Creating collateral security packages

1. What types of collateral are available?

In general, Croatian legislation recognises almost all types of collaterals that are common in the international business environment. The rules governing specific types of security and their perfection depend primarily on the type of the respective collateral. The system of collaterals is primarily regulated by the Ownership and Other Proprietary Rights Act, which sets out rules on establishment of security over real estate, moveables and property rights. Some types of collaterals are regulated by specific legislation, such as financial collaterals.

Croatian law regulates two separate types of security that can be created over real estate, namely, hypothecation and fiduciary ownership (transfer of ownership as security). Other available collaterals include pledges over, inter alia, shares, share interests, securities, contractual rights and claims, trademarks, concessions, the floating charge (entirety of moveables at a certain location) and other standard collaterals. Further, security can be created over moveables having special legal treatment, such as ships and yachts (also over those in construction) and over aircraft or parts thereof. 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 and practice, without a straightforward answer. However, in order to conduct out-of-court collection of claims, debtors are often required to provide the creditor with a debenture note or a blank debenture note, which constitutes grounds for the creditor to seize the monetary funds of the debtor that are in accounts or on deposit in Croatian credit institutions through the Financial Agency by sending the debenture note or a blank debenture note along with a request for direct collection.

Available collaterals can be established as voluntary (by agreements as well as in the form judicial or notary public security, created under special rules of the Enforcement Act) and coercive in the form of the court pledge (created by a court decision, created in enforcement proceedings or coercive security proceedings), administrative security (created by decisions of administrative bodies) and the statutory security (by virtue of law due to fulfilment of certain statutory preconditions).

The claim can also be secured by (fiduciary) transfer of ownership over moveable or real estate as security (fiduciary ownership), as well as by fiduciary transfer of certain other rights. Such security is always voluntary under special rules of procedure contained in the Enforcement Act. There are some further possibilities involving real estate as collateral, as quasi-security, by retention of property rights, execution of retention and others.

Financial collateral, as a specific type of collateral, is regulated by the Financial Collateral Act. Financial collateral (or security) is defined as the transfer of financial security instruments or creation of a special type of pledge over financial security instruments, for the purpose of securing a financial obligation. Financial security instruments are financial instruments, monetary funds and credit claims. Financial instruments are defined by legislation governing the capital market, namely, transferable securities (shares, bonds, etc), money market instruments (except payment instruments), units in collective investments undertakings and derivatives (options, futures, swaps, forward rate agreements, etc). Monetary funds are defined as a monetary claim on the grounds of an account or deposit in any currency, except for hard cash. A credit claim is a claim created by a credit agreement or loan agreement in which the credit provider or loan provider is a credit institution defined by the act that regulates the activity of credit institutions, the Croatian National Bank, the Croatian Bank for Reconstruction and Development or one of certain subjects of financial markets defined by the Financial Collateral Act, provided, in any case, that the other contracting party is not a consumer under the act regulating consumer crediting. On these assets two types of financial security can be created as a special pledge in the form of a limited proprietary right or a transfer of financial security instruments.

2. 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 differ, depending on the type of collateral in question, and are as follows:

- real estate – security interest is perfected by registration of the collateral with the Land Register that is maintained by the competent municipal court, with the priority order of the registration in accordance with the moment of submission of the motion for registration. Related to this type of perfection, there is a specific principle called the principle of trust in the Land Register entries, which provides that anyone interested in particular real estate can rely on the facts from the Land Register;
- moveables – perfection of the security over ships and yachts (also over those in construction) and over aircraft or parts thereof is regulated in a similar manner as over real estate by special legislation, namely, by registration with the relevant registers in which ownership titles are recorded. Therefore, for these types of moveables, it is possible to rely on the principle of trust in the register entries. For other types of moveables, the security rights can be also registered with the Court or Notary Public Created Security Interest Register maintained by the Financial Agency. However, such registration is not a condition for perfection of security over moveables, but merely serves as a form of extra security for the creditor when determining the priority rank. Bank accounts, on the other hand, are not considered as
moveables 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:

- securities – collateral over non-materialised securities is perfected by registration with the securities account with the Central Clearing and Depository Company, as provided by the Capital Market Act;
- shares – security over shares issued in materialised form is perfected by registration with the share ledger maintained by the issuing company;
- share interest – collateral over share interest is perfected by registration with the share interest record maintained by the company, but it is also recommended to register the collateral with the Court Register and the Court or Notary Public Created Security Interest Register; and
- trademarks – security over trademarks can be registered over with the Trademark Register maintained by the State Institute for Intellectual Property.

