

Bank finance and regulation

Multi-jurisdictional survey

Croatia

Enforcement of security interests in banking transactions

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Part I – types of security

1. *What are the most common types of security in banking transaction in your jurisdiction (eg, standard security package)? Please provide a brief characteristic of each type of security.*

The most common types of security instruments in Croatia are pledges, Hypothecs, bank/corporate guarantees, security transfer of ownership and voluntary submission to enforcement.

The standard security package depends on the type of transaction and property of the debtor. Brief characteristics of each listed security instrument are given bellow.

Pledge

Pledge is very popular and widespread security instrument. Objects of the pledge are various and include movables, shares, securities, etc. Pledge is set up in a form of a pledge agreement.

Subject to the form of the pledge and pledge object itself, a pledge may be a registered or unregistered pledge.

A registered pledge is set up in a form of a pledge agreement which must be in a form of notarial deed or a voluntary court pledge agreement. Such agreement is then submitted to the relevant registry (if pledge object is registered in registry) for registration of pledge. For example, pledge agreement for pledge of shares is submitted to the Company Registry of the competent Commercial court for registration. Moreover, pledge agreements in the form of notarial deed or a voluntary court pledge agreement may be registered in the Registry of Pledges. Ownership title on the pledge object remains with the debtor. A registered pledge authorises the creditor to enforce its claim from the pledge object, regardless of the possible change in ownership title.

A non registered pledge is set up in a form of a pledge agreement in written form and once the creditor comes into the possession of the pledge object. Once creditor comes into the possession of the pledge object on the grounds of pledge agreement, creditor has acquired a

pledge. A non registered pledge is used for pledge objects which are not registered in public registries (for example movables) and where pledge agreement is not in the form of notarial deed or voluntary court pledge agreement.

Hypothec

Hypothec is a special type of pledge – pledge on real estate, and assets registered in public registries which are in the same regime as real-estate, ie, ships and airplanes.

This is the most popular type of security instruments used in Croatia. Setting up a hypothec does not result in change of ownership title to the creditor. Hypothec is set up by hypothec agreement between the creditor and the debtor, and registered in the Land Registry (or other public registry, if applicable). Hypothec agreement must be in a form of a notarial deed or in the form of voluntary court pledge agreement.

A registered hypothec authorises the Creditor to enforce its claim from the real estate (or other property, if applicable) at any time, regardless of the possible change in ownership title. A hypothec may be enforced by way of a regular court enforcement proceeding.

Bank/corporate guarantee

Bank guarantee as security instrument is obligation to pay a certain monetary amount, regardless of the document title, on the written demand of the creditor and subject to presenting documents to a bank, if such documents are required under a guarantee. The only requirement in terms of form is that bank guarantee must be issued in a written form.

Corporate guarantee as security instrument is not specially prescribed by the law. A guarantee is an agreement between the creditor and the guarantor under which the guarantor undertakes to pay valid and matured obligation of a debtor, if he fails to do so. corporate guarantee must be in a written form. This security instrument is almost never used as a sole security instrument.

Security transfer of ownership (fiduciary ownership)

This is a type of collateral that provides for security transfer of assets (ownership title) from debtor to creditor.

Agreement on security transfer of ownership must be in a form of notarial deed or in a form of voluntary court pledge agreement. Transfer is performed under a resolutive condition – the creditor becomes the owner of the assets until repayment of the secured debt.

When real estate is in question, the agreement must include debtor's statement that he unconditionally authorises creditor to perform the change of ownership in the Land Registry.

If the agreement on security transfer of ownership does not stipulate otherwise, a debtor is authorised to use the assets in the same manner it has been using them prior to the security transfer. If upon maturity of secured obligation debtor fails to repay the obligation, creditor is allowed to sell the assets, but only through a Notary Public.

Voluntary submission to enforcement

This type of security instrument is established to quicken enforcement proceedings (summary enforcement proceedings) against a debtor. Voluntary submission to enforcement issued by the debtor constitutes an enforcement title that, upon appending an enforcement clause, allows for initiating judicial enforcement proceedings against the debtor.

Voluntary submission to enforcement is a statement given by the debtor in a form of a notarial deed, allowing direct initiation of judicial enforcement. It is always used in combination with another security instrument.

2. *In relation to the following types of assets, please provide the types of security that can be created or granted in your jurisdiction and give details of any registrations required:*

(a) *Real estate*

Hypothec

Hypothec agreement in order to take effect must be registered in the Land Registry of the competent Municipal Court (competence is established subject to location of the property). All Hypothec agreements must be in the form of notarial deed or in the form of voluntary court pledge agreement (this second form is rarely used in practice). Registration of hypothec in the Land Registry takes from approximately four weeks up to couple of months (depending from the number of files a particular Land Registry is having to handle). However, as soon as the motion for registration is submitted to the Land Registry, existence of motion for registration is marked and publicly available, meaning the creditor is protected against all other subsequent motions.

