

Serbia: Amendments to the Mortgage Act

JULY 2015

The Amendments to the Mortgage Act ("**Amendments**"), in force as of today (16 July 2015), are more than a welcome rectification of several crucial deficiencies in the Serbian mortgage law.

Welcome changes

- **Deletion of lower ranked mortgages:** The Amendments have finally made right the status of lower-ranked mortgages in case of first-ranked mortgage foreclosure. It is now provided that the lower-ranked mortgages will be deleted upon sale of property in first-ranked mortgage foreclosure. This change does away with an awkward provision that used to stipulate that lower-ranked mortgage survives the foreclosure on a higher-ranked mortgage.
- **Security agent:** The Amendments empower the secured creditors to appoint one of them or a third person to act as security agent with the power to undertake, on behalf of the secured creditors, any legal act aimed at protecting and enforcing the mortgage. This concept accommodates the needs of syndicated or parallel lenders taking a *pari passu* security.
- **Sale process:** The Amendments introduce the possibility of selling the foreclosed property in out-of-court at no less than 90% of its appraised value. If the first auction is unsuccessful, the creditor is entitled to dispose with the property in direct sale, at no less than 60% of the valuation. Amendments limit the maximum duration of the out-of-court sale process to eighteen months.
- **Escrow account:** The mortgage proceeds have to be deposited to an escrow account. The account is ring-fenced from the creditors of the mortgage creditor.
- **Simplification of out-of-court enforceable mortgage agreement:** It is no longer required that the mortgage agreement contain an acknowledgment of the mortgage and the rights of the mortgagee by a lessee or other possessor of the property. This requirement created problems when mortgaging large facilities with multiple lessees (e.g. shopping malls). Lease agreements now survive after mortgaged foreclosure.

Room for Improvement

Although the Amendments represent an encouraging development, there are certain aspects of the law which beg for further improvement:

- **Excessive requirements on claim description:** The Amendments have unfortunately maintained the requirement for excessive description of secured amount. Instead, the lawmaker should have replaced this requirement with a requirement to stipulate in the mortgage agreement a maximum secured amount.
- **Distribution of mortgage proceeds:** Currently, all secured claims are treated in the same manner when it comes to distribution of proceeds. A rule requiring that the proceeds needed to cover conditional or immature claims should be retained on an escrow account is unfortunately missing.
- **Registration of mortgage on the basis of mortgage statement:** The Amendments specify that only the creditor can register a mortgage that is based on a unilateral mortgage statement, rather than mortgage agreement. It is unclear why this restriction has been introduced, given that in practice creditors often require debtors to register the mortgage.



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