For securities that are perfected by registration, the priority right is determined by the moment of submission of applications for registration of security. In cases of security for which the registration is not a precondition of its perfection, there is a certain risk of establishing priority right. To avoid or at least minimise the risk, creditors also tend to register their security rights over moveables and property rights with relevant registries, most commonly with the Court Register and the Court or Notary Public Created Security Interest Register.

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 and costs within the proceedings for registration of security.

As in most continental legal systems, it is highly disputable whether in practice a corporate or any other entity can hold collaterals on behalf of the project lenders as the secured party in the capacity of an agent or a trustee, especially if the loan agreement is governed by Croatian law. In Croatia, this is due to the provision of the Ownership and Other Proprietary Rights Act, which provides that a security can be created for the benefit of a creditor of a certain claim for the purpose of securing that claim. Consequently, it is not possible to hold a security if the security holder has no claim against the security debtor. The security is accessory to the debt and shares the faith of the debt.

However, the concept of the security agent or trustee is common in project finance practice in Croatia. The security agent or trustee could potentially hold collaterals, but only in the capacity of the creditor regarding all respective claims secured by certain collateral. The preferable solution is that the lender and the security agent or trustee are the same entity. Another option is to have the loan agreement (as the ground for the claim) governed by foreign law, which somehow makes the security agent or trustee a creditor with regard to the secured claim. Having said that, the concept of parallel debt is being increasingly used in international transactions and, consequently, Croatian law security documents increasingly secure creditors who are not the actual lenders but are security agents or trustees. Such security documents are regularly being registered with the competent registers. To the best of our knowledge, there is no court practice and professional literature addressing the legal concept of parallel debt in the Croatian legal system, meaning that this has not been tested in litigation or otherwise before the Croatian courts. Consequently, in each particular case there is a risk that the parallel debt provisions may be set aside, as the court may hold that the debt owed to the replacement security agent did not have a lawful cause as it did not arise from any funds actually lent to the borrower or, in the case of transfer, funds actually acquired by the borrower.

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

The priority rank of the creditor's security, which requires registration with specific public registers for perfection, is determined by insight in the relevant public register. To such registers the 'principle of trust' in public register entries applies. With regard to most registers, the priority rank is established according to the moment of submission of the motion or application to register the respective security interest with the respective registers.

For security over moveables (except ships, yachts and aircraft) and property rights, although it is not necessary to register the acquired security interest with the respective public register (eg, the Court or Notary Public Created Security Interest Register) for purposes of their perfection, the creditors risk regarding determining the priority rank is decreased by conducting registration of security interest. However, even conducting registration of security interest does not give absolute assurance as to the absence of other non-registered liens over moveables.

4 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 can enforce its rights as a secured party over the collateral through enforcement proceedings. This type of proceedings is regulated by the Enforcement Act. A secured party can enforce its pledge either through proceedings before the court or, in some events, before a notary public over the collateral. In these cases, the duration of enforcement may be shortened by including an enforcement clause (clausula excequenda) in the loan agreement or a pledge agreement that enables the secured creditor to initiate immediate enforcement procedure after the notary public establishes the debtor's default upon the request of the secured party. The formal requirement for that is that the respective agreement is executed in the form of a notarial deed or solemnised private document.

