

# Bosnia & Herzegovina

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RISK & COMPLIANCE REPORT

DATE: March 2018

**Executive Summary - Bosnia and Herzegovina**

<b>Sanctions:</b>	EU travel bans and asset freezes against certain individuals
<b>FAFT list of AML Deficient Countries</b>	No longer on list
<b>Higher Risk Areas:</b>	US Dept of State Money Laundering assessment Not on EU White list equivalent jurisdictions Offshore Finance Centre
<b>Medium Risk Areas:</b>	Compliance with FATF 40 + 9 Recommendations Corruption Index (Transparency International & W.G.I.) World Governance Indicators (Average Score)

**Major Investment Areas:**

**Agriculture - products:**

wheat, corn, fruits, vegetables; livestock

**Industries:**

steel, coal, iron ore, lead, zinc, manganese, bauxite, aluminum, vehicle assembly, textiles, tobacco products, wooden furniture, ammunition, domestic appliances, oil refining

**Exports - commodities:**

metals, clothing, wood products

**Exports - partners:**

Slovenia 17.3%, Croatia 16.5%, Italy 13.6%, Germany 12.8%, Austria 12.7% (2012)

**Imports - commodities:**

machinery and equipment, chemicals, fuels, foodstuffs

**Imports - partners:**

Croatia 21.1%, Germany 12.5%, Slovenia 12.4%, Italy 9%, Russia 7.3%, Austria 6.1%, Hungary 4.9%, Greece 4.3% (2012)

**Investment Restrictions:**

Bosnia and Herzegovina (BiH) still struggles to attract foreign investment. Although open to foreign investment, foreign investors continue to face a number of serious obstacles including: multiple complex legal and regulatory frameworks and government structures; non-transparent business procedures; corruption; poor infrastructure; insufficient protection of property rights; and weak judicial structures. In addition, the country's political environment, coupled with the pressures of the global economic downturn, has stalled many key economic reforms.

Bosnia and Herzegovina has made significant efforts to attract foreign investors by passing a liberal foreign investment law and uniform trade, corporate tax and customs policies. The state level Law on Foreign Direct Investment gives foreign investors the same rights as domestic investors, including bidding on privatisation tenders, and provides for non-restrictive investment, except in the media and defence sectors where foreign ownership is limited to 49%.

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## Section 1 - Background

Bosnia and Herzegovina's declaration of sovereignty in October 1991 was followed by a declaration of independence from the former Yugoslavia on 3 March 1992 after a referendum boycotted by ethnic Serbs. The Bosnian Serbs - supported by neighboring Serbia and Montenegro - responded with armed resistance aimed at partitioning the republic along ethnic lines and joining Serb-held areas to form a "Greater Serbia." In March 1994, Bosniaks and Croats reduced the number of warring factions from three to two by signing an agreement creating a joint Bosniak/Croat Federation of Bosnia and Herzegovina. On 21 November 1995, in Dayton, Ohio, the warring parties initiated a peace agreement that brought to a halt three years of interethnic civil strife (the final agreement was signed in Paris on 14 December 1995). The Dayton Peace Accords retained Bosnia and Herzegovina's international boundaries and created a multi-ethnic and democratic government charged with conducting foreign, diplomatic, and fiscal policy. Also recognized was a second tier of government composed of two entities roughly equal in size: the Bosniak/Bosnian Croat Federation of Bosnia and Herzegovina and the Bosnian Serb-led Republika Srpska (RS). The Federation and RS governments are responsible for overseeing most government functions. Additionally, the Dayton Accords established the Office of the High Representative (OHR) to oversee the implementation of the civilian aspects of the agreement. The Peace Implementation Council (PIC) at its conference in Bonn in 1997 also gave the High Representative the authority to impose legislation and remove officials, the so-called "Bonn Powers." An original NATO-led international peacekeeping force (IFOR) of 60,000 troops assembled in 1995 was succeeded over time by a smaller, NATO-led Stabilization Force (SFOR). In 2004, European Union peacekeeping troops (EUFOR) replaced SFOR. Currently EUFOR deploys around 600 troops in theater in a policing capacity.



## Section 2 - Anti – Money Laundering / Terrorist Financing

### FATF status

Bosnia & Herzegovina is no longer on the FATF List of Countries that have been identified as having strategic AML deficiencies.

### Latest FATF Statement - 23 February 2018

The FATF welcomes Bosnia and Herzegovina's significant progress in improving its AML/CFT regime and notes that Bosnia and Herzegovina has established the legal and regulatory framework to meet the commitments in its action plan regarding the strategic deficiencies that the FATF identified in June 2015. Bosnia and Herzegovina is therefore no longer subject to the FATF's monitoring process under its on-going global AML/CFT compliance process. Bosnia and Herzegovina will work with MONEYVAL to improve its AML/CFT framework.

### Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Bosnia & Herzegovina was undertaken by the Financial Action Task Force (FATF) in 2009. According to that Evaluation, Bosnia & Herzegovina was deemed Compliant for 3 and Largely Compliant for 14 of the FATF 40 + 9 Recommendations. It was Partially Compliant or Non-Compliant for 3 of the 6 Core Recommendations.

### Key Findings from latest follow up Mutual Evaluation Report (2013):

Overall the MONEYVAL Secretariat welcomes the progress that has been achieved by the BiH authorities in respect of the short and medium-term action points. Of the 22 short term measures that were originally established only 7 remain unfulfilled and most of these relate to training that has been delayed awaiting the adoption of the revised AML Law. However, of the 78 medium term measures which were intended to be in place by 10 October 2012, only 13 have been fully dealt with. It is noted that, due to delays in enacting the revised laws and consequential amendments to laws, guidance, procedures and trainings, 65 of the medium-term action points are still outstanding. This report does not deal with the 10 long term action points, which are due to be met by 10 October 2013.

It was initially accepted by the Committee that resolution of a number of the medium term action points would be delayed due to seeking advice from the Council of Europe. This advice was delivered on 15 February 2013. It is therefore of concern that although draft laws are currently in the parliamentary process any further delays could mean that the relevant

laws will not be in force and effect in time for the 4th round evaluation of Bosnia and Herzegovina which is scheduled for 2014.

## US Department of State Money Laundering assessment (INCSR)

### **Bosnia and Herzegovina is categorised by the US State Department as a Country/Jurisdiction of Primary Concern in respect of Money Laundering and Financial Crimes.**

#### OVERVIEW

Bosnia and Herzegovina (BiH) has a primarily cash-based economy and is not an international or regional financial center. BiH has porous borders with Croatia, Serbia, and Montenegro. A Visa Liberalization Agreement with the EU enables easy transit from Eastern Europe and the Balkans region to countries in Western Europe. BiH is a market and transit point for smuggled commodities, including cigarettes, firearms, counterfeit goods, lumber, and fuel oil.

BiH has made substantial progress not only strengthening its AML regime, but also harmonizing its laws across its numerous legal jurisdictions, including those related to the money laundering offense and forfeiture. BiH has a state-level criminal code and three additional criminal codes in its constituent parts.

#### VULNERABILITIES AND EXPECTED TYPOLOGIES

The majority of STRs are connected to tax evasion. A smaller number involve concealing the proceeds of illegal activities, including human trafficking and smuggling, narcotics trafficking, organized crime, and corruption. Individuals frequently withdraw funds under the guise of legitimate business, but transactions are later found to be fabricated. Banks make up 87 percent of the financial sector and STRs from banks show that, by number of transactions, fraud and identity theft are increasing, as are identity card counterfeiting and credit card fraud. Integration of laundered proceeds in real estate is also a problem.

There are four active FTZs in BiH. Companies working in these zones primarily produce automobile parts, forestry and wood products, and textiles. The Ministry of Foreign Trade and Economic Relations is responsible for monitoring FTZs and there have been no reports that these areas are used for money laundering.

#### KEY AML LAWS AND REGULATIONS

The main legislation defining BiH's AML regime includes the Law on AML/CFT, the four criminal codes and criminal procedure codes of the multiple jurisdictional levels - the State, the two entities (the Federation of Bosnia and Herzegovina and the Republic of Srpska), and Brčko District - and various sectoral laws (e.g., addressing insurance, the securities market, banks, associations, and foundations), some of which have been amended in the last two years. The country has comprehensive KYC and STR regulations and applies due diligence measures. BiH has mechanisms in place for records exchange.

BiH is a member of MONEYVAL, a FATF-style regional body.

#### AML DEFICIENCIES

Corruption is endemic, affecting all levels of the economy and society. Cooperation among rule of law entities is erratic, and corruption and inter-ethnic discord profoundly diminish the judicial systems' ability to fight money laundering and similar crimes.

As of the end of September 2017, BiH reported that it had completed its action plan to address AML/CFT deficiencies. BiH made improvements to noted areas, including its confiscation measures; CDD and STR procedures; internal controls, compliance, and audit; special attention for higher risk countries; regulation of bank branches and subsidiaries, DNFBPs, and NPOs; definition of legal persons and beneficial owners; sanctions; statistical data and public reporting by the FIU; and national-level cooperation. Although BiH made legislative and technical corrections, actual implementation needs to be confirmed.

#### ENFORCEMENT/IMPLEMENTATION ISSUES AND COMMENTS

While BiH's political structure and ethnic politics hinder the effectiveness of its AML regime, coordination of law enforcement efforts among the multiple jurisdictional levels in BiH is improving.

