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**Slovenia: Law and Practice**

Vid Kobe and Peter Gorše
Schoenherr Slovenia

# SLOVENIA


## Law and Practice

**Contributed by:**
Vid Kobe and Peter Gorše
**Schoenherr Slovenia**

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## Authors

**Vid Kobe** is the office managing partner at Schoenherr Slovenia, where he heads the banking and finance department. Vid's multifaceted practice spans financings, restructurings, distressed assets, and financial sector M&A transactions. He has extensive experience in syndicated financing/restructuring transactions and frequently represents sellers and buyers of bank asset portfolios in Slovenia, Austria and Croatia. Additionally, he advises industry associations (notably, EFET) on netting issues and provides regular counsel to financial institutions on regulatory matters and market entry. Vid holds an LLM from the London School of Economics, publishes on Slovenian corporate finance and insolvency regimes, and lectures on financial contract principles to both financial institutions and law students.

**Peter Gorše** is a partner at Schoenherr Slovenia specializing in the fields of banking and corporate finance. His extensive expertise encompasses a wide range of areas, including leveraged and acquisition financing, project finance, restructurings and NPL transactions, as well as banking and financial sector mergers and acquisitions. In addition, Peter is a trusted advisor on financial regulatory matters, serving a diverse clientele including banks, financial institutions and payment service providers. Peter has published on issues relating to insolvency and restructuring, cross-border jurisdiction, start-up financing and merger control.

**Schoenherr Slovenia**

Tomšičeva 3
SI-1000 Ljubljana
Slovenia

Tel: +386 1 200 09 80
Fax: +386 1 426 07 11
Email: office.slovenia@schoenherr.eu
Web: www.schoenherr.si/en

# 1. Loan Market Overview

## 1.1 The Regulatory Environment and Economic Background

In the face of rising inflation after the start of the war in Ukraine, due to rising energy and fuel prices, the European Central Bank (ECB) started intensively raising the key interest rate – the Euro Inter-Bank Offered Rate (EURIBOR). Moreover, banks increased their focus on risk management, particularly in light of heightened economic and geopolitical uncertainties. This included more stringent credit assessments and a cautious approach to new lending. Increased interest rates and a focus on risk management led to a noticeable reduction in credit activity as the cost of borrowing increased and the acquisition of loans became more difficult. A reduction was evident in the decreased demand for loans, particularly in the non-financial corporate sector (NFD), where credit growth slowed significantly from a peak of 18.4% in August 2022 to a contraction of 2.2% by March 2024. The growth rate of loans to households also decreased from 8.5% in September 2022 to 4.2% by March 2024.

In terms of regulatory environment – in addition to a more stringent approach to credit risk and sanctions regulations by Slovenian banks – the Bank of Slovenia (BoS) implemented several macroprudential measures aimed at enhancing the resilience of the financial system. These notably included the introduction of a positive neutral countercyclical capital buffer (CCyB) rate of 1.0%, effective from 1 January 2025, and tightening of the consumer credit conditions (eg, by way of establishment of a uniform debt service-to-income (DSTI) ratio cap of 50%).

In summary, the recent economic cycles characterised by high inflation, rising interest rates and geopolitical uncertainties, coupled with a proactive regulatory environment, have led to a more cautious and regulated loan market in Slovenia. These factors have collectively contributed to reduced credit growth, a shift towards fixed-rate loans, and an increased emphasis on risk management within the banking sector.

On the other hand, the banking sector, irrespective of the reduced credit activity and proactive regulatory environment, recorded increased profits and further strengthened its liquidity and capital adequacy indicators.

## 1.2 Impact of Global Conflicts

As noted in **1.1 The Regulatory Environment and Economic Background**, the heightened geopolitical uncertainties coupled with increased

interest rates led to reduced credit activity and stricter lending terms. Banks and other credit providers have increased their focus on risk management, in particular with respect to compliance with various sanctions regulations, making it more difficult to acquire a loan, especially for corporates from or associated with critical regions.

### 1.3 The High-Yield Market

Slovenia's high-yield market has remained relatively modest, with its bond market yet to reach the level of other EU countries. In general, the Slovenian bond market is dominated by public issuance, with a limited number of (mostly private) corporate issuers. Accordingly, the high-yield market had a limited overall role in emerging trends and the development of financing terms and structures in Slovenia.

### 1.4 Alternative Credit Providers

Traditionally, the Slovenian credit market has been dominated by established credit institutions. However, in recent years, geopolitical shifts, macroeconomic volatility and rising interest rates resulted in a notably increased level of activity among alternative credit providers, such as debt funds, private lenders and factoring companies.

Direct lending from these alternative providers often introduces different loan terms compared to traditional bank financing. For example, loans from alternative lenders may feature minimal amortisation requirements before a bullet repayment at maturity, enabling borrowers to prioritise growth over immediate debt servicing. These loans also tend to have higher pricing, and in cases such as mezzanine financing may include equity kickers, which grant the lender the option to acquire an equity stake in the borrower or its affiliates. However, since alternative lending takes on various forms, the financing terms and structures employed by these providers can vary significantly, depending on the specific deal and provider involved.

### 1.5 Banking and Finance Techniques

Although recently there has been an uptick in deals involving alternative credit providers in Slovenia, local borrowers continue to primarily rely on domestic banks for their financing needs. These transactions are generally structured using local banks' template documentation, which tends to be simpler and less complex compared to loan agreements based on the Loan Market Association (LMA) standards. Syndicated lending remains relatively uncommon among Slovenian banks.

However, in recent years, there has been a noticeable increase in syndicated and club deals led by foreign lenders in Slovenia. These transactions are typically based on LMA-recommended forms or, in the case of New York law-governed facilities, on a "documentation precedent" – ie, the existing deal documentation of the sponsor or borrower, which may incorporate certain model provisions from the Loan Syndications and Trading Association (LSTA). The same trend can be observed in lending transactions of certain alternative credit providers, in particular debt funds.

This evolution reflects the growing influence of international financing practices in the Slovenian market.

### 1.6 ESG/Sustainability-Linked Lending

Most Slovenian banks are making significant efforts to improve the composition of their credit portfolios from an ESG perspective – driven, inter alia, by ESG-related reporting requirements. Generally, banks are willing to offer (commer-

cially) better terms to borrowers/projects fulfilling ESG-related criteria. While certain borrowers have been able to meet/adapt to such requirements and manage to extract better borrowing terms, demonstrating ESG compliance tends to prolong the credit approval process.

## 2. Authorisation

### 2.1 Providing Financing to a Company

It is a generally accepted among practitioners and the regulator that lending/provision of credit to corporates in Slovenia only attracts regulation if performed by a (licensed) bank/credit institution. In Slovenia, the regulatory trigger for a banking licence (or a passporting) requirement is the taking of deposits and other debt instruments (*vračljiva sredstva*) from the public. In the case of non-Slovenian credit institutions established in the EU/EEA, such services may be provided in Slovenia (i) to the extent these are covered by home regulators' authorisation and (ii) based on establishment of a branch or by way of cross-border provision of services based on an EU passport. Non-EU/EEA credit institutions may provide such services subject to establishing a branch in Slovenia.

That said, it should be noted that the provision of loans/credit by entities other than credit institutions beyond "one-off" transactions may trigger the requirement to set up a branch in Slovenia based on general rules of corporate law. In addition, lending to consumers – when performed by entities other than credit institutions – will trigger a special licensing requirement.

In practical terms, this generally means that, in order to provide financing in Slovenia:

- credit institutions must be duly licensed, passported or establish a branch in Slovenia if they provide these services on a lasting and continuous basis; and
- other (non-bank) entities do not require special Slovenian licences, save for potential requirements to (a) establish a branch if they provide financing on a stable and continuous basis and/or (b) obtain a requisite license if they extend credits to consumers.

In addition to the foregoing, it should be noted that the new Act governing credit purchasers and credit servicers of the non-performing loans (NPLs) issued by banks implementing Directive (EU) 2021/2167 imposes certain additional obligations upon the servicers of NPLs originated by banks, including a licensing/passporting requirement.

