

# Slovenia

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## Dematerialized securities in Slovenia

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A dematerialized security is a statement of the issuer entered in the Central Register of Dematerialized Securities (the Central Register), by which the issuer undertakes to fulfill all liabilities under the security to a person who is entered into the central register as a legal holder of the security. The Dematerialized Securities Act regulates (i) the method of issuing and transferring dematerialized securities; (ii) replacing already-issued securities with securities issued in a dematerialized form; (iii) the conditions and restrictions of access to information about holders of dematerialized securities; and (iv) the rules regarding the requirement to keep a central register of dematerialized securities.

### Issuers required to issue dematerialized securities

The following issuers are required to issue dematerialized securities:

- Issuers of serial securities of which the first sale was carried out by public offering pursuant to the act regulating the securities market.
- Banks, insurance companies, stockbroking companies and management companies, notwithstanding whether their first sale was carried out according to the procedure referred to in the previous paragraph.
- Practically all companies that were privatized in the country's transitional period of the transformation of publicly owned companies (between 1992 and 2000).

Dematerialized securities are also being issued in relation to (i) most (over 95%) shares of Slovenian stock companies, (ii) debt and money market securities issued by the Republic of Slovenia (that is, government bonds and treasury bills); and (iii) all debt securities (ie bonds) issued by banks and companies.

The new Companies Act, which came into force on May 4 2006, defined that all shares must be issued as dematerialized securities. In its transitional and final provisions the Companies Act declares that on the day of the introduction of the euro as Slovenia's national currency, all shares are to be replaced with dematerialized securities.

### The Central Register

The Central Register is a central electronic database into which is

entered: (i) dematerialized securities; (ii) rights arising from dematerialized securities and their holders; (iii) third-party rights to dematerialized securities, and holders of these rights; and (iv) prohibitions and restrictions on the transferability of dematerialized securities.

On the issue of the dematerialized securities, the issuer shall give the Central Securities Clearing Corporation an order to issue dematerialized securities on behalf, and for the account, of the issuer by entering in the Central Register the information about the essential components of the dematerialized securities, and to credit them to the accounts of their holders who have subscribed and paid for such securities.

The liability of the issuer of the dematerialized securities arises when the Central Securities Clearing Corporation issues those dematerialized securities by entering in the Central Register information about the essential components of the dematerialized securities, and by crediting the dematerialized securities to the accounts of their holders on the basis of the issuing order.

The rights arising from the dematerialized securities can be exercised only by their legal holders. The legal holders of dematerialized securities are deemed to be the persons on whose behalf the dematerialized securities are entered in the central register. The rights of a holder of dematerialized securities shall be transferred by transferring the dematerialized securities to the account of a new holder.

### Third party rights to dematerialized securities

A third party can obtain the following rights to dematerialized securities: (i) lien; (ii) usufruct; (iii) call option; (iv) pre-emptive right; or (v) limitation on disposal of a security. These rights shall apply to each holder of individual dematerialized securities at any given time.

The rights to the securities shall come into effect in respect of third parties once they are entered into the Central Register.

When a debtor fails to settle a debt secured by a lien on securities traded on the organized market on maturity, the holder of the lien can sell the pledged securities on the organized market eight days from the date of his warning thereof to the debtor. The notice must be sent by registered mail.

The usufruct of securities represents a third-party entitlement to the payment of dividends or other yields on securities. The duration of the usufruct depends whether the beneficiary of the usufruct is a natural or legal person (in either case it is determined by legal act) and is terminated by the usufructuary's death (or in case of a legal person, cannot be longer than 30 years). It also expires in the case of the dissolution of the legal person.

The call option is a unilaterally defined entitlement by the exer-

cise of which a contract on the sale of securities which are the object of the option to purchase is concluded between the holder of securities as the seller and the holder of the call option as the buyer, at a certain price, at a certain period of time and on a certain date. The time limit set for the exercise of the call option cannot exceed five years. This right is not transferable by legal transaction between living persons.

An order for registration of pre-emptive right shall also include the term of validity of the pre-emptive right. A pre-emptive right is the right of an entitled person to be notified by the security-holder of the intended sale of the security, and offer to buy it under the same terms and conditions. Although the duration of this right is to be stipulated by the contract, this right expires after five years.

A limitation on disposal of a security to the benefit of a given person is a special type of third-party right that arises when the security-holder, through a legal transaction concluded to the benefit of a given person, waives the disposal of the security for a given period.

### The Central Securities Clearing Corporation

The Central Register is kept by the Central Securities Clearing Corporation (*Centralna klirinsko depotna druzba*, hereinafter the KDD).

