

# Real Estate

*Contributing editor*  
**Joseph Philip Forte**



2019

GETTING THE  
DEAL THROUGH

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# Real Estate 2019

*Contributing editor*  
**Joseph Philip Forte**  
**Sullivan & Worcester LLP**

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# Preface

## Real Estate 2019

Twelfth edition

**Getting the Deal Through** is delighted to publish the twelfth edition of *Real Estate*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Croatia and Myanmar.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Joseph Philip Forte of Sullivan & Worcester LLP, for his continued assistance with this volume.

GETTING THE  
DEAL THROUGH 

London  
November 2018

# Slovenia

Matej Perpar and Ajda Okršlar

Kirm Perpar Law Firm

## General

### 1 Legal system

**How would you explain your jurisdiction's legal system to an investor?**

Slovenia has a continental legal system, which is strongly influenced by German law. The most fundamental acts of civil law in Slovenia are the Code of Obligations, which contains the basic principles and general rules for all obligational relationships, and the Law of Property Code, which governs property and related rights. With regard to the law governing real estate, a potential investor should also be acquainted with provisions of the:

- Land Register Act;
- Real Estate Recording Act;
- Agricultural Land Act;
- Housing Act; and
- Protection of Buyers of Apartments and Single Occupancy Buildings Act.

Case law is generally not recognised as a formal source of law (with the exception of decisions made by the Constitutional Court), but it persistently gains importance, especially with regard to the power of argument.

Oral contracts are generally recognised under Slovenian law, except in cases where the law requires a written form or when the parties agree on a written form. A written form is, for example, especially envisaged by law for contracts regulating transfer of ownership title or other property rights on real estate. Regardless of the fact that oral contracts are generally recognised by Slovenian law, it is still highly recommended to conclude all contracts in written form, especially due to their stronger evidentiary value.

Slovenian law also enables a party to obtain an injunction to prevent an action.

Laws regulating real estate are applicable throughout the whole territory of Slovenia. In addition to state laws, there are some municipal acts relating to real estate. Such municipal acts only apply to real estate located in the territory of the respective municipality.

### 2 Land records

**Does your jurisdiction have a system for registration or recording of ownership, leasehold and security interests in real estate? Must interests be registered or recorded?**

Slovenia has a registration-based system. All property (and some obligational) rights must be registered in the Land Register in order to gain validity. Unregistered owners only enjoy limited protection.

Entries of the rights and legal facts in the Land Register are effective from the moment the land registration court receives a proposal for entry, unless otherwise provided by the law. All entries in the Land Register are public.

Registered rights follow the principle 'first in time, first in right', which means that the first right entered has priority over other rights of the same type. This is especially relevant for mortgages.

### 3 Registration and recording

**What are the legal requirements for registration or recording conveyances, leases and real estate security interests?**

The party proposing the entry in the Land Register must provide the document containing an unconditional statement of the owner allowing the entry. The owner's signature on such document must be notarised.

The registration fee varies with respect to the value of the real estate, from €5 (for values up to €20,000) to €5,000 (for values of more than €60 million). The payment of fees is subject to agreement between the seller and the buyer. Nevertheless, the buyer customarily pays them.

### 4 Foreign owners and tenants

**What are the requirements for non-resident entities and individuals to own or lease real estate in your jurisdiction?**

**What other factors should a foreign investor take into account in considering an investment in your jurisdiction?**

Natural or legal persons from European Union, European Economic Area, European Free Trade Association and Organisation for Economic Co-operation and Development member states may acquire ownership of real property under same conditions as Slovenian citizens and legal persons with their registered seat in Slovenia. For natural or legal persons from other countries that are not members of the above listed unions, ownership of real estate is permitted under condition of reciprocity.

There are no legal limitations for foreigners to lease real estate in Slovenia.

### 5 Exchange control

**If a non-resident invests in a property in your jurisdiction, are there exchange control issues?**

Slovenia does not impose foreign exchange controls or specific restrictions on payments to foreign individuals and companies. Both residents and non-residents in Slovenia are allowed to open bank accounts in foreign currencies.

### 6 Legal liability

**What types of liability does an owner or tenant of, or a lender on, real estate face? Is there a standard of strict liability and can there be liability to subsequent owners and tenants including foreclosing lenders? What about tort liability?**

Slovenian law recognises two types of liability: statutory and contractual. Generally, all aspects of statutory liability arise from the basic rule stating that any person inflicting damage on another is obliged to reimburse it. Moreover, the owner of an object shall also be liable for damages caused by an object in his ownership, if such object can be considered dangerous. While some objects are considered dangerous per se, others may become dangerous by incorrect use or lack of care. Under general rules, a landlord can therefore potentially also be held liable for damages caused to a contractor that has an accident on his or her property.

