Akhmetzyanov R.E., Vakhitova G.V.**The pledge of rights under a Bank Deposit contract***Bashkir State University
(Russia, Ufa)**doi: 10.18411/lj-02-2020-128**idsp: ljournal-02-2020-128***Abstract**

The article discusses the features of pledge of rights from the contract of Bank Deposit, the specificity of the security of Bank deposits of certain types, for example, contributions in favor of third parties, considers the correlation of the collateral obligations, rights and security of Bank deposits.

Keywords: The Bank Deposit agreement, the Deposit pledge account.

From 1 July 2014 in the civil legislation of the Russian Federation provides practiced in public circulation up to this point the pledge of rights from the contract of the Bank account¹.

St. St. 358.9 – 358.14 of the civil code establishes rules of conclusion, fulfillment and termination of the contract on pledge of rights from the contract of the Bank account.

The substance of the pledge of rights to funds in a Bank account boils down to the right of the mortgagee to withdraw funds from the account or transfer the rights of the owner of the Bank account in case of default of the main obligation, secured by collateral.

Meanwhile, a new type of Deposit can be applied not only to the rights of the holder of a Bank account, but in respect of rights to the Deposit at the Bank (item 8 of article 358.9 of the civil code). According to this, the rules of articles 358.9 - 358.10 of the civil code shall apply to the pledge of rights from the contract of Bank Deposit. However, this provision of section 8, article 358.9 of the civil code contains no provisions that these articles of the Code do not apply if it is contrary to the essence of the contract of Bank Deposit.

But such cases are theoretically possible. So, it is impossible to conclude a contract of pledge of rights on Deposit in the Bank, if funds are not deposited in the Bank as Deposit. This is due to the fact that it is impossible to open Deposit account without listing the Bank cash, in contrast to current/personal accounts (Bank accounts under Chapter 45 of the civil code). In such cases, the contract of pledge is concluded.

There is another option, blocking the use of the Institute of Deposit Deposit. Thus, article 842 of the civil code provides the possibility of concluding a contract of Bank Deposit in favor of third parties.

To Express the third person's intention to enter into a debt relationship for the contribution, a party to the contract (investor) remains who have invested funds in the Bank subject.

At first glance he original depositor owns unrestricted rights to available cash. This is evidenced by item 2 of article 842 of the civil code.

However, is it possible to burden the key to the right of the depositor for cash, if the property is intended to a third party?

Here face formal logic and the substance of the obligation.

If the answer to this question must be borne in mind.

First, the rights and obligations of the subject of civil law can empower themselves only by their Autonomous will, and the will.

Second, when regulating these relations must adhere to the conciliation, i.e., at each stage, the subjects must agree to limit their property rights:

- mortgagee, not a Bank, shall be notified to the pledgor (the original contributor) that the Bank Deposit contract is concluded for the benefit of a third party;
- when expressing a third person's intention to enter into the rights of the depositor, the pledge agreement of the Bank contribution should cease if the third party within a reasonable time not agreed to assume the obligations of the mortgagor.

If the third party is unequivocally expressed waiver by the contract of Bank Deposit with a specified time, the Deposit becomes ordinary (in favor of the original depositor) and the Deposit relationship do not bear the risks of disruption the will of a third person (section 3 of article 430 of the civil code).

In addition, in our opinion, to certain kinds of Bank deposits, the rules of article 358.9 - 358.14 of the civil code should not apply on the merits.

To those contributions, we consider Bank deposits concluded by the issuance of savings/Deposit certificates. These certificates are registered certificated securities (section 1 of article 843 of the civil code).

However, 358.16 article of the civil code provides for a separate type of mortgage – securities, which is characterized by its own form of agreement.

So, the pledge agreement in respect of securities such as savings and certificates of Deposit is concluded by the transfer of these securities to the pledgee.

In this regard, the pledge of rights on Deposit certified by a savings or Deposit certificate, is carried out according to the rules of securities.

Some questions is the order of conclusion of the contract a collateral account. The fact that the pledge of the rights of the Bank Deposit can be set only in the presence of a collateral account.

The nature of the collateral account from sense of item 1 of article 358.9 of the civil code is also not unambiguous. Whether the escrow account a separate account to be opened separately to complete mortgage transactions, or the legal regime of rights, it is impossible to establish from the interpretation of norms of the civil legislation of the Russian Federation.

In the civil law doctrine still inclined to think that the escrow account is a special legal regime for the exercise of the rights arising from the contract of the Bank account and Bank Deposit.

At the conclusion of the contract of pledge of Bank Deposit with the Bank, which previously signed a Deposit agreement, the collateral account is not required.

You must answer the question whether the obligation of the Bank to assume the obligation to perform the functions of the holder of the collateral.

On the one hand the collateral account is a special banking mode of operations for the open design/facial or Deposit account. On the other hand, the Bank is obliged to perform the duties to protect the interests of the mortgagee, with whom the Bank has no contractual relationship.

The Bank is obliged to provide information to the pledgee about the current status of Bank accounts, control of limits on money transfers and safety minimum balance Bank, including Deposit account².

Can the Bank, after reading unnecessary for performing the specified functions, to refuse conclusion of an agreement collateral account (include in the content of Deposit agreement a condition about pledge account).

Paradoxically, this question is difficult to answer positively or negatively based on the norms of the civil legislation of the Russian Federation.

But, given the substance of the Bank account agreement, which applies to a Bank Deposit, taking into account the enforceability of the Bank of the customer's Bank account (including Deposit account) must be vested with the status of the collateral account upon the first request of the client.

I would also like to pay attention to the balance of pledge of rights under a Bank Deposit contract and collateral rights of obligation (article 358.1 – 358.8 civil code). By their legal nature, these types of mortgages are exactly the same – pledge of rights of obligation, but the security of Bank deposits is a special kind of pledge of the law of obligations in the nature of performance of contractual duties.

When considering these types of collateral can also be some difficulties with the qualification of mortgage relations.

So, the parties may conclude a contract on pledge of rights of the Bank Deposit in the absence of the pledgor collateral account Bank in relation to the existing Deposit account.

The courts should not classify such contracts as non-concluded. In this case it is the ordinary pledge of rights of obligation. The security of Bank deposits with the use of the collateral account is a mechanism for enhanced protection of the rights of the mortgagee, who is using the collateral account gets the opportunity;

- to ensure the necessary amount of cash (the Bank may refuse to perform operations contrary to the terms of the agreement under pain of joint and several liability to the pledgee);
- has access to information on transactions;
- have the right to request cash on the basis of a court decision, the Executive inscription of the notary or of the agreement and other safeguards.

At the moment, noted above questions there is no detailed judicial practice. In this paper we would like to draw attention to risks which may arise in law enforcement practice.

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To the question of the nature of the hereditary substitution in the Russian Federation

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Abstract

This article addresses the issue of the status of hereditary substitution in the Russian Federation. The features of this institution are revealed.

Keywords: substitution, assignment of the heir, substitute, inheritance, testament.

The Russian legislation provides a wide range of possibilities which the testator can use, at the indication of the will on the further disposal of property. By virtue of the principle of freedom of will, which is provided by the inheritance law of the Russian Federation, the testator may include in wills various orders provided for by the rules of the civil code on inheritance. One of these is the institution of hereditary substitution.