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SECURITY INSTRUMENTS GOVERNED BY THE POLISH LAW IN INTERNATIONAL FINANCING TRANSACTIONS

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ABSTRACT

The purpose of the article. As noted recently, an increased number of financing transactions through financing documents with international elements has been reported. We are referring in particular to facility agreements prepared under the LMA standard governed by the English law and the objects of potential providers of facility security located in multiple jurisdictions, e.g., 'subsidiaries' acting as guarantors or additional debtors, but sometimes also as borrowers. The multiplicity of jurisdictions poses a challenge to the lender's advisers, but also to the principal borrower, as to which security instruments to use in each jurisdiction depending on where the security interest is located. This article aims to provide an overview of the most commonly used types of security under the Polish law to secure loan agreements in jurisdictions other than the Polish one. In addition, the author has made an assessment that may be helpful to non-Polish practitioners in selecting the appropriate security for a debt. The main objective was to acquaint those unfamiliar ones with the Polish law with the standards of the Polish debt security law. The main hypothesis is that the Polish security provides certainty to foreign institutions granting facilities where a Polish entity is involved as a security provider.

Methodology. The article provides a comprehensive review of the literature on Polish legal security for facility receivables granted under a foreign law (including legal acts). The applied methods

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include the hermeneutic method, the comparative method and the method of analysis and synthesis.

Results of the research. On the basis of the conducted research it was found that Polish collateral documents are sufficient to secure receivables arising from facilities governed by a foreign law. The main hypothesis appears to have been proven. In addition, on the basis of the research it was proved that Polish security documents, due to their legal significance, should constitute an incentive for foreign financial institutions to take up in Poland. The conclusion is that the Polish security law is wealthy in terms of instruments allowing for certainty of trading between international institutions.

Keywords: facility agreement, security, financing, LMA, parallel debt, registered pledge, financial pledge, assignment agreement, subordination agreement, project support agreement, submission to enforcement.

JEL Class: K12.

INTRODUCTION

The purpose of the article is to analyse and present the available, as well as the most frequently applicable security documents (sensu stricto) governed by the Polish law, which are intended to secure a receivable under financing documents governed by a foreign law (other than the Polish one). In Poland, legal security of receivables is usually divided into personal security and material security. In financing transactions, in rem securities are used as the basis for application, and they will largely be analysed in this paper. It is undisputed that in multilateral transactions where several or more jurisdictions are involved, the issue is how to adequately secure the claims of the financiers. Using the definition of security described in the LMA model "security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect", which confirms that the parties to a facility agreement created under the LMA standard are free to shape the security. The main purpose of this article is to provide an overview of the simplicity, for those outside the Polish legal circle, of the security documents existing in Poland that may be used in financing transactions for credit agreements (and not only). Under the Polish law, when several lenders are present, it is possible for receivables to be secured for the benefit of the security administrator by syndicates. From a practical point of view, it should be highlighted that receivables in international transactions with an element of a company under the Polish law may be secured by several security interests simultaneously.

Furthermore, it should be noted that this article is intended to explain the Polish security market to advisors to financing entities in international transactions, and to convince them that these securities provide a solid basis for encouraging financing of the Polish market.

The main research hypothesis is to examine the complexity of security documents within the Polish legal framework, which can be utilized in financial transactions related to credit agreements (and beyond), especially for those unfamiliar with the Polish legal environment.

1. BACKGROUND

The purpose of this article is to analyse and present the available, as well as the most frequently applicable security documents (*sensu stricto*) governed by the Polish law, which are intended to secure a receivable under financing documents governed by a foreign law (other than the Polish one). In Poland, legal security of receivables is usually divided into personal security and material security. In financing transactions, in rem securities are used as the basis for application, and

they will largely be analysed in this article. It is undisputed that in multilateral transactions where several or more jurisdictions are involved, the issue is how to adequately secure the claims of the financiers. Using the definition of security described in the LMA model "*security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect*"[1], which confirms that the parties to a facility agreement created under the LMA standard are free to shape the security. The main purpose of this article is to provide an overview of the simplicity, for those outside the Polish legal circle, of the security documents existing in Poland that may be used in financing transactions for credit agreements (and not only). Under the Polish law, when several lenders are present, it is possible for receivables to be secured for the benefit of the security administrator by syndicates. From a practical point of view, it should be highlighted that receivables in international transactions with an element of a company under the Polish law may be secured by several security interests simultaneously[2].

