Croatia

Miroslav Plaćar and Marko Andrijanić
Žurić i Partneri d.o.o.

General
1 Legal system

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

The Croatian legal system is a civil law system. The courts rule in equity.

A party can obtain an injunction to prevent an action; a party is entitled to start the proceeding by prohibitory injunction (an order addressed to a particular person that either prohibits him or her from doing or continuing to do a certain act) or mandatory injunction (an order addressed to a certain person to carry out a certain act).

Under the Croatian legal system, formal evidence is always admissible. However, some proceedings, for example, Land Register proceedings, are mostly based on documentary evidence.

The Croatian legal system admits an oral form of contract, but for some types of contract (for example, a real estate purchase contract) the written form is mandatory.

2 Land records

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

There is a system for the registration of property rights and legal relationships arising from legal transactions connected to real estate. According to the Land Register Act (Official Gazette No. 91/96, 114/02, 103/04, 107/05, 152/08, 55/12, 50/13), property rights (ownership, easements, constructional rights, encumbrances and pledge or security interests) are recorded in the Land Register. The acquirer of a property right is entitled to file the acquisition in the Land Register.

Legal relationships emerging from legal transactions connected to real estate (such as a leasehold or security interest, a creditor's right emerging from a legal transaction between creditor and debtor) can also be recorded in the Land Register.

The legal effect of these records will vary as follows.

Ownership and security interest is acquired by recording in the Land Register, so the person or legal entity will be considered a legal owner or pledgee of real estate on condition that they are recorded in the Land Register. The contract represents only the legal basis for a real estate transfer, but the transfer will acquire legal validity by being recorded in the Land Register. On the other hand, the ownership of real estate acquired by a valid court decision does not require Land Register registration (in this case, registration will only constitute declaration of the acquired ownership).

A leasehold record represents only the declaration of the leasehold's existence and provides publication of the leasehold.

Interests do not have to be recorded in the Land Register. They are usually recorded in the case of a credit contract approved by banks, as part of a mortgage description.

Land Register data are based on cadastral register data, so include unregistered land. There is no special register where unregistered real estate is recorded.

According to the Land Register Act a security interest has to be recorded in the Land Register, with specification of the insured amount. Interests have to be recorded, together with the interest rate. If the statutory interests are agreed, the recorded hypothec has to involve an indication of statutory interest. Failure to do so does not make transactions void or voidable, but such interest would rank below a recorded interest.

As stated, according to the Law of Ownership and Other Property Rights (Official Gazette No. 91/96, 71/00, 114/02, 79/06, 146/08, 30/09, 351/09, 90/10, 143/12, 152/13), the right of ownership and the security interest are acquired by entry in the Land Register, thus registration guarantees title to the person recorded in the register. A lease is settled at the moment of entering into the lease contract. The law does not impose an obligation to record the lease contract at the Land Registers, but once recorded it is presumed that the existence of such lease contract is known to all other persons and entities.

3 Registration and recording

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

Registration of ownership

By recording a conveyance, the buyer will have to follow the procedure regulated by the Land Register Act.

The procedure is initiated by the buyer, who files a registration request with the Land Register. The request is usually submitted in writing, but the law also allows the possibility of an oral request entered into the court record. The buyer is also obliged to file the required documents and court fee:

- the conveyance contract (the legal ground);
- tabular statement (a statement provided by the seller confirming that the purchase price has been paid in full and authorizing the buyer's registration); and
- the fee determined by the Fee Act (Official Gazette No. 26/03, 125/11, 132/12, 157/13), which cannot be reduced.

The buyer is also obliged to pay real estate tax regulated by the Real Estate Tax Act (Official Gazette No. 69/97, 133/02, 22/11, 143/14).

Registration of leasehold

According to the Civil Obligation Act (Official Gazette No. 35/05, 41/08, 63/08, 134/09, 95/13, 78/15) and the Premises Lease and Purchase Act (Official Gazette No. 91/96, 132/13, 63/15), a lease is established by concluding the lease contract. Registration is not required by law, but the owner of the real estate is entitled to submit the registration request to the Land Register, together with the lease contract and court fee.

