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Recent legislative developments

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Since the beginning of the credit crunch, Slovenia has been adopting measures geared towards increasing the liquidity of companies without exposing banks to greater risk. In the last year, Slovenia has also amended its Companies Act in order further to transpose EU Directives into national legislation.

Guarantee scheme for the general granting of bank loans to companies

On May 1 2009, the Act on the Guarantee Scheme of the Republic of Slovenia entered into force. The amendments to this Act entered into force on June 6 2009. The Act is aimed at alleviating the effects of the financial and economic crisis whereby the state bears up to 80% of the risk in an individual business for loans with credit ratings of A, B and C. The Act follows the recommendations of the European Commission for state aid measures granted until December 31 2010, at the latest.

The guarantee scheme will be implemented through SID Banka. The guarantee amount to be provided totals €1.2 billion, which is to be divided equally among borrowers with credit ratings of A, B and C. Borrowers must be residents of the Republic of Slovenia and their legal form must be in compliance with the provisions of the Companies Act or the Co-operatives Act.

The state guarantee is provided to all banks doing business in Slovenia that are regulated under the Slovenian Banking Act. The guarantee is allotted through public tender and priority is given to banks that are willing to take on risk higher than the statutory minimum of 20%. Minimum loan maturity is one year and the maximum maturity cannot exceed 10 years. The minimum amount of a loan granted under the guarantee scheme is

€100,000 and the maximum amount is €70 million.

The maximum amount loaned to an individual company must not exceed the total salaries paid by the borrower in 2008. The loan can be applied only to financing the basic business of the borrower and, explicitly, not to the acquisition of shares or assets of other legal entities.

The guarantee is irrevocable, unconditional and payable upon first call of the lending bank. The costs of the guarantee in case that the loan is collateralised in accordance with the usual banking practice are: 0.4% of the loan principle for borrowers with credit rating A; 0.55% for credit rating B; and 0.8% for credit rating C. If the loan is not collateralised the costs are: 0.4% of the loan principle for borrowers with credit rating A; 0.8% for credit rating B; and 2% for credit rating C.

The banks that acquire the guarantee quote under this Act are prohibited to finance or refinance management buyouts if they are performed contrary to the provisions of the Takeover Act, Market in Financial Instruments Act or the Competition Act.

Loans granted contrary to this Act are void and the bank is obliged to return any amount received under the guarantee.

Further amendments to the Companies Act transposing EU Directives of 2006 and 2007 into national law

An amendment to the Companies Act that entered into force on July 23 2008 continues the harmonisation process of Slovenian corporate law with the Capital Directive (Directive 77/91/EGS), Audit Directive (Directive 2006/43/ES), Directive on the Annual Accounts (Directive 78/660/EGS) and Division Directive (Directive 2007/63/ES).

Provisions on the acquisition of treasury shares and related provisions on capital maintenance have been changed. Any violation of capital maintenance rules means, in general, that the transaction is void if concluded

between the company and the shareholder, while an agreement with a third party is affected by the capital maintenance rules only if the third party knew or should have known (through a gross negligence test) that the transaction was executed in violation of the capital maintenance rule.

According to the amendments, a claim for the return of subscribed capital and time reserves (capital and statutory reserves) is not subject to the general obligation rules (meaning, *inter alia*, that good faith is irrelevant and set-off cannot be exercised) but rather is a claim, *per se*, based only on the respective article of the Companies Act from which the shareholder cannot be exempted. If the banned payments for contributions or services of a shareholder or related party exceeds its real value, irrespective of whether the payment was made to the shareholder or related party or to a third party by an order of the shareholder, this must now be disclosed in the enclosure to the accounting records.

With respect to a limited liability company, the capital maintenance rule is now applied not only to subscribed capital but also to time reserves (capital and statutory reserves).

According to the amendments, an audit committee must be established in all publicly listed companies. Those companies must also enclose a corporate governance statement in their annual report.

A new type of universal legal succession by way of division was also introduced into corporate law through the amendments. In addition to both complete and partial division, spin-off is now permitted.

Stricter liability of active shareholders in case of deletion of a company without liquidation

The new Insolvency Act adopted on December 31 2007 was amended on June 13 2009 in order to, among other goals, tighten the liability of active shareholders for the obligations of the deleted company. Considering the amendment, active share-

holders (presumed to be those who hold, together with closely-connected persons, at least 25% of the voting rights in a company) are those who held the status of a shareholder in the last two years prior to the deletion of the company and are liable for any obligations assumed while still acting as a shareholder. The liability of active shareholders is a special liability where the conditions for piercing the corporate veil need not be demonstrated.

Financial and corporate

Recommended firms	
Tier 1	
Jadek & Pensa	
Miro Senica in odvetniki	
Odvetniki Selih & partnerji	
Rojs Peljhan Prelesnik & partnerji	
Tier 2	
Schoenherr	
Wolf Theiss	

The financial crisis has hit Slovenia in the same way it has hit many markets – with the slowing of equity issuance on the capital markets, a dramatic drop-off of classical M&A activity and a shift to focus on distressed transactions, financial and corporate restructurings, along with a broad range of requests for regulatory advice.

