

## Regional Secured Transactions Assessment – Croatia

### Non-possessory charge over movable property

The following table relates to non-possessory security over movable assets and rights. The survey is best understood if read in conjunction with the EBRD Core Principles, which specify the basic criteria for a modern secured transactions law. The Explanatory Notes describe the methodological approach to the survey.

<b>A</b>	<b>Non-possessory charge - Scope</b>	<b>Grading</b>
1.	Can anyone grant a charge?	<b>3</b>
2.	Can anyone take a charge?	<b>3</b>
3.	Can the charge cover all types of tangible movable property?	<b>3</b>
4.	Can the property be described in general terms?	<b>0</b>
5.	Can the charge be established over future property?	<b>1</b>
6.	Can the charge be established over changing pool of assets?	<b>3</b>
7.	Can the charge be established over going concern (enterprise) or all present and future assets of the chargor?	<b>0</b>
8.	Can debts of any type be secured by charge?	<b>3</b>
9.	Can parties agree on the rights of the chargor over charged assets?	<b>1</b>
10.	Is the good faith charge creditor protected from subsequent claims which may adversely affect the charge?	<b>3</b>
11.	Does a third party acquire property free from security in the ordinary course of business?	<b>1</b>
12.	Are subsequent charges permitted over same property?	<b>3</b>
13.	Can the charge creditor dispose of its priority position?	<b>1</b>
14.	In case of transfer of secured claim, does charge follow automatically?	<b>3</b>

### 2.2. Creation and Registration

<b>B</b>	<b>Non-possessory charge - Creation / Registration</b>	<b>Grading</b>
15.	Are charges registered?	<b>3</b>
16.	Can a third party determine whether property is encumbered?	<b>2</b>
17.	Is the data centralised? Is the data from the register available on line?	<b>3</b>
18.	Is data in the register indexed against the name of the chargor?	<b>3</b>

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### 2.3. Enforcement

<b>C</b>	<b>Non-possessory charge -Enforcement</b>	<b>Grading</b>
19.	Are the manners of starting enforcement and the enforcement procedure clearly established?	<b>3</b>
20.	Does commencement of enforcement have to be publicised?	<b>3</b>
21.	Is out of court realisation of assets permitted?	<b>3</b>
22.	Can the charge creditor decide on the way the realisation will be done?	3
23.	Can the charge creditor exercise control over the realisation process?	0
24.	Is enforcement rapid?	0
25.	Is the purchaser protected?	<b>3</b>
26.	Is charge creditor protected against the chargor's obstruction?	3
27.	Is taking possession of charged asset simple and quick?	2
28.	Can the charge creditor actively protect the charged assets?	<b>2</b>
29.	Is the charge creditor right protected in case of third party initiated enforcement against the asset?	<b>3</b>

A5	It is not sure whether it can be established over future movables although it is used in practice. Object of security needs to be clearly defined. The regime is rather new and there is no court tried practice.
A9	This is unclear as three different laws regulate non-possessory charges over moveable property. Each of those three laws contains fragments of regulation passed in different times and contain solutions that are not always clear cut. Restrictions are usually contracted in practice.
A11	No. however in case of floating charge established over movable property in case of sale and property leaving the business premises, the security is automatically released.
A13	The law is silent on this issue. Therefore, the conclusion is that subject to the agreement of all registered holders of security the positions can be changed but the time of establishment of new positions would be considered to be at the application of this request. This increases a risk of such new registration being objected and declared null in insolvency proceedings (three months hardening periods).
B16	The third party may search the register and it may find that the property is encumbered. However, the search is not exhaustive and entirely reliable, as it depends on the type of the property and keywords used for the search..
C27	Secured Creditor may be allowed to take possession (for safekeeping) of the chattels serving as collateral, in the same enforcement proceedings initiated for sale of collateral. However, taking over the collateral is likely to take significantly more than a week.
C28	The creditor has remedies available to protect the charged assets, in particular via injunctions. However, they may not be easily obtainable.