

Real Estate

Contributing editor
Joseph Philip Forte



2018

GETTING THE
DEAL THROUGH

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Real Estate 2018

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Slovenia

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General

1 Legal system

How would you explain your jurisdiction's legal system to an investor?

Slovenia has a continental legal system, that is strongly influenced by German law. The most fundamental acts of civil law in Slovenia are the Code of Obligations, which contains the basic principles and general rules for all obligational relationships, and the Law of Property Code, which governs property and related rights. With regard to the law governing real estate, a potential investor should also be acquainted with provisions of the:

- Land Register Act;
- Real Estate Recording Act;
- Agricultural Land Act;
- Housing Act; and
- Protection of Buyers of Apartments and Single Occupancy Buildings Act.

Case law is generally not recognised as a formal source of law (with the exception of decisions made by Constitutional Court), but it persistently gains importance, especially with regard to the power of argument.

Oral contracts are generally recognised under Slovenian law, except in cases where the law requires a written form or when the parties agree on a written form. A written form is, for example, especially envisaged by law for contracts regulating transfer of ownership title or other property rights on real estate. Regardless, the fact that oral contract is generally recognised by Slovene law, it is still highly recommendable to conclude all contracts in written form, especially due to their stronger evidentiary value.

Slovene law also enables a party to obtain an injunction to prevent an action.

Laws regulating real estate are applicable throughout the whole territory of Slovenia. In addition to state laws, there are also some municipal acts relating to real estate. Such municipal acts only apply to real estate located in the territory of the respective municipality.

2 Land records

Does your jurisdiction have a system for registration or recording of ownership, leasehold and security interests in real estate? Must interests be registered or recorded?

Slovenia has a registration-based system. All property (and some obligational) rights must be registered in the Land Register in order to gain validity. Unregistered owners only enjoy limited protection.

Entries of the rights and legal facts in the Land Register are effective from the moment when the land registration court receives a proposal for entry, unless otherwise provided by the law. All entries in the Land Register are public.

Registered rights follow the principle 'first in time, greater in right', which means that the first right entered has the priority over the rest of the rights of same type. This is especially relevant for mortgages.

3 Registration and recording

What are the legal requirements for registration or recording conveyances, leases and real estate security interests?

The party proposing the entry to the Land Register must provide the document containing unconditional statement of the owner allowing the entry. The owner's signature on such document must be notarised.

The registration fee varies with respect to the value of the real estate, amounting from €5 (for values up to €20,000) to €5,000 (for values of more than €60 million). The payment of fees is subject to an agreement between a seller and a buyer. Nevertheless, the buyer customarily pays them.

4 Foreign owners and tenants

What are the requirements for non-resident entities and individuals to own or lease real estate in your jurisdiction?

What other factors should a foreign investor take into account in considering an investment in your jurisdiction?

Natural or legal persons from the European Union, European Economic Area, European Free Trade Association and the Organisation for Economic Co-operation and Development (OECD) member states may acquire ownership of real property under same conditions as Slovenian citizens and legal persons with registered seat in Slovenia. For natural or legal persons from other countries, that are not members of the above listed unions, ownership of real estate is permitted under condition of reciprocity.

There are no legal limitations for foreigners to lease real estate in Slovenia.

5 Exchange control

If a non-resident invests in a property in your jurisdiction, are there exchange control issues?

Slovenia does not impose foreign exchange controls or specific restrictions on payments to foreign individuals and companies. Both residents and non-residents in Slovenia are allowed to open bank accounts in foreign currencies.

6 Legal liability

What types of liability does an owner or tenant of, or a lender on, real estate face? Is there a standard of strict liability and can there be liability to subsequent owners and tenants including foreclosing lenders? What about tort liability?

Slovenian law recognises two types of liability: statutory and contractual.

Generally, all aspects of statutory liability arise from the basic rule stating that any person inflicting damage on another is obliged to reimburse it. Moreover, the owner of an object shall also be liable for damages caused by an object in his ownership, if such object can be considered dangerous. While some objects are considered dangerous per se, another may become dangerous by incorrect use or lack of care. Under general rules, the landlord can therefore potentially also be held liable for damages caused to a contractor, that had an accident at his or her property.