Contractual liability can, as a rule, be agreed in addition to statutory liability, as statutory liability can generally not be excluded by contractual agreement.

Owners of real estate can also be held liable for environmental damage and for causing prohibited emissions to neighbouring properties.

## 7 Protection against liability

### How can owners protect themselves from liability and what types of insurance can they obtain?

Owners usually protect themselves by conclusion of insurance policies such as building insurance and individual or all-risk property insurances. Some insurance companies also provide environmental insurance.

Personal liability can also be avoided (or at least reduced) by incorporating a limited liability company (LLC) and listing it as the owner of specific real estate.

## 8 Choice of law

### How is the governing law of a transaction involving properties in two jurisdictions chosen? What are the conflict of laws rules in your jurisdiction? Are contractual choice of law provisions enforceable?

Parties to a transaction are free to choose any governing law. The parties can also agree that the chosen law is applicable only to specific parts of a contract. However, if all elements relevant to a transaction are located in a country other than that whose law has been chosen, obligatory provisions of law of the country of location shall also be applicable to this transaction.

If the parties decide not to agree on a governing law, general conflict-of-laws provisions shall assign the governing law. Because Slovenia is a member of the EU, the provisions of Regulation (EU) No. 1,215/2012 (Brussels I Regulation) and Regulation (EC) No. 593/2008 (Rome I Regulation) shall apply.

Additionally, in some exceptional cases where the above-mentioned Regulations are not applicable, conflict-of-law rules are governed by the Slovenian Private International Law and Procedure Act.

Conflict-of-law rules regarding rights in rem on real estate are generally of cogent nature and therefore cannot be amended by contractual provisions. As a consequence, such contractual provisions also cannot be enforced. On the other hand, obligatory rights connected to real estate can be governed by any law chosen by the parties, with respect to the limitation explained in the first paragraph above.

## 9 Jurisdiction

### Which courts or other tribunals have subject-matter jurisdiction over real estate disputes? Which parties must be joined to a claim before it can proceed? What is required for out-of-jurisdiction service? Must a party be qualified to do business in your jurisdiction to enforce remedies in your jurisdiction?

In Slovenia, district civil courts have jurisdiction over disputes regarding real estate. In disputes relating to rights in rem on real estate, the competent district court is determined based on the location of the real estate in question; while in disputes relating to obligatory rights connected to real estate, the competent district court is determined by the defendant's place of residence.

Under Slovenian law, out-of-jurisdiction service of court applications is in the court's domain and is not an obligation of the parties. Slovenian law assures the legal capacity of foreign people and legal entities, so they can enforce remedies under same conditions as Slovenian persons or entities. However, the courts may request such entities to assign a representative to whom court writings can be delivered.

## 10 Commercial versus residential property

### How do the laws in your jurisdiction regarding real estate ownership, tenancy and financing, or the enforcement of those interests in real estate, differ between commercial and residential properties?

While real estate ownership is mostly governed by the Law of Property Act, provisions regulating tenancy in general are included in the Slovenian Code of Obligations. In addition to the above-mentioned, there are some other acts governing specific types of space (such as the Housing Act for residential premises, the Business Buildings and Business Premises Act and the Agricultural Land Act).

The provisions of these acts concerning lease agreements and relationships mainly differ in respect to:

- obligatory elements of lease contracts;
- notification periods;
- the manner of and reasons for termination and rights; and
- obligations of parties.

With regard to real estate ownership, the provisions of the listed acts do not differ as much as with regard to leases. Nevertheless, there is a special act protecting buyers of new apartments in Slovenian legislation, which provides special rights to such buyers and obligations of sellers. These provisions are similar to those protecting consumers and cover obligatory elements and form of purchase contracts, rights of termination, delivery of the real estate, guarantees, etc.

Financing does not generally differ with respect to residential or commercial property, but this may be subject to the conditions of each individual bank.

## 11 Planning and land use

### How does your jurisdiction control or limit development, construction, or use of real estate or protect existing structures? Is there a planning process or zoning regime in place for real estate?

The Slovenian jurisdiction controls and limits development, construction and use of real estate by spatial planning and spatial management, mainly through the adoption of 'spatial plans'. The main authorities that control compliance with this are:

- the Construction, Surveying and Housing Inspectorate; and
- the Inspectorate for Agriculture and the Environment.

These bodies have the authority to impose inspection measures and to initiate minor offence proceedings if they discover any breaches of provisions regulating spatial planning and management.