The four criminal codes and criminal procedure codes now contain similar money laundering offenses. The entities and Brčko District changed criminal codes to include specific provisions on some aspects of confiscation and forfeiture of income or other benefits, commingled property, and instrumentalities. The two entity governments adopted special laws on the confiscation of assets, in addition to the provisions within the criminal procedure codes. State level law enforcement investigates money laundering crimes with an international or inter-entity element, while the entities and Brčko district deal with localized money laundering. State and entity level jurisdictions maintain separate bank supervision and enforcement/regulatory bodies.

There are concerns about the effectiveness of controls relating to the cross-border transportation of currency and bearer negotiable instruments at the maritime border and land crossings. BiH law enforcement is improving its actions to combat TBML.

BiH has implemented the 1988 UN Drug Convention (mainly through the Law on Suppression of Abuse of Narcotic Drugs) and other applicable agreements. BiH has not refused to cooperate with foreign governments.

In the period from November 2016 through August 2017, according to information from the High Judicial and Prosecutorial Council of BiH, the courts handed down eight convictions related to money laundering pertaining to nine persons. One person was acquitted.

#### **Current Weaknesses in Government Legislation (2013 INCRS Comparative Tables):**

According to the US State Department, Bosnia & Herzegovina does not conform with regard to the following government legislation: -

**Arrangements for Asset Sharing** - By law, regulation or bilateral agreement, the jurisdiction permits sharing of seized assets with third party jurisdictions that assisted in the conduct of the underlying investigation.

#### **EU White list of Equivalent Jurisdictions**



Bosnia & Herzegovina is not currently on the EU White list of Equivalent Jurisdictions

### **World Governance indicators**

[To view historic Governance Indicators Ctrl + Click here and then select country](#)

### **Failed States Index**

[To view Failed States Index Ctrl + Click here](#)

### **Offshore Financial Centre**

Bosnia & Herzegovina is not considered an Offshore Financial Centre

### **US State Dept Narcotics Report 2017:**

Bosnia and Herzegovina is not a major producer or consumer of illegal narcotics, nor is it a producer of precursor chemicals. It is primarily a transit country, positioned between drug production and processing centers in Southwest Asia and markets in Western Europe. Drugs are trafficked through Bosnia and Herzegovina from Albania, Macedonia, Montenegro, and Croatia for storage and eventual distribution throughout Europe. Law enforcement and security institutions in Bosnia and Herzegovina remain limited, and require further enhancements to effectively deter trafficking through the country.

During the first nine months of 2016, Bosnian and Herzegovinian police agencies reported seizing: 1.49 kilograms (kg) of heroin; 1.78 kg of cocaine; 120.5 kg of marijuana; 2.5 kg of other cannabis products; 19 kg of amphetamine-type stimulants; 2,031 tablets of MDMA (ecstasy); and 6,773 tablets of diverted pharmaceutical products. Many of these seizures resulted from joint investigations between Bosnian and Herzegovinian law enforcement agencies and the Ministries of the Interior of the Republics of Serbia and Croatia.

At the state level, the State Information and Protection Agency (SIPA, an FBI-equivalent agency) is responsible for drug control enforcement. At the entity-level, the Federation Ministry of Interior and Republika Srpska Ministry of Interior oversee entity, cantonal, and municipal law enforcement agencies engaged on drug issues. During the first nine months of 2016, authorities recorded 1,388 felonies related to illegal production and trade in narcotics and narcotics misuse in the country.

Bosnian and Herzegovinian law enforcement agencies face challenges with funding and staffing. However, they continue to work closely with the United States to develop their capacity for strategic planning and resource management in order to overcome some of these challenges.

Bosnia and Herzegovina cooperates with other international partners on drug issues. The European Union and individual European governments work with state agencies at various levels on training and institutional support.

### **US State Dept Trafficking in Persons Report 2016 (introduction):**

Bosnia and Herzegovina is classified a Tier 2 (watch list) country - A country whose government does not fully comply with the Trafficking Victims Protection Act's minimum standards, but is making significant efforts to bring themselves into compliance with those standards.

Bosnia and Herzegovina is a source, destination, and transit country for men, women, and children subjected to sex trafficking and forced labor. Bosnian women and girls are subjected to sex trafficking within the country in private residences, motels, and gas stations. Economically-vulnerable Romani children are subjected to forced begging and involuntary

domestic servitude in forced marriages. Foreign women and girls from European countries are vulnerable to sex trafficking within the country. Bosnian victims are subjected to sex trafficking and forced labor in construction and other sectors in countries across Europe including Croatia, France, Serbia, Slovenia, and Austria. Corruption creates an environment enabling some trafficking crimes.

The Government of Bosnia and Herzegovina does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Federation, Republika Srpska, and Brcko District authorities increased law enforcement efforts overall. The national, state-level criminal code was amended to further establish legal jurisdiction and increase the prescribed penalties for transnational human trafficking. While the Federation began the process of amending its criminal code to prohibit all forms of trafficking, its parliament had not yet formally passed the legislation at the end of the reporting period, hampering overall prosecution of trafficking crimes at all levels of the government during the year. The government trained prosecutors and judges on trafficking case-management techniques; however, experts stated judges deciding trafficking cases remained inadequately prepared, and interview techniques and protections available to shield child trafficking victims from further trauma were not adequately utilized. The government continued to allocate small grants to NGOs for assistance to trafficking victims, but male victims could not access specialized services

### **US State Dept Terrorism Report 2016**

**Overview:** Bosnia and Herzegovina (BiH) remained a cooperative counterterrorism partner and continued to make progress increasing its counterterrorism capacity. BiH law enforcement agencies generally kept close track of foreign terrorist fighter suspects, however, the Terrorism Task Force led by the State Prosecutor's Office – tasked with improving coordination between BiH's many security and police agencies – continued to falter. Violent Islamist extremist ideology and regional nationalist extremist groups both remained potential sources of violent extremism in BiH.

A number of BiH citizens have traveled to Syria and Iraq to support ISIS and other terrorist groups, but legal and societal efforts to prevent violent extremism were credited with having reduced the flow of foreign terrorist fighters compared to previous years. BiH officials and open media sources estimated that approximately 300 BiH citizens have left for destinations in Iraq and Syria since 2013, of which approximately 50 have returned. BiH government officials reported that there was no discernible flow of foreign terrorist fighters in 2016. BiH is a member of the Global Coalition to Defeat ISIS.

**Legislation, Law Enforcement, and Border Security:** The majority of BiH's coordination and cooperation problems are the result of personal, political, and institutional rivalries that exist among law enforcement agencies and the State Prosecutor's Office. BiH continued to lack the capacity to thoroughly investigate and prosecute cases of terrorism and foreign terrorist fighters, particularly when investigations involve complex financial dealings, cyber recruitment, and coordination. While most prosecutions resulted in convictions or plea bargains, sentences were inadequate.

The BiH Border Police (BP) uses a computerized database and software system to support immigration and passenger information collection. According to the Border Police, the system connects BiH's border crossings, including four airport locations (Banja Luka, Mostar, Sarajevo, and Tuzla) via the State Police Information Network (SPIN), a network developed and donated by the Department of State via the U.S. Department of Justice's International Criminal Investigative Training Assistance Program (ICITAP). The Foreigners Affairs Service (FAS) reports that they have connected all but two of their 16 field offices to the SPIN network. The Directorate for the Police Body Coordination (DCPB), the State Investigative and Protection Agency (SIPA), the Federation Ministry of Interior, and the BiH Ministry of Security can reportedly also access SPIN. The SPIN network provides the BP and FAS with access to other supporting databases (including INTERPOL) to run appropriate checks and cross-checks.

Through the data exchange system, which became operational with European Union support in 2013, participating police agencies in BiH have the capability to exchange data, and any derogatory information will come up as a "hit" when a subject's passport or BiH identification card is passed through the scanner at the point of entry. The BP has both legal authority and physical facilities at most border crossings to detain individuals for up to 24 hours while they consult with SIPA and the BiH Prosecutor's Office regarding next steps regarding questionable individuals. Observers report, however, that there continued to be significant gaps in border security and it was unclear whether screening had occurred at all official points of entry. There were also numerous non-official points of entry that were not monitored.

Separately, ICITAP, with Department of State funding, has set up a limited biometric system for the FAS that will permit more effective monitoring of individuals entering and leaving BiH, and has supported two mobile command posts that can respond anywhere in the country and coordinate emergency response. Additionally, ICITAP plans to upgrade the DCPB's Emergency Operations Center's communications system to facilitate coordination during emergency situations. Emergency response systems were still lacking throughout most of the country, however, and law enforcement agencies were not fully equipped or trained to respond to a terrorist attack or natural disaster. The lack of information sharing between law enforcement entities would likely further inhibit a coordinated response.

The Department of State's Export Control and Related Border Security (EXBS) program provided training courses and equipment donations to BiH Customs and Border Police, including a *Docubox*, a device used to identify fraudulent travel documents.

**Countering the Financing of Terrorism:** BiH is a member of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), a Financial Action Task Force (FATF)-style regional body. BiH's financial intelligence unit, the Financial Intelligence Department, is a member of the Egmont Group of Financial Intelligence Units.