Furthermore, it should be noted that this article is intended to explain the Polish security market to advisors to financing entities in international transactions, and to convince them that these securities provide a solid basis for encouraging financing of the Polish market.

2. SECURED CLAIM

Transaction providers around the world confront the problems of securing their claims in multiple jurisdictions. The continued growth in the number of international secured lending transactions, the development of the syndicated loan market and its syndication in continental Europe have increased the importance of effective security over the receivables of the institution providing financing in many countries. There is no definition of a parallel debt in the Polish law, but in facility agreements governed by a foreign law, security interests governed by the Polish law most often secure parallel debt claims, and it must be noted that in such a construction an important role is played by a security agent, who is not the creditor but has a technical and organisational role to assist the actual creditor/lender in the future enforcement of the claim. The introduction of an abstract parallel debt of an institution created in accordance with the principles of respect for the law should, in the author's opinion, be viewed positively, since a parallel debt is intended to prevent controversial debt security operations in multilateral finance in Europe. Such a creation was originally generated from the doctrine of the German law, but has been adopted in international transactions usually governed by the English law. Parallel debt consists in the fact that an

[1] (www1).
[2] Judgment of the SA in Poznań of 11.07.1995, I ACr 78/95, OSA 1996/7-8, item 32.

abstractly recognised debt, i.e., in an amount equal to the entire lender's claims against the borrower under the facility agreement, which may be secured by means of a specific security established in favour of a security agent. It must be emphasised that this agent is not normally a creditor (although this is not excluded) under the facility agreement (Griffiths, 2006: 340). All creditors are jointly and severally entitled to the parallel debt claim but, for the purpose of a more efficient enforcement of the security, the security agent is the only entity, which is concerned with this process. The enforced part of the debt reduces the amount of the financial liability under the parallel debt (Gilmore, 1999). The construction of a parallel debt used in international transactions with a Polish element is intended to structure the establishment of security interests in claims to which multiple creditors (including from different jurisdictions) are entitled. Parallel debt is a single independent financial obligation of each of the borrower-debtors to each of the creditor-creditors, with the security agent as the specific administrator (Malarewicz-Jakubów and Kułak, 2020). Particular attention should be paid to the accessory nature of the Polish security, i.e., the secured claims will exist as long as the debt exists (principle of accessoriality). In the case of a plurality of entities on the part of the borrower-debtor, any satisfaction of the claim under the parallel debt by any of the debtors releases the other debtors from their obligation. At this point, it should be indicated that the Polish jurisprudence is poor in discussing this topic, the Supreme Court[3] established that parallel debt arises at the time of signature of the documents creating it, i.e., the facility agreement or, alternatively, in some cases, the intercreditor agreement, irrespective of whether the original claims of the creditors de facto financing the project have arisen (i.e., the loan funds have been disbursed to the borrowers). In addition, the Supreme Court stated that in order to prevent the possible ineffectiveness of the security interests in light of Article 127(3) of the Bankruptcy Law[4], the security interests in the parallel debt must be created at the latest at the time the documents creating the parallel debt are signed, because if the parallel debt claim has arisen before, the security interests are created (according to the Supreme Court's interpretation, the loan agreement creating the parallel debt has been signed), such security interests may be declared ineffective (Malarewicz-Jakubów and Kułak, 2020). Another advantage of parallel debt is the establishment of security in rem due to the collateralization of a different number of receivables by individual security instruments, which may, however, be controversial in the opinion of practitioners in Poland. The practice of using a parallel debt in financing transactions with international elements, despite the poor Polish case law, should be assessed positively and proposed as a preferential

[3] Judgment of the Supreme Court of 9.10.2009, IV CSK 145/09, LEX No 558608.

[4] Act of 28 February 2003. Bankruptcy Law (Journal of Laws 2015, item 233, as amended).

aspect over other forms of security in international transactions with Polish elements. Drawing attention to Article 93 of the Banking Law: "In order to secure the receivables that arise from banking activities, the bank may demand the security provided for in the Civil Code and the Law on Bills of Exchange, as well as the customs accepted in domestic and foreign trade"[5]. The use of the security below based on parallel debt should be viewed positively and as an attempt to encourage its use.

