

the value of EBIT. Because the highest value of operating profit the company gained in the year 2003, this ratio also high value. Nowadays, the value of operating profit fall down and the same situation has been observed into ratio level.

Summary

Run researches shows that the company has a strong position on Polish market and also makes many investments which aim to expand on others foreign markets, especially on eastern market. The financial results present good condition of company. Attention should be paid only for turnover ratios which levels wander from limits. The gained profits by company show how important role is featured to the value of Euro. It is cause that more then 50% of total sales comes from export.

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STIMULATING THE AVAILABILITY OF A CREDIT BY APPLICATION OF THE REGISTERED PLEDGE

Summary: Asset-backed financing is an important segment of the credit sector. A registered pledge plays an important role in stimulating the availability of credit. This improves the terms on which credit is granted. But a pledge only serves this role effectively if it provides an efficient means of reducing risk. A registered pledge may become a factor for determining whether or not credit is available. This is particularly the case for small and medium-sized enterprises where the unsecured risk is often high. The elaboration presents regulations referring to a registered pledge in the Polish legal system concerning creating a registered pledge, the risk of loss of the security, ways of enforcing security and shows the reasons why a registered pledge in Poland is incapable of performing its functions.

Key words: securing the claims, credit, registered pledge

Introduction

Back in the early 1990s, Poland faced an urgent need to introduce viable rules for securing transactions. New investments to regenerate the economies were dependent on a credit. Few potential borrowers had the credit record, the balance sheet or the banking relationships that would persuade lenders to advance money on viable terms. What was needed was a simple means of using assets to support credit thereby giving the lenders the confidence to lend and regain money and borrowers the access to a credit on more advantageous terms.

The reform of the registered pledge law has been motivated by this simple objective. A credit remains the lifeblood of a market-based economy and security has an ever-growing role in nourishing the market for credit.¹

A registered pledge plays an important role in stimulating the availability of credit. But a pledge only serves this role effectively if it provides an efficient means of reducing risk. A registered pledge may

¹ European Bank for Reconstruction and Development report „The impact of the legal framework on secured credit market in Poland” www.nbp.com.pl

become a factor for determining whether or not a credit is available. This is particularly the case for small and medium-sized enterprises where the unsecured risk is often high. In addition, if the risk is reduced a bank can lend money for a longer period of time. Yet, Polish statutory and executive regulations concerning a registered pledge, cause that, despite they are established, the risk of repayment the credit remains higher and there is less scope for price reduction. As a consequence of this, the number of new pledges being registered has declined from close to 350.000 in 1999 to approximately 74.000 in 2004.²

The reasons why a registered pledge is in not able to perform its functions are: a formal approach in court registration procedures, a court procedure on enforcement, limitations on possibilities for out-of-court realization and costs of a creation of a pledge.¹

A Regulation referring to a registered pledge in Polish legal system

In Poland the Registered Pledge Law of 1996 was the result of a number of years of work. When it was passed it was seen as one of finest examples of modern pledge law in the region of former communist countries. The Law of Registered Pledge which was introduced on 1 January 1998, significantly expended the notion of a pledge and created a centralized register for pledges.

A registered pledge can be created to secure the receivables which belong to: national and foreign banks, the coffers of the state and other state legal person, a unit of territorial government, communal, district and provincial legal persons, international finance organizations, the debentures or other indebted stock holders and anyone who has their own trade in Poland.

A Pledger, whereas, can be every subject who is in possession of legal capacity. Pledgers, as opposed to lienors, are not under an obligation to have a trade.³

One or several obligations may be secured by a pledge. The secured obligation may be future or contingent. Future or contingent obligation may be secured by a deposit pledge. A pledge is valid only if the secured obligation thereby is expressed in zloty, in foreign currency or has any value in money.⁴

Creating a registered pledge

To establish a pledge two conditions are necessary: a contract between pledgers and lienors and an enrollment to the register. A pledge arises at the moment of its registration in the respective registry.

Pledges are registered at ten special departments in 10 regional courts through a judicial process. A judicial process in Poland is different than system of "notice" registration used in Bulgaria, Czech Republic, Hungary, Latvia, Romania, Slovak Republic. In Bulgaria, Czech Republic, Hungary, Romania, Slovak Republic registers are operated by Ministry of Justice, Chamber of Notaries or Register for Enterprises¹.

