

THE JURIDICAL SYSTEM OF THE PAWN HOUSES

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The present paper called the judicial system and the accountancy of the pawn houses was drawn up as a wish of clearing up some things connected to the judicial, the accountancy and the taxation system of the pawn houses. The activity developed by these entities. Went through a period of multiple changes lately as far as the organizational framework is concerned, and the amount of transactions of this nature is confronted with spectacular rises within the periods of economical crisis.

Key words: pawn, security contract, loan, interest commission.

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From the juridical point of view the pawn (the pledge) represents an accessory, unilateral, real contract through which the debtor gives to the creditor a corporeal or non-corporeal personal thing in order to guarantee his obligation (article 1685 from the Civil Code). It is a real guarantee which accomplishes the same function as the mortgage, the only difference being that it always has as an object personal goods which are entrusted to the creditor or to a third.

The pawn may be thus used as a guarantee when we grant credits under the shape of civil or commercial pledge with or without dispossession. The general rule is the one according to which the pledged good must be factually handed in to the creditor. The factual hand in is made through tradition (delivery) in what concerns the corporeal goods and through the rendering of the promissory note in what concerns the non-corporeal goods.

The creditor is forbidden to use the pledged good, he has the obligation to preserve it and it is returned after the payment in full of the guaranteed book debt. If till due the debtor doesn't pay off, the creditor may proceed to the accomplishment of the pledge and may ask the law court to give a writ and to authorize the pledge through:

- the sale of the pledged good through public auction;
- the assignation of the pledged good to the creditor, as payment for the debt.

The law forbids that there should be stipulations in the pledge contract through which the creditor would be authorized to appropriate the pledged good in a direct way without appealing to the law court. The percentage (partial) payment of the debt doesn't lead to the partial quittance of the pledge. The pledge is indivisible and it is extinguished only through the payment in full of the debt, including the interest and expenses generated by the preservation of the good.

Since the enforcement of the Decree no. 28/2006 concerning some financial and fiscal measures, with further changes and completions, the pawn houses must be registered in the evidence book opened at the National Bank of Romania. However, the pawn houses don't draw up and don't hand in the financial situations according to the accountancy regulations emitted by the National Bank of Romania and applicable to all the credit institutions.

The object of activity of the pawn houses may be enunciated as it follows:

The activity of pledge takes place between two people – a corporate body and a natural person (more rarely a corporate body). Through the pledge rapports based on an agreement appear between the two people, each of them being creditor and debtor at the same time.

The pawn house is:

-creditor for the sum it borrowed in exchange of the pledged good and, therefore, it will enter the book debt in its accounts;

-debtor for the good which was left as a pledge and, therefore, it will enter the good which was received in its custody.

The customer (the owner of the good) is:

-creditor for the good which he left as a pledge;

-debtor for the sum of money he took from the pawn house.

The contractual relationship between the creditor (the pawn house) and the debtor is recorded in a pawn contract. In the contract they have to mention the identification data of the parts, the sum which was borrowed, the time limit of the payment, the commission and the description of the good (denomination, weight or measure, quality and other necessary remarks).

The creditor (the pawn house) is not compelled to give the pledged good back before the debtor pays in full the debt, including the commission for the sum which was borrowed.

If the owner of the pledged good doesn't come to pay the debt and the commission when the time limit expires, the pawn house will become the owner of the good. Having this quality, the pawn house can have as an option to sell the good or to keep for its own needs. Therefore, the pawn house can have as an object of activity both lending activity specific to the credit institutions and specific activity for consignment because they receive goods as a pledge and specific activity for retail.

We have to mention the fact that, in what concerns the pledged goods which represent cultural goods remained in the ownership of the pawn house and which will be sold, the pawn house has to obey to the provisions stipulated in the Order number 1284//1996, emitted by the Ministry of Culture, for the approval of the methodological norms regarding the unique criteria of classification of cultural goods which are part of the national cultural patrimony and the pawn house must also obey to the regulation regarding the development of the commercial activities with cultural goods.

If the owner of the pledged good comes before the time limit and asks for an extension of the term for which the borrow has been granted, the contract initially concluded will be changed and will specify the new time limit and the supplementary commission calculated for the extended period of the contract.

The interests or the commissions perceived by the pawn houses in order to give loans represent incomes obtained from providing financial services which, according to stipulations from the Fiscal Code, are operations exempted of the tax on the added value. These incomes are exempted of the tax on the added value regardless if the personal goods which are left as a pledge by the debtor are returned or not.

