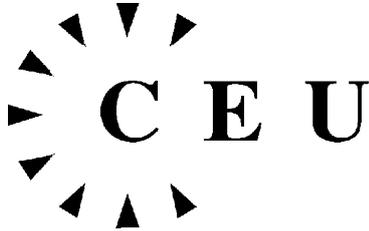


**LEGAL STUDIES DEPARTMENT
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**FLORIDA PAWNBROKING ACT, USA: LESSONS FOR
KAZAKHSTAN**

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Table of Contents:

ABSTRACT	II
LIST OF ABBREVIATIONS	III
INTRODUCTION	1
CHAPTER I: PAWNSHOP INDUSTRY: DEFINITION, IMAGE AND HISTORY	8
1.1 WHAT IS A PAWNSHOP AND HOW DOES IT WORK?.....	8
1.2. THE PAWNSHOP’S IMAGE	17
1.3. PAWNSHOPS’ HISTORY	24
CHAPTER II: THE ANALYSIS OF FLORIDA PAWN BROKING ACT AND KAZAKHSTANI LEGISLATION ON PAWN SHOP INDUSTRY	33
2.1. FLORIDA PAWNBROKING ACT’S REVIEW: BACKGROUND.....	33
2.2. THE CONTEMPORARY FLORIDA PAWN BROKING ACT: PROS AND CONS.	39
2.2.1 <i>Main definitions</i>	39
2.2.2 <i>Licensing requirements</i>	41
2.2.3 <i>Administrative penalties</i>	48
2.2.4 <i>Pawnbroker transaction form-pawn ticket</i>	49
2.2.5 <i>Recordkeeping and hold periods</i>	52
2.2.6 <i>Pawn service charge</i>	54
2.2.7 <i>Prohibited acts</i>	57
2.2.9 <i>Third parties’ claims</i>	61
2.2.10 <i>Criminal Penalties</i>	65
2.2.11 <i>Additional ordinances</i>	66
2.2.12 <i>Confidentiality</i>	67
2.2.13 <i>Remarks</i>	68
2.3. KAZAKHSTANI LEGISLATION ON THE PAWN INDUSTRY V. FLORIDA PAWN BROKING ACT	73
2.3.1 <i>General background</i>	73
2.3.2 <i>Definitions of pawnshop, collateral, pawn service charge</i>	80
2.3.3 <i>Pawn-ticket</i>	83
2.3.4 <i>Insurance of the pawned property</i>	84
2.3.5 <i>Storage of the pledged goods, recordkeeping and cessation of pawn transaction</i>	85
2.3.6 <i>Mandatory rules on conducting pawn transactions</i>	87
2.3.7 <i>State registration instead of licensing requirements</i>	88
2.3.8 <i>Requirements to the pawnshops’ employees</i>	90
2.3.9 <i>Sale of unredeemed goods</i>	91
2.3.10 <i>Interest rates</i>	93
2.3.11 <i>Safe services</i>	94
2.3.12 <i>Other provisions</i>	95
2.3.13 <i>Remarks</i>	96
CONCLUSION:.....	100
BIBLIOGRAPHY:.....	106
APPENDIX I:	110

Abstract

The main objective of this thesis: *The elaboration of recommendations to the existent legislation in Kazakhstan through the comparative analysis of the Florida pawn broking act and Kazakhstan's legislation on pawn industry, their peculiarities, advantages and disadvantages, common features and distinctions.*

Additionally, this research observes the approaches of both countries in getting over the unattractive stigma, attached to pawn shops due to their presumed connection with criminal structures and provided solutions in regulating the correlation of property crime with pawnshop industry. That is what makes this research more substantial.

List of abbreviations

RK – Republic of Kazakhstan

USA – The United States of America

FBI – Federal Bureau of Investigation

FDLE – Florida Department of Law Enforcement

FSA – Financial Supervision Agency

UCC – Uniform Commercial Code (United States).

NPA – National Pawnbrokers' Association.

F.S. – Florida state.

NBC – National Broadcast Channel.

Introduction

God bless pawnbrokers! They are quiet men.
You may go once, You may go again-
They do not question as a brother might;
They never say what they think is right;
They never hint all you ought to know;
Lay your treasure down, take your cash and go,
Fold your ticket up in a secret place
With your shaken pride and your shy disgrace,
Take the burly world by the throat again-
God bless pawnbrokers! They are quiet men.
Marguerite Wilkinson¹

Recently, when the financial crisis has exploded, shoving the whole economic world into ambiguous position and harassment, simultaneously, many media reports mark the rapid growth of pawn transactions almost everywhere. "We've seen an increase in the last six months," said Tim Mertens, manager of National Pawn & Jewelry in Fort Lauderdale.² The same situation is in other countries. For example: in China, one Chinese businessman Roger Zhang needs a bridging loan for his steel company. Instead of going to the banks which are reluctant to lend money within this hard credit crunch all over the world, he applies to a pawn shop to get a cash flow injection to keep his business afloat. The Chinese economy has slowed down in seven years and banks are short of lending, small business operators are hocking belongings and company assets for loans from pawn shops.³ These facts show that the issue of pawnshops is of great essence today. This research work is devoted to pawnshops as the

¹ 37Buff L.Rev. 751 - Oeltjen C. Jarret, Pawnbroking on Parade, Buffalo Law Review available at www.international.westlaw.com (last access on 03-23-2009).

² Nolin Robert, Pawnshop see slight increase in traffic as gold prices soar:aside from jewelry, outlets see little change in sale, posted on 10-08-2008 available on <http://search.ebscohost.com/login.aspx?direct=true&db=nfh&AN=2W62W63217371890&site=ehost-live> (last access on 03-03-2009).

³ Shen Samuel, Chinese pawnshops to the rescue, article posted on 02-23-2009, available on <http://www.financialpost.com/small-business/Story.html?id=1318571> (last access on 03-25-2009).

hottest issue now. The actuality and uniqueness of provided solutions in regard to the promotion of loan transactions which are predominantly based on possessory pledge as one of the most ancient security maintenance method within the not less ancient institution that is known as *pawnshop* are laid into the fundament of this thesis.

Pawnshops are maintained by pawnbrokers. “The *Pawnbroker* – one who lends money, usually at a high interest rate, in exchange for personal property that is deposited as security by the borrower”⁴. Here, the notion of security or collateral comprises an enormous variety of personal property to sell starting from jewelries, precious metals, watches, computers, video cameras, guitars, TV-sets, tape-recorders and finishing with clothes, items of furniture, valuable books etc. The further analysis of the pawnshop functioning shows that the scope of collateral determines the ratio of borrowers and has a direct impact on the amount of loan transactions within a pawnshop, consequently, on the profitability of this business.

What is the importance of investigation of pawnshop industry? The issue of pawnshops is truly emphasized through the growing significance of the access to loan transactions by people with different income rates or even no income at all. The recent reports of a growing number of pawn transactions in many countries within the contemporary financial crisis, signals the rising importance of pawnshops. As British expert, John Lang, speculating on the impact of contemporary financial crisis, confidently states that lower discount pawnbrokers are those who benefit and do well within this crisis.⁵

⁴ Black’s law dictionary, seventh edition, published by West Group, Saint Paul, Minnesota, USA, 1999, p1149.

⁵ HotNews, Three British experts explain for HotNews.ro the impact of the global financial crisis, posted on 10-06-2008, available on http://english.hotnews.ro/stiri-regional_europe-4668858-three-british-experts-explain-for-hotnews-the-impact-the-global-financial-crisis.htm (last access on 03-22-2009).

This makes the topic unique to Kazakhstan, a country, where pawnshops have become known recently and every year the number of pawnshops and its subsidiaries is growing up starting from 1995. The chronicles indicate that until 1995 year only one municipal pawnshop functioned in Almaty. Today, all over Kazakhstan, the total amount is about 72, not taking into consideration their subsidiaries. Exactly, in Almaty, there are 25 pawnshops and 30 subsidiaries. Thus, it shows the growing demand in pawnshops all over the country.⁶

According to the civil codex of Kazakhstan, accepted from December 27, 1994 there are provisions on pawnshops, especially article 328 (was amended on January 21, 2006), which clearly indicates the scope of collateral is limited to all movable property, first of all, jewelry, audio and video equipment and automobiles; credit services that pawnshops are to provide include additionally investments', and storage activities.⁷

In fact, the commonest type of collateral that is widely used all over the pawnshops in Kazakhstan is a jewelry, thus, most of all transactions are functioning on the possession of jewelries as collateral whereas other potential objects of collateralization are rare to be served. The contemporary tendency in Kazakhstan shows the bulging necessity of expanding the domain of credit operations with a vivid positive view on pawnshop industry.

It is worth noting, that there is no separate pawn broking act in Kazakhstan as in USA states. However, the provisions regarding the pawnshop industry are scattered in different legislative acts. For doing analysis of the legal framework of pawnshops in Kazakhstan, we are to rely upon the following documents: the civil codex of Kazakhstan: general and specific provisions, the Order of the President of Kazakhstan about business associations having a power of a

⁶ Vigodi lombardnogo kreditovaniya (benefits of pawn shops' credits), article available in Russian on www.afn.kz/cont/publish836728_669.doc (last access on 03-22-2009).