On the other hand, for debt that is not directly enforceable and there is no directly enforceable deed against the debtor a creditor can initiate enforcement proceedings before a notary public by submitting an enforcement motion based on what is called a 'creditable document', which serves as proof of existing debt (eg, business record excerpt, invoice or promissory note). After the notary passes an enforcement decision and it becomes final, a creditor may request direct collection (as a type of out-of-court enforcement) by submitting this decision to the Financial Agency in order to seize the debtor's accounts and deposits or, in the event that the debtor is a natural person, or to the debtor's employer in order to seize the debtor's salary or to any other subject paying the debtor's other continuous income in order to seize it. Generally, if a creditor cannot collect his or her claim in the described manner, the creditor can motion for seizure and auction of the debtor's moveables, property rights or real estate before the court.

If the debt is directly enforceable, a creditor can initiate enforcement proceedings before the court by motions for seizure and auction of the debtor's moveables, property rights or real estate, except in certain cases when the directly enforceable deed can be and is enforced beyond proceedings before the court or the notary public (eg, a debenture note enforced directly over the debtor's accounts in direct collection before the Financial Agency).

In any of the above cases, the exact steps in enforcement depend on the type of enforcement object. It is not possible to generally define the duration of enforcement, as it is dependent on the type of
the enforcement object and actions of the debtor as well as on the circumstances of the particular case.

Since Croatia's accession to the European Union on 1 July 2013, the provisions of the Enforcement Act referring to the European Enforcement Order are in force and regulate the procedure for certification and execution of European Enforcement Orders for uncontested claims in accordance with Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. Competent Croatian authorities are authorised to issue an enforceable European enforcement deed regarding uncontested claims. Further, an enforcement deed that is confirmed in another member state of the European Union in accordance with the Regulation as an European Enforcement Order is enforceable in Croatia under the same conditions as domestic enforcement deeds without conducting a document recognition procedure, obtaining declaration of enforceability or deciding on document recognition as a preliminary and without the need to decide on document recognition as a preliminary issue.

In addition to the above rules, in accordance with Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, it is possible to submit an application for issuance, examination and enforceability confirmation of a European order for payment before the exclusively competent Commercial Court in Zagreb for collection of pecuniary claims. Further, it is provided that a European payment order issued by a Croatian court is an enforceable deed on the grounds of which enforcement can be conducted in Croatia.

5 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?

Generally, in the event that bankruptcy proceedings are opened with regard to a security debtor with a Croatian-registered address, Croatian legislation provides exclusive jurisdiction of Croatian courts for the bankruptcy proceedings. In the event of a claim based on a foreign court decision or arbitral award, the rights of the creditor are recognised in accordance with the requirements for recognition of foreign court rulings. Under the Bankruptcy Act, bankruptcy proceedings cannot be conducted over the Republic of Croatia, funds financed from the state budget, pension or disability funds, the Croatian Institute for Health Insurance, Croatian Pension Institute and counties and municipalities.

Within bankruptcy proceedings, different rules apply, depending on the type of security in question. A financial collateral shall not be affected by the opening of bankruptcy according to the Financial Collateral Act, with certain exceptions. A claim secured by hypothecation or fiduciary title or other form of pledge registered with a public register is considered as a right to separate collection, but assets that constitute the 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 either within or beyond the bankruptcy proceedings. However, costs of enforcement (a lump sum of up to 10 per cent of the achieved auction price) have priority over settlement of the secured creditor as well as taxes burdening the sale.

The bankruptcy creditors whose claims are not secured by pledges registered with a public register are arranged in payment priority ranks depending on the type of the claim. Non-secured claims can be settled from the bankruptcy estate only after the secured claims. Only after claims of creditors from the preceding payment priority rank are settled, claims of creditors of a lower payment rank may be settled. Among non-secured claims, the highest priority rank is given to costs of the bankruptcy proceedings and obligations of the bankruptcy estate, employees of the bankruptcy debtor and taxes, while incidental claims (eg, interest, shareholder's loans to the bankruptcy debtor) are at the bottom of the priority rank list.

The Bankruptcy Act also provides unfair preference periods. As a consequence, the transactions undertaken by the bankrupted company in such periods can be contested in litigation in order to have it annulled. In general, the bankruptcy administrator or the bankruptcy creditors have the authority to dispute transactions undertaken by the bankruptcy debtor prior to bankruptcy, subject to specific conditions of Bankruptcy Act, if the bankruptcy administrator 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.

