

Croatia

Dinka Kovačević and Maja Komljenović

Žurić | Partneri Law Firm

1 Collateral

What types of collateral are available?

In general, the Croatian legislation recognises almost all types of collateral that are typical for the international business environment. The rules governing specific security and their perfection depend primarily on the type of collateral in question. The system of collateral is primarily regulated by the Ownership and Other Proprietary Rights Act, which prescribes the rules on the establishment of security over real estates, movables and property rights. Some types of collateral are regulated by specific legislation such as, for example, financial collateral. Croatian law regulates two separate securities over real estate; hypothecation and fiduciary ownership (transfer of ownership for security). The collateral available are shares, securities, contractual rights and other standard collateral. On the other hand, for example, onshore and offshore bank accounts could be considered as the available collateral, but the perfection and establishment of security over bank accounts still remains an open issue in Croatian legislation without a straightforward answer.

Available collateral security can be established as voluntary (on the basis of voluntary agreements as well as judicial or notary public security, established by special rules of the Enforcement Act) and forced: (i) the so-called judicial pledge (created by a court decision, made in the enforcement proceedings or insurance); (ii) administrative security rights (established on the basis of decisions of administrative bodies); as well as (iii) a statutory pledge (arising under the law with the fulfilment of certain preconditions).

The claim can also be secured with the (fiduciary) transfer of ownership on movables or real estate for security (fiduciary ownership), as well as with the fiduciary transfer of some other rights. Such security is always voluntary according to special rules of procedure within the Enforcement Act. There are some further possibilities involving real estate collateral, like security, by ensuring the retention of property rights, execution of retention and others.

The financial collateral, as a specific type of collateral, is prescribed by the Financial Collateral Act as the transfer registration of a special kind of pledge of financial instruments or cash for the purpose of securing financial obligations. Financial collaterals are financial instruments or cash, while financial instruments are shares in companies and securities equivalent to them, bonds and other debt securities negotiable in the capital market, units in undertakings for collective investment in transferable securities, money market instruments, other book entry securities negotiable in the capital market, which give the right to acquire shares, bonds or other securities that give the right to a financial claim, derivatives, as well as all other rights arising from the mentioned financial instruments, excluding promissory notes and cheques.

2 Perfection and priority

How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party?

The rules on perfection of collateral and its priority establishment defer, depending on the type of collateral in question and are as follows:

- real estate – security interest is perfected by its registration with the Land Registry. In connection with this type of perfection, there is a specific principle called the ‘principle of trust in land registry entries’, which provides that everyone interested in particular real estate can rely on the facts from the Land Registry;
- movables – perfection of the security over boats and aeroplanes is regulated in a similar manner as over real estate, namely, by registration with the relevant registries in which ownership titles are recorded. Therefore, for these types of movables it is possible to rely on the principle of trust in the registry entries. For other types of movables the security rights can be also registered in the Register of Judicial and Notary Public Secured Claims held by the Financial Agency. However, such registration is not the condition for perfection of security over movables but merely serves as a form of extra security for the creditor when determining the priority right. Bank accounts, on the other hand, are not considered as movables on which a pledge can be registered and, therefore, it is highly questionable whether and how security on bank accounts is perfected and established, and moreover, how it can be enforced; and
- securities – collateral on non-materialised securities is perfected by registration with the Central Depository and Clearing Agency, as prescribed by the Securities Market Act.

For securities that are perfected by registration, the priority right is determined by the time of submission of applications for the registration of security. In cases of security for which the registration is not a precondition of its perfection, there is a risk of establishing priority right. To avoid or at least minimise the risk, creditors also tend to register their security rights over movables with relevant registries.

There are no specific fees, taxes or other charges necessary for the perfection of security interest. Nevertheless, competent registries would condition finalisation of registration with payment of court and administrative fees within the proceedings for registration of security.

3 Existing liens

How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

In determining the priority right to the creditor's security for securities in which perfection is conditioned with registration in specific registries, the 'principle of trust in registry entries' applies.

For securities over movables (except boats and aircraft), although it is not necessary to register the acquired rights with the Registry of Judicial and Notary Public Secured Claims held by the Financial Agency for purposes of their perfection, the creditors' risk of determining priority right is minimised with respective registration. However, even in such situations there is no absolute assurance as to the absence of other non-registered liens over movables.

