when the mortgaged property is sold under the terms and conditions of the SPA.

In addition to the above the most commented amendments in the law concern the status of the CRSP, the new regulation of the registration procedure taking effect as of Sep. 1, 2018, and the access to the data registered in the CRSP. These amendments, which are already significant enough to be subject of a separate independent analysis, will probably make the registry of special pledges much easier to be accessed and will facilitate the use of this securitization mean which is otherwise very flexible and convenient.

While we take into account the indisputably positive aspects of the reform attempt, the aim of the above article is to draw the attention on certain controversial solutions, which are already recognizable in the new regime and which will need to be put under balance and to be overcome through the practice or to be subject to further amendments of the law until the optimal balance between legal security and efficiency of the special pledge institute is achieved.

Exchange Rates Clauses Are Matter of Thorough Consideration

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When entering into a long term transaction, the parties usually choose very carefully their business partner and conclude a comprehensive contract, attempting to regulate all possible future situations. The rights and obligations of the parties are broadly discussed; the payment method is strictly defined. However, parties tend to neglect the currency risk.

The aim of this topic is to illustrate how important the exchange rate clauses in the international contracts are and to provide some practical solutions in this regard.

Contracting with foreign companies is common thing. For example, party A, incorporated in USA, agrees to deliver goods to party B, registered under the laws of Poland, where the goods have been produced in a factory in Chile. Evidently, the relationship between the parties is international, three different countries are engaged and three different currencies are applicable. Therefore, the problem is not the payment obligation itself, but the clause that provides for the payment method.

To clarify this, we should examine a situation where the price of the goods is not fixed by the time of the conclusion of the contract, but is dependent on several factors – for example: price for the parts of the goods, employee remuneration, taxes etc. Where the goods shall be produced for a long period of time, parties prefer not to limit their payment obligation from the very beginning, but to use flexible clause instead of signing an addendum every few months. On the one hand, the risk in such situation arises where, for example, there is a political crisis or other force major in the country, where the factory is located, and that would influence the price of the goods and the labor costs.

On the other hand, the supply and demand of the goods might also change and the parties should not be bound by some strict relation that would lead to substantial deprivation on the side of one party and unjust enrichment to the other party.

According to the Bulgarian law, such cases might be classified as business frustration, where the problem is solved by the court that might intervene in the contractual relation of the parties and modify or terminate their contract. However, instead of going to the court, the parties might formulate their remuneration clause in such way that it would be flexible and it would not lead to such extreme imbalance of the transaction. One way is to include a price formula that is floating, thus: the payment shall be effected in accordance with the currency rates at the time of issuance of the invoice. The other way is to provide for a price formula that includes fixed exchange rates. This would lead to more predictability and for a certain period of time the parties would have some clarity as to their expectations. However, such clauses should be drafted very carefully and with consideration of number of factors.