3. MORTGAGE

The Polish legal system as a basic security in rem on real estate and certain rights arising therefrom is the mortgage. The important status of mortgages in business transactions is determined primarily by the value and characteristics of their subject matter, which predestine mortgages to secure monetary debts of significant amounts and long payment terms – especially debts under long-term credit (Czech, 2022). A mortgage is a limited right in rem belonging to the broad category of pledge rights. A mortgage is described in the Land and Mortgage Register Act[6]. A mortgage may be established to secure a specific claim arising from a specific legal relationship. The mortgage entitles the creditor's claim to have the priority over the debtor's personal creditors. A mortgage is public and is recorded in the land and mortgage register, and in order for it to come into existence it is necessary to have the debtor's statement on establishing a mortgage and for the mortgage to be entered in the land and mortgage register, which in the Polish legal system may take up to twelve months. The obligatory elements of a mortgage include:

a) designation of the creditor;
b) designation of the maximum amount of security (in the practice of the Polish law it is 150% of the secured claim);
c) designation of the legal relationship from which the secured claim arises.

A mortgage should be established in a notarial deed. Enforcement of a foreclosure due to the momentousness of the deed is greatly simplified and allows the creditor to positively enforce the mortgage claims (however, the process is complex and formalised). A mortgage may be established in favour of a security agent or lender, which could be an entity established under a law other than the Polish law. It should be noted that a mortgage is one of the most important Polish methods of securing claims.

[5] Act of 29 August 1997. Banking Law (Journal of Laws 2023, item 2488).
[6] Act of 6 July 1982 on land and mortgage registers (Journal of Laws 2023, item 1984).

4. REGISTERED PLEDGE

One of the key securities for receivables in financing transactions (alongside the mortgage) is the registered pledge regulated by the Act on Registered Pledge and Pledge Register (Polish Pledge Act[7]), regulation of the Minister of Justice of 15 October 1997 on the detailed organisation and method of keeping the pledge register[8] and, as indicated in Article 1(2) of the Polish Pledge Act, the provisions of the Civil Code shall apply in matters not regulated herein. A registered pledge is a limited right in rem and is one of the basic securities on movables and transferable property rights (Osajda, 2022). The registered pledge is an accessory right (non-subordinate, dependent) to the secured claim. The registered pledge may be used to secure existing and future claims denominated in PLN or foreign currencies and of a known or unknown amount, and may also be used to secure incidental receivables, i.e., capital interest, interest on arrears or commissions and fees. In addition, the Polish law introduces a peculiar rule of specificity for a registered pledge regarding the secured receivables and the pledged object. For the purposes of this article, it should be noted that a registered pledge is created exclusively in the moment of the obligatory enter to the pledge count register, which can be done only on the basis of the pledge contract concluded between the pledgor (borrower) and the security agent (Mojak and Widło, 2020). Therefore, in financing transactions where there is a multitude of jurisdictions, special attention should be paid to the fact that in the Polish jurisdiction it is important to submit the relevant applications to the pledge registry for the registration of the registered pledge[9]. It should also be pointed out at this point that the beneficiary (pledgee) under a registered pledge could be aby entity established and operating under non-Polish law or for the benefit of a security agent (which may have tangible benefits in the case of the exercise of rights and enforcement under a registered pledge (Czech, 2007: 35–42)).

Moving on to the determination of the object of the registered pledge, it may be movables and transferable property rights:

a) things marked as to identity – one or more movables may be pledged if they are adequately individually described in the pledge agreement, e.g., multiple wind turbines may be secured by a single pledge agreement provided that each is adequately described;

[7] Act of 6 December 1996 on the registered pledge and the pledge register (Journal of Laws 2018, item 2017).

[8] Regulation of the Minister of Justice of 15 October 1997 on the detailed organisation and manner of keeping the pledge register (Journal of Laws No. 134, item 892, as amended).

[9] The registration of the registered pledge is done on a special form, paying the relevant fee of PLN 200 (aproximetly EUR 45), and the waiting time for the registration of the registered pledge depends on the registration court and can last from two weeks even up to three-four months.

b) things designated by species – e.g., stocks in a production company, it is important to quantify them in a way that is distinguishable from the same species;
c) mechanical movable objects – e.g., machinery or vehicles;
d) future goods and rights which do not yet exist at the time when the pledge contract is concluded or which the pledgor will own in the future;
e) a collection of goods and rights constituting an economic whole even if its composition is variable, e.g., the pledgor's (i.e., usually the borrower's/guarantor's) business. This is similar to a floating charge (Renfert and Bayirbas, 2022); however, there are many differences in Polish law regarding a floating charge (Bryl, 2003; Harvey et al., 1994: 201);
f) rights in assets, e.g., a trademark;
g) pledge over receivables, e.g., pledge over receivables from the pledger's bank accounts;
h) pledge over shares or stocks.

The purpose of this article is not the sole process of enforcement of the registered pledges described herein but, for the practical purposes of this discussion, the Polish Pledge Act provides several modes of enforcement of a registered pledge, which the agreement may provide for the satisfaction of the pledgee (a) by taking possession of the pledged property; (b) by sale of the pledged property by public tender; (c) by collecting the income generated by the pledged property or by the rent of the leased pledged property.

5. FINANCIAL PLEDGE

Another important debt security in international financing transactions with a factor providing security from a Polish entity is the financial pledge. A financial pledge is also a limited right in rem belonging to the group of pledge rights. The financial pledge is regulated in the Act on Certain Financial Collaterals[10]. This is a specific type of pledge right referred to in Article 2(1)(a) of Directive 2002/47/EC[11] for personal and material reasons. The particularity of this security derives from certain categories of objects that can be its subject, such as assets, which include cash, credit claims, financial instruments, money market instruments, securities (including shares), financial instruments that are not securities or shares in companies. The distinguishing factor of the financial pledge

[10] Act of 2 April 2004 on certain financial securities (Journal of Laws 2022, item 133, as amended).

[11] Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ EU. L. 2002 No. 168, p. 43 as amended).

results from the entities which may act as pledgee and the beneficiary in particular, central banks, international banks and financial institutions, investment firms, open-ended investment funds and investment fund company managing such funds, banks and other financial institutions within the meaning of the Banking Law, entities participating in the settlement of payments and securities, insurance or reinsurance undertakings, as well as certain public authorities in Poland and other Member States (Makowski, 2020). Accordingly, before establishing a financial pledge, particular caution must be exercised and it must be verified whether the security agent fulfils the aforementioned prerequisites. In financing transactions, financial pledges most frequently occur alongside registered pledges on shares and registered pledges on account receivables. A financial pledge does not need to be registered in the public register, but in order for it to be valid, it is necessary to conclude a pledge agreement and to make the appropriate notification to, for example, the company whose shares are the subject of the financial pledge or the bank keeping the bank accounts.

6. CIVIL PLEDGE

The civil pledge is derived from the Polish Civil Code, and its main advantage is that no registration is required to establish it (it constitutes an intermediate security, which the existence starting from the conclusion of the civil and registered pledge agreement until the registration of the registered pledge, the pledgee, including a security agent acting under non-Polish law, may be able to enforce its claims against the pledgor's property subject to the pledge, which couldn't be possible through the registered pledge before its registration). A civil pledge may only be established to secure a claim that is specifically designated, usually a pecuniary claim, but also it may be established on rights on movable property. As in the case of the above-mentioned rights in rem the pledgee has priority over the pledgee's personal creditors. A civil pledge is an accessory right – this means that it is closely linked to the claim against which it is pledged and does not exist without it – it arises and expires with it (similar to a registered pledge). The source of a civil pledge is a contract between the owner of the property (the pledgor) and the pledgee (Balwicka-Szczyrba, 2023), and its moment of origin is the conclusion of the pledge agreement, and an mandatory obligation, e.g., when establishing a pledge on shares, is to notify the company of the pledged shares. In addition, the pledgee must ensure that the pledge is reflected in the book of shares and in the list of shareholders of the company (similar to a registered pledge). The civil pledge is this peculiar security for the security agent's claims for the moment of uncertainty, which begins from the conclusion

of the registered pledge agreement to the moment of registration in the pledge register, but it may also serve as an independent security.

7. POWERS OF ATTORNEY

In financing transactions under a foreign law, with the participation of a Polish entity, it is possible to secure the secured receivables of the lender or security agent, which is an entity incorporated under non-Polish law, by granting the borrower or guarantor in an international transaction a power of attorney for a particular legal action. A power of attorney for a specific legal action (special power of attorney) may relate to a specific action within the scope of ordinary management or exceeding ordinary management. However, when granting a special power of attorney, the type of legal transaction must be specified (Balwicka-Szczyrba, 2023). Such a power of attorney is based on the main principles of the Polish Civil Code.

The most common powers of attorney are:

a) power of attorney over bank accounts – to withdraw the amount of the outstanding debt from the bank accounts of a Polish company;
b) power of attorney to block funds from the bank account of a Polish company;
c) power of attorney to exercise rights under other agreements, e.g., pledge agreements, which the pledgee has not performed but is required to perform under the pledge agreement;
d) power of attorney to lease the enterprise;
e) power of attorney to exercise voting rights at shareholders' meetings;
f) power of attorney to conclude a pledge agreement on new assets that may be pledged.

Powers of attorney are a very solid subject of debt security in international transactions and the role of such an attorney may be performed by a security agent. Naturally, a power of attorney must comply with the law, the rules of comity and not exceed its scope, which is why the attorney must act in accordance with the design of the power of attorney and comply with the code rules for the exercise of its rights. A generic power of attorney may also exist as an alternative power of attorney whereby the principal leaves it to the attorney to choose a specific legal act from among those listed in the power of attorney (Nazaruk, 2023).

8. SUBMISSION TO ENFORCEMENT

Important security for receivables in international financing transactions are the notarial deeds described in Article 777 of the Polish Code of Civil Procedure[12]. It is a quasi-security because only after an enforcement title has been granted to the notarial deed it can be enforced before a court. Enforcement may be carried out against both the personal debtor and the debtor in rem, e.g., against pledged shares. These become enforceable titles after the court has issued an enforcement clause. The order granting an enforceability clause to an enforcement title, such as a notarial deed, declares that the title is enforceable, that enforcement against the debtor on its basis is permissible and that the enforcement authorities should enforce it (most commonly in Poland the bailiffs). The granting of the clause results in the enforcement title becoming an enforceable title and therefore a document which constitutes the basis for enforcement. The enforcement order is subject to compulsory execution (Jaceczko, 2023). An obligatory element of the notarial deed as an enforcement title is the concretisation of the creditor for whose benefit enforcement is to be carried out (Sieńko, 2022). It is undisputed that such entities may be those having their registered office outside Poland and those which have been established under laws other than the Polish law. The notarial deed should contain an obligation to pay a sum of money up to an amount expressly specified in the deed (in accordance with the Polish practice, this is 150% of the secured claim), an indication of the event on which performance of the obligation depends, or the date by which the creditor may request that the deed to be declared enforceable (Heropolitańska, 2023), usually in practice there is a security period of three years after the final payment of the claim, but this is not an obligatory condition under the Article 118 of the Polish Civil Code[13].

9. EXERCISE OF THE PLEDGEE'S VOTING RIGHTS IN A LIMITED LIABILITY COMPANY

The exercise of voting rights does not strictly constitute a security interest, but it may take the form of a security interest, and therefore, due to the importance of the subject, it is necessary to at least briefly mention the importance of this legal institution here. When shares in a company that is a Polish borrower or guarantor in an international financing transaction are pledged as collateral, the security agent usually receives a security with great power in the form of the pledgor's

[12] Act of 17 November 1964 Code of Civil Procedure (Journal of Laws 2023, item 1550, as amended.

[13] "Unless otherwise provided by a special law, the period of limitation shall be six years, and for claims for periodic benefits and claims relating to the conduct of business, three years. However, the end of the limitation period shall fall on the last day of a calendar year, unless the limitation period is less than two years (Act of 23 April 1964 Civil Code (Journal of Laws 2023, item 1610, as amended).

power of attorney to exercise the voting rights of the pledged shares. Article 187 § 2 of the Commercial Companies Code indicates that the articles of association may provide for the exercise of voting rights by the pledgee, this being a power separate from the power of attorney to exercise voting rights at shareholders' meetings. If the articles of association provide for the possibility to exercise the voting right, the exercise of this right is only possible from the moment of effective notification to the company of such a decision (Kidyba, 2023). This is a tremendous power held by the security agent allowing a degree of control over the pledged entity. It is a situation in which the current shareholder and the pledgee have similar powers, which makes the attractiveness of the registered pledge to secure a receivable even greater.

10. ASSIGNMENT OF RECEIVABLES

Security for receivables in international financing transactions with a Polish entity element may also include an obligation to transfer receivables under specific agreements in favour of the creditor. The assignment agreement of receivables is dispositional in nature; therefore, the transfer causes the receivable to exit the assets of the assignor and enter the assets of the assignee (Sikorski, 2023). The purchaser of the claim transfers all rights relating to the nature of the transferred claim, such as: the right of priority, the right to rescind the agreement, the rules on termination of the agreement, the right to collect legal benefits from the claim, the right to demand payment of a contractual penalty, the right to ordinary and default interest, legal security for the claim[14]. An agreement between the assignor and the assignee is necessary for an assignment to take place.

The subject of a receivables assignment may be existing receivables as well as future receivables. In practice, claims from sale contracts, insurance agreements and supply contracts are usually assigned as security for the main credit claim, but these aspects depend on the type of transaction. Aspects concerning notification of the relevant debtors should also be analysed at the time of creation of the security, as under the Polish law in occurrence of any assignment, the purchaser of the claim is obliged to inform the debtor. In case of failure to inform the debtor, the debtor may relieve himself of their debt by performing to the original creditor (in such case the purchaser will only have a claim towards the original creditor on the grounds of unjust enrichment) and a silent assignment.

[14] Judgment of the WSA in Warsaw of 6.09.2021, III SA/Wa 2418/20, LEX nr 3264977.

11. SUBORDINATION AGREEMENT

Another security occurring in international transactions with a Polish aspect is the subordination agreement of receivables which is an unnamed agreement (according to the provisions of the Polish Civil Code). Under the Polish law, however, it can be treated as a personal security agreement based on the principle of freedom of contract. A subordination agreement is a type of commitment agreement in which, in addition to the security agent/lender and the borrower (a Polish entity), there are other parties providing financing to the Polish obligor. In a subordination agreement, the debtor undertakes to its creditors that it will not pay the subordinated claim before the senior claim has been paid in full. In addition, there are obligations on the subordinated creditor not to seek satisfaction from the debtor until the senior claim has been paid. It should be pointed out that there are clauses in the subordination agreement in which the subordinated creditor undertakes to transfer funds to the senior creditor if it receives any payment of the subordinated claim (Zdzieborski, 2004). From a practical point of view, the subordination agreement provides a guarantee that the senior claims will have priority over the repayment of other obligations of the Polish entity.

12. PROJECT SUPPORT AGREEMENT

Another unnamed agreement based on the freedom of contract principle of the Polish Civil Code having the characteristics of a project security is the project support agreement. When a security agent or lender wants to secure itself in a project finance that a Polish entity, the borrower, will carry out, for example the construction of a wind farm, an agreement is concluded in which the sponsor, who is sometimes an indirect or direct partner, undertakes to fulfil certain pecuniary or nonpecuniary obligations (Vinter, 2006). It is a security and an institution with the purpose of eliminating the risk of discontinuation or failure to finish the project. In project support agreements, a distinction is made as follows:

a) a commitment to contribute to the project;
b) guarantees or sureties for the completion of a project;
c) a commitment to contribute funds to cover outstanding commitments and fees, or a commitment to provide funds to maintain adequate financial ratios (Rutkowski, 2023).

It should be pointed out that under the principle of freedom of contract, the form of the sponsor's support may be arbitrary, so that the purpose of securing the execution of the project is preserved, i.e., to assure the financing party of the certainty of the project's execution.

CONCLUSION

In conclusion, it should be noted that Polish legislation has a very wide range of security documents that can be used in international transactions with a Polish entity as the collateral provider. The model use of security interests by means of a parallel debt, which has been adopted by practice and the custom of the Polish legal culture, should be viewed positively. In the author's opinion, the security documents (sensu stricto) cited in this article may serve as an incentive to popularise the Polish market as a market where international entities may carry out financing transactions without worrying about the collateral instruments of their obligations.