4 Enforcement of collateral

Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

Outside the context of a bankruptcy proceeding, a project lender may enforce its rights as a secured party over the collateral through the enforcement proceeding. This process is regulated by the Enforcement Act. A secured party may enforce its right either through the process by a notary public or through the court. Also, a period of enforcement may be shortened by agreeing in the loan agreement on the enforcement clause that grants to the secured creditor the right to initiate immediate enforcement procedure upon determination of the debtor's default by the notary (for that, the agreement must be executed in the form of a notarial deed). On the basis of a document that serves as a proof of debt and is not directly enforceable (eg, a bill or excerpt from the accounts book), a creditor can initiate the enforcement procedure with a notary public. After the notary passes a resolution on enforcement and it becomes final, a creditor may send the resolution to the Financial Agency and the employer of the debtor or initiate a court auction of the debtor's movables or real estate (depending on the available debtor's assets) and demand a seizure. On the basis of the document that serves as a proof of debt and is directly enforceable, a creditor can initiate proceedings at the court with the same result as the proceedings initiated in front of the notary public, except in specific cases when the enforceable deed would be directly enforced outside notarial or judicial proceedings (eg, a debenture note enforced directly over the debtor's accounts or, in the case of collateral, over non-materialised shares or other securities).

5 Bankruptcy proceeding

How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the collateral? Are there any preference periods, clawback rights or other preferential creditors' rights (eg, tax debts, employees' claims) with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

In the context of bankruptcy proceedings initiated over the security debtor, Croatian legislation prescribes an exclusive jurisdiction of the Croatian courts. In the case of a claim based on a foreign court decision or arbitral award, the rights of the creditor are recognised in accordance with the conditions for acknowledgement of foreign court rulings.

Within bankruptcy proceedings, different rules apply, depending on the type of security in question. A claim secured by fiduciary title is treated as a right of asset separation and the asset that represents such a collateral does not constitute a bankrupt estate and as a consequence is excluded from the bankruptcy proceedings. It could be concluded that a similar status has financial collateral since

the Financial Collateral Act specifically excludes the enforcement of financial collateral from the bankruptcy proceedings. On the other hand, for example, a claim secured by hypothecation or other form of registered pledge is considered as a right of separate collection, but assets that represent collateral are considered as part of the bankrupt estate. In this case, the creditor has a priority right over other non-secured claims, as well as the right of enforcement outside the bankruptcy proceedings.

The bankruptcy creditors that do not have secured claims (either though transfer of ownership for security – fiduciary title or registered pledge) are classified in payment priorities depending on the type of the claim and could be settled from the bankrupt estate only after the secured claims. After the claims of all creditors from the preceding payment priority are fulfilled, the creditors of a lower payment priority may have their claims settled. Within the range of non-secured claims, the highest priority is assigned to the employees of the bankrupted company and payment of bankruptcy proceedings, costs and taxes, while incidental claims (eg, interests) are at the bottom of the priority scale.

The Bankruptcy Act also prescribes unfair preference periods. As a consequence, the transactions undertaken by the bankrupted company in such periods would be considered null and void. In general, the bankruptcy administrator has the authority to dispute the transactions undertaken by the company prior to bankruptcy, subject to specific conditions of Bankruptcy Act if he or she considers that such transactions distort the equality of creditors in settlement of their claims or in any way place specific creditor in a preferential position against the bankrupt company's other creditors.

According to the Bankruptcy Act, bankruptcy proceedings cannot be conducted against the Republic of Croatia, funds financed from the state budget, pension, social or health funds or municipalities.

6 Foreign exchange

What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange?

According to the Foreign Exchange Act and the Decision of the Croatian National Bank on Payments in Foreign Currency in the Country, payments made in foreign currency under the credit arrangements between domestic and foreign entities are allowed. There are exceptions for payments in foreign currency between domestic and foreign entities, where such payments are not allowed. Those exceptions are:

- purchase of real estate in the territory of Croatia;
- purchase of share interests in Croatian limited liability companies;
- purchase of shares in investment funds regulated under Croatian law; and
- purchase of securities listed on the Croatian stock exchange or issued in Croatia, except for securities issued in Croatia but listed abroad.

