Mortgage Securitization System (MSS)

Complementary System of Rastin Banking

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Abstract

Several systems have been designed in Rastin banking to solve prevailing problems of the banking system of Iran. Mortgage Securitization System (MSS) is one of these systems which facilitates obtaining collaterals and guarantees for financial activities. This system makes it possible for people to change their movable/immovable assets into negotiable papers called "Guarantee Certificates". These operations are carried out through notary offices. Guarantee Certificates can be used as guarantee or collateral for all related activities.

Keywords: Rastin Banking, Mortgage, Securitization, Banking Operation, Collateral, Guarantee, Rastin Certificate, Guarantee Certificate

Introduction

Rastin banking is a new Islamic banking which studies theoretical and empirical problems of Iran's banking system and introduces legal and executive solutions according to the latest scientific and technical findings. Each subsystem of Rastin banking has been designed to remove specific problems of banking operations. Mortgage Securitization System (MSS) is designed to provide necessary arrangements for transforming assets into negotiable papers – specifically: Guarantee Certificates.

Many properties and assets can be used as guarantee for observing obligations. The available ways for changing properties into guarantees are not so easy. MSS which works under the Rastin Banking System law and regulations was designed to fulfill this purpose. Issuance system of Guarantee Certificate by notaries is defined under the supervision of Documents and Properties Registration Organization of the country.

Mortgage

Etymologically, mortgage means to be pledged or obliged in something and is synonym to the word collateral. In other words, mortgage is pledging (mortgaging) some assets for obtaining loan until the repayment. In Islamic jurisprudence mortgage is defined as a contract for reliance of the creditor to debt to the debtor[2]. The pledged (mortgaged) asset is called "mortgaged" or beholden (*rahn* or *marhouneh*) and the one who gives the asset as mortgage is called "mortgager/ mortgagor" (*rahen*) and the receiver of this asset is called "mortgagee" (*mortahen*). For mortgage

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contract to be correct, it needs the assertion of the mortgager and acceptance of the mortgagee. Other qualifications of these persons are similar to those necessary for other contracts, including maturity, insaneness, free decision and etc. In Civil Law[3], mortgage[4] is a contract according which the debtor gives some asset to the creditor as collateral. This contract is revocable for mortgagee and irrevocable for mortgager[5]. But this issue does not mean that other regulations of revocable contracts cover this contract; this is because mortgage contract is not cancelled by death, or insaneness of each party of the contract[6]. Mortgaging any movable and immovable asset is possible if it is a financial asset and has rational benefit. There are six elements in mortgage contract[7]:

1. Existence of a debt, even if the debt is not created simultaneously with mortgage contract.
2. The mortgaged asset must be substance.
3. Taking the possession of the mortgaged asset is for a certain (short) period.
4. The term of the mortgage must not be stipulated in the contract.
5. Taking the possession of the mortgaged asset must be possible.
6. Transaction of the mortgaged asset must not have any legal prohibition; therefore, a devoted asset to child cannot be mortgaged.
   In addition to the above conditions:
7. The mortgaged asset must be substance and mortgage of a debt and profit is null.
8. The mortgaged asset must be determined.
9. The mortgaged asset must be transferable and legally nontransferable assets such as devoted assets cannot be mortgaged.

Mortgage Securitization System (MSS)

By assessing the value of the assets of the clients with less than a margin percent, and deducting registration, auction, commission, and other acceptable costs, notary will issue guarantee certificates lots for certain period of time. The margin is defined by the Documents and Property Registration Organization. The owner of these certificates can offer their certificates as guarantees or collaterals to banks and other real and legal entities and institutions, for themselves or on behalf of the other peoples.

After fulfillment of his obligations, the owner of certificate will deliver his certificate back to notary can make his asset free from mortgage. In case of unfulfillment of his obligations, the certificate acceptor (which can be bank) can apply to notary and notary will sell the mortgaged through auction and give the value of certificate or make the property at possession of acceptor after deducting commission and other costs from the owner of the certificate and update the related information in Collateral Registration System (CRS)[8]. If the acceptor of the Guarantee