The KDD was founded on January 10 1995 and represents the first and only institution in Slovenia to provide central securities custody services, clearance and settlement of securities transactions, and maintenance of the Central Registry. The KDD's share capital amounts to SIT260 million (\$1.4 million) and is divided into 520 ordinary registered shares.

The KDD's operation is regulated by the Securities Market Act, on the basis of which the KDD was issued the operating licence by the Securities Market Agency. Initially, maintenance of the Central Registry was regulated by the government's Decree on Dematerialized Securities, and on that basis the government authorized the KDD to maintain the Central Registry and to carry on activities related to dematerialized securities. In 1999 the Dematerialized Securities Act was passed, which substituted the Decree.

The KDD's principal activity is to offer services in reference to:

- calculating, netting and settling obligations with respect to settlement of stock exchange transactions;
- the issue, cancellation or replacement of dematerialized securities;
- the maintenance of the Central Registry;
- procedures relating to takeover bids (according to Mergers and Acquisitions Act); and
- other services related to securities transactions, and the exercise of rights attached to those securities.

The task of maintaining the Central Register includes managing the securities accounts. The KDD ensures that transfers of securities to the accounts of their holders, the registration of third-party rights, or restrictions on the transferability or prohibitions on the disposal of securities, are carried out in the same order in which the orders were recorded in the Central Register.

## Corporate and commercial

### Recommended firms

#### Tier 1

Colja Rojs & Partners  
Jadek & Pensa  
Miro Senica in Odvetniki

#### Tier 2

Odvetniki Selih & Partnerji

#### Tier 3

Schönherr  
Wolf Theiss

### Colja Rojs & Partners

The market was unanimous in naming Colja Rojs & Partners as one of Slovenia's top-flight firms. It has been operating in Ljubljana as long as Slovenia has existed, and provides a full suite of services in corporate, banking, insolvency and project finance, as well as capital markets and securitization advice.

Name partners Marjan Colja and Ales Rojs are the firm's most visible practitioners, but competitors point to Grega Peljhan as a future name in the market. The practice has a distinctly international outlook, with an office in Belgrade and access to overseas clients through the JCA network.

#### Leading lawyers

Marjan Colja  
Ales Rojs

#### Key contact partners

Marjan Colja  
Ales Rojs

### Jadek & Pensa

Jadek & Pensa bolstered its team in August 2005 with the promotion of Aleksandra Jemc to partner status. Jemc has already aided the firm's more established names, Pavle Pensa and Sreco Jadek, in advising eFunds International on its purchase and transfer of SKB Banka's payment processing business Plasis. More recently, the three partners managed the purchase of a 79% stake in Donit Tesnit on behalf of DBG Eastern Europe.

The firm was also involved in the Slovenia's most interesting commercial dispute this year, a hotly contested takeover of the successful Union brewery. The so-called brewers' war between the Belgian company InBev (formerly Interbrew) and Pivovarna Lasko, Union's main rival in Slovenia, finally ended in February with InBev, a client of Jadek & Pensa, selling its €70 million share to Lasko.

A client described Sreco Jadek as "particularly creative and business-oriented", adding: "he found interesting solutions to a couple of complex issues."

On the banking side, Pavle Pensa leads a team with a distinctly international flavour. This year saw the firm act as Slovenian counsel for Bank Austria Creditanstalt in a €43 million syndicated guarantee, advise Pro Plus (as borrower) and CME (as guarantor) on a €37.5 million revolving credit facility, and represent HSH Nordbank on a €21 million term loan facility agreement granted to Probanka.

The firm also boasts impressive regulatory credentials – especially in the insurance sector – spearheaded by Bostjan Spec. Among the year's highlights, Spec led teams that represented Vzajemna (Slovenia's biggest mutual health insurance company) in relation to its transformation into a joint-stock company, and

acted for Slovenica Zavarovalniska Hisa in relation to a merger that created Adriatic Slovenica Zavarovalna druzba, the second biggest Slovenian insurer.

Pavle Pensa is also legal counsel to the Ljubljana Stock Exchange in relation to the acquisition and withdrawal of treasury shares. Bostjan Spec oversees most of the firm's capital markets work, however. Over the past 12 months he has advised Société Générale and KD Holding in relation to the private placement of employee offerings and bonds respectively.

At the time of writing, the firm was providing advice in relation to the €200 million development of a railway station and adjoining shopping centre in Ljubljana. It was also involved in a politically contentious €500 million casino development project near the Slovenian-Italian border, the success of which depends on the government agreeing to amend legislation preventing foreign investors from holding more than a 50% stake in Slovenian projects.

