant rise in numbers of citizens with credit debt, and this number is increasing. According to data of the Croatian Bureau of Statistics banks’ receivables from citizens in December 2003 amounted to HRK 55,0 billion (EUR 0,72 billion), while in December 2009 this figure increased to HRK 122,9 billion (EUR 1,61 billion). At the same time, according to the Financial Agency (FINA), as of December 31, 2013 some 299.795 citizens had their bank accounts blocked due to their defaulting on payment of various debts, in the total amount of HRK 23,82 billion (EUR 0,30), which represents a 3,4% increase compared to November 2013. This growth of citizens’ debt is also partly a result of global economical crisis which led to increase of unemployment rate in Croatia, in combination with decrease in the standard of living and rise in consumers’ prices.

**The Solution**

1. After considering several possible options in addressing this problem, the Government of the Republic of Croatia has decided to pursue a legislative solution aimed at development of a system that will lay down conditions in which insolvent consumers would be enabled to reprogram their debt or have a “new beginning”, while at the same time creditors would have a more equalized possibilities for collecting on their claims.

The overall goal of such a system would be to enable insolvent citizens a possibility for a “new beginning”, as well as efficient collection of debt for the creditors – even in situations where a debtor does not poses adequate means for repayment of debt at that moment.

Specific objectives within this include the following:

* To develop a framework within which settlement between a debtor and his creditors on restructuring the debt through both informal (non-institutional) and formal (institutional) fora can be reached;
* To create conditions within which settlement between a debtor and creditors may be reached;

- By establishing a counselling service and by stimulating debtors against whose assets bankruptcy proceedings were instituted to use advice on rational spending and responsible financial behaviour, as well as by general education of citizens aimed at avoiding irresponsible borrowing;

* To relieve the justice system of futile, repeated enforcement proceedings;

- By intermediation between the debtor and the creditor in preliminary phases of the proceedings and by assisting them in reaching an agreement for repayment of debt (drafting repayment plans, and similar).

The legislative framework designed for reaching the listed objectives has been drafted and is currently in the parliamentary procedure. The intention is to have the overall system of the Personal Insolvency (or the Consumers’ Bankruptcy) operational as of January 1, 2016.

According to these drafts, the system of Personal Insolvency is envisaged to operate on two levels (summary):

1. **Settlement proceedings before the Financial Agency (FINA)**

Following such a proposal by the individual consumer (debtor), FINA (through its employees trained for the purpose) shall perform the following services:

* provide counselling to debtor in negotiations with creditors;
* act as an intermediary (mediator) conducting the proceedings, and is authorized to check the data given in the application (by inspecting respective public registers, etc., in accordance with relevant legislation in place) in order to establish the amount of debt, as well as available assets and income of the debtor;
* publish the invitation for participation in particular settlement proceedings on its web pages;
* issue a certificate in case an out-of-court settlement was unsuccessful.

1. **Court proceedings**

Within 3 months from the date of the certificate on unsuccessful attempt on settlement, the debtor may file a petition for Personal Bankruptcy:

Upon submission of relevant documentation and payment of the advance payment (not less than HRK 1.000,00) the Court shall initiate the proceedings by:

1. Conducting the preliminary hearing:

* attempt on reaching an agreement between the debtor and creditors;
* elaborating the plan for repayment of debt;
* accepted plan for repayment has effects of a court settlement.

1. Conducting the Personal Insolvency proceedings:

|  |  |
| --- | --- |
| **In case assets are available** | **In case there are no assets** |
| * opening of the proceedings * appointment of the trustee * asset management * asset liquidation * payments to creditors * decision on proposal for relief * conclusion of the proceedings | * opening of the proceedings * appointment of the trustee * decision on proposal for relief * conclusion of the proceedings |

The expected benefits of this effort are the following:

1. For the society at large:

* balanced satisfaction of creditors with an accent on abandonment of the privileged position of “large creditors”, especially banks and other credit institution, that are in most cases secured by a lien on debtor’s (real estate) assets;
* reduction of the number of insolvent citizens;
* reduction of the number of enforcement proceedings;
* incentives to amicable settlement of legal issues between debtors and creditors with minimal intervention by public institutions;
* relieving courts of numerous out-of–court proceedings;
* preventing the situation where a consumer who might be only in temporary financial problems becomes a “social case” and thus burden to the society;
* large number of insolvent citizens has negative effect on economy and on society as a whole;
* strengthening the public awareness on the need of restructuring ones’ obligations;
* strengthening the public awareness on the need for responsible financial behaviour.

1. For debtors/consumers:

* providing them opportunity for a new, more responsible beginning;
* opportunity to settle ones’ debt with creditors;
* improving the financial literacy of consumers, with preventive effects;
* providing the debtor an opportunity to keep his real estate property in cases where he has no other accommodation;
* relieving the debtor of the remaining debt – for *bona fide* debtors.