In our view, this would not prevent a bank from granting financing in the form of a loan to a buyer in foreign currency. However, ownership-based financing (eg, transfer or retention of title) could be affected by this provision. No taxes or stamp duties on foreign loans for which a foreign bank would be liable in Croatia apply.

7 Remittances

What are the restrictions, controls, fees and taxes on remittances of investment returns or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions?

There are no specific restrictions, controls and fees on remittances of investment returns (dividends and capital) or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions. However, a new amendment to the Act on Company

Income Tax has introduced some changes regarding the taxation of dividends. These amendments came into force on 1 March 2012. According to the amendments, a withholding tax of 12 per cent has to be paid on dividends paid to a non-resident entity, while tax of 15 per cent has to be paid on interest paid to a non-resident entity. It should also be noted that, due to the fact that there are a great number of exceptions applicable to non-residents based on bilateral agreements and EU directives, most non-residents will be excluded from this taxation or the lower tax rate will apply.

8 Repatriation

Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

Repatriation of foreign earnings is allowed, but not necessary. According to the Foreign Exchange Act, the transfer of profits from one country to another is not restricted and may be effected after all tax and other statutory obligations in Croatia have been met. The general rule is that the amount that is left after the corporate income tax is paid can be repatriated. Moreover, recently, Croatian legislation was introduced with the Investment Incentives Act. This act prescribes all sorts of incentives created to originate a 'fertile ground' for foreign investments in Croatia. One of these incentives is related to corporate income tax. Depending on the amount of capital invested in Croatia, a company may gain the right to the lower tax rate. The higher the amount is, the lower the tax rate becomes. Therefore, not only is the rule for repatriation fairly liberal, but the provisions of the specific act are in favour of the non-resident company.

Additionally, it is important to underline the possibility of transferring the profit through the company's foreign currency account that is held at one of the authorised local banks. This is possible in the case of a company with profits that are to be transferred and that has its own foreign currency income from exports of goods or services.

9 Offshore and foreign currency accounts

May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

Since 2011, in line with the decision of the Croatian National Bank, domestic entities are able to open bank accounts abroad without prior approval of the central bank and, additionally, foreign project companies may also open and maintain foreign currency accounts in Croatia.

10 Foreign investment and ownership restrictions

What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

As a general rule, there are no restrictions on foreign investment in a project. However, for purposes of setting up a project or acquiring the ownership over project and performing business activities on a permanent basis in Croatia, a foreign investor would have to set up at least a domestic branch office or subsidiary. According to the Companies Act, if a foreign person establishes a company in Croatia, the company is considered to be a domestic legal entity and it may acquire rights and undertake the obligations in the same manner as any other domestic entity.

According to information provided by the Croatian National Bank, up to 2011, Croatia has entered into 59 bilateral treaties for the protection and promotion of investments and 50 bilateral treaties on double taxation avoidance with Austria, Germany and France, as

the biggest foreign investors in Croatia, as well as with other countries within and outside the region.

11 Documentation formalities

Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

Whether financing or project documents would have to be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable would, primarily, depend on the type of specific transaction or project in question. The project documents issued abroad that would serve as the basis for registration with government authorities in Croatia would have to be notarised and apostilled. For purposes of confirmation of the validity of public documents issued abroad (unless otherwise provided by bilateral or multilateral treaties), they should be apostilled in accordance with the laws of the country of issue.

12 Government approvals

What government approvals are required for typical project finance transactions? What fees and other charges apply?

The loans or credits and collaterals granted by the state are subject to the approval of the Ministry of Finance or the government in accordance with the applicable legal provisions. In the case of requirement of approval by the corporate bodies and, similarly, approval of the competent state body, the approvals have to be obtained prior to obtaining the loan or issuance of the collateral. In the case of a need for approvals of the company's bodies it would depend on the content of the company's document in which such an approval is defined. For example, a provision in the company's articles may require the approval (of the supervisory board or the shareholders' meeting) for each transaction of a certain type or for the value that exceeds specific amount.

In the case of loans and collaterals given by the state, the approval is granted for a specific project and, at the same time, up to the means provided for that purpose in the budget (specifically determined by the law on execution of the state budget for each year). The government passes the decision on issuance of state guarantees. State guarantees and sureties have to be approved by the government (upon proposal of the Ministry of Finance) and the Ministry of Finance takes part in the negotiations for the loans for which the state will provide guarantees.