## 3. Structuring and Documentation

### 3.1 Restrictions on Foreign Lenders Providing Loans

Apart from the requirements outlined in **2. Authorisation**, there are no Slovenia-specific restrictions exclusively targeting foreign lenders. That being said, in light of the geopolitical conflicts and extensive sanction packages related thereto, certain foreign lenders may face practical difficulties in providing loans in Slovenia.

### 3.2 Restrictions on Foreign Lenders Receiving Security

There are no material restrictions or impediments applying specifically to the taking of security or receiving guarantees by foreign lenders. Foreign lenders may be required to take certain administrative steps, such as obtaining a Slovenian tax number or a Slovenian identification number (*matična številka tuje pravne osebe*), for the reg-

istration of a security interest or ownership rights with certain registers. However, these steps are purely formal in nature and are relatively easy to complete. See also **6.4 A Foreign Lender's Ability to Enforce Its Rights**.

### 3.3 Restrictions and Controls on Foreign Currency Exchange

Apart from various EU-level sanctions and other international sanctions due to the war in Ukraine, there are no Slovenia-specific restrictions, controls or other concerns regarding foreign currency exchange.

### 3.4 Restrictions on the Borrower's Use of Proceeds

There are no statutory restrictions (of general application) as regards the use of loan/debt security proceeds by borrowers. Typically, the underlying loan/subscription agreements will provide for such restrictions.

### 3.5 Agent and Trust Concepts

A "security trust" structure – whereby one of the lenders (trustee) would hold legal title to security on behalf of other lenders (such that these would have the right of separation in respect to the (proceeds of) the respective security in the event of insolvency of the trustee) – is not used in strictly "local" constellations (where such "security trustee" would be established under Slovenian law). This is primarily due to a prevailing concern that such a structure may not be upheld by Slovenian courts, albeit – in view of certain practitioners – Slovenian law provides a sufficient legal basis therefor.

On the other hand, security trust structures are often put in place in cross-border constellations (ie, structures involving lenders/security trustees established under the laws of a jurisdiction that recognises security trust). Such constellations are (in relation to Slovenian borrowers) typically supported by instruments such as "joint and several creditorship" and/or "parallel debt" (providing a legal basis for the security agent/trustee to enforce transaction security in respect of the entire amount of secured obligations/on behalf of all secured parties). Albeit not yet confirmed by court practice, it is broadly accepted (among legal practitioners and scholars) that parallel debt and joint and several creditorship are valid under Slovenian law.

In local constellations, it is common for Slovenian lenders (when forming consortia) to employ a "security agency" structure in the form of an arrangement whereby one of the lenders (agent) is empowered to enforce security interests held by all (other) lenders/members of the consortium, albeit with other lenders typically holding separate (direct) but equally ranking security interests over the transaction security.

### 3.6 Loan Transfer Mechanisms

As regards the transferability of the various classes of rights stemming from a typical loan agreement, the following considerations apply.

- The transfer of a loan agreement as a whole (ie, the transfer of all rights and obligations) will require the consent of the borrower – which may generally also be given upfront/ by way of a provision in the underlying facility agreement.
- Receivables (ie, monetary claims) may generally be transferred from the original lender to the acquirer without consent of the borrower, who must be notified of the transfer (otherwise, it may validly fulfil its obligation by paying to the original lender). While good arguments can be made that the same applies to other classes of creditor rights (eg, information rights, acceleration rights), this is

subject to different views amongst practitioners (at least in respect of non-accelerated/non-terminated exposures).

As regards the transferability of the various classes of security (securing receivables arising from a loan agreement), the following applies:

- an ordinary real estate mortgage will generally transfer together with the secured receivable, and re-registration of the mortgagee is required to achieve publicity/perfection of the transfer;
- the transferability of the so-called maximum real estate mortgage (*maksimalna hipoteka*) is subject to some controversy amongst legal scholars and practitioners – in terms of market practice, the current "safe-side" approach is to obtain the debtor/mortgagor's consent;
- a pledge over movables, shares, IP rights and receivables will generally transfer together with the secured receivable, and re-registration of the pledgee in the relevant register (if applicable) is required to achieve publicity/perfection of the transfer; and
- bank guarantees (to the extent agreed as a form of transaction security) will generally not transfer without the guarantor's consent.

See **5.1 Assets and Forms of Security** as regards the requirements for the establishment of the various security interest classes.

Several market-standard routes have been developed in practice for addressing (potential) transferability issues, including synthetic transfers and methods employing corporate reorganisation forms.

## 3.7 Debt Buyback

There are no specific statutory restrictions as regards debt buybacks by borrowers or sponsors. However, creditors in multi-lender facility agreements (underlying syndicated lending structures) will typically seek to restrict such buybacks in terms of, inter alia, (i) the permissible source of funding, (ii) permissible methods/processes of acquisition (eg, solicitation/open order) and (iii) disenfranchisement of borrowers/sponsor affiliates in case of such buybacks. In addition, debt buybacks by sponsors may result in a risk of equitable subordination and thin capitalisation (see **7.5 Risk Areas for Lenders** and **4.3 Foreign Lenders or Non-money Centre Bank Lenders**).

## 3.8 Public Acquisition Finance

Under Slovenian law, certainty of funds is hard-wired into the takeover regime: a prospective acquirer must, as a condition for permission to publish a valid (mandatory or voluntary) takeover offer, either (a) deposit with the Slovenian Central Securities Clearing Corporation an amount of money equal to the offer price (price per share multiplied by the number of shares not owned by the offeror) or (b) provide the Central Securities Clearing Corporation with an irrevocable first-demand bank guarantee for an equivalent amount.

In terms of the underlying documentation (both in private and public deals), acquisition finance agreements will often specifically stipulate that during a "certain funds period", the obligation of the lender(s) to provide the requisite funding is subject to only a very limited number of conditions, and that the lenders' rights to terminate the underlying agreement, exercise rights of set-off or similar are restricted.

Long-form documentation is typically used for acquisition finance agreements. It is typically not made public but, as a matter of practice, the regulator (Securities Market Agency) may

request the disclosure of such agreements. It should be noted that, by virtue of an idiosyncratic (Slovenia-specific) "enhanced" restriction on financial assistance in the context of public companies (historically aimed at restricting leveraged buyouts), a prospective acquirer must (as a condition for the permission to publish a takeover offer) prove to the regulator that neither (a) the target company's assets nor (b) the target shares (other than those owned by the acquirer) form part of the acquisition finance security package.

### 3.9 Recent Legal and Commercial Developments

Over the past few years, legal practice seems to have developed market-standard solutions to certain (local law) topics that are important in the context of financings, notably around the provision of side- or cross-stream collateral and the associated limitation language. That said, parties are advised to pre-discuss and align on legal views at an early stage to avoid hiccups in advanced stages. Moreover, an increase in local financing transactions modelled on the LMA's recommended forms (including by certain Slovenian credit institutions that have historically been transacting on the basis of their local bank loan templates) can be observed. Apart from these general observations, there have been no noteworthy recent developments.

### 3.10 Usury Laws

In the context of consumer lending, an interest rate exceeding the statutorily prescribed default interest rate (currently set at approximately 12% pa) by more than 50% (currently meaning interest rates exceeding approximately 18% pa) is presumed to be usury and thus null and void. In the event of a dispute, the lender may refute this presumption by proving otherwise (eg, that the agreement has been entered into between equivalents and/or has a sound commercial basis). This presumption does not apply in the context of lending to corporates (in principle, an excessive interest rate in such a context could still qualify as usury under the general rules of Slovenian contract law, but this is a rather theoretical risk).

### 3.11 Disclosure Requirements

In line with the EU Transparency Directive (as implemented into Slovenian legislation), holders of (financial) instruments entitling them to acquire voting shares in a Slovenian public company (or having an equivalent economic effect) must notify that company of acquisitions or disposals of such instruments; in turn, the public company must publish this information.

In addition, the Slovenian Companies Act contains a provision stating that, in the context of any arrangement where a beneficiary obtains "a right to participate in a company's profits on the basis of a financial investment into such company", the respective beneficiary must be registered with the Slovenian court and commercial register (in the entry pertaining to that company). The scope of this provision is notoriously unclear and it appears not to be used in practice.

Directive (EU) 2018/822 (DAC6) also provides for obligatory reporting to the tax authorities in certain cases (see **4.3 Foreign Lenders or Non-money Centre Bank Lenders**).