Official information on land use can be easily obtained at local municipalities and state administrative units.

## 12 Government appropriation of real estate

### Does your jurisdiction have a legal regime for compulsory purchase or condemnation of real estate? Do owners, tenants and lenders receive compensation for a compulsory appropriation?

The right of the government (or state) to compulsorily purchase real estate is envisaged in the Constitution of the Republic of Slovenia, and is additionally (and more in detail) regulated in the Spatial Management Act.

In case of appropriation, owners receive monetary compensation or comparable real estate as remuneration in kind.

## 13 Forfeiture

### Are there any circumstances when real estate can be forfeited to or seized by the government for illegal activities or for any other legal reason without compensation?

Real estate can be forfeited to or seized by the government if it is recognised as an asset of illicit origin. This may be in the case where it is discovered that the assets were gained through a criminal act or if the owner cannot explain or prove their legal origin to a sufficient extent. The burden of proof in this case is on the defendant.



## 14 Bankruptcy and insolvency

### Briefly describe the bankruptcy and insolvency system in your jurisdiction.

Under Slovenian legislation there are two main types of insolvency procedure: compulsory settlement proceedings (with variation of simplified compulsory settlement) and bankruptcy proceedings.

The purpose of bankruptcy proceedings is typically the management and sale of assets of the debtor, division of proceeds and winding up of the company, while compulsory settlement is a way to restructure the debt without termination of the company as a legal entity.

Bankruptcy proceedings can be instituted by:

- a debtor, through its own proposal;
- a debtor's personally liable shareholder;
- a creditor that can prove that the debtor has defaulted on payments for more than two months; or
- the Guarantee, Child Support and Disability Fund of the Republic of Slovenia, if the debtor is in default with the payment of employees' claims.

By initiating bankruptcy proceedings, all representation rights are immediately transferred to the bankruptcy trustee, who also takes over the debtor's management, premises and documents.

The impact on specific interest holders varies in accordance with the rights they hold. If it holds an ownership right over an asset that is considered part of the bankruptcy estate, the rights holder may demand its exclusion from the bankruptcy estate. If it does not hold an ownership right, but only a pledge or mortgage, the rights holder may demand to be repaid from a special distribution estate (ie, proceeds from the sale of security). Only if there is a surplus of proceeds from the sale of security may it be transferred to the general distribution estate.

All information on insolvency proceedings that must be published under the Insolvency Act (including the court's decision on the commencement of bankruptcy proceedings) is publicly available on the website of the Agency of Republic of Slovenia for Public Legal Records and Related Services.

## Investment vehicles

### 15 Investment entities

#### What legal forms can investment entities take in your jurisdiction? Which entities are not required to pay tax for transactions that pass through them (pass-through entities) and what entities best shield ultimate owners from liability?

Under the Slovenian Companies Act the following legal forms are available to Slovenian and foreign investors:

- LLC;
- joint-stock company;
- sole proprietor;
- unlimited liability company;
- limited partnership;
- limited partnership with share capital; and
- *societas Europaea*.

Foreign entities conducting business in Slovenian territory have equal rights, liabilities and obligations to Slovenian companies. A foreign entity may also conduct business activity in Slovenia by setting up branches.

There are no entities under Slovenian law, similar to real estate investment trusts, which are exempt from taxes on transfers of real estate. The ultimate owners are protected to the widest extent in LLCs and joint-stock companies.

### 16 Foreign investors

#### What forms of entity do foreign investors customarily use in your jurisdiction?

The most commonly used entity form by foreign investors is the LLC, as this does not impose liability on its shareholders and the obligatory initial capital only amounts to €7,500. It is a much more convenient option in comparison to the joint-stock company, because the establishment of the latter is more complex and requires initial capital of a minimum amount of €25,000.

## 17 Organisational formalities

### What are the organisational formalities for creating and maintaining the above entities? What requirements does your jurisdiction impose on a foreign entity? Does failure to comply incur monetary or other penalties?

### What are the tax consequences for a foreign investor in the use of any particular type of entity, and which type is most advantageous?

Legal entities established under Slovenian law must be registered in the Companies Register. In order to be registered, the company must submit articles of association concluded in the form of a notarial deed (in case of an LLC, the articles of association can also be submitted on a form sheet with the notarised signatures of the shareholders). For a company with only one shareholder, the articles of association need not be concluded in the form of a notarial deed, but only in written form or on a form sheet. In both cases the signature of the shareholder must be notarised.

With regard to books of account and annual reports, the same obligations as for domestic entities apply for branches of foreign companies.