Contractual liability can, as a rule, be agreed in addition to statutory liability, as the statutory liability can generally not be excluded by contractual agreement.

Owners of real estate can also be held liable for environmental damage and for causing prohibited emissions to the neighbouring properties.

7 Protection against liability

How can owners protect themselves from liability and what types of insurance can they obtain?

Owners usually protect themselves by conclusion of insurance policies such as building insurance and individual or all-risk property insurances. Some insurance companies also provide environmental insurances.

Personal liability can also be avoided (or at least reduced) by incorporation of a limited liability company (LLC) and listing it as the owner of specific real estate.

8 Choice of law

How is the governing law of a transaction involving properties in two jurisdictions chosen? What are the conflict of laws rules in your jurisdiction? Are contractual choice of law provisions enforceable?

Parties of a transaction are free to choose any governing law. The parties can also select that the chosen law is applicable only to specific part of a contract. However, if all elements relevant to a transaction are located in a country other than the country whose law has been chosen, the provisions of law of the country of location, which are obligatory, shall also be applicable for this transaction.

If the parties decide not to agree on a governing law, general conflict-of-laws provisions shall assign the governing law. Because Slovenia is a member of the EU, provisions of Regulation (EU) No. 1,215/2012 (Brussels I Regulation) and Regulation (EC) No. 593/2008 (Rome I Regulation) shall apply.

Additionally, in some exceptional cases where the above-mentioned Regulations are not applicable, conflict of law rules are governed by the Slovenian Private International Law and Procedure Act.

Conflict of law rules regarding rights in rem on real estate are generally of cogent nature and can therefore not be amended by contractual provisions. As a consequence, such contractual provisions can also not be enforced. On the other hand, obligational rights connected to real estate can be governed by any law chosen by the parties, with respect to limitation explained in the first paragraph above.

9 Jurisdiction

Which courts or other tribunals have subject-matter jurisdiction over real estate disputes? Which parties must be joined to a claim before it can proceed? What is required for out-of-jurisdiction service? Must a party be qualified to do business in your jurisdiction to enforce remedies in your jurisdiction?

In Slovenia, district civil courts have jurisdiction over disputes regarding real estate. In disputes relating to rights in rem on real estate, the competent district court is determined based on the location of the real estate in question, while in disputes relating to obligational rights connected to real estate, the competent district court is determined by the defendant's place of residence.

Under Slovenian law, out-of-jurisdiction service of court applications is in court's domain and is not an obligation of parties. Slovenian law assures the legal capacity of foreign people and legal entities, so they can enforce remedies under same conditions as Slovene persons or entities. However, the courts may request such entities to assign a representative to whom court writings can be delivered.

10 Commercial versus residential property

How do the laws in your jurisdiction regarding real estate ownership, tenancy and financing, or the enforcement of those interests in real estate, differ between commercial and residential properties?

While real estate ownership is mostly governed by the Law of Property Act, provisions regulating tenancy in general are included in Slovenian Code of Obligations. In addition to the above-mentioned, there are some other acts governing specific types of space (such as the Housing Act for residential premises, the Business Buildings and Business Premises Act and the Agricultural Land Act).

Provisions of these acts concerning lease agreements and relationships mainly differ in respect to:

- obligatory elements of lease contracts;
- notification periods;
- manners and reasons for termination and rights; and
- obligations of parties.

With regard to real estate ownership, the provisions of the listed acts do not differ as much as with regard to leases. Nevertheless, there is a special act protecting buyers of new apartments in Slovene legislation, which provides special rights to such buyers and obligations of sellers. These provisions are similar to the ones protecting consumers and include obligatory elements and form of purchase contracts, rights of termination, delivery of the real estate, guarantees, etc.

Financing does not generally differ with respect to residential or commercial property, but this may be subject to the conditions of each individual bank.

11 Planning and land use

How does your jurisdiction control or limit development, construction, or use of real estate or protect existing structures? Is there a planning process or zoning regime in place for real estate?

Slovene jurisdiction controls and limits development, construction and use of real estate by spatial planning and spatial management, mainly through the adoption of 'spatial plans'. The main authorities that control compliance with this are the:

- Construction, Surveying and Housing Inspectorate; and
- Inspectorate for Agriculture and the Environment.