⁷ Grazhdanskii kodeks Kazahstana (Civil codex of Kazakhstan) available in Russian and Kazakh on www.inform.kz (last access on 03-04-2009).

statute, the statute on limited liability companies, the act on state regulation and control of the financial market and financial organizations, the legislation of the Republic of Kazakhstan about administrative penalties and the criminal codex of RK.

The evident reasons to the deep exploration of this issue in Kazakhstan is not the lack of legislation that creates a legal basis for the preliminary foundation of pawnshops, but the content and structure of the recently amended pawnshop related legislation and the practical realization in respect of serving collateral in a broader sense. Within this thesis the main focus will be on the civil codex (general and specific provisions) with a reference to other above mentioned legislative acts.

Before outlining the peculiarities, advantages and disadvantages of a present regulation in Kazakhstan, exploring the practical realization in regard to the pawnshop legislation and elaborating recommendations on avoiding the existent obstacles, it would be beneficial to turn our view to those countries, which the pawnshop industry is a factual reality, fully adopted and practically regulated in with a distinguished diverse system of secured transactions.

Among such countries, the United States of America is the most optimal and brightest example of how pawnshops can be given a practical solution. I will dare to say that the USA went much further in collaboration and implication of legal instruments on development of pawnshop industry that in the middle of the twentieth century boomed the whole country. A 1994 study of pawnbrokers notes that the number of pawnshops listed in America's Yellow Pages jumped from 4849 in 1985 to 8787 in 1992.⁸ In fact, the 1980s provided a boom period for pawnbroking, with new shops opening in all parts of the country. This upturn, in part, is due to the increase in the number of Americans excluded from mainstream credit markets and

⁸ Drysdale Lynn, Keest E. Kathleen, The two-tiered consumer financial services market place: the fringe-banking system and its challenge to current thinking about the role of usury laws in today's society 51 S.C. L. Rev. 589, available at <http://international.westlaw.com> (last access on 03-01-2009).

small bank closings and in significant part to the upgrading by the industry of the products and service offered to the public.⁹

However, it is important to note that the United States of America do not have a national legislation on regulation of pawnshops. Each state (remark: USA consists of 50 states) has elaborated its own pawn broking act that gives a legal framework to the pawnshop industry and assists avoiding most of problems in connection with it. Obviously, it would be impossible and unnecessary to comprise the analysis of pawnshops' regulations of every state in USA since all of them have significant distinctions. That's why this thesis is focused on comparison of Kazakhstani legislation and all relevant legal provisions on pawn industry and the Florida's pawn broking act which was under elaboration as one of the first legal regulation of pawn industry in USA from the beginning of the twentieth century in 1903 and finally enacted in 1996; also due to the fact that Florida has more than 1274 pawn shops today (which is enormous in comparison with New York that has approximately 45).¹⁰ In 2000 year under the pressure of local enforcement authorities, the Florida senate elaborated some amendments to an existing statute by means of incorporating recommendations for facilitating the relations and work of enforcement authorities with pawnbrokers and improving the consumer protection means.¹¹

Despite the fact it is not the most perfect act and it was used to be under the constant watching eye of critics, legal practitioners and enforcement authorities, the history of amendments it went through and their practical implication makes the observance of this act quite valuable in

⁹National Pawnbrokers, Pawnbroker history, available on <http://www.natpawn.com/natpawn.html> (last access on 03-03-2009).

¹⁰ Caskey P.John "Fringe-banking: check-cashing outlets, pawnshops, and the poor" published by Russell Sage Foundation, New York, 1994, p47.

¹¹ Florida senate, Interim project report January 26, 2000, available at http://www.flsenate.gov/data/Publications/2000/Senate/reports/interim_reports/pdf/00-26cj.pdf (last access on 03-25-2009).

outlining advantages of a final version of this act and its practical significance. Due to the fact that the pawnshop industry in Kazakhstan was established recently and therefore the legislation in respect to them is considered to be fresh and subject to review. That's why this thesis' undisputable value is that it is giving a detailed comparative analysis of a recently enacted legislation in Kazakhstan with a Pawn-broking act of Florida. It makes the analysis more valuable from the perspective of outlining advantages and disadvantages of pawn broking regulations in both countries. Moreover, this thesis also deals with the stigma that hovers over the image of pawnshops and makes the industry quite unattractive for local market. Pawnshops are often closely associated with criminal world. The media and literature depict pawn industry in dark colors, giving impetus to its relation to property crime and a convenient way to get rid of stolen things. Captain Hurley, assistant chief in the Ford Lauderdale police department, South Florida, states the connection between the pawnshops and property crime.¹² Additionally, this research observes the approaches of both countries in getting over this unattractive stigma and provided solutions in regulating the correlation of property crime with pawnshop industry. That is what makes this research more substantial.

Thus, it is worth stressing the main objective of this thesis: *The elaboration of recommendations to the existent legislation in Kazakhstan through the comparative analysis of the Florida pawn broking act and Kazakhstan's legislation on pawn industry, their peculiarities, advantages and disadvantages, common features and distinctions.*

This thesis is divided into two main chapters, each of which consists of several sections. Sections are divided into a number of subsections. First chapter, consisting of three sections, is devoted to the definition, image, history, and functioning of pawnshops. It comprises the

¹²Hurley.T James, "Property crime and pawnshops: correlation or coincidence?", police magazine, may 2000 available at <http://ci.ftlaud.fl.us/police/hurley2.html> (last access on 21-12-2008).

substantial general information about the establishment and maintenance of pawnshops from the very birth of this industry until nowadays including comparative and investigative analysis on the examples of treating pawnshops in other countries. The second chapter, consisting of three sections represents the practical part of this thesis, focusing on detailed observance of Florida pawn broking act and Kazakhstani legislation on pawn industry, their provisions, local enforcement authorities' reports, the Florida and Kazakhstan senates' recommendations. The thesis ends with conclusion which is focused on elaborating recommendations to the existent legislation in Kazakhstan.

Chapter I: Pawnshop industry: definition, image and history

1.1 What is a pawnshop and how does it work?

The monkey chased the weasel,
The monkey thought 't was all in fun
Pop! Goes the weasel.

A penny for a spool of thread
A penny for a needle,
That's the way the money goes,
Pop! Goes the weasel.

A half a pound of tupenny rice,
A half a pound of treacle.
Mix it up and make it nice,
Pop! Goes the weasel.

Up and down the London road,
In and out of the Eagle,
That's the way the money goes,
Pop! Goes the weasel.

I've no time to plead and pine,
I've no time to wheedle,
Kiss me quick and then I'm gone
Pop! Goes the weasel.¹³

Pawnshop is the most ancient financial establishment the historical identification of which goes far to those times when the first loan was created. It is hardly possible to clearly state the date of birth of this institution, the activity of which is rooted in the loan transactions based on possessory pledge. However, the notions of pawn and pledge have vital distinctions that make the pawn broking business peculiar.

In order to understand the notion of pawnshop, we would like to cite the definitions from various legal and non legal public sources. The Black's law dictionary, 7th edition states: "*Pawn* – 1. An item of personal property deposited as security for a debt; a pledge or a guarantee. 2. The act of depositing personal property 3. The condition of being held on

¹³EZ Cash, History of pawn brokering, available on <http://www.ezcashofpanamacity.com/history2.html> (last access on 03-22-2009).

deposit as a pledge. *Pawnbroker* – one who lends money, usually at a high interest rate, in exchange for personal property that is deposited as security by the borrower”¹⁴

The Florida’s pawn broking Act 1996 gives its own definitions as follows: “*Pawn* – means an advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor.... *Pawnbroker* – means any person who is engaged in the business of making pawns; who makes a public display containing the term “pawn”, “pawnbroker”, or “pawnshop” or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade”¹⁵

Such a free public internet source as the Wikipedia encyclopedia suggests these definitions: “A **pawnbroker** (or **pawnshop**) is an individual or business that offers monetary loans in exchange for an item of value that is given to the pawn broker. The word ‘pawn’ is derived from the Latin *pignus*, for pledge, and the items having been *pawned* to the broker are called *pledges* or *pawns*, or simply the collateral”¹⁶.

Encyclopedia Britannica online gives its own definition to the pawn broking activity: “business of advancing loans to customers who have pledged household goods or personal effects as security on the loans.”¹⁷

¹⁴ Black’s law dictionary, seventh edition, published by West Group, Saint Paul, Minnesota, USA, 1999, p1149.

¹⁵ The Florida pawn broking Act, 1996, chapter 539.001, (2)Definitions (h), (i) available at http://www.leg.state.fl.us/statutes/index.cfm?Appmode=display_statute&URL.=Ch0539/ch/0539.htm (last access on 03-09-2009).

¹⁶ Free encyclopedia Wikipedia online, Pawnbroker, available on <http://en.wikipedia.org/wiki/Pawnbroker> (last access on 03-20-2009).

¹⁷Encyclopedia Britannica online, Pawnbroking, available on <http://search.eb.com/eb/article-9058821> (last access on 03-22-2009).

After attentive reading of the above mentioned definitions it would become obvious that all of them under the notion “pawn” mean the physical possession by the lender (pawnbroker) of a personal property – tangible goods as a security in the credit-based transaction.

