Summary

of Dissertation "Protection of the Pledgor in Case of Unlawful Commencement of Enforcement under the Special Pledges Act"

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Nearly three decades have passed since the adoption of the Special Pledges Act ("**SPA**"), which makes it necessary to assess its practical application and the difficulties encountered by legal practitioners. The SPA introduced a specific legal framework governing pledges established without the transfer of possession of the pledged property from the pledgor to the pledgee.

The regime of extrajudicial enforcement under the SPA has substantially facilitated and accelerated the process of debt recovery in commercial transactions. The SPA allows a broad range of proprietary rights to serve as collateral, including intangible rights, aggregates of existing and future assets, as well as complexes of rights, obligations, and factual relationships recognised as independent legal objects. As a result, a modern and widely utilised security instrument has emerged in commercial practice, enabling debtors to provide security to their creditors without disrupting the normal conduct of their business activities.

The pledgor – as debtor under the secured claim – thus has the opportunity to obtain financing by providing appropriate and adequate collateral, while at the same time retaining the ability to continue conducting its business activities without impediment through the use of the pledged assets.

With the adoption of the Act Amending and Supplementing the Special Pledges Act (promulgated in State Gazette, No. 105 of 30 December 2016), a substantial reform of the legal framework governing special pledges was undertaken. This reform reflects the Bulgarian legislator's recognition of the importance of the special pledge as a security instrument in commercial transactions and of the need to ensure the lawful conclusion and performance of special pledge agreements. Its principal objectives include the prevention of abusive practices, greater clarity in the interpretation of existing provisions in order to avoid inconsistent or incorrect applications, and the strengthening of the protection afforded to pledgees.

Nevertheless, the SPA does not provide effective mechanisms for protecting pledgors against bad-faith creditors who assert that the pledgor has breached obligations under the principal debt or the special pledge agreement when this is

not in fact the case, in order to initiate enforcement proceedings aimed at realising the pledged property without judicial intervention. This creates the possibility of situations in which enforcement is commenced unlawfully against both the pledgor and the pledged assets.

The aim of the study is to conduct an in-depth and critical analysis of the mechanisms available for the protection of the pledgor as a party to a special pledge agreement and to discuss possible solutions capable of effectively safeguarding the pledgor's rights. Unlike most scholarly works on the subject, this study focuses primarily on the legal position of the pledgor and the pledgee, as well as on the available means of protecting the pledgor in cases of potentially unlawful commencement of enforcement.

The principal objective of the study is to present as broad a range as possible of debatable issues and practical problems related to the protection of the pledgor in situations involving unlawful commencement of enforcement, and to clarify the possible ways of resolving these issues without undermining the legitimate interests of the pledgee.

The study may be of value both to the academic community and to law students, as well as to legal practitioners working in the field of special pledges and seeking possible solutions for the protection of pledgors. Only through such an approach can the issues identified be addressed through original solutions that are soundly supported by both the scholarly community and legal practice.