These bodies have the authority to impose inspection measures and to initiate minor offence proceedings if they discover or learn about any breaches of provisions, regulating spatial planning and management.

Official information on land use can be easily obtained at local municipalities and state administrative units.

12 Government appropriation of real estate

Does your jurisdiction have a legal regime for compulsory purchase or condemnation of real estate? Do owners, tenants and lenders receive compensation for a compulsory appropriation?

The right of government (or state) to compulsory purchase real estate is envisaged in the Constitution of the Republic of Slovenia, and is additionally (and more in detail) regulated in Spatial Management Act.

In case of appropriation, owners receive monetary compensation or comparable real estate as remuneration in kind.

13 Forfeiture

Are there any circumstances when real estate can be forfeited to or seized by the government for illegal activities or for any other legal reason without compensation?

Real estate can be forfeited to or seized by the government if it is recognised as an asset of illicit origin. This may be in case when it is discovered that the assets were gained by criminal act or if the owner cannot explain or prove its legal origin in sufficient extent. The burden of proof in this case is on the defendant.

14 Bankruptcy and insolvency

Briefly describe the bankruptcy and insolvency system in your jurisdiction.

Under Slovenian legislation there are two main types of insolvency procedure: compulsory settlement proceedings (with variation of simplified compulsory settlement) and bankruptcy proceedings.

The purpose of bankruptcy proceedings is typically management and sale of assets of the debtor, division of proceeds and winding up of the company, while the compulsory settlement is a way to restructure the debt without termination of the company as a legal entity.

Bankruptcy proceedings can be instituted by:

- a debtor, through their own proposal;
- a debtor's personally liable shareholder;
- a creditor proving the debtor has defaulted on payments for more than two months; and,
- the Guarantee, Child Support and Disability Fund of the Republic of Slovenia, if the debtor is in default with payment of the employees' claims.

By initiating bankruptcy proceedings, all representation rights are immediately transferred to the bankruptcy trustee, who also takes over the debtor's management, its premises and documents.

The impact on specific interest holders varies in accordance with the type of right they hold. If they hold an ownership right over asset that is considered part of bankruptcy estate, the rightsholder may demand its exclusion from the bankruptcy estate. If they do not hold an ownership right, but only pledge or mortgage, they may demand to be repaid from special distribution estate (ie, proceeds from the sale of security). Only if there is a surplus of proceeds from the sale of security may it be transferred to the general distribution estate.

All information on insolvency proceedings that must be published under Insolvency Act (including the court's decision on commencement of the bankruptcy proceedings) are publicly available on the website of the Agency of Republic of Slovenia for Public Legal Records and Related Services.

Investment Vehicles

15 Investment entities

What legal forms can investment entities take in your jurisdiction? Which entities are not required to pay tax for transactions that pass through them (pass-through entities) and what entities best shield ultimate owners from liability?

Under the Slovene Companies Act the following legal forms are available to Slovene and foreign investors:

- LLC;
- joint-stock company;
- sole proprietors;
- unlimited liability company;
- limited partnership (LP);
- limited partnership with share capital; and
- *societas europaea*.

Foreign entities conducting business in Slovenian territory have equal rights, liabilities and obligations as Slovenia-based companies. The foreign entity may also conduct business activity in Slovenia by setting up branches.

There are no entities under Slovenian law, similar to real estate investment trusts (REITs), that are excused of taxes on transfer of real estate. The ultimate owners are protected to the widest extent in LLCs and joint-stock companies.

16 Foreign investors

What forms of entity do foreign investors customarily use in your jurisdiction?

The most commonly used entity form by the foreign investors is an LLC, as this type does not impose liability on its shareholders and the obligatory initial capital only amounts to €7,500. It is a much more convenient option in comparison to the joint-stock company, because the establishment of the latter is a bit more complex and it requires initial capital in a minimum amount of €25,000.

17 Organisational formalities

What are the organisational formalities for creating and maintaining the above entities? What requirements does your jurisdiction impose on a foreign entity? Does failure to comply incur monetary or other penalties? What are the tax consequences for a foreign investor in the use of any particular type of entity, and which type is most advantageous?

