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LSTA ADVANCING THE CORPORATE LOAN MARKET

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1 Overview

1.1 What are the main trends/significant developments in the lending markets in your jurisdiction?

Similar to numerous other sectors, the advancements in the Croatian lending market over the last couple of years have been shaped by the impact of the global COVID-19 pandemic. More recently, the emergence of the war in Ukraine and its repercussions on the economy have further influenced the lending market in Croatia. Due to inflation, interest rates are still increasing on a global level. According to data published on 30 November 2023 by the Croatian National Bank, interest rates were 3.60% for residential loans and 5.90% for general-purpose cash loans. The annual inflation rate for 2022 was 13.1% according to the Croatian Bureau of Statistics. In September 2023, the inflation rate slowed down which resulted in an inflation rate of 6.7%.

Despite the various consequences of the global pandemic and inflation on the economy in the past year, the Croatian market was preparing for its admission into the Eurozone. As of 1 January 2023, the euro is the official currency in Croatia.

The conversion rate is set at 7.53450 Croatian kuna per 1 euro. Calculations of the existing amounts in kuna are performed in accordance with the rules determined by the Act on the Introduction of the Euro as the Official Currency in Croatia.

As anticipated, admission to the eurozone as of 1 January 2023 led to a great number of amendments in the legislature. It is expected that admission to the eurozone should benefit citizens as there will be a reduction of the foreign exchange risk to those who are exposed to it by having euro-related loans. Such changes may attract different investors and increase foreign investment in Croatia. However, as this transition period is still pending, it is too early to say what all the benefits that admission to the eurozone has brought.

1.2 What are some significant lending transactions that have taken place in your jurisdiction in recent years?

Substantial lending activities are relatively rare on the Croatian lending market because there are not many large companies and groups, and some of them are still under government ownership. Large-scale infrastructure projects are not funded by private loans; instead, they rely on EU funds, the European Investment Bank, the European Bank for Reconstruction and Development, and programmes offered by the Croatian Bank for Reconstruction and Development.

Some of the projects implemented in the past few years are the Pelješac Bridge; construction drew EUR 357 million from the EU Cohesion Policy funds, which was opened in July 2022 and the LNG Terminal Krk, which commenced operation in 2021, and was granted EUR 101.4 million from the Connecting Europe Facility fund. The most recent project of major local and regional importance is the modernisation and revitalisation of Croatian railways. It is estimated that the value of planned projects by 2030 is EUR 4.4 billion and that there will be 750km of modernised and renovated railways, most of which will be provided from EU funds.

The HAMAG-BICRO loans were financed through the European Regional Development Fund. Such loans were called "corona-loans" and when they were active, they were used by over 500 entrepreneurs, in total amounting to over HRK 165 million (EUR 21.8 million).

As indicated in our previous contributions to this guide, probably the most significant event lending-wise and the most complex settlement in restructuring proceedings in Croatia in the last few years is still the case of *Agrokor*. Agrokor was one of the largest retail stock companies in South East Europe. It nearly went bankrupt in 2017 after it had acquired several large companies (e.g. Mercator, valued at EUR 500 million) and failed to negotiate the restructuring of their debt through a syndicate loan from BNP Paribas, Credit Suisse AG (London branch), Goldman Sachs International and J.P. Morgan Limited.

Consequently, the Croatian Parliament enacted the Act on Compulsory Administration Procedure in Companies of Systemic Importance for the Republic of Croatia ("Lex Agrokor") to protect the sustainability of business operations of systematically important companies. The settlement between Agrokor and more than 5,700 of its creditors was signed in July 2018. The settlement resulted in the formation of the Fortenova Group to take over Agrokor's assets. The restructuring is considered one of the most successful international restructuring endeavours globally, with ongoing effects on the Croatian banking sector.

2 Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

A company is restricted to ensuring the borrowings of its members (known as downstream guarantees) in adherence to the principle of capital maintenance (refer to question 2.2); otherwise, it is deemed an unauthorised distribution.