Security transfer of ownership

As described under (1) security transfer of ownership is a security instrument under which ownership title on the real estate is transferred from debtor to creditor. Agreement on security transfer of ownership must be in the form of notarial deed or in the form of voluntary court pledge agreement (this second form is rarely used in practice). Also, the agreement must include debtor's statement that he unconditionally authorises creditor to perform the change of ownership in the Land Registry

In order to take effect, agreement must be registered in the Land Registry (until registration debtor is not protected against any disposals with third parties regarding the property). Regarding the registration process and length, the same applies regarding the hypothec.

(b) *Charging assets (inventory, stocks etc);*

Pledge

Establishing a pledge requires a written agreement between the creditor as a pledgee and pledgor (debtor or simply owner of the pledged assets). Regarding the form, please see 'Pledge' under Question 1.

Security transfer of ownership

Agreement on security transfer of ownership must be in a form of notarial deed or in a form of voluntary court pledge agreement. A notification on the change of ownership must be published in the Official Gazette of the Republic of Croatia

(c) Movable

Pledge

Establishing a pledge requires a written agreement between the creditor as a pledgee and pledgor (debtor or simply owner of the pledged assets). Pledge is established once the creditor enters into possession of assets or the pledge is registered with the Registry of Pledges.

Security transfer of ownership

Agreement on security transfer of ownership must be in a form of notarial deed or in a form of voluntary court pledge agreement. Creditor becomes the owner of assets by signing the agreement. A notification on the change of ownership must be published in the Official Gazette of the Republic of Croatia.

(d) Shares

Security interests over shares are the most common type of security instrument. By establishing security over shares, creditors are establishing security over all assets owned by the company whose shares are subject to the security interests, subject to the percentage of the share in the share capital of that company.

Pledge

A registered pledge is set up in a form of a pledge agreement which must be in a form of notarial deed. Such agreement is then submitted to the Company Registry of the competent Commercial court for registration (determined subject to the registered seat of the company) and to the Registry of Pledges.

Security assignment

Agreement on security transfer of ownership must be in a form of notarial deed or in a form of voluntary court pledge agreement. Creditor becomes the owner of assets by signing the agreement. A notification on the change of ownership must be published in the Official Gazette of the Republic of Croatia.

(e) Rights under contracts (receivables);

Pledge

Establishing a pledge requires a written agreement between the creditor as pledgee and pledgor (debtor or owner of the pledged receivables). Rules on assignment of receivables apply accordingly to the establishment of a pledge over receivables. Thus, before establishing a pledge it needs to be noted whether disposal of such receivable does not require any third party consent.

(f) Bank accounts

Voluntary submission to enforcement

A debtor must provide with the statement in the form of notarial deed authorising the bank to enforce amount available on his bank account.

(g) Financial instruments

Pledge

Please see charging assets.

(h) Intellectual property

Security interests on intellectual property rights are not commonly used in Croatia.

Pledge

Please see charging assets.

(i) Plant and machinery

Please see charging assets.

(j) Other assets

Subject to particular assets, a general response is not applicable.

3. Can a trustee or security agent be used in your jurisdiction, or must security be granted in favour of all lenders? Is the parallel debt clause concept recognised in your jurisdiction?

A security agent is not regulated under Croatian law.

The concept of parallel debt is not regulated under Croatian law. However, it is used in a numerous banking transactions involving foreign lenders. Normally, such a parallel debt clause included in an agreement governed by foreign law (if allowed by such foreign law) would be recognised in Croatia.

4. Please explain the latest amendments to the law governing secured transactions in your jurisdiction. Are there any amendments which will be introduced in the near future (within one to two years) which might have an impact on the legal framework of secured transaction? Please explain recent practical developments regarding secured transaction in your jurisdiction.

There have been no relevant amendments to the law governing secured transactions lately in Croatian jurisdiction.

Also, at this moment, there are no amendments expected to be introduced in the near future which might have an impact on the legal framework of secured transactions, nor recent relevant practical developments.

Part II – enforcement of security

- 1. Please explain briefly general rules of enforcement of security indicated in answer to the Question 1 in Part I above (excluding rules in a bankruptcy or insolvency proceeding – see Question 3 below). In your answer please explain whether specific security may be enforced only through judicial proceedings or whether extra-judicial methods are also available. Furthermore, please provide estimate costs (if they create significant obstacle in enforcement, including applicable taxes and any other duties/costs) and timing for enforcing such security. Please also explain degree of difficulty (eg, burdensome formalities, whether enforcement requires actions of a state body) in enforcing security. Also please explain whether taking security by an entity from other jurisdiction influences possibility of establishing security and its enforcement).*

Security interests may be enforced through judicial enforcement proceedings and only security transfer of ownership may be enforced through non-judicial methods of enforcement.