In spring 2015, BiH was referred to the FATF public identification process due to its lack of progress rectifying core anti-money laundering/countering the financing of terrorism (AML/CFT) deficiencies, including the criminalization of terrorist financing and failure to implement UN obligations for targeted financial sanctions. In June 2015 BiH made a high-level political commitment to work with the FATF and MONEYVAL and has been working to

implement an action plan to address identified deficiencies since that time. In June 2016, the FATF recognized that BiH has taken steps towards improving its AML/CFT regime, including by finalizing a regulation for freezing terrorist assets under UN Security Council resolution 1373 and working to harmonize the federal criminal code with its equivalent in BiH jurisdictions. The EU noted in its November 2016 report on BiH that measures in the action plan need to be completed without delay, particularly on the registration and financial reporting of the non-governmental sector.

## International Sanctions

Pursuant to Council Decision 2011/173 the EU has imposed travel bans and asset freezes against certain persons undermine the sovereignty, territorial integrity, constitutional order and international personality of Bosnia and Herzegovina.

## Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	38
World Governance Indicator – Control of Corruption	37

Corruption is a serious obstacle for business operating in Bosnia and Herzegovina (BiH). Almost all sectors of the economy suffer from rampant corruption and most particularly public procurement. The same applies to the public administration where nepotism and patronage networks are widespread practices. The Criminal Code in BiH criminalizes several forms of corruption; including passive and active bribery and the bribery of foreign officials. Nonetheless, the government did not enforce the relevant laws effectively and prosecutions of corruption offences have been selective and officials engaged in corruption with impunity. The offer and demand of bribes and gifts is criminalized in BiH, however, these practices are widespread. **Information provided by GAN Integrity.**

## Corruption and Government Transparency - Report by Global Security

### Political Climate

According to the Bertelsmann Foundation 2012, effective governance continues to be hampered by the abuse of constitutional mechanisms, designed to ensure fair ethnic representation in state institutions. These behaviours threaten the government's legitimacy, stability, and ability to fight corruption. This has led the European Commission in its 2012 Progress Report to call for 'stronger commitment and determined action' against corruption.

Freedom House 2012 reports that political instability resulted in a lack of progress in 2011. Many of the country's reforms have been internationally driven, e.g. through the Office of the High Representative (OHR). Towards the end of 2009, following the limited progress of the previous anti-corruption strategy, the government set out the 2009-2014 Strategy for the Fight against Corruption (in Serbo-Croat). Furthermore, efforts towards fighting corruption have resulted in the establishment of an anti-corruption agency as reported by Global Integrity 2011. Since its creation in 2011, the anti-corruption agency has suffered a lack of resources and funding, which have hampered its ability to tackle corruption in the country, as reported by a 2012 article by Balkan Insight. The European Commission's 2012 Progress Report evaluates that the anti-corruption agency's efforts in fighting corruption throughout 2012 as ineffective. The same report also states that a very limited progress has been made in tackling corruption, which remains widespread throughout the public and private sectors. In addition, only limited steps have been taken in the implementation of the 2009-2014 anti-corruption strategy and action plan.

According to Freedom House 2013, citizens have little trust in public institutions or in the existence of political will to deal with corruption. This is largely due to uncontrolled corruption and ample evidence connecting corrupt high-level politicians and political parties with organised crime. This is supported by Transparency International's Global Corruption Barometer 2010/2011, which reports that citizens perceive the country's political structures to be deeply affected by corruption, ranking political parties as the most corrupt institution in the country, with close to 50% of responding households perceiving political parties to be 'extremely corrupt'. Moreover, the same source reports that 71% of citizens believe that the government's efforts to combat corruption are ineffective. A legal framework to tackle corruption is in place, but political will to tackle the issue and improve institutional capacity remains weak.

### **Business and Corruption**

Since the end of the 1992-1995 war, Bosnia and Herzegovina has demonstrated progress in stabilising the country and the economy. However, due to a wide range of problems, many of which are legacies from the war, the country still struggles with trying to win the confidence of its citizens, the international community and investors. Consequently, levels of foreign investment remain low. Furthermore, the political elite have secured profit through corruption and a tight-knit network of informal economic ties, as reported by the Bertelsmann Foundation 2010. Bosnia and Herzegovina has a large informal sector, reported to account for one-third of the country's GDP. Different administrative layers (the state level, the two entities, the northeast Brčko District, the cantons, and the municipalities and cities) produce confusion between the responsibilities and jurisdictions of government authorities, resulting in an increased frequency of face-to-face encounters between companies and civil servants. According to Global Integrity 2011, inspection authorities suffer from lack of transparency and integrity, making inspections a hot spot for corruption in Bosnia and Herzegovina. Corruption is pervasive within the country's institutions, particularly within the judiciary, the police and other law enforcement agencies, business licensing, public utilities, taxation, customs, and procurement. Local and cantonal authorities are often perceived as being the most corrupt, as they are subject to less monitoring than the state or entity level government, which makes enforcement and implementation of anti-corruption measures more challenging.

Corruption continues to be a widespread phenomenon in Bosnia and Herzegovina, linked to the dominant political parties and the oft-tainted privatisation process. Companies identify corruption as the ninth most problematic factor for doing business according to the World Economic Forum Global Competitiveness Report 2012-2013. However, it is important to note that the high level of corruption in Bosnia and Herzegovina should not be reduced to a question of questionable integrity among public officials. Private sector corruption is also prevalent, and the private sector is cited as a highly corrupt sector by 25% of the respondents in Transparency International's Global Corruption Barometer 2010/2011, indicating that citizens do not consider companies as being mere victims of corruption by public officials. According to the Global Competitiveness Report 2012-2013, Bosnia and Herzegovina performs poorly in relation to the ethical behaviour of companies. The private sector is indeed believed to be part of the problem due to its inclination to resort to bribery in order to secure favourable treatment. According to the World Bank & IFC Enterprise Surveys 2009, 8.1% of the surveyed companies doing business in Bosnia and Herzegovina report paying bribes to get things done. Facilitation payments are pervasive and companies should thus prepare themselves to deal with demands for such payments in virtually all phases of



business activities in Bosnia and Herzegovina by developing, implementing and strengthening integrity systems, and practising thorough due diligence.

Organised crime is reported to be a major problem for companies in Bosnia and Herzegovina. According to a 2012 article on Organised Crime in Bosnia and Herzegovina, post conflict countries like Bosnia and Herzegovina provide a platform for organised crime, which is seen as the obstacle to attracting foreign direct investment. In relation to the prevalence of organised crime, money laundering is also pervasive, and observers report that fictitious companies, many owned by the mafia, are set up to facilitate money flows. Efforts to curb corruption have been stepped up by the state government, with some 400 officers involved in the 'Kastel' anti-corruption operation. Nevertheless, close links between profit-seeking political elites and organised crime remain. Companies are generally advised to develop and/or improve their internal integrity systems to strengthen their resistance to fraud, bribery and corruption.

### **Regulatory Environment**

Bosnia and Herzegovina has made significant efforts to attract foreign investors by passing a liberal foreign investment law and uniform trade, corporate tax and customs policies. The state level Law on Foreign Direct Investment gives foreign investors the same rights as domestic investors, including bidding on privatisation tenders, and provides for non-restrictive investment, except in the media and defence sectors where foreign ownership is limited to 49%. The law also prohibits expropriation and nationalisation of assets, unless under exceptional circumstances. However, the investment climate in the country is far from ideal. Companies in the World Economic Forum Global Competitiveness Report 2012-2013 identify access to financing, political instability, tax rates, and government instability as the most problematic factors for doing business in Bosnia and Herzegovina.

According to the World Bank & IFC Doing Business 2013, starting a company in Bosnia and Herzegovina is a relatively complex and time-consuming task. The process requires 11 administrative steps, an average of 37 days and costs 14.9% of GNI per capita, which is more than double the regional average. The great differences in regulations between the entities of the Federation of Bosnia and Herzegovina and Republika Srpska make it difficult for companies wanting to do business across the country's changing regulatory regimes. Companies have to register in each entity in which they wish to conduct operations. Observers, such as the US Department of State 2013, agree that the insufficiently defined power-sharing agreements in Bosnia and Herzegovina produce complex legal and regulatory frameworks, partly due to the fact that laws and regulations at state and entity levels are often duplicative and contradictory and result in unclear responsibilities. These foster inconsistent procedures that encourage corruption. The regulatory environment also results in confusion among companies and leads to regulatory violations, which in turn fuels bribery and extortion amongst corrupt public officials. Forming a general view of all laws and rules that apply to a certain activity can be extremely difficult and foreign investors are therefore advised to obtain local assistance and advice and are reminded to conduct due diligence when facilitating with local agents. Both the Bosnia and Herzegovina Ministry of Finance and Treasury and the Foreign Investment Promotion Agency provide investors with useful links to government bodies across the country and in regard to the country's regulatory environment.

