

Summary

The Consumer Loan Contract and its Securing by Suretyship

As is self-evident from the title of the thesis, the subject matter of the thesis is the analysis of the concept of consumer credit and the securing thereof through suretyship. The starting point of the thesis was the newly-adopted Consumer Credit Act, which came into force on 1 January 2012.

The aim of this thesis is to acquaint its readers with the relevant legislation, point out its shortcomings, and analyse the concept of suretyship as the most typical instrument used to secure consumer credit obligations, thus giving the reader a full picture of these legal concepts.

The thesis is divided into nine chapters. The first chapter describes a contractual relationship under the credit contract, which is governed by legal regulations similar to those governing a consumer credit contract or a loan contract. This chapter analyses the essential terms of a credit contract, its origination and termination. Also analysed are the differences between a credit contract and a loan contract under the Civil Code.

The second chapter describes the history of the consumer credit concept, in both domestic and European contexts. Particular emphasis is given to the individual directives of the European Community, currently the European Union, since they are of key significance to consumer credit regulation.

The following chapter describes key concepts introduced by the Consumer Credit Act, namely the consumer, the creditor, the intermediary and the annual percentage rate, and the fourth chapter deals with the material scope of the Consumer Credit Act, in which such terms are used. In my opinion, the legislation should be amended to this effect more systematic.

The fifth chapter describes the intermediary's information obligations, and the scope of information provided in public advertisements, as I consider these two information channels to be the typical first contact of a consumer of this type of credit.

The sixth chapter is the most comprehensive chapter, since it deals with the obligations imposed on the creditor, who by virtue of the relevant legal regulations is obliged to fulfil obligations that are more onerous than those imposed on the consumer. It can be argued that this imbalance is contrary to the principle of contractual equality between the parties. These obligations include the creditor's obligation to provide certain information prior to the conclusion of the contract, while other information needs to be provided in the contract.

Another duty of the creditor is to assess the creditworthiness of a consumer. Non-compliance with these obligations may be sanctioned with a penalty of CZK 5,000,000, since such non-compliance may trigger the closing provisions of the Consumer Credit Act defining administrative offences. A detailed analysis of these issues is contained in chapter eight of this thesis.

Following my analysis of the creditor's obligations, I have analysed the possibility of terminating the contractual relationship. The Consumer Credit Act explicitly sets out three ways in which the contract can be terminated, namely rescission, withdrawal and early payment.

The final part of the thesis deals with the securing of consumer credit obligations through suretyship. In particular, I explain why I have chosen to discuss this security instrument, the law by which it is regulated and the way in which it is regulated, namely its origination, content and termination.

Considering the short time since the date of effectiveness of the new Consumer Credit Act, I handled the individual concepts in my thesis in a somewhat descriptive and some else manner. With this in mind and taking the absence of relevant case law into account, there was in fact no other way of handling the concept of consumer credit, apart from highlighting the shortcomings of the legal regulation.

A deeper and more detailed analysis of the regulations contained in the Consumer Credit Act cannot be carried out until the relevant legislation has been in force for a longer period of time and the individual provisions thereof have been tested by Czech courts, including the Constitutional Court.