It is not possible to provide cost estimate for enforcement of security instruments without the analysis of the nature of the assets subject to enforcement. Also, almost all enforcement proceedings, since they include judicial enforcement, are lengthy proceedings. And finally, enforcement is a very formal and strict proceeding, which is quite burdensome for the creditor.

Taking security by an entity from other jurisdiction does not influence possibility of establishing security and its enforcement.

Pledge

Only judicial methods are applicable in case of pledges. There are no special features as to enforcement of this security instrument.

Hypothec

Only judicial methods of enforcement are possible in case of hypothecs. In order to initiate enforcement, enforcement title appended by enforcement clause is required. A real estate subject to security is seized and sold. The creditor benefits from the sums received from the sale of real estate. On the first sale the property is sold for the minimum of two-thirds of the appraised value. If this sale fails, on the second sale the property can be sold for the minimum of one-third of the appraised value. The whole process lasts approximately two years. In general we estimate that costs of enforcement (if we take into consideration property of approximate value of €100.000,00) is approx €1.500,00 (court taxes and cost of appraisal by an authorised court expert witness).

Guarantee

If guarantee incorporates voluntary submission to enforcement clause (in the form of notarial deed), a direct judicial enforcement is applicable.

If guarantee does not incorporate such clause in the prescribed form, litigation proceedings which is followed by judicial enforcement must be initiated.

Security transfer of ownership

Enforcement proceeding is a non-judicial one and is conducted by a Notary Public. The proceedings is to a certain extent more time efficient than a judicial enforcement, however in our experience this proceedings still lasts approximately 1.5 years. Costs of enforcement vary subject to the type of assets and value of assets.

2. *Please explain briefly specific features (if any) of enforcement of security established over following types of assets:*

(a) Real estate

Special features of enforcement of security established over real-estate have been explained under Point 1 (hypothec and security transfer of ownership).

(b) Charging assets

There exist no special features of enforcement of security established over charging assets, except if those charging assets represent assets necessary for continuing operations of a legal entity, in which case assets are exempt from enforcement. This is determined from case to case basis.

(c) Fixed charge over movables

Please see under charging assets.

(d) Shares

Judicial enforcement is applicable and shares are sold in the court proceedings. Once enforcement decree is issued by the court, it is registered in the Company Registry of the competent Commercial court.

(e) Rights under contracts (receivables)

There are no special features.

(f) Bank accounts

Non judicial enforcement is possible on a bank account. It is sufficient that a Notary Public issues an enforcement decree. When such decree becomes final and enforceable, it is submitted to a bank for enforcement.

(g) Financial instruments (eg, securities)

There are no special features

(h) Intellectual property

There are no special features

(i) Plant and machinery

Please see under charging assets.

(j) Other assets

General advice is not applicable.

3. *How does a commencement of bankruptcy or insolvency proceeding influence the right of the security holder to enforce its rights? In bankruptcy or insolvency proceedings, what are the suspect periods, is claw-back possible, and what are other types of rights (tax debts, employees, etc) have preference over security granted?*

All creditors, regardless of the type of assets, who have pledge or are entitled to enforcement based on the right entered into public registry for a specific type of asset, are authorised to institute enforcement proceedings for sale of such assets. This also applies to the creditors who have security transfer of ownership over assets.

If enforcement proceeding was not initiated the same assets may be sold by a bankruptcy trustee in a bankruptcy proceedings.

In both scenarios such creditors have preference and are satisfied from the proceeds of sale (decreased for the cost of proceeding) and other types of rights do not have preference over such granted security.

4. *Are there any specific features or problems of enforcement proceedings if the security is granted to a trustee or security agent or the parallel debt structure is used?*

Croatian legal system is not familiar with institute of security being granted to a trustee or security agent or the parallel debt structure.

5. *Please explain the latest amendments to the law governing secured transaction in your jurisdiction in relation to a bankruptcy or insolvency proceeding. Are there any amendments which will be introduced in the near future (one to two years) which might have impact on the legal framework of the enforcement of secured transactions in the light of insolvency law? Please also explain recent practical developments regarding secured transactions in your jurisdiction in relation to insolvency law?*

There have been no relevant amendments to the law governing secured transactions in relation to a bankruptcy or insolvency proceeding lately in Croatian jurisdiction.

Also, at this moment, there are no amendments expected to be introduced in the near future which might have an impact on the legal framework of secured transactions in the light of insolvency law, nor recent relevant practical developments.