Intellectual Property Rights laws in Bosnia and Herzegovina provide for the basic IPR protection, but are being strengthened in preparation of eventual membership into the EU

and WTO. However, the US Department of State 2013 reports that enforcement is poor. The computerisation of files at the Land Registry in Sarajevo took place in 2008 and has substantially sped up the process of registering property in that area. However, the weak judicial structures in Bosnia and Herzegovina pose a challenge to investors, as there is no means for rapid resolution of commercial disputes. There are only few non-judicial dispute resolution mechanisms available and commercial courts are still developing through capacity building and reforms to streamline procedures. Companies are thus currently forced into settling commercial disputes in the courts, which can be both time-consuming and costly and, according to some observers, appears to be less than objective. It is common to include an arbitration clause in commercial contracts, which allows for one party to bring a dispute before another nation's court - a practice permitted under Bosnian-Herzegovinian law. This is in accordance with the New York Convention 1958. Access a collection of Bosnia and Herzegovina's and the Federation of Bosnia and Herzegovina legislation and of Republika Srpska's legislation.

### Section 3 - Economy

Bosnia has a transitional economy with limited market reforms. The economy relies heavily on the export of metals, energy, textiles, and furniture as well as on remittances and foreign aid. A highly decentralized government hampers economic policy coordination and reform, while excessive bureaucracy and a segmented market discourage foreign investment. Foreign banks, primarily from Austria and Italy, now control most of the banking sector. The konvertibilna marka (convertible mark or BAM) - the national currency introduced in 1998 - is pegged to the euro, and confidence in the currency and the banking sector has remained stable.

Interethnic warfare in Bosnia and Herzegovina caused production to plummet by 80% from 1992 to 1995 and unemployment to soar, but the economy made progress until 2008, when the global economic crisis caused a downturn. Bosnia and Herzegovina became a full member of the Central European Free Trade Agreement in September 2007.

Bosnia's private sector is growing slowly, but foreign investment has dropped sharply since 2007. Government spending - including transfer payments - remains high, at roughly 40% of GDP, because of redundant government offices at the national, sub-national, and municipal level. High unemployment remains the most serious macroeconomic problem. Successful implementation of a value-added tax in 2006 provided a steady source of revenue for the government and helped rein in gray-market activity. National-level statistics have also improved over time but a large share of economic activity remains unofficial and unrecorded.

Bosnia and Herzegovina's top economic priorities are: acceleration of integration into the EU; strengthening the fiscal system; public administration reform; World Trade Organization membership; and securing economic growth by fostering a dynamic, competitive private sector.

#### **Agriculture - products:**

wheat, corn, fruits, vegetables; livestock

#### **Industries:**

steel, coal, iron ore, lead, zinc, manganese, bauxite, aluminum, motor vehicle assembly, textiles, tobacco products, wooden furniture, ammunition, domestic appliances, oil refining

#### **Exports - commodities:**

metals, clothing, wood products

#### **Exports - partners:**

Slovenia 16.5%, Italy 15.9%, Germany 12.1%, Croatia 11.5%, Austria 11.1%, Turkey 5.2% (2015)

#### **Imports - commodities:**

machinery and equipment, chemicals, fuels, foodstuffs

#### **Imports - partners:**

Croatia 19.3%, Germany 13.9%, Slovenia 13.8%, Italy 10.9%, Austria 5.7%, Hungary 5.2%, Turkey 4.5% (2015)

## Banking

With a growing number of foreign banks present in the country, competition is strong and banks are starting to offer an extended product range of financial instruments (credit cards, consumer loans, mortgages). However, the level of bank intermediation remains low, due to the slow restructuring of the economy. Small and medium size enterprises still experience difficulties obtaining long-term credit, a problem exacerbated by the ongoing financial crisis. Inadequate secured transaction regulations and an inefficient court system make collateral foreclosure difficult and increase the cost of capital. There are currently 29 commercial banks operating in BiH, 19 in the Federation and 10 in RS. The number of banks is still too large relative to the size of the country. Due to the minimum capital requirement of EUR 7.5 million, further consolidation is expected. The Central Bank of Bosnia and Herzegovina (CCBiH) ([www.cbbh.ba](http://www.cbbh.ba)) is the country's monetary authority. Its main goal is to maintain monetary stability under the present currency board arrangement, with full coverage in freely convertible foreign exchange funds under a fixed exchange rate of 1 KM: 0,51129 EURO. In addition, the CCBiH supports and maintains appropriate payment and settlement systems and co-ordinates the activities related to supervision of commercial banks and also coordinates the activities of the bank regulatory agencies in the two entities, which are in charge of bank licensing and supervision.

## Stock Exchange

Capital markets remain underdeveloped in Bosnia. Both entities have created their own modern stock market infrastructure with separate bourses in Sarajevo (SASE) and Banja Luka (BLSE), both of which started trading in 2002. The small sizes of the market, lack of progress on privatization, and public mistrust of previous voucher privatization programs have impeded the development of a market. Nonetheless, both stock exchanges experienced a significant boom in the first half of 2007, supported by strong performances in neighboring stock markets in Belgrade, Zagreb, and Ljubljana. However, during the second half of 2007 and throughout 2008 foreign investment dwindled and investors saw previous gains dissipate on both exchanges. While this has not had a significant impact on the broader Bosnian economy, it is a setback to the development of Bosnia's capital market. For example, in 2008 the BLSE had a turnover smaller than KM 250 million (\$180 million), compared to KM 700 million (\$500 million) in 2007. This downward trend continued in 2009, shaped not only by the global financial crisis but also by Bosnia's own political instability and reform slowdown

### Executive Summary

Bosnia and Herzegovina's (BiH) political environment and complex government structures create significant obstacles to economic development and foreign direct investment. Although open to foreign investment, investors continue to face a number of serious obstacles including corruption, complex legal and regulatory frameworks and government structures, non-transparent business procedures, insufficient protection of property rights, and a weak judicial system. The country's complicated government structure and political environment has stalled many key economic reforms. BiH's poor investment climate, lingering effects of the global economic downturn, and the country's strong connection to still slow growing Europe has resulted in stagnant foreign direct investment inflow over the past five years. According to the World Bank's Ease of Doing Business Report, BiH is the least competitive economy in Southeast Europe and is currently ranked 79 out of 189 global economies.

Historically, U.S. investment in BiH has been low, primarily due to the challenging business climate and the lack of opportunities for investment. Nonetheless, if fully implemented, the European Union Reform Agenda will gradually open up BiH to foreign investment by improving the labor environment, decreasing regulation, harmonizing economic regulation, and shifting the economy from public to private-led. BiH offers business opportunities to well-prepared and persistent exporters and investors. The country is open to foreign investment and offers a liberal trade regime. It is also richly endowed with natural resources, providing potential opportunities in energy (hydro and thermal power plants), agriculture, timber, and tourism. The best business opportunities for U.S. exporters to BiH include energy generation and transmission equipment, telecommunication and IT equipment and services, transport infrastructure and equipment, engineering and construction services, medical equipment, and raw materials and chemicals for industrial processing. In 2015, the U.S. exported \$251 million in goods to BiH (*source: BiH Statistics Agency*).

### 1. Openness To, and Restrictions Upon, Foreign Investment

#### Attitude toward Foreign Direct Investment

Bosnia and Herzegovina struggles to attract foreign investment. Complex labor and pension laws, the lack of a single economic space, and inadequate judicial and regulatory protections deter investment.

Under the BiH constitution established through the Dayton Accords, Bosnia and Herzegovina is divided into two "entities," the Federation of BiH (the Federation) and the Republika Srpska (RS). A third, smaller area, the Brcko District, operates under a separate administration. The Federation is further divided into ten cantons, each with its own government and responsibilities. Each entity also has municipalities for a total of 143 municipalities in BiH (63 in the RS and 80 in the Federation). As a result, BiH has a multi-tiered legal and regulatory framework that can be duplicative and contradictory, and is not very conducive to attracting foreign investors.

Employers bear a heavy burden toward governments. They must contribute 69 percent on top of wages in the Federation and 52 percent in the RS to the health and pension systems.

The labor and pension laws are also deterrents to investment, though both are being reformed to decrease burdens on employers. While corporate income taxes in the two entities and Brcko District are now harmonized at ten percent, entity business registration requirements are not harmonized. The RS has its own registration requirements, which apply to the entire entity. Each of the Federation's ten cantons has different business regulations and administrative procedures affecting companies. Simplifying and streamlining this framework is essential to improving the investment climate. The EU Reform Agenda targets changes that should improve the investment climate by clarifying and simplifying regulation and procedures while decreasing fees faced by businesses at the entity, canton and municipal levels.

Generally, BiH's legal framework does not discriminate against foreign investors. However, given the high level of corruption, foreign investors can be at a significant disadvantage in relation to entrenched local companies, especially those with formal or informal backing by BiH's various levels of government.

#### Other Investment Policy Reviews

In the past three years, the BiH government has not conducted an investment policy review through the Organization for Economic Cooperation and Development (OECD); the World Trade Organization (WTO); or the United Nations Conference on Trade and Development (UNCTAD).

#### Laws/Regulations on Foreign Direct Investment

The state-level Law on the Policy of Foreign Direct Investment accords foreign investors the same rights as domestic investors and guarantees foreign investors national treatment, protection against nationalization/expropriation, and the right to dispose of profits and transfer funds. With the exception of the defense industry and certain elements of the media sector (see below), where foreign control is limited to 49 percent of a single company, there are no restrictions on foreign investment. However, an Entity Government may decide that companies normally subject to this limitation are not subject to restrictions. According to the Law on the Policy of Foreign Direct Investment in BiH, it is stated that "the Entity Government may decide, if it deems justified, that the share of foreign entity for certain business companies referred to in paragraph (a) of this Article, except for companies dealing with public information, is not subject to restrictions set forth in paragraph (a) of this Article".