For the purposes of this research work we focus on using the definitions given in the Black’s law dictionary with some reference to the Florida pawn broking Act.

Obviously, from the study of above mentioned definitions, legal or general, it is clear that pawn transactions are originally based on the notion of consumer credit. According to Christopher L. Peterson the consumer credit is older than money and one of humanity’s most useful and dangerous social inventions. The creditor was “in effect a gift giver who merely expected a delayed reciprocal gift from the recipient”.¹⁸

The way Peterson speculates on the essence of credit has a direct reference to the substance of the pawn transactions, which brightly reflect the above mentioned principle: gift for gift. Consumer gives a valuable object, pawnbroker lends money on this object and both have interest and benefits in the transaction. The same principle is in the basis of another legal device such as possessory pledge. According to Black’s law dictionary definition, the pledge is: “1. a bailment or other deposit of personal property to a creditor as security for a debt or obligation”.¹⁹ As a result, the pawn has the same functioning as a possessory pledge. Why it is not really a true pledge? The answer we got through the investigating the way a pawn functions actually. Pawn v. Pledge comprises the following traditional differences:

¹⁸ Peterson L. Christopher, Truth, Understanding, and high cost consumer credit: the historical context of the truth in lending act, 55 Fla. L. Rev. 807, available at <http://international.westlaw.com> (last access on 03.01.2009).

¹⁹ Black’s law dictionary, seventh edition, published by West Group, Saint Paul, Minnesota, USA, 1999, p1175.

1. Pledge comprises not only tangible assets, but also commercial paper and securities in certificated (pledge able form). Pawn encompasses only tangible assets (goods)!
2. Pledgee may recover sales deficiency from the debtor, while Pawnee may not do it.
3. Pledgor (debtor/borrower) may recover sales surpluses from the pledgee, Pawnee may not.²⁰

These distinctions specify pawn as a separate notion despite a tight correlation with pledge. Simultaneously, it shows that the pawn broking business is more risky than any other business having pledge in its basis. No possibility to recover either deficiencies or surpluses. Subsequently the following question is adequate to pose: If it seems to be risky, what makes pawn broking industry attractive for potential customers and people willing to engage in a pawnbrokers' business?

In order to respond this essential for this research question, it is necessary to observe and distinguish the way the pawnshops function. How is business going on in pawnshop? The Nursery Rhyme "Pop Goes The Weasel" refers to pawning. A weasel is a shoemaker's tool and to "pop" is to pawn. "That's the way the money goes... Pop goes the weasel." There are several versions of this famous nursely rhyme. The above presented one is considered to be the most favorite.

²⁰ CEU, comparative secured transactions course, slides on pawnshops made by professor Tibor Tajti, 2008 year.

This childish rhyme in simple words describes the pawn transaction process that usually takes place within any pawnshop. In fact the very transaction is truly plain. You, as a client or potential borrower, bring in an item of your personal property into the pawnshop. The scope of pawned personal property is rather broad in USA and Europe: it starts with jewelry and watches and ends with guitars, video cameras, bicycles and even clothes that could be physically possessed. Grant Gilmore remarks that the possession is available as perfection device only when the collateral is a tangible existence. In the article 9 UCC (9-305) it is stated that a security interest may be perfected by possession if the collateral is „letter of credit, advices of credit, goods, instruments, negotiable documents or chattel paper”. Thus the categories of property which cannot be pledged are in article 9 terminology, accounts, contract rights, general intangibles and non-negotiable documents of title. This article serves as the basis for executing transactions and defining their nature.²¹ The pawn broker estimates the value of it, taking into consideration the depreciation value and its market demand, plus resale value if this item is not redeemed after a certain period of time, and announces the sum he is ready to pay for it and the period of redemption within which the pawn broker stores the item in his physical possession and has no right to sell until expiration of the redemption period, identifies the price with addition of interest charged a borrower need to pay in case of redemption. When it expires, you need to rebuy the item or you can renegotiate the conditions of extension of redemption period with pawnbroker with additional interest charged.

Often, the difference between the price paid for an item by the pawnbroker and the redemption price can be reasonable or seem to be very excessive that disappoints the borrower. However, we should take in mind that the pawn broker takes a risk of reselling the item in case if the property is not bought back by its real owner when time comes. He can

²¹ Gilmore Grant ,“Security interests in personal property” in two volumes, published by The Law book exchange Ltd, New Jersey, 1999 year, volume 1, chapter 14, §14.1, page 439.

either resell it profitably or on the contrary, lose more than he paid on the ground that the market demand can go down in respect of this specific item. You together with pawnbroker can come to the agreement how to shape the pawn transaction.

There are two well-known types of them: *pawn or buy-sell agreement*.²² The importance of shaping the pawn transaction in a specific way is rooted in the legal and technical consequences that follow out of either one or another type of structuring the pawn transaction. It is widely and frequently accepted to classify the pawn transactions as buy-sell agreements on the reason that usury rates and interest ceilings apply to those transactions, structured in the nature of a loan or pawn. Even the Florida Pawn broking Act contains a two-prong definition of a pawn: a bailment of personal property as security for a debt, and an agreement under which the purchaser will keep the pawn for an identified time period and invest an exclusive right to redeem to the seller.²³

To finalize the transaction regardless the way it is shaped, the pawn broker takes for storage an item of personal property and gives the borrower the money and a pawn ticket. The ticket contains the following required information: a detailed description of the pawned item, first and last names, address and a finger print of the borrower together with its signature and an amount the borrower must pay to redeem, additionally, the date by which the property must be redeemed. These transactions are picturesquely depicted and narrated in literature and television media. This literal example better demonstrates it:

²² 23 Fla. St. U. L. Rev. 995 – Oeltjen C. Jarret, Florida pawnbroking: an industry in transition available at <http://international.westlaw.com> (last access on 03-11-2009).

²³ The Florida pawn broking Act, 1996, chapter 539.001 available at http://www.leg.state.fl.us/statutes/index.cfm?Appmode=display_statute&URL.=Ch0539/ch/0539.htm (last access on 03-09-2009).

„I wish to get some money on this book, said the stranger in a hesitating manner, a flush invading his fair complexion; „could you – that is, will you.....”. He paused in confusion and held out the book, which Hagar took in silence.

It was an old and costly book, over which a bibliomaniac would have gloated.....

„.....give me five pounds”.

No; four is all that I can advance”.

„four ten,” pleaded the customer.

„Four”, retorted the inexorable Hagar...

„.....give me the four pounds,” he said, gloomily...

„That’ s my business!” retorted Hagar, curtly. „Name and address?”

„Eustace Lorn, 4: Caslte Road,” said the young man, giving an address near at hand....”

„Four pounds,” said Hagar, taking no notice of this remark; „there it is, in gold; your ticket also-number eight hundred and twenty. You can redeem whenever you like, on paying six percent interest...”²⁴

This example goes back to the nineteenth century and it illustrates that at that time, there was no necessity to describe the pawned item, have a fingerprint of a customer and the redemption period was indefinite, usually, that which was stipulated by the customer himself. Nowadays these gaps are fulfilled. However, it should be noted that there is a diverse variety of redemption periods and service charges or so called interest rates in different states. It mainly depends upon the jurisdiction and type of merchandise.

It was already mentioned above that after the expiration of redemption period, the pawn broker has a full legal right to sell the pawn to any third party. Obviously, the sale of pawn terminates any liabilities of a pawnbroker in respect to the borrower. All rights, title and any other interests in the pawn are transferred to the purchaser. The sales serve an irreplaceable function in the maintaining pawnshops. They constitute an additional source of profits or revenues that assist the profitability of a pawnshop business. The brightest example in USA is the example of a remarkable company such as Cash America, a publicly owned chain of pawnshops in Texas, greatly benefits from the sale deals. It should be mentioned that pawnshops can generally be regulated by states and cities and license private money loaning or the small loan business. A pawnbroker as a lender of small sums on the security of personal

²⁴ Hume Fergus, “Hagar of the pawnshop”, published by Kessinger Publishing, USA, 1998, page 23, available at <http://www.kessinger.net>.

property left with him or her in pawn is required by municipal corporations to be licensed. However, licensing regulation must be reasonable and not interfere with property rights or conflict with governing statutes.²⁵

It is interesting to note that Kazakhstani pawnshops are called in Kazakh and Russian: *ломбард* (*lombard*). However, the notion of pledge transaction as well as pawn in Kazakh sounds: *кепіл* (*kepil*) while in Russian it sounds: *залог* (*zalog*). In Kazakhstan, it is significant to mention that there is no clear distinction between pledge and pawn. Thus, the above-shown table of distinctions does not fit. In Kazakhstan, the pawnbroker can recover sales deficiencies from the pawnor if it is stipulated in the contract which is accompanied by pawn-ticket. The pawnee, in its turn, can recover surpluses from the pawnbroker according to the contract. Additionally, we will discuss it in details in the second chapter, the pawn transactions can be shaped as storage service. The storage service means that a customer does not act as a borrower, but better to say, a rentor or safor, who saves the valuable documents or things with the pawnshop, using the safes and all facilities in pawnshop. To say exactly, a customer rents the facilities of a pawnshop to keep safe his valuables for a specified renting fee. The pawnbroker has no right to sell this property unless the rentor does not take it within three months after the specified date is gone. Then, a pawnshop has a right to sell according to legislation. Moreover, the pawnshops in Kazakhstan do not have the distinction between auto loans, payday loans and pawns as in USA. There, pawnshops's scope of activity includes pawns, auto loans, payday loans, leasing, investments activity altogether. Three year ago, the pawnshops were tightly dependent on the Agency on regulation and control of the financial market and financial organization of the Republic of Kazakhstan and National Bank on the ground of obtaining licenses (two licenses need to be obtained) and permission to proceed