Legal entities established under Slovenian law must be registered with the Companies Register. In order to be registered, the company must submit articles of association concluded in the form of notarial deed (in case of an LLC, the articles of association can also be submitted on form sheet with the notarised signatures of the shareholders). For a company with only one shareholder, the articles of association do not need to be concluded in the form of notarial deed but only in written form or on a form sheet. In both cases the signature of the shareholder must be notarised.

With regard to books of account and annual reports, the same obligations as for domestic entities apply for branches of foreign companies.

There are no special tax consequences for foreign investors. The Slovenian corporate income tax rate is set at 19 per cent (the rate of withholding tax is 15 per cent) and applies to all Slovene-based companies.

Acquisitions and Leases

18 Ownership and occupancy

Describe the various categories of legal ownership, leasehold or other occupancy interests in real estate customarily used and recognised in your jurisdiction.

The basic legal ownership category under Slovene law is ownership right, which consists of a right to hold, use, exploit and dispose of a property. In addition to the above-mentioned, the owner also has a right to limit his or her ownership right by transferring one of the listed rights to a third party or parties. One example is leasing the real estate, by which the owner-landlord transfers his or her right to hold and use (and in some cases also exploit) the real estate to the tenant on the basis of the lease agreement. The lease agreement can be concluded for definite or indefinite period of time. If the parties choose the latter, it is recommended to agree in detail on the terms for termination.

As a rule, burdens on real estate are established by explicit and unconditional statement of the owner allowing such burden to be imposed on the real property. In addition, they must usually be entered in the Land Register in order to gain validity. Signature on statement allowing the establishment of burdens must be notarised.

While condominium regimes have become widely used in Slovenia in recent years, the cooperative ownership agreements are not yet recognised.

Lease agreements are, in general, governed by Code of Obligations. In addition, there are some other acts governing specific types of space (such as the Housing Act for residential premises, Business Buildings and Business Premises Act and the Agricultural Land Act). Provisions of these acts, which concern lease agreements and relationships, mainly differ in respect to obligatory elements of lease contracts, notification periods, manners and reasons for termination and rights and obligations of parties.

19 Pre-contract

Is it customary in your jurisdiction to execute a form of non-binding agreement before the execution of a binding contract of sale? Will the courts in your jurisdiction enforce a non-binding agreement or will the courts confirm that a non-binding agreement is not a binding contract? Is it customary in your jurisdiction to negotiate and agree on a term sheet rather than a letter of intent? Is it customary to take the property off the market while the negotiation of a contract is ongoing?

The Slovene Code of Obligations recognises a pre-contract as a contract by which parties undertake obligation to subsequently conclude the (main) contract. A pre-contract is considered binding if it contains all essential elements of the main contract, and can in such case also be

enforced. Nevertheless, a pre-contract shall not be binding if the circumstances materially changed during the gap between conclusion of pre-contract and the main contract.

The options to enter into a letter of intent or term sheet are commonly used in the initial stages of transactions. It is also usual to include in such agreements the obligation to remove the real estate from the market during the negotiation period or not to enter into negotiations with other interested parties for a defined period of time.

20 Contract of sale

What are typical provisions in a contract of sale?

The essential elements of a sale contract under Slovenian legislation are the object of sale and the purchase price. Other elements and provisions are optional.

The parties commonly decide to agree on a down payment, which depends on a total purchase price but usually amounts from 10 per cent to 20 per cent of the purchase price. Use of an escrow account generally depends on total value of the transaction and its complexity.

As the principle of trust in the Land Register fully protects the parties of legal transactions, current extracts from Land Register are used as a proof of a good title of the property. The Land Register is public and available online, therefore no costs arise from verification of proper title. Since the principle of trust in the Land Register is fully applicable for legal transactions and as in accordance with this the principle party, trusting in the Land Register, cannot suffer detrimental effects, there is usually no need to include special representations and warranties with respect to the title in the agreements. Nevertheless, such warranties are often included in high-value transactions.

Liabilities for taxes and utilities are transferred to the buyer as of the date of delivery of object of sale, unless agreed otherwise. The same applies for the risk of loss, which is borne by the seller until the delivery of the object of sale to the buyer. After delivery, the risk transfers to the buyer.