As a result of FDI Law amendments adopted in March 2015, foreign investors can now own more than 49 percent of capital business entities dealing with media activities, such as publishing newspapers, magazines and other journals, publishing of periodical publications, production and distribution of television programs, privately-owned broadcasting of radio and TV programs, and other forms of daily or periodic publications of edited produced program content through transfer of recordings, voice, sound or images. The new FDI Law maintains the restriction that foreign investors cannot own more than 49 percent of public television and radio services. The March 2015 amendments also set clear and precise conditions to enhance legal security and clarity for foreign direct investment flows.

The complex legal environment in BiH underlines the utility of local legal representation for foreign investors. The legal framework is sometimes contradictory or overlapping, creating confusion and uncertainty. Bosnian attorneys' experience base is still limited with respect to legal questions and the issues that arise in a market-oriented economy. However, local

lawyers are quickly gaining experience in working with international organizations and companies operating in BiH. Companies' in-house legal counsel should be prepared to oversee their in-country counsel, with explicit explanations and directions regarding objectives. The U.S. Embassy maintains a list of local lawyers willing to represent U.S. citizens and companies in BiH. The list can be accessed at <http://sarajevo.usembassy.gov/lawyers.html>.

### *Business Registration*

Establishing a business in BiH can be an extremely burdensome and time-consuming process for investors. The World Bank estimates there are an average of 11 procedures, taking a total of 37 days, to complete registration of a new business in the capital city of Sarajevo. In 2013, the RS established a one-stop shop for business registration in the entity. This dramatically reduced the time required to register a business in the RS, bringing time to register a company down to an average of 7 to 14 days. Registration in BiH can sometimes be expedited if companies retain a local lawyer to follow up at each step of the process. Investors in the Federation may register their business as a branch in the RS and vice versa.

The entity, cantonal, and municipal levels of government each establish their own laws and regulations on business operations, creating redundant and inconsistent procedures that encourage corruption. It is often difficult to understand all the laws and rules that might apply to certain business activities, given overlapping jurisdictions and the lack of a central information source. It is therefore critical that foreign investors obtain local assistance and advice.

The most common U.S. business presence found in BiH are representative offices. A representative office is not considered to be a legal entity and its activities are limited to market research, contract or investment preparations, technical cooperation, and similar business facilitation activities. The BiH Law on Foreign Trade Policy governs the establishment of a representative office. To open a representative office, a company must register with the Registry of Representative Offices, maintained by the BiH Ministry of Foreign Trade and Economic Affairs (MoFTER) and the appropriate entity's ministry of trade.

In BiH, the size of enterprises is defined by the number of employees and amount of revenue. Small enterprises are those with up to 50 employees and revenues of up to \$1.3 million (KM 2 million); Medium enterprises are those with between 50 and 250 employees and revenues up to \$5 million (KM 9 million). No special services or preferences are provided in facilitating investment and business operations by Small and Medium Enterprises.

Other forms of businesses in BiH include:

#### Unlimited Joint Liability Company

An Unlimited Joint Liability Company is a company of at least two persons who bear unlimited mutual liability of the company. The company is founded through a contract between two or more domestic or foreign legal entities. Each member has the right and obligation to manage the company. The company has no statute and no management bodies because members manage and represent it directly.

#### Limited Liability Company

A Limited Liability Company (LLC) is founded by an establishment act or establishment contract by one or more domestic or foreign legal entities with basic capital divided into parts. A member in a limited company is liable for the value of his investment in that company. Minimum basic capital is KM 2,000 (approx. \$1,200).

#### Limited Partnership

A Limited Partnership is a company in which one or more members has unlimited solidarity liability for the liabilities of the company, including members' private assets. Members' risk is limited by the value of their shares in the company. A Limited Partnership is founded by a contract of two or more domestic or foreign legal entities. General partners manage and represent the company.

#### Joint-Stock Company

A Joint-Stock Company is founded by an establishment contract of one or more domestic or foreign shareholders with basic capital divided into shares. A Joint-Stock Company is not liable for the obligations of shareholders and can be established by one or more founders. Minimum basic capital is KM 50,000 (approximately \$28,000).

Additional English-language information on the business registration process can be found at:

BiH Ministry of Foreign Trade & Economic Relations (MoFTER)

Ph: +387-33-220-093

[www.mvteo.gov.ba](http://www.mvteo.gov.ba)

BiH Foreign Investment Promotion Agency (FIPA)

Ph: + 387 33 278 080

[www.fipa.gov.ba](http://www.fipa.gov.ba)

#### Industrial Promotion

There are no specific government programs to attract foreign investment. Sporadically, high ranking government officials give media statements inviting foreign investments in the energy, transportation, and agriculture industries; however, the announcements are rarely supported by tangible, commercially-viable investment opportunities.

#### Limits on Foreign Control

With the exception of the defense industry and certain elements of the media sector, where foreign control is limited to 49 percent of a single company (see 1.3 above), there are no restrictions on investment.

#### Privatization Program

Privatization offerings are scarce and often require unfavorable terms. Some formerly successful state-owned enterprises have accrued significant debts from unpaid health and pension contributions, and potential investors are required to assume these debts and maintain the existing workforce. Under the State-level FDI Law, foreign investors may bid on



privatization tenders. International financial organizations, such as the European Bank for Reconstruction and Development are heavily engaged on privatization and restructuring efforts across the remaining portfolio of state owned enterprises.

The Federation government approved the privatization of 14 companies based on the Federation Agency for Privatization's 2016 privatization plan. However, this decision is non-binding, and there is no enforcement mechanism. Some of the companies listed have posted losses and suffered significant decline in value, while others have only a small amount of public ownership. The 14 companies are Bosnalijek, Energopetrol, Energoinvest, Aluminij Mostar, Hidrogradnja, Remontni Zavod Travnik, Šipad export-import, Zenica Steel, KTK Visoko, Agrokomerc, Borac Confection Travnik, Tobacco Factory Mostar, Vitezit, and Holding Company Putevi BiH. Privatization process in the RS is carried out by the RS Investment Development Bank. Many prospective companies have been already privatized, and out of 163 not yet privatized companies, many are being liquidated or undergoing bankruptcy. The Defense industry and energy sector have not been slated for privatization. Although the RS National Assembly passed a decision that the entity has no plans to privatize the energy sector, the RS Government maintains the possibility of joint ventures in the energy sector.

#### Screening of FDI

The Bosnia and Herzegovina government does not screen or review foreign direct investments, except in the cases of privatization in order to ensure privatization contracts have been met. If privatization contract commitments are not fulfilled, the government retains the right to cancel the contract. Foreign investors have the right to appeal the review process.

#### Competition Law

BiH has a Competition Council, designed to be an independent public institution to enforce anti-trust laws, prevent monopolies, and enhance private sector competition. The Council reviews and approves foreign investments in cases of mergers and acquisitions of local companies by foreign companies. The Competition Council consists of six members appointed for six-year terms of office with the possibility of one reappointment. The BiH Council of Ministers appoints three Competition Council members, the Federation Government appoints two members, and the RS Government appoints one member. From the six-member Competition Council, the BiH Council of Ministers affirms a president of the Council for a one-year term without the possibility of reappointment.

## **2. Conversion and Transfer Policies**

#### Foreign Exchange

The Law on Foreign Direct Investment guarantees the immediate right to transfer and repatriate profits and remittances. Local and foreign companies may hold accounts in one or more banks authorized to initiate or receive payments in foreign currency. The implementing laws in both entities include transfer and repatriation rights. The Central Bank's adoption of a currency board in 1997 guarantees the local currency, the convertible mark or KM (aka BAM), is fully convertible to the euro with a fixed exchange rate of KM 1.95583 = €1.00.

#### Remittance Policies

BiH has no remittance policy, although remittances are generally high due to a large diaspora. Remittances are estimated to range up to 15 percent of total GDP. Based on the two entities' Laws on Foreign Currency Exchange, all payments in the country must be in national currency.

BiH is not sanctioned by the Financial Action Task Force (FATF). On March 11, 2015, required amendments for terrorist financing were added to the criminal code. BiH is working with FATF to complete additional recommendations.

### **3. Expropriation and Compensation**

The BiH investment law forbids expropriation of investments, except in the public interest. According to Article 16, "Foreign investment shall not be subject to any act of nationalization, expropriation, requisition, or measures that have similar effects, except where the public interest may require otherwise." In such cases of public interest, expropriation of investments would be executed in accordance with applicable laws and regulations, be free from discrimination, and include payment of appropriate compensation. Neither the entity governments nor the state government have expropriated any foreign investments to date.

### **4. Dispute Settlement**

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

BiH has a clogged court system and it often takes several years for a case to be brought to trial. Moreover, commercial cases with subject matter that judges do not have experience adjudicating such as intellectual property cases, are often left unresolved for lengthy periods of time. Most judges have little to no in-depth knowledge of adjudicating international commercial disputes and require training on applicable international treaties and laws.

The U.S. Government has provided training to judges, trustees, attorneys, and other stakeholders at the state and entity levels to assist in the development of bankruptcy and intellectual property rights laws. Those laws are now in effect at both the entity and state levels, but have not been fully implemented.