There are no special tax consequences for foreign investors. The Slovenian corporate income tax rate is set at 19 per cent (the rate of withholding tax is 15 per cent) and applies to all Slovenia-based companies.

## Acquisitions and leases

### 18 Ownership and occupancy

#### Describe the various categories of legal ownership, leasehold or other occupancy interests in real estate customarily used and recognised in your jurisdiction.

The basic legal ownership category under Slovenian law is the ownership right, which consists of a right to hold, use, exploit and dispose of a property. In addition, the owner has a right to limit his or her ownership right by transferring one of the listed rights to a third party or parties. One example is leasing the real estate, by which the owner-landlord transfers his or her right to hold and use (and in some cases also exploit) the real estate to the tenant on the basis of the lease agreement. The lease agreement can be concluded for a definite or indefinite period. If the parties choose the latter, it is recommended to agree in detail on the terms for termination.

As a rule, burdens on real estate are established by explicit and unconditional statement of the owner allowing such burden to be imposed on the real property. In addition, they must usually be entered in the Land Register in order to gain validity. The signature on a statement allowing the establishment of burdens must be notarised.

While condominium regimes have become widely used in Slovenia in recent years, cooperative ownership agreements are not yet recognised.

Lease agreements are, in general, governed by the Code of Obligations. In addition, there are some other acts governing specific types of space (such as the Housing Act for residential premises, the Business Buildings and Business Premises Act and the Agricultural Land Act). The provisions of these acts that concern lease agreements and relationships mainly differ in respect to obligatory elements of lease contracts, notification periods, the manner of and reasons for termination and rights and obligations of parties.

### 19 Pre-contract

#### Is it customary in your jurisdiction to execute a form of non-binding agreement before the execution of a binding contract of sale? Will the courts in your jurisdiction enforce a non-binding agreement or will the courts confirm that a non-binding agreement is not a binding contract? Is it customary in your jurisdiction to negotiate and agree on a term sheet rather than a letter of intent? Is it customary to take the property off the market while the negotiation of a contract is ongoing?

The Slovenian Code of Obligations recognises a pre-contract as a contract by which parties undertake to subsequently conclude the (main) contract. A pre-contract is considered binding if it contains all essential elements of the main contract, and can in such case also be enforced.

Nevertheless, a pre-contract shall not be binding if the circumstances materially change between the conclusion of the pre-contract and the main contract.

The options to enter into a letter of intent or term sheet are commonly used in the initial stages of transactions. It is also usual to include in such agreements an obligation to remove the real estate from the market during the negotiation period or not to enter into negotiations with other interested parties for a defined period.

## 20 Contract of sale

### What are typical provisions in a contract of sale?

The essential elements of a sale contract under Slovenian legislation are the object of sale and the purchase price. Other elements and provisions are optional.

The parties commonly decide to agree on a down payment, which depends on the total purchase price but usually amounts to between 10 per cent and 20 per cent of the purchase price. Use of an escrow account generally depends on the total value of the transaction and its complexity.

As the principle of trust in the Land Register fully protects the parties to legal transactions, current extracts from the Land Register are used as proof of a good title of the property. The Land Register is public and available online; therefore, no costs arise from verification of proper title. Since the principle of trust in the Land Register is fully applicable to legal transactions and as in accordance with this principle a party trusting in the Land Register cannot suffer detrimental effects, there is usually no need to include special representations and warranties with respect to the title in the agreements. Nevertheless, such warranties are often included in high-value transactions.

Liabilities for taxes and utilities are transferred to the buyer as of the date of delivery of the object of sale, unless agreed otherwise. The same applies for the risk of loss, which is borne by the seller until the delivery of the object of sale to the buyer. After delivery, the risk transfers to the buyer.

## 21 Environmental clean-up

### Who takes responsibility for a future environmental clean-up? Are clauses regarding long-term environmental liability and indemnity that survive the term of a contract common? What are typical general covenants? What remedies do the seller and buyer have for breach?

The environmental responsibility or responsibility to remove the source and its effects is primarily on the polluter, who is also obliged to pay the costs for measures of prevention and reduction of environmental effects. If an environmental effect cannot be assigned to a specific polluter, the liability for its removal and payment of costs for removal are borne by the state (or municipality).

With regard to contractual provisions regarding environmental liability, it is not unusual to negotiate representations and warranties that the property is free of environmental burdens or compliant with environmental legislation. Breach usually results in an obligation to pay a contractual penalty or the possibility of terminating the agreement.

## 22 Lease covenants and representation

### What are typical representations made by sellers of property regarding existing leases? What are typical covenants made by sellers of property concerning leases between contract date and closing date? Do they cover brokerage agreements and do they survive after property sale is completed? Are estoppel certificates from tenants customarily required as a condition to the obligation of the buyer to close under a contract of sale?

