

**MANAGING PROBLEM LOANS IN THE BANKS OF UKRAINE: CURRENT LEGAL ASPECTS**

**Statement of the problem.** The current process of bad loans in Ukrainian banks is impossible without legal regulation of this issue in the legislation. It is important to emphasize that the main source of income of banks is interest on loans that they provide economic entities through their own or borrowed funds. The banks are legally responsible for the use of these funds to the founders (shareholders) and investors. The problems that arise in connection with delayed repayment of loans and interest on them is most acute in the banks. However, banks that operate in the financial markets over 10 years, already have a database and practice for working with loans that are not promptly returned. Therefore, the focus of banking institutions has always focused on the main areas of work with borrowers who are delaying repayment of loans and which are considered as "bad loans".

**Analysis of recent research and publications.** Study on bad loans of banks and their methods of returning devoted to the works of Aleksiychuk, V. Andriychuka, P. Laiko, I. Kirilenko, A. Moroz, A. Vasyurenka, V. Mishchenko. In particular, the works of Aleksiychuk, A. Moroz and V. Mishchenko devoted to the nature of problem loans as an economic category in the system of finance and finding their causes. In turn, Vasyurenko A., P. Laika did in his writings focus on causal events of NPLs of the banking system of Ukraine in the financial system of our country. Ivan Kirilenko focused its attention on the international banking market, analysis of the global financial crisis, paying the greatest attention to NPLs of the banking sector. However, despite significant scientific results obtained by the above and other scientists, the nature and problems of managing problem loans remain scarcely explored. This is what led to the selection of research theme and is the evidence of its relevance.

**Problem.** The purpose of this paper is to describe and analyze the current legal framework for dealing with problem loans of the banking system of Ukraine. It is also important to note that a lot of attention given to some unresolved issues with regard to these aspects of the research. In particular, it applies to the work of collection firms in law line with current legislation.

**The main material of the study.** Any activity within society can't be realized without legislative regulation of all its spheres. The basic regulatory framework governing relations associated with the recovery and management of non-performing bank loans or problematic in the other words include:

1. The Commercial Code of Ukraine.
2. The Criminal Procedural Code of Ukraine.
3. The Civil Code of Ukraine.
4. Law of Ukraine "On Mortgage".
5. Law of Ukraine "On Insurance".
6. Law of Ukraine "On Liability for failure to perform cash commitments"
7. Law of Ukraine "On Hypothec".
8. Law of Ukraine "On Mortgage Lending Operations with Consolidated Mortgage Debt and Mortgage Certificates".
9. Law of Ukraine "On Securing Creditors' Claims and Registration of Encumbrances".
10. Law of Ukraine "On the formation and organization of the Circulation of Credit Histories".
11. Law of Ukraine "On Banks and Banking Activity".
12. NBU Resolution "for setting the discount rate and reserve requirements for the creation of the mandatory provisions".

Unpleasant situations cheaper to prevent than to have immediate adverse effects on them. This fully applies to the provision of banking institutions loans. Before making a positive decision on granting a bank loan, the intensive work of bank's employees is processing to clarify the creditworthiness of a potential borrower, necessary business plans, the level of collateral, payments in respect of loan repayment and interest etc. Much attention is paid to the credit history of the bank's borrower.

Law of Ukraine "On the formation and organization of the Circulation of Credit Histories" [10] defines the legal and organizational framework for the formation and maintenance of credit history, the rights of the subjects of the credit histories and credit bureaus users, the requirements for information security that make up credit history, order of the formation and the elimination of the credit bureau.

After a borrower passing through the bank control and making up bank a positive decision on the loan, the borrower shall be submitted and signing a credit agreement and contracts, which guarantee its implementation. These contracts shall include certain legal aspects to some extent, encouraged borrowers to timely repayment.

To collect debts from borrowers for loans not repaid on time, banks use certain mechanisms to influence the debtor under the laws of Ukraine [13, 1]:

1. application to the debtor of penalties ( fines ) for late payment or non-payment of the interest on the loan and / or late payment or non-payment of the loan;
2. recover damages from the debtor for breach of monetary obligations ;
3. enforcement of monetary obligations of the debtor by third parties (guarantors, the guarantors);
4. insuring the borrower's obligations with mortgage arising from the loan agreement;
5. appeal to the insurance company for the payment of insurance claims in the event of the insured bank's risk of default on the loan and the interests and insured event;
6. recovery of outstanding loans within the criminal case against officials of the debtor.

In addition to these areas of work with debtors regarding collection of bad loans, banks as a fact use factoring and leverages to the debtor by the bankruptcy law. In this case, factoring is used to meet the requirements of the bank by debtors concluding relevant agreements . The procedures of bankruptcy debtors to banks used in the event that other methods of debt collection from the debtor failed to produce positive results.

According to paragraph 3 of Article 549 of the Civil Code of Ukraine penalty is calculated as a percentage of the amount of time performed the liability for each day of delay in implementation [3]. Article 549 of the Civil Code stipulates that the penalty (fines, penalties ) is a sum of money or other property that the debtor must pass the lender in the event of breach obligations. The basis for calculating the amount of the penalty is executed improperly the liability. In this case, the improper performance of the liability is its delay. Under the credit agreements the delay is non-payment of late payment by the borrower of the loan and the interest on its use.

According to Article 3 of the Law of Ukraine "On Liability for failure to perform cash commitments" [6] the size of the penalty may not exceed double the NBU discount rate effective during the period for which the penalty is paid [12].