Bankruptcy

Both entities have Laws on Bankruptcy. However, existing laws are inadequate because bankruptcy proceedings are not resolved in a timely manner, and there is insufficient emphasis placed on companies' rehabilitation and/or reorganization. The entities' laws define the rights of creditors, equity shareholders, and holders of other financial contracts. Foreign contract holders enjoy the same rights as local contract holders. Bankruptcy is not criminalized. The U.S. Government provided recent training to judges on international bankruptcy principles.

Investment Disputes

Over the last decade, there has been only one case of a legal dispute involving a U.S. investor and the local government. While efforts are being made to improve BiH's commercial court system, its current capacity and practical inefficiencies limit timely resolution of commercial disputes.

International Arbitration

BiH has been a member of the International Center for the Settlement of Investment Disputes since 1997. BiH does not have a Bilateral Investment Treaty (BIT) or Free Trade Agreement (FTA) with an investment chapter with the United States. It accepts international arbitration to settle private investment disputes if the parties outline this option in a contract.

The only domestic arbitration body in BiH – the Arbitration Court of the BiH Foreign Trade Chamber – is an inexperienced institution. It needs updated and modernized laws and regulations to comply with international norms and standards. The Arbitration Court would benefit from licensed and trained arbitrators. Domestic arbitration legislation is encompassed within the Civil Procedure Code and is not currently modeled on internationally-accepted regulations. As for the legislation, arbitration is generally poorly addressed. Namely, there are few provisions in the entities' laws that regulate litigation procedures, which are the legal basis for parties in dispute to entrust the dispute to arbitration. There is no legislation that is modelled on internationally accepted regulations, such as the model law of the United Nations Commission on International Trade Law (UNCITRAL).

#### ICSID Convention and New York Convention

BiH is a signatory of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). Bosnia and Herzegovina is a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), also known as the Washington Convention.

#### Duration of Dispute Resolution – Local Courts

Government agencies and courts are often unpredictable and intermittent in their enforcement of commercial market violations. In the rare instances that cases reach a court of law, prosecutors and judges too often put commercial cases on the back burner, leading to excessively long court procedures. BiH needs to prioritize commercial cases such as contract disputes, company restructuring procedures, and intellectual property protection in order to protect Bosnian companies and entice additional investors to the country.

### **5. Performance Requirements and Investment Incentives**

#### WTO/TRIMS

BiH is at the last stage of the WTO accession process with bilateral negotiations in progress with Russia, Ukraine, and Brazil. Internally, the Federation needs to settle its Law on Internal Trade, which requires that 50 percent of products in shopping malls to be of local origin and is inconsistent with WTO standards.

#### Investment Incentives

There are some incentives for foreign direct investment, including exemptions from payment of customs duties and customs fees. Bosnia and Herzegovina is divided into three jurisdictions for direct tax purposes: the Federation, the RS, and the Brcko District.

Equipment of the foreign investor being imported as part of share capital is exempt from paying customs duties.

In the Federation, RS, and Brcko District, the corporate income tax allows offsetting of losses against profits over a five-year period. Foreign investors can open bank accounts in all jurisdictions and transfer their profits abroad without any restrictions. The rights and benefits of

foreign investors granted and obligations imposed by the Law on the Policy of Foreign Direct Investment cannot be terminated or overruled by subsequent laws and regulations. Should a subsequent law or regulation be more favorable to foreign investors, the investor has the right to choose the most beneficial regulations.

In addition to the BiH-wide incentives listed above, the two entities and the Brcko District have specific incentives. In the Brcko District, investments in fixed assets are subject to tax relief.

In the Federation:

A taxpayer who invests KM 20 million (approx. \$12 million) over a period of five years is exempted from paying corporate income tax for the period of five years beginning from the first investment year, in which a minimum KM 4 million (approx. \$2.5 million) must be invested, shall have reduced the obligations of the calculated income tax for 50% of the amount in the year of investment. A taxpayer that does not make the prescribed investment in the time period of five years loses the right of tax exemption. In that case, unpaid corporate income tax is determined in accordance with the provisions of the Law on Corporate Income Tax augmented with a penalty interest payable for untimely paid public revenues.

A taxpayer whose workforce is more than 50 percent disabled persons and persons with special needs in any given year are exempted from paying corporate income tax. The exemption applies to the applicable year in which disabled persons and persons with special needs met the required threshold. Employees must have been with the company for longer than one year to be considered.

In the Republika Srpska:

In its Amendments to the Law on Profit Tax, the RS reduced taxes on investments in equipment intended for company production and investment in plants and immovable property used for manufacturing and processing.

For employers with at least 30 workers during a calendar year, there is a tax base reduction in personal income tax and mandatory employer contribution of the employer. Employees must be officially listed with the RS Employment Office.

The RS Decree on Conditions and Implementation of the Investment and Employment Support Program (Official Gazette of RS No. 70/12) also established new incentives in 2012 meant to encourage and support direct investments, employment growth, and transfer of new knowledge and technologies. To qualify for the incentives, participants must have existing investment projects in the RS manufacturing sector, a minimum investment value of KM 2 million (\$1.2 million), and new employment for at least 20 workers. The total funding awarded is proportional to the investment value, the number of newly employed, and the development level of the investment location.

In early 2015, the RS government passed several economically-focused laws, including the Law on Property Tax, which imposes a flat rate for property taxes in all municipalities; the Law on Income Tax, which exempts dividends and profit shares from taxation; the Law on Corporate Income Tax, which broadens the scope of deductible expenses and harmonizes taxes for foreign investors; and the Law on Contributions, which decreases tax contributions employers pay on salaries by 1.4%.

## *Research and Development*

The host government does not restrict participation of foreign companies in government-financed research and development programs.

## *Performance Requirements*

The host government does not mandate local employment and does not impose excessively onerous visa, residence, work permit, or similar requirements that would inhibit mobility of foreign investors and their employees.

## *Data Storage*

BiH government does not have a “forced localization” policy in which foreign investors must use domestic content or sourcing in goods or technology. Also, there are no requirements for foreign IT providers to turn over source code and/or provide access to surveillance. There are no mechanisms in place used to enforce rules on maintaining a certain amount of data storage within the country.

## **6. Protection of Property Rights**

### *Real Property*

Registration of real property titles is generally acknowledged as a significant barrier to the real property and mortgage market development. The present system consists of separate Geodetic Administrations for the Federation and the RS, which are responsible for real property cadasters. Real property cadasters describe and certify the legal object, e.g. land, house, etc. Separately, the land registry establishes legal ownership and rights for the specific object and is maintained by the municipal courts. A significant portion of land and real estate property does not have a clear title due to restitution issues. The 2016 World Bank Doing Business Report ranked BiH at number 97 out of 189 in the ease of registering property, which takes seven procedures and an average of 24 days.

### *Intellectual Property Rights*

Companies should consider several general principles for effective management of intellectual property rights (IPR) in BiH. It is important for companies to have a comprehensive IPR protection strategy. IPR is protected differently in BiH than in the United States and rights must be registered and enforced according to local law. U.S. trademark and patent registrations do not protect IPR in BiH.

Bosnia’s IRP framework consists of seven laws, adopted and put into force by the BiH Parliament in 2010. This legislation is compliant with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and EU legislation. BiH belongs to over 20 international treaties related to IPR and, in 2009, ratified the 1996 World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performance and Phonograms Treaty. Although existing legislation provides a basic level of protection, BiH’s civil and criminal enforcement remains weak.

Jurisdiction over IPR investigations is split between customs officials, entity inspectorates, and state and entity law enforcement agencies, and no institution has specialized IPR investigation teams. IPR crimes are prosecuted primarily at the state level. Cases in which

companies are indicted often involve fairly low-level violators. More significant cases have sometimes languished for years with little action from prosecutors or judges.

The entity governments have been using licensed software for a number of years. The state-level government came into compliance in 2009, a significant step forward in the government's commitment to IPR protection. Some of the Cantonal governments continue using unlicensed software. However, some officials still lack understanding of the importance of IPR. Illegal DVDs and CDs are still available for sale in small public markets. BiH's enforcement record still leaves much room for improvement. At this time, there is no mechanism to combat digital piracy.

In BiH's private sector, awareness of IPR, particularly the importance of copyright protection, remains low, though the emergence of a local software development industry is helping to raise awareness. Curbing business software piracy could significantly improve the local economy by creating new jobs and generating tax revenue. The failure to recognize the importance of preventing copyright infringement makes software producers and official distributors less competitive and the establishment of a legitimate market more difficult. Businesses in BiH lose an estimated \$15 million annually from the sale of counterfeit software, CDs, and DVDs. According to the Business Software Alliance (BSA), the rate of illegal software installed on personal computers in Bosnia and Herzegovina currently remains at 66 percent, which is the regional average.

Registration of patents and trademarks is on a first-in-time, first-in-right basis, so businesses should consider applying for trademark and patent protection prior to introducing their products or services in the BiH market. The U.S. government generally cannot enforce rights for private individuals in BiH. Companies may wish to seek advice from local attorneys who are experts in IPR law.

