

Securing special-purpose Loans with a focus on the security transfer of ownership to movables and the right of lien

Abstract

This thesis deals with securing claims from special purpose loans in the form of a security transfer of ownership of movable property and in the form of a lien, while the main attention is paid to the security transfer of ownership. The introduction is devoted to the general characteristics of a special purpose loan and the means of securing it. The special arrangement for securing claims from consumer loans is also emphasized. The main part of the thesis deals with the analysis of the security transfer of ownership according to the regulation valid in the Czech Republic, including the historical development to the current legal regulation according to the Act No. 89/2012 Coll., The Civil Code. A special chapter deals with the issue of recovery of claims secured by a security transfer of ownership in insolvency proceedings. Attention is also paid to the tax context in relation to this security instrument, focusing on income tax and value added tax. The thesis also contains a comparison of the Czech legislation on the security transfer of ownership with the legislation applicable to the Slovak Republic and Germany. Within these comparative chapters, the main differences of the compared adjustments are pointed out and these differences are subsequently evaluated. A special chapter is devoted to securing special purpose loans in the form of a lien on movable property in order to compare this security instrument with a security transfer of ownership. It includes the adjustment of the so-called prohibited agreements with a focus on the prohibition of the so-called forfeiture, which also affects the interpretation of the implementation of realization of the security transfer of ownership. The conclusion contains an evaluation of the institute of security transfer of ownership, including the identification of its shortcomings, and *de lege ferenda* proposals are presented, which resulted from the conclusions made during this thesis.