Concerning joint-stock companies ("d.d."), any benefit provided by the company to its members must be in the form of a dividend or reimbursement for non-monetary capital contributions conducted at arm's length.

Two exemptions from the prohibited distribution rule are distributions on the grounds of company management agreements and the transfer of profit and loss agreements ("venture contracts"), which are not considered prohibited distributions.

Downstream guarantees are permitted and can also be given as an "additional obligation of the member" stipulated in the incorporation deed (not applicable for joint stock companies).

2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

The capital maintenance principle is one of the most important principles of the corporate lending framework. It applies both to joint stock companies ("d.d.") and limited liability companies ("d.o.o."). Any distribution benefitting the member which is made contrary to arm's-length terms would be contrary to capital maintenance principles and therefore prohibited. This means that any distribution which includes all benefits and payments under the guarantee is permitted if made in exchange for full value or with the obligation to return what is received. Creating an upstream guarantee would not be inherently prohibited, but it would only be unacceptable if it led to a reduction in the company's assets as reflected in the company's balance sheet (by payment, enforcement, etc.).

The consequence of such prohibited distribution is the obligation of the member to return the received benefit or its personal liability for damage to the company and its creditors ("lifting of the corporate veil"). Should the company be unable to recoup the loss from the member that received the benefit or the directors, other members might be held liable for payment if a prohibited distribution prevents the company from fulfilling its obligations to creditors.

The responsibility for preserving the company's capital rests on the management, and if prohibited guaranteeing or securing the leads to the impairment of the company's assets occurs due to the lack of due care of a prudent businessman, the directors may face personal liability.

2.3 Is lack of corporate power an issue?

Any limitations of management such as consent, specific conditions, or restrictions regarding the type of agreements to represent the company, do not affect the validity of agreements with third parties if the third party did not know about the restrictions and knowledge of the restrictions was not required. In general, according to the Civil Obligations Act, the contract that a person enters into as an authorised representative on behalf of another without their authorisation binds the unauthorised represented party only if they subsequently approve the contract.

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

In general, no governmental or other consents are required for granting guarantees. However, if the Republic of Croatia is the guarantor, i.e., security provider, the consent of the Ministry of Finance is required. Possible special authorisation or any limitation could be required under the provisions of the incorporation deed.

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

Please see question 2.2.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

There are no exchange controls or similar obstacles to the enforcement of a guarantee.

3 Collateral Security

3.1 What types of collateral are available to secure lending obligations?

According to Croatian law, the available types of collateral to secure lending obligations are as follows:

Security over immovables:
- a mortgage; and/or
- a fiduciary transfer of ownership.

Security over receivables:
- a pledge; and/or
- a security assignment ("fiduciary transfer").

Security over movables:
- a pledge;
- a mortgage ("registered security"); and/or
- a fiduciary transfer of ownership.

Security over shares:
- a share pledge; and/or
- a security assignment.

3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

The requirements and the procedure for creation, registration and enforcement of security vary for different types of assets. Therefore, separate agreements for each type are usually required. According to Croatian law, it is possible to create "a floating security" over generic movables. However, since a floating security over all assets of the debtor is not possible, such security must be sufficiently identifiable.

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

Two types of securities over immovables are recognised in Croatia: (i) mortgage; and (ii) fiduciary transfer of ownership. Both securities are created by security agreement in the form of a notarial deed and registration in the land registry. Mortgages, in Croatia commonly known as "*hipoteka*", represent the most common form of security on immovables and are an accessory to the underlying receivable. This interconnection implies that they cannot be transferred separately from the receivable they secure.

The difference between the mortgage and the fiduciary transfer is that the title of the property does not transfer to the mortgagee, unlike the fiduciary ownership where the ownership remains restricted and contingent upon the settlement of the secured receivable.

A mortgage over land may exceptionally be extended to movables located on the land, such as plants, livestock, machinery, and equipment that serve the economic purpose of the building on the land plot.

