

Regional Secured Transactions Assessment – Croatia

Security over immovable assets

The following table relates to security over immovable assets (hypothecation). The survey is best understood if read in conjunction with the EBRD Core Principles, which specify the basic criteria for a modern mortgage law. The Explanatory Notes describe the methodological approach to the survey.

A	Mortgage - Scope	Grading
1.	Can anyone grant a mortgage?	3
2.	Can anyone take a mortgage?	3
3.	Can the mortgage cover all types of immovable property?	3
4.	Can debts of any type be secured by mortgage?	3
5.	Can existing title to property be established with sufficient certainty?	2
6.	Is the mortgage creditor protected from subsequent claims which may adversely affect the mortgagor's title to the property?	2
7.	Can parties agree on how the mortgaged property can be used?	2

B	Mortgage - Creation and Registration	Grading
8.	Are mortgages registered?	3
9.	Can a third party determine whether property is encumbered?	3
10.	Is the data from the register available on line?	3

C	Mortgage - Enforcement	Grading
11.	Are the manners of starting enforcement and of enforcement clearly established?	3
12.	Does commencement of enforcement have to be publicised?	3
13.	Is out of court realisation of assets permitted?	1
14.	Can the mortgage creditor decide on the way the realisation will take place?	1
15.	Can the mortgage creditor exercise control over the realisation process?	0
16.	Is enforcement rapid?	0

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17.	Is the purchaser protected?	3
18.	Is mortgage creditor protected against mortgagor's obstruction?	2
19.	Is the mortgage creditor right protected in case of third party initiated enforcement against the asset?	3

D	Mortgage - Corporate Finance Specifics	Grading
20.	Are subsequent mortgages permitted over same property?	3
21.	Can the mortgage creditor dispose of its priority position?	3
22.	In case of transfer of secured claim does the mortgage follow automatically?	3
23.	Does the mortgage cover rents collected under commercial or residential leases?	1

E	Mortgage - Land Development Projects Specifics	Grading
24.	Does the mortgaged property include subsequent constructions and additions?	3
25.	Can the mortgage creditor release specific units in developed residential building?	3

Remarks

A5	Person acting in good faith and relying on the information from the Land Register is protected in doing so. However, this protection is limited in cases involving properties that were in the regime of ex-community ownership.
A6	There are some limitations and/or uncertainties in cases of property acquired by force of law (in particular marital property); and in cases in which the mortgage is taken over a piece of real property that is in the process of reconstruction..
A7	The parties could agree on restrictions, which are often agreed in practice, but the limits to such disposition of the parties are not sufficiently tested in case law.
C13	The enforcement must be done via court administered enforcement proceedings. However, the court may entrust the sale to a notary public. In addition, if all the interested parties (mortgagor, mortgagee, holders of other real rights) agree, the sale can be done through real estate agency.
C14	If all the interested parties (mortgagor, mortgagee, holders of other real rights) agree, the sale can be done through real estate agency.
C18	Legal remedies against enforcement decisions generally do not prevent enforcement, but the debtor may file for a motion for postponement of enforcement. It is up to the courts to set the dynamics of the enforcement, which allows (and often results in) unjustified delay of the enforcement.
D23	No, as the law prohibits even the contractual provision which would allow the mortgagor to collect fruits and other benefits from the collateral. However, a new, separate charge can be established, i.e., charge over such receivables.