Collective copyright protection also remains a challenge in Bosnia and Herzegovina. The Association of Composers and Musical Authors is the only licensed collective management organization for music authors in BiH. It faces enforcement challenges, and both members and users remain skeptical and unfamiliar with collective copyright management protection. The Association of Film Workers represents visual artists, filmmakers, and literary authors in BiH, collecting and distributing royalties for use of their works on their behalf.

The U.S. Government, in conjunction with local partners, has made IPR awareness within the enforcement community a priority through training and public awareness programs. The U.S. Department of Commerce (DOC) conducted a judicial training on intellectual property rights in Teslic, RS in early 2016. DOC supports other capacity building for judiciary in intellectual property, including assistance with writing and publishing a judicial bench book and promoting the international arbitration regime in Bosnia.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at [www.wipo.int/directory/en/](http://www.wipo.int/directory/en/).

Embassy point of contact:

Janet Kennedy

Economic and Commercial Officer

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Phone: +387 33 704 515

Embassy lawyers list link: [www.sarajevo.usembassy.gov/lawyers.html](http://www.sarajevo.usembassy.gov/lawyers.html)

## **7. Transparency of the Regulatory System**

The government has adequate laws to foster competition; however, due to corruption, laws are often not implemented transparently or efficiently. The multitude of state, entity, cantonal (in the Federation only), and municipal administrations – each with the power to establish laws and regulations affecting business – creates a heavily bureaucratic, non-transparent system. Foreign investors have criticized government and public procurement tenders for a lack of openness and transparency. Dispute resolution is also challenging as the judicial system moves slowly, often does not adhere to existing deadlines, and provides no recourse if the company in question re-registers under a different name. It is difficult to know all of the laws or rules that might apply to certain business activities, given overlapping jurisdictions and the lack of any central source of information. Foreign investors often, therefore, obtain local assistance and advice. In an effort to promote the growth of business in its entity, the Republika Srpska government passed a series of amendments in fall and winter 2013 to create an RS one-stop-shop for business registration. This institution centralizes the process of registering a business, ostensibly making it easier, faster and cheaper for new business owners to register their companies in the RS. The Federation also plans to establish a one-stop-shop.

Businesses are subject to inspections from a number of entity and cantonal/municipal agencies including the financial police, labor inspectorate, market inspectorate, sanitary inspectorate, health inspectorate, fire-fighting inspectorate, environmental inspectorate, institution for the protection of cultural monuments, tourism and food inspectorate, construction inspectorate, communal inspectorate, and veterinary inspectorate. Some investors have complained about non-transparent fees levied during inspections, changing rules and regulations, and an ineffective appeals process to protest these fines.

## **8. Efficient Capital Markets and Portfolio Investment**

Capital markets remain underdeveloped in BiH. Both entities have created their own modern stock market infrastructure with separate stock exchanges in Sarajevo (SASE) and Banja Luka (BLSE), both of which started trading in 2002. The small size of the markets, lack of privatization, and public mistrust of previous privatization programs has impeded the development of the capital market. During the global economic crisis, foreign investment dwindled and investors saw previous gains dissipate on both exchanges. Foreign investment has shown no signs of growth since 2008, shaped not only by the global financial crisis but also by BiH's lack of political stability and slowdown of reforms.

Both the RS and Federation issued government securities for the first time during 2011, as part of their plans to raise capital in support of their budget deficits during this period of economic stress. Both entity governments continue to issue government securities in order to fill budget gaps. These securities are also available for secondary market trading on the stock exchanges.

On March 11, 2016 Standard & Poor's (S&P) affirmed BiH's B/B long- and short-term foreign and local currency sovereign credit ratings. The agency kept the outlook stable based on its expectation that the country will continue to receive stable creditor support. In the rationale,

the S&P noted that BiH's ratings were constrained by the country's multilayered and overlapping government institutions that complicate its policymaking process and delay the implementation of reforms. Other factors constraining the country's rating are its weak fiscal management framework and its persistent current account deficits. On the other hand, the rating agency expects Bosnia to continue receiving international support and to sign a new deal with the IMF in the first half of 2016. Such an agreement is expected to unlock additional funding from the EU and the World Bank and help the government to implement the EU Reform Agenda. S&P forecasts real GDP growth to average at just under 3 percent annually - this is in line with World Bank and IMF projections - led by exports, in 2015-18. It also sees investment financed by multilateral institutions, as well as private projects (particularly in the energy sector), as important growth drivers.

### Money and Banking System

Bosnia and Herzegovina's banking and financial system has been stable with the most significant investment coming from Austria. As of March 2016, 27 commercial banks operated in BiH; 18 with headquarters in the Federation and 9 in the Republika Srpska. Twenty four commercial banks are members of a deposit insurance program, which provides for deposit insurance in the amount of KM 50,000 (\$28,000). In 2015, two commercial banks in the RS, Bobar Banka, Bijeljina and Banka Srpske, Banja Luka collapsed and are currently under provisional administration. The banking sector is divided between the two entities with entity Banking Agencies responsible for banking supervision. The BiH Central Bank defines and controls the implementation of monetary policy (via its currency board) and supports and maintains payment and settlement systems. It also coordinates the activities of the BH Entity Banking Agencies, which are in charge of bank licensing and supervision.

BiH passed a state-level framework law in 2010 mandating the use of international accounting standards, and both entities passed legislation that eliminated differences in standards between the entities and Brcko District. All governments have implemented accounting practices that are fully in line with international norms.

### **9. Competition from State-Owned Enterprises**

In BiH, the vast majority of public companies are owned by subnational governments: the two entities and ten cantons. Private enterprises can compete with SOEs under the same terms and conditions with respect to market share, products/services, and incentives. In practice, SOEs have the advantage over private enterprises, especially in sectors such as telecommunications and electricity, where government-owned enterprises hold a near-monopoly and make hefty profits as a direct result of their dominant market position. Generally, government-owned companies are controlled by various alliances of political parties, increasing the possibilities for corruption and inefficient company management. The country is not party to the Government Procurement Agreement within the framework of the WTO.

### OECD Guidelines on Corporate Governance of SOEs

According to a World Bank study which analyzed the application of corporate governance principles in Bosnia and Herzegovina, the country "partially observes" the majority of corporate governance principles. For adhering to the principles of basic stockholders' rights, shareholders rights, principle stakeholder redress, and creditor rights law and enforcement, BiH received a poorer grade of "largely observed." In the same study, BiH received a grade



of “materially not observed” for not adhering to the following principles: the rights of shareholders to participate in fundamental decisions; Board/Managers’ disclosure of interests; stakeholder disclosure; whistleblower protection; disclosure standards; and acting with due diligence and care.

The governments in each entity have legislation specifying how the government exercises ownership in SOEs. Laws guiding SOE management by government in both entities are in some cases contradictory and overlapping, creating legal uncertainty and making monitoring and enforcement mechanisms weak.

In Bosnia and Herzegovina, political parties exert tremendous influence on the overall economy. Political parties exercise direct control of SOEs through a barter system dependent on pay-offs, elections results, and party coalitions. Management and board appointments are largely dictated by election results. It is the rule rather than the exception that managers and company directors are appointed according to their party affiliation, and more often than not, lack technical expertise or relevant business experience. When SOEs are involved in investment disputes, domestic courts typically rule in the SOE’s favor.

Sovereign Wealth Funds

BiH does not have a government – affiliated Sovereign Wealth Fund.

## **10. Responsible Business Conduct**

Foreign and local companies conduct some corporate social responsibility activities and there is a general awareness of standards for responsible business conduct. More could be done in this area to respond to BiH’s various social and economic needs. In general, consumers tend to view favorably companies that initiate and carry out charitable activities in the local market. Corporate governance is not part of the broader economic mindset, and shareholder protection is not a priority. The financial system is not yet developed enough to understand and apply principles of corporate governance and shareholder protection.

## **11. Political Violence**

The war in Bosnia and Herzegovina was halted by the Dayton Peace Accords in November 1995. There have been no attacks targeting foreign investments. However, there are still risks from occasional, localized political and criminal violence.

In mid-June 2013 and early 2014, large groups of citizens protested the country’s economic stagnation and the government’s apparent inability to improve the situation. The vast majority of protests were peaceful with relatively small numbers of participants. The first string of protests took place in Sarajevo, while the second outbreak of protests occurred in several cities throughout the country but mainly within the Federation. Protests in early 2014 in the cities of Sarajevo, Mostar, and Tuzla resulted in attacks on government buildings, destruction of government property, and injury. There were no reports of foreign investors being directly targeted in the protests.

## **12. Corruption**

Corruption remains prevalent in many political and economic institutions in Bosnia and Herzegovina and raises the costs and risks of doing business. BiH’s overly complex business registration and licensing process is particularly vulnerable to corruption. The multitude of

state, entity, cantonal, and municipal administrations, each with the power to establish laws and regulations affecting business, creates a system that lacks transparency and opens opportunities for corruption via parafiscal fees. Paying bribes to obtain necessary business licenses and construction permits, or simply to expedite the approval process, occurs regularly.

Transparency International's (TI) 2015 Corruption Perception Index ranked BiH 76 out of 168 countries. According to TI, relevant institutions lack the will to actively fight corruption; law enforcement agencies and the judiciary are not effective in the prosecution of corruption cases and are visibly exposed to political pressures; and prosecutors complain that citizens generally do not report instances of corruption and do not want to testify in these cases. In 2011, BiH established a state level agency to prevent and coordinate efforts to combat corruption; while officially active, the agency has shown limited results.