Please see question 3.7 for security over machinery and equipment.

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Security established over receivables can be in the form of a pledge or security assignment (fiduciary transfer of rights). Uniform rules apply to security over all property rights, including receivables.

A pledge over receivables requires two constitutive elements: (i) transfer of the right; and (ii) notification to the debtor. Registering the security in the Register of Judicial and Notarial Securities Over Movables and Rights does not exempt the obligation to notify the debtor.

The security assignment is based on regulations governing assignment ("*cessio*") of rights in general. Once the agreement is concluded, the security becomes effective. In such case, notification to the debtor is required; however, the assignment remains valid even without notification, as it is not a constitutive element. However, if the debtor is not notified and the security over receivables is not registered or evident from the Register, the debtor can discharge their obligation by paying the assignor.

Security over rights may be established either independently between the parties or with the involvement of the court or the notary public in the security proceedings. In notarial or judicial security cases, the security is registered in the Register of Judicial and Notarial Securities Over Movables and Rights.

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Cash deposited in bank accounts is considered a receivable against the bank account. Nevertheless, specific rules apply to financial securities over receivables against bank accounts (cash deposits, credit receivables and financial instruments). The written form is required for the security agreement.

There are two types of securities: (i) pledge; and (ii) financial security transfer. The pledge grants the beneficiary to use and dispose of the deposited cash of the security provider with the obligation to return or replace the security at the latest on the due date for the performance of the obligation covered by the security. The beneficiary of the security transfer has an unlimited right to utilise and manage the deposited cash. The security may be enforced by seizure, out of court sale and by compensation against monetary funds, directly by the beneficiary.

3.6 Can collateral security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Can such security validly be granted under a New York or English law-governed document? Briefly, what is the procedure?

Collateral security can be created over shares of joint stock companies and limited liability companies incorporated in Croatia.

(i) Shares of joint stock companies can be in dematerialised or certificated form (in theory only; they have not been used for many years). From the legal perspective, security over certificated shares in bearer form involves security over movable property, established through a security agreement and the transfer of possession.
The creation of security on dematerialised shares requires registration of the security in the Central Depository & Clearing Company ("CDCC"). If dematerialised shares are not registered in the CDCC, security is created by cessio.

(ii) The creation of security over shares in a limited liability company is solely through an agreement that must be in the form of a notarial deed or a private document certified by a notary public. Registration in the book of shares is required but it has the function of publicity.
Security over shares can be granted based on foreign documents pursuant to the Croatian Private International Law Act, however, Croatian law applies to the enforcement of such security.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

Security over movables may be established in three forms: (i) a pledge with the transfer of possession; (ii) a mortgage; or (iii) fiduciary transfer of ownership. Please note that for the purpose of this question, movables such as vessels and aircraft are not considered inventory.

Security over movables can also be established in the security proceedings before courts or a notary public (please see question 3.4), however, securities over movables are not very common in Croatia.

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

A company can grant a security interest in order to secure (i) its own obligations as a borrower, and (ii) itself as a guarantor of the obligations of other borrowers/guarantors under a credit facility. The latter is only possible if it is not contrary to limitations determined by Croatian Companies Act (please see questions 2.1 and 2.2).

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

Depending on the type of asset there are three possible fees: (i) fees of the notary public (when the security agreement is in the form of a notarial act); (ii) registration fees (land registry, notarial and judicial registry, vessel's registry); and (iii) security proceedings fees if the security is created with the involvement of the court or the notary. The notary fees are prescribed by the notary's tariff and are subject to the value of the security object. Registration fees are usually minor.

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

Filing, notification or registration requirements do not generally involve a significant amount of time (for expenses, please see question 3.9). Registration in the land registry may take longer,

depending on the court. However, due to the digitalisation process, applications for registration into the land registry are submitted electronically, which makes the procedure simpler and less time consuming.

