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LEGAL SUPPORT of INVESTORS' INTERESTS IN THE COURSE of SECURITIZATION of ASSETS

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The problem of investing in the modern period is becoming a complicated process. Foreign investors choose securitization of a different type, unlike investors in post-Soviet countries, which raises certain questions related to the difference in legal and economic systems, a number of investors do not receive legal protection and refuse securitization.

The term securitization originated in the early 80s of the 20th century in Europe, when the most significant changes took place in the field of banking and investment. Banking capitalism was replaced by a new system – the system of issuing securities. In the United States of America, securitization became widespread in the 1970s. Despite the difference, the types of securitizations varied, which led to minor securitization patterns in the country. In the UK, business securitization did not come until the mid-1990s, and since then this process has become more and more common in other countries, for example, in Australia, New Zealand and even in Malaysia. One banker at Nomura, the bank that arranged the Malaysian deal, said «We've broken ground in Asia, and have lawyers and international rating agencies on board in structuring this kind of a deal» [1, p. 524].

However, before delving into the securitization system, one should pay attention to the fact that this concept arose during the reform period and the 1982 global crisis. The crisis affected almost all spheres of life, especially ones related to the economy and money, so it was decided to introduce certain requirements for banks in order to avoid such losses. Basel Accord No. 1 was adopted in 1988 and became one of the first documents thatformalized the norms and principles of banks' operation. Basel I is a set of international banking regulations put forth by the Basel Committee on Bank Supervision (BCBS) that sets out the minimum capital requirements of financial institutions with the goal of minimizing credit risk [2]. Thus, the agreement establishes a target standard ratio of capital to weighted risk assets in the amount of 8%, of which the main element of capital becomes at least 4%. During 2008, for the first time since the 1930s, the world economy experienced a systemic financial crisis: on September 18, the international financial system was on the precipice of collapse, and global credit markets essentially ceased to function for the following four weeks [4, p. 91]. That is why later two more Basel Accords were adopted, determining the norms and standards of banks' work. The securitization process is developing rapidly, for example, by the end of 1994, more than $ 1.9 trillion securitization securities were outstanding, and more than $ 500 billion of securitization transactions were done in 1994 alone [3, p. 1062].

The changes directly affected the banking system and fundamentally reformed the financing system. As a result, banks no longer saw their main function as a financial intermediary, but directly began to attract and use financial assets as additional ways to raise funds. In this regard, a new term appeared – asset securitization. According to some researchers, securitization is a method that firms use to raise finance. This type of transaction involves the purchase of securities that are payable by collecting the firm's receivables. It is a complex process compared to many other financing methods, but it is also effective. Complexity is rarely without cost. With the rational use of resources and opportunities, the securitization process will provide advantages that are not found in simpler financing methods. The securitization process is built around assets, securities and company ownership. The start of securitization will be the desire of the asset-holding company to remove certain assets from the balance sheet. In economics, such a company is called an «originator». Basically, these are the assets or loans that no longer need service or the sender decides to stop this process. Such a promotion is understood as a «reference portfolio». On the other hand, the originator sells this portfolio to the issuer, which creates equity securities. The issuer refers to a special purpose company (SPC). It is created for the purpose of providing a loan to a company that needs funding. At the same time, the SPC receives from investors the amount of money for which it makes a loan. Consequently, the SPC is already becoming a secured lender due to the existence of fixed and floating payments on assets against the borrower. It becomes clear that without the regulation of such processes, numerous violations will be committed, therefore under the bankruptcy laws of the United Kingdom and other jurisdictions that have used this transaction structure, secured creditors of a company approaching insolvency can appoint a receiver who controls and manages the company purely for the creditors' benefit [1, p. 525]. Investors will be interested in buying these securities with a certain income.

Any economic process entails risks. In securitization, such risks are referred to as tranches included in the reference portfolio and containing assets. Each tranche has a different degree of risk and different income, investors themselves determine which tranche is suitable for them. Higher levels of risk warrant correspondingly higher interest rates. The form is the simplest: the higher the risk, the higher the income. Securities have tangible assets, but there is no guarantee that the assets will have original value or exist if the debtor stops paying.

It is necessary to pay attention to the types of securitization. In the modern economy, there are three types of securitization: American (real), synthetic and business, but if we consider the most popular types, then this will be mortgage-backed securities (MBS) and asset-backed securities (ABS).