21 Environmental clean-up

Who takes responsibility for a future environmental clean-up? Are clauses regarding long-term environmental liability and indemnity that survive the term of a contract common? What are typical general covenants? What remedies do the seller and buyer have for breach?

The environmental responsibility or responsibility to remove the source and its effects is primarily on the polluter, who is also obliged to pay the costs for measures of prevention and reduction of environmental effects. If an environmental effect cannot be assigned to a specific polluter, the liability for its removal and payment of costs for removal is borne by the state (or municipality).

With regard to contractual provisions regarding environmental liability, it is not unusual to negotiate representations and warranties that the property is free of environmental burdens or compliant with environmental legislation. The breach usually results in an obligation to pay a contractual penalty or the possibility of terminating the agreement.

22 Lease covenants and representation

What are typical representations made by sellers of property regarding existing leases? What are typical covenants made by sellers of property concerning leases between contract date and closing date? Do they cover brokerage agreements and do they survive after property sale is completed? Are estoppel certificates from tenants customarily required as a condition to the obligation of the buyer to close under a contract of sale?

The most common representations given by the seller with relation to leases are that the leases are legally binding and enforceable, that the rent was not modified and that there are no pending or threatened terminations. For the time gap between start of negotiations and finalisation of the agreement, the seller usually also warrants not to enter into any other lease agreements and make material changes to the existing ones.

Lease agreements do not usually include brokerage agreements, but are regulated and negotiated separately.

Estoppel certificates are neither required nor common as a condition to the obligation of the buyer to close under the sales contract.

23 Leases and real estate security instruments

Is a lease generally subordinate to a security instrument pursuant to the provisions of the lease? What are the legal consequences of a lease being superior in priority to a security instrument upon foreclosure? Do lenders typically require subordination and non-disturbance agreements from tenants? Are ground (or head) leases treated differently from other commercial leases?

Under Slovene legislation, leases are not subordinated to security instruments and do not cease to exist upon foreclosure. By purchasing the real estate, the buyer becomes the new landlord and undertakes all rights and obligations under the existing lease agreement.

24 Delivery of security deposits

What steps are taken to ensure delivery of tenant security deposits to a buyer? How common are security deposits under a lease? Do leases customarily have periodic rent resets or reviews?

Security deposits are not obligatory but are still commonly used in lease relationships. The usual amount for a security deposit is one or two monthly rents, and it is typically provided in cash or by transferring amounts to the landlord's bank account.

With regard to short-term lease agreements, it is not usual for them to contain provisions on periodic rent resets or reviews. If the contractual parties agree to modify the amount of rent, they usually include an annex to the agreement. On the other hand, long-term lease agreements commonly contain an indexation clause.

25 Due diligence

What is the typical method of title searches and are they customary? How and to what extent may acquirers protect themselves against bad title? Discuss the priority among the various interests in the estate. Is it customary to obtain government confirmation, a zoning report or legal opinion regarding legal use and occupancy?

A typical method of title search is obtaining the current extract from the Land Register. Other ways of proving the title are used only in exceptional cases, where the transfers of title were not yet entered into the Land Register.

The principle of trust in the Land Register, as recognised and interpreted in Slovene legislation, fully protects the parties of legal transactions and therefore the party, trusting in Land Register, cannot suffer detrimental effects. The purchaser, in good faith, can accordingly obtain title even if the seller is wrongfully registered as the owner of the respective land.

Extracts from the Land Register and zoning reports are available online free of charge in a user-friendly format. Nevertheless, legal support is still advisable, especially with regard to the correct interpretation of the extracts and verification of rights and obligations entered therein.

26 Structural and environmental reviews

Is it customary to arrange an engineering or environmental review? What are the typical requirements of such reviews? Is it customary to get representations or an indemnity? Is environmental insurance available?

Engineering and environmental reviews are generally not obligatory, but are still advisable, especially in respect to larger transactions. Representations or an indemnity are also only used in larger transactions, where difficulties are expected in this regard.

Environmental liability insurances are available and can be required by the government as financial insurance for payment of costs for environmental nuisance.

27 Review of leases

Do lawyers usually review leases or are they reviewed on the business side? What are the lease issues you point out to your clients?