In 2012 the Financial Dealings and Pre-Bankruptcy Settlement Act entered into force, introducing a completely new regime into the Croatian legal system. It has already been amended a few times. Since the Act is rather new and amended, the implementation of this Act and practice varies depending on the consolidated version that applies in a particular case. Further amendments are planned, since it is widely considered that the Act and the pre-bankruptcy settlement procedure have not yet obtained the adequate form. Generally, the pre-bankruptcy settlement proceedings precede the bankruptcy proceedings and the reasons for opening of both of the proceedings are similar. In the event that the pre-bankruptcy settlement is not concluded, the bankruptcy proceedings shall be opened over the former pre-bankruptcy debtor, thus becoming the bankruptcy debtor.

Foreign exchange issues

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

Under 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 loan arrangements between residents and non-residents are allowed. There are exceptions for payments in foreign currency between domestic and foreign entities, where such payments are not allowed. These exceptions are:

- purchase of real estate in the territory of Croatia;
- purchase of shares in investment funds regulated by Croatian law;
- purchase of securities listed on a Croatian stock exchange or issued in Croatia, except for securities issued in Croatia but listed abroad.

The latter limitation does not apply to purchases of securities issued by the Republic of Croatia denominated in a foreign currency on the primary market.

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, for which a foreign project lender may be liable in Croatia, on foreign loans are applicable.

7 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, an amendment to the Income Tax Act has introduced some changes regarding the taxation of dividends. According to the amendment, a withholding tax at the rate of 12 per cent is payable on dividends and shares in profit paid to non-residents, while a tax at the rate of 15 per cent is payable on interest paid to non-residents. 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 a lower tax rate will apply.

With Croatia's accession to the EU, changes related to withholding tax on dividends and profit shares in relation to parent companies and affiliated companies from different member states entered into force, allowing certain tax benefits.

8 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 required. According to the Foreign Exchange Act, the transfer of profits from one state 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 remaining after the corporate income tax is paid can be repatriated. Therefore, the rules regarding repatriation are fairly liberal.

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 authorized local banks. This is possible in the event that the company's profits are to be transferred and that it owns foreign currency income from exports of goods or services.

9 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.

Foreign Investment issues

10 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 depending on the state of origin may have to set up at least a domestic branch office or even a subsidiary. According to the Companies Act, if a foreign person incorporates 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.

However, non-EU entities (natural and legal persons) may acquire ownership of real estate in Croatia under the condition of reciprocity, if the Minister of Justice issues the consent to such an acquisition. Also, it should be noted that non-EU entities may acquire ownership of real estate on the Croatian territory by inheritance that is legal succession under the condition of reciprocity.

According to information provided by the Croatian National Bank and the State Bureau for Trade Policy, Croatia has entered into over 60 bilateral treaties for the protection and promotion of investments and 30 bilateral treaties on avoiding double taxation with Austria, Germany and France, as the biggest foreign investors in Croatia, as well as with other countries within and beyond the region. On 1 July 2013, Croatia became a member state of the European Union and took over the provisions of free trade agreements that the EU has entered into with certain states or groups of states, which are, among other topics, related to liberalisation of trade in agricultural, food and industrial products and protocols of origin. As a consequence, Croatia will, in relation to EFTA countries, CEFTA and Turkey enter into subsequent relationships as a new party, namely, a member state of the EU.

11 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.

12 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 the employment of foreign nationals, 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 beyond the annual quota, for example, key personnel (directors, procurators and similar) and internally transferred employees from within the group.

Due to Croatia's accession to the EU, the regime for citizens of states of the European Economic Area is as provided by EU legislation, provided that there are no reservations made by Croatia regarding the respective member state's citizens. The EEA citizens regime requires the respective EEA citizen to obtain the certificate on application of residence for the purpose of work. In the event that there is a reservation, it should also be pointed out that, for example, the criteria for EU citizens who are key personnel working beyond the annual quota are more liberal than with regard to non-EU citizens.