²⁵ Mcquillin, Law of municipal corporations, §24:334 available at www.international.westlaw.com (last access on 03-25-2009).

with its activity.²⁶ In January 2006, the requirement to obtain licenses was eliminated and a pawnshop was no more a legal entity carrying on specific bank operations, but simply a commercial entity. But, this fact begot a lot of dilemmas such as minimal capital requirements, scope of activity etc which we analyze in the second chapter of this thesis. The pawnshops in Kazakhstan mostly represent corporations with shareholders as founders and a growing number of subsidiaries. The pawnshop is considered to be not a bank! But, it still carries specific bank operations identified by legislation what makes it more interesting. The detailed comparative analysis in the second chapter will give us a view on the functioning of pawnshops in Kazakhstan and assists us in achieving the main objective of this thesis.

²⁶ Pravila ob otkritii, lizensirovanii, regulirovanii, prekraschenii deyatel'nosti lombardov ot 16 fevralya, 2004, № 43 (Rules on opening, licensing, regulation, cessation of the pawnshops' activity, dated from 02-16-2004, № 43) available in Russian on www.inform.kz (last access on 03-05-2009).

1.2. The pawnshop's image

“Can you conceive of a scenario where guns and pawnshops in court against a federal agency would do anything but damage our image further?
Being right does not mean you are going to win.
If you win, you must determine what you won. You did not win any friends.
It is rare that someone gets beat and does not want retribution.
Many Brady proponents serve on other committees that could create serious grief for the industry”²⁷

In many literal works, even in such masterpiece of William Shakespeare, *The Venice Merchant*, the pawn brokers are depicted as greedy, dirty and loathsome people who are trying to do profits by putting people into intolerably difficult situation in the way of charging extreme interests. That is the most sensitive issue in regard to the pawnshop industry. This practice has always suffered because of it being vividly and colorfully narrated in the most negative sense by means of media, literature and law enforcement authorities. It has often associated with criminal world especially with burglary engaged dealers on the ground that those criminals can easily convert the stolen property into liquid funds and the real owners can hardly be able to prove the right of ownership or to trace the way the property was used.

A number of cinema directors also are deeply interested in the pawn broking. However, again, the image of pawn broker is greatly distorted. In most movies the pawnshops are shown rather unattractive. Usually, it is a repulsive, stinky hock shop in the back street with a not less filthy and ill-natured pawn broker who is involved in immoral business with representatives of criminal world such as drug suppliers, thieves, frauders.

Alan Rosen in her article “Teach me gold” analyzes the impact of the film based on the real novel the main idea of which was the business of Pawnbroker and remarks that most notably, both book and film recall Shakespeare’s *Shylock*, associating the transactions of the

²⁷ Bill White, *The Brady report-A wake-up Call*, *National Pawnbroker journal*, Summer 1994, pages 52-53.

pawnshop to Shylock's early modern money lending. This association is nothing new: the pawnshop has played this cinematic role since the emergence of moviemaking at the end of the late nineteenth century, fashioning the pawnbroker either to emphasize allegations of Jewish greed or to contest them.²⁸

Moreover, the pawnshop industry is often correlated with the gun industry on the ground that guns are unlimitedly accepted by the pawn brokers as pawns, especially in the USA. Thus, it hinders the investigation made by law enforcement authorities. They were unable to exactly define the identity of a criminal person who possessed the gun and probably used it in criminal affairs on the reason that in earlier times there was no recordkeeping requirements.

Thus, we can see that the image of a pawn broker is to be quite negative despite the fact there are so many advantages of this practice, outlined by other legal practitioners and media workers. The main reason for having developed such unkind treatment towards the pawnshops was the lack of any efficient and practicably realizable legal regulation of this practice. Since the effective legal provisions in regard to recordkeeping, control and inspection by the law enforcement authorities, license requirements and penalties were elaborated and successfully probated specifically in the USA, the disgusting stigma which hovered over the pawnbrokers is gradually dissipating, highlighting more positive sides of this industry.

For example, such a distinguished law professor as John Caskey in his recent book states the advantages of pawnshops and their irreplaceable value by alleging that pawnbrokers provide

²⁸ Rosen Alan, "Teach me gold: Pedagogy and Memory in the Pawnbroker", *prooftexts* 22 (2002):17-117.

less than one percent of consumer credit in the United States. However, since the median loans are quite small (about 60 %), pawnshops serve millions of customers each year.²⁹

He also states in the same book that for a considerably long time, pawnbrokers have engaged in the legitimate business of lending very small amounts of cash to anxious (of somewhat desperate) borrowers on mutually agreeable terms. And steady growth for the pawn industry throughout the past century suggests that, all things considered, the “disadvantaged” pawn borrowers have arguably been quite satisfied with their dealings with these “consumer lenders of last resort”. After all they seem to keep going back for more.³⁰

In support to John Caskey, Jarret C. Oeltjen issues a number of articles such as “Pawn broking on Parade”, “Florida pawn broking: Industry in Transition” where he investigates the benefits of the pawn industry and the main problems and myths surrounding it. Also, he mentions that the pawnshops are mainly criticized for high interest rates.

Some law professors share their point of view on this problem. For example: Glen Tenney in his doctoral dissertation devoted to this hot topic uses the statistics showing the attempts of 28 states (including Washington DC) to constrain pawnbrokers who dare to make these high-interest loans, have legal rate ceilings ranging from 24 percent to 300 percent annual interest on pawn loans. In addition, 10 jurisdictions have some form of a regulation where lenders are required to return the proceeds from the sale of the collateral item (above the loan amount-including interest) to the original borrower in the case of default”. A very pertinent dilemma is raised in the same dissertation making us speculate before condemning pawnbrokers for

²⁹ Caskey, John *Fringe-Banking: Check-cashing Outlets, Pawnshops and the Poor*, published by Russell Sage Foundation, New York, 1994, p49.

³⁰ Caskey, John *Fringe-Banking: Check-cashing Outlets, Pawnshops and the Poor*, published by Russell Sage Foundation, New York, 1994, p16.

taking unfair advantage of unfortunate situations, however, a sense of fairness requires that we ask a very important question: Does the lending activity of the pawnbroker cause or contribute to the bad situation in which the borrower finds himself, or does the pawnbroker's action tend toward alleviating the bad situation in some way? Logic would tell us that if - in the mind of the borrower – the pawn loan being offered were deemed to worsen his situation, then the borrower would not agree to the loan. He would turn the loan down and walk away as a dissatisfied non-customer. Only to the extent the borrower feels that the loan will at least partially alleviate his problem (his “felt uneasiness” in academic parlance) will he go through with the loan.³¹

Murray Rothbard explains a simple, but essential principle of exchanges on the free market. His idea is the exchanges are taken voluntarily by both participating parties. This fact demonstrates that both parties are determined to benefit from the chosen transaction. At least, they expect these benefits.³² So, if a person gets into the pawnshop to do a bargain, he comes for benefit, not detriment. If the operation was truly detrimental to him, he would have never stepped into the pawnshop, knowing that he will get nothing but loss.

In regard to the connection of pawn industry to the criminal world, we agree with the opinion of another scholar, George White, who is also deeply interested in this issue. His analysis focuses on three levels a pawnbroker loses, if he takes a stolen item. First, he can lose his license. Second, chances are good that the police will confiscate the item and the broker ends up neither the item nor the money he paid out on it. And third, it undermines the relationship

³¹ Tenney, Glen, *The Effects of Government Regulation on competition and supply in the Pawn industry: a quantitative and qualitative study* (unpublished Doctoral Dissertation in Touro University, 2004), pp.200-02.

³² Rothbard, Murray N. *The logic of Action One* (Cheltenham, U.K.: Edward Elgar, 1997), p240.

the shop has with the local law enforcement agency.³³ It sounds very persuasive and turns to be so in reality. Pawnbrokers are businessmen, first of all, and as businessmen they take much care of their reputation, efficient marketing and elimination of potential dangers to their practices. The connection with the criminal world is a danger from all aspects. Despite the spoilt reputation and relations with law enforcement authorities, the pawnbrokers cannot trust to the representatives of the criminal world, who usually play their own rules.

Thus, it is not in the best interest of the pawnbroker to facilitate the correlation with criminal world. Moreover, pawnbrokers need a kind of protection from the same criminal structures that cannot stand before temptation of cleaning through a pawnshop full of stored valuables such as jewelries. As a result, we can come to the conclusion, that the pawn industry is much more valuable for our society, especially, it serves as the last resort people can apply to recover their financial situation.