Corruption has a corrosive impact on both market opportunities overseas for U.S. companies and the broader business climate. It deters foreign investment, stifles economic growth and development, distorts prices, and undermines the rule of law. U.S. companies must carefully assess the business climate and develop an effective compliance program and measures to prevent and detect corruption, including foreign bribery. U.S. individuals and firms should take the time to become familiar with the relevant anticorruption laws of both BiH and the United States in order to properly comply, and where appropriate, seek the advice of legal counsel.

The U.S. Government seeks to level the global playing field for U.S. businesses by encouraging other countries to take steps to criminalize their own companies' acts of corruption, including bribery of foreign public officials, and uphold obligations under relevant international conventions. A U.S. firm that believes a competitor is seeking to use bribery of a foreign public official to secure a contract should bring this to the attention of appropriate U.S. agencies.

U.S. firms should become familiar with local anticorruption laws, and, where appropriate, seek legal counsel. While the U.S. Department of Commerce cannot provide legal advice on local laws, the Department's U.S. and Foreign Commercial Service can provide assistance with navigating the host country's legal system and obtaining a list of local legal counsel.

The U.S. Department of Commerce offers several services to aid U.S. businesses. For example, the U.S. and Foreign Commercial Service can provide services that may assist U.S. companies in conducting due diligence when choosing business partners or agents overseas and provide support for qualified U.S. companies bidding on foreign government contracts. For a list of U.S. Foreign and Commercial Service offices, please visit the Commercial Service website: [www.trade.gov/cs](http://www.trade.gov/cs)

Alleged corruption by foreign governments or competitors can be brought to the attention of appropriate U.S. government officials, including U.S. Embassy personnel or through the Department of Commerce Trade Compliance Center "Report a Trade Barrier" Website at:

[www.tcc.export.gov/Report\\_a\\_Barrier/index.asp](http://www.tcc.export.gov/Report_a_Barrier/index.asp)

*UN Anticorruption Convention, OECD Convention on Combatting Bribery*

BiH signed and ratified the UN Anticorruption Convention in October 2006. BiH is also party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Contact at government agency or agencies responsible for combating corruption:

BiH Agency for the Prevention of Corruption and Coordination of the Fight against Corruption

Phone: +387 57 322 540

email: kontakt@apik.ba

[www.apik.ba](http://www.apik.ba)

Contact at "watchdog" organization (international, regional, local or nongovernmental organization operating in the country/economy that monitors corruption):

Transparency International BiH

Phone: +387 51 216928

Fax: +387 51 216369

email: info@ti-bih.org

[www.ti-bih.org](http://www.ti-bih.org)

### **13. Bilateral Investment Agreements**

Bilateral Taxation Treaties

BiH has signed/ratified 42 agreements to promote and protect investments with the following countries: Albania, Austria, Belgium, Belarus, China, Croatia, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Netherlands, Hungary, India, Iran, Italy, Jordan, Kuwait, Lithuania, Luxembourg, Macedonia, Malaysia, Moldova, Montenegro, Netherlands, Pakistan, Portugal, Qatar, Romania, Serbia, Libya, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, UAE, Ukraine, and the United Kingdom.

BiH does not have a bilateral investment treaty with the United States.

BiH had been designated as a beneficiary country under the United States Generalized System of Preferences (GSP) program; On June 29, 2015, President Obama signed legislation reauthorizing the Generalized System of Preferences (GSP) program for BiH through December 31, 2017. Between 2010 - 2015, BiH exported to the U.S. over \$22 million worth of goods eligible for the GSP program.

The Interim Agreement on Trade and Trade-related matters (IA) between the European Union and Bosnia and Herzegovina is currently in force. According to the IA, all goods of BiH origin that fulfill EU technical-technological standards and conditions can be imported to all EU countries without any quantitative restrictions and without paying customs or other similar duties. Only sugar, wine, fish, and baby beef are subject to specific quotas beyond which duties are to be paid by Bosnia and Herzegovina for the export to the EU. Since 2009, import tariffs have been eliminated for more than 11,000 products that BiH imports from the EU. With Croatia's accession to the EU in 2013, Bosnia and Herzegovina now imposes substantial

import duties on agricultural products from Croatia, in particular on milk and certain meat and meat products. The EU has raised concerns over these agricultural import duties, and is negotiating to lower/eliminate these as part of BiH's process of accession to the EU.

#### 14. Foreign Trade Zones/Free Ports/Trade Facilitation

The BiH Law on Free Trade Zones allows the establishment of free trade zones (FTZs) as part of the customs territory of BiH. Currently there are four free trade zones in BiH: Vogosca, Visoko, Hercegovina-Mostar, and Holc Lukavac. One or more domestic or foreign legal entities registered in BiH may create a FTZ.

FTZ users do not pay taxes and contributions, with the exception of those related to salaries and wages. Investors are free to invest capital in the FTZ, transfer their profits, and retransfer capital. Customs and tariffs are not paid on imports into FTZs. FTZ is considered economically justified if the submitted feasibility study and other evidence can prove that the value of goods exported from a free zone will exceed at least 50% of the total value of manufactured goods leaving the free zone within the period of 12 months.

#### 15. Foreign Direct Investment and Foreign Portfolio Investment Statistics

According to the BiH Central Bank foreign direct investment (FDI) totaled \$420 million in 2014 and \$180 million in the first half of 2015, as compared to an all-time high of \$2.1 billion in 2007. Most investments in 2012-2015 came from Russia, Austria, Croatia, Serbia, Kuwait, and the United Kingdom.

Table 1: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

Economic Data	Host Country Statistical source		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (\$M USD)	2014	\$18.3 billion	2014	\$18.3 billion	<a href="http://www.worldbank.org/en/country/bosniaandherzegovina">http://www.worldbank.org/en/country/bosniaandherzegovina</a>
Foreign Direct Investment	Host Country Statistical source		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country (\$M USD, stock positions)	2014	\$170 million	N/A		N/A
Host country's FDI in the United States (\$M USD, stock positions)	2014	\$0	\$0		N/A

Total inbound stock of FDI as % host GDP	2014	N/A	N/A	N/A
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**Section 5 - Government**

**Chiefs of State and Cabinet Members:**

For the current list of Chiefs of State and Cabinet Members, please access the following - [Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments](#)

**Legal system:**

civil law system; Constitutional Court review of legislative acts

**International organization participation:**

BIS, CD, CE, CEI, EAPC, EBRD, FAO, G-77, IAEA, IBRD, ICAO, ICC (NGOs), ICRM, IDA, IFAD, IFC, IFRC, ILO, IMF, IMO, IMSO, Interpol, IOC, IOM, IPU, ISO, ITSO, ITU, ITUC (NGOs), MIGA, MONUSCO, NAM (observer), OAS (observer), OIC (observer), OIF (observer), OPCW, OSCE, PFP, SELEC, UN, UNCTAD, UNESCO, UNIDO, UNWTO, UPU, WCO, WHO, WIPO, WMO, WTO (observer)

## Section 6 - Tax

### Exchange control

For further information - <http://cbbh.ba/?id=1&lang=en>

### Treaty and non-treaty withholding tax rates

For further information - <http://cbbh.ba/?id=1&lang=en>

## Methodology and Sources

### Section 1 - General Background Report and Map

(Source: [CIA World Factbook](#))

### Section 2 - Anti – Money Laundering / Terrorist Financing

	Lower Risk	Medium Risk	Higher Risk
<a href="#">FATF List of Countries identified with strategic AML deficiencies</a>	Not Listed	AML Deficient but Committed	High Risk
<a href="#">Compliance with FATF 40 + 9 recommendations</a>	>69% Compliant or Fully Compliant	35 – 69% Compliant or Fully Compliant	<35% Compliant or Fully Compliant
<a href="#">US Dept of State Money Laundering assessment (INCSR)</a>	Monitored	Concern	Primary Concern
<a href="#">INCSR - Weakness in Government Legislation</a>	<2	2-4	5-20
<a href="#">US Sec of State supporter of / Safe Haven for International Terrorism</a>	No	Safe Haven for Terrorism	State Supporter of Terrorism
<a href="#">EU White list equivalent jurisdictions</a>	Yes		No
<a href="#">International Sanctions UN Sanctions / US Sanctions / EU Sanctions</a>	None	Arab League / Other	UN , EU or US
<a href="#">Corruption Index (Transparency International) Control of corruption (WGI) Global Advice Network</a>	>69%	35 – 69%	<35%
<a href="#">World government Indicators (Average)</a>	>69%	35 – 69%	<35%
<a href="#">Failed States Index (Average)</a>	>69%	35 – 69%	<35%
<a href="#">Offshore Finance Centre</a>	No		Yes

### **Section 3 - Economy**

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: [CIA World Factbook](#))

### **Section 4 - Foreign Investment**

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: [US State Department](#))

### **Section 5 - Government**

Names of Government Ministers and general information on political matters.

(Source: [CIA World Factbook](#) / <https://www.cia.gov/library/publications/world-leaders-1/index.html>)

### **Section 6 - Tax**

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: [OECD Global Forum on Transparency and Exchange of Information for Tax Purposes](#) [PKF International](#))



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