

Business Forum on the SEE - Balkans

Financing in the Balkans

Transaction and guarantee structure

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Preferred SPV jurisdiction	The Netherlands/Spain	The Netherlands	The Netherlands	The Netherlands	The Netherlands	The Netherlands	The Netherlands	The Netherlands / Luxembourg
Comments	Non-EU jurisdiction may be needed for BIT protection	n/a	Alternative jurisdiction is Luxembourg; for purposes of subsequent capital markets refinancing - Malta is an option	Non-EU jurisdiction may be needed for BIT protection	Non-EU jurisdiction may be needed for BIT protection	Non-EU jurisdiction may be needed for BIT protection	Non-EU jurisdiction may be needed for BIT protection	Non-EU jurisdiction may be needed for BIT protection
Co-borrowers	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Upstream guarantees available	Yes, but for corporate benefit	Yes	Yes	Yes	Yes	Yes	Yes, subject to certain restrictions	Yes
Corporate benefit required	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Capital maintenance applicable	n/a	Yes, limitation language used in practice	1. Corporate limitations related to so called "hidden non-monetary contribution"; 2. Decapitalization (negative equity) also needs timely remedies	Yes; limitation language used in practice	Yes	Yes	Yes	Yes
Prohibited financial assistance	Yes in certain circumstances	Yes, for both LLC and JSC	Certain limitations for JSC; possible for LLC	Yes for JSC; possible for LLC	Yes for JSC; possible for LLC	Yes	Yes	Yes for JSC; possible for LLC
Other issues	Avoidance claims by creditors possible	If guaranteeing for a non-resident, counter guarantee has to be obtained.	1. Possible tax issues with: (a) "hidden distribution of profit" and (b) correction of financial result due to non-arms length transactions; 2. Avoidance claims by creditors possible in certain cases.	Avoidance claims by creditors possible	Avoidance claims by creditors possible	Avoidance claims by creditors possible	Avoidance claims by creditors possible	Avoidance claims by creditors possible

Type of security

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Real estate	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Stock held for the purposes of the business	Yes, as floating charge	Yes	Yes, should be individualized or as floating charge	Only if individualized or as floating charge	Yes	Yes	Only if individualized	Yes
Shares owned in subsidiaries and other companies	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Receivables	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Intellectual property	Yes	Yes	Industrial property rights (TM, designs, patent)	Yes	Yes	Yes	Yes	Yes
Goodwill	Yes	No	Not separately	Not separately	Not separately	No	No	Not separately
Wherever possible, floating charges	Yes	Yes	Yes	Yes	Yes	Non existent, but similar effect could be achieved with certain pledges	Non existent, but similar effect could be achieved with certain pledges	No, but non-possessory pledge over inventory has characteristics resembling a floating charge
Other customary security	n/a	Bills of Exchange	Registered pledge over commercial enterprise; debenture bond	Debenture bond	Debenture bond	Movable assets, third party securities assignment, promissory notes, bank accounts	Movable assets, third party security assignment, promissory notes, bank accounts	Bank accounts

Mechanics of taking security (I)

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Real estate	Notarial deed + registration in land register	Notarial deed + registration in land register	Notarial deed + registration in land register	Notarial deed + registration in land register	Notarial deed + registration in land register	Notarial deed + registration in land register	Notarial deed + registration in land register	Notarial deed + registration in land register
Stock held for the purposes of the business	Securing Charge Agreement + notification at securing charge registry	Agreement in written form + registration with Pledge Register	Under the general rules for the respective type of stocks, whether as separate asset or as a part of a totality of assets	n/a	Notarial deed + registration in Pledge Register	Pledge agreement + registration with the Pledge Registry (LLC)	Pledge agreement + registration with the BRA (LLC)	Pledge Agreement + registration in Ajpes
Shares owned in subsidiaries and other companies	Securing Charge Agreement + notification at securing charge registry (or company registry/securities registrars)	Agreement in written form + registration with Pledge Register (LLC) or Securities Register (JSC)	1. For shares in LLC: Notarized registered pledge contract + registration in commercial register and Central Registered Pledge Register; 2. for materialized shares in JSC: pledge endorsement + registration in the shareholders book; 3. for dematerialized shares in JSC – special pledge contract + registration in Central Depository	Notarial deed + registration in central depository (JSC) or FINA and share register (LLC)	Notarial deed + registration in Pledge Register	Notarial deed + registration with the Pledge Registry + registration in Central Securities Depository and Clearing Company (JSC)	Notarial deed + registration with the BRA (LLC) Notarial deed + registration in Central Securities Depository and Clearing House (JSC)	Notarial deed + registration in Ajpes Business Register (for LLC) Pledge Agreement – registration in KDD (Central Clearing House)