Mortgage is the most common way to enforce monetary obligations arising from a contract of loan [4]. The lender (mortgagee) is entitled in the event of default by the debtor ( mortgagor ) the obligation secured by the mortgage, have fun at the expense of most of the pledged property to other creditors of the debtor, unless otherwise provided by law. In this case, the mortgagor may be as a person who directly takes a credit as property guarantor.

The subject of the mortgage can be any property (such as estate, securities, property rights ), which may be alienated mortgagor and which may be levied and the property that the mortgagor will come after the onset of the collateral (the future harvest, the arrival of livestock, etc.) [7]. If the pledged movable property is, according to the Law of Ukraine "On Securing Creditors' Claims and Registration of Encumbrances" [9] it shall be registered in the State Register of Encumbrances of movable property. According to Article 14 of the Act mentioned above, registered encumbrance has higher priority over unregistered encumbrance.

Article 2 of the Law of Ukraine "On Mortgage Lending Operations with Consolidated Mortgage Debt and Mortgage Certificates" [8] provides that the contract of mortgage insurance provided shall contain financial risks. Insurance as a way to ensure repayment of the loan is used along with the banks as collateral or otherwise enforce the obligations and also without them [5]. The reason for going to the bank insurance company for insurance claims that insurance loan default risk and interest are insured event, that the failure to pay the loan amount, interest on it within the period stipulated by the contract of loan. After payment of the insurance company to insurance reimbursement bank such company becomes a claim against the debtor (borrower) on the monetary obligation that was not performed properly to the bank.

Ignorance of an average borrower with domestic law often leads to the situation that collection firms exceed the permissible methods of debt recovery law. In Ukraine there is no regulation of collection services and companies that are engaged in their provision. During collection services realize services recovering debts natural or legal persons such customer service. Activities of collection company can be regarded as an ordinary business activities of the entity. This subject must be registered in accordance with law. Collection services may be provided by the customer collection company under a contract assignment, an assignment of the contract or agreement of the factoring.

Typically, along with providing the right collector to do some legal action to recover the debt from the debtor client sends header information about client - debtor. In this article 1076 of the Civil Code of Ukraine established that the bank guarantees the confidentiality of bank accounts, account transactions and customer information. However, information about transactions and balances can only be provided by bank's clients or their representatives.

Collection firms mainly operate very stringent methods. Workers of the collection companies via correspondence, telephone calls and SMS- messages persuade the debtor to pay the debt voluntarily. They usually call day and night long, and letters sent to the debtor containing threats and intimidation. Moreover, collectors put pressure on defaulters by familiarity with their friends and relatives, as well as by post to work in the presence of defaulter outstanding obligations. Such collectors' activities violate the law and the Constitution of Ukraine up to the citizens of Ukraine intervening in private family and family life business[2]. Summarizing the activities of collection companies and how they work, we can conclude that the vast majority of them violates the constitutional rights of citizens and does not have a relevant legal basis according to the Law of Ukraine "On banks and banking activity" [11].

### **Conclusions and further research.** Based on the study revealed:

1. relations in Ukraine related to banking regulation when dealing with problem loans are regulated by several laws of Ukraine.
2. existing legal acts are to regulate the relationship of banks and debtors in collection of outstanding debt issue and do not contain full coverage of the regulation of legal relations related to their implementation.
3. most irregular area of financial relations in the field of collecting bad debts from debtors to banks is the work of collection firms.
4. research topic needs more refinement, as well as the lack of legal framework in relation to specific areas of activity results in violation of the law, the rights and freedoms guaranteed by the Constitution of Ukraine. Such existing problem is the activity of collecting companies.

### **References**

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### **Yurkiv M.T. MANAGING PROBLEM LOANS IN THE BANKS OF UKRAINE: CURRENT LEGAL ASPECTS**

**Purpose.** Due to the need to analyze the legislative framework of Ukraine regarding the Bank's credit policy to return NPL of debtors, as well as existing problems related to the lack of regulation of collection companies whose activities do not have a clear legal outline.

**Methodology of research.** The combination of scientific methods of collection, processing and analysis of materials on the status and improving the legislation of Ukraine in the regulation of relations on recovery of bad loans of banks debtors ensures successful implementation of the goals and objectives of the study. The methodological basis of the research in the article were current foreign and domestic scientific approaches and trends of the development problems of management, statistics, economics, psychology, sociology, allied with them and other sciences. In the process of writing were used research methods such as comparative (in terms of matching and comparing the Laws of Ukraine), the system one (during the analysis of the legislation of Ukraine on banking regulation), synergistic (in part due to the evolution of legislation regulating banking activities in the financial system of Ukraine in general).

**Findings.** The article reviews the current state of imperfection and incompleteness of the current state of the banking legislation of Ukraine on the regulation of social relations of banks with borrowers on loans. The focus of attention primarily placed on the current situation of legal acts to regulate the relationship of banks and debtors in collection of outstanding debt issue, but do not include the full scope of regulation of legal relations related to their implementation. It should be noted that most unregulated areas of financial relations in the field of collecting bad debts from debtors to banks is the work of collection firms. It is the last activity in the community concern about the numerous violations of human rights and freedoms guaranteed by the Constitution of Ukraine and need legal regulation.

**Originality.** Subsists in the necessity of legal regulation of collection companies in the Ukraine, activity which in fact is illegal and contrary to the applicable laws of our country. The current Regulations are intended to regulate the activities of the banking system, especially the work of banks with troubled assets.

**Practical value.** The obtained results of research allow to develop a rational approach to the regulation of social relations between banking institutions on the one hand, and the lenders on the other hand, to return to recent debts previously taken from banks under credit agreements.

**Keywords:** economy, management, problem loans, the banks, the legislation, Ukraine.