In exchange, if the loan is not given back by the debtor, the pawn houses owe the tax on the added value for the sum it obtained from selling the goods which are owned by it. If, according to the contract concluded with the debtor, the goods are sold in a consignment system, the pawn houses owe the tax on the added value only for the margin realized as a result of the sale of the goods. In this situation, special stipulations established in the methodological norms of the Fiscal Code will be applied. According to these rules, in the case of second-hand goods sold in a consignment, the taxing base is formed from the sum representing the margin obtained (the difference between the price at which the good was commercialized and the sum owed to the owner of the good) from the sale of second-hand goods which belong to people who don't pay taxes on the added value or of goods which are exempted of the tax on the added value.

In this case, the tax on the added value which must be paid is determined through the application of the procedure of inflating one hundred on the margin representing the taxing base, the level of the tax on the added value being the standard level or the reduced level and the demandability of the tax on the added value interferes when the goods are sold.

The tax on the added value which is thus established may not be inscribed distinctively in the invoices or in other legal documents which are handed in to the buyer because the buyer can not deduct it so, in this case, the document should contain the mention "VAT included".

In order to determine the sum of the VAT for these operations in a fiscal period sale books or registers must be kept. They must be separated from the operations for which a normal VAT system applies where only the total amount of the sale document is written, including VAT. There are also purchase books in which only the second-hand goods meant to be sold in consignment are written.

The taxing base and the VAT sum which are collected for these operations in a fiscal period are determined according to an estimation elaborated for all the operations submitted to the special rules from that time and they are written in the VAT expense account.

The activity developed by the pawn houses generates the following categories of incomes and expenses:

Incomes:

- from the commissions collected as a result of the loans granted;
- from the sale of the pledged goods which became the property of the pawn house;
- from the value of the pledged goods which were retained in the patrimony of the pawn house for its own use;
- from interests at the treasury kept in the bank;
- from other sources.

Expenses:

- with wages and other debts related to them;
- with the rent (if the space is rented);
- with taxes;
- with the value of the goods which were retained and sold;
- with interests for the credits which were received;
- with the taxes on the profit.

The management of the pawn house is delimited in the following way:

- the pledged goods which are received temporarily in the management will enter into the book accounts with the help of the account 8033 "Material values received in custody";
- the goods which are entered determinately in the patrimony of the pawn house as a result of non-payment of the loan will enter into the book accounts with the help of reserve accounts taking into consideration the way of the good and its destination, for the own needs or for sale.

The incomes derived from commissions achieved by the pawn houses will enter into the book account with the help of 704 account "Incomes from performed services" – according to some experts or, according to other experts, they will enter in the 708 account "Incomes from different activities". The incomes achieved as a result of the sale of the pledged goods will enter the 707 account "Incomes from the sale of the merchandise". We consider as correct the first variant – 704 account "Incomes from performed services" – taking into consideration the fact that we are dealing with financial services.

In the literature of speciality there are two ways for the achievement of accountancy in book debts accounts in what concerns the operations performed by pawn houses:

- the first variant recommends the use of the 461 account "Different debtors";
- the second variant recommends the use of 2678 account "Other bound book debts".

The accountancy regulations regarding the functioning of the accounts mentions at the 2678 account: "with the help of this account one can keep evidence of book debts related to shares, to loans granted on long term and to other bound book debts, such as deposits and paid guarantees". Or the loan granted by the pawn house is a short term loan and its recording in the bound category is not justified. Consequently, the 461 account "Different Debtors" seems to be the best solution in order to account for this operation. From our point of view, we consider useful to

adjust the general plan of accounts through the use of a book debt account specially created in class 4 whose denomination may be “Pawn – granted loans”.

The development of the analytic accounts which will be used can be done according to necessities. For example, the 461 account “Different Debtors” can be analytically developed so that every natural person can take advantage of a loan. The 704 account “Incomes from performed services” or 708 account “Incomes from different activities” can be analytical developed, too, for the incomes derived from the commissions perceived when the loan is granted and for incomes derived from the commercial margin obtained if the sale of the pledged goods is done in the consignment.

Application

On 01.08.X, the pawn house S.C. “Alfa” SRL concludes a contract with a natural person “Popescu Ion”, the owner of a set of golden jewels Based on the contract the natural person is granted 1000 lei for 12 months. The natural person will pay to the pawn house 20% commission.