Registration of real estate security interests

As stated in question 2, interests do not have to be recorded in the Land Register. They are usually part of the recorded mortgage description, concluded by credit contract with real estate security instrument registration.

A mortgage is recorded by filing the registration request at the Land Register, together with credit contract and court fee.
4 Foreign owners and tenants

What are the requirements for non-resident entities and individuals to own or lease real estate in your jurisdiction? What other factors should a foreign investor take into account in considering an investment in your jurisdiction?

From 1 February 2009, EU citizens have been considered equal to Croatian citizens. Citizens and legal entities who are not EU citizens are entitled to transfer real estate in Croatia under reciprocity agreements as well as the consent of the Ministry of Justice.

The foregoing procedure can be circumvented by setting up a company in Croatia. The company will be entitled to acquire the property rights as any other domestic legal entity.

The foreign tenant does not have to fulfil the foregoing conditions; he or she is authorised on the leasehold’s conclusion regulated by the Civil Obligation Act and the Premises Lease and Purchase Act.

The buyer should take into account the obligation to pay real estate tax with several exceptions when the tax does not have to be paid:
- if the real estate represents initial capital or an increase of share capital;
- if the real estate acquisition emerges as a result of a merger or demerger of a company (according to the Companies Act (Official Gazette No. 175/11, 111/12, 68/13)).

When buying real estate from the seller liable to tax payment in accordance with value added tax the buyer is obliged to pay tax under the following conditions:
- real estate tax will be payable according to the land value, as well as communal land planning and
- value added tax (VAT) will be payable according to the construction value of the building.

5 Exchange control

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

Reappraisal of foreign earnings is allowed, but not compulsory. According to the Foreign Exchange Act, the transfer of profits from one country to another is not restricted and may be effected after all tax and other statutory obligations in Croatia have been met. The general rule is that the amount that is left after corporate income tax has been paid can be repatriated. Moreover, the Investment Incentives Act was recently introduced. This act prescribes various incentives to create a 'fertile ground' for foreign investment in Croatia. One of these incentives is related to corporate income tax. Depending on the amount of capital invested in Croatia, a company may gain the right to a lower tax rate. The higher the amount invested, the lower the tax rate becomes. Therefore, not only is the reparation rule quite liberal, but also the provisions of the above act are in favour of the non-resident company.

In addition, it is important to underline the possibility of transferring any profit through the company’s foreign currency account that is held at one of the authorised local banks. This is possible if the company with profits to be transferred has its own foreign currency income from exports of goods or services.

6 Legal liability

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

Tax obligation liability

The buyer of real estate is liable to real estate tax payment and VAT. Transfers of real estate are subject to VAT only when the object of the transaction is a newly constructed building, built after 1 January 1997.

Lease agreement liability

If the landlord sells or in any other manner transfers its right over business premises, the business lease is not terminated. The third party (the buyer) who acquires the business premises enters into the position of a former landlord, subject to the pre-existing lease, with all rights and obligations arising from it.

Tort liability

The buyer may be entitled to claim damages for actual damage suffered as a result of the other party’s negotiating without the real will to conclude a contract (Civil Obligation Act, Official Gazette No. 33/05, 61/08, 63/08, 124/09, 94/13, 78/13).

If the sale agreement is signed and it is later revealed that the seller was not entitled to sell the real estate for one of the following reasons, the buyer can claim that the transaction is invalid, resulting in the return of all gains acquired. These reasons are:
- the seller was not the registered owner of the property;
- the seller was not empowered by the owner to conclude the agreement;
- the agreement was the result of a willful misrepresentation by the seller.

The seller also retains liability for misdeeds and criminal acts.

Pursuant to the Civil Obligation Act the owner of a dangerous object will be responsible for any damage caused to another person. Also, the owner will be responsible for any damage caused to another person if the owner owns the object that causes an increased level of peril in the surroundings (Civil Obligation Act, Law No. 33/05, 41/08, 63/08, 124/09, 94/11, 78/13). Regarding that issue, the owner of the real estate will be liable for damage caused to another person if the real estate presents this kind of peril, irrespective of intent.