3.11 Are any regulatory or similar consents required with respect to the creation of security?

In general, there is no consent required with respect to the creation of security. It is possible to determine by the company's deed of incorporation that the consent may be required for creation of security over shares.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

There is no special priority in case the borrowings are secured under a revolving credit facility.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

In order for the security agreement to be enforceable, it should be in the form of a notarial deed or a notarised private document. It is important that the security agreement contains an *exequendi* clause – consent of the security provider to direct enforcement. Once requested by the security beneficiary, the notary public issues an enforceability confirmation on the security agreement confirming that the requirements for enforcement are fulfilled.

Regarding the authorisation for any action with regard to the creation or enforcement of the security (except in the court proceedings), a special power of attorney is required which is certified by the notary public and in some cases accompanied by an apostille depending on the state where the power of attorney is notarised.

4 Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company that directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

(a) Shares of the company
Regarding the joint stock companies, Croatian law explicitly provides that an agreement under which the company grants financial assistance to third parties in the form of advance payment, security or loan for acquisition of its own shares is invalid. This does not apply to (i) the operation of credit and financial institutions, or (ii) financial assistance for acquisition of shares by the employees of the company.
Financial assistance for the acquisition of shares of a limited liability company is not explicitly determined by law, however, the general rule of capital maintenance applies.

(b) Shares of any company that directly or indirectly owns shares in the company
Provision on the invalidity of the agreement explicitly applies to financial assistance for the acquisition of shares of the company that owns shares of the company providing financial assistance.

(c) Shares in a sister subsidiary
Provision on the invalidity of an agreement explicitly applies to financial assistance for acquisition of shares of the sister company.

5 Syndicated Lending/Agency/Trustee/Transfers

5.1 Will your jurisdiction recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

The Croatian bank, together with local or foreign banks, offer syndicated loans. Therefore, agents are recognised in practice, though they are not explicitly determined by the law. According to the bylaws regulating credit institutions, the role of an agent (one of the lenders) is to coordinate all transactions between the lenders and the borrowers, as well as to run administrative operations and balance sheets for all lenders. Furthermore, the agent can act in the name and for the account of other lenders and is authorised to collect payments on behalf of all lenders from the borrower. In matters where creditors are joint and several, each of the creditors could enforce the whole claim. The agent, being the debtor itself, could initiate the proceedings. However, there is no court practice so the success of possible objections from the borrower is uncertain. The concept of trust is recognised by the Croatian Act on prevention of money laundering and financing of terrorism, which determines trust as a trust and a subject of foreign law equated to a trust from Article 32, paragraph 1, point b) of the Act, and includes a trust established by an express declaration (express trust), fiduciary, *treuhand*, *fideicomiso* and other similar legal forms of foreign law.

5.2 If an agent or trustee is not recognised in your jurisdiction, is an alternative mechanism available to achieve the effect referred to above, which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

Pursuant to the Croatian Obligations Act, in general, when there is more than one creditor of one claim, if such creditors are joint and several, each of them is entitled to enforce the whole claim and redistribute the collected amount among the creditors. When security is registered in public registries, only the registered creditor can enforce the security concerning the secured claim.

5.3 Assume a loan is made to a company organised under the laws of your jurisdiction and guaranteed by a guarantor organised under the laws of your jurisdiction. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

In order for the loan and guarantee to be enforceable, the loan should be assigned either by (a) assignment of claim when one claim is transferred from one creditor to another, or (b) transfer of the contract when all rights and obligations from the contract are transferred from one party to the new party. Regarding

the guarantee, in the event of claim assignment (as in (a)), all rights including those from the guarantee are transferred to the new creditor and can be enforced by them. Regarding the transfer of contract (b), the guarantees would also be transferred and enforceable except if the guarantor raises an objection to guarantee the creditor.

