

The Loan Agreement

SKENDER GOJANI, PhD
Faculty of Law
Peja, "Haxhi Zeka" University
Kosovo

Abstract:

The loan agreements are among formal contracts, because according to its legal provisions, it must be done in writing. The contract for loan is a load contract, because the user of the loan always pays to the bank pays the contracted interest, even when it is not specified in the contract. In these cases, in cases where the interest is not contracted, the borrower is obliged to pay the interest to the bank as specified by law.

With the loan agreement, the bank, the creditor, the creditors is obliged that, the borrower, the debtor to make available the amount of contracted cash flow for the specified or not specified period, for the intended or indefinite purpose, on one side, while, the borrower, debtor is obliged that, during the period of credit use, to pay monthly instalments with contracted interest to the creditor, in case of delays to pay the moratoria interest, contracting banking provision and, at the end of the contractual period to finish all the obligation by taking over with a contract.

Key-Words: loan agreement, bank, creditor, borrower.

Introduction

The loan agreement represents one formal contracts and very important in the relationship between borrower and lender (creditor and debtor).

With loan agreement, banks, creditors, the creditors is obliged that, borrower, the debtor to make available the amount of contracted cash flows for the period specifies or no specifies period , for the intended or indefinite purpose, on one side, while, borrower, debtor, is obliged that, during the period of use of credit, lender to pay monthly instalments with contracted interest, in case of delays, the moratoria interest, the contractor banking provision and, at the end of the contractual period to finish all the obligation by taking over with a contract.

Even in the case of arranging loan agreement, as in other contacts it is considered the freedom principle of contracting, which by society and lawmakers side is guaranteed that the contract concluded between the contracting parties has the effect of law for them (*contractus contrahendibus lex est* –that what the contractors have determined in the contract is the law for them) or "*pacta sunt servanda* '.

It is obvious that loan agreement creates juridical effects between parties and does not create legal effects against third persons' *res inter alios acta* ".

Loan Agreement

The issue of loan agreement, is with social and economic particular importance of interest, because also to the social interest to legally regulate that subject.

Loan agreement, even though the report and legal work - business, in which, mainly applies the principle "Ius Dispositivum", however, in considerable aspect it is legally considered as civil law, contract law, the tout law, law for business entities, law for financial organizations, law for commercial papers etc. Lending and contracting for credit, is one of the most significant business transactions in banking activities.

With loan agreement, banks, creditors, owed to creditors, borrower, the debtor to make available the contracted amount of cash flow for the specified or indefinitely period, for the intended or indefinite purpose, on one hand, while, borrower, debtor owes that, during the period of use of credit, to creditor to pay monthly instalments with contracted interest, in case of delays, the moratoria interest, the contracting banking provision and at the end of the contractual period to finish all the obligation by taking over with a contract.

The loan agreement is a contract bilateral, labelled, usually expressed in monetary value. For the sake of importance loan agreement, even with the legal provisions, is required that agreement to be in written and with formal character. The form of loan agreement is a validity of its condition *Conditio Sine Qua Non*, with loan agreement, *ex leges*, it should be set the amount of the loan with the terms of receiving the loan and its return.

It is worth to highlight the particular of the loan agreement which consists of bank lending authority that, it, even before the expiration of the contract, may revoke the contract unilaterally when it determines that the borrower is not using the loan according with the contractual destination. Debtor borrower falls in insolvency, even when that fact is not actually verified by court procedures, business entity, the debtor bankrupt or dies, in that manner that the creditor in non-circumstances would be put in an unfavourable legal position.

However, the lending bank, such situations should this confirmed, otherwise, it would respond to the borrower due to unauthorized exit from the contract and that it should be compensate.

On the other hand, the borrower, even in conformity to the liability law, may leave the contract for loan agreement, prior using of credit, when you can repay the loan before the stipulated term, to what earlier to inform the credit bank; also, if credit bank, would suffer damage, that damage, the

borrower would have been obliged to give reimbursement for the damage caused.

When the borrower, return the loan to the creditor before the deadline specified in the contract, he is not obliged to, from the date of liquidation of the loan early, until the expiration of the contract, to pay the contractual interest, on one side, nor the credit bank would not have the right that for that period, to take the contractual interest, on the other hand. To avoid ambiguities in the interpretation and application of these provisions, whenever, particular importance have the contractual provisions between creditor and borrower.

The Difference between Loan and Borrowing

The loan agreement differs from borrowing agreement for the fact that:

- In the loan agreement, mainly is the bank, while in the borrowing agreement, the lender except the bank can be each natural or legal entity;
- The loan agreement is realized with money, while the borrowing agreement with money and other goods;
- In the borrowing agreement, unlike that for loan agreement, the borrower usually is authorized by the lender to dispose with the borrowing thing, even, times to times, to dispose it as owner;
- The borrowing agreement can be practiced also from other business entities despite banks as creditor;
- While borrowing can be practiced with interest rate and without interest rate, the loan cannot be imagined to be applied without interest rate, because, precisely, the interest rate is one of the most important profits of crediting - banks and,
- While the loan agreement, practically, is a formal contract, the borrowing agreement, can be the same, but is practiced as non-formal contract.