## 4. Tax

### 4.1 Withholding Tax

In the context of financing transactions, interest income paid to a non-Slovenian resident (without a business unit or permanent establishment in Slovenia) is generally subject to a 15% with-

holding tax. Repayment of principal or default interest (*zamudne obresti*) does not qualify as income interest and is not subject to withholding tax in Slovenia. The above-mentioned withholding tax applies only to interest income with a Slovenian nexus, basically meaning interest income that is paid by a Slovenian resident (or by a non-Slovenian resident through its business unit/permanent establishment in Slovenia). Under certain circumstances, the withholding tax may also apply to interest income paid by an agent who is a Slovenian resident that pays the income to the beneficial owner as an intermediary.

There are various exemptions relating to withholding tax under local legislation (including legislation implementing the EU Interest and Royalties Directive (2003/49/EC)) as well as under double tax treaties, which may result in a decrease of the applicable withholding tax rate or full exemption from the withholding tax. Generally, a prior approval by the tax authority is required to benefit from the respective exemptions.

For the sake of completeness, withholding tax is, in principle, also payable with respect to dividends and income similar to dividends (including hidden distribution of profits or profit payable in relation to loans/securities providing for participation on profit), royalties and certain other income categories that are usually less relevant in the context of financing transactions.

## 4.2 Other Taxes, Duties, Charges or Tax Considerations

Except for the withholding tax, there are no specific taxes, duties, charges or tax considerations to lenders making loans to (or taking security and guarantees from) entities incorporated in Slovenia (in particular, there is no stamp duty).

## 4.3 Foreign Lenders or Non-money Centre Bank Lenders

Some of the most common tax concerns in scenarios involving foreign lenders and/or non-money centre banks include (by way of non-exhaustive overview) the following.

- Withholding tax – tax gross-up: in particular in scenarios involving a syndicate (or a club) of lenders, or where secondary debt trading is likely, the inclusion of tax gross-up provisions has become rather common. These provisions essentially stipulate that, in case the borrower is required to withhold the tax, it must gross-up the payment to the lender, so the lender receives the intended payment in full. In line with market standard, the gross-up obligation is commonly limited to "qualifying lenders" (or lenders who have ceased to be such as a result of a change in law) – ie, lenders to whom (based on the borrower's local law or double tax treaty) payments under the loan documents may be made free of withholding tax. While in the international context such provisions are relatively standardised (in particular under the LMA loan documentation) and subject to limited negotiations, local deals still often involve discussions and negotiations around the point.
- Permanent establishment risk: if the lender has a presence in Slovenia, there might be a risk of creating a business unit (*poslovna enota nerezidenta*) (within the meaning of local tax legislation) or a permanent establishment (within the meaning of double tax treaties following the recommendations of the OECD Model Tax Convention on Income and on Capital) of the lender in Slovenia, which may have implications for the lender's taxation in Slovenia. By way of simplification, interest income attributable to such business unit or permanent establishment will, gener-

ally, not be subject to withholding tax but will, rather, be included in the taxable income of that business unit or permanent establishment (with such income being subject to the Slovenian corporate income tax).
- DAC6 reporting obligations: cross-border financing transactions may be reportable to the tax authorities in accordance with Directive (EU) 2018/822 (commonly known as DAC6), aimed at providing tax authorities with an early warning regarding potential aggressive tax planning arrangements. In certain cases, the taxpayer may be liable for obligatory reporting under DAC6, even though intermediaries are involved in the transaction.
- Interest deductibility in case of debt pushdown: in scenarios involving debt pushdown by way of merger between the borrower and the target (which is generally permissible but subject to certain restrictions under corporate law, most notably approval by the existing creditors/employees), interest may – following the merger – no longer be tax deductible. Tax grouping is, generally, not possible in Slovenia.
- Transfer pricing and thin capitalisation: interest from financing provided by taxpayer-affiliated persons is, generally, tax deductible only if it is in line with the transfer pricing rules (ie, does not exceed the published recognised interest). Under Slovenian thin capitalisation rules, interest payments on debt financing (eg, loans) provided by a taxpayer-related person (a person directly or indirectly holding at least 25% of shares or voting rights in the taxpayer) are generally not tax deductible if such financing exceeds four times the amount of the relevant related person's share in the capital of the taxpayer. This is particularly relevant in constellations involving a lender who is also a (direct or indirect) shareholder of a Slovenian obligor (eg, in mezzanine-financing scenarios involving an equity kicker).

Most of these risks may be mitigated by diligent transaction structuring and/or drafting of loan documentation, whereas specific risk mitigation measures must be assessed on a case-by-case basis.

## 5. Guaranties and Security

### 5.1 Assets and Forms of Security

The composition of security packages taken by lenders generally depends on the specifics of the transaction and the available assets of the Slovenian obligor(s). By way of a general overview, the following asset classes are commonly subject to security in Slovenia: shares, receivables (trade, inter-company, acquisition, insurance, bank account, etc), business equipment, inventory/stock-in-trade and certain IP rights (most notably trademarks and patents).

The most common types of security used in the Slovenian market are a pledge (*zastavna pravica*) – typically established over shares, real estate, movables or IP rights – and a fiduciary assignment/fiduciary ownership (*fiduciarna cesija/prenos*) – typically established over receivables and certain types of movables.

Formalities and perfection requirements depend on the type of security and asset over which the security is established, as follows.

- Form of the security agreement: most security agreements require the form of a notarial deed (*notarski zapis*), either as a constitutive condition (forma ad valorem) – which inter alia applies to security over shares in private limited liability companies (*družba z omejeno*

*odgovornostjo* (LLCs)) and certain movables – or in order to establish bankruptcy remoteness, which applies in particular to the security over receivables in the form of a fiduciary assignment. Even where no specific form is required, concluding the security agreement in the form of a notarial deed may afford additional rights to the lenders, most notably a right of direct enforceability (ie, a right to enforce a claim/security via court without having to obtain a prior judgement).

- Registration: where assets and related rights are entered into a public register, the registration of the security interest will be required to create or perfect the security. There are differing views in legal theory and case law as regards the effects of registration of security over different registrable asset classes (eg, real estate, movables, trademarks and patents). In any event, an absence of registration may inter alia result in a bona fide third party obtaining a legal title over an unencumbered asset; hence, registration is highly recommendable.
- Notifications: notifications of debtors or the company will also be required to perfect the security in certain cases (most notably in the case of fiduciary assignment of receivables and pledge over shares or receivables). The absence of notification typically will not prevent the security interest from being created, but will carry other risks such as losing the security ranking and/or the debtor validly discharging its obligations to the original creditor.
- Other formalities: certain asset classes may also require other specific steps to be taken in order to create or perfect the security interest. By way of example, it is commonly requested that insurance companies provide an acknowledgment of assignment of insurance receivables/vinculation confirmation (*potrdilo o vinkulaciji*) and – due to specific requirements of each bank – for a bank to acknowledge the security over bank accounts and confirm that it will comply with the secured party's instructions as regards the assets comprising the collateral.

Security over most asset classes in Slovenia can, generally, be established within a relatively short timeframe, with the main bottlenecks being the registration procedures (in particular with respect to real estate) and response time of certain debtors whose acknowledgement of security interest is recommendable and sought as a market practice (eg, banks maintaining the bank accounts over which security is established and insurance companies issuing policies that are subject to security).

In terms of costs, these predominantly comprise the notarial fees for drawing up/recording security agreements in the form of a notarial deed, which typically range from EUR1,000 to EUR2,000 per agreement (depending on the specifics of the transaction and scope of the security package), and notarial fees for registrations with various registers and the issuance of certified counterparts. If direct enforceability is agreed, the safe-side approach is to translate the principal loan documentation into local language, typically resulting in significant translation costs.

### 5.2 Floating Charges and/or Similar Security Interests

Certain Slovenian law security instruments have elements of a floating charge. By way of example, global fiduciary assignment of receivables (*globalna fiduciarna cesija*) encompasses all existing and future receivables, whereas a registered pledge over certain movables may be

established over all movables located in a specific area from time to time.

However, the concept of a floating charge (ie, lien over all obligor's assets) as such is not recognised under Slovenian law, and a separate security interest normally needs to be established over each relevant asset (class).