Mechanics of taking security (II)

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Receivables	Securing Charge Agreement + notification at securing charge registry	Agreement in written form + registration with Pledge Register	Registered pledge contract + notification of debtors + registration in Central Registered Pledge Register	Notarial deed + registration with FINA	Notarial deed + registration in Pledge Register	Pledge agreement + registration with the Pledge Registry	Pledge agreement + registration with the BRA	Pledge Agreement – notification of the debtor
Intellectual property	Securing Charge Agreement + notification at securing charge registry / IP register	Agreement in written form + registration with the Institute for Intellectual Property	Industrial property rights (TM, designs, patent) – registered pledge contract + registration in Patent Office	Notarial deed + registration with IP register/FINA	Notarial deed + registration in Pledge Register	Pledge Agreement + registration with the Institute for Intellectual Property	Pledge Agreement + registration with the Institute for Intellectual Property	Pledge Agreement + registration with IP register
Goodwill	Securing Charge Agreement + notification at securing charge registry	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Wherever possible, floating charges	Securing Charge Agreement + notification at securing charge registry	Agreement in written form + registration with Pledge Register	Registered pledge contract + registration in Central Registered Pledge Register	Notarial deed + registration with FINA	Notarial deed	n/a	n/a	n/a
Other customary security	Bank accounts	n/a	Commercial enterprise: notarized registered pledge contract + registration in the Commercial Register	Notarial deed + registration in land register	Notarial deed + registration	Request for issuance + possibility of registration with the CBM (promissory notes)	Request for issuance + possibility of registration with the NBS (promissory notes)	

Security structure (I)

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Issues with giving upstream security	Yes 1.corporate benefit/capital maintenance rules; 2. parent liability (law on groups) 3. director liability	Yes 1a.corporate benefit/capital maintenance rules; 2. financial assistance	Yes 1.corporate benefit/capital maintenance rules; 2. financial assistance; 3. tax issues with non-arms-length basis or hidden distribution of profit	Yes 1.corporate benefit/capital maintenance rules; 2. financial assistance	Yes 1.corporate benefit/capital maintenance rules; 2. financial assistance	Yes. 1. Capital maintenance rules 2. Financial assistance	Yes. 1. Capital maintenance rules 2. Financial assistance 3. Central Bank restrictions	Yes 1. capital maintenance rules (for LLC and JSC); 2. prohibition of financial assistance (for JSC) 3. corporate benefit (control/domination agreement required, controlling company must cover any shortage to the controlled company)
Issues with security over particular assets	Yes 1. corporate benefit 2. parent liability (law on groups) 3. director liability	Share pledge over shares owed by a non – resident	Floating charges – may be hard to track down the objects (movables) once foreclosure starts	Account receivables, bank accounts, fixed charge over number of objects (e.g. cars)	Account receivables, bank accounts, fixed charge over number of objects (e.g. cars)	Part of Montenegro is still under deed system so there might be uncertainty with mortgage registration	Pledge over accounts has to be updated regularly as it pledges amounts available on the date of pledge	Guarantees (need to be very specific to assure effectiveness)

Security structure (II)