The Republic of Slovenia made a €1.5 billion bond issue in April 2009 in order to finance its bank rescue package. This was felt by many to be a timely intervention, which stimulated bond activity among the banks. Whether or not it will encourage the banks to underwrite corporate issues remains to be seen.

Privatisations, such as that of Telekom Slovenije, continue to be shelved for the time being – the only such anticipated future work consisting of distressed state operations.

Project finance activity may show signs of growth over the next year, at least in terms of advances in planning. An example of this is the Slovenian Railways project.

Jadek & Pensa

Jadek & Pensa has a formidable reputation with international clients operating in the Slovenian market. On recent big-ticket client says: “They did an excellent job, which didn’t surprise us. We’re used to that when we work with them.”

In May 2008, Simon Gabrijelcic acted for UniCredit on the €196 million Sava Re IPO, one of the last to be recorded before the

impact of the credit crisis. Also on the capital markets, in April 2009 the firm acted on the Republic of Slovenia’s €1.5 billion bond programme, which was set in place to fund the bank rescue package.

A recent client singles out Gabrijelcic for praise, saying he “was very useful to us, in terms of both technical, structural work and creative solutions. I think he sees solutions others might not notice.”

On the financing side, the firm acted for the lenders on Slovenian security arrangements for securing acquisition and mezzanine financing for the acquisition of Bartec.

In M&A, Aleksandra Jemc advised Arx Equity Partners, through its subsidiary Donit Holding, on the sale of 100% ownership interest in Donit Tesnit.

Leading lawyers

Simon Gabrijelcic
Sreco Jadek
Aleksandra Jemc
Pavle Pensa
Bostjan Spec

Miro Senica in odvetniki

Miro Senica in odvetniki, one of the largest law offices in Slovenia, has maintained its solid reputation in big-ticket corporate due diligence, competition and M&A work. One client says of the firm: “They’re an excellent team. We enjoyed working with them – they were highly professional and helped us on a huge range of issues.”

In April 2009, Melita Trop replaced Anja Strojnik Stampar as head of the firm’s commercial and international department. Trop worked on a particularly high-profile assignment this last year when she represented Hellenic Exchanges, the Greek stock exchange, as a potential buyer of the majority share in the Ljubljana Stock Exchange. A client says: “She is a great lawyer. She has a vast knowledge of the issues, both locally and internationally.”

Additionally, Trop and colleague Iztok Milac acted as lead counsel responsible for the Slovenian subsidiary side of the acquisition of Bartec Varnost by the Capvis fund, in an international transaction worth €205 million.

Another large M&A matter involved working on the buy side of the €150 million purchase of 25% of a leading Dutch household appliance manufacturer by Gorenje, a Slovenian manufacturer.

Leading lawyers

Miro Senica
Melita Trop

Rojs Peljhan Prelesnik & partnerji

Rojs Peljhan Prelesnik & partnerji adopted its new name following the retirement of Marjan Colja (the firm previously known as Colja Rojs & partnerji). The firm continues to be considered top-tier for financial services and insurance work, as well as for its excellence in corporate advice.

Rojs Peljhan Prelesnik & partnerji has been acting on some truly impressive deals for a good range of clients. Grega Peljhan, who is now a name partner, acted for Depfa ACS Bank in the setting up of a €530 million master facility agreement. Also in finance, Peljhan and Marusa Mrak advised Dexia Credit Local on a €24 million loan refinancing agreement in connection with the BOT (build-operate-transfer) wastewater plant in Maribor, Slovenia.

The corporate team has likewise been busy on some high-profile mandates. When Veritas chose to sell their stock brokerage, they turned to the firm for representation in the €250 million sale, which was handled by Andrej Andric.

Another large corporate deal saw Mrak act for Slovenian Steel Group on restructuring of the group, comprised of 15 companies with a consolidated value of €544 million, and the setting up of the group under their present name.

The firm’s market reputation is perhaps best summed up by this comment from a recent client: “As far as I’m concerned, they’re at the very top of their game. They’re supportive, sharp and very highly trained people.”

Leading lawyers

Grega Peljhan
Ales Rojs

Schoenherr

Schoenherr has continued to be active in various practice areas in Slovenia, building on its already excellent reputation in the region.

In one notable transaction, the firm advised Worldwide Clinical Trials on its entry into the country, where it has started to conduct clinical trials across the region.

The firm’s recent M&A work includes advising the Dr Oetker international food group on its acquisition of Droga Kolinska’s puddings and powders units in Slovenia, Croatia, Serbia, Macedonia and Bosnia-Herzegovina. The deal covered numerous brands and operational units across the countries.

Schoenherr also advised insurance group Generali on the establishment of a joint venture with Czech financial group PPF. The matter involved the reassignment of assets across 10 central and eastern European jurisdictions.