1. For creditors:

* efficient satisfaction of creditors even in situations where debtor temporary has no assets sufficient for paying his obligations due;
* avoidance of lengthy and expensive litigation;
* resolving the situation in a faster and less burdensome manner compared to litigation;
* encouraging the debtor to actively pursue increase of his/her assets;
* discouraging the debtor from trying to conceal his assets,

Participants in the proposed Personal Bankruptcy framework may therefore be categorized in the following groups:

* FINA counsellors (intermediaries, mediators);
* Judges (of municipal courts);
* Presently licensed trustees in bankruptcy (commercial)

**Objective of the Assignment**

1. The objective of this activity is to assist the Ministry of Justice in achieving the objectives listed above and in operationalizing the described system. The assignment shall focus, but not be limited to, the following:

* designing of training programs for different groups of professionals participating in the system;
* drafting and producing training materials needed for training;
* organization and delivery of trainings to different groups of participants in the proceedings;
* assistance in designing certain elements for the planned public awareness campaign.

To achieve this goal the Consultant should analyze the proposed approach, particular legislative acts drafted, study other legislation in place – as well as practical implementation - relevant for functioning of the proposed framework, and develop a training program and materials based on practical approach to training of adult professionals.

Consultant is welcome to offer comments and recommendations in regards to the general legal and implementation framework of the new personal bankruptcy system, however that is not a requirement for this assignment.

**Scope of Services**

1. The Consultant will provide the services that will assist the MoJ in faster practical operationalization of the proposed Personal Insolvency system.

Specific responsibilities include, but are not limited to those listed below:

* 1. Conduct consultations with all relevant stakeholders in regards to their positions/expectations of the future systems. These groups should include, among others: civil associations of indebted citizens, Association of trustees in bankruptcy, Social welfare centers, association of creditors (banks, utility providers), associations of employers, employment agency, etc...

**This should be a continued activity during the contract duration, especially during the analysis phase under a. above.**

**Output: Consultation and interviews performed with relevant stakeholders.**

* 1. Design the training program for different groups of participants actively involved in implementation of the Personal Insolvency system. This includes the following groups:

1. **FINA mediators/intermediaries**

As FINA mediators shall be assisting the parties (debtor, creditors) to reach an agreement on the manner and/or amount of debt repayment (discharge) within a voluntary, informal proceedings, mediators should be trained on the following topics (but not limited to):

* + General reasoning behind introducing the Personal Insolvency into Croatian legal and economic system and
    - expected benefits for the society;
    - expected benefits for the debtor;
    - expected benefits for the creditor;
    - comparable systems and solutions, examples, and similar;
  + Legal regulation governing the issue
    - applicable legislation and regulation; substantial and procedural;
  + Procedure – step by step, detailed practical guide through the procedure;
  + Data gathering and reviewing – sources, available tools, legal requirements and/or limitations;
  + Financial – review of regulation governing common financial transactions, financial planning, etc. applicable to such proceedings; cost-benefit analysis, and similar;
  + Mediation – skills and techniques;
  + Practical examples, case studies, role playing exercises, and similar.

Consultants shall draft and produce all training materials – including the manual with necessary forms, samples, etc....

It is expected that some 130 FINA mediators should be trained. Trainings should be organized in 4 major Croatian cities – Zagreb, Split, Rijeka, Osijek – preferably in FINA premises, or premises of the Judicial Academy.

It is estimated that each mediator should undergo an 80-hour course (2 weeks), of which 40 hours with an accent on mediation aspects of the work, and 40 hours on financial aspects (on top of all general topics listed above).

**This activity should commence by early October 2015 and be completed by the end of December 2015.**

**Output: Training program and training materials designed and approved, training courses organized and conducted, some 130 FINA mediators trained.**

1. **Municipal court judges**

Judges of municipal courts shall be competent for conducting the Personal Insolvency proceedings before courts. It should be noted that municipal court judges do not have a direct experience with (commercial) bankruptcy proceedings, since bankruptcy against legal entities is within the jurisdiction of commercial courts. Therefore training program for judges should include, among other, the following topics:

* + General reasoning behind introducing the Personal Insolvency into Croatian legal and economic system and
    - expected benefits for the society;
    - expected benefits for the debtor;
    - expected benefits for the creditor;
    - comparable systems and solutions, examples, and similar;
  + The role of Court in Personal Insolvency proceedings;
  + Legislation governing the proceedings (substantial and procedural);
  + Mediation;
  + Financial aspects of the issue;
  + Appointing the trustee;
  + Monitoring and control over the work of the trustee;
  + as well as all other topics listed under c)1), but adjusted to the specifics of the court proceedings and judge’s role.

Consultants shall draft and produce all training materials – including the manual with necessary forms, samples, etc....

It is expected that some 150 judges should receive the training. Trainings should be organized in 5 major Croatian cities – Zagreb, Split, Rijeka, Osijek, Varaždin – preferably in premises of the Judicial Academy.

It is estimated that each judge should undergo an 40-hour course (1 week). Special attention should be paid to financial aspects of the issue.