The most common representations given by the seller with relation to leases are that the leases are legally binding and enforceable, that the rent has not been modified and that there are no pending or threatened terminations. For the start of negotiations to finalisation of the agreement, the seller usually also warrants not to enter into any other lease agreements and make material changes to the existing leases.

Lease agreements do not usually include brokerage agreements, but are regulated and negotiated separately.

Estoppel certificates are neither required nor common as a condition to the obligation of the buyer to close under the sales contract.

## 23 Leases and real estate security instruments

### Is a lease generally subordinate to a security instrument pursuant to the provisions of the lease? What are the legal consequences of a lease being superior in priority to a security instrument upon foreclosure? Do lenders typically require subordination and non-disturbance agreements from tenants? Are ground (or head) leases treated differently from other commercial leases?

Under Slovenian legislation, leases are not subordinated to security instruments and do not cease to exist upon foreclosure. By purchasing the real estate, the buyer becomes the new landlord and undertakes all rights and obligations under the existing lease agreements.

## 24 Delivery of security deposits

### What steps are taken to ensure delivery of tenant security deposits to a buyer? How common are security deposits under a lease? Do leases customarily have periodic rent resets or reviews?

Security deposits are not obligatory but are still commonly used in lease relationships. The usual amount of a security deposit is one or two monthly rents, and it is typically provided in cash or by transferring amounts to the landlord's bank account.

With regard to short-term lease agreements, it is not usual for them to contain provisions on periodic rent resets or reviews. If the contractual parties agree to modify the rent, they usually include an annex to the agreement. On the other hand, long-term lease agreements commonly contain an indexation clause.

## 25 Due diligence

### What is the typical method of title searches and are they customary? How and to what extent may acquirers protect themselves against bad title? Discuss the priority among the various interests in the estate. Is it customary to obtain government confirmation, a zoning report or legal opinion regarding legal use and occupancy?

A typical method of title search is obtaining a current extract from the Land Register. Other ways of proving the title are used only in exceptional cases, where the transfers of title have not yet been entered into the Land Register.

The principle of trust in the Land Register, as recognised and interpreted in Slovenian legislation, fully protects the parties to legal transactions and therefore a party trusting in Land Register cannot suffer detrimental effects. A purchaser, in good faith, can accordingly obtain title even if the seller is wrongfully registered as the owner of the respective land.

Extracts from the Land Register and zoning reports are available online free of charge in a user-friendly format. Nevertheless, legal support is still advisable, especially with regard to the correct interpretation of the extracts and verification of rights and obligations entered therein.

## 26 Structural and environmental reviews

### Is it customary to arrange an engineering or environmental review? What are the typical requirements of such reviews? Is it customary to get representations or an indemnity? Is environmental insurance available?

Engineering and environmental reviews are generally not obligatory, but are still advisable, especially with respect to larger transactions. Representations or an indemnity is also only used in larger transactions, where difficulties are expected in this regard.

Environmental liability insurance is available and can be required by the government as financial insurance for payment of costs for environmental nuisance.



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## 27 Review of leases

**Do lawyers usually review leases or are they reviewed on the business side? What are the lease issues you point out to your clients?**

Leases are most commonly reviewed by lawyers rather than on the business side.

---

## 28 Other agreements

**What other agreements does a lawyer customarily review?**

Alongside lease agreements, lawyers usually review utility supply agreements, property insurance agreements and brokerage agreements. Because easements and mortgages are demonstrated in extracts from the Land Register, agreements on their establishment are not typically subject to review (unless there is doubt regarding the validity of their establishment).

---

## 29 Closing preparations

**How does a lawyer customarily prepare for a closing of an acquisition, leasing or financing?**

Preparations for closing usually include drafting the list of deliverables and reviewing the requirements for the transaction to be validly concluded. The latter usually includes verification of representatives and formalities of their authorisation (notarisations, apostille, etc), while the list of deliverables usually consists of:

- documentation on clients;
- proof of ownership;
- proof of financing (if applicable);
- certificate on use of land; and
- statements on release of mortgages (if applicable).

Authorisations are typically verified by presenting current extracts from the business register. In the case of a foreign client, it is often required that the official certificate be translated by a court-sworn translator in order for a notary public to notarise its signature. Notarisation of a seller's signature is a prerequisite for entry of the transfer in the Land Register.

There is usually a delay between signing of the sales contract and closing, due to tax formalities. After a sale contract is signed, the seller must submit the contract to the tax authorities, which issue a notice of tax assessment.