13 What restrictions exist on the importation of project equipment?

From 1 July 2013, the foreign exchange regulations in Croatia became a part of the EU single market. In practice, this means that in trade with other EU member states, all customs and non-tariff barriers as well as measures having equivalent effect are abolished, the costs of cross-border operations should be reduced, competition should increase and there are no particular restrictions on the import of project equipment. However, some additional requirements may remain or occur in relation to specific industries, all in accordance with EU legislation.

With regard to trade with non-EU states, customs tariffs and certain non-tariff barriers are still applicable and the specific measures depend on the type of product intended for import.
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14 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 may be expropriated in favour of the expropriation beneficiary, but only if the existence of the interest of the Republic of Croatia or certain public interest has been established, and provided that the envisaged use of the real estate gives greater benefit than the use of the real estate before the expropriation. Interest of the Republic of Croatia is established by the government and in some cases by law. The expropriation proceedings are defined as administrative proceedings and are conducted before the bureau of state administration in counties or the city of Zagreb, competent for property affairs. In the event that real estate is expropriated, a prior owner will, in return, receive new real estate of approximately the same value and in the same area or, if that is not possible, an amount equivalent to the market value of the real estate.

Fiscal treatment of foreign investment

15 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?

The Act on Investment Promotion and Advancing the Investment Environment envisages:

- tax incentives;
- customs incentives as well as incentives related to new jobs and eligible training costs associated with the investment project;
- incentives related to development and innovation activities, business support activities and services with high added value;
- incentives for capital costs of investment projects; and
- incentives for labour-intensive investment projects. With regard to tax incentives, the profit tax rate may be decreased for certain investors depending on the investment value.

In addition to the above, foreign investors may also be entitled to EU subsidies or national subsidies depending on the type of investment and industry.

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 charged 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 interest shall not be charged holders of government or corporate bonds who are non-resident legal persons. With regard to withholding tax on dividends and profit shares, see question 7.

Foreign investors may also be obliged to pay income tax. However, due to the fact that Croatia has bilateral agreements with 30 countries, payment of this particular tax is subject to the provisions of these agreements.

Government authorities

16 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?

Competence over 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 Croatian Energy Market Operator – institution with certain authority in the energy market;
- the Agency for the Protection of Environment – the authority in minerals extraction;
- Croatian Waters – the institution supervising water treatment;
- the Croatian Agency for Post and Electronic Telecommunications – the agency with supervision over the telecommunications sectors and
- the Croatian Financial Services Supervisory Agency.

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 dd – the provider of electricity), while some were partially privatised (eg, INA dd – oil and gas company) or fully privatised (eg, HT dd – the telecommunications provider). Legal persons who have been given competence to manage state property include the State Bureau for Managing State Property and the Centre for Restructuring and Sale.

Regulation of natural resources

17 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?

Generally, depending on the type of natural resource, the state can have the title to natural resources, the natural resources are in the legal regime of a common good, which are procured for and managed by the state, or natural resources can be objects of special interest for the state, which can be the object of property rights, but can be subjected to certain restrictions. Further, private entities can obtain a concession for utilising natural 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 utilise natural resources for consideration – concession fee. Foreign parties may also obtain concession rights if they meet the conditions for a non-resident to perform business in Croatia.

Also, based primarily on the Proposal for a Directive of the European Parliament and of the Council on the award of concession contracts (COM (2011) 897) of 2011, the Croatian Parliament passed the Concessions Act, which entered into force on 29 December 2012. The Concessions Act provides, inter alia, for a possibility to grant sub-concessions for commercial use of maritime domains, a possibility to create pledges on the concession right for the benefit of financial institutions, an obligation to form a committee to monitor performance of concession agreements that have the characteristics of a public-private partnership and several other procedural regulations aimed at facilitation of the concession granting and monitoring process. One of the major novelties introduced by the Concessions Act is the possibility to grant concessions on demand, but these are provided only for certain events (eg, when granting minor concessions as part of a larger concession project).

This Act, however, does not apply to concessions that are awarded in accordance with an international agreement between Croatia and one or more third countries, signed in accordance with the Treaty on the Functioning of the European Union and which include works, goods or services intended for the joint implementation or use of a project by the signatory states. The concession provider has to inform the European Commission on this international agreement.