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[3] Chapter 18th of Civil Law.
[4] Article 771, Civil Law.
[5] Article 787, Civil Law.
[6] Article 778, Civil Law.
[7] Mohammad Jafar Langaroudi, *Detailed Terminology of Law,* Vol. 3, pp. 2071-84.
[8] It is seen much that loan applicant has used his assets as mortgage in several banks. The Collateral Registration System (CRS) has been designed to prevent such an action. This system is an integrated database and has capability of data entry for online registering movable/realty collaterals information, and is accessible for banks, legal authorities and other applicants to get information about the mortgaged assets. See:
Bijan Bidabad, IT-Based Sub-Systems of Rastin Banking. Proceeding of National Conference of E-Service new change in sustainable development, 21-22 November, 2011. Al-Zahra University, Tehran, Iran.
http://www.bidabad.com/doc/Rastin-Bank-IT.pdf
http://www.bidabad.com/doc/Rastin-Bank-IT.ppt

Certificate is a bank, bank can obtain its claims through Interbank Withdrawal Protocol (IWP)[9] from the account of the owner of the certificate, and return him the related certificate back and if the owner were not available bank can return back the certificate to the notary. The operation settles through Non-Usury Scripless Security Settlement System (NSSSS)[10] and simultaneous registration in CRS. In addition, if the acceptor of the Guaranty Certificate is a bank and the debtor account is not enough to compensate the debt, bank can clear his claim through "Bank Document Execution" defined in Rastin banking system.

Documents and Property Registration Organization will compile and execute the supervisory instructions of notary operations for MSS operations. Mortgage Securitization System is carried out under the law and regulations of Rastin Banking Law and its Executive Regulations.

This system provides the reliance and security upon collaterals and conditions for clearing the claims with low formalities and time consuming and does not need to apply to legal authorities and passing time-consuming adjudication processes.

Guarantee Certificate

New and innovative financial instrument such as Rastin Certificates are used in Rastin PLS[11] banking system. Guarantee Certificate is a named document which shows the guarantee of a certain amount of money and is issued by notary upon mortgaged asset and if the obligation is not fulfilled, the owner must compensate it, otherwise, the mortgaged asset will be sold through auction and the claim of the acceptor will be settled.

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[9] It is seen much that a person owes lot to one or several banks but he has deposits at other banks. The Interbank Withdrawal Protocol (IWP) is an agreement between banks and under the supervision of central bank which allows banks to withdraw money from the accounts of the debtor at other banks after depleting the money in the account of the debtor at the agent bank through online operation. See:
- Bijan Bidabad, M. Allahyarifard, Interbank Withdrawal Protocol (IWP) in Rastin Banking. The 4th Conference on Information and Knowledge Technology (IKT2012), Faculty of Electrical and Computer Engineering, Babol Noshiravani University of Technology. May 22-24, 2012.
  http://www.bidabad.com/doc/iwp-paper-fa.pdf
  http://www.bidabad.com/doc/iwp-1.ppt

[10] Non-Usury Scripless Security Settlement System (NSSSS) is an integrated web-based system for settlement of Rastin usury-free certificate transaction under the supervision of central bank. The NSSSS operations is conducted under the law and regulations of Rastin Banking Law and its Executive Regulations. See:
- Bijan Bidabad, M. Allahyarifard, IT role in fulfillment of Profit & Loss Sharing (PLS) mechanism. Proceeding of the 3rd International Islamic Banking and Finance Conference, Monash University, KL, Malaysia, 16-17 November, 2005.
  http://www.bidabad.com/doc/english-pls-5.pdf
- Bijan Bidabad, M. Allahyarifard, IT Based Usury Free Financial Innovations. Proceeding of ECDC 2010, 5th International Conference on e-Commerce in Developing Countries: with focus on e-Banking & e-Insurance. ECDC 2010, 15-16 September 2010.
  http://www.bidabad.com/doc/non-usury-finance-it-en.pdf

[11] The Rastin Profit and Loss Sharing (PLS) banking system was designed to increase the economic participation of banks and practicability of participation of real and legal entities (private or public) in investment and financial activities and also to increase the efficiency of monetary intermediary and better absorption and allocation of financial resources. See:
- Bijan Bidabad, Jina Aghabeigi, Mahasti Naeemi, Azarang Amirostovar, Saeed Salehian, Saeed Nafisi Saraee, Alireza Mehdizadeh Chelehbari, Bijan Hossainpour, Saeed Sheikhani, Mahmoud Allahyarifard, Mohammad Safaeepour, Nadia Khalili Velaee. Detailed design of Profit and Loss Sharing (PLS) banking. Office of Research and Planning, Bank Melli Iran. 2008, Tehran.
  http://www.bidabad.com/doc/detailed-pls.pdf