After the tax in the assessed amount is paid, the seller provides proof of payment to the notary public, who can only then notarise the signature on the contract. The gap can last from one day up to one month, as under relevant legislation the tax authority has 30 days to issue the notice.

Nevertheless, in practice, the tax authorities issue the notice rather quickly, so this delay usually only lasts a few days.

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## 30 Closing formalities

**Is the closing of the transfer, leasing or financing done in person with all parties present? Is it necessary for any agency or representative of the government or specially licensed agent to be in attendance to approve or verify and confirm the transaction?**

Except for notarisation of the seller's signature, no other formalities or participation of government representatives is required. The parties may sign the agreement separately.

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## 31 Contract breach

**What are the remedies for breach of a contract to sell or finance real estate?**

In the event of a breach, the aggrieved party may seek termination, fulfilment of obligations or contractual penalties (if envisaged in the contract). If the party seeks fulfilment of obligations or payment of contractual penalties, it first needs to enforce its claim by filing a lawsuit at the competent court. After obtaining a final judgment, the party can initiate enforcement proceedings.

However, if the parties conclude the agreement in a form of directly enforceable notarial deed, the first step (lawsuit) is not required. The aggrieved party can directly initiate the enforcement proceeding against the other contractual party.

The aggrieved party may, in addition to enforcing the fulfilment of obligations under the contract, also seek compensation for the damages caused by the breach.

In case a purchaser provides a down payment and then fails to execute the contract, the seller may choose either to demand the performance of the contract (if possible) and corresponding damage or to retain the purchaser's down payment.

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## 32 Breach of lease terms

**What remedies are available to tenants and landlords for breach of the terms of the lease? Is there a customary procedure to evict a defaulting tenant and can a tenant claim damages from a landlord? Do general contract or special real estate rules apply? Are the remedies available to landlords different for commercial and residential leases?**

In the event of a breach, the aggrieved party may seek termination, fulfilment of obligations (for example, payment of rent) or contractual penalties (if envisaged in the contract). The tenant of the residential premises may terminate the lease agreement at any time by written notice and with a 90-day notice period, while the landlord must file a lawsuit in order to terminate the lease. If the tenant occupies the premises even after termination of the agreement, the landlord may seek eviction through customary judicial proceedings.

If the object of lease is a commercial premises and if the premises is leased for an indefinite period, the agreement may only be terminated by filing a lawsuit at the competent court and with a minimum notice period of one year.

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## Financing

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### 33 Secured lending

**Discuss the types of real estate security instruments available to lenders in your jurisdiction.**

The most common security that lenders require in this regard is mortgage on the financed real estate. Should the mortgage not constitute sufficient security, lenders often require assignment of receivables from insurance policies or sureties.

The enforcement of security depends on both the type of security (difference in competent courts, publicity of enforcement and individual enforcement acts) and the manner in which the agreement is concluded (civil agreement, notarial deed or directly enforceable notarial deed).

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### 34 Leasehold financing

**Is financing available for ground (or head) leases in your jurisdiction? How does the financing differ from financing for land ownership transactions?**

Financing of ground or head leases is not common in Slovenia, but there is still an option to obtain such financing from specific banks under their general lending conditions.

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### 35 Form of security

**What is the method of creating and perfecting a security interest in real estate?**

A mortgage can be established through conclusion of a contract and registration in the Land Register. The contract must include the owner's statement allowing the registration of the mortgage on his or her real estate, and its signature must be notarised.

A contract on establishment of a mortgage can also be concluded in the form of a directly enforceable notarial deed. This way the lender has an option to directly enforce the sale of the real estate and subsequent repayment of the debt, instead of first initiating litigation proceedings and only afterwards initiating the enforcement.

### Update and trends

Since 2017, which was a record year for the Slovenian real estate market, positive developments in the market are expected to continue. With rising prices and an increasing discrepancy between supply and demand, the construction of new residential properties is also accelerating.

In its latest report on the real estate market, the Surveying and Mapping Authority of the Republic of Slovenia announced that the number of sales transactions on the market last year reached 36,000, which was about 5 per cent higher than in 2016 and about 16 per cent higher than in 2015. The number represents a new record of sales transactions in a single year in Slovenia. By far the most transactions (about two-thirds) were for residential real estate (with apartments approximately 42 per cent and houses approximately 24 per cent). The Bank of Slovenia pointed out that last year's total growth of 10 per cent in residential real estate prices was the highest since the start of the financial crisis in 2008. According to the Bank of Slovenia, Slovenian growth was the third highest in the eurozone area last year, with only Ireland and Portugal ahead. Additionally, the disposable income of households increased by 15 per cent between 2008 and 2017, while real estate prices, despite the growth in recent years, are still about one-tenth lower than in the pre-crisis period.

