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ASSESSMENT OF INTANGIBLE ASSETS AS LOAN COLLATERAL

This paper studies one of the important topics in collateral valuation practice i.e. valuation of intangible assets especially intellectual property. Moreover it compares tangible and intangible assets as loan collateral, studies the obstacles in IP valuation practice, proposes ham recommendations to improve this practice.

Keywords: intangible assets, intellectual property, bank loan, collateral, collateral valuation

НОМОДДИЙ АКТИВЛАРНИ КРЕДИТ ГАРОВИ СИФАТИДА БАҲОЛАШ

Ushbu maqolada hozirgi kunda garovni baholash amaliyotida eng muhim bo’lgan nomoddiy aktivlar, xususan, intelektual mulkni bank krediti uchun baholash jarayoni yoritilgan. Bunda nomoddiy hamda moddiy aktivlarni garov sifatidagi farqlari qiyosiy tahlil qilingan, intelektual mulkni baholashda yuzaga keladigan to’siqlar o’rganilgan hamda ushbu amaliyotni rivojlantirish bo’yicha takliflar ishlab chiqilgan.

Kalit so’zlar: nomoddiy aktiv, intelektual mulk, bank krediti, garov, garovni baholash

ОЦЕНКА НЕМАТЕРИАЛЬНЫХ АКТИВОВ В КАЧЕСТВЕ ОБЕСПЕЧЕНИЯ КРЕДИТА

В этой статье рассматривается одна из важных тем в практике оценки залогового имущества, а именно оценка нематериальных активов, особенно интеллектуальной собственности. Кроме того, он сравнивает материальные и нематериальные активы как залоговое обеспечение, изучает препятствия в практике оценки ИС, предлагает полезные рекомендации для улучшения этой практики**.**

Ключевые слова: нематериальные активы, интеллектуальная собственность, банковский кредит, обеспечение, оценка обеспечения

Introduction

In modern industries, primarily digital, intellectual property is the main value. This applies not only to smartphones - without them it would be unusual, but you

can live. The shift in cost parameters also occurs in vital industries, such as, for example, pharmaceuticals. Yes, expanding the production of a drug is not an expensive thing. But to develop the drug itself is even more expensive. The same thing happens in agribusiness, the production of functional food products, in construction and transport. The same thing happens everywhere, in all sectors - only the speed with which the "scales" shift in favor of the intellectual component differs.

The presentation of the results of intellectual activity for many business owners is ambiguous. What gives the presence and growth of intangible assets in the balance sheet? The answer is quite simple - the same as other assets that have tangible properties, but with the corresponding specifics of valuation and accounting. Thus, an intangible asset can be created on its own or bought, incurring expenses, as well as intangible assets can be sold or valued and used as collateral for a loan / loan. The theory of using intangible assets as collateral, as well as practical tips and recommendations will be discussed below.

The use of “standard” forms, in our opinion, is more common not because of their liquidity, but because of the “understandability” to the creditor. Say, the bank tentatively knows how much the seized security car costs and how it can be sold. But if you look at the practice, what is the chance to get collateral equipment in good condition? Often, vehicles are resold by unreliable borrowers, and they are difficult to physically find, or the technical condition in which the pledged item is transferred to the creditor does not allow it to be sold at a price acceptable for paying off the debt. The same applies to equipment. The situation is better with real estate, where, thanks to the state registration of the pledge (mortgage), fraudulent actions are limited, but the accuracy of the assessment is important here, as an error can lead to insufficient collateral. The liquidity of securities is also conditional in many cases and can change significantly. So what is better to receive at non-return of a debt? Doubtful physical asset or formalized results of intellectual activity (patents, know-how).

