

## 13 ABSTRACT

Theme of this dissertation is „Legal and economic aspects of securitisation“. The main goal of the dissertation is to perform a comprehensive legal analysis of the issues relating to transactions, which can be termed securitisations, regarding also related economic aspects, while focusing especially on the analysis of special public law regulation of certain aspects related to securitisation under Czech law.

The dissertation contains nine chapters. The first chapter specifies the theme of the work, its content, structure, main sources, goals and methods applied.

The second chapter provides the basis for the subsequent legal analyses elaborated within the following chapters, as it deals with the general meaning and purpose of securitisation, its definition under applicable law, a standard structure of securitisation transaction and most common products of securitisation including evaluation of their character under Czech law. The essential issue rests with the interpretation of the general definition of the term securitisation in a way it is accepted in financial sector, it means as a tool of structured finance that covers all possible variations of securitisation transactions, as well as the interpretation of the definition of the term securitisation with respect to special public law regulation. In order to provide a complete overview of securitisation this dissertation provides also an introduction into history and economic aspects of the securitisation.

For the purposes of legal analysis of securitisation in the Czech Republic this dissertation follows the standard securitisation transaction process, provided that it deals primarily with traditional securitisation transaction. Synthetic securitisation is analysed only marginally, as it belongs rather to derivative transactions that are not subject to this dissertation.

The third chapter is dedicated to analysis of the common issues of the law applicable to securitisation transaction, focusing namely on identification of the applicable legal provisions with the emphasis on European law regulation, and on determining of scope of application of these legal provisions.

The fourth chapter forms the substantial part of the dissertation and it deals with the analysis of each particular step in securitisation transaction with the focus on possible problematic aspects. With regard to the fact that the Czech law does not provide for special regulation of the entire securitisation process, it is necessary to apply legal provisions regulating the most similar legal issues to many steps of the securitisation process, that is, the analogues application of relevant legal provisions would be necessary.

The Czech law contains special public law regulation of certain aspects related to securitisation transaction, which transposes the corresponding European law regulation. This specific regulation contains rules on risk transfer in connection with securitisation, which applies if credit institutions (Czech banks and credit unions] participate on transaction as the originator or person acquiring risk in securitisation. I perform the legal analysis of particular obligations of Czech banks and credit unions within the chapters of this dissertation dealing with the issues, to which such obligations relate.

With respect to individual steps in securitisation process I pay attention to the following issues: gathering the assets by the originator, establishment of the specific purpose vehicle, transfer of the assets (with the focus on transfer of receivables) to the special purpose vehicle, issuance of asset-backed securities, public offering and admission to trading on regulated market, related disclosure obligations of issuer, selling the securities to the investors and related requirement on retention of economic interest in securitisation by the originator or sponsor and disclosure obligations of the originator towards the persons who acquire risk in the transaction and towards the investors.

On the basis of the analysis of the asset gathering I conclude that this step need not necessarily to be part of securitisation process as also a single originator's asset may be the subject to securitisation. However, in a majority of cases the originator will gather and subsequently transfer a group of its assets (mostly receivables).

Provided that the originator is a bank or credit union, they will be obliged to apply the same sound and well-defined criteria for credit-granting to assets (exposures) to be securitised in the future, as they apply to assets (exposures) to be held on their book. At the same time the bank or credit union have to assure already within the creation of assets to be securitised that they will have at their disposal all information to be disclosed to the investors within the securitisation transaction.

Within the analysis of establishment of the special purpose vehicle I analyse especially the possibility of establishment of such special purpose vehicle under Czech law, which would fulfil standard requirements imposed on securitization transactions. I deal namely with the issue of the bankruptcy remoteness of such vehicle and isolation of assets transferred to vehicle from its other assets.

Within the analysis of the transfer of assets (receivables) to special purpose vehicle I deal especially with the obligatory content of such transfer agreement under Czech law, identification of receivables that may be transferred under Czech law and risk of ineffectiveness of such transfers namely in connection with initiation of insolvency proceedings against the originator.

The issuance of asset-backed securities relates to the issue of determination of character of such securities under Czech law. I conclude that these securities represent innominate securities, which are most similar to bonds under Czech law. Accordingly, the issuance, public offering, admission to the regulated market and issuer's disclosure obligations are subject to legal regulation applicable to bonds and in general to investment securities.

I pay special attention to question of acquiring a credit risk in securitization (that is, provision of credit enhancement to securitisation transaction and investment into securitisation), as this area is explicitly regulated and is applied when banks or credit units participate in securitisation transaction.

Banks and credit units can acquire credit risk only in securitisation, where the originator inform them in a standard, defined way that it keep the net economic interest in transaction, while banks and credit units are obliged to understand all structural features of transaction.

Banks and credit units investing into securitisation shall proceed with due care and they shall perform due diligence before investment to securitisation. This include the obligation to understand (provided that they must be able to demonstrate such understanding to competent supervising authority, that is, to CNB) the risk characteristics of individual securitisation positions, methodology of assessment of underlying exposures and to monitor on an ongoing basis the performance of the underlying exposures during the existence of the investment. Bank is also obliged to assess the originator's reputation and take into consideration previous originator's failures.

The violation of specified obligations by the bank or credit union in any important way lead to sanction in the form of additional risk weight applied by CNB to securitisation positions held by bank or credit union.

The fifth chapter deals with the analysis of regulation of capital adequacy applied on banks, credit units, securities traders and investment arrangers in connection with securitisation. As this issue forms relatively separate part of legal regulation of aspects linked to securitisation, it is dealt with in separate chapter.

In the sixth chapter I analyse additional obligations of the participants to securitisations, that is, banks, credit units, securities traders and investment arrangers.

The seventh chapter deals with the international comparison with foreign legal regulations and it contains especially analysis of French legal regulation of securitisation and public law requirements applicable on securitisation transactions under German law.

The eighth chapter provides introduction into current trends in securitisation industry, that is, current state of securitisation market and introduction to covered bonds as alternative products to products of securitisation, which keep getting more and more popular by the investors.