Environmental issues

Environmental issues are regulated by the Environmental Protection Act, Official Gazette No. 110/07, 80/13, 133/13, 78/13. The act regulates the areas of noise, ionising and radioactive radiation protection, harmful effects of chemicals and lightning and waste disposal.

7 Protection against liability

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

Owners can take out all standard types of insurance policies.

8 Choice of law

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

Pursuant to the Administrative Conflict Act, real estate contracts are strictly regulated by the law of the state where the real estate is situated (Administrative Conflict Act, Official Gazette No. 53/91, 88/01).

9 Jurisdiction

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

Pursuant to the Administrative Conflict Act (Official Gazette No. 53/92, 88/01) Croatian municipal courts have exclusive jurisdiction over real estate disputes concerning real estate situated in Croatia for Croatian as well as foreign citizens.

The parties in a proceeding are:
- a plaintiff (a party whose right of ownership or possession is violated); and
- a defendant (a party who is prosecuted over any violation).

The service of process does not require any specific conditions, except the regular ones (legal capacity, acting with free will). Every party, physical person or legal entity, is entitled to enforce remedies in the Croatian legal system.
10 Commercial versus residential property
How do the laws in your jurisdiction regarding real estate ownership, tenancy and financing, or the enforcement of those interests in real estate, differ between commercial and residential properties?

Croatian legislation provides different legal regulation regarding commercial and residential property. Purchase and lease of commercial property are regulated by the Premises Lease and Purchase Act (Official Gazette No. 125/11).

Purchase of residential property is regulated by the Civil Obligation Act.

Subject to the enforcement procedure, both commercial and residential property is regulated by the Enforcement Act (Official Gazette No. 112/13, 25/13, 93/14).

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

The planning process is determined through a detailed process of regional and urban planning, regulated by the Urban Planning Act (Official Gazette No. 133/13).

Regional and urban planning efficiency is defined by regional and urban planning documents and executed by the government and parliament at state and regional level. Direct implementation of regional and urban planning is provided through regional and urban planning departments at the state level, and the county department at the regional level.

Regional and urban planning documents determine aspects of organization, use and purpose and protection of the area. Basic regional and planning documents at the state level are the Urban and Regional Planning Strategy and Regional and Planning Programme (created by Parliament) and a regional plan (created at county level).

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

A system similar to the system of compulsory purchase exists in Croatia as a legal form of expropriation, regulated by the Expropriation and Determined Compensation Act (Official Gazette No. 74/14).

Real estate can be expropriated through an administrative procedure, initiated by an expropriation beneficiary. The beneficiary can be a physical person or a legal entity. The expropriation can be authorised under the following conditions:

- building or conducting construction work (such as in the infrastructure, energy, telecommunications, health, cultural or industrial sectors), when such work is required in the public interest; or
- when it is thought that the new purpose of expropriated real estate would provide a higher benefit.

Before taking any other legal steps, determination of public interest is required. The proposal is initiated by the expropriation beneficiary. The proposal is evaluated and a decision taken by the Croatian government, after obtaining the opinion of the municipal county (or the city of Zagreb) of the area where the construction work is to be carried out.

With determined public interest the beneficiary is authorised to submit the expropriation proposal to the Property Right Administrative County Department, which makes the first-instance decision. The second-instance decision is made by the Ministry of Justice.

There are two types of expropriation:
- complete expropriation (the expropriated real estate comes under the ownership of the beneficiary); and
- incomplete expropriation (the owner keeps the ownership, while the beneficiary acquires easement or lease).

The owner of the real state is entitled to compensation. In the case of complete expropriation, the former owner is compensated by gaining other real estate of the same economic value in the same municipality. If the owner does not want to accept new real estate, or new real estate of similar value cannot be found, the owner will be financially compensated.

In case of incomplete compensation, the owner will be financially compensated.

The exception to the payment of compensation is related to the owner of the building who does not possess documents generally required for construction. Also, the real estate owner is not entitled to compensation for investments conducted after it was informed that the expropriation proposition had been submitted to the authority.

