

CORONAVIRUS – SLOVENIA: SECURE YOUR RECEIVABLES WHILE ENFORCEMENT IS SUSPENDED

Suspension of enforcement proceedings	One of the measures adopted in light of the Covid-19 epidemic in Slovenia is also the suspension of all non-urgent court proceedings, including enforcement proceedings, until further notice. This means that currently, creditors in possession of enforcement title cannot effectively initiate enforcement proceedings against Slovenian debtors / assets in Slovenia.
Urgent matters, including security proceedings, continue	The suspension of court proceedings, however, does not apply to urgent matters, among them, all security proceedings under the Claim Enforcement and Security Act (<i>Zakon o izvršbi in zavarovanju</i>), provided they do not require physical contact of participants. Obtaining such security may safeguard the creditor's receivable, to be enforced and collected when courts return to normal operation.
Means of security	Creditors in possession of final enforceable title for monetary receivable (e.g. final judgement / settlement, imposing payment obligation, which is due) may initiate claim security proceedings, by way of which they may obtain security for their enforceable receivables (i.e. collateral over debtor's assets), by court intervention (i.e. against debtor's will). Possible means of security / assets over which collateral may be obtained (per claimant proposal): <ol style="list-style-type: none"> 1. mortgage over debtor's real-estate property; 2. pledge (lien) over some of debtor's movable property; 3. pledge (lien) over debtor's business shares in Slovenian LLCs; 4. cross-border freezing of debtor's financial assets on bank accounts. Note that specific means of security of future receivables (interim injunctions) also remain possible for claimants not yet in possession of enforcement titles (e.g. during ongoing litigation) – these are subject to specific conditions and are not discussed here.
Mortgage	How to obtain mortgage over real-estate via court: <ul style="list-style-type: none"> • claimant files proposal to initiate claim security proceedings before competent court; • relevant debtor's real-estate must be listed (discovery of assets possible in advance); • mortgage (and enforceability) is registered in land register after court's resolution on security becomes final (i.e. after potential objection proceedings, if instigated by debtor).
Pledge over movables	Effectively limited to registrable movables (e.g. vehicles, equipment, stock, cattle) – seizure of other movables is not possible provided it entails physical contact between persons. How to obtain pledge over movables via court: <ul style="list-style-type: none"> • claimant files proposal to initiate claim security proceedings before competent court; • listing of debtor's movables advisable (limited discovery of assets possible in advance); • with registrable movables, pledge is registered in lien register after court's resolution on security becomes final (i.e. after potential objection proceedings, if instigated by debtor).
Pledge over business shares	How to obtain pledge over business shares in a Slovenian LLC via court: <ul style="list-style-type: none"> • claimant files proposal to initiate claim security proceedings before competent court; • relevant debtor's business share must be listed (discovery of assets possible in advance); • pledge (and enforceability) is registered in court register after court's resolution on security becomes final (i.e. after potential objection proceedings, if instigated by debtor).
Advantages of obtained security for future enforcement	Advantages (effective after registration of mortgage or pledge): <ul style="list-style-type: none"> • future enforcement (after suspension is lifted) simplified and expedited; • if debtor declares bankruptcy, claimant has priority repayment right from secured assets: repayment priority follows order of obtainment, i.e. registration; • if debtor sells secured asset, security remains valid and enforcement also possible against buyer.
Cross-border freezing of bank accounts	Envisaged especially for claimants from other EU states, against Slovenian debtors / assets. How to freeze debtor's bank account via court: <ul style="list-style-type: none"> • claimant obtains European Account Preservation Order ("EAPO") based on EU Regulation 655/2014 in own jurisdiction (provided this Regulation applies in relevant EU state); • EAPO is obtained by filing a standard application form, (usually) with the court that issued the enforcement title (e.g. judgement, settlement), i.e. in relevant EU state of origin; • Claimant must submit evidence, that security measures (in EAPO form) are necessary and warranted by threat of non-performance by debtor (threat must be subjectively linked to debtor; objective uncertainty entailed by the epidemic will likely not suffice); • it is recommended to list relevant debtor's bank accounts (discovery of accounts possible in advance); • after it is obtained, EAPO is filed with the competent Slovenian court. Advantages: <ul style="list-style-type: none"> • EAPO will be recognised in Slovenia without any further procedure / enforced without declaration of enforceability; • effect: either freezing of accounts or seizure of funds (essentially, funds are "reserved"); • future enforcement (after suspension is lifted) simplified and expedited.

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