Leases are most commonly reviewed by lawyers rather than on the business side. Our company highlights provisions on rent indexation, rights and obligations of parties and termination to our clients.

28 Other agreements

What other agreements does a lawyer customarily review?

Alongside lease agreements, lawyers usually review utility supply agreements, property insurance agreements and brokerage agreements. Because easements and mortgages are demonstrated in extracts from the Land Register, agreements on their establishment are not typically subject to review (unless there is doubt regarding the validity of their establishment).

29 Closing preparations

How does a lawyer customarily prepare for a closing of an acquisition, leasing or financing?

Preparations for closing usually include drafting the list of deliverables and reviewing the requirements for transaction to be validly concluded. The latter usually includes verification of representatives and formalities of their authorisations (notarisations, apostille, etc), while the list of deliverables usually consists of:

- documentation on clients;
- proof of ownership;
- proof of financing (if applicable);
- certificate on use of land; and
- statements on release of mortgages (if applicable).

Authorisations are typically verified by presenting current extracts from the business register. In the case of a client being a foreign entity, it is often required for the official certificate to be translated by court-sworn translator in order for a notary public to notarise its signature. Notarisation of a seller's signature is a prerequisite for entry of the transfer to the Land Register.

There is usually a time gap between signing of the sales contract and closing, due to tax formalities. After a sale contract is signed, the seller must submit the contract to the tax authorities, which issue a notice of tax assessment.

After the tax in the assessed amount is paid, the seller provides proof of payment to the notary public, who can only then notarise the signature on the contract. The gap can last from one day up to one month, as under relevant legislation the tax authority has 30 days to issue the notice.

Nevertheless, in practice, the tax authorities issue the notice rather quickly, so this gap usually only lasts a few days.

30 Closing formalities

Is the closing of the transfer, leasing or financing done in person with all parties present? Is it necessary for any agency or representative of the government or specially licensed agent to be in attendance to approve or verify and confirm the transaction?

Except for notarisation of the seller's signature, no other formalities or participation of government representatives are required. The parties may sign the agreement separately.

31 Contract breach

What are the remedies for breach of a contract to sell or finance real estate?

In the event of a breach, the aggrieved party may seek termination, fulfilment of obligations or contractual penalties (if envisaged in contract). If the party seeks fulfilment of obligations or payment of contractual penalties, it first needs to enforce its claim by filing a lawsuit at the competent court. After obtaining a final judgement, the party can initiate enforcement proceedings.

However, if the parties conclude the agreement in a form of directly enforceable notarial deed, the first step (lawsuit) will not be required. The aggrieved party will be able to directly initiate the enforcement proceeding against the other contractual party.

The aggrieved party may, in addition to enforcing the fulfilment of obligation under the contract, also seek compensation for the damages caused by the breach.

32 Breach of lease terms

What remedies are available to tenants and landlords for breach of the terms of the lease? Is there a customary procedure to evict a defaulting tenant and can a tenant claim damages from a landlord? Do general contract or special real estate rules apply? Are the remedies available to landlords different for commercial and residential leases?

In the event of a breach, the aggrieved party may seek termination, fulfilment of obligations (for example payment of the rent) or contractual penalties (if envisaged in contract). The tenant of the residential premises may terminate the lease agreement at any time by written notice and with a 90 days notice period, while the landlord must file a lawsuit in order to terminate the lease. If the tenant occupies the premises even after termination of the agreement, the landlord may seek eviction through customary judicial proceedings.

If the object of lease is a commercial premise and if the premise is leased for indefinite period of time, the agreement may only be terminated by filing lawsuit at competent court and with a minimum notice period of one year.

Financing

33 Secured lending

Discuss the types of real estate security instruments available to lenders in your jurisdiction.

The most common security that lenders require in this regard is mortgage on the financed real estate. Should the mortgage not bring enough security, the lenders often require assignment of receivables from insurance policies or sureties.

34 Leasehold financing

Is financing available for ground (or head) leases in your jurisdiction? How does the financing differ from financing for land ownership transactions?

Financing of ground or head leases is not common in Slovenia, but there is still an option to obtain such financing from specific banks under their general lending conditions.

35 Form of security

What is the method of creating and perfecting a security interest in real estate?