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Security agent	Not very common, unless for syndicated loans	<ol style="list-style-type: none"> Not explicitly recognized by the law, but used in practice Parallel Debt structure used, Not tested in courts 	No such figure regulated in law. In practice such result may be achieved through PoAs to the "security agent" to act on behalf of the other creditors	<ol style="list-style-type: none"> Used in practice Must be a creditor Parallel debt / joint and several creditors / commission agent structure used Not tested in courts 	n/a	No	Yes	Commonly used
Transfer of participation affecting security	Possible, subject to notice to borrower and preservation of security	Possible under certain conditions	The transfer of participation in practice is achieved by assignment/transfer of receivable. The security passes over along with the assigned receivable, unless agreed otherwise	Probably not, provided that the existence of the secured obligation is preserved	Probably not, provided that the existence of the secured obligation is preserved	<p>Two options:</p> <ol style="list-style-type: none"> if the whole credit relationship is transferred (consent of the borrower required) - security is not affected Transfer of claims, but not also the obligations (notification of the borrower is required) - security is not affected <p>Changes in appropriate registry needed</p>	<p>Two options:</p> <ol style="list-style-type: none"> if the whole credit relationship is transferred (consent of the borrower required) - security is not affected Transfer of claims, but not also the obligations (notification of the borrower is required) - security is not affected <p>changes in appropriate registry</p>	<p>Two options:</p> <ol style="list-style-type: none"> if the whole credit relationship is transferred (consent of the borrower required) - security is not affected Transfer of claims, but not also the obligations (notification of the borrower is required) - security is not affected (not possible for maximum mortgage)

Loan Agreement (I)

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Form	Written form required for evidence	Written form required	Written form plus actual payment of the sum; Consumer credits, mortgage credits and bank credits are valid when signed even before the actual payment	Written form required	Written form required	Written form required	Written form required	Written form required
Interest	No limitations apply	No limitations apply	No compounding	No compounding Maximum interest rate prescribed	No compounding Maximum interest rate prescribed	No compounding interest, no limitations on amount	No compounding, No limitations on amount	In case of consumer financing for non-bank institutions: the rate is limited to 200% of the average effective interest rate of Slovenian banks for consumer For non-commercial agreements: interest rate 50% higher than the legally prescribed default interest is deemed usurious

Loan Agreement (II)

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Covenants	Negative pledge may not be enforceable, but can be an event of default. Covenants requiring third party action (e.g. shareholders) may not be enforceable	Negative pledge may not be enforceable. Covenants requiring third party action (e.g. shareholders) may not be enforceable	Restrictions for certain activities do not affect the validity of such activities (concluded contracts, etc.); in practice that issue is solved through penalty provisions	Negative pledge may not be enforceable. Covenants requiring third party action (e.g. shareholders) may not be enforceable	Negative pledge may not be enforceable. Covenants requiring third party action (e.g. shareholders) may not be enforceable	Negative pledge may not be enforceable. Covenants requiring third party action (e.g. shareholders) may not be enforceable	Negative pledge may not be enforceable. Covenants requiring third party action (e.g. shareholders) may not be enforceable	Negative pledge may not be enforceable. Covenants requiring third party action.
Events of Default / Acceleration	Must be material of the interest of creditor	Insignificant breach may not justify acceleration	the agreed in the contract rules for acceleration will apply. Non payment of one due instalment may justify acceleration	Insignificant breach may not justify acceleration	Insignificant breach may not justify acceleration	Insignificant breach may not justify acceleration	Insignificant breach may not justify acceleration	Insignificant breach may not justify acceleration
Prohibition of assignment	Effective	Effective	Non-effective: the assignment would be valid, although indemnification can be claimed for the breach	Effective	Effective	Effective	Effective	Effective
Forefeiture agreement	Generally prohibited, allowed in some cases during auction procedures	Null and void	Yes but only for financial collaterals, if explicitly agreed in the contract. Not valid for other types of security	Generally, not valid	Generally, not valid	Generally, not valid except as a last resort	Generally, not valid except as a last resort	Allowed in some cases

Law and Jurisdiction (I)

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
English law governing	Generally allowed	Allowed	OK, used in practice. For certain matters the law of the SPV may be mandatory. The choice of applicable law cannot evade the mandatory provisions of the law that would be applicable in the absence of choice; the choice of law could even be invalid in case the purpose of the parties is to evade the mandatory provisions and restrictions of the law that would be applicable in the lack of a choice	OK, often in practice	OK	Allowed	Allowed	OK
English courts Forum selection	Generally allowed	Allowed	OK	OK	OK	Allowed	Allowed	OK