The most recent financial crisis that spread globally can also be a proof of irreplaceable value of pawnshops according to recent media reports. For example, in Russia the local pawnbroker Vadim Karashuk, head of Moscow's 16 state-owned pawn shops says that his business is getting good: "We're lending out more cash now than ever because the banks are giving less credit... Before it was mainly older people with cheaper stuff, but now it's middle class people with more valuable gold and jewelry". He estimates his shops now loan around \$200,000 a day -- about 15 percent of the total for all Moscow's state and private pawn shops -- compared to about \$130,000 two months ago.³⁴ In USA, exactly, in Florida the slight increase of pawns is evidenced. Anthony Coppola, owner of Davie Pawn & Jewelry, Fort Lauderdale, says the

³³ George White, Corporate security: Eliminating Loss from the Industry, National pawnbroker, Summer 1994, at 22, 24.

³⁴ Kilner James, Russian pawn shops boom in financial crisis, posted on 11-16-2008, Reuters.com, <http://www.reuters.com/finance> (last access on 2009-03-03).

cash bonanza from something that now may be languishing in an old jewelry box has savvy customers heading to pawn windows."Business has increased somewhat, but your business is going to increase because the price of gold is higher," he says. "People are selling their unwanted jewelry."³⁵

The negative attitude towards pawnshops can be explained by creation of the social stereotype. People used to mark things with certain labels, either good or repulsive. Such a disgusting label is stuck to the pawnshop on the ground of the public opinion that only desperate people in the worst of worst financial situation turn to the pawnshop – people with one step to the misery. Consequently, it was a humiliation for a person to go to the pawnshop. It serves like a sign of your ‘frustrated finances’.³⁶ For purposes of satisfying their clients, pawnshops always have a secret entrance and exit doors that lead to dark, narrow and uninhabited streets to a client escape unnoticeably from early times. It makes people believe in the criminal practice a pawnshop is doing. But, we think it is simply done to please the customer as nowadays, hotels create a special helicopter square for an access by VIP customers if they want to avoid public.

Meanwhile, Kazakhstan is characterized by rather positive attitude to pawnshops. Due to the gun control and absence of the problem of selling or pawning of firearms and more or less efficient means of protection which pawnbrokers themselves undertake to avoid dealing with criminals through the requirement of depositing with the pawn shop the identity card of a potential borrower, the unattractive stigma, characteristic of the USA pawnshops does not

³⁵ Nolin Robert, Pawnshop see slight increase in traffic as gold prices soar:aside form jewelry, outlests see little chage in sale, posted on 10-08-2008 available on <http://search.ebscohost.com/login.aspx?direct=true&db=nfh&AN=2W62W63217371890&site=ehost-live> (last access on 03-03-2009).

³⁶ Metaphor, used by the thesis writer to strengthen the effect.

exist in Kazakhstan. Moreover, it is also explained by the growing necessity in micro credit institutions, which pawn shops refer to in Kazakhstan. Especially as a result of the financial crisis, the people are now stuffing in the pawn shops of Kazakhstan. However, there is another problem. Now, under the impact of crisis, people bring into pawnshops items, which they probably are not going to redeem at all.³⁷

The high consumer demand in micro credits, a pawn shop provide justifies the necessity and significance of the support of the pawn industry development which is undisputable, however, it is still evident that people should be made more aware of the peculiarities of this business in order to clearly distinguish the pros and cons and get rid of the unattractive stigma that has disrupted the reputation of this industry for a considerably long time.

³⁷ Zhama Gafur, Ssudnii den' (Day of verdict), article posted on 04-30-2008, available on <http://www.nomad.su/?a=4-200804300322> (last access on 03-23-2009).

1.3. Pawnshops' history

Upon the outermost Head of that seventh circle...
Where sat the melancholy folk (the usurers) -
Out of their eyes was gushing forth their woe.
- Dante, Divine Comedy, Inferno: Canto VII³⁸

Throughout history, pawnbrokers have been helping people. The Bible offers references to pawnbroking, and in Deuteronomy 24:6-13 it states: "No man shall take the nether or the upper millstone to pledge, for he taketh a man's life to pledge". What this means is: you should not take as a pledge anything a man needs to make a living. Also in Deuteronomy 23:21 the people were told not to take interest from their own countrymen - only from foreigners.³⁹

The word *pawn* originates from the latin word *patinum* which means cloth or clothing. The French word *pan* refers to skirt or blouse. In the early centuries the principle assets people had were their clothes and they borrowed money by pawning their clothing.⁴⁰

It is worth saying that in the West the pawnshop industry was well operative in Ancient Greek and Roman Empire. The further the Empire spread, the same way the pawn broking expanded. The Justinian code which was rediscovered in the tenth century is basically foundation of the contemporary Western law on this subject. Abrogating the prohibition of the Roman Catholic Church against charging interest on loans, the Franciscans got a permit to

³⁸ 37Buff L.Rev. 751 - Oeltjen C. Jarret, Pawnbroking on Parade, Buffalo Law Review available at <http://international.westlaw.com> (last access on 03-11-2009).

³⁹ EZ Cash, History of pawn brokering, <http://www.ezcashofpanamacity.com/history2.html> (last access on 02-12-2009).

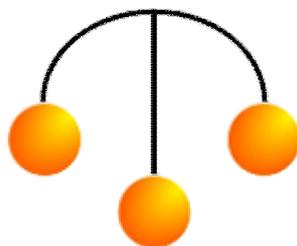
⁴⁰ National pawnbrokers, Pawnbroker History, <http://www.natpawn.com/history.htm> (last access on 02-14-2009).

commence the practice as an aid to poor. Consequently, the industry absorbed the whole Empire and all adjoining lands.⁴¹

In the East, especially, in China the pawn broking was established more than 3000 thousand years ago and surprisingly, it still exists in China, widely, in Hong Kong, without changing its business model as it was at the very birth of this practice. A typical pawnshop sign in Hong Kong is a bat holding a coin. The bat signifies fortune and the coin signifies benefits.⁴²

Despite it is being discovered long time ago, it became more popular and distinguishable in the Middle Ages. At that historic time, the credit systems commenced to develop and surely were represented by plain loan transactions. Owing to the great prosperity of pawnshops, the small businesses got a financing source through transforming goods or material into liquid funds.

Who were the step-fathers of pawnshops? The history says that in the Middle Ages, those who actively participated in pawnshop industry were Jews and Lombards from the Northern Italy. The Lombards are thought to be creators of the symbol of pawn broking.



⁴¹ Absolute astronomy, Pawnbroker, <http://www.absoluteastronomy.com/topics/Pawnbroker> (last access on 02-17-2009).

⁴² Roath's pawn shop, The history of pawn broking, <http://www.roaths.com/pawnbroking.htm> (last access on 02-18-2009).

The pawnbroker's symbol is three spheres suspended from a bar. It is naturally attributed to the Medici Family of Florence, Italy, owing to its symbolic meaning of Lombard. Certainly it refers to the Italian province Lombardy where pawn shopping originated under the name of Lombard banking. The three golden spheres were originally the symbol which medieval Lombard merchants hung in front of their houses. Originally, these spheres were yellow effigies of byzants, or gold coins, laid heraldically upon a sable field.⁴³ Pawnbrokers joke that the three balls mean "Two to one, you will not get your staff back".⁴⁴

Saint Nicholas is a patron saint of all pawnbrokers. Obviously, the symbol is attributed to the story of Nicholas and three bags of gold. **Saint Nicholas** is the common name for **Nicholas of Myra**, a saint and Bishop of Myra (in Lycia, part of modern-day Turkey). Because of the many miracles attributed to his intercession, he is also known as **Nicholas the Wonderworker**. In the most well known version, Nicholas helped a poor man to provide his three daughters with dowry by leaving him three sacks of gold unanimously. For his help to the poor, Nicholas is the patron saint of pawnbrokers.⁴⁵

In England, William the Conqueror can be considered the founder of the pawn broking that subsequently got a high promotion under the Italian brand-name, Lombards.⁴⁶

In 1198 in Freising, Germany and in 1350, Salans, Burgundy there were the earliest experiments of establishing public pawnshops as an approach to curb the excesses of private

⁴³ Roath's pawn shop, The history of pawn broking, <http://www.roaths.com/pawnbroking.htm> (last access on 02-18-2009).

⁴⁴ Free encyclopedia Wikipedia online, Pawnshop, <http://en.wikipedia.org/wiki/pawnshop> (last access on 02-19-2009).

⁴⁵ Free encyclopedia Wikipedia online, Saint Nicholas, http://en.wikipedia.org/wiki/Saint_Nicholas (last access on 02-19-2009).