Delays and inefficiencies which occur in the registration process discourage lenders and creditors to use a registered pledge. Thus, a common practice of banks is to require an alternative form of security pending a registration of pledge (for example a possessory pledge or a fiduciary transfer of assets). Inevitable additional costs of such actions are an obvious side-effect. According to the pledge law in Poland a registration has a constitutive effect and the data that have been registered are deemed exact, even if, in fact, they are not recognized true. In the opinion of the Report's authors applying this rule to pledge registers is a misconception. "For the register good functioning, it is not necessary to authenticate the information registered in relation to the pledge. In fact, any requirement

² Appendix C chart 6 to European Bank for Reconstruction and Development report „The impact of the legal framework on secured credit market in Poland” www.nbp.com.pl

³ Mojak J., Widlo J, Zastaw rejestrowy i rejestr zastawów: komentarz. Wydawnictwo prawnicze LexisNexis, Warszawa 2004

⁴ ustawa o zastawie rejestrowym i rejestrze zastawów z dnia 6 grudnia 1996 r. (Dz. U. z dnia 19 grudnia 1996 r.)

to do so seriously limits the ability of the pledge register to meet the practical and economic needs of the secured credit market⁸.

The judicial process in Poland also means that there is a subjective interpretation by the judge as to whether or not registration should be permitted, which adds a further element of uncertainty of result of a register process.⁹

The risk of the security loss

The difference between a registered pledge and a habitual pledge is the possibility of leaving the pledged assets or a title to such assets in a pledger or the third party's possession.

The registration entry of pledge to the register is as univocal with the extradition of the pledged asset. Undoubtedly, this legal regulation entails the enlargement of the risk to be dissatisfied with the pledged asset.

The pledge law contains numerous regulations to diminish this risk. The pledge remains a new movable asset resulting from the transformation of a pledged asset. The pledge also extends to the assets resulting from combination or merging of several movable assets already pledged. If a pledged movable asset becomes a component part of real asset then the pledge expires. However, the pledgee can require a creating of mortgage on immovable to the value of the affiliated movables from the householder. Simultaneously, law regulates consistency resulting from the pledger contract. These duties are: the using of encumbered estate according to its social and economic appropriation and impossibility to destroy or damage the pledged asset or decrease its value unless this happens as a result of normal wear and tear or if it is necessary. If the pledger transgresses these duties, than the pledgee can require compensation for non-fulfillment.

Leaving of the encumbered asset in pledger's possession causes the possibility of the free disposition with the object of pledge by the pledger.

In principle, the sale of the encumbered assets does not cause expiry of a pledge because the pledge gives the possibility of the satisfaction from the object of the pledge irrespective of whose property it becomes. However, the expiry of pledge as a consequence of transferring the property of pledged asset is possible.

The pledgee loses his security of the claims if the buyer did not know and at adding of due diligence could not find out about the existence of the pledge. Bona fide third parties are protected by these regulations. The risk of the loss of the security in consequence of alienation of the object of pledge is however greatly limited by principle of reliability of a pledge register that from the moment of pledge registration no one may invoke negligence of the information registered in pledge registry.

Yet, the parties can introduce the reservation to the contract that the pledger will not administer of encumbered asset. Transferring or encumbrance of the pledged asset by the pledger against additional reservation is unimportant⁴.

Three ways of enforcing security

One of the principal factors which stimulate the market for credit, is the credit provider's assessment of the risk of non-recovery. "A debtor with a good credit rating or who gives valuable security should be able to expect better access to credit. But rating credit worthiness or valuing security normally assumes that there exist reliable means to enforce claims and realize security. If confidence is lacking not in the debtor's ability to repay or the value of the security, but in the ability of legal institutions to give effect to creditor's claims, then it becomes difficult for credit market to operate

⁸ European Bank for Reconstruction and Development report, "The impact of the legal framework on secured credit market in Poland", s.9, www.nbp.com.pl

⁹ Anna Rajchel, Zastaw rejestrowy jako rzeczowe zabezpieczenie kredytu bankowego, "Ostoja", Kraków 2001

efficiently. For the borrower this is likely to mean high interest rates, shorter duration or simply no credit at all⁷.

The Polish pledge law recognizes three ways of enforcing security.