Law and Jurisdiction (II)

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Enforcement in local courts	Upon obtaining judgement from courts of selected jurisdiction/Interim and Conservatory Measures possible	Upon foreign court judgement is recognized by local court	Upon obtaining judgement from courts of selected jurisdiction	Upon obtaining judgement from courts of selected jurisdiction	Upon obtaining judgement from courts of selected jurisdiction	Upon foreign court judgement is recognized by local court	Upon foreign court judgement is recognized by local court	Upon obtaining judgement from courts of selected jurisdiction
Law governing guarantee	Law governing the principal obligation (unless otherwise agreed)	Law governing the principal obligation (unless otherwise agreed)	The parties can choose. If it is not chosen – the law governing the principal obligation	Law governing the principal obligation	Law governing the principal obligation	Law governing the principal obligation (unless otherwise agreed)	Law governing the principal obligation (unless otherwise agreed)	Law governing the principal obligation (unless otherwise agreed)
Law governing local security	Depending on type (e.g. Albanian law for real estate)	Bosnian	Bulgarian	Croatian	Macedonian	Montenegrin	Serbian	Generally Slovenian
Other issues re: law and jurisdiction	n/a	n/a	Brexit is a hot topic	Brexit – consequences on enforcement regime	n/a	n/a	n/a	Brexit – consequences on enforcement regime

Enforcement (I)

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Private sale of collateral	Generally not possible, allowed for possessory pledge	No for real property Yes for other property, via public auction or direct exchange	Allowed for: 1. registered pledges; 2. Commercial pledge; 3. Financial collaterals – available to banks, pension funds, investment brokers, special investment companies, etc.	No for real property Yes for other property, via public auction or exchange	No.	Yes, but subject to agreement	Yes (out of court always possible, court enforcement subject to agreement or after 2 unsuccessful public sales)	Used for sale of shares, movables Possible also for real estates but not used in practice
Appropriation of collateral	Generally prohibited, allowed in some cases during auction procedures	Generally prohibited	Generally prohibited, allowed only for financial collateral, if stipulated in the contract. In an enforcement proceeding the creditor can bid at the sale but in competition with the other bidders.	Generally prohibited, allowed only exceptionally	Theoretically, under the law, it is possible, but never in practice (only in sale via notary, after the collateral could not be sold via auction or direct settlement. However notaries never accept to perform sales)	Generally prohibited, allowed only exceptionally	Generally prohibited, allowed only exceptionally	Allowed in some cases
Timescale for enforcement	Depends on circumstances (1-2 years average)	1-3 years	2 months - 1 year	6 months -3 years	1-3 years	Depends on circumstances and type of collateral	Depends on circumstances and type of collateral	Depends on circumstances and type of collateral

Enforcement

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Challenges to enforcement	<ul style="list-style-type: none"> a. Invalid executive order b. Debt does not exist c. Debt exists in lower amount d. Illegal enforcement procedures 	<ul style="list-style-type: none"> a. Invalid executive document, b. Elapsed period for seeking of enforcement c. Condition stipulated in an executive document has not been fulfilled d. The claim ceased to exist, e. other 	Unfounded appeal could delay the enforcement	<ul style="list-style-type: none"> a. Avoiding service of process b. Appeal +request for suspension c. Litigation for declaring the enforcement illegal d. Provisional measures 	<ul style="list-style-type: none"> a. Avoiding service of process b. Appeal +request for suspension c. Litigation for declaring the enforcement illegal d. Provisional measures 	<ul style="list-style-type: none"> 1. Unfounded objections; and other disruptive actions by the debtor; 2. Inefficiency of the second instance courts 	<ul style="list-style-type: none"> 1. Unfounded objections; and other disruptive actions by the debtor; 2. Inefficiency of the second instance courts 	<ul style="list-style-type: none"> 1. Debtors' misuse of the right to appeal 2. In some cases court delays
Appointing a receiver	n/a	Not available	Generally not available; similar figure – the depository, takes part in the foreclosure of the registered pledge	Not available	n/a	Not available	Not available	n/a
Preferred claims	According to statutory list of priority claims	Certain taxes and costs	Enforcement costs, the claims secured with mortgage or pledge; state receivables; labour claims, etc.	Certain taxes and costs	Certain taxes and costs	According to statutory list of priority claims (relevant in case of bankruptcy)	According to statutory list of priority claims (relevant in case of bankruptcy)	According to statutory list of priority claims (relevant in case of bankruptcy)