MSS Operations

1. Movable assets which are imperishable and can be used in a foreseeable period can be used as mortgage.
2. Immovable (realty) assets used as mortgage should have the following qualifications:
   a. The immovable mortgage asset must (site and superstructure) entirely and legally be registered, easily negotiable and must be confirmed through municipality and other relevant authorities that it is not located in urban development plans.
   b. The immovable asset with a devotional land can be mortgaged only when the owner has separate ownership document for the building itself and has a permission for mortgaging the building from the devotee for a long enough period of time.
   c. Mortgage asset (site and superstructure) should entirely and legally be registered, easily negotiable, and the ownership of the asset should be proved before mortgage transaction.
3. At the beginning, the owner applies necessary documents to notary and requests for appraisal of the property and issuance of Guarantee Certificate.
4. After appraisal of the property by Ministry of Justice official expert, the notary will mortgage the property and issue Guarantee Certificate with a value lower than the assessed value. All ownership documents will be deposited at the notary.
5. The property is assessed according to market price by Ministry of Justice official expert.
6. The margin amount deducted from the assessed value for mortgage transaction is equal to the total registration, auction, commission and other acceptable costs. This amount is defined by Documents and Properties Registration Organization.
7. The notary receives registration and writing fees for issuing Guarantee Certificate.
8. Notary mortgages the property and instead, issues Guarantee Certificate for the property owner.
9. Notary can divide Guarantee Certificate into several lots according to the request of the owner. Each lot of Guarantee Certificate represents a specific amount of guarantee independently.
10. Each lot of Certificate should have a separate serial number. The certificates will be registered according to their serial numbers in CRS and can be traced according to its serial number or other identifications related to property or its owner.
11. All real and legal entities (public or private) and those affiliated to government can apply to notary for mortgaging their properties and requesting Guarantee Certificate.
12. Guarantee Certificates don't have due date.
13. All Guarantee Certificate operations should be registered in CRS system.
14. Banks can accept Guarantee Certificates as guarantee or collateral.
15. In order to compensate the probable losses to property, bank can ask the owner to insure it for the bank.
16. Guarantee Certificates in Rastin PLS banking and its subsystems are not considered as contribution of the entrepreneur and is only accepted as guarantee and collateral.
17. Guarantee Certificates are not negotiable at Rastin Certificate Market (RCM)[12].

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[12] Rastin Certificate Market (RCM) is a web-based system for settlement of Rastin Certificates and Rastn Swap Bonds (RSB) in Rastin banking. Generally, RCM operations work under the the law and regulations of Rastin Banking Law and its Executive Regulations. The owner of Rastin Certificates can negotiate them at market price or agreed price under the supervision of the issuing bank. See:

- Bijan Bidabad, M. Safaeipour. The Electronic Market for Transaction of Mosharekeh (Partnership)/Pazireh (Subscripted) Certificates. Fifth Conference of E-Commerece, 23-24, November 2008, Ministry of Commerce, Tehran, Iran.
  http://www.bidabad.com/doc/charchoobe-bazare-electronic-pls.pdf
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18. The owner of Guarantee Certificates can negotiate their certificates or use them as guarantee in other markets.
19. All benefits of the mortgaged asset during mortgage duration belong to the owner of property.
20. Whenever the owner of the certificate deposits the certificate as guarantee to a person, he has to fill a written form with the signature of the owner as well as the acceptor of the certificate to the issuing notary and the notary register the action in a special registry book and in CRS.
21. The acceptor of the Guarantee Certificate must inquire the validity of the certificate from the issuer notary or from CRS site. The issuer notary is obliged to inform the acceptor about the certificate condition within 2 days.
22. The Guarantee Certificate is valid until the owner returns it back to the issuing notary.
23. If the owner of the Guarantee Certificate could not fulfill his obligations and the mortgaged asset is not dividable, the asset will be sold at an auction and the remainder of the amount sold will be deposited at Documents and Properties Registration Organization.
24. If the owner of the guarantee certificate could not fulfill his obligations, after selling the mortgaged asset, notary can compensate registration, auction, commission and other acceptable costs from the amount of sale after paying back the claims of the Guarantee Certificate acceptor. If the acceptor is bank, bank can receive his claims due to Guarantee Certificate from the accounts of the certificate owner through IWP at maturity and delivers the certificate to certificate owner or in the case that certificate owner is not accessible delivers the certificate to issuing notary.
25. After receiving the Guarantee Certificate when the debtor cannot fulfill his obligations, the notary has to execute the concluding activities within 10 days.
26. Whenever the Guarantee Certificate is freed, it should be informed to the notary in written and be registered in registry book and in CRS.

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