**This activity should commence by mid December 2015 and be completed by the end of February 2016**.

**Output: Training program and training materials designed and approved, training courses organized and conducted, some 150 judges trained.**

1. **Bankruptcy trustees (commercial)**

This category includes existing trustees in bankruptcy who are licensed as such within the existing framework for commercial bankruptcy. It is expected that individuals from this group will eventually be interested to also serve in the capacity of a trustee (administrator) in Personal Insolvency proceedings before courts, and shall be appointed by courts.

Since this group already has knowledge and experience with commercial bankruptcy, training should mostly concentrate on specific regulation governing the Personal Insolvency proceedings, differences between the two types of bankruptcy proceedings, and other specifics in administering assets of an individual.

Consultants shall draft and produce all training materials – including the manual with necessary forms, samples, etc....

At the moment there are some 300 licensed trustees in bankruptcy, however it is hard to estimate how many will be interested to participate in this training. Consultants are expected to establish contact with their Association and organize this part of the assignment (linked to tasks under 5.b.). Trainings should be organized in 5 major Croatian cities – Zagreb, Split, Rijeka and Osijek.

It is estimated that interested licensed trustees should undergo an 16-hour course (2 days). Special attention should be paid to specifics of the Personal Insolvency proceedings and its differences compared to bankruptcy proceedings.

**This activity should commence in February 2016 and be completed by the end of contract term.**

**Output: Training program and training materials designed and approved, training courses organized and conducted, some 100 trustees trained.**

* 1. Public Awareness Campaign: the Consultant shall assist the Ministry of Justice (and/or selected PR agency) in developing and designing the public awareness campaign. Namely, as the concept of Personal Insolvency represents a novelty in Croatian legal and economic life, potential benefits as well as other consequences should be communicated to the public in general, and notably to potential debtors/creditors in such proceedings.

This activity shall include, but not be limited to:

* + assistance in drafting/approving texts for leaflets, and/or radio/TV broadcasts, developing marketing pitches, slogans, etc.
  1. Two weeks prior to completion of the assignment the Consultant shall prepare a detailed Final Report on all activities performed and all achievements reached during the performance of these activities, with recommendation for possible future improvements of the system and its sustainability.
  2. Assist the MoJ Project Team with any connected relevant issue, as necessary, and strengthen the MoJ Project Team capacity through transfer of knowledge.

**Consultant’s Qualifications**

5. The Consultant shall possess the following minimum qualifications:

a. At least 3 (three) years traceable experience in the following areas:

* implementation of a Personal Insolvency system and/or participation in the development of a similar legal framework from legislative concept to implementation;
* training and education of legal professionals, preferably in the area of insolvency;

b. Knowledge of legal and implementation issues within personal insolvency frameworks in comparable legal systems;

c. Sound knowledge of economic and financial aspects connected with Personal Insolvency framework.

d. Experience in developing/conducting public awareness campaigns for similar legal/social projects.

c. Familiarity with the Croatian legal and economic system and previous work experience on projects within comparable systems would be desirable, but not mandatory.

e. The Consultant shall confirm the availability of sufficient number of (minimum 3) key experts with particular experience and knowledge in areas listed in items a. through g. (above) to be engaged on this assignment, with indication of their specific roles and responsibilities.

f. Demonstrated experience and skills in transfer of knowledge.

**Contract Arrangements**

6. The Consultant will work under a time-based contract. Consultant’s input is estimated at 180 man-days, and the assignment should be completed within 6 months. The contract is subject to renewal/extension based on satisfactory performance, business needs and availability of resources.

It is expected that services will be provided while working in Zagreb, Croatia, with travel to training locations within the country.

The assignment shall begin in September 2015.

The Consultant is expected to secure translation services, in case if needed.

**Services and Facilities to be Provided by the Client:**

7. The Client shall:

* + 1. Issue all such instructions and/or guidelines as may be necessary or appropriate for the prompt and effective implementation of the Services;
    2. Provide the Consultant(s) with all relevant documentation available.

**Annex 1**

**Consultant’s Reporting Obligations**

Detailed suggested timeline for the delivery of outputs is presented in table below:

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| --- | --- | --- |
| **Description of the output** | **Duration of the activity** | **Indicative completion date** |
| **Training programs for various groups of participants developed and submitted for review.** | 1. days | 15. October 2015. |
| **Training materials prepared and produced, first training courses organized and ready to be delivered** | 45 days | 1. November 2015 |
| **Training courses should be planned based on the following priorities and tentative times:** | 1. FINA mediators: 2. MC Judges: 3. Trustees: | Oct 2015 – Dec 2015  Dec 2015 – Feb 2016  Feb 2016 – March 2016 |
| **Last training courses delivered.**  **Final presentation of the project activities and achievements, with recommendations for improvement delivered.** | 6 months | 15. March 2015. |
| **Activities on consultation with relevant stakeholders and assistance in PA campaign shall be conducted throughout the duration of the assignment, and/or in agreement with the Client.** | n/a | n/a |

Outputs as defined above will be submitted to the Client in Croatian language.