6 Withholding, Stamp and Other Taxes; Notarial and Other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Interest paid to foreign lenders (not natural persons) in Croatia is subject to withholding tax. The payee – the borrower – is the obligator of withholding tax. Exceptionally, interest paid on loans given by foreign banks or other financial institutions is exempt from the withholding tax. The Croatian Income Tax Act and bilateral treaties determine payment of withholding tax by foreign entities. If a bilateral treaty regarding the avoidance of double taxation exists, such treaty would regulate the taxation of interest payable on loans. Withholding tax can be reduced or not paid at all, which is dependent on what each treaty determines. In order to deduct such tax obligation, the certificate issued and notarised by a competent foreign body should be obtained and filed with the tax authority. If there is no applicable treaty regulating the avoidance of double taxation, interest payable on loans is subject to 25% withholding tax. There are no special provisions regarding domestic lenders. The profit from the interest, together with the total annual income, is taxed according to annual income tax.

There are no specific conditions mandated for the deduction or withholding of tax from the funds received through a guarantee claim or from the proceeds of enforcing security.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

No particular taxes or other incentives are provided preferentially to foreign lenders. There are no taxes applicable to foreign lenders with respect to loans, mortgages or other security documents for the purposes of effectiveness or registration. Regarding fees for registration, please see question 3.9.

6.3 Will any income of a foreign lender become taxable in your jurisdiction solely because of a loan to, or guarantee and/or grant of, security from a company in your jurisdiction?

Any income of a foreign lender would not become taxable in Croatia solely because of a loan or guarantee or grant of security from a company in Croatia.

6.4 Will there be any other significant costs that would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

Please see question 3.9.

6.5 Are there any adverse consequences for a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for the purposes of this question.

In general, borrowers should not face adverse consequences in cases where all or some of the lenders are organised under the laws of a foreign jurisdiction.

7 Judicial Enforcement

7.1 Will the courts in your jurisdiction recognise a governing law in a contract that is the law of another jurisdiction (a "foreign governing law")? Will courts in your jurisdiction enforce a contract that has a foreign governing law?

Croatian courts recognise a foreign governing law in a contract. Parties have the freedom to designate the law of any jurisdiction in a contract, as freedom of choice stands as one of the fundamental principles of legislation governing conflict of law rules. However, certain exemptions to the rule are determined by the Private International Law Act due to the protection of Croatia's public interests. Two general categories of such exemption are: *ordre public* rules; and rules of immediate application. Rules of immediate application are implemented in accordance with Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

According to article 13 of the Private International Law Act, the court may apply a provision of Croatian law, the respect for which is regarded as crucial for safeguarding the country's public interests, such as political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract.

7.2 Will the courts in your jurisdiction recognise and enforce a judgment given against a company in New York courts or English courts (a "foreign judgment") without re-examination of the merits of the case?

In general, judgments given by a court in an EU Member State should be recognised in other EU Member States without any special procedure being required, i.e., without re-examination of the merits of the case pursuant to the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I *bis*).

Since the UK is no longer a part of the EU, it is considered a third country. Therefore, an English court judgment would be treated as a non-EU Member State court judgment.

Recognition of a judgment given by a court of a non-EU Member State, such as the New York court, is regulated by the Private International Law Act, and such judgments are recognised without re-examination of the merits. In the procedure of recognition before the court, the court will only check formal requirements as follows:

- if such judgment was final in the state of origin;
- whether there was infringement of the party's right to participate in the proceedings;

- whether there is exclusive jurisdiction of Croatian courts;
- whether there is already an existing judgment (*res judicata*); and
- whether the judgment is contrary to the *ordre public*.

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in your jurisdiction, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in your jurisdiction against the assets of the company?

It is hard to predict the approximate timeframe for the obtainment and enforcement of a judgment as it depends on the complexity of the case and the promptness of the court, which is connected to the workload of the court. The timeframe also depends on the type of assets, i.e. whether bank accounts, movable or immovable property are enforced. On average a judgment could be obtained within approximately three years and then enforced within two months if enforcing bank accounts have sufficient funds, or approximately three years when enforcing immovables. The timeframe also depends on whether an appeal was lodged against the first instance judgment. Such appeal can prolong the process for approximately one to two years. For the recognition and enforcement of a foreign judgment, it could also take from a few months to a few years, depending on the same factors as indicated above: type of assets; financial situation of the debtor; and the court's workload.