13 Foreign insurance

What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

There are no restrictions, fees and taxes existing on insurance policies over project assets provided or guaranteed by foreign insurance companies, and policies are payable to foreign secured creditors. However, for certain types of projects there is an obligation to contract a local insurance policy.

14 Foreign employee restrictions

What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

Subject to the conditions set by the Foreigners Act, it is possible to obtain a work and residence permit (RWP) for a foreign employee in Croatia. However, there are some limitations and restrictions for employment of foreigners, such as annual quota of permitted foreign employees, which is in compliance with the unemployment rate and needs of the market. An RWP is issued for a maximum period of a

year and can be extended for another year. Apart from employees within the quota, there are some groups of employees that can be employed regardless of the annual quota, for example, key personnel (directors, procurators and similar) and internally transferred employees from within the group. It should also be mentioned that the criteria for non-EU key personnel working beyond the annual quota are more stringent than for EU nationals.

15 Equipment import restrictions

What restrictions exist on the importation of project equipment?

Potential restrictions on importation of project equipment would primarily depend on the type of imported goods. In general, the Trade Act prescribes the rules on limitations on imports in cases of domestic production being endangered. In the case of an increase of imports of a certain product to the extent that it endangers or threatens to endanger domestic production, the Croatian government is entitled to impose restrictions, such as a decrease of the import volume of such a product or an increase of customs duties or both. On the other hand the Investment Incentives Act excludes the obligation of customs payment for certain type of products if such products represent an investment. These products are listed in chapters 84 to 90 in the Customs Tariff (eg, mechanical equipment, necessary parts for vehicles, other transport devices, etc).

16 Nationalisation and expropriation

What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

Croatian legislation recognises expropriation, however, only to a limited extent. According to the Expropriation Act, real estate can be expropriated only in favour of Croatia when it is of national interest and in the case that the new utilisation of the real estate has a greater benefit than that gained before the expropriation. In the case where the real estate is expropriated, a prior owner will, in return, receive a new real estate of approximately the same value and in the same area or, in the case where that is not possible, an amount equivalent to the market value of real estate.

17 Fiscal treatment of foreign investment

What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

As a general rule, a foreign entity gaining a certain type of profit in Croatia must pay withholding tax. Profit includes interest. However, withholding tax shall not be paid on interest paid on commodity loans for the purchase of goods used for the carrying out of a taxpayer's business activity, on loans granted by a non-resident bank or other financial institution and to holders of government or corporate bonds, who are non-resident legal persons.

Foreign investors may also be obliged to pay income tax. However, due to the fact that Croatia has bilateral agreements with 50 countries, payment of this particular tax is subject to the provisions of these agreements. The Investment Incentives Act has, however, set a list of tax benefits provided for investors investing in rural areas. Following the provisions of this act, the company income tax rate, in some cases (large investments on long period of time), can decrease to zero per cent.

18 Government authorities

What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

Authority over the typical project sectors (eg, oil and gas, mineral extraction, telecommunications, etc) is given either to the competent ministry or to one of the agencies that are serving as legal entities with the public authority. Some of these agencies are:

- the Croatian Energy Regulatory Agency – the agency with the authority in energy sector;
- the Agency for the Protection of Environment – the authority in minerals extraction;
- Croatian Waters – the institution supervising water treatment; and
- the Croatian Agency for Post and Electronic Telecommunications – the agency with supervision over the telecommunications sector.

Apart from Croatian Waters, which is an institution, all of the above mentioned agencies are legal entities with public authority, directly responsible to the Croatian Parliament.

The history of state ownership in these important sectors is widely different. Some sectors remained state-owned (eg, HEP d.d. – the provider of electricity), while some were partially privatised (eg, INA d.d. – an oil and gas company) or fully privatised (eg, HT d.d. – the telecommunications provider).

19 International arbitration

How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

It is possible and advisable to agree to arbitration, subject to arbitration requirements and practical concerns that may, in some cases, require or suggest that the parties should go to regular courts. However, a foreign arbitration may not be agreed upon between two domestic entities. Also, there is no automatic arbitration.