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

Apart from the concession fee burdening the concession holder, extraction of natural resources is not subject to specialised taxes and
royalties. This falls under the provision of the Company Income Tax Act. A mine, oil and gas well, quarry or any other source of extraction of natural resources is also considered to be a business unit of a company. Therefore, companies that are extracting natural products are subject to profit tax. Due to the fact that different state agencies, bureaus and institutions are responsible for issuance of permits and licences within the natural resources sector, obtaining these permits is subject to the payment of different fees regulated by specialised tariffs.

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

As Croatia is seeking to gain more relevance as an export country, rules regulating the export of natural resources are quite export and market-oriented and thus fairly liberal. Since Croatia is a part of the EU, it has gained access to the single EU market. The benefits of this are yet to be fully seen. For example in 2009 the Croatian Parliament passed the Strategy on Energy Development of the Republic of Croatia. This Strategy supports the export-oriented policy regarding the energy sector in Croatia. The new Strategy is in the preparation phase.

The energy sector in Croatia is supervised by public bodies. As far as exports are concerned, Croatia is currently exporting only a limited amount of products and mostly to EU member states and neighbouring countries, and there are no particular restrictions beyond the ones provided for local enterprises. Tourism and related services remain one of the most important Croatian export products, so to speak.

Legal issues of general application

20 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 that the approval of corporate bodies or the competent state body is required, the approvals have to be obtained prior to contracting and drawing the loan or issuance of the collateral. Whether the approval of corporate bodies is required, as well as the particular corporate body that is relevant, depends on the content of the company's corporate documents in which such an approval is provided and defined. For example, a provision in the company's articles of association may require the approval of the supervisory board or the shareholders' meeting for each transaction beyond a certain value or for a certain type of transaction.

In the event that the loans and collaterals are given by the state, the approval is granted for a specific project and, at the same time, up to the amount of funds provided for that purpose in the state budget (specifically defined and designated by the Act on Execution of the State Budget passed each year for the specific year). The government passes the decision on the 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.

For private projects, generally, government approvals are not required, apart for licences, approvals and consents of regulatory entities, where required.

21 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 in order for the documents 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 potentially apostilled. For purposes of confirmation of the validity of public documents issued abroad (unless otherwise provided by bilateral or multilateral treaties) the documents should be apostilled in accordance with the laws of the country of issuance.

22 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 stipulate 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, if exclusive competence of the Croatian courts is provided by law, foreign arbitration cannot be contracted. Further, 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, recognised and enforced in the Republic of Croatia under the conditions set out in the New York Convention.

23 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, as a rule, parties may agree on the governing law. In practice, it will usually be the law of the lender's state of domicile.

Croatian courts have exclusive jurisdiction for disputes regarding proprietary rights (and some other rights) on real estate and in some other events provided by the law. Consequently, security agreements concerning real estate 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 non-materialised securities, under the Financial Collateral Act, the financial collateral agreement shall be exclusively governed by the law of the state where the register where the account with the authorised institution is situated with those financial instruments that are registered with regard to the legal nature and proprietary effects, procedural requests and forms for conclusion and realisation of the financial collateral agreement, as well as in matters concerning the impact of potentially existing rights of third parties over those financial instruments.

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

With regard to non-EU lenders, under the Conflict of Laws Act, submission to a foreign jurisdiction is allowed and effective 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 decision is equal in effect to a decision of a
Croatian court, provided that such a decision has been recognised by a Croatian court within the recognition procedure.

With regard to EU-domiciled lenders, the Council Regulation (EC) No. 44/2001 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the Brussels Regulation) applies and it is generally allowed to submit to a foreign jurisdiction, in accordance with the Brussels Regulation.

It should be noted that Croatian courts have exclusive jurisdiction for disputes regarding proprietary rights (and some other rights) on real estate, as well in some other events eg. bankruptcy, proprietary rights on aircraft and ships. Further, enforcement decision implementation is also reserved for Croatian courts.