The first one that leads to realization can be carried out through judicial proceeding. The procedure is unanimously described by users as inefficient and excessively formalistic, with many cases ending without the asset being sold at all.⁷

The second way of enforcing security are two out-of-court realization procedures.

The first one is taking over a title of the pledged asset exchange for the secured debt. An application of this way of enforcing security is a requisite of previous contractual clause. Taking over a title of the pledged asset in settlement for the secured debt is suggestive of one-sided expropriation. The moment of expropriation is lienor's statement filing date.

This procedure has also a number of drawbacks. Lienors do not receive money to repay their claim but they become the owner of a pledged asset which they are free to keep or sell as they choose. However very often, the pledge becomes the owner of an asset which he does not want. He may sell it but if he sells it for less than the appropriation value, then it is unsatisfactory for him¹.

The second out-of-court realization procedure for registered pledges is foreseen in the Polish pledge law, in article 24. This article allows the parties to agree that the sale of a pledged asset can be conducted by a notary or a court enforcement officer. This kind of sale has the same legal consequence as a sale in the course of judicial proceedings.

I believe this intention is beneficial for both lienors and pledgers. It is, however, difficult to judge this procedure, because requisite implementing decree of Ministry of Justice has never been passed. The article 24 of Polish Pledge Law is therefore "dead" statutory provision and the parties can not apply this regulation.

A survey, conducted by the European Bank for Reconstruction and Development in 2003, that focused on the enforcement over movable assets showed Poland remarkably deficient among the countries of central and south eastern Europe. Rating the efficiency of the enforcement system by reference to financial return, simplicity of the process and time involved, Poland ranked 20 th out of the 26 former communist countries.¹

This situation is mainly caused by the fact that lienors use a judicial process of execution to satisfy from security.

If the parts could use out-of-court way of enforcing security, this situation probably would be better. The Polish Registered Pledge Law regulates this way of enforcing security. The reason why the parts can not apply statutory regulations is the lack of executive ones.

Costs

The next problem that arises while using a registered pledge is a registration fee. The registration fee of PLN 200 (approximately 50 euro) is relatively high. This is discouraging for smaller transactions.

Among countries that charge a constant fee, like Czech Republic (approximately 23 euro), Hungary (19 euro), Latvia (36 euro), Romania (18 euro), Poland has the highest fee.¹ In comparison to countries that charge a proportional fee, which comes up to 400 euro, the registration fee in Poland shouldn't however indispose the parts for secure the bigger transactions.

⁷ Appendix A and B to European Bank for Reconstruction and Development report „The impact of the legal framework on secured credit market in Poland“ www.nbp.com.pl

Conclusions

Asset-backed financing is an important segment of the credit sector. A registered pledge plays an important role in stimulating the availability of credit.

This improves the terms on which credit is granted. Banks, like any other business in the market, try to recover their costs from their customers and to make a profit. The higher their costs and risk are, the higher price is charged from banks' customers. Polish enterprises point out, that the biggest problem is not an access to financing, but costs of financing. They include not only the fees, but also they are time-consuming and demand a lot of effort that is connected with a long registration process. Also the cost of taking alternative security and the costs of enforcement procedures should be taken into consideration.¹

Various deficiencies in the legal system that affect registered pledge increase the cost of credit, and this is likely to have significant impact on the Polish economy as a whole².

A reform of the current system should be driven by the economic objective of reducing the cost and increasing the availability of credit.

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THE ESSENCE OF THE CREDIT RISK MANAGEMENT IN COMMERCIAL BANK

Abstract: The essence and the nature of the credit risk present at banking activity have been extensively explored in the literature. Considerations taken in this paper are focused on the risk management of the individual transaction. However it seems that hypercompetitive environment of XXI century requires the creation of the integrated model of credit risk management including mutually related transaction risk and total risk management processes. Thus this paper presents the model involving complex credit risk management.

Key words: credit risk management, credit risk, commercial bank.

Introduction

Increasing business risk, globalization processes and the intensification of the competitiveness that complicate considerably the activity conditions for companies and financial institutions make banks identify properly the individual phases of risk management. The commercial banking activity is strictly associated with the risk. In the scientific literature credit risk is still treated as the most typical kind of the risk occurring in banking activity. On the account of negative consequences of the credit risk, the

¹ European Bank for Reconstruction and Development report „The impact of the legal framework on secured credit market in Poland”, s. 4, www.nbp.com.pl