The law does not impose any specific rules relating to interest in this matter.

According to the Law of Ownership and Other Property Rights foreign citizens are not entitled to own real estate that is regulated by law as real estate of special interest or essential for the protection of state security. A foreign citizen who had acquired such real estate before it was regulated by law as real estate of special interest or essential for the protection of state security will lose ownership, but will be entitled to compensation according to the Expropriation and Determined Compensation Act.

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

The defendant’s property (including real estate) can be seized in a criminal procedure.

14 Bankruptcy and insolvency
Briefly describe the bankruptcy and insolvency system in your jurisdiction.

The Law on Bankruptcy regulates involuntary and voluntary bankruptcy (Law of Bankruptcy, Official Gazette No. 71/15).

The debtor and creditor in bankruptcy are entitled to start bankruptcy proceedings by submitting a bankruptcy petition to the court (the Commercial Court).

A secured creditor will have to file his or her claim in bankruptcy as well as his or her security interest, submitting the claim in bankruptcy and security interest report to the Bankruptcy Commissioner.

If the secured interest is admitted by the Bankruptcy Commissioner, the secured creditor is entitled to demand settlement from secured assets.

Once the bankruptcy proceeding has started, the Bankruptcy Commissioner will undertake the obligation of management of the whole of the debtor’s assets. In relation to this, the rent will be paid to the Bankruptcy Commissioner and will become part of the bankrupt’s estate.

15 Investment vehicles

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

While investing in real estate, investors primarily use property companies, with the aim of mitigating tax liabilities, reducing personal liability.

The most common forms are the joint-stock company and the limited liability company.

Pursuant to the Law on Real Property Transfer Tax, when real estate is provided as an incorporation deposit or capital stock increase, including the procedure of joining and separation of the company, the company is not liable to real estate transfer tax or VAT (the Law on Real Property Transfer Tax, Official Gazette No. 69/97, 26/05, 127/06, 153/05, 23/13, 143/14).
16 Foreign investors
What form of entities do foreign investors customarily use in your jurisdiction?

The most common type of entity in Croatia is the limited liability company.

17 Organisational formalities
What are the organisational formalities for creating the above entities? What requirements does your jurisdiction impose on a foreign entity? What are the tax consequences for a foreign investor in the use of any particular type of entity, and which type is most advantageous?

The most common type of entity is the limited liability company. Pursuant to the Companies Act, a limited liability company is incorporated by its articles of incorporation. They are concluded before a notary public (Companies Act, Official Gazette No. 112/93, 34/99, 121/99, 5/200, 118/03, 107/07, 146/08, 117/09).

A limited liability company has to pay corporation tax.

In real estate matters, a company has to pay real estate transfer tax, except an acquisition as mentioned in question 14.

Transfers of real estate are subject to VAT only when the object of the transaction is a newly constructed building, built after 1 January 1997.

18 Acquisitions and leases

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

Real estate ownership is regulated by the Law of Ownership and Other Property Laws (Official Gazette No. 91/95, 73/92, 114/01, 79/06, 146/08, 38/09, 153/09, 96/10, 343/11, 112/14) (the Law of Ownership). The right of ownership provides absolute and unlimited real estate disposition (under condition that such disposition does not hurt another person’s rights defined by law). Apart from ‘one person or entity ownership’, the ownership can appear in the form of co-ownership (the ownership is divided and defined between two or more persons or legal entities) as well as joint or common property (condominium – ownership without division).

The legal grounds for the acquisition of the right of ownership are alienation, judicial decision or legislative.

Real estate ownership is legally acquired by registration at the Land Register.

As well as the right of ownership, the Law of Ownership regulates easements, construction rights, encumbrances and pledges as ‘other property rights’. Unlike the right of ownership (which authorises the bearer to absolute and unlimited disposition of the real estate), the bearer of ‘other property rights’ is authorised only to limited disposition of real estate.