Commission = 1000 x 20% = 200

Book keeping recordings

To grant the loan:

2678 “Other bound book debts”	5311 „House in lei”	1.000
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and, at the same time, out of accountancy the pledged goods received are registered

8033 „Material values received in custody”		1.000
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At the time limit there can be several situations:

a) the natural person refunds the value of the loan without asking to prolong the refunding term of the loan

The interests or the commissions performed by the pawn houses in order to grant loans are considered incomes derived from performing financial services which, according to stipulations from the Fiscal Code are operations exempted of VAT, regardless if the personal goods left as a pledge by the debtor are returned or not.

5311 „House in lei”	% 2678 “Other bound book debts” 704 „Incomes from performed services”	1.200 1.000 200
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At the same time, the pawn house will return the goods from its custody to the owner

	8033 „Material values received in custody”	1.000
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B) The pawn house decides to retain the good in the patrimony of the society, as an object of inventory

The characteristics of the goods received as pledge:

-1 chain 5 grammes = 250 lei

-1 set of earrings 10 grammes = 500 lei

-1 bracelet 5 grammes = 250 lei

Total: 20 grammes = 1000 lei

The goods retained as inventory objects are recorded through compensation with the loan granted:

303 „Materials related to inventory objects ”	2678 “Other bound book debts”	1.000
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The market value of the price of one gramme of gold is 55 lei per gramme, so the evaluation of the set is done in the following way:

- 1 chain 5 grammes = 275 lei
- 1 set of earrings 10 grammes = 550 lei
- 1 bracelet 5 grammes = 275 lei
- Total: 20 grammes = 1100 lei

The inventory objects are recorded at their market value (the difference until the market value is considered an income):

303 „Materials related to inventory objects ”	758 „Other incomes from exploitation”	100
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C) The natural person doesn't refund the loan at the time limit and the pawn house decides to sell the jewels

If the debtor doesn't refund the loan to the pawn house, the pawn house will owe VAT for the value obtained from the sale of the goods which have become its property.

Evaluated price: 1000

Trading accession: 50 % 500

VAT 19% 285

The entry in the management of the retained jewels sold as merchandise to the thirds:

371 „Marchandise”	% 2678 “Other bound book debts” 378 „Differencies in price at the marchandise” 4428 „Non liable VAT”	1.785 1.000 500 285
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At the same time, in order to get the pledged goods out of the management

	8033 „Material values received in custody”	1.000
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The sale of the jewels to a third:

5311 „House in lei”	% 707 „Incomes from the sale of the marchandise” 4427 „Collected VAT”	1.785 1.500 285
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In order to get the sold merchandise out of the management:

% 607 „Expenses concerning the marchandise”	371 „Marchandise”	1.785 1.000 500
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378 „Differencies in price at the merchandise” 4428 „Non liable VAT”		285
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The VAT liability:

4427 „Collected VAT”	4423 „VAT to pay”	285
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VAT payment in the month following the one to the sale of the jewels:

4423 „VAT to pay”	5311 „House in lei”	285
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D) The natural person asks to prolong the refunding term of the loan with 2 months:

Date of the limit time: 01.10.N.

For this operation, we suppose that an extra commission of 15% is perceived

Commission perceived: $1.000 * 15\% = 150$

In the 8033 account the following sums are added.

· *supplementary commission = 150 lei*

Total amount to pay (01.10.N) $200 + 150 = 350$ lei to be paid

· *Loan granted = 1.000 lei*

GENERAL TOTAL = 1.350 LEI

NOTE

If the natural person comes at the limit time and refunds the loan it will be proceeded according to the situation A). If not, it will be proceeded according to the situations B) and C).

E) The pawn house in agreement with the owner retains the commission perceived from the granted loan

Commission $1.000 * 20\% = 200$

Granting of the loan, payment of 800 lei and retaining of the jewels which are worth 1.000 lei:

2678 “Other bound book debts”	5311 „House in lei”	800
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At the same time, out of accountancy, the pledged goods are recorded with all the value of the granted loan of 1.000 lei:

8033 „Material values received in custody”		1.000
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At the time limit, the owner of the jewels refunds the loan granted and the commission:

5311 „House in lei”	% 2678 “Other bound book debts” 462 „Different creditors” 704 „Incomes from performed services”	1.200 800 200 200
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At the same time, the pawn house will return the goods from its custody to the owner:

	8033 „Valori materiale primite in pastrare sau custodie”	1.000
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If, at the time limit, the owner doesn't refund the sum representing the value of the loan, the pawn house becomes the owner of the jewels and gives him back the difference until the initially evaluated value

462 „Creditors”	5311 „House in lei”	200
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