7.4 With respect to enforcing collateral security, are there any significant restrictions that may impact the timing and value of enforcement, such as (a) a requirement for a public auction, or (b) regulatory consents?

Significant restrictions that may impact the timing and value of enforcement include public auctions, which are mandatory in enforcement proceedings. Namely there are one to two public auctions for immovables and one auction for movable property. There are no regulatory consents proposed by Croatian law concerning the implementation of collateral security.

7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in your jurisdiction, or (b) foreclosure on collateral security?

No special restrictions apply to foreign lenders in the event of (a) or (b). However, in some cases it could be requested that the foreign lender plaintiff give security for the payment of proceedings costs. Namely, a foreign lender plaintiff would be requested to give security for the payment of proceedings costs where there is no reciprocity, i.e., treaties between the country of the seat of a foreign lender and Croatia regarding proceedings costs, and the foreign lender plaintiff is not a Croatian national or resident, nor a national or resident of another EU or EEA Member State or a Member State-contracting party of another international agreement that regulates the exemption from the security of the costs of the procedure. Moreover, if such foreign lender plaintiff does not have its seat or representation (e.g., attorney) in Croatia, they will need to appoint a delivery agent to receive court documents during the legal proceedings.

7.6 Do the bankruptcy, reorganisation or similar laws in your jurisdiction provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?

Pursuant to the Bankruptcy Act, once pre-bankruptcy proceedings or bankruptcy proceedings are opened, up to the closure of such proceedings, no enforcement proceedings are permitted against the debtor. The proceedings are considered opened and have the legal effect once the decree that the proceedings are opened is published on an electronic bulletin board of the court. After the commencement of bankruptcy proceedings, creditors with secured claims (e.g., a mortgage on real estate registered in the land registry) are not authorised to initiate enforcement or securing procedures, unless a decree on the settlement of the creditor with a secured claim has already been rendered in the enforcement proceedings. However, after the commencement of bankruptcy proceedings, separated creditors may, for the purpose of realising their rights, initiate enforcement and security procedures against the debtor according to the general rules of enforcement proceedings.

7.7 Will the courts in your jurisdiction recognise and enforce an arbitral award given against the company without re-examination of the merits?

The Arbitration Act regulates the recognition of foreign arbitral awards. Croatia is also a party to the Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention 1958).

Croatian courts would recognise and enforce arbitral awards given against the company without re-examination of the merits, subject to the arbitration award not being contrary to the public order and there being no exclusive jurisdiction of Croatian courts.

8 Bankruptcy Proceedings

8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?

Creditors with secured claims have preferential status in (pre-)bankruptcy proceedings, i.e., they can use their right of "separate settlement". Such category of creditors has the right for their claim to be reimbursed from the proceeds of sale of their collateral. On the other hand, creditors with non-secured claims can only be reimbursed from the proceeds of sale from other unencumbered assets.

8.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?

Legal actions taken prior to the opening of the bankruptcy proceedings may be challenged by the Bankruptcy trustees and creditors if such actions benefit certain creditors (clawback) or are deemed to disrupt the balanced settlement of the creditors. Legal action which may be challenged are as follows:

(i) actions taken three months prior to filing a motion for opening bankruptcy proceedings or after, by which action a creditor was able to settle/secure his claim, can be challenged if such action was taken at a time when the debtor was

insolvent and if the creditor was aware of his insolvency or was aware that the bankruptcy proceedings had been opened;

(ii) actions that allow one creditor to settle/secure a claim that he is not entitled to claim/that is not due, if such action was taken in the last month before filing a motion for opening bankruptcy proceedings or was taken two or three months before filing such motion if the debtor was insolvent, or when the creditor was aware that such action would damage other creditors;

