

**International Swaps & Derivatives Association
One Bishops Square
London E1 6AD
United Kingdom**

Attn: Dr. Peter M. Werner

Zagreb, 11 August 2017

Reference: Informal country update on Croatia: Agrokor's latest monthly report provides details on pending legal cases; Act on the Nullity of Loan Agreements with an International Element Concluded in the Republic of Croatia with an Unauthorized Creditor

This informal country update does not constitute legal advice with respect to any issues set forth herein. Its intention is merely to provide a guide for ISDA members with respect to ISDA related issues under Croatian law. It cannot be used as an opinion for banking regulatory purposes administering capital adequacy provisions.

I. Agrokor d.d. – pending legal cases revealed in the latest monthly report of the special administrator

On 10 August 2017 a special administrator of Agrokor d.d., a Croatian company under a special administration pursuant to the provisions of the Act on Special Administration Procedure for Companies of Strategic Importance for the Republic of Croatia (hereinafter referred to as: "Lex Agrokor")¹, published his Monthly Report on the Economic and Financial Status and the Implementation of the Special Administration Measures at Agrokor d.d. in the period from 11 July to 10 August 2017 (hereinafter referred to as: the "Report").²

For the first time the special administrator's monthly report includes a chapter related to the pending legal cases against or related to Agrokor d.d. and its affiliated companies subject to

¹ Croatian: „Zakon o postupku izvanredne uprave u trgovačkim društvima od sistemskog značaja za Republiku Hrvatsku“, published in the Official Gazette No. 32/2017

² The full text of report can be found at: <https://lider.media/wp-content/uploads/2017/08/Agrokor-mjesečno-izvješće-srpanj-2017.pdf>

Lex Agrokor. The Report is available in the Croatian language only, so we provide an English translation of Chapter 5 (pages 26 – 27) of this Report in Appendix I of this update.

The key legal issues that are in our view of importance to ISDA Members are the following:

1. A rising number of foreclosure proceedings and civil lawsuits despite the clear provision of Lex Agrokor that such new legal proceedings may not be filed in Croatia. We believe creditors intentionally file such lawsuits despite the fact that it is highly likely that they will not succeed before the Croatian courts, in order to exhaust all the legal remedies in Croatia and thus qualify for filing lawsuits against the Republic of Croatia before international tribunals.
2. International insolvency element, in particular:
 - a) United Kingdom – Agrokor's special administrator filed a request for recognition of the special administration proceedings at the Chancery Division of the High Court of England and Wales; Sberbank³ responded; the first hearing originally scheduled for 3 August 2017 has been postponed;
 - b) Slovenia – Slovenian court recognized the special administration proceedings in Slovenia, but the Republic of Slovenia, Sberbank and Sberbank Ljubljana appealed/objected. The Slovenian court decision on the recognition of the special administration proceedings remains in force.
 - c) Serbia - The special administrator has filed a request for the recognition of the special administration proceedings in Serbia.
3. Three arbitration proceedings are pending in London. Local media provide that all three proceedings have been filed by Sberbank.⁴
4. Recently Sberbank pressed criminal charges against Mr. Ivica Todorić, the former CEO of Agrokor (formally still the current owner of Agrokor).

Conclusion:

The special administration of Agrokor d.d. will significantly affect Croatian case law in several legal areas, in particular the insolvency law. We strongly recommend that the future development of this case be closely followed.

As already provided in our previous legal memorandum, we remind you there are still cases pending before the Croatian Constitutional Court challenging Lex Agrokor on the basis of being contrary to the Croatian Constitution on various legal grounds.

II. Act on Nullity of Loan Agreement Act on the Nullity of Loan Agreements with an International Element Concluded in the Republic of Croatia with an

³ Sberbank and its affiliates are Agrokor's largest creditors with overall claims against Agrokor in the amount of more than 1,1 bio EUR.

⁴ Source: <http://www.telegram.hr/politika-kriminal/ministrice-dalic-javila-su-se-oko-arbitraza-koje-je-sberbanka-pokrenula-protiv-agrokora-misli-da-rusi-ne-podzavaju-oporavak-tvrtke/>

Unauthorized Creditor⁵ (hereinafter referred to as: "the Loan Agreements Nullity Act")

1. The rationale behind the Loan Agreements Nullity Act

Most recently, the Croatian leading right-wing party nearly lost its majority in the Parliament and sought to win parliamentary majority by getting votes of various independent members of the parliament. In order to comply with the requests of certain independent populist representatives, the Government supported the blueprint of the Loan Agreements Nullity Act containing problematic legal solutions and the Parliament passed the said Act in an urgent legislative procedure.