### 5.3 Downstream, Upstream and Cross-Stream Guaranties

While downstream guarantees are generally permissible (subject to tax/arm's length considerations), upstream and side-stream guarantees are subject to certain limitations under Slovenian law, most notably under capital maintenance rules and group-of-companies rules (*koncernsko pravo*). The restrictions are stricter for joint-stock companies (*delniška družba* (JSCs)) compared to private LLCs. Consequently, there is typically more flexibility for LLCs acting as guarantors or security providers.

#### JSCs – Capital Maintenance

In general, any provision of value upstream or side-stream outside of permitted dividend distribution by a JSC, including granting a guarantee or security for a debt of its shareholders (whether direct or indirect), may be considered a violation of mandatory capital maintenance rules if not conducted at arm's length. In practice, the inflexibility of the rules applicable to JSCs is sometimes addressed by way of conversion into LLCs.

#### LLCs – Capital Maintenance

In the case of LLCs, the capital maintenance rules are somewhat more lenient. The restriction on transferring value upstream or side-stream generally applies insofar as the transaction impairs the company's (i) registered share capital (*osnovni kapital*) and/or (ii) restricted reserves, which comprise capital reserves (*kapitalske rezerve*) and statutory reserves (*zakonske rezerve*). Additionally, it is widely acknowledged that such transactions must not lead to the insolvency of the company. Although the statutory provisions explicitly mention "distribution" or a "loan to the shareholder", legal literature argues that similar restrictions, with some modifications, also apply to upstream/side-stream guarantees/security due to their equivalent consequences.

A balance sheet test, factoring in the likelihood of debt default, is typically necessary to ascertain whether there is a risk that enforcing the guarantee or security could impair the aforementioned "tied-up" capital categories of the guarantor or security provider. If necessary, the effects of the transaction must be offset by establishing (and documenting) an appropriate recourse claim against the borrower and/or provision of a security interest securing such. Transactions violating the capital maintenance rules are at risk of being declared null and/or void and may result in management liability. Any prohibited distribution must be reimbursed to the company. Breaching capital maintenance rules may also impact third parties (eg, lenders), particularly if they were aware or should have been aware that the transaction is not permitted under Slovenian capital maintenance rules.

#### Group-of-Companies Rules

Under the group-of-companies rules (*koncernsko pravo*) and general rules on management liability, companies are generally prohibited from entering into transactions that are detrimental to them (ie, not in line with corporate benefit or the arm's length principle), even if instructed to do so by the controlling entity. As noted in the foregoing, this does not apply to the extent the control is formalised by way of a corporate control agreement. However, such agreement inter alia

entails an obligation of a controlling company to reimburse the controlled company's profit and loss (P&L) on an annual basis.

Additional exemption applies when there is no corporate control agreement between the concerned entities in place (ie, where only factual control, such as through ownership of the majority equity stake, exists). In such a case, the controlling company may instruct the controlled company to enter into a detrimental transaction provided that it compensates the controlled company for such detriment by the business year's end (the so-called group of companies privilege (*koncernski privilegij*). If the loss is not offset during the financial year, it is necessary to determine when and how the loss shall be offset no later than the end of the financial year in which the controlled company suffers the loss.

Breaching these rules may lead to management liability for both involved companies, with the controlling company also being liable for any damages suffered by the controlled company as a result of the breach.

### Mitigation Measures

The restrictions and limitations regarding the upstream and side-stream guarantees and security outlined above are typically addressed by, inter alia, limitation language in the financing documentation (in a nutshell, to the effect that a guarantee and/or security is effective (only) to the extent permitted by law). However, it should be noted that the effectiveness of such mitigation measures has not been tested in court.

While other mitigation measures are theoretically available, such as providing guarantees for market consideration or through a corporate agreement on control between the borrower and guarantor, these do not represent a "market standard" approach (and are seldom used in practice) due to legal uncertainties and practical challenges. For instance, if a corporate control agreement is reached between two entities, the controlled entity may, upon instructions from the controlling company, arguably engage in activities such as providing loans, guarantees or security, which would otherwise breach capital maintenance rules. However, as the corollary, the controlling entity must, among other things, annually reimburse any balance sheet losses incurred by the controlled entity. Consequently, it is not customary for Slovenian obligors to be required to enter into such control agreements in the context of financing transactions.

## 5.4 Restrictions on the Target

Save for two exemptions (which are of limited importance in the context of typical acquisition financing), a prohibition of financial assistance for the acquisition of own shares by JSCs applies under Slovenian law. This includes any assistance by way of granting a guarantee or in rem security by the target for the purpose of securing an acquisition loan. The prohibition is broad and applies to all (economically) comparable transactions. There are no whitewash procedures available.

For the sake of completeness, an "extended form" of financial assistance prohibition also applies in case of public acquisitions effected by way of a takeover bid. By way of summary, it is prohibited for the offeror to – for the purposes of securing acquisition finance – directly or indirectly, pledge or offer to pledge any shares in the target it does not own at the relevant point in time (ie, the shares that are subject of the takeover bid) or any assets of the target. Absent such a "negative condition", the competent regulator will not issue the approval for the takeover bid.

Conversely – and while this remains judicially untested – it is broadly accepted that financial assistance restrictions, otherwise applicable to JSCs, do not apply to LLCs. Rather, any transactions having elements of financial assistance must be assessed from the perspective of capital maintenance and the group-of-companies rules (*koncernsko pravo*) (see **5.3 Downstream, Upstream and Cross-Stream Guaranties**).

A permissible form of financial assistance, also applicable to JSCs, involves a merger between the target company and the borrower that has pledged or offered to pledge the shares in the target as security for acquisition financing (in the form of a debt pushdown). In such cases, protection of the interests of other stakeholders of the involved companies, such as creditors and employees, is ensured through a mechanism requiring the consent of the majority of creditors and employees for the merger to proceed.

## 5.5 Other Restrictions

The most material restrictions in connection with the grant of guarantees and security in the context of (group) financing transactions are outlined in **5.3 Downstream, Upstream and Cross-Stream Guaranties** and **5.4 Restrictions on the Target**.

Other relevant restrictions/limitations include:

- issues/uncertainty regarding the "trust structures" typically involved in syndicated financing, as noted in **3.5 Agent and Trust Concepts** – although it is market standard for parallel debt/joint and several creditorship provisions to be used in such constellations (with a view to facilitating a "security agency structure"), such structures remain untested in court;
- potential prohibitions or limitations on disposition with shares or assets (which are subject to transaction security) in the company's articles of association;
- equitable subordination rules in scenarios involving a lender that is also a shareholder of the borrower (including if it becomes such as a result of the transaction in question); and
- claw-back rules within and outside the insolvency proceedings.

If a workers' council or a workers' representative is established within a company, the company must notify (and in certain cases, consult with) the respective persons prior to "adopting a decision which could significantly impact (inter alia) the company's commercial position, production organisation, or personnel matters, or which would entail any corporate/status changes with respect to the company". While this is fact-contingent (and must be assessed on a case-by-case basis), the respective notification and consultation requirements are typically not triggered exclusively by a contemplated financing transaction.

Costs related to a grant of security or guarantees in Slovenia typically comprise, in addition to legal fees, notarial costs, potential translation costs (notably where direct enforceability is agreed) and insignificant filing fees, and are generally not seen as a deterrent factor/limitation.

## 5.6 Release of Typical Forms of Security

Formalities related to the release of security depend on the type of security established in a given case.

From a legal perspective, the following applies (by way of simplification and in summary):

- an accessory security (such as a pledge or suretyship) automatically ceases to exist/is extinguished (by operation of law) upon full discharge of the secured obligations;
- a non-accessory security (such as, by way of example, a fiduciary assignment of receivables and bank guarantees) may require a formal retransfer or similar act to "reverse" the establishment of security; and
- in the case of a registrable security interest (eg, a mortgage, pledge over certain movables, or pledge over shares in an LLC) it is – notwithstanding the potential accessory nature of security – common to delete the relevant security from the registers, which requires certain additional steps (most notably a formalised consent (deed of release) from the secured creditor/pledgee).