In fact, a creditor is not interested in any type of collateral, and when issuing a loan, banks proceed primarily from assessing solvency (liquidity and financial stability) and the borrower's reliability (assessing business reputation), and collateral becomes a formal aspect of the issue. To further reduce risks, insurance and discounting the value of collateral are used (that is, accepting collateral worth more than a loan), which, of course, applies to intangible assets. Therefore, at present, in

conditions of a shortage of “good” borrowers, the issue of lending using intangible assets in the form of collateral for repayment of debt is becoming increasingly important. Modern business does not invest in real estate, but in intangible assets, without which a business cannot exist - brand, technology, software, databases, etc. Remember the well-known grocery chain stores, electrical stores, popular pharmacies - and answer yourself the question, what is their really valuable asset. Goods, rental right or brand, customer base, sales and service technology? Transactions on transferring the right to a trademark as a pledge to the bank are becoming more and more formalized, and this trend will continue. In addition, increasing the technological effectiveness of business in many sectors, and reducing the share of fixed assets of most successful companies, changes the traditional view of the value of assets. Such trends are especially characteristic of the market of information technology, pharmaceutical and innovative manufacturing companies.

Literature review

In recent decades, firms have increasingly invested in intangible assets to enhance their uniqueness and competitive advantage (Lev, 2001; Nakamura, 2001) [9]. However, greater reliance on intangible assets distorts the ability of firms to raise capital in the credit market because the low redistribution capacity, higher information asymmetries and uncertain liquidation value inherent in intangible assets limit their effective use as collateral (Williamson, 1988; Shleifer and Vishny, 1992; Holthausen and Watts, 2001) [12]. Several factors are associated with the growth of this lending practice (e.g. Edwards, 2001; Ellis and Jarboe, 2010; Amable et al., 2010)[3] [4] [1]. First, intangible asset markets have become more liquid over the past twenty years (IRS active corporate income Report, 1994-2005). As a result, companies and investors have developed more sophisticated methods for measuring the value of intangible assets, which have helped to make intangible value monitoring less costly (Kaplan and Norton, 2004; Gu and Lev, 2004) [8] [5]. Second, over the past few years, unregulated creditors (i.e., non-regulated creditors) have investment banks and institutional investors) have become an important source of credit (Ivashina and Sun, 2010)[7]. Free from the regulatory constraints of commercial banks in assessing collateral for intangible assets for regulatory capital requirements, these financial intermediaries adopted various and unconventional lending methods (Carey, Post and Sharpe, 1998)[2] and were willing to lend to

distressed borrowers using "residual" collateral (i.e. intangible assets), which commercial banks largely ignored (Edwards, 2001)[3].

Analysis and results

Obstacles in assessing intellectual property rights in Uzbekistan

Many experts recognize that it is not easy to evaluate the economic efficiency of the result of intellectual activity and the possible risks associated with it, since this requires the participation of highly qualified specialists. Simply put, it is difficult for bank employees to understand what the benefit of their credit organization will be from the sale of such a specific subject of pledge. This feature can, in particular, significantly affect the price of an object - if, for example, a company does not have the ability to quickly implement a particular technology, it will pay less for its purchase than one that already has production in place, and in connection with new technology is expected to increase profits. In this regard, the expert suggested transferring a certain share in the investment project to banks, and not just the result of intellectual activity.

In order to actively issue loans secured by intellectual property banks face with the following obstacles:

- intellectual property market in general;
- state support for the use of intellectual property;
- work experience with this method of ensuring the fulfillment of obligations;
- underestimation of the role and importance of intellectual property as a collateral.

The difference between intellectual property and tangible assets in terms of loan collateral

The process of issuing securities backed by assets in structured Finance is called securitization, since assets are converted into securities. IP securitization is defined as a "financing technique "or" financing method" in which a company transfers rights to receivables (such as royalties) from IP owners to an entity that in turn issues securities to investors in the capital market and transfers the proceeds back to the IP owner." IP securitization is different from securitization of other traditional assets such as mortgages and credit cards. Intellectual property rights are considered personal property and, in principle, a security interest may be transferred to any property, tangible or intangible. Intellectual property is property in the sense

that it can be bought, sold, licensed or sold in the same way as any other form of property. However, compared to more traditional asset classes, other intangible assets and personal attributes, IP has some unique attributes. For the purposes of secured transactions law, intellectual property rights are distinct from rights to payments arising therefrom, such as the right to pay royalties. In other words, a license agreement relating to IP is not a secure transaction, and a license with the right to terminate the license agreement is not a security right.