A mortgage can be established through conclusion of contract and registration at the Land Register. The contract must include the owner's statement on allowing the registration of the mortgage at his or her real estate, and its signature must be notarised.

A contract on establishment of the mortgage can also be concluded in the form of a directly enforceable notarial deed. This way the lender has an option to directly enforce the sale of the real estate and subsequent repayment of the debt, instead of first initiating litigation proceedings and only afterwards initiating the enforcement.

36 Valuation

Are third-party real estate appraisals required by lenders for their underwriting of loans? Must appraisers have specific qualifications?

It is common for banks to require appraisal of the relevant real estate. Banks usually provide a list of the authorised appraisals, from which the borrower may choose with whom to engage.

37 Legal requirements

What would be the ramifications of a lender from another jurisdiction making a loan secured by collateral in your jurisdiction? What is the form of lien documents in your jurisdiction? What other issues would you note for your clients?

Lenders from another jurisdiction may provide loans, which are secured by collateral in Slovenia under the same conditions as Slovenian lenders. In order to be entered into the Land Register as a mortgagee, the lender will need to register at the Slovene Business Register and obtain an identification number. This will bring no other consequences, as the entry will be strictly intended for the purposes of the Land Register.

Lien documents must be concluded in writing and the owner's signature must be notarised. If the lender wants to include direct enforceability in the contract, the contract will need to be concluded in the form of a notarial deed.

If the signature is notarised abroad or if the notarial deed is concluded abroad, additional legalisation rules may apply (apostille, etc).

If the financing is provided to a consumer, the mandatory provisions of the Consumer Credit Act also apply. Under the said Act the credit agreement must contain various clauses envisaged by the Consumer Credit Act and, if secured by mortgage, the agreement must be concluded in the form of a notarial deed.

38 Loan interest rates

How are interest rates on commercial and high-value property loans commonly set (with reference to Libor, central bank rates, etc)? What rate of interest is legally impermissible in your jurisdiction and what are the consequences if a loan exceeds the legally permissible rate?

Interest rates are usually set by reference to Euribor, as the majority of the loans are provided and obtained in euros.

If the agreed interest rates are more than 50 per cent higher than the rates given by law (currently 8 per cent), the interests are considered usurious and the contract is null. This does, however, not apply for commercial contracts.

In case of consumer loans, additional rules of the Consumer Credit Act regarding calculation of the effective interest rate and its maximum value apply.

39 Loan default and enforcement

How are remedies against a debtor in default enforced in your jurisdiction? Is one action sufficient to realise all types of collateral? What is the time frame for foreclosure and in what circumstances can a lender bring a foreclosure proceeding? Are there restrictions on the types of legal actions that may be brought by lenders?

If the agreement is concluded in the form of a directly enforceable notarial deed, the lender has an option to directly initiate the enforcement procedure. If not, the lender must first initiate litigation proceedings and only after obtaining final judgement can the enforcement procedure be commenced. Both litigation and enforcement procedures are judicial procedures.

If the contract is concluded in the form of a notarial deed, the court decision of the commencement of enforcement could be obtained within two weeks, while if the lender must firstly initiate litigation proceedings, obtaining enforceable judgment would take approximately two years. The duration of the court proceedings depends mainly on the competent court, complexity of the matter and actions of the litigating parties.

When filing the application for commencement of enforcement proceedings, the lender may propose to invoke all collateral available as well as other enforcement methods. The debtor will then have an option to propose to the court to only enforce one of them, if it suffices for full repayment of the claim.

Update and trends

The Slovenian government recently submitted a proposal for the adoption of a new Real Property Mass Valuation Act, which will enable the subsequent adoption of the Real Property Tax Act. The new Real Property Mass Valuation Act is supposed to eliminate incompatibilities with the Slovenian Constitution, which appeared in 2014 during the government's first attempt to impose real property tax on owners of real estate.

Under the new proposal, the owners will have wider options in relation to cooperation in the valuation process of their real property. According to the most optimistic anticipations, the Real Property Tax Act could be adopted in 2018 and imposed in 2019. The proposed tax, as currently envisaged, combines the presently existing tax on property and compensation for use of construction land.