The background is that before Croatia joined the EU (1 July 2013), certain foreign banks⁶ directly solicited Croatian (mostly) retail clients in order to grant them loans outside the Republic of Croatia. Such banks used to collateralize their loans with a mortgage created against property located in Croatia. Since the volume of such transactions became significant and many Croatian debtors were unable to pay their obligations, this legal question, in particular a direct solicitation of clients, has become interesting to some populist politicians.

As a result of the political bargaining, the Parliament has passed this problematic piece of legislation with a retroactive effect. Its consequences are yet to be seen.

Our major concern is whether (and how) securitized loans or any other products linked to such loans/credit claims will be affected.

2. The scope and features of the Loan Agreements Nullity Act

The Loan Agreements Nullity Act applies to loan agreements with an international element⁷ concluded in the Republic of Croatia between debtors and unauthorised creditors⁸, with the exception of such agreements in which the debtor⁹ is:

- the Republic of Croatia or a unit of its regional or local self-government
- a legal person whose owner or majority owner on the date the contract is concluded is

⁵ Croatian: "Zakon o ništetnosti ugovora o kreditu s međunarodnim obilježnjima sklopljenim u Republici Hrvatskoj", Official Gazette No. 72/2017

⁶ Banks having their registered offices outside the Republic of Croatia and having no license to provide banking/financial services in the Republic of Croatia on a daily basis.

⁷ »Loan agreement with an international element« means a loan agreement or another agreement under which an unauthorised creditor granted a debtor a certain amount of money, and the debtor promised to pay the agreed interest and repay the used amount of money at the time and in the manner agreed.

⁸ »Unauthorised creditor« means a legal person who under a loan agreement with an international element granted a loan to a debtor, and who on the date of the conclusion of the loan agreement with an international element has registered office outside of the Republic of Croatia and provides lending services in the Republic of Croatia in spite of not meeting the requirements prescribed by special legislation for the provision of such services, i.e. not having the required approvals and/or consents of the competent bodies of the Republic of Croatia.

⁹ -»Debtor« means a physical or legal person who has been granted a loan under a loan agreement with an international element and/or a person who for the benefit of the person granted the loan participated as co-debtor, lienee, co-lienee, co-debtor or guarantor.

the Republic of Croatia or a unit of its regional or local self-government

- a legal person that on the date the agreement is made is a budgetary or extra-budgetary beneficiary of the state budget or the budget of a unit of the regional or local self-government

- a legal person that on the date the agreement is made is a large or medium-sized entrepreneur within the meaning of the law governing accounting for entrepreneurs.¹⁰

¹⁰ Articles 5 and 6 of the Accounting Act (Croatian: "Zakon o računovodstvu"), Official Gazette Nos. 78/2015, 134/2015, 120/2016:

"Classification of entrepreneurs:

Article 5

(1) For the purposes of this Act, entrepreneurs are classified into micro, small, medium-sized and large depending on the indexes determined on the last day of the business year that preceded the business year for which financial reports are made. The indexes by which entrepreneurs are classified include:

- amount of total assets

- amount of revenues

- average number of employees in the course of the business year

(2) Microentrepreneurs are those that do not exceed borderline indexes in two out of the following three conditions:

- total assets 2,600,000 kunas

- revenues 5,200,000 kunas

- average number of employees in the course of the business year - 10 employees

(3) Small entrepreneurs are those that are not micro-entrepreneurs and do not exceed borderline indexes in two out of the following three conditions:

- total assets 30,000,000 kunas

- revenues 60,000,000 kunas

- average number of employees in the course of the business year - 50 employees.

(4) Medium-sized entrepreneurs are those that are neither micro nor small entrepreneurs and do not exceed borderline indexes in two out of the following three conditions:

- total assets 150,000,000 kunas

- revenues 300,000,000 kunas

- average number of employees in the course of the business year - 250 employees.