Croatia is a contracting party to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) of 1958. Croatia has adopted both the commercial and reciprocity reservations of the New York Convention. Thus, arbitral awards rendered in commercial matters to a contracting party to the New York Convention are, in general, capable of being recognised and enforced in the Republic of Croatia under the conditions laid down in the New York Convention.

20 Applicable law

Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

When it comes to the law governing project agreements, it is a rule that parties may agree on the relevant law. In practice, it will usually be the law of the lender.

Croatian courts have exclusive jurisdiction for disputes regarding proprietary rights (and some other rights) over real property. Consequently, security agreements concerning real property situated in the Republic of Croatia are governed by Croatian law and subject to the jurisdiction of Croatian courts (or Croatian arbitral tribunals). Judgments of foreign courts may be enforced in Croatia subject to the fulfilment of conditions for the recognition and enforcement of the foreign judgment.

Where financial instruments are in the form of book entry securities, the law of the country where the register, namely, where the account with the authorised institution is situated in which those financial instruments are registered, shall exclusively apply to the financial collateral agreements in respect of the legal nature and proprietary effects, procedural requests and forms for conclusion and realisation of the financial collateral agreements, as well as in matters concerning the impact of potentially existing rights of third parties over those financial instruments (the Financial Collateral Act).

21 Jurisdiction and waiver of immunity

Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

According to the Conflict of Laws Act, submission to a foreign jurisdiction is effective and agreeable if one of the parties is a foreign natural person or legal entity, except in cases of exclusive jurisdiction of the Croatian courts. Also, a decision of a foreign court is equal to one brought in front of a Croatian court in the case of the Croatian court accepting it within the recognition procedure.

22 Title to natural resources

Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

The state has the title to natural resources, however, private parties may obtain a concession on extraction of these resources. Issuance of concessions is strictly supervised by the authorised state bodies or agencies with public authorities. Therefore, a private party may obtain the right to exploit these resources for consideration. Foreign parties may also obtain such rights if they follow the conditions necessary for a non-resident to perform business in Croatia.

23 Royalties on the extraction of natural resources

What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

Extraction of natural resources is not subject to specialised taxes and royalties. This falls under the provision of Company Income Tax Act, as a mine, oil and gas well, quarry or any other place of extraction of natural resources is also considered as a business unit of a company. Therefore, companies that are extracting natural products are subject to income tax. Due to the fact that different state agencies are responsible for issuance of permits of business within the natural resources sector, obtaining these permits is subject to the payment of different fees regulated by specialised tariffs (eg, the tariff for permission for provision of natural gas).

24 Export of natural resources

What restrictions, fees or taxes exist on the export of natural resources?

Due to the fact that Croatia is seeking to gain wider relevance as an export country, rules providing the export of natural resources are fairly market-oriented and liberal. For example, every three years, the Croatian government provides the National Strategy on Energy Development. This strategy supports export-oriented policies over energy in Croatia. However, the energy sector in Croatia is strictly supervised by the public bodies. As far as export goes, Croatia exports only a limited amount of products and mostly to neighbouring countries (almost a quarter of the country's exports are to Bosnia and Herzegovina) and there are no particular restrictions that are different to those for local enterprises. Every possible exporter has to fulfil the export customs declaration. For this submission, one has to pay an administrative and customs fee.

25 Environmental, health and safety laws

What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?

There is a wide system of laws and regulations that apply to typical project sectors, for example:

- the Nature Protection Act, OG 139/08;
- the Agricultural Land Act, OG 152/08;
- the Waters Act, OG 153/09;
- the Electronic Media Act, OG;
- the Act on the Amendments to the Waste Act, OG 87/09;
- the Act on the Gas Market, OG 83/09;
- the Act on the Production, Distribution and Supply of Thermal Energy, OG 20/10;
- the Utilities Act, OG 79/09;
- the Railways Act, OG 75/09;
- the Mining Act, OG 75/09; and
- the Public Roads Act, OG 153/09.

These laws are administered with a number of bodies. Principally, there are sectors in particular ministries that regulate and monitor the implementation of these laws. Also, much authority is given to local bodies that are dealing with the implementation of laws in their area. However, the specialised, state-founded companies that are in charge of particular areas of interest should also be mentioned. A managerial board of these companies is elected by the Croatian government. In general, these companies are widely under the control of the state and even though they are organised as legal entities in the private sector, most of their features are similar to those in public administration bodies.