40 Loan deficiency claims

Are lenders entitled to recover a money judgment against the borrower or guarantor for any deficiency between the outstanding loan balance and the amount recovered in the foreclosure? Are there time limits on a lender seeking a deficiency judgment? Are there any limitations on the amount or method of calculation of the deficiency?

There is no need to recover any additional judgement in case of deficiency between the outstanding loan balance and amount recovered by the foreclosure. The debtor is still obliged to pay the outstanding amount, and the basis to enforce this amount is the same judgement or notarial deed as for the foreclosure. The lender can, in such case, propose an additional enforcement measure to the court.

41 Protection of collateral

What actions can a lender take to protect its collateral until it has possession of the property?

The collateral is generally protected by its publicity – in case of possessory pledge by possession itself and in case of mortgage or non-possessory pledge by registration at the proper register.

Additionally, if the pledger reduces the value of mortgage real estate or in some other way worsens its state, the mortgagee may ask the court to instruct the mortgagor to restrain from such acts. If the mortgagor fails to comply with this instruction, the mortgagee may request a compulsory collection of the claim even before the claim is due.

42 Recourse

May security documents provide for recourse to all of the assets of the borrower? Is recourse typically limited to the collateral and does that have significance in a bankruptcy or insolvency filing? Is personal recourse to guarantors limited to actions such as bankruptcy filing, sale of the mortgaged or hypothecated property or additional financing encumbering the mortgaged or hypothecated property or ownership interests in the borrower?

Under Slovene law it is not possible for security documents to provide recourse for all the assets. In order to establish a valid pledge, each individual pledged asset must be specified.

Recourse is typically limited to the collateral. In the case of bankruptcy, the holder of claim secured by collateral has an option to demand being repaid from special distribution estate (ie, proceeds from the sale of respective collateral).

43 Cash management and reserves

Is it typical to require a cash management system and do lenders typically take reserves? For what purposes are reserves usually required?

It is often required that the main cash flow of the borrower is directed through bank account opened at the lending bank.

44 Credit enhancements

What other types of credit enhancements are common? What about forms of guarantee?

In Slovenia, the most common credit enhancements are non-possessory pledges (eg, over equipment or stock), assignment of receivables from insurance policies and sureties.

45 Loan covenants

What covenants are commonly required by the lender in loan documents?

Lenders often require that the Loan Agreements are concluded in the form of a directly enforceable notarial deed, as it provides them with a more efficient way to enforce their claim at its maturity. Additionally, the lenders often require the loan to be used for a specific purpose and for this purpose only and they usually choose the collateral in connection with the purpose.

Lenders also usually require that the borrower pays for all costs arising from the conclusion of loan contract, approval and drawing of the loan.

46 Financial covenants

What are typical financial covenants required by lenders?

Financial covenants mainly differ in respect to amount of loan and loan-to-value ratios. Nevertheless, lenders usually choose the classic types, such as covenants on sufficient liquidity or cash flow.

47 Secured moveable (personal) property

What are the requirements for creation and perfection of a security interest in moveable (personal) property? Is a 'control' agreement necessary to perfect a security interest and, if so, what is required?

There are two types of pledges on moveable property recognised under Slovene law – possessory and non-possessory pledge.

Possessory pledge is established on the basis of a valid pledge agreement and extradition of the pledged asset to the lender. On the other hand, since the extradition of the pledged asset contradicts the intent of the non-possessory pledge and it is therefore not required for the valid establishment of non-possessory pledge, the agreement on its establishment must be concluded in the form of directly executable notarial deed.

If the asset pledged by the non-possessory pledge is equipment, stock, vehicles or specific types of livestock, the pledge must also be entered into a register of non-possessory pledges in order to gain validity.

48 Single purpose entity (SPE)

Do lenders require that each borrower be an SPE? What are the requirements to create and maintain an SPE? Is there a concept of an independent director of SPEs and, if so, what is the purpose? If the independent director is in place to prevent a bankruptcy or insolvency filing, has the concept been upheld?

The term 'single purpose entity' is not generally used in Slovene legislation with respect to real estate transaction. In practice, there are companies that would correspond to the meaning of SPE. The lenders require that the borrower is an SPE only in specific cases (eg, if the lenders want to make sure that the proceed from the real estate are not used for other purposes).

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