

THE NUMBER AND VOLUME of non-performing loans transactions has increased over the last few years in Croatia. Many reasons stand behind this: the economic crisis took its toll, thus increasing the number of non-performing loans. Other issues were strict requirements imposed upon the banks by Basel III, other regulations and problems with raising additional capital, and the classic way of recovery (such as enforcement, insolvency) taking too long and not bringing the desired results etc. As a result of all of this, the banks turned their interests to sale of non-performing loans. Non-performing loans transactions are very complex and include various legal questions, from the very first phase of preparing the loans portfolio for sale, setting up a due diligence data base, conducting the due diligence process, data protection issues, negotiating and drafting sale and purchase agreements, transferability of the security instruments, stepping into ongoing court proceedings, statute of limitation issues etc. In this article we will give you a glimpse of the most important points of non-performing loans transactions.

In Croatia, general law provisions of the Obligations Act and the Ownership Act apply to sale of loans. In addition to that, in 2013, special amendments to the Credit Institutions Act were made, introducing specific provisions regarding the sale of loan portfolios. On

loans portfolio. A spin-off is a corporate change of the bank, and as such requires the Croatian National Bank's participation in the transaction. It triggers licencing and regulatory issues of the entity to which the portfolio would be transferred, and all of that does not make the spin-off too attractive for usual non-performing loans transactions. When structuring the non-performing loans transaction, different aspects have to be taken into consideration and all potential issues have to be addressed in order to discover a route which will be the most favourable, both for the bank and the purchaser.

Generally all loans can be sold, unless certain sale or transfer restrictions are imposed in a loan agreement. The banks usually make sure that the wording of the loan agreement is such that the loan can be sold without the debtor's consent. In rare cases, the loan agreements may



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report

NON-PERFORMING LOANS TRANSACTIONS

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the basis of such an amendment, in May of 2013 the Croatian National Bank issued a Decision on a Sale of Loans by the Credit Institutions (the "Decision"). The Decision created a regulated environment and, even though it did impose various restrictions, it contributed to a smoother closing of transactions. It is important to emphasize that the Decision applies only to sale of loans by a Croatian credit institution. In this text we will also focus on sale of loans by Croatian credit institutions.

Loans can be sold in different ways. The most general division of sales is into a synthetic sale and a true sale. The synthetic sale is the sale of all risks and rewards from the loans to the purchaser while the bank formally remains holder of all rights and obligations arising from the loans. In the true sale scenario, the loans are being transferred to the purchaser, and from the effectiveness of such a transfer the bank does not have any claims on the loans and does not hold any rights.

An assignment is usually a legal form of the sale. The assignment came to be the most practical legal form for sale of the loans; as it does not require the debtor's consent, notification to the debtor is sufficient. Theoretically, the sale can also be done by way of transfer of agreements; however, that requires the debtor's consent and is therefore not practical. The banks may also sell the loans by way of a spin-off of part of the bank consisting of the non-performing

include a provision that a debtor's consent is necessary for sale, and the bank will have to obtain such consent. Banks tend to avoid such scenarios, and it is not common to come across such provisions in loan agreements. Once the loan becomes non-performing, the relationship between the bank and the debtor usually deteriorates and it is not very likely to obtain the debtor's consent.

Generally, there are no restrictions as to who the purchaser of the non-performing loans can be. The loans do not have to be sold to a bank or credit institution.

The position of the debtor remains the same regardless of the fact that, as of the sale of the loans, the purchaser has a claim on the debtor, and not the bank. As mentioned above, the debtor has to be notified of the sale, and upon such notification, the debtor has to make all payments to the purchaser. The Decision introduced a special provision dealing with the sale of consumer loans. The bank is obliged to procure that the consumers are not put in an adverse position after the sale. The bank and the purchaser are jointly and severally responsible for damages which might affect the consumers as a result of their adverse position after the sale of the loan.

As briefly elaborated above, the sale of non-performing loans is a very complex transaction with a lot of specific legal issues which have to be taken into consideration. With this article, we have brought some of the more general points to your attention.