

ABSTRACT

Thesis Title : Security in Credit Extension of the Commercial Bank

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Current legislation controlling guarantee, mortgage and pledge has been employed for more than 70 years while our country's economy has been in a significant development period. As a result, that this legislation is now outdated and no longer meets the demands of our modern economy.

Investors wishing to obtain a loan from a monetary source such as a commercial bank face the necessity of assuring that their assets are sufficient in order to secure their loan. According to the present law, otherwise, quite valuable and trustable assets are not considered sufficient to guarantee a loan for the mortgage or pledge. The practice of securing loans only by land, structure, and personal guarantee limits the growth of large business that may not be able to meet these strict requirements. Other valuable assets should also be considered as security.

However, guaranteeing pledges by goods in circulation or by agricultural production is extremely inconvenient and improper. The law states that a pledge must be guaranteed by the given asset, and that a mortgage may be granted only for certain assets and properties. The law and the process of registration is further complicated by a bureaucratic routine that may further delay the expansion of a business.

Commercial bank, being the most important monetary source for loans, are forced to go to great lengths to prove their credit ability, and to assure that the loan will not lose its value. The commercial bank is sometimes required to accept assets or property from their customers as assurance for the loan, though there is no law supporting mortgage or pledge. The banks, thus, have to use legal agreements as a guarantee. If the customer fails to fulfil the agreement, the banks shall sell or auction the guaranteed property to recover the money. However, such agreements are not secured by law, and banks are put in jeopardy, e.g. in situations when the property meant to guarantee the agreement is held in joint possession or is encumbered by claims of other juridical or physical persons than the one signing the initial legal agreement. However, in the case of security guarantees, the lender have priority rights over other persons. It is therefore important to revise the law in the light of more complex economical relations in present-day society.

The study proposes the following conclusions to solve the aforesaid problems:

1. Amendments to mortgage and pledge law to cover more varieties of valuable property that can be used for the security guarantee.

For example the pledge specifications should not be too strict in their limitations, and there should be an alternative variant of substituting pledged property.

2. Commercial bank should have the right to temporarily take possession over the property until the liabilities are paid back, or any settlement agreement is reached in order to prevent potential financial loss caused by the slow legal process. If the customer delays the appointed payment, the bank should have the right to sell the guaranteed property without waiting for an order from the court. An act permitting the sequestration of property for Commercial Bank BE 2505 should be added.

3. Additional law allowing for accepting property or assets that previously could not be used in pledge or mortgage arrangement such as the Act of Air Traveling BE 2497, that requires no mortgage registration, should be adopted. It also causes disadvantages in relations with other countries.

4. The determination of "Charge", which is a legal practice concerning guaranteed property, should follow the same pattern as the Internationals Law, so that more types of property would be able to qualify as guarantee property. This addition may be done as an amendment to the Commercial Civil Law, or by enacting a separate Charge Law.

The study clearly demonstrates an urgent need to revise the law concerning mortgage, pledge and guarantee to facilitate business relations. More types of property should be specified by the law as acceptable to guarantee loans, and the law should facilitate business functioning by not limiting the types of security that may be used in lending transactions.