(5) Large entrepreneurs are:

1. Entrepreneurs that exceed borderline indexes in at least two of the three conditions set out in paragraph (4) hereof

2. banks, savings banks, building societies, electronic money institutions, insurance companies, reinsurance companies, leasing companies, UCITS funds management companies, alternative investment funds management companies, UCITS funds, alternative investment funds, pension companies for the management of compulsory pension funds, pension companies for the management of voluntary pension funds, voluntary pension funds, compulsory pension funds and pension insurance companies, companies for the purchase of additional insurance years, factoring companies, investment companies, exchanges, MTP operators, central clearing and depositary companies, central registry operators, clearing and/or settlement systems operators and Investment Fund Protection operators, regardless of whether they meet the criteria set out in sub-paragraph 1 hereof.

(6) Newly formed entrepreneurs and entrepreneurs with a status change are classified in accordance with paragraphs (2), (3), (4) and (5) hereof on the basis of indexes for the period running from the date of their formation or status change to the of their first business year, i.e. on the last day of that period. For the purpose of classification, entrepreneurs described in this paragraph shall convert the amount of revenues to the annual level.

Classification of entrepreneur groups

Article 6

(1) For the purposes of this Act, entrepreneurs groups are classified into small, medium-sized and large depending on consolidated indexes determined on the last day of the business year that preceded the business year for which annual consolidated financial reports are made. The indexes by which entrepreneurs are classified include:

The Loan Agreements Nullity Act also applies to **other transactions** concluded in the Republic of Croatia between debtors and unauthorised creditors that were formed as a consequence of or are based on a loan agreement with an international element.

Such loan agreements shall be null and void. Nullity may not be raised where the agreement has been fully performed.

A notarial deed concluded on the basis of or in connection with such a null and void agreement shall be null and void as well.

Once the judgment declaring a loan null and void has become final and effective, or the judgment declaring the notarial deed based on a null and void agreement has become final and effective, enforcement proceedings brought against the debtor before the court or before the Financial Agency shall be discontinued at the motion of the debtor.

Where for the purpose of recovery of a claim arising from such a loan agreement there are enforcement proceedings pending against a debtor who brought an action seeking a declaration of nullity of a loan agreement or a declaration of nullity of a notarial deed based on a null and void agreement, the court will, on the motion of the debtor, postpone enforcement until the proceedings for the declaration of nullity are closed with a final judgment, without examining whether there are requirements prescribed by other laws as regards postponement of enforcement on the motion of the judgment debtor.

3. Consequences of nullity

Each contracting party shall restore to the counterparty whatever it received on the basis of a null and void agreement, and if this is not possible or if the nature of what has been performed defies restitution, then adequate monetary compensation should be given on the basis of the prices valid at the time the court decision was rendered.

4. Jurisdiction

- amount of total assets

- amount of revenues

- average number of employees in the course of the business year

(2) Small entrepreneur groups are those that on consolidated basis on the date of the balance sheet of the parent company do not exceed borderline indexes in two out of the following three conditions:

- total assets 30,000,000 kunas

- revenues 60,000,000 kunas

- average number of employees in the course of the business year - 50 employees.

(3) Medium-sized entrepreneur groups are those that are not small entrepreneur groups and that on the date of the balance sheet of the parent company on the consolidated basis do not exceed borderline indexes in two out of the following three conditions:

- total assets 150,000,000 kunas

- revenues 300,000,000 kunas

- average number of employees in the course of the business year - 250 employees.

(4) Large entrepreneur groups are those groups that on the consolidated basis exceed borderline indexes in at least two of the conditions set out in paragraph (3) hereof.

(5) An entrepreneur group may for the purposes of classification within the meaning of this Article use the aggregated balance sheet and profit and loss account before consolidation eliminations, in which case total asset indexes and total revenues indexes set out in paragraphs (3) and (4) hereof are increased by 20%.”

In disputes arising from such loan agreement a debtor may bring proceedings against an unauthorised creditor either before the courts of the state in which the unauthorised creditor is domiciled, or, regardless of the unauthorised creditor's domicile, before the courts of the place where the debtor is domiciled, i.e. where the debtor has its registered office.

An unauthorised creditor may bring a lawsuit against the debtor only before the courts of the state in which the debtor is domiciled, i.e. in which it has its registered office. Null and void agreements within the meaning of this Act shall be subject exclusively to the application of the law of the Republic of Croatia, and the court adjudicating in proceedings brought to declare an agreement null and void shall apply this Act without examining whether there are prerequisites prescribed by other laws as regards the applicability of legislation in respect of the place of contract formation.