In practice, in conformity with the loan types, the loan agreement are manifested in different forms.

According the juridical-credit reports lengths, loans, also loan agreements, can be: short term, usually up to one year; medium term, from 1 year up to 5 years and long term, usually more than five years;

According the creditor character, loans can be:

Bank, public, business loan, in which the creditor can be business entity, as it is the company, corporate etc. and foreign, when the creditor can be the state or other state entity of the foreign state.

Meanwhile, according to the nature of the activity, loans can be:

Industrial, municipal, craft, agricultural, residential, etc.

Credit, according to the form in which it is given, it may be:

Commercial, goods, monetary-goods.

Credit, depending on the economic destination and the use of funds earned with loan agreement, may be:

Manufacturing, consumer-spending, investment.

According to the form of ensuring orderly return of credit, credit can be:

Personal, which is practiced when the lender believes the borrower's personality and, in that faith, afford the loan. This business work is more applied and affirmed in the Albanian customary law (*fiducia*), mainly based on trust, say the man, honor, name, fame and notoriety, however, in actuality, for different reasons, is preferred the real credit application;

Real- covered or supported, based on the contractual instrument for securing the request of the creditor and the debtor's obligation, such as hostages, mortgages, bank guarantee etc.

Instruments for Strengthening the Loan Agreement

Credit, according the instrument to strengthen, more specifically the execution of the loan agreement, can be practiced in the form:

Mortgage respectively **Lombardy**, in which is practiced the mortgage of commercial paper, of the consumer (special commercial paper) or precious item "safe contract". Often is practiced the *relombard*, in which the bank, which, earlier, by contract has obtained a right of pledge on commercial paper or precious item, to acquire loan from other banks, to that bank award in mortgage the same mortgage. Loans under the Lombard practice are allowed up to 80% of the value of the Lombard facility. Lombard legal work accomplished with bilateral contract, onerose, formal, consensual and labeled, to which, in the case of a legal vacuum, apply adequate provisions for loan agreement. With loan agreement on the basis of pledge of commercial paper, the bank approves loan of specific amount with the insurance of treasury bills which is owned by the users of credit. Lombardy credit is realized through loan agreement, except commercial paper, mortgage for the Lombarde loan can be also the precious item, item with distinguishing value, in general;

The pledge of commercial paper or precious item, in which case, the bank is obliged to borrower to make available the certain monetary amount, for a (un) certain time, with or without interest rate, with or without certain destination and borrower or credit user as pledger, at the moment when he liquidate the loan under the contract, to return to the previous regular situation the collateral pledge. On the other hand, the borrower - the pledger, is obliged that to the bank- pledger, to provide mortgage the contracted collateral and to pay the loan amount in conformity with the loan agreement

at the same bank; Lombard contracts, despite the standard substantially elements, in conformity with the law, has the naming and definition of pledge collateral with the amount or value of the pledged collateral, the pledger address, loan amount, annuity and contractual interest rate;

Eskonte, as a special bank job with mixed elements of loan agreement and the contract for the purchase of commercial unexpired papers; When the owner of commercial unexpired paper has urgent need for cash, in compromise with the bank, from that bank lends monetary loan and, award mortgage unexpired commercial paper, therefore that bank can put pledge the unexpired commercial paper at the other bank and, from that to realize loan for itself.

In that case, is practiced *reeskonti*; therefore it can be applied *diskontim* of unexpired commercial paper, so, it can be sold to the bank and, the transaction is usually done through the commercial paper; from the moment of buy-sell of commercial paper, it passes from the former owner in the purchasing bank, in the active of its assets; in those transactions, are used the terms "sale", "buy-sales" or "diskontim" which, practically are synonymous;

Diskonte when the nominal value of the commercial trade paper is determined by its value on the day of diskonte; banks, as the buyer, to the seller of commercial paper, retains the right to regression, otherwise, when the contract for diskonte, to suppose the unexpired bill, exclude the right of the of acquiring bank for regression.

Forfeit, which consists on *diskontim* of commercial unexpired paper, in which case, purchasing bank, explicitly exempted from authorization for regression of commercial paper purchased only with respect to fertility but not with its variety, for that reason also the price of commercial paper discounted according forfeit, compared with its *diskontim*, it should have been a bit above. In practice, often are applied buy-sell transactions of unexpired bills of exchange, in which case, the buyer assumes once their execution and so exclude his possibility to make the regression against the seller, however, the obligation of vendors unexpired exchange bill, remains latent, even though, with eventual clauses in the transaction of *diskontim* forfeit, he takes out the responsibility for himself in that direction of;

Factoring bank contract to which the client provides the bank or other business entity to sell short-term requirements of the contract for delivery of goods or the provision of services before expiration, while the factor bank liable to compensation of the offer, the same, accept it regardless of the transaction, the client or factor, keeps the risks for collection of demand. The contract for factoring involves several juridical institutions, the first (a) Cesion; (b) Pre-contract and, (c) the essential elements of the contract for buy

and sale. With factoring contract, practically, can be violated requirements from any contract, but, primarily, the requirements of the delivery of goods or services and requirements arising from the customer's business activity; also, with the contract for factoring insurance company requirements can be violated, contractual requirements for storage, reimbursements requirements, shareholder demands from his shareholding company ...;

The contract for factoring is labeled, consensual, bilateral, onerous and commutative; Buyer - service or application factor, practically takes over the contractual responsibility of the third party, *stare del credere* that consists in taking over the responsibility for collecting the request of (Ehling, H., *Zivilrechtliche Probleme der Vertraglichen Ausgestaltung des Inland - Factoring, Berlin, 347*); the debtor's payment capacity is expressed in the contractual risk of factor-bank or other business buyers.