Environmental, health and safety laws

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

There are a number of laws and regulations that apply to specific project sectors, for example:

- the Nature Protection Act, OG 80/13;
- the Agricultural Land Act, OG 39/13;
- the Waters Act, OG 153/09, 63/11, 130/11, 56/13, 14/14;
- the Electronic Media Act, OG 153/09, 84/11, 94/13;
- the Sustainable Waste Management Act, OG 94/13;
- the Energy Act, OG 120/12, 14/14;
- the Oil and Oil Derivatives Market Act, OG 19/14;
- the Gas Market Act, OG 28/13, 14/14;
- the Electricity Market Act, OG 22/13;
- the Thermal Energy Market Act, OG 80/13, 14/14;
- the Utilities Act, OG 36/95, 109/95, 21/96, 70/97, 12/99, 57/00, 129/00, 59/01, 26/03, 82/04, 110/04, 178/04, 38/09, 79/09, 153/09, 49/11, 84/11, 90/11, 144/12, 94/13, 153/13;
- the Railways Act, OG 94/13;
- the Mining Act, OG 56/13;
- the Tourism Services Act, OG 68/07, 88/10, 30/14; and

In 2013 and 2014, most of these laws have been amended so that they are compliant with the relevant EU legislation. These laws are administered by a number of bodies. In principle, there are sectors in particular ministries that regulate and monitor the implementation of these acts. Also, rather large authority is given to local bodies that are competent the implementation of in their area. However, specialisation state-founded companies that are competent in particular areas should also be mentioned. The management board of these companies is usually elected by the Croatian government, whether directly or indirectly. In general, these companies are widely under the control of the state and, even though they are organised as separate legal entities, most of their features are similar to those in public administration bodies.

Project companies

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

Most commonly, project companies in Croatia are incorporated as limited liability companies, except where another company type or other entity type is provided by law.

Capital projects are mainly financed through bank loans. Quite often, when there is a capital project of greater 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).

Update and trends

On 1 July 2014, Croatia acceded to the European Union. Consequently, in recent years a number of new acts and amendments have been introduced in order to be compliant with relevant EU legislation. For example, with regard to the energy sector, Croatia has implemented the EU Third Energy Package, meaning that cooperation between Croatia and the EU in relation to gas shall increase.

The issuance of various permits necessary for international and domestic investors interested in project finance in Croatia has been simplified to some extent and it can be assumed that it could be further developments in that direction.

By its accession to the EU Croatia became part of the single market of the EU, which should have positive effect on Croatian exports to EU member states. It has been predicted that this will cause a small decrease in trade with non-EU states in the region due to the stricter import regime with these states, however, it has not proved to be a significant decrease.

The Croatian Parliament has made significant efforts to harmonise Croatian legislation with EU legislation, and the state bodies have adapted a number of new provisions and procedures. This adaptation has been most rapid and efficient in the area of banking and finance. Therefore, it can be assumed that 2014 will be a year of faster rapid adjustment in the area of project finance.

In recent years, European Union pre-accession funds have been available as a source of financing. Today EU funds are also available for certain types of projects.

Public-private partnership legislation

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

From 2012, the main act that regulates public-private partnership in 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 a less general. Consequently, there are a number of laws that regulate the PPP model in specific areas (eg, the gas market, water, agriculture).

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 implementing the PPP projects, as well as the registration of contracts, applying the best international practices and establishing a system of training in the field of PPP.

In the preparation and implementation of PPP projects, the Ministry of Finance, which gives 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 then founded Centre for Monitoring Business Activities in the Energy Sector and Investments.

PPP – limitations

28 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). Under the Private Partnership Act, 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.

**PPP - transactions**

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

Although the previous Public Private Partnership Act came into force in 2009 and the Public Private Partnership Act at present in force entered into force in 2012, 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 Airport Pleso. The project of building a new bus terminal in Rijeka has also been accepted and will be realised through the PPP model.

One large PPP project is in process, namely the construction of Justice Square in Zagreb. The idea behind the project is to locate all of Zagreb's courts and a few other judicial bodies in one place, in order to maximise the efficiency of judicial bodies in Croatia. This project will be one of the biggest performed PPP projects in Croatia to date.