In practical terms, the security is typically released by way of a (general) release agreement providing for:

- the release of the obligors from any and all claims and liabilities under or in connection with the finance documents, as well as for the release of any and all security established in relation therewith (often subject to certain conditions); and
- an obligation of the secured parties to (i) return any powers of attorney, bills of exchange and other physical security instruments to their issuers and (ii) issue formal (short-form) deeds of release for each type of security (whereby the forms of such short-form deeds of release are typically enclosed to the agreement as schedules).

Such an agreement is typically concluded in a simple written form, whereby the short-form deeds of release may require a stricter form (such as a notarial deed or notarised signatures). It is also common for a release procedure to include pay-off language (or separate pay-off letters) specifying the amount of outstanding obligations that must be paid in order for the obligors to fully discharge the secured obligations.

Issues relating to the principle of "delivery versus payment"/simultaneous delivery in refinancing scenarios are dealt with on a case-by-case basis and may warrant a form of escrow arrangement.

### 5.7 Rules Governing the Priority of Competing Security Interests

Generally, the priority/ranking of security interests is determined based on the time of their establishment (the *prior tempore potior iure* principle). In addition, the timing of registration, notification of debtors and/or other perfection steps may impact the priority order, even if not strictly required for the creation of the security interest. Hence, the omission of certain perfection steps (in particular those establishing effects vis-à-vis third parties such as registration and, in certain cases, notification) may have an adverse effect on the (ranking of) a lender's security interest. By way of example, if a debtor of a claim assigned by way of fiduciary assignment is not notified of such assignment, any subsequent pledge or assignment of such claim (to a bona fide third party) of which the debtor was notified will have priority over the respective fiduciary assignment. Similarly, the absence of registration of a pledge over business shares in an LLC could (through a lack of publicity) enable bona fide third parties to acquire (unencumbered/prior ranking) interest over the assets subject to such pledges.

It is generally possible to agree on the contractual subordination of claims (and/or the ranking of existing security interest), which is typically achieved by way of a subordination/intercreditor agreement. In terms of in rem effects, the

law specifically allows for the entry of annotation of subordination (effectively subordinating the relevant security to another security specified therein) in the land register, whereas with respect to certain other registers (eg, court and commercial registers, a register of pledges over movables), such entries may be achieved by including the subordination language in the descriptive part of the entry. Notwithstanding, there is limited case law on the effects of contractual subordination and related entries to the relevant registers. Hence, contractual subordination (with the exception of subordination of mortgage, the entry of which is expressly regulated by law) carries a degree of enforceability risk, especially in enforcement and insolvency scenarios. It remains particularly unclear whether the insolvency administrator or the court would adhere to the contractual arrangement on subordination and/or the annotations of the security ranking, which are not expressly regulated by law. This risk may be somewhat mitigated by establishing a robust regime for the handover of proceeds. An additional risk-mitigating measure is the appointment of a joint security agent (who is obliged to distribute enforcement proceeds pursuant to the agreed ranking/waterfall). This is common in cross-border syndicated transactions, where the security agent holds the security for and on behalf of all secured parties (typically on the basis of a parallel debt or joint and several creditorship – see also **3.5 Agent and Trust Concepts**).

In addition to the "relative subordination" (where claims of certain creditors are subordinated to specific senior claims), Slovenian law also recognises so-called general subordination, where certain claims are – either by operation of law or an agreement – subordinated to all other ordinary and secured claims in the event of insolvency of the debtor.

## 5.8 Priming Liens

Some of the security interests that can prime a lender's security in Slovenia include the following.

### Tax Liens

As a general rule (and subject to certain exceptions that are of limited importance in the context of financing transactions), a tax authority's claims for unpaid taxes enjoy absolute priority over the claims of other creditors of a debtor. Consequently, a lien obtained by the tax authority in the tax enforcement procedure will prime any lender's security over the relevant asset that is subject to enforcement, unless the lender's security interest is registered with the appropriate register. In practical terms, this priming lien is particularly relevant for security over bank accounts, as there are no relevant registers where such security could be registered. Apart from arrangements regarding the obligor's obligation to preserve the value of security (eg, by way of an account top-up), there are limited ways to structure around this priming lien.

### Bank Liens

While not arising by operation of law, the banks may have a (prior ranking) security interest over the bank account that is subject to transaction security. Banks' general terms and conditions or agreements underlying bank accounts typically provide for a bank's right to directly debit a bank account for any of its unpaid claims, its retention right and/or security (eg, pledge) over the (assets credited to the benefit of the) bank account. Whether or not the obligor will be required to ensure that the bank waives such rights to the benefit of the lender in the context of a financing transaction depends on the commercial agreement. In practical terms, such requirement may prolong the perfection procedure or even lead to reluctance of the bank to acknowledge the

lender's security, which could have practical implications in the case of enforcement.

### Retention of Title

Certain assets may be – while in the possession of an obligor – subject to the retention of title by a third person, either by operation of an agreement or (under certain specified circumstances) by operation of law. A typical example would be a retention of title by the seller over certain movable assets (eg, business equipment or inventory) of the obligor, which may exist until full repayment of the purchase price and associated claims. Any workarounds will necessarily be driven by facts and commercial agreement and may include an undertaking by the obligor not to agree on any retention of title going forward, and an obligation to duly discharge all obligations underlying the retention of title in a timely manner. The lender may also wish to regulate its right to repay the relevant third-party creditor and the inclusion of any debt against the obligor arising as a result of repayment into the obligations secured by the transactions security.

### Statutory Liens

Similarly to the retention of title, there are also certain instances where a lien arises over certain assets by operation of law. An example of such a statutory lien (potentially relevant in the financing context) is a lien of a warehouse operator over the movables stored in the warehouse and a lien of a repairman over repaired movables, which exist until full repayment of the underlying obligations. As regards the workarounds, the same considerations that apply to the retention of title (see the preceding point subsection) also apply here.

## 6. Enforcement

### 6.1 Enforcement of Collateral by Secured Lenders

Enforcement of contractual security varies depending on the type of security and assets in question. While it is generally possible to enforce a collateral via court – which generally requires an enforcement title (eg, a final binding judgement or directly enforceable notarial deed), the parties may also agree on an out-of-court sale for certain asset classes, where such agreement must adhere to specific (mandatory) statutory rules (in particular as regards the manner of enforcement and mandatory notice periods). Such agreement is presumed in the case of commercial contracts – meaning, in simplified terms, contracts between legal entities engaged in economic activities. As a general rule, the following applies.

### Shares

It is market standard to include an agreement on the possibility of an out-of-court sale in the share pledge agreement, and shares (either in publicly traded companies or in private LLCs) have historically been subject to the most out-of-court enforcement proceedings in Slovenia. The sale may be effectuated, following a notice to the debtor and pledgor, through an organised market (eg, stock exchange) or, to the extent the shares are not publicly traded, through a public auction. Due to a lack of (publicly available) practice and ambiguous wording of the law, it remains unsettled in practice as to what extent the shares may be sold via private (non-auction) sale – eg, on the basis of a prior appraisal of value by a competent expert.

### Movables

Similar considerations to those for shares apply for enforcement over movables (business equip-

ment and inventory) pledged by way of a non-possessory registrable pledge.

In addition to a pledge, a common security interest with respect to movables under Slovenian law represents fiduciary transfer of title. In this context, the law inter alia provides for – by way of exemption to the general rule – the possibility of a secured creditor appropriating the movable assets, which is without prejudice to its right to an out-of-court sale.

### Real Estate

As a general rule, mortgages over real estate are enforceable via court. By way of exemption, a mortgage (established after 2016) may be enforceable by way of a quasi-private sale effected by a notary public, provided that certain conditions are met. These broadly include:

- the mortgage agreement being concluded (i) in the form of a directly enforceable notarial deed and (ii) by and between certain eligible creditors (eg, a bank or other credit institution) and certain eligible borrowers (eg, a company classified as a small-, medium-, or large-sized company);
- the secured claim being due and payable; and
- an absence of prior entries in the land register preventing the sale of the relevant real estate (eg, annotation of a dispute regarding the legal title or of a priority order for acquisition of legal title).

### IP Rights

While an agreement on out-of-court enforcement of a pledge over IP rights is in principle possible, such enforcement might prove to be difficult because of a lack of established practice in this respect and/or of established and widely accepted valuation methods for IP rights.