The Croatian legal system makes a distinction between two types of lease: commercial (regulated by the Civil Obligation Act and the Premises Lease and Purchase Act) and residential (regulated by the Leasehold Act).

A lease tenant is entitled to a wider range of rights – regular usage and retaining the real estate benefits – while the hire tenant is only entitled to regular usage of real estate.

A commercial premises lease is always regulated and contracted under the Premises Lease and Purchase Act.

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

There is no customary form of non-binding agreement. On the other hand, pre-contractual agreements are common. There is a pre-contractual liability for damages if either party:

- enters into a negotiation without intending to conclude the contract;
- negotiates in a manner contrary to the principles of conscientiousness and good faith;
- terminates the negotiations without reasonable grounds.

It is not customary to take property off the market while the negotiations are ongoing.

20 Contract of sale
What are typical provisions in a contract of sale?

The Civil Obligation Act requires a real estate contract of sale to be in writing. The seller’s signature has to be notarised.

The amount of a typical down payment varies; alternatively, the price has to be paid all at once. The payment is usually held in escrow or public notary deposit.

The seller confirms the fact of ownership with a Land Register extract, which is available on the Land Register website, so the title search does not usually result in any special costs. However, official proof of ownership (with the official stamp) has to be issued at the Land Register.

The most general representations and warranties are contracted in the form of a seller’s statement that he or she is the owner of the real estate and that the real estate is not encumbered by a mortgage.

The buyer of real estate is liable to pay real estate tax. The obligation to pay arises at the moment of concluding the contract. The buyer must apply for taxation at the taxation office authorised for the territory where the real estate is situated within 30 days of concluding the contract.

The buyer is obliged to pay a court fee to register ownership within 30 days from the date of delivery of the administrative decision determining the tax obligation.

The typical tax year is equivalent to the calendar year.

21 Environmental clean-up

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

Environmental clean-up clauses are not typical in Croatian property transfer contracts.

22 Lease covenants and representation

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

The lease agreement will not be terminated if the third party buys or gains real estate on any other legal ground. This means that the buyer enters into the position of lessor, with all rights and duties to the lease contract.

The contractual lease provisions as well as any covenants made by the seller are left to the will of the parties.

23 Leases and real estate security instruments

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

Lenders do not typically require subordination and non-disturbance agreements.

Pursuant to the Enforcement Act, lease contracts that are registered with the Land Register before the registration of a mortgage will not be terminated in the case of enforcement pending over real estate. On the other hand, lease contracts that are not registered with the Land Register...
will be terminated in any enforcement proceedings. In Croatia, lease contracts are rarely registered with the Land Register (Enforcement Act, Official Gazette No. 52/12, 25/13, 93/14).

The Law on Agricultural Land (Official Gazette No. 39/13, 48/13) regulates two specific ground lease forms regarding land owned by the state:
- agricultural land owned by the state: the lease is established on the basis of a lease contract between the state as lessor and a physical or legal entity as leaseholder. Conclusion of the contract is preceded by the following administrative procedure:
  - on the basis of a local authority proposal, a public notice containing all relevant information relating to required terms and documentation is released by the State Agricultural Agency (the Agency). All required terms, including rental, are generally governed by special regulation made by the Ministry of Agriculture and Economy; and
  - after all the offers and required documentation have been reviewed, the Agency, acting on behalf of the state as lessor, enters into a contract with the best estimated offeror as leaseholder. The contract must be in writing. The period of the ground lease is 50 years; and
- undeveloped construction areas owned by the state, valued as agricultural land in a special administrative procedure: the lease is set up on the basis of a lease contract between the state as lessor and a physical or legal entity as leaseholder, preceded by the administrative procedure described above. The period of such a ground lease is 10 years.

<table>
<thead>
<tr>
<th>24 Delivery of security deposits</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What steps are taken to ensure delivery of tenant security deposits to a buyer?</strong> How common are security deposits under a lease? Do leases customarily have periodic rent resets or reviews?</td>
</tr>
</tbody>
</table>

Security deposits are normal under the Croatian legal system. A security deposit is usually stipulated to be an amount of one to three rent installments. In addition to a security deposit clause, lease contracts often include an enforcement clause, by which the tenant entitles the landlord to conduct an enforcement proceeding against the tenant if the tenant refuses to leave the real estate or pay the rent or expenses due from the tenant.