During the course of economic development, MBS is distributed through the so-called intermediaries, such chains continue in the modern world. The procedure starts from the moment the loans are sold to the entity (initiator). In this case, the bank sells several loans, gradually consolidating them into the portfolio described above. It must be said that the one who sends does not have the ability to follow the process of granting loans, as well as the quality of those who are borrowers. Therefore, the more knowledgeable the seller is, the higher the guarantee for a quality product and service will be. The originator – the first buyer of the MBS portfolio – can be an independent firm or a subsidiary of a large bank [5, p. 168]. The process consists of purchasing MBS portfolios with the aim of selling them to a larger bank. a large bank, commonly called the «seller», would then resell the portfolio under the «Mortgage Purchase Agreement» to another financial intermediary called the «buyer» [5, p. 168]. The mortgage purchase agreement also includes a companion agreement «Pool and Service Agreement» [5, p. 168]. Such an agreement includes three parties: the seller, who is the «depositor»; an entity called «service personnel» whose task was to service loans and a trustee. This pool is then sold to a government agency. In this type of securitization, investors bear significant risks, for example, incur losses when there is a closure or termination of payments that debtors must make, despite the fact that the investor has the right to pay them.

As a rule, MBS is the type of securities that is directly related to real estate and is created in situations when it comes to a large number of loans.

On the other hand, asset-backed securities (ABS) are pools of loans that are packaged and sold to investors as securities, but this is not a government issue. This type of securitization typically includes residential mortgages, credit card receivables, car loans, home equity loans, student loans and boat loans, and so on. The securitization of asset-backed securities began in 1970. Due to this, all of the above assets were sold to the private sector in the form of securities. Smart financing allows lending to be practical and cost-effective for senders, as well as being in direct contact with investors. In addition, credit enhancement devices such as letters of credit, sureties and collateral, which may be required to obtain an investment grade rating for a proposal, often result in ABSs having a higher rating [6, p. 143]. An important aspect is that the income from ABS, which is not related to real estate, is higher than that of MBS. In addition, the ABS differs from the MBS in that it provides more flexibility on the maturity of the bonds, which is beneficial to both parties.

The credit card issuer pledges the accounts and receivables to a master trust. The master trust then sells the securities to investors. The credit card issuer keeps an interest in the master trust and the interest, principal collections, and defaults return to the bank [7]. ABS can be understood as pass-through or asset-backed bonds. In addition, it is important to understand that the value of an asset's cash flow can be determined, but depends on the choice of the structure and characteristics of the asset's cash flows, for example, prepayment, delay or default, along with this, the organization must decide on the transfer or retention of ownership [6, p. 146].

Unlike the previous type of securitization, here the right to assets belongs to the trust and investors bear certain risks that are associated with default or early repayment. Payout tools, as already mentioned, are more flexible and sensitive to changes and trends in the market. Pass-through bonds represent the debt of the issuer secured by a pool of assets and are pledged as collateral for payments of principal and interest on the bonds [6, p. 146]. ABS represent direct obligations of the issuer, which attracts investors in this type of securitization. The fact is that in the ABS it is possible to talk about the security of bonds with a discrete pool of assets, which is accompanied by a safe payment with a specified interest income and a fixed maturity. At the same time, the assets still exist on the issuer's balance sheet.

Asset-backed credit card securities have two main periods after issue – a revolving and an amortization period [7]. The first period assumes that investors temporarily receive only interest until the revolving period ends. It is believed that such costs allow to make purchases of new receivables, as well as resolve issues with short-term credit card loans. The second period means that here the principal amount that is received serves as a means of payment to investors, but not immediately, but within a certain period and in equal amounts, with their reasonable control.

Thus, it becomes clear that investors will be based on personal interests, which will determine their choice in matters of securitization. The choice of the type of securitization depends directly on external circumstances, capital and other factors. a distinctive advantage of securitization is the achievement of the result with less costly, but long-term financing. Along with this, scientists and practitioners draw attention to the fact that securitization is precisely a form of financial and investment activity. Therefore, it has a wide range of applications, which was mentioned above. In order to fulfill their financial obligations, securities may be issued and this process will be considered as an asset. It is securitization that makes it possible to build a self-financing system in the early stages of asset creation. In the process of issuing securities, there is a process of attracting external financial resources secured by payments.

Many scholars draw on the experience of the United States of America in securitization issues. History shows that at the time of the crisis, the GSE corporation was created, which set itself the goal of improving the financial condition of banks and the country, as well as reducing risks for investors and other owners of capital. At the time of this program, lending performance improved from 2000 to 2003, but deteriorated sharply from 2004 to 2007, when intense competition forced the GSE's influence to decline. Despite this, the loans that were attributable to the GSE remained in an advantageous position as they were less prone to default than other financial institutions. Michael Simkovic believes that recent experience in the U.S. mortgage securitization market illustrates how competition between financial institutions seeking market share can destabilize financial systems and ultimately result in losses to taxpayers [8, p. 271].

In conclusion, it should be mentioned that securitization has been developing over the years and still its process forces many researchers to disagree with each other. Its action is aimed at preventing financial crises and collapses, as well as eradicating the possibility of repeating the mistakes of the past. Investors are actively interested in the securitization process and choose the most suitable assets for investment.

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