### Receivables

A secured creditor holding a security over receivables may either enforce the assigned/pledged receivables or sell them out of court (subject to the foregoing). In the case of security over bank accounts, the banks may require certain additional steps (such as know-your-customer checks, a special power of attorney and a validly filled-out payment order) to be taken to comply with a secured creditor's instructions regarding the enforcement of collateral.

Some other notable points of interest on the topic of enforcement include the following.

### Direct Enforceability

As noted in the foregoing, due to the general requirement that an enforcement title must exist for court enforcement, the loan and/or security documents may be concluded or confirmed in the form of a directly enforceable notarial deed, facilitating court enforcement without the need to obtain prior judgement. Whether or not direct enforceability is agreed in a specific transaction depends on commercial agreement, whereby translation costs and/or the number of parties to the relevant documents play a significant role.

### Right to Appropriation

As a general rule, Slovenian law prohibits agreements between a security provider and secured creditor (concluded prior to maturity of secured obligations) based on which the creditor would be allowed to appropriate the assets constituting a transaction security in the event of default. By way of exemption, the secured lender's right to appropriation is recognised and upheld by law in certain cases, most notably in the case of:

- financial collateral established pursuant to Directive 2002/47/EC of the European Parlia-

ment and of the Council on financial collateral arrangements;
- fiduciary assignment of title (over movables); and/or
- bankruptcy proceedings where, in certain limited scenarios (notably when the relevant collateral cannot be sold in the context of bankruptcy proceedings), the secured creditors may acquire the underlying collateral. As a general rule, under Slovenian law (including in respect of financial collateral arrangements), any surplus of collateral – ie, excess value (over the amount of the receivable secured by the (financial) collateral) – obtained by appropriation or otherwise should be returned to the security provider.

## 6.2 Foreign Law and Jurisdiction

Generally – in line with the principle of freedom of contract – the parties are free to agree on the governing law of the contract. In accordance with Regulation (EC) No 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations ("Rome I"), it should also be possible – as a general rule – to agree that a law without a specific connection to the case will govern the agreement. Notwithstanding, the agreement on the choice of law will not always result in the chosen law being applicable/upheld. Most notably, under Rome I, effect may be given to the "overriding mandatory provisions" (as defined in Rome I), whereas certain (in particular) in rem aspects of the security interests are not susceptible to a choice of law.

By the same token, the parties are in principle free to agree on the submission to a foreign jurisdiction, and such provisions will be valid, binding and enforceable under Slovenian law subject to certain limitations and exceptions. In this respect, it is unclear whether a jurisdiction clause allowing only certain parties the right to bring an action in different jurisdictions (ie, a hybrid jurisdiction clause) is valid under the terms of Regulation (EU) No 1215/2012 on jurisdiction, the recognition and enforcement of judgments in civil and commercial matters (the "Brussels Regulation") and/or the Slovenian legislation on private international law and procedure. It is also unclear whether such jurisdiction clause would be considered to confer exclusive jurisdiction on a particular court.

A waiver of sovereign immunity would generally be upheld in Slovenia under certain circumstances. The extent to which the waiver would be upheld will depend on different factors, such as the specific terms of the waiver, applicable international treaties, the type of immunity in question (immunity from prosecution or immunity from execution), the person granting the waiver and the type of assets in question. Under Slovenian law, certain assets (in particular infrastructure assets and assets required for the performance of public service obligations) may be exempt, and thereby immune, from enforcement/attachment.

## 6.3 Foreign Court Judgments

Judgments rendered by a court of state within the territorial scope of application of the Brussels Regulation are generally recognised "without any special procedure being required". Enforcement of such judgements is inter alia subject to the limitations set forth in the Brussels Regulation (including, without limitation, Articles 34 and 35 thereof, referring amongst others to *ordre public*).

Recognition and enforcement of the judgements or other decisions of state courts outside the territorial scope of application of the Brussels Regulation must be assessed on a case-by-case

basis. Slovenian legislation on private international law and procedure generally requires reciprocity for the acknowledgment of judgments with the relevant foreign jurisdiction. Accordingly, absent a ratified convention applicable between Slovenia and the relevant foreign jurisdiction on the mutual recognition of judgments rendered by the courts of the other state, a foreign judgement may not be recognised or enforced in Slovenia.

For the sake of completeness, Slovenia ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958 (the "New York Convention"), as well other major multilateral conventions in the field of international commercial arbitration such as the 1961 European Convention on International Commercial Arbitration and the 1965 Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the "ICSID Convention"). Hence, foreign arbitral awards rendered in a contracting state should generally be recognised and enforced by Slovenian courts in accordance with the relevant convention and Slovenian arbitration and civil procedure rules.

### 6.4 A Foreign Lender's Ability to Enforce Its Rights

There are generally no specific restrictions and limitations that would impact a foreign lender's ability to enforce its rights under a loan or security agreement exclusively due to the lender being a foreigner. For the sake of completeness, if a foreign lender were to acquire the underlying collateral (which is – despite the general restriction of collateral appropriation – possible in certain structures and subject to certain limitations; see also **3.2 Restrictions on Foreign Lenders Receiving Security**), this may trigger a requirement to obtain certain regulatory approvals, in particular an approval of a foreign direct investment. In addition, certain limitations (most notably a condition of reciprocity – see also **8.4 Foreign Ownership**) may apply where a foreign lender intends to acquire a real estate property in Slovenia.

## 7. Bankruptcy and Insolvency

### 7.1 Impact of Insolvency Processes

The Slovenian insolvency regime, governed by the Slovenian Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (*Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju* (ZFPPIPP)), provides for two basic forms of insolvency proceedings:

- the compulsory settlement (CS)/insolvent reorganization process (*postopek prisilne poravnave*); and
- bankruptcy/insolvent liquidation proceedings (*stečajni postopek*).

In addition, ZFPPIPP provides for two general forms of "preventive restructuring" proceedings (see **7.4 Rescue or Reorganisation Procedures Other Than Insolvency**).

#### CS Proceedings

In general terms, the aim of CS proceedings is to enable an insolvent corporate debtor to achieve long-term solvency by reaching an agreement with a requisite majority of its (affected) creditors.

A duly opened CS proceedings will result in (i) restrictions to the debtor's operating activities (limited to ordinary course of business); and (ii) an automatic stay on court enforcement proceedings against the debtor.

If approved by the requisite majority of the affected creditors, the CS will result in a "cram-down" over the rest (ie, the terms of the CS will also be imposed on the dissenting minority of affected creditors).

The effects of opening CS proceedings on the creditors' claims against the debtor commence on the day the competent court publicly notifies the creditors of the initiation of CS proceedings ("the call"); notably, these effects include the following.

- A stay on court enforcement proceedings against the debtor is implemented ("execution holiday").
- Claims against the debtor having arisen prior to the opening of CS proceedings are subject to, inter alia, the following alterations:
  (a) non-monetary claims are converted into monetary claims (at market value);
  (b) periodic claims are transformed into singular claims;
  (c) foreign currency claims are transformed into euro claims;
  (d) set-off occurs ex lege for all eligible mutually reciprocal claims (despite not having fallen due); and
  (e) as regards (reciprocal) claims governed by qualified financial agreements containing close-out netting provisions, the CS will only affect the calculated net claim against the debtor.

Generally, the effects described under the second bullet point above do not extend to (i) secured claims (except in cases where CS proceedings are also aimed at extension to secured claims) or (ii) priority claims (see **7.2 Waterfall of Payments**).

Moreover, mutually unfulfilled (executory) contracts and claims arising therefrom are not subject to the foregoing effects; however, the debtor may elect to terminate such contracts (subject to court approval) within one month from the opening of CS proceedings.

### Bankruptcy Proceedings

Generally, the aim of bankruptcy proceedings is to enable a court-sponsored dissolution of an insolvent corporate debtor (liquidation of its assets), providing for optimal recovery terms for the debtor's creditors (taking into account the general principle of equal treatment of (same-class) creditors).

After the opening of bankruptcy proceedings, creditors' claims against the debtor may generally only be exercised within bankruptcy proceedings and not by way of other/parallel proceedings – the so-called principle of concentration.

However, the opening of bankruptcy proceedings does not affect the creditors' (contractual) rights of out-of-court enforcement of security interests/collateral (ie, the asset securing the claim may be liquidated out of bankruptcy, and said claim may be repaid without having to be lodged (except for the potential part of the claim, uncovered by the proceeds realised through the monetisation of the asset providing security)).