Leases do have periodic rent resets.

<table>
<thead>
<tr>
<th>25 Due diligence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What is the typical method of title searches and are they customary? How and to what extent may acquirers protect themselves against bad title? Discuss the priority among the various interests in the estate.</strong></td>
</tr>
</tbody>
</table>

The typical method of title search is to obtain new Land Register extracts from the Land Register. Pursuant to the Law on Ownership, ownership of real estate is acquired by registration with the Land Register. In other words, if the seller is not registered as the owner of the real estate, the buyer cannot be certain that he or she is the legal owner of the real estate.

<table>
<thead>
<tr>
<th>26 Structural and environmental reviews</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Is it customary to arrange an engineering or environmental review? What are the typical requirements of such reviews? Is it customary to get representations or an indemnity? Is environmental insurance available? Is it customary to obtain a zoning report or legal opinion?</strong></td>
</tr>
</tbody>
</table>

When required, an engineering and environmental review usually includes a review of legislation as well as a review of permits and certificates required by the legislation.

Environmental insurance is not common under the Croatian legal system.

<table>
<thead>
<tr>
<th>27 Review of leases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Do lawyers usually review leases or are they reviewed on the business side? What are the lease issues you point out to your clients?</strong></td>
</tr>
</tbody>
</table>

Lawyers do review leases. Lawyers point out all the relevant issues concerning the rights and obligations of the parties.

<table>
<thead>
<tr>
<th>28 Other agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What other agreements does a lawyer customarily review?</strong></td>
</tr>
</tbody>
</table>

Lawyers review the documents delivered by the clients, such as loan agreements, purchase contracts, debenture contracts, contracts of assignment, etc.

<table>
<thead>
<tr>
<th>29 Closing preparations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>How does a lawyer customarily prepare for a closing of an acquisition, leasing or financing?</strong></td>
</tr>
</tbody>
</table>

In relation to real estate conveyance or leasing, closing will usually be preceded by the following steps:
- review of the Land Register and cadastre, which will usually cover the following issues:
  - whether the seller is the recorded register owner, whether the real estate is recorded in the Land Register or at least in cadastre;
  - whether the real estate is hypotetected or encumbered;
  - remarks relating to construction documents; and
  - whether the real estate is free of any docket number indicating that some other entity has already submitted a recording proposal to the Land Register;
- review of relevant documentation relating to the real estate:
  - if the seller is not recorded in the Land Register, preparation will require further review of the documents representing the legitimate legal base for recording the ownership in the Land Register, and
  - review of required construction documents and permits as well as energy certificates;
  - if required, negotiating on behalf of the client to the seller or buyer; and
- drafting the purchase agreement, organizing the contract and notarial public verification.

The financing source usually requires documents relating to the buyer’s guarantor’s personal data. Concerning any security that can be created over moveables, real estate or claims, the financing source will usually require documents in relation to security objects, such as the original real estate extract, insurance policy, vehicle ownership certificate, income certificate, debenture note or blank debenture note, which constitute grounds for the creditor to seize the monetary funds of the debtor that are held on account or on deposit in a Croatian credit institution. Before financing, the financing source will require the contract, which must be in writing. The contract authorization is verified by notary public certificate. Provisions can be concluded, but are not customary under the Croatian legal system.

The timing between the contract and closing as well as the timing of the closing and finding depend on the individual finance source’s rules. Usually, the contract and closing will take place on the same day, as well as closing and funding, but there are also different options with a few days’ time delay.

<table>
<thead>
<tr>
<th>30 Closing formalities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Is the closing of the transfer, leasing or financing done in person with all parties present? Is it necessary for any agency or representative of the government or specially licensed agent to be in attendance to approve or verify and confirm the transaction?</strong></td>
</tr>
</tbody>
</table>

The presence of both parties at the moment of closing the conveyance contract is not specifically required by law. The conveyance contract has to be concluded in written form and signed by both parties to the contract. The Land Register Act imposes an additional registration condition: the seller’s signature has to include notary public certification.