⁴⁶ Absolute astronomy, Pawnbroker, <http://www.absoluteastronomy.com/topics/Pawnbroker> (last access on 02-20-2009).

pawn broking.⁴⁷ In Germany, there was one significant difference in the public regulation of pawning in the two countries: German municipal authorities could-unlike their British counterparts – prevent the establishment of new pawnshops if they saw no “public need”(*öffentliches Interesse*) for them. In translating this into action, most cities seem to have been quite draconian, since they had to guard the interests of public enterprise: unlike their British colleagues German pawnbrokers had to face competition from municipal pawnshops. They were designed or remodeled - some of them had a centuries-old, if less charitable history – according to public-spirited rules. Obviously, people pawned goods-mostly clothes – which were of no use to them during summer and got hold of them again when winter returned. This type of transaction became known as “*seasonal pledge*”.⁴⁸

There are a lot of historic evidences of how very outstanding and respectable statesmen or representatives of bourgeois society applied to the assistance of pawnshops seeking the monetary aid in exchange for material or goods in their possession. For example, in 1338, Edward III pawned his jewels to the Lombards to raise money for his war with France. King Henry V did much the same in 1415. And Queen Isabella of Spain pawned her jewelry in order to send Christopher Columbus out to what he believe were the Indies.⁴⁹ Evidently, not all historic persons treated pawnshops kindly. It is recorded that Henry VII Tudor chased them a good deal. Within first year of reigning of James I Stuart, an **Act against Brokers** was

⁴⁷ 37Buff L.Rev. 751 -Oeltjen C. Jarret, Pawnbroking on Parade, Buffalo Law Review available at www.international.westlaw.com (last access on 03-11-2009).

⁴⁸ Führer Christian Karl, Pawning in German Working class life before the first world war, International review of social history 46, published by *Internationaal Instituut voor Sociale Geschiedenis* (2001), pp.29-44.

⁴⁹ Absolute Astronomy, Pawnbroker, <http://www.absoluteastronomy.com/topics/Pawnbroker> (last access on 02-20-2009).

incontestably passed and was even included in the statute-book until Queen Victoria took the power into her hands for thirty five years.⁵⁰

Meanwhile, the pawn broking was not only aimed at granting loans per higher interest. In the place of its origin, Italy, it was associated with the Monte de Piedad movement began in Perugia in 1450 with the Orden de Menores Observantes de San Francisco. This campaign was directed to providing financial aid with no interest rate. The pawned goods were given as collateral without any ceiling interests. In return, the borrowers were obliged to make donations to the Church. This practice was quickly adopted by others all over the Europe. For example, the same campaign was started in Spain, Madrid, the idea of which was proclaimed by Pedro Romero de Terreros, the count of Santa Maria de Regla and knight of Calatrava in between 1774 and 1777. It was recognized as a national charity in 1927 by the Mexican government. Today it is a fast-growing institution with over 152 branches all over the Mexico. In India, the Marwari Jain community pioneered the pawn broking business, but today others are involved; the work is done by many agents called “saudagar”.⁵¹ In Singapore pawn broking started in 1875 and was a unique small business sector in Singapore. Because of difficulties in ascertaining the authenticity and/or the market value of such items as autos, antiques, paintings, mobile phones, pagers, branded spectacles, cameras, comic book series, and the likes, most pawnbrokers in Singapore refused to accept these items as pawn. About 90% (percent) of the pledges accepted by pawnbrokers thus were gold and jewelry.⁵²

The pawn industry came to America with the first settlers, and in the early parts of this century, pawnbroking was regarded as the main source of consumer credit. With the rise of

⁵⁰Free encyclopedia Wikipedia online, pawnshop, <http://en.wikipedia.org/wiki/pawnshop> (last access on 02-21-2009).

⁵¹ Free encyclopedia, Wikipedia online, Pawnbroker, <http://en.wikipedia.org/wiki/Pawnbroker> (last access on 02-21-2009).

⁵² Ghee Soon Lim, Pawnshops in Singapore, Asian Case Research Journal, vol.5, issue 2, published by World Scientific Publishing Co., pp 251-270 (2001).

large consumer credit institutions, such as finance corporations, savings and loan associations, and credit unions, the pawn shop is no longer the main source of consumer credit. But the pawn shop still plays a vital role in providing consumer credit.⁵³

The United States has never had either nationally operated pawnshops or national regulation of pawnbrokers. State pawnbroker legislation began to appear in the early 1880's. As a general matter, the early legislation imposed few restrictions. For example, first statutes merely granted authority to the cities or counties to pass such pawnshop ordinances as they saw fit. Pursuant to them, in the middle of the nineteenth century ordinances requiring pawnbrokers to pay a fee, to file a bond and to obtain insurance policy in order to be granted a license appeared. Several subsequent regulations were enacted to ensure the good character of the pawnbroker or to enforce appropriate record keeping for police purposes.

Even though municipal pawnshops never developed in the United States, there is a history of philanthropic individuals pooling their funds to operate successful charitable pawnshops. The best known and most successful of the philanthropic pawnshops is the Provident Loan Society. Formed in 1894, its goal was to “divorce the three balls from the three Furies.”

Throughout that period until nowadays, state regulation of pawnbroking varies state to state. An early attempt to uniform legislation could hardly be termed a success. A model Uniform Pawnbrokers Act was drafted, circa 1918, and it incorporated many of the business practices then in use by the Provident Loan Society. This Uniform Act was approved by the National Federation of Remedial Loan Associations in 1922. However, the Act received little support

⁵³ Acme pawn shop, History of pawnshops, <http://www.acmepawn.com/historyofpawn.htm> (last access on 02-22-2009).

in state legislatures, being followed, and only loosely at that, in Indiana, Pennsylvania, and New York”.⁵⁴

It is worth mentioning that the history of American legitimization of consumer credit took a number of shapes and had diverse implications. The most remarkable and contradicting was the Uniform Small Loan Law drafted by the Russell Sage Foundation in 1916. The purpose of it was the resistance to the loan sharks and its attempt to regulate their businesses. Nowadays, each state has its own consumer loan legislation that was the effect of the Russell Sage Act. However, this Act was much under criticism because of the unbelievably high interest rates of about three and one-half percent per month, or forty two percent per annum as a reasonable interest rate.⁵⁵

The Uniform Consumer Credit Code (UCCC) was enacted in 1968 as one of the most considerable steps towards the uniformity of regulations relating to consumer lending. In fact, it contained a number of imperfections which were highly criticized by the consumer groups; especially it concerns its pro-creditor orientation and limited exemption of pawnbrokers that generated a lot of disputes.⁵⁶ The UCCC did not apply to “pawnbrokers who are licensed, and whose rates and charges are regulated under or pursuant to ordinances or other statutes. Practically, it had a significant impact taking into consideration that UCCC established high interest rates -18 percent per annum for unsupervised lenders and 36 percent per annum for \$300 or less for supervised lenders despite a rather sharp criticism in its address. The

⁵⁴ 37 Buff L. Rev. 751 Buffalo Law Review – Oeltjen C. Jarret “Pawn broking on Parade” available at <http://international.westlaw.com> (last access on 03-11-2009).

⁵⁵ 37 Buff L. Rev. 751 Buffalo Law Review – Oeltjen C. Jarret “Pawn broking on Parade” available at <http://international.westlaw.com> (last access on 03-11-2009).

⁵⁶ Answers, Uniform Consumer Credit code, <http://www.answers.com/topic/uniform-consumer-credit-code> (last access on 02-23-2009).

application of UCCC was also disputable and arguable in those jurisdictions that lacked any regulation on pawnshops. As a reaction to the UCCC, the National consumer Act was promulgated, but it had another negative effect. It established very low interest rates thus, distorting the competition between pawnshops and other credit-based financial institutions such as banks, credit unions and others that did not operate under uniform laws.⁵⁷

In the same 1968 the Truth-in-Lending Act was adopted by Congress as part of the Consumer Protection Act. The core of this Act was in disclosure requirements of credit terms and *informatization* of potential credit consumers about the loan transactions. The Truth-in-Lending Act disclosure requirement applied to all pawn transactions, no matter whether it was characterized as buy-sell agreement or loan. Later, it was revised and rewritten in 1980 and it was determined that certain pawn transactions will be excluded from this Act depending on the circumstances related to those transactions and it will be decided and varied on case-by-case basis.⁵⁸

Today, National Pawnbrokers association outlines primary statutes and regulations applicable to the pawn industry. Among them, the truth-in-lending act is mandatory for compliance all over the states.⁵⁹

In Kazakhstan the legislative history of pawn broking is very scarce. It is explained by the late recognition of pawnshops as credit establishments. The only traces we find go back to the

⁵⁷ 37 Buff L. Rev. 751 Buffalo Law Review – Oeltjen C. Jarret “Pawn broking on Parade” available at <http://international.westlaw.com> (last access on 03-11-2009).

⁵⁸ Fair Debt Collection, the TILA requires full disclosure statements that outline all credit terms in simple easy-to-read language, <http://www.fair-debt-collection.com/credit-laws/truth-in-lending-act.html> (last access on 03-06-2009).