5. Retroactive effect and other provisions

Loan agreements with an international element concluded by the date of the entry into force of the Loan Agreement Nullity Act shall be null and void as of the moment they are concluded. The same applies to transactions that were formed as a consequence of or are based on such loan agreement and were concluded by the date of entry into force of this Act. Such transactions shall be null and void as of the moment they are concluded.

The Loan Agreements Nullity Act shall not affect a debtor's rights prescribed by special laws if they are in the debtor's favour

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If you need any further clarification, please do not hesitate to contact us.

Yours sincerely,

Marijana Jelić
Attorney-at-Law
marijana.jelic@law-office-jelic.hr

APPENDIX I

Abstract of the Special Administrator's Monthly Report on the Economic and Financial Status and the Implementation of the Special Administration Measures at Agrokor d.d. in the period from 11 July to 10 August 2017 (Chapter 5, pages 26-27)¹¹

AGROKOR

SPECIAL ADMINISTRATION

5. Legal proceedings

A few civil and enforcement proceedings have been instituted against Agrokor d.d. and a few of its subsidiaries and affiliates. Apparently, more proceedings are about to be instituted, but the relevant processes have not yet been served on Agrokor's defendant companies. The latter proceedings will be considered once the relevant processes have been served.

Particularly worth mentioning are the enforcement proceedings brought against Agrokor d.d. and Jamnica d.d. in Slovenia by Sberbank d.d. Ljubljana in respect of Agrokor's stake in Mercator d.d. and the stake in Jamnica Mineralna Voda d.o.o. held by Jamnica d.d. The enforcement order was issued on 4 July 2017, after which the special administrator, in keeping with the relevant rules of procedure, filed an objection against it. However, once the administration procedure had been recognized in Slovenia, the enforcement proceedings concerned were stayed by operation of law. The special administrator notified the court before which the enforcement proceedings were pending about the decision whereby the special administration proceedings were recognized, and moved that the enforcement proceedings be stayed. The decision concerning the stay of proceedings due to be made by of the court conducting the enforcement proceedings is still pending.

In addition, Sberbank d.d. Ljubljana has apparently moved the court for an interim restraining order prohibiting any alienation or encumbrance of the aforementioned stakes. No processes concerning that motion have yet been received, and if, indeed, they do get served, the special administrator will take appropriate steps.

The Republic of Slovenia and two legal entities of the Sberbank group have filed appeals/objections objecting to the recognition of special administration proceedings in Slovenia. The administrator is currently in the process of obtaining legal advice concerning these objections, but the order of 14 July 2017 whereby the special administration was recognized remains in force.

Furthermore, Slovenian and Croatian companies of the Sberbank group have brought enforcement proceedings in Serbia against Jamnica d.d. in respect of the stake that company holds in MG Mivela d.o.o. private company, and against Konzum d.d. in respect of the stake that company holds in Idea d.o.o. private company. The special administrator is taking appropriate steps in connection with those proceedings and has filed a request for the recognition of the special administration proceedings in Serbia.

The special administrator has also filed with the Chancery Division of the High Court of England and Wales a motion for the recognition of special administration proceedings.

¹¹ This is not an official translation. It is provided for mere guidance and information purposes.

Sberbank has responded to that motion and the hearing originally scheduled for 3 August 2017 has been postponed to give the parties more time for disclosure of additional evidence. Proceedings are still pending on the motion for a restraining order Sberbank of Russia filed with the Commercial Court of Zagreb in June this year seeking a ban on the roll-up model of financing. The Commercial Court denied the original motion of Sberbank of Russia, but since appeal was admissible the Court is currently re-considering the case.

Other proceedings involve other financial obligations owed to a number of third party creditors and arising from bills of exchange or loan agreements. Proceedings have been brought before the courts in Montenegro, and three arbitration proceedings are pending in London. The special administrator has sought legal advice on each of those proceedings and has been in touch with the relevant creditors.

The special administrator will take all the necessary steps in respect of all the proceedings, in compliance with the Lex Agrokor and in the best interest of Agrokor d.d. and its subsidiaries and affiliates.