The effects of opening bankruptcy proceedings on creditors' claims are broadly equivalent to those of CS proceedings (see the second bullet point in the foregoing); in addition, notably, the interest rate of mature interest-gathering claims is converted to the statutorily prescribed rate (*predpisana mera zamudnih obresti*) as of the opening of bankruptcy proceedings.

## 7.2 Waterfall of Payments

Generally, in terms of priority of payments within insolvency proceedings within the meaning of ZFPPIPP, claims of creditors may be classified as follows:

- secured claims (*zavarovane terjatve*) – claims of creditors secured with a legally recognised security interest in a debtor's asset (see also **5.1 Assets and Forms of Security**) will be repaid, as a matter of priority, from the proceeds of sale of the relevant collateral (in relation to competing security interests, see **5.7 Rules Governing the Priority of Competing Security Interests**);
- priority unsecured claims (*prednostne nezavarovane terjatve*) – according to ZFPPIPP, certain claims – notably worker's wages and damages for work-related accidents and illnesses, together with associated social contributions – shall be settled (out of the proceeds from liquidation of the debtor's assets that are not subject to (valid) security) ahead of other unsecured creditors;
- ordinary unsecured claims (*navadne terjatve*) are settled out of the proceeds from liquidation of the debtor's assets (not subject to valid security) after priority unsecured claims and subordinated claims; and
- subordinated claims (*podrejene terjatve*) – according to ZFPPIPP, these are claims that, based on the legal relationship between the relevant creditor and the borrower, are to be settled only after repayment of all other unsecured claims of the borrower (see also **5.7 Rules Governing the Priority of Competing Security Interests**).

In addition to the foregoing, certain claims of creditors (notably, claims that arise after the opening of the relevant insolvency proceedings) shall, according to ZFPPIPP, be treated as "cost of proceedings" and repaid ahead of certain claims arising prior to such opening.

## 7.3 Length of Insolvency Process and Recoveries

According to court system statistics (publicly available at the time of writing), the average duration of bankruptcy (insolvent liquidation) proceedings concluded in 2023 ranged between 16.5 months (in cases pending before courts in Ljubljana) and 19 months (in cases pending before other Slovenian courts). On the other hand, CS (insolvent reorganization) proceedings lasted on average between 6.9 months (in cases pending before courts other than Ljubljana) and 7.2 months (cases pending before courts in Ljubljana) in 2023. In practice, the duration of the respective proceedings may notably deviate from the mean values – in particular as a function of the quantum of assets and multitude of stakeholders involved.

As regards the rate of recovery, no official statistics are available in this respect; according to certain research (conducted in the recent past for academic purposes), the mean recovery rates in bankruptcy proceedings (relative to the nominal value of the creditor's claims) have historically been:

- in respect of bankruptcies where distribution to creditors took place (ie, where the debtor's assets exceeded the cost of bankruptcy proceedings), approximately 18% for unsecured creditors and approximately 60% for priority and secured creditors; and
- in respect of all bankruptcies generally (ie, including those where no distribution to creditors took place), approximately 7% for unsecured creditors, approximately 25% for priority creditors and approximately 50% for secured creditors. Again, in practice, actual

recoveries in a particular proceeding may notably deviate from the aforementioned mean values.

## 7.4 Rescue or Reorganisation Procedures Other Than Insolvency

Slovenian borrowers in financial distress (and their creditors) will typically employ either (i) an out-of-court restructuring process or (ii) a court-sponsored preventive or judicial-restructuring process.

### Out-of-Court Debt Restructuring

Despite the availability of preventive restructuring proceedings (see later in this section), out-of-court debt restructurings – where a distressed borrower group and its senior lenders reach an agreement on rescheduling (and, typically, on other common terms) of the borrower's financial indebtedness based on contract/consent of all affected parties – remain relatively commonplace.

In particular, parties will employ such process in constellations with cross-border elements (where potential application of multiple pre-insolvency regimes to different members of the borrower's group may lead to uncertain results) or where the "official" opening of (pre)insolvency proceedings is perceived as having the potential to negatively affecting a debtor's business.

On the other hand, in cases where one or more lenders refuse to temporarily suspend enforcement ("stand still") and/or subscribe to a restructuring agreement ("hold-out lenders"), stakeholders willing to effect a restructuring will then typically seek to employ a (court-sponsored) preventive restructuring process.

### Preventive Restructuring

A preventive restructuring proceeding (*postopek preventivnega prestrukturiranja*) is an instrument aimed at enabling eligible distressed corporate debtors to avoid insolvency by entering into a financial (debt) restructuring agreement with its financial creditors outside of formal insolvent reorganisation/CS proceedings (see **7.1 Impact of Insolvency Processes**).

If the requisite majority – creditors holding 30% of financial claims – agree to the initiation of preventive restructuring proceedings, this will (for the time period of the preventive restructuring process) result in a statutory stand-still/execution holiday for the entire class of financial creditors.

If the requisite majority – creditors holding 75% of financial claims – then accedes to the financial restructuring agreement (worked out between the borrower and co-ordinating creditors) and the financial restructuring agreement is confirmed by court, dissenting financial creditors face cram-down.

The "restructuring toolbox" available in the context of a preventive restructuring proceeding is generally limited to maturity extension and reduction of outstanding claims ("haircut").

### Judicial Restructuring Procedure

In a recent addition to the Slovenian preventive restructuring framework, a new (court-supervised) procedure of judicial restructuring to remedy impending insolvency (*postopek sodnega prestrukturiranja zaradi odprave grozeče insolventnosti*) was introduced.

In contrast to the (relatively straightforward) preventive restructuring proceedings, the judicial pre-insolvent restructuring procedure is based

on the (relatively complex) rules governing insolvent reorganization/CS proceedings (see **7.1 Impact of Insolvency Processes**); as such, the judicial restructuring procedure entails stricter control over the borrower, but also provides an expanded restructuring toolbox (eg, debt-to-equity swaps and the creation of common security pools, in addition to haircut and maturity extension) to eligible distressed corporate debtors.

No precedents as to the judicial restructuring procedure were available at the time of writing – the provisions regulating the new judicial restructuring procedure will enter into force on 1 January 2025.

## 7.5 Risk Areas for Lenders

The key risk areas for lenders in the context of insolvencies of Slovenian debtors may be summarised as follows.

Insolvency of a company (within the meaning of ZFPPIPP) triggers certain obligations of the company and its management, as well as restrictions on doing business. The following provides a high-level, non-exhaustive overview.

- Non-essential payments are no longer permitted to be made by the company.
- A general prohibition of unequal treatment of creditors applies.
- The management of the company must file for initiation of an insolvency proceeding within one month. Failure to adhere to these restrictions may inter alia result in management liability. Consequently, any individual workouts (ie, agreements on repayment and/or restructuring of debt with an individual lender), such as debt-to-asset swaps agreements on the private sale of collateral for the purpose of debt repayment and similar, will require careful/adequate structuring.

Moreover, the onset of insolvency (proceedings) will generally trigger the application of various restrictive rules, such as equitable subordination and bankruptcy claw-back/avoidance, briefly summarised below.

### Equitable Subordination

A (direct or indirect) shareholder who granted a loan to the company "at the time when a diligent businessman would have invested additional equity" cannot demand repayment in case of insolvency (equitable subordination). Moreover, if repaid to the shareholder within a year preceding the opening of insolvency proceedings against that company, such loan may be clawed back (irrespective of whether or not the general insolvency avoidance rules are met). The triggering status (notion of financial distress) is not specified further by black-letter law, but is generally considered to be broader than technical insolvency – encompassing financial distress in the broader sense of the word. The foregoing must be taken into account in scenarios where a lender is also a (direct or indirect) shareholder of the borrower, including in certain mezzanine lending structures (eg, where the lender has acquired an equity stake in the borrower).

### Bankruptcy Claw-Back/Avoidance Risk

A transaction/legal act performed by the debtor within a certain "suspect period" may be challenged/avoided in a bankruptcy proceeding if (i) a consequence thereof was either a decrease in the net value (*čista vrednost*) of the debtor's assets or unfair preferential treatment of a creditor vis-à-vis other creditors; and (ii) the person to the benefit of which the act was performed knew or should have known that the debtor was insolvent at the time when the transaction/legal act

took place (so-called subjective criterion; fulfilment of the subjective criterion is not required for (significantly) undervalued or gratuitous transactions).