⁵⁹ NPA, Federal regulations, <http://www.nationalpawnbrokers.org/i4a/pages/index.cfm?pageid=3397> (last access on 03-06-2009).

creation of Silk Road in the fourth century B.C. The idea of pawn came with merchant caravans. Until 1731, the moment when Kazakhstan joined the Russian Empire, the pawn transactions were usually conducted by merchants, independent, private bodies. Since that time, Anna Iohannovna started the struggle with merchants who established too high interest rates by delegating the right to conduct pawn transactions to the monetary bureau, which was the state institution. Jewelries were accepted as collateral with 8% percent annual interest rate. From that time a number of municipal pawnshops were opened. However, after the revolution in 1918 which absorbed as Russia so and Kazakhstan, all pawnshops were closed. During the soviet time, in 1922-1923 years, the public pawnshops (lombards) were re-established, referred to the system of consumer service institutions and were under the control of local authorities. In Almaty (former capital of Kazakhstan) until 1995 only one public pawnshop functioned. After the break of the Soviet Union, the independent legislation of Kazakhstan was enacted in august 30, 1991. The provisions in respect to pawnshops went through a number of amendments. The civil codex, article 328 stating the definition and scope of activity of pawnshops, article 26.2 of the statute on banks and bank activity in Kazakhstan that contains requirements applicable to pawnshops were amended in January 2006.⁶⁰ The consequences of these amendments have led to abolishment any licensing requirements to pawnbrokers. Now, if an individual or a legal entity is going to open a pawnshop, it needs only state registration in the Ministry of Justice of RK.

⁶⁰ Vigodi lombardnogo kreditovaniya (benefits of pawn shops' credits), article available on www.afn.kz/cont/publish836728_669.doc (last access on 03-22-2009).

Chapter II: The analysis of Florida pawn broking act and Kazakhstani legislation on pawn shop industry.

2.1. Florida pawnbroking act's review: background.

Business people who fight change might as well fight an ocean tide.
Business people who ignore change are ignoring their future.⁶¹

If we compare the development of the legislative history of pawn broking in all states of America, we can come to the conclusion that the Florida state has one of the most lengthy and rich legislative background on this subject.

If we look back into the history we will see that the early legislative enactments in Florida mostly focused on such issues as registration, crime prevention or even control through pawnshops and the raising of revenue. The importance of registration is evident on the ground of maintaining control over such business entities as pawnshops and an opportunity to avoid over-density of these establishments in certain districts or regions, thus procuring a fair competition. Even earlier, the necessity of keeping specific written documentation was fully realized and mandated for all pawnshops. Mainly, it was done for the purposes of assisting the local law enforcement officials to raid and watch the activity of pawnbrokers, whose practice used to be associated with criminal structures. Since early times it was clear that without some effective control measures, the criminals mostly engaged in forgery or burglary could easily transfer the stolen valuables into liquid funds to obtain cash and get rid of the “burning” property. When there was no law regulation, it constituted a major hindrance to law

⁶¹ Rossin E. Jack “The Pawnshop chronicles: street wisdom for the business world”, published by Rossin E. Jack, USA, 2003, p93.

enforcement powers to follow the route of the sale of the stolen property and it burst into the criminals' business prosperity.⁶²

When Florida, following the example of other states, adopted the common law of England, the common law had already contained provisions in regard to record-keeping. According to these provisions, the pawnbrokers were obliged to keep records of all pledged goods. Such records should have contained the information on the identity of pledged goods (a detailed description of them), the amount loaned, and the data of the pledgor including his name and address. The copy of the record was forwarded to the pledgor. These provisions were completely adopted in the first Florida statute on pawn brokers that was chapter 5106, Laws of Florida. It was enacted in 1903. There were some significant additions requiring pawn brokers to make these records available to law enforcement officials during regular inspections, the license tax in the amount of \$100 to the state for each place of business was also imposed, and the penalty of one to six months' imprisonment was admitted for violation of the law. The license fee and record-keeping requirements were subjects to constant amendments, either increased or otherwise.⁶³

Thus, in 1913, the license fee was increased to \$150 for those pawn brokers who manage business in the cities with population of 10 000 or more. New recordkeeping requirements obliged the pawnbrokers to fix the person whom they purchased the stock from, date of purchase and the date of it being sold and who it was sold to. The express right to sell the pawn if no payment was made within six months' of the pledge was granted to the

⁶² 23 Fla. St. U. L. Rev. 995 – Oeltjen C. Jarret, Florida pawnbroking: an industry in transition available at <http://international.westlaw.com> (last access on 03-11-2009).

⁶³ 23 Fla. St. U. L. Rev. 995 – Oeltjen C. Jarret, Florida pawnbroking: an industry in transition available at <http://international.westlaw.com> (last access on 03-11-2009).

pawnbrokers only in 1957 by the new enactment of Florida legislation. Such sale terminated all liabilities of pawnbroker towards the pledgor, and all rights and interests of both of them were invested into the purchaser at the time of sale. By this legislation, this provision should have been printed on the pawn ticket, thus, giving a notice of intent to the pledgor. By signing the pawn ticket, the pledgor gave his/her full consent. However, there was no penalty in a case of violation of this provision.⁶⁴

The pawnbrokers had to do monthly reports to the local sheriff about all recorded transactions according to the duty imposed by the Florida legislature in 1959. In 1972 the state licensure of a majority of businesses was eliminated and the authority to issue occupational licenses was granted to the local governments. The pawnbrokers were deleted from the larceny statute in 1975 and recordkeeping requirements and obligations to report to local sheriffs were repealed. Consequently, by the end of 1975, the Florida legislation contained provisions in respect to only redemption period and sale of the pawn. So, practically, the pawnbrokers were almost released from the control of the Florida legislature owing to the abolishment of licensing, recordkeeping requirements and absence of penalties for violation of existing provisions. This begot its own negative effects and created more obstacles in tracing the stolen property by law enforcement personnel. This period can be characterized as a booming of pawnshop industry. Lack of licensing requirements led to the founding of a great number of new pawnshops that were on the verge to over-fill the cities in Florida.⁶⁵

⁶⁴ Oeltjen C. Jarret, Florida pawnbroking: an industry in transition available at <http://www.law.fsu.edu/journals/lawreview/frames/234/oeltfram.html> (last access on 03-11-2009).

⁶⁵ Oeltjen C. Jarret, Florida pawnbroking: an industry in transition available at <http://www.law.fsu.edu/journals/lawreview/frames/234/oeltfram.html> (last access on 03-11-2009).

As a result, in 1979 the record-keeping requirements were legislatively reinstated and made available to the inspection of law enforcement officials. Moreover, a kind of protection of owners of stolen property was expressly given through this reinstatement on the condition if the true owner of the stolen property furnishes proof of the ownership, he/she can recover the property through the police at no personal expense. This meant that no judicial process or reimbursement of pawnbroker for the loan was necessary. However, as in defense, the pawnbroker could show the evidence that the pledgor provided proof of ownership of the pawn. Thus, it was hardly possible to contest legality of pawn transaction and the possibility of judicial process was alternative.⁶⁶

In 1989, chapter 538 governed the Florida pawn broking. The major focus was to resist the problem of robbery and drug-related crimes by strengthening the police control of the pawnshops and facilitating the recovery of the stolen property. In addition, it allowed having identified those criminals who could turn to pawnbrokers or secondhand dealers for money. When the Florida Law Enforcement Recovery Unit was introduced, due to its impact, the mentioned statutes were designed to combine pawnbrokers and others under the category of “second-hand dealers” and to abolish all former statutes in respect to pawnbrokers, junk dealers and precious metals dealers.⁶⁷

Most of the amendments to this statute were of minor importance, but there were significant additions. One such notable addition obliged secondhand dealers to have an actual physical possession of all pledged articles of stock throughout the transaction; since that moment title or any other form of security could not be accepted without actual physical possession. As an

⁶⁶ 23.Fla.St.U.L.Rev. 995 – Oeltjen C.Jarret,Florida pawnbroking: an industry in transition available at <http://international.westlaw.com> (last access on 03-11-2009).

⁶⁷ 23 Fla. St. U. L. Rev. 995 – Oeltjen C. Jarret, Florida pawnbroking: an industry in transition available at <http://international.westlaw.com> (last access on 03-11-2009).

effect of this amendment, in 1995, title loans were authorized but separated from pawnshops completely by the legislation. Thus a “new” title loan industry got a legal framework.

Another addition gave a chance to the person alleging the ownership of the property in the possession of the secondhand dealer to bring an action for replevin in a case the secondhand dealer contests the identification or ownerships rights of this person.⁶⁸

Chapter 538 consisted of the following provisions: recordkeeping and registration requirements, delivery of copies of records to law enforcement authorities, periods for possessing goods, inspections by law officials, a list of prohibited practices, procedure for the recovering of the stolen property to the true owner, restitution to the secondhand dealer by the convicted burglar, penalties, the authorization of local governments in enacting ordinances governing the operation of the pawnshop. However, there was no mandatory requirement relating to service charges, interest rates ceilings or sale/purchase differential and so on.⁶⁹

The current Florida Pawnbroker Act is under chapter 539 001. It comprises such important provisions as: definitions, license requirements and conditions for eligibility for obtaining license, revocation or suspension of licenses, net worth requirement, penalties, recordkeeping requirements, especially, relating to the filling in the pawnbroker’s transaction form with stipulation all necessary data in respect to the pledgor and pledged goods, reporting and hold periods, service charges, the list of prohibited acts, right of redemption and measures that must be taken in a case of loss of the pawnbroker’s transaction form. Moreover, it includes

⁶⁸ Oeltjen C. Jarret, Florida pawnbroking: an industry in transition available at <http://www.law.fsu.edu/journals/lawreview/frames/234/oeltfram.html> (last access on 03-11-2009).