The interest of potential investors in investment opportunities in Slovenian territory has also increased with the adoption of renewed construction legislation. For investors the most welcome change was

a reduction in the administrative barriers to obtain building permits. The new Building Act requires less extensive documentation to obtain a building permit and if the investor provides all necessary documentation, including evidence and opinions, the permit can be obtained through an expedited procedure. The Building Act further increases the legal security of investors with the newly introduced option of pre-decision regarding compliance of buildings, as well as mandatory advice for investors on administrative procedures.

While the law has largely reduced administrative barriers for investors, additional requirements and administrative steps arise in practice for the owners of existing buildings, owing to new provisions on unauthorised buildings and incompatible construction. For example, a notary public is now obliged to check whether a building permit has been issued for the building prior to authentication of the signature on the agreement of sale or another contract through which the right of ownership is transferred. Engineers and other competent authorities also have the same duty, prior to carrying out communal installations to economic public infrastructure, prior to carrying out entries and changes to entries in the Land Register, prior to carrying out economic and other activities, prior to assigning a house number, etc. If the building owner does not have a copy of the building permit available, proof of its existence can be quite time-consuming in practice, particularly in relation to older buildings.

### 36 Valuation

**Are third-party real estate appraisals required by lenders for their underwriting of loans? Are there government or industry standards for appraisals? Must appraisers have specific qualifications or required government or industry certifications? Who is required to order the appraisal?**

It is common for banks to require appraisal of the relevant real estate. Banks usually provide a list of authorised appraisers, from which the borrower may choose whom to engage. The appraisal may be ordered by either party but in general the banks require that the appraisal be obtained at the borrower's cost.

### 37 Legal requirements

**What would be the ramifications of a lender from another jurisdiction making a loan secured by collateral in your jurisdiction? What is the form of lien documents in your jurisdiction? What other issues would you note for your clients?**

Lenders from another jurisdiction may provide loans which are secured by collateral in Slovenia under the same conditions as Slovenian lenders. In order to be entered in the Land Register as a mortgagee, the lender will need to register in the Slovenian Business Register and obtain an identification number. This will bring no other consequences, as the entry will be strictly intended for the purposes of the Land Register.

Lien documents must be concluded in writing and the owner's signature must be notarised. If the lender wants to include direct enforceability in the contract, the contract will need to be concluded in the form of a notarial deed.

If the signature is notarised abroad or if the notarial deed is concluded abroad, additional legalisation rules may apply (apostille, etc).

If the financing is provided to a consumer, the mandatory provisions of the Consumer Credit Act also apply. Under the said Act the credit agreement must contain various clauses envisaged by the Consumer Credit Act and, if secured by mortgage, the agreement must be concluded in the form of a notarial deed.

### 38 Loan interest rates

**How are interest rates on commercial and high-value property loans commonly set (with reference to Libor, central bank rates, etc)? What rate of interest is legally impermissible in your jurisdiction and what are the consequences if a loan exceeds the legally permissible rate?**

Interest rates are usually set by reference to Euribor, as the majority of loans are provided and obtained in euros.

If the agreed interest rates are more than 50 per cent higher than the rates specified by law (currently 8 per cent), the interest is considered usurious and the contract is null. This does not apply, however, to commercial contracts.

In case of consumer loans, additional rules of the Consumer Credit Act regarding calculation of the effective interest rate and its maximum value apply.

### 39 Loan default and enforcement

**How are remedies against a debtor in default enforced in your jurisdiction? Is one action sufficient to realise all types of collateral? What is the time frame for foreclosure and in what circumstances can a lender bring a foreclosure proceeding? Are there restrictions on the types of legal actions that may be brought by lenders?**

If the agreement is concluded in the form of a directly enforceable notarial deed, the lender has the option to directly initiate the enforcement procedure. If not, the lender must first initiate litigation proceedings; only after obtaining final judgment can the enforcement procedure be commenced. Both litigation and enforcement procedures are judicial procedures.

If the contract is concluded in the form of a notarial deed, the court decision of the commencement of enforcement can be obtained within two weeks, while if the lender must first initiate litigation proceedings, obtaining an enforceable judgment will take approximately two years. The duration of the court proceedings depends mainly on the competent court, the complexity of the matter and the actions of the litigating parties.

When filing the application for commencement of enforcement proceedings, the lender may propose to invoke all collateral available as well as other enforcement methods. The debtor will then have the option to propose to the court to only enforce one of them, if this suffices for full repayment of the claim. Should the collateral represent a security for a different claim, the secured claim will be repaid first and the lender will only be repaid from the remainder of the proceeds (if any).

**40 Loan deficiency claims**

**Are lenders entitled to recover a money judgment against the borrower or guarantor for any deficiency between the outstanding loan balance and the amount recovered in the foreclosure? Are there time limits on a lender seeking a deficiency judgment? Are there any limitations on the amount or method of calculation of the deficiency?**

There is no need to obtain any additional judgment in case of deficiency between the outstanding loan balance and the amount recovered by the foreclosure. The debtor is still obliged to pay the outstanding amount, and the basis to enforce this amount is the same judgment or notarial deed as for the foreclosure. The lender can, in such case, propose an additional enforcement measure to the court.

**41 Protection of collateral**

**What actions can a lender take to protect its collateral until it has possession of the property?**

The collateral is generally protected by its publicity, in case of possessory pledge by possession itself; and in case of mortgage or non-possessory pledge, by registration in the proper register.

Additionally, if the pledgor reduces the value of mortgaged real estate or in some other way worsens its state, the mortgagee may ask the court to instruct the mortgagor to restrain from such acts. If the mortgagor fails to comply with this instruction, the mortgagee may request a compulsory collection of the claim even before the claim is due.

**42 Recourse**

**May security documents provide for recourse to all of the assets of the borrower? Is recourse typically limited to the collateral and does that have significance in a bankruptcy or insolvency filing? Is personal recourse to guarantors limited to actions such as bankruptcy filing, sale of the mortgaged or hypothecated property or additional financing encumbering the mortgaged or hypothecated property or ownership interests in the borrower?**

Under Slovenian law it is not possible for security documents to provide recourse to all assets. In order to establish a valid pledge, each individual pledged asset must be specified.

Recourse is typically limited to the collateral. In the case of bankruptcy, the holder of a claim secured by collateral has the option to demand repayment from a special distribution estate (ie, proceeds from the sale of respective collateral).

**43 Cash management and reserves**

**Is it typical to require cash management system and do lenders typically take reserves? For what purposes are reserves usually required?**

It is often required that the main cash flow of the borrower be directed through a bank account opened at the lending bank.

**44 Credit enhancements**

**What other types of credit enhancements are common? What about forms of guarantee?**

In Slovenia, the most common credit enhancements are non-possessory pledges (eg, over equipment or stock), assignment of receivables from insurance policies and sureties.

**45 Loan covenants**

**What covenants are commonly required by the lender in loan documents?**

Lenders often require that loan agreements be concluded in the form of a directly enforceable notarial deed, as this provides them with a more efficient way to enforce their claim at its maturity. Additionally, lenders often require the loan to be used for a specific purpose and for this purpose only and they usually choose the collateral in connection with the purpose.

Lenders also usually require that the borrower pay for all costs arising from the conclusion of loan contract, and approval and drawing of the loan.

**46 Financial covenants**

**What are typical financial covenants required by lenders?**

Financial covenants mainly differ in respect of the amount of the loan and loan-to-value ratios. Nevertheless, lenders usually choose the classic types, such as covenants on sufficient liquidity or cash flow.

**47 Secured movable (personal) property**

**What are the requirements for creation and perfection of a security interest in movable (personal) property? Is a 'control' agreement necessary to perfect a security interest and, if so, what is required?**

There are two types of pledges on movable property recognised under Slovene law: possessory and non-possessory pledges.

A possessory pledge is established on the basis of a valid pledge agreement and extradition of the pledged asset to the lender. On the other hand, since extradition of the pledged asset contradicts the intent of the non-possessory pledge and is therefore not required for the valid establishment of non-possessory pledge, the agreement on its establishment must be concluded in the form of a directly executable notarial deed.

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If the asset pledged by the non-possessory pledge is equipment, stock, vehicles or specific types of livestock, the pledge must also be entered in a register of non-possessory pledges in order to gain validity.

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**48 Single purpose entity (SPE)**

**Do lenders require that each borrower be an SPE? What are the requirements to create and maintain an SPE? Is there a concept of an independent director of SPEs and, if so, what is the purpose? If the independent director is in place to prevent a bankruptcy or insolvency filing, has the concept been upheld?**

The term 'single purpose entity' is not generally used in Slovene legislation with respect to real estate transactions. In practice, there are companies that would correspond to the meaning of SPE. The lenders require that the borrower is an SPE only in specific cases (eg, if the lenders want to make sure that the proceeds from the real estate are not used for other purposes).

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