(iii) actions that directly damage the creditors, if such actions were taken three months prior to filing a motion for opening bankruptcy proceedings and if the debtor was insolvent and the other party was aware of such insolvency, or, if it was taken after – if the other party was aware of the debtor's insolvency or that the motion had been filed;

(iv) actions taken by the debtor in the last 10 years prior to filing a motion for opening the bankruptcy proceedings or after, with the purpose of damaging the creditors if the other party was aware of such intentions of the debtor;

(v) a debtor's actions without compensation taken within four years prior to filing a motion for the opening of bankruptcy proceedings; and

(vi) actions by which the shareholder's claim for a loan replacing the share capital or other similar claim is secured, when such action is taken five years prior to filing a motion for the opening of bankruptcy proceedings or after, or giving a guarantee for the claim if such action is taken one year before filing the motion for the opening of bankruptcy proceedings.

Employees' claims have priority over all other claims.

8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

Pursuant to the Bankruptcy Act, entities which are excluded from the bankruptcy and pre-bankruptcy proceedings are: the Republic of Croatia; funds financed by the Republic of Croatia; the Croatian Health Insurance Fund; the Croatian Pension Insurance Institute; and local and regional self-governing units.

8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

Assets are normally seized in court proceedings.

9 Jurisdiction and Waiver of Immunity

9.1 Is a party's submission to a foreign jurisdiction legally binding and enforceable under the laws of your jurisdiction?

A party's submission to a foreign jurisdiction is legally binding unless the Croatian court has the exclusive jurisdiction for such submission according to Croatian legislature. According to the Private International Law Act, the parties can choose the forum of a court of a non-EU Member State if there is no exclusive jurisdiction of the Croatian court, or a court of an EU Member State. Additionally, pursuant to article 25 of Brussels I *bis* Regulation, the parties can choose, in a written agreement, that a certain court of an EU Member State has jurisdiction and such court would be competent unless the agreement is null and void as to its substantive validity under the law of that Member State.

9.2 Is a party's waiver of sovereign immunity legally binding and enforceable under the laws of your jurisdiction?

A party's waiver of sovereign immunity is legally binding and enforceable, and it should always be given explicitly.

10 Licensing

10.1 What are the licensing and other eligibility requirements in your jurisdiction for lenders to a company in your jurisdiction, if any? Are these licensing and eligibility requirements different for a "foreign" lender (i.e., a lender that is not located in your jurisdiction)? In connection with any such requirements, is a distinction made under the laws of your jurisdiction between a lender that is a bank *versus* a lender that is a non-bank? If there are such requirements in your jurisdiction, what are the consequences for a lender that has not satisfied such requirements but has nonetheless made a loan to a company in your jurisdiction? What are the licensing and other eligibility requirements in your jurisdiction for an agent under a syndicated facility for lenders to a company in your jurisdiction?

There is a difference if loans are given by a financial institution which is called "*kredit*" or if it is given by any other natural or legal person it is called "*zajam*". A *kredit* agreement should always be in writing, and the object of the loan is always money and interest always applies. A *zajam* agreement, on the other hand, is a non-formal contract – the object of the contract can be money or another fungible object, with or without interest. Having in mind everything previously mentioned, under Croatian law, a distinction is made between a lender that is a financial institution and a lender that is a non-financial institution. Pursuant to Croatian banking and financing laws, a bank should obtain a special licence to operate as a bank. The licence is given according to the Croatian Act on credit institutions. There are no special licensing requirements for other (foreign) legal and natural persons to give loans.

Foreign lenders, i.e., foreign financial institutions can give loans in Croatia if such financial institutions are incorporated within the EU and have a subsidiary in Croatia or are authorised to directly operate as financial institutions in Croatia or banks from other countries that have a subsidiary in Croatia.