⁶⁹ Oeltjen C. Jarret, Florida pawnbroking: an industry in transition available at <http://www.law.fsu.edu/journals/lawreview/frames/234/oeltfram.html> (last access on 03-11-2009).

specific provisions in regard to claims against purchased or pledged goods held by pawnbroker, hold orders and the procedure of their issuance by law enforcement officials if there is any suspicion that the pawnbroker misappropriated certain goods, criminal penalties (they are stipulated separately from administrative penalties such as fees). Additionally, under paragraph 539.002 applicability of the above mentioned act is identified. And under paragraph 539.003 confidentiality in relation to the pawn broking practice is also mentioned.⁷⁰

⁷⁰ The Florida pawn broking Act, 1996, chapter 539.001, available at http://www.leg.state.fl.us/statutes/index.cfm?Appmode=display_statute&URL.=Ch0539/ch/0539.htm (last access on 03-09-2009).

2.2. The Contemporary Florida pawn broking act: pros and cons.

A great strategy poorly executed is a waste of time.
A mediocre strategy superbly executed has value to it.⁷¹

2.2.1 Main definitions

For the purposes of this thesis, it is necessary to observe in details the contemporary provisions of the pawn broking Act of Florida in order to identify its advantages and disadvantages, thus contributing to a more fertile comparative analysis with Kazakhstani pawnshop legislation. The local enforcement authorities' reports and Florida senate recommendations to the Act will assist us much. All block quoted and in italics provisions used in this section are taken from the contemporary Florida pawn broking act.⁷²

First of all, let us consider the pawn broking act's provisions separately. The act is represented by the chapter or section 539.001 of Florida statutes and it consists of subsections which are divided into paragraphs and subparagraphs. The act starts with short title (subsection 1) and definitions (subsection 2). Among all of them, it is significant to indicate the following notions:

Agency – means the Department of Agriculture and Consumer services;

Appropriate law enforcement official – means the sheriff of the county in which the pawnshop is located or, in case of a pawnshop located within municipality, the police chief of the municipality in which the pawnshop is located; however, any sheriff or police chief may designate as appropriate law enforcement official for the county or municipality headed by that sheriff or police chief. Nothing in this subsection limits the power and the responsibilities of the sheriff.

⁷¹ Rossin E. Jack "The Pawnshop chronicles: street wisdom for the business world", published by Rossin E. Jack, USA, 2003, p87.

⁷² Florida pawn broking Act, 1996, chapter 539.001 available at http://www.leg.state.fl.us/statutes/index.cfm?App-mode=display_statute&URL.=Ch0539/ch/0539.htm (last access on 03-09-2009).

Pawn-means any advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor...

Pawnbroker – means any person who is engaged in the business of making pawns; who makes a public display containing the term “pawn”, “pawnbroker” or “pawnshop” or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.

Person- means any individual, partnership, corporation, joint venture, trust, association, or other legal entity.

Pledged goods – mean tangible personal property that is deposited with, or otherwise delivered into the possession of a pawnbroker in connection with a pawn. Pledged goods do not include titles or any other form of written security in tangible property in lieu of actual physical possession, including, but not limited to, choses in action, securities, printed evidence of indebtedness, or certificates of title and other instruments evidencing title to separate items of property, including motor vehicles. For purposes of federal and state bankruptcy laws, a pledgor's interest in his or her pledged goods during the pendency of a pawn is a right of redemption only.

Pawn service charge – means a charge for investigating the title, storage, and insuring of the security; closing the transaction; making daily reports to appropriate law enforcement officials; expenses and losses; and all other services.⁷³

After careful reading of these notions, we can already distinguish some peculiarities of this Act. It is necessary to remark that the very Act is regulated and under the control of the Department of Agriculture and Consumer services in Florida, identified as Agency here. It is not the same situation in other states and other countries. In Kazakhstan, pawn industry is under the control of the Agency on the regulation and control of financial market and financial organizations (sometimes called FSA). However, in Florida proponents of the Florida pawn broking act are of opinion that the shifting of responsibility to the Department of Agriculture and consumer services was not an optimal solution on the ground that it has the ability to revoke the pawnshop license, but is generally limited to issuing fines. This clearly benefits to law enforcement in respect to imposition of administrative penalties.⁷⁴

⁷³ Florida pawn broking Act, 1996, chapter 539.001 available at http://www.leg.state.fl.us/statutes/index.cfm?App-mode=display_statute&URL.=Ch0539/ch/0539.htm (last access on 03-09-2009).

⁷⁴ Hurley.T James, “Property crime and pawnshops: correlation or coincidence?”, police magazine, may 2000 available at <http://ci.ftlaud.fl.us/police/hurley2.html> (last access on 21-12-2008).

The definition of pawnbroker implies that any person can engage in this practice. By any person it means any legal entity without limitation and individual. Simultaneously, we can get to another point that the pawnbroker can conduct pawn and sell-buy transactions by purchasing goods. So, the transactions can be shaped in two ways: pawn or buy-sell agreement. The notion of pledged goods leads us to another fact that despite Article 9 UCC governing the secured transactions, includes chattel paper and negotiable documents into the list of tangible property that can be perfected by physical possession, here, all written securities in tangible property are clearly excluded, even auto titles. Thus, the scope of collateral is limited to movable property, exactly, consumer goods. When we start analyzing Kazakhstan legislation, we will see that the situation in respect to collateral is different there.

Moreover, the pledgors' interest is definitely limited to a right of redemption only. This means that in case of sale, the pledgor is not entitled to recover any deficiencies or surpluses. The pawn service charge is rather broad notion. It explicitly comprises not only expenses, losses, insurance cost, investigation of title, but also daily reports to enforcement officials. This fact proves the tight relations of pawnshops with enforcement authorities, but, it does not have the same nature in other countries. In Kazakhstan, the pawn legislative acts do not separately and clearly identify the relations of enforcement authorities with pawnshops and daily reports are not among requirements, applied to pawnshops.

2.2.2 Licensing requirements

The following provision under subsection 3, concerns the license requirements. Without doubt, each person who wants to start pawn business must obtain a license. The Department of Agriculture and Consumer services, hereinafter referred as Agency, is responsible for

issuing licenses. No matter what kind of legal entity a pawnshop represents, a separate license is required for each pawnshop. This means that if a pawnshop is corporation and establishes its subsidiary in the same region or another, it has to obtain a separate license for its subsidiary. The same concerns individuals, wishing to open more than one pawnshop.

In case a licensee seeks to relocate the pawnshop, he needs to give 30 days prior notice to the Agency and law enforcement official in order the Agency could do all relevant amendments to the very license; otherwise it is considered to be invalid. However, it is possible to obtain the temporary license before the permanent one will be issued. It concerns individuals and legal entities. The owner of the pawnshop does not have to apply for a new license if he or one of the shareholders, keeps 90 % (ninety percent) of the outstanding equity interest in the ownership of pawnshop, otherwise, a new license must be requested. The validity of the license is limited to one year and must be renewed annually unless it is revoked or suspended. The license fee in the amount of \$300 for each license held is mandatory. In fact, this very provision was under constant debates among pawnbrokers and enforcement authorities. The annual renewal was and is thought to be a burden upon pawn brokers that hinders the healthy business conduct. However, the provision is still in force due to the opportunity to properly control the pawnbrokers' activity.

We keep to the opinion of pawn brokers that such provision is too excessive. Taking into consideration that pawnshops do daily reports to enforcement officials and presence of a number of administrative and criminal sanctions for misrepresentation of information while obtaining license and opportunity to exercise revocation and suspension of license in case of suspicion of wrongdoing from the part of pawnbrokers, does this provision of annual renewal give any protection and really serve as means of control? What is the exact value of this

requirement? We think, it has no important practical value and only creates one more obstacle to the normal business doing. The situation is aggravated by the fact that subsection 20 of this act allows municipal and county authorities enact ordinances on land use control and requiring pawnbrokers to obtain occupational licenses. This means that a pawnbroker, actually, must have two licenses at least.

The following subsection 4 focuses on eligibility requirements for license. The value of this provision is that it exactly states what requirements an applicant must fulfill. That is what is rather ambiguous in Kazakhstan legislation. In regard to the minimal capital requirements, this section stipulates a necessity to have a net worth (total assets less total liabilities) in the amount of \$50 000 or file a bond issued by a surety company qualified to do business in this region, in the amount of \$10 000 for each license. In lieu of the bond, the applicant may establish a certificate of deposit or an irrevocable letter of credit in a Florida banking institution in the amount of the bond. The original bond, certificate of deposit or letter of credit shall be filed with and in favor of the Agency, and the Agency shall be the beneficiary to said document.

The most peculiar fact is that if a pawnbroker commits fraud, misrepresentation, breach of contract, financial failure, violation of any provisions of this act towards consumer and consumer files court proceedings, the bond, certificate of deposit or letter of credit must not be subject to these proceedings. They are only subject to enforceability and amenability in administrative proceedings before the Agency. Thus, only the Agency can order the payment of consumer claims out of such bond, letter of credit or certificate of deposit. The payment can be done on the pro rata basis unