

Security agent under Czech law

Abstract

Despite the importance of secured debt financing in today's society, there is no Czech literature that comprehensively covers one of the most important aspects of securing of debt – the sharing of security among the financing entities by using the security agent. The aim of this thesis is to introduce the concept of the security agent under Czech law, including a description of transactions in which the security agent is used, a description of available security and a comparison with foreign law concepts of the security agent. The thesis compares the two main transaction areas in which the security agent is widely used, which are syndicated loans and bond issues, and describes several key differences that determine what form of external financing the borrower will choose. The thesis then deals with the involvement of financial institutions in these transactions with an emphasis on the role of the security agent who administers the security for the benefit of all creditors. The thesis also points out some problematic aspects arising out of the plurality of secured creditors in situations where the concept of the security agent is not used and emphasizes the importance of security in the event of the debtor's bankruptcy. The thesis also presents options for achieving the functioning of the security agent under Czech law, which consist in (i) appointing the security agent as a joint and several creditor and securing the joint and several claim, (ii) securing an artificially created parallel debt to the security agent or (iii) appointing the security agent in accordance with the requirements of the Czech Bonds Act. At the same time, the thesis points out the fundamental shortcomings of the functioning of the security administrator (in Czech *správce jistoty*) under the Czech Civil Code and its unsuitability for use in debt transactions. The penultimate chapter discusses the most important rights and obligations of the security agent with an emphasis on the new possibilities brought by the Czech Civil Code and ways to best eliminate the credit risk of the security agent. The last chapter of this thesis compares the common law trust, which is used to administer security in jurisdictions where trusts are recognized, with the Czech trust fund (in Czech *svěřenský fond*) and illustrates why the Czech trust

fund is completely unsuitable for administering the security. Lastly, the thesis does not forget to mention foreign efforts to unify the rules for secured debt financing, represented primarily by the model law of the European Bank for Reconstruction and Development on secured transactions, which served as an inspiration to the Czech legislator in introducing the security administrator into Czech law.

Keywords: agent, security, debt