1. IP rights are in most cases exclusive rights: IP consists of exclusive rights that can be applied to any person. But there are restrictions on intellectual property rights. Copyrighted material may be copied to the fullest extent permitted by law for "fair use". While patents do not have similar limitations for personal use, patent protection is also subject to exceptions such as the “research exception”

2. Intellectual property rights may not be in possession of: all personal belongings are in the possession or action. While the intellectual property rights chosen in the action classification have been criticized, it is generally agreed that intellectual property rights cannot be held in possession. In other words, intellectual property rights are net intangible assets that can be exercised and fully utilized by an indefinite number of entities simultaneously. This is because a party that has a" right " to intellectual property interests is usually entitled to protection of rights against infringers. Parties with simple physical copy storage do not matter. Thus, competing intellectual property claimants include parties with competing ownership rights. However, these parties may differ depending on whether the debtor's interest in the intellectual property arises as part of an assignment or license.

3. Intellectual property is not like tangible property (like a pen or olive oil) - it is what economists call a public good, meaning it is uncompetitive and not excluded. For example, many people can benefit from information without interfering with the pleasure others derive from the same information. It's not competitive. At the same time, once disclosed, it is extremely difficult to exclude the use of information by others, and it is not excluded. You can't build a fence around your idea like you can your yard or ranch.

Based on the unique characteristics of IP, a secured transaction related to IP can be divided into 2 categories: IP rights transaction and financing transaction. An IP rights transaction consists of transactions in which the IPR itself provides security for the borrower, including patent, trademark or copyright rights; financial

transactions involve the intellectual property of other movable assets, including equipment, inventory or receivables. But in its simplest form, a financial transaction is debt financing without recourse, in which the intellectual property licensor can take the future cash flow expected from the license agreement and receive a cash advance payment representing the present value of the future cash. flow. Financing royalties for intellectual property allows the owner of intellectual property to retain a stake in the intellectual property, and thus the owner of such property can still profit from the value of such an asset in excess of the collateral share of the debt.

General challenges in assessing the value of intellectual property

There are no generally accepted formulas for IP valuation. However, in some jurisdictions, parties (lenders and borrowers) may rely on valuation methods developed by national institutions. In the United States and other developed countries, companies have experienced a shift in the focus on company values from tangible to intangible IP assets and are more likely to monetize IP through IP securitization. Calculation and evaluation are necessary to determine securitization feasibility and forecast future cash flows. Securitization of IP presents significant difficulties due to problems in assessing the intangible nature of IP assets. Generally, the real value of individual IP assets cannot be accurately measured because of the nature of IP assets as intangible.

Conclusion

According to the abovementioned studies and analysis this paper proposes the following recommendations:

1. Securitization of intellectual property assets is a unique securitization market that has not been widely developed. While the cash flow from intellectual property may be more sustainable than the cash flow from assets that are now widely securitized, there are some significant problems with IP securitization that hinder the full development of the market. However, there is now little doubt that the best option is a single secured transactions instrument that covers all asset types.

2. As stated by Professor Dunn and Seiler: "We believe that the most effective and defined legal regime that removes constraints and increases the cost of securing these types of assets would be one common application for all types of assets (including trade secrets and other non-traditional forms of intellectual property), rather than separate security rights regimes.

3. Enhance the dissemination of knowledge about intellectual property law and raise awareness of intellectual property law throughout society. To carry out ordinary training in intellectual property law is widespread. Expand the content of intellectual property rights in the nationwide promotion of public awareness of IP securitization.

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