Different presumptions regarding the fulfilment of both criteria apply. The suspect period is generally 12 months (or 36 months for (significantly) undervalued or gratuitous transactions) before the motion for initiation of insolvency proceedings is filed; pursuant to the latest amendments to ZFPPIPP, where a person seeking to challenge the legal act in question is able to prove that (i) the debtor was already insolvent at the time when the act in question was concluded or fulfilled or (ii) the debtor became insolvent as a result of the challenged act, the act may in principle be challenged without a temporal limit.

Lastly, insolvency (ie, CS or bankruptcy) proceedings are governed by relatively complex rules that, in turn, provide a number of remedies to the affected parties; as a consequence, such proceedings may (i) yield unpredictable results (turn litigious), (ii) result in delayed recovery and (iii) result in high costs. (Notably, the foregoing does not apply to secured lenders holding valid out-of-court security enforcement rights).

## 8. Project Finance

### 8.1 Recent Project Finance Activity

Project finance (ie, the debt financing of specific projects by means of structures limiting recourse to sponsors and looking at the project's future cash flows as the primary means of repayment) is generally regarded as still developing (and somewhat lagging behind the EU average) in Slovenia in terms of use frequency – in particular as regards public (infrastructure) projects. This is mostly due to the widespread practice of state funding/guarantees in respect of public infrastructure projects, and underdeveloped practice pertaining to public-private partnerships (PPPs) in Slovenia. However, in recent times, the financing of public (infrastructure) projects has been increasing, with European Investment Bank (EIB) being one of the important players in the market. By way of example, in 2023, EIB signed EUR359 million in new commitments for projects in Slovenia, among other things, approving the financing of a strategic railway project, the Divača-Koper Second Rail Track, with a EUR250 million loan, as well as financing to strengthen the electricity grid with a EUR42 million loan to Elektro Primorska.

On the other hand, project financing in the private sector is somewhat more evolved and is particularly used in construction and energy projects. In addition to standard bank lending, certain alternative creditor providers are present on the market, whereby different financing structures are being deployed (including asset-light models entailing strategic co-operation with the financier).

In terms of legal documentation, while most Slovenian banks have designated project finance teams with specialist knowledge and experience, market-standard solutions are still developing, and negotiations are (thus) typically lengthy. Alternative credit providers often rely on internationally established document templates, such as LMA-recommended forms.

### 8.2 Public-Private Partnership Transactions

Slovenia has a relatively developed general legal framework for PPPs in place – the general Public-Private Partnership Act was adopted in 2007. Other key legislative pieces include the Act on Certain Concession Agreements (imple-

menting an EU Concession Directive – ie, Directive 2014/23/EU), the Public Procurement Act (implementing the Public Contracts Directive – ie, Directive 2014/24/EU) and several other laws and regulations.

PPPs can generally take one of the two main forms: (i) a contractual PPP, where the private entity and public authority enter into a concession or a service agreement, or (ii) an institutional PPP, where a public authority and a private entity jointly establish a legal entity, contribute equity, share risk, and make decisions regarding the project's operation and management.

Irrespective of the relatively solid legal framework for PPPs, several challenges remain, and PPPs (in the sense of the participation of private capital in public infrastructure projects) are relatively rare in practice. Some of the key obstacles include complex approval procedures, a lack of experience and expertise, compliance challenges, political risk, limited access to finance (in particular for large-scale projects) and environmental and social constraints.

### 8.3 Governing Law

The parties are in principle free to agree on the law applicable to project agreements, whereby the general rules on the governing law and jurisdiction clauses/agreements apply (see **6.2 Foreign Law and Jurisdiction**). The parties therefore enjoy a degree of flexibility with respect to choosing the applicable law and may also agree to submit the contract to arbitration proceedings. That said, in particular when the relevant assets are located in Slovenia, it is customary to agree on the applicability of Slovenian law – in particular in relation to arrangements establishing in rem rights (such as the various in rem security agreements entered into in connection with the principal finance documents).

### 8.4 Foreign Ownership

No (nationality-based) restrictions on the acquisition of real estate apply to foreign natural persons who are citizens of, or entities that are incorporated in, any of the EU, OECD and/or EFTA member states (excluding the applicability of any sanctions regime). Restrictions (most notably in the form of a reciprocity requirement) apply to citizens of other countries. These restrictions do not apply to entities incorporated in Slovenia, and it is generally possible to acquire real estate in Slovenia by means of a foreign-owned legal entity established in Slovenia.

### 8.5 Structuring Deals

No recourse or limited recourse structures (ie, structures where recourse of the lenders is limited to the assets/cash flows pertaining to the project) are commonly employed for private project financing in Slovenia. These are typically implemented via a special-purpose vehicle entity (or entities), with tight controls and limitations placed on its ability to perform any activities other than the project and/or incur any additional liabilities. Arrangements with limited recourse (typically involving a parent guarantee) against the sponsor are often put in place, in particular in case of development projects/where the project is not yet producing cash flow.

The preferred legal form for special-purpose project companies in Slovenia is a private LLC offering significant flexibility from a corporate law perspective. Alternatively, a limited partnership (*dvojna družba*) can be used, though in practice, it remains uncommon outside alternative investment fund structures.

### 8.6 Common Financing Sources and Typical Structures

Senior bank financing (to the project company) remains the most commonly used source of

third-party project financing in Slovenia. While still not fully developed, certain alternative credit providers are willing to enter the credit structure with mezzanine or subordinated loans/instruments. Public project financing is typically done through the national budget.

The state-owned Slovenian Export and Development Bank (SID Bank) plays a pivotal role in the Slovenian export financing market. SID Bank inter alia provides export loans and export credit insurance, and also finances large-scale development projects that contribute to the economic growth of Slovenia such as infrastructure projects, renewable energy initiatives and other significant investments.

Project bonds (among other things used for NPL acquisition financing) and other alternative sources of financing are slowly developing but still relatively seldom used in practice.

## 8.7 Natural Resources

Project financing in the field of natural resources exploitation remains underdeveloped in Slovenia. In terms of a general overview, the key facets of the applicable regulatory regime are as follows.

- By law, mineral resources are owned by the Republic of Slovenia. To explore these mineral resources, an exploration permit (*dovoljenje za raziskovanje*) is required, which is awarded through a public tender procedure. The exploitation of mineral resources requires a state concession (*koncesija za izkoriščanje mineralnih surovin*), also obtained through a public tender procedure, with a validity period of up to 50 years. It is worth noting that exploitation through fracking is expressly prohibited.
- Water resources are similarly subject to various regulations. The sea, inland waters, marine waters and riverbeds are categorised as natural water public good (*naravno vodno javno dobro*). While their general use – such as for drinking, swimming and firefighting – does not require specific licences, special water use (*posebna raba vode*) – eg, for irrigation, hydroelectric power generation, industrial use and the recently introduced possibility of installing floating solar power plants on specified lakes, requires a water right (*vodno pravico*), based on a water permit, a water concession or a certificate of registered special use of water, to be obtained, ensuring compliance with water management plans and the protection of existing water rights. Moreover, certain water bodies and their surrounding areas are designated as protected zones to preserve their ecological and hydrological functions. These include Natura 2000 sites, national parks and other nature reserves. Activities in these areas are subject to strict regulations to prevent pollution and degradation.
- There are no general limitations associated with the exportation of natural resources; however, specific regulations may be applicable to particular exports contingent on the nature of the natural resource in question. Furthermore, all activities must adhere to applicable sanctions and trade restrictions in accordance with national and international regulations.

## 8.8 Environmental, Health and Safety Laws

Various environmental, health and safety (EHS) laws may come into play depending on project characteristics. A large part of the EHS legislation is based on the EU framework. Key pieces of legislation include the Environmental Act,

Nature Conservation Act, Spatial Planning Act, Water Act and Health and Safety at Work Act. These laws will generally apply irrespective of investor nationality. Governmental authorities responsible for oversight include the Slovenian Environmental Agency, Slovenian Water Agency and different inspectorates.

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