26 Project companies

What are the principal business structures of project companies? What are the principal sources of financing available to project companies?

Capital projects are mainly financed through bank loans. Quite often, when there is a capital project of great value, a group of first-class banks provide a syndicated loan. In recent years, some capital projects (eg, the building of schools) were financed through the PPP mode.

In specific sectors (eg, the energy sector), there are specialised funds established for the promotion and financing of such industries (eg, the Environmental Protection and Energy Efficiency Fund).

In recent years, European Union pre-accession funds have been available as a source of financing.

27 Public-private partnership legislation

Has PPP-enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

From 2009, the main act that has regulated the area of public-private partnership in the Republic of Croatia is the Public Private Partnership Act. Croatian legislation does not exclude any industry from the possibility of PPP model projects – while the Public Private Partnership Act is *lex generalis*, there are a number of acts that regulate the PPP model in specific areas (eg, the gas market, water and agriculture). Also, as a future member of the EU, in 2010 Croatia successfully finalised negotiations on chapter 5 – Public Procurement with the EU and harmonised its PPP legislation with EU rules.

The main regulatory body for PPP projects is the Agency for Public Private Partnership, which is a legal entity with public authority and serves as the central authority for evaluating, approving and monitoring the implementation of PPP projects, organising and keeping the register of PPP contracts, applying the best international practices and establishing a system of training in the field of PPP.

Update and trends

In 2013, Croatia will become a member of the European Union and fully adopt the market practice established in the EU. Consequently, new opportunities will arise for foreign investors. Since 2001 and entering into the Stabilisation and Association Agreement with the EU, Croatia has made a great effort to fulfil EU requirements as well as to harmonise with EU legislation. At present, now that the accession period has almost elapsed, it can be confirmed that Croatia is in compliance with EU standards and business practices. Nevertheless, due to the on-going economic crisis, it is expected that the period of joining the EU will not be easy. Croatia is still struggling with slow public administration and a judicial system that directly influences interest for foreign investment. To circumvent such a trend the Croatian government is continually seeking better and more practicable approaches that are acceptable for a positive business environment.

In the preparation and implementation of PPP projects, the Agency for Public Private Partnership has a key role with the Ministry of Finance, which grants approval for PPP projects regarding their compliance with budget projections and plans, fiscal risks and constraints regulated by special regulations, as well as the financial and fiscal sustainability of the project proposal. In 2012, the preparatory and advisory component in the implementation of a PPP project was given to the newly founded Centre for Monitoring Business Activities in the Energy Sector and Investments.

28 PPP – limitations

What, if any, are the practical and legal limitations on PPP transactions?

The main drawback of PPP is that the choice of a private partner is subject to mandatory public procurement procedure in accordance with the Public Procurement Act and the specific PPP project can be proposed only by the public partner. Also, the duration of a PPP project model is limited in time (between five and 40 years). According to the newly-passed Private Partnership Act in July 2012, the procedure has been simplified to some extent, but nevertheless, it still remains a complex and time-consuming process. The Public Private Partnership Act recognises two types of PPP projects; the contractual PPP and the PPP/SPV model.

29 PPP – transactions

What have been the most significant PPP transactions completed to date in your jurisdiction?

Although the Act on Public Private Partnership came into force in 2009, the model is still not fully enough recognised, probably due to the recent global economic crises. However, there are a few good examples of its practice, as well as some significant pending projects. During the last three years, 32 schools were either built or renovated in Varaždin County and the County Palace was renovated with the PPP model. One big project that is currently in the final phase of preparation is the renovation and construction of a new terminal at Zagreb's Pleso Airport. The project of building a new bus terminal in Rijeka has also been accepted and will be realised through the PPP model.

Žurić i Partneri
odvjetničko društvo

Dinka Kovačević
Maja Komljenović

dinka.kovacevic@zuric-i-partneri.hr
maja.komljenovic@zuric-i-partneri.hr

Ivana Lučića 2a/15
10000 Zagreb
Croatia

Tel: +385 1 5555 630
Fax: +385 1 4856 704
www.zuric-i-partneri.hr