If a *kredit* loan is given by a lender without the proper licence, it would be considered null and void. In that case and depending on the specifics on each case, the lender or their management could be punished with fines for an offence.

As Croatian law does not specifically regulate an agent under a syndicated facility, no licensing and eligibility requirements apply.

11 LIBOR Replacement

11.1 Please provide a short summary of any regulatory rules and market practice in your jurisdiction with respect to transitioning loans from LIBOR pricing.

The Law on the Implementation of the Regulation (EU) No 2016/1011 on Indices used as Benchmarks (Official Gazette Nos 57/18, 46/2021 and 123/2023), amended on 31 October 2023,

regulates the transition from LIBOR pricing in Croatia. The most recent amendments were made due to Croatia's admission to the eurozone on 1 January 2023. The law fully implements Regulation (EU) No 2016/1011.

The regulations aim to minimise legal ambiguity and mitigate risks to financial stability by ensuring the implementation of an alternative legal rate before the cessation of the systemically significant benchmark.

According to the Commission Implementing Regulation (EU) No 2021/1847 of 14 October 2021 on the designation of a statutory replacement for certain settings of CHF LIBOR, which is applicable as of 1 January 2022, Croatia must substitute CHF LIBOR with SARON (Swiss Average Rate Overnight) in all agreements connected to CHF LIBOR. On the other hand, USD LIBOR was supposed to stay in use during the transition period, i.e. until the end of June 2023.

Most of the loans and deposits in Croatia are linked to the national reference rate ("NRS") and EURIBOR, both of which have remained unchanged.

12 ESG Trends

12.1 Do you see environmental, social and governance (ESG) or sustainability-related debt products in your jurisdiction? If yes, please describe recent documentation trends and the types of debt products (e.g., green bonds, sustainability-linked loans, etc.).

Environmental, social and governance ("ESG") and sustainability-related debt products are recognised in Croatia. Namely, the Act on Implementation of the Disclosure and Taxonomy Regulation, together with relevant EU regulations, constitute the legal base for ESG and sustainability-related debt products. The types of debt products presented on the Croatian market are sustainability-linked loans which are offered mostly by banks and green bonds.

12.2 Are there any ESG-related disclosure or diligence requirements in connection with debt transactions in your jurisdiction? If yes, please describe recent trends and any impact on loan documentation and process.

Having in mind that the development of ESG-related framework is still in progress, mostly all regulations are adopted directly from the EU Directives and Regulations or refer to them. The Croatian Financial Services Supervisory Agency ("HANFA") is the entity which supervises whether entities on the financial market are fulfilling obligations from the Act on Implementation of the Disclosure and Taxonomy Regulation.

13 Other Matters

13.1 Are there any other material considerations that should be taken into account by lenders when participating in financings in your jurisdiction?

This chapter has addressed most of the relevant and general issues regarding the Croatian landing market. The diverse circumstances in each case determine the range of potential material considerations that need to be considered. In general, the Croatian Civil Obligations Act regulates the lending and is applicable to participation in financing in Croatia.

Miroljub Macesic is the founder and partner at the law office Macesic & Partners Law Office LLC since its establishment in 2002. During his long-standing practice as a lawyer and attorney, he has worked in all areas of law related to business and commercial law. Following his internship at the District Commercial Court and practice as an in-house council, as an attorney he has chosen to specialise in commercial, maritime and transport law along with banking and finance, energy and similar areas of law. During his work as a lawyer and attorney, he has represented clients in all types of proceedings before courts, administrative and misdemeanour bodies as well as in arbitration proceedings, as a nominated arbitrator. As an experienced lawyer, he has dedicated himself to leading teams of attorneys and lawyers in the most demanding matters and to mentoring team members.

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Macesic and Partners assists international clients doing business or looking to invest in Croatia. One of the oldest business-law oriented offices in the country, the firm provides expert assistance in complex, cross-border matters and operates through two offices in Zagreb and Rijeka.

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