At this point, it should also be pointed out that submissions to enforcement and statements on the creation of a mortgage require the form of a notarial deed, which further indicates the importance of these forms of security, which also provides an indirect guarantee for subsequent enforcement. Reference should also be made to the requirement to register certain securities such as the registered pledges and the mortgages, which in order to be established need the entry in the register kept by the relevant courts. Attention should also be paid to the relevant notifications, inter alia, notifying the company in the case of a pledge on shares in a limited liability company, relevant notifications to the shareholders' register in the case of a registered pledge on shares in a joint stock company, notifications to the patent office in the case of a pledge on patents or trademarks, notification to account banks to record financial pledges and registered pledges, notification to debtors of the transfer of receivables under certain contracts, or updates to the share register or the list of shareholders; the requirements are numerous but are intended to guarantee to both the parties to the transaction the transparency of trading and the observance of the rules of social intercourse.

It should be stressed that the Polish legislator, as well as the practice and the doctrine have developed appropriate ways of securing claims arising from facility agreements governed by a foreign law.

In the author's opinion, the above mentioned securities should be positively perceived by international financing providers and the straightforwardness of the securities and its certainty in economic dealings may be an invitation to invest in Poland.

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INSTRUMENTY ZABEZPIECZEŃ RZĄDZONE PRAWEM POLSKIM W MIĘDZYNARODOWYCH TRANSAKCJACH FINANSOWANIA

Cel artykułu. Nastąpił wzrost liczby transakcji finansowych za pośrednictwem dokumentów finansowych z międzynarodowymi elementami. W szczególności artykuł odnosi się do umów kredytowych sporządzonych zgodnie ze standardami LMA, podlegających angielskiemu prawu, oraz do potencjalnych dostawców zabezpieczeń kredytowych działających w wielu jurysdykcjach, np. "spółek zależnych" pełniących rolę poręczycieli lub dodatkowych dłużników, a czasem także kredytobiorców. Wielość jurysdykcji stawia przed doradcami kredytowymi oraz głównym dłużnikiem wyzwanie dotyczące wyboru instrumentów zabezpieczenia w każdej jurysdykcji, w zależności od lokalizacji przedmiotu zabezpieczenia. Artykuł ma na celu przedstawienie przeglądu najczęściej stosowanych rodzajów zabezpieczeń w polskim prawie, służących zabezpieczeniu umów kredytowych w jurysdykcjach innych niż polska. Autor dokonał również oceny, która może być pomocna dla praktyków spoza Polski w doborze odpowiedniego zabezpieczenia dla długu. Głównym celem jest zapoznanie osób nieobeznanych z polskim prawem ze standardami prawa polskiego dotyczącego zabezpieczeń kredytowych, a główna hipoteza zakłada, że polskie zabezpieczenia zapewniają pewność instytucjom zagranicznym udzielającym kredytów, w których uczestniczy polski podmiot jako dostawca zabezpieczenia.

Metoda badawcza. Artykuł stanowi kompleksową recenzję literatury dotyczącej polskiego zabezpieczenia prawnego dla należności z umów kredytowych udzielonych na mocy prawa obcego (włączając w to akty prawne). Zastosowane metody obejmują metodę hermeneutyczną, metodę porównawczą oraz metodę analizy i syntezy.

Wyniki badań. Na podstawie przeprowadzonych badań stwierdzono, że polskie dokumenty zabezpieczenia są wystarczające do zabezpieczenia należności wynikających z umów kredytowych regulowanych przez prawo obce. Główna hipoteza wydaje się, że została udowodniona. Ponadto na podstawie badań udowodniono, że polskie dokumenty zabezpieczenia, ze względu na ich znaczenie prawne, powinny stanowić zachętę dla zagranicznych instytucji finansowych do działania na terenie Polski. Wnioskiem jest, że polskie prawo zabezpieczeń jest bogate w narzędzia pozwalające na pewność obrotu międzynarodowego instytucji.

Słowa kluczowe: umowa kredytowa, zabezpieczenie, finansowanie, LMA (ang. Loan Market Association - Stowarzyszenie Rynku Kredytowego), dług równoległy, zastaw rejestrowy, zastaw finansowy, umowa cesji, umowa podporządkowania, umowa wsparcia projektu, oświadczenie o poddaniu się egzekucji.

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