"For any business we do in Slovenia, we'd definitely turn to them to advise us. I don't think we would consider using anybody else," said one of the firm's commercial clients.

#### Leading lawyers

Sreco Jadek  
Pavle Pensa  
Bostjan Spec

#### Key contact partners

Sreco Jadek  
Pavle Pensa  
Bostjan Spec

### Miro Senica in Odvetniki

With 25 practitioners, Miro Senica's full-service firm has size on its side. The commercial and international team is headed up by Katarina Kresal, and is a bastion of local corporate heavyweights, though it is also dealing with about 500 international cases at the time of writing.

The firm's broad base of expertise allowed it to act for Pivovarna Lasko in every aspect of its successful €108 million acquisition of Pivovarna Union, from the public takeover bid to filing for the approval of the Securities Agency and representation before the Commercial and Administrative Court.

Another highlight of 2005 saw the firm advise on Gorenje's purchase of Mora Moravia, a Czech manufacturer of cooking appliances. The transaction had a strong regional element, and involved close cooperation with White & Case's Prague office. Among other recent highlights, the firm acted on the friendly takeover of Lek by Novartis.

#### Leading lawyers

Katarina Kresal  
Miro Senica

#### Key contact partner

Katarina Kresal

### Odvetniki Selih & Partnerji

Odvetniki Selih & Partnerji's excellent reputation is built on the name of Rudi Selih, a pioneer of international legal work in Slovenia. His daughter's firm retains him as an advisor, but has a burgeoning practice in its own right.

A disagreement over the firm's business model saw name partners Aleksandra Janezic and Andrej Jarkovic part company with the firm in May 2005, but the bulk of the corporate work remains in the hands of Nina Selih's 12-strong team. It has been involved this year in numerous multi-million-euro cross-border transactions, such as advising a Canadian-Hungarian group in a greenfield real estate development project in Ljubljana.

Other international clients include a German healthcare group, an Italian bank and a Dutch express delivery provider, all of which Selih & Partners advised in the acquisition of Slovenian competitors.

The firm's domestic credentials are also solid. Local highlights this year include advising on an asset deal between two of Slovenia's mobile phone operators, and advising a Slovenian public institution in the sale of shares and the exercise of a rollover option in Eutelsat, a communications infrastructure company. Odvetniki Selih & Partnerji has also been instructed to advise on several syndicated loans granted by international syndicates to Slovenian banks and other local entities.

#### Leading lawyer

Nina Selih

#### Key contact partner

Nina Selih

### Wolf Theiss

Slovenia's prosperity has not gone unnoticed by its Austrian neighbours. Schönherr set up shop in Ljubljana in 2001, and Wolf Theiss followed suit in 2003. Since then it has developed a formidable market presence, usually representing Austrian and other foreign companies as Slovenian counsel. In September, the firm expects to conclude a €292 million deal to restructure the Austrian bank Kärntner Sparkasse. The deal is complex because Slovenian and Austrian regulations prevent companies from performing cross-border spin-offs.

The firm's recent deal list includes advice to Altima Partners on its public offer for around 25% of the shares of Mercator, a Slovenian supermarket chain, for €133 million. Lenovo also mandated the firm to act as local counsel during its takeover of IBM's personal computer business.

Capital markets highlights include the registration of 15 new investment funds in Slovenia by Capital Invest, as well as the establishment of *sociétés d'investissement à capital variable* (Sicavs) by BNP Paribas. Société Générale has also used Wolf Theiss' services this year in relation to a euro medium-term note (EMTN) programme. The firm has also advised the Bank Austria Group, Citigroup and ABN Amro on regulatory issues.

Wolf Theiss's conventional banking law experience this year comprised several sizeable refinancing deals. In an €580 million deal, the firm negotiated and drafted a share pledge agreement on behalf of JP Morgan Chase relating to an existing syndicated loan facility, and offered a legal opinion in relation to the refinancing. The bank returned to the firm for a similar deal with the Messer Group in August, with a value of €260 million in the form of a senior facility, and a \$252 million note purchase and guarantee agreement.

Various insolvency instructions have come Wolf Theiss' way this year, such as Siteco Holding's cessation of its lighting systems operation in Slovenia, valued at €50 million. The process involved the winding up of a 400-employee production business and the spin-off of the company's sales activities. Other insolvency clients have included Wavcom and Von Roll Holding, which turned to the firm in connection with compulsory settlements with Iskraemeco.

#### Key contact partner

Markus Bruckmüller