Getting the Deal Through – Real Estate 2016
The Premises Lease and Purchase Act requires that a purchase contract and a lease contract be in writing. In situations where the state or municipality is closing the contract as the lessor, apart from the written form, the law also requires a notarial document. A credit contract containing a real estate security instrument, concluded in form of notarial document represents an enforcement document. Conclusion of a notarial document requires the presence of all the parties to the contract at the notary public’s office. Presence of the government representative is not required.

32 Contract breach

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

When a down payment has been deposited and the buyer is the party in breach, the seller is entitled to:
- demand settlement of the purchase agreement (if this is still possible);
- demand damages, in which case the seller can choose whether the down payment will be considered as damages or returned to the buyer; or
- keep the down payment.

When a down payment has been deposited and the seller is the party in breach, the buyer is entitled to:
- demand settlement of the purchase agreement (if that is still possible);
- demand damages and the return of the down payment; or
- demand the return of double the amount of the down payment.

When the conveyance contract is partially honoured, the injured party is not entitled to keep the down payment. One is entitled to demand fulfillment of the contract and damages or demand damages on the grounds of breach of the contract (in both cases, the down payment will be included in the damages).

When a down payment has not been provided, the injured party is entitled to:
- demand fulfillment of contract (as described below); or
- rescind the contract.

The injured party is always entitled to claim damages.

The seller is obliged to hand over the object of the contract in good condition. If this contractual term is breached, the seller is liable on the ground of warranty of quality.

Subject to a conveyance contract, it is important to mention legal deficiency liability. If a third person claims a property right over real estate, through which a property right buyer’s right of property is limited or derogated, the seller will be liable for such legal deficiency on condition that the buyer was not notified about the third person’s right at the moment of the contract’s conclusion and did not provide his or her approval of such limitation.

In order to activate the legal protection mechanism, the buyer is obliged to notify the seller and demand the seller release the third person’s right in a reasonable period. If the seller fails to provide release, and the real estate is taken from the third person, the contract will be discharged. If the buyer’s property right is only limited by a third person’s right, the buyer is entitled to choose between revoking the contract or demanding a lower price.

The buyer is entitled to claim damages. If the buyer starts legal proceedings against the third person, without giving notice to the seller, and the judge rules in the third person’s favour, the seller will still be liable. But if the seller can prove that the evidence he or she would provide could bring a judicial decision in favour of the seller, the legal grounds for legal deficiency liability would not exist.

Legal deficiency liability can be excluded by contract.

33 Secured lending

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

The usual security instruments in the Croatian legal system are hypothecation (mortgage) and fiduciary.

The mortgage entitles the lender (mortgagor) to collect matured debt from the value of real estate, while the real estate ownership remains with the mortgagor until the real estate is sold. The mortgage is recorded in the Land Register as a real estate lien. If the loan is repaid on time (or before it is due), the ownership will be registered back to the debtor and the fiduciary instrument will be removed from the Land Register on the debtor’s proposal. Both mechanisms are common security instruments in bank credit agreements because the value of the real estate guarantees debt repayment.

34 Leasehold financing

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

The Croatian Bank for Reconstruction and Development regulates and accommodates specific credit programmes regarding land ownership transactions, but ground lease financing is not specifically regulated. Such financing is available only through the normal credit programmes of Croatian banks.
35 Form of security
What is the method of creating and perfecting a security interest in real estate?
Liens are usually created as standard forms of agreement and registered with the Land Register.

36 Valuation
Are third-party real estate appraisals required by lenders for their underwriting of loans? Must appraisers have specific qualifications?
Third-party real estate appraisals are required by lenders for their underwriting of loans. The appraisals are regularly required by the banks. The specific qualifications of the appraisers are also required.