Factoring is applied in the form of "Old Line Factoring" U.S.A., GB, or "Echte Factoring" in Germany etc. After factoring contractual, the factor, the purchasing bank notifies the debtor of seller who then becomes a debtor of factor and, with that transaction, is practiced the transfer of request of the seller - buyer client - factor; with the notification, informing the debtor client vendor, it remains debtor factor buyer and considered immediately after contracting searchable and is known as "Conventional Notification Factoring". Factoring is applied in international business transactions in the same proceeding in domestic relations with that, at least a contractor should be external. In international factoring, regularly are presented four subjects: (a) the seller - the client; (b) local factor; (c) the foreign buyer and (d) the external factor in the buyer's country; for the unification of rules which refer to international factoring, UNIDROIT has concept the Contract for International Factoring which in 1988 ended in the Convention of Contract for International Factoring

Banking transaction for accepting, in which case, the bank does not afford the consumer the money but it accept bill of exchange, respectively the commercial paper, with the aim of increasing its prolificacy and quality, then, that accepted bill of exchange, its owner may use primarily in the lending function, with that, banks, for that commercial paper is the main debtor. The expiration of commercial paper taken for granted by the bank, is lending of banking client, the owner of the exchange bill. The exchange bill can be used as a means of payment and as an instrument for strengthening the credit contract;

Reimbursement work, which mainly is practiced for foreign trade credits, so that the bank grants loans to the importers, often, with his coverage of documents of goods and, it made available to exporters. Reimbursement loan is practiced with various combinations. With reimbursement loan is avoided the eventual scepticism of exporter from the importer, on the one hand and,

the importer, who may even be unknown enough, with it "he is armed" and "promoted" as a serious importer, on the other hand;

Vinkular work, in which the bank, for anti-service, is equipped with documents of goods of the importer, from that he ensures for the correct implementation of the contract of the loan. When the bank realizes the payment of the loan, then, the bank returns the documents of goods of importer- vinkulare loan user;

Accordinging the conditionality with interest rate, the loan may be with interest rate which may be contractual regular. The contractual interest rate is payable from the date of commencement of loan to its liquidation, whereas the *interkalare* interest is payable from the date of contracting until the day of commencement of loan without interest rate.

The loan can be requested and granted intentionally or unintentionally defined: for annual leave; medication; for hiking and recreation; Purchase or "personal needs", in the form of:

The (un) defined or the (un) intended), in practice, it often happens that, loan seeker defines the creditor "purpose" which the lender allows, but, then, the borrower, the former loan seeker, the allowed loan uses for other purposes; for example, requires loan for agriculture or livestock and the approved funds for that purpose uses for a vehicle purchase!

By the method of loan repayment, the loan can be: The one time lapsed (gets € 100,000, and that sum is obliged to repay to that sum in the specified date in the contract); **Many time lapsed** (the borrower receives € 100,000 and that sum is obliged to repay in three periods and that in proportional amounts and **amortization** (which sum is repaid back with annuities, including in them the monthly interest;

Conclusion

From this work we have achieved to understand the theoretical viewpoint, but above all the Juridical-Entrepreneurship perspective of contract for loan, form of contract for loan, and the essential elements and clauses of loan agreement. Loan agreement represents one of the formal contracts and very important in the relationship between borrower and lender (creditor and debtor). The contract is a legal action through which one or more parties create or extinguish a legal relationship. It is a key element of business relations. It should be based on a legitimate cause. The object of the contract shall be determined and determinable.

So, from this paper, we managed to understand that the contract is an instrument and very important contributor of obligations under mandatory law, and also represents a central institution within the legal communication between the contracting parties

LITERATURE

1. SMAKA Dr.Sc.Riza, GOJANI Mr. Sc. Skender, The Business Right, Prishtina 2012
2. DAUTI, Dr. Nerxhivane, Mandatory Law, UP – Juridical Faculty, Prishtina 2003
3. GORENC, Vilim, Fundamentals of the Business Law Statutory and Contractual, Prishtina 2010,
4. KRASNIQI, dr, Armand, University of Prishtina, The School of Business, Peja 2012
5. GOJANI, Skender, GLOSSARY LEGAL TERMINOLOGY, Prishtina 2013
6. SEMINI (TUTULANI), Dr. Mariana, The Contractual and mandatory law, General Overview, Tirana, 2002.
7. KRASNIQI, Armand, The Business Law, Dukagjini, Peje 2014
8. Commentary of Mandatory Law, Book I, Ministry of Justice, Prishtina 2013