Insolvency and bankruptcy (I)

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Types of insolvency proceedings	Bankruptcy liquidation /reorganization	Liquidation, restructuring and bankruptcy proceeding	Pre-bankruptcy; bankruptcy; reorganization. Special types of proceedings exist for banks, insurers, etc.	Pre-bankruptcy; bankruptcy; reorganisation	Bankruptcy; Reorganisation	Liquidation, restructuring and bankruptcy proceeding	Liquidation, restructuring and bankruptcy proceeding	Compulsory settlement; bankruptcy
Timescale	1-3 years	1-3 years	2 - 5 years	3 years	3 years	Depending on complexity	Depending on complexity	Depending on complexity
DIP Financing	Possible	Not recognized	Not provided for in the law, in practice similar effect could be achieved under certain conditions	In certain cases and under certain conditions	In certain cases and under certain conditions	Not recognized	Not recognized	Yes, in certain cases and under certain conditions
Possible outcome	Agreement with creditors; Restructuring; Winding up	Agreement with creditors; Restructuring; Winding up	Agreement with creditors; Restructuring; Winding up	Agreement with creditors; Restructuring; Winding up	Agreement with creditors; Restructuring; Winding up	Restructuring; Winding up	Restructuring; Winding up	Agreement with creditors; Restructuring; Winding up

Insolvency and bankruptcy (II)

	ALB	BIH	BG	CRO	MAC	MNE	SER	SLO
Priority order in bankruptcy	<ul style="list-style-type: none"> a. Bankruptcy expenses/creditors b. Secured creditors (up to value of security received) c. Statutory list of priority claims d. Unsecured creditors e. Lower rank creditors (e.g. claims without consideration, subordinated lenders etc.) 	<ul style="list-style-type: none"> a. Bankruptcy expenses b. Labor related claims c. All other claims d. Certain interests, costs, fines, etc. 	<ul style="list-style-type: none"> 1. Secured creditors; 2. Costs on insolvency; 3. Labour law claims; 4. State and municipal receivables – tax, fees, etc.; 5. receivables dating after the opening of insolvency; 6. non-secured receivables dating before the opening of insolvency; 	<ul style="list-style-type: none"> - Costs of bankruptcy proceedings and other obligations of bankruptcy estate defined by law - Labour law related claims - All other claims except: certain interest, costs, fines, claims without consideration etc. 	<ul style="list-style-type: none"> 1. Labour law related claims 2. All other claims 	<ul style="list-style-type: none"> 1. Labor related claims 2. Public revenues related claims 3. Claims of other bankruptcy creditors 4. Shareholder or related entities unsecured loans 	<ul style="list-style-type: none"> 1. Labor related claims 2. Public revenues related claims 3. Claims of other bankruptcy creditors 4. Shareholder or related entities unsecured loans 	<ul style="list-style-type: none"> 1. Secured creditor (creditors with the right to separate settlement) 2. 2. creditors with priority claims (certain claims from workers, certain claims in relation to taxes and contributions) 3. Creditors with ordinary claims 4. Creditors with subordinated claims
Contractual super-priority	Generally ineffective	No	No	Generally no	No	No	No	Not effective in bankruptcy proceeding
Protection of secured creditor	Yes – separation from bankruptcy estate	Yes – separate satisfaction from collateral	Yes – generally, separate satisfaction from collateral	Yes – separate satisfaction from collateral	Yes – separate satisfaction from collateral	Yes – separate satisfaction from collateral	Yes – separate satisfaction from collateral	Yes – separate settlement from collateral