37 Legal requirements
What would be the ramifications of a lender from another jurisdiction making a loan secured by collateral in your jurisdiction? What is the form of lien documents in your jurisdiction? What other issues would you note for your clients?
A loan secured by collateral will not create any special tax obligation for the lender. There is no general rule concerning a lender’s obligation to qualify to do business in Croatia. It will depend on the creditor’s (eg, the bank’s) rules.

Croatian documents are usually made as separate documents or as clauses in credit agreements.

38 Loan interest rates
How are interest rates on commercial and high-value property loans commonly set (with reference to LIBOR, central bank rates, etc)? What rate of interest is unreasonable high in your jurisdiction and what are the consequences if a loan exceeds the reasonable rate?
Banks stipulate variable interest rates, according to the banks’ decision (mostly 7 to 11 per cent).

39 Loan default and enforcement
How are remedies against a debtor in default enforced in your jurisdiction? Is one action sufficient to realise all types of collateral? What is the time frame for foreclosure and in what circumstances can a lender bring a foreclosure proceeding? Are there restrictions on the types of legal actions that may be brought by lenders?
Remedies against a debtor are enforced through enforcement proceedings. The enforcement proceeding is initiated by writ of execution. The Enforcement Act regulates judicial and non-judicial proceedings. A judicial proceeding is conducted by the court and a non-judicial proceeding is conducted by a notary public.

Foreclosure enforcement is a judicial proceeding, conducted by the court. It can be initiated as soon as the debtor defaults.

40 Loan deficiency claims
Are lenders entitled to recover a money judgment against the borrower or guarantor for any deficiency between the outstanding loan balance and the amount recovered in the foreclosure? Are there any limitations on the amount or method of calculation of the deficiency?
Lenders are entitled to take legal action in order to collect the whole amount of matured debt (including matured interests, including enforcement proceedings costs). In other words, according to the Enforcement Act, the lender is entitled to proceed with the enforcement procedure against borrower and guarantor, on their whole property, subject to certain restrictions prescribed by the Enforcement Act.

41 Protection of collateral
What actions can a lender take to protect its collateral until it has possession of the property?
Collateral is established by registration with the Land Register. The registration does not entitle the lender to acquire ownership of the real estate. It only entitles the lender to conduct a sale of the real estate in enforcement proceedings and recover his or her debt.

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

Most credit contracts include an enforcement clause by which the debtor entitles the lender to conduct enforcement proceedings over his entire assets. In this case, the lender is entitled to choose which part of the debtor’s assets will be the subject of the enforcement proceedings. In bankruptcy proceedings, all lenders (legal and physical persons) will be able to report their debts and try to recover their debts from all of the debtors’ assets.

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

It is not typical to require a cash management system or to take reserves.

44 Credit enhancements
What other types of credit enhancements are common? What about forms of guarantee?
The most common credit enhancement is a guarantee agreement. A guarantee agreement is made in writing and it is usually notarised. If notarised, the guarantee agreement entitles the lender to start enforcement proceedings against the debtor, any of the guarantors or all of them at once. In other words, the lender is entitled to recover his or her debt from any of them. The person who recovers the debt is entitled to reimbursement from other debtors.

45 Loan covenants
What covenants are commonly required by the lender in loan documents? What is the difference depending on asset classes?
The lender will usually require the borrower’s written guarantee that his or her assets are sufficient to cover the lender’s claims.
The lender will commonly require the borrower’s written guarantee that he or she is the registered owner of encumbered assets (especially real estate) and that the assets are not encumbered by another mortgage. Quite often, the lender will require the borrower’s written guarantee that he or she will not alterate his or her asset once the agreement is concluded.

46 Financial covenants
What are typical financial covenants required by lenders?
While obtaining bank loans, the debtor will usually bind himself to deliver his current account, statement of changes in financial position and annual financial report. Also, he or she will usually commit himself to inform the bank on opening an account in other banks.
47 **Secured movable (personal) property**

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

Security interest in non-real property is created pursuant to the Enforcement Act Regulations by notification in the register of public notary insurances at the Financial Agency.

48 **Single purpose entity (SPE)**

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

In the Croatian legal system physical and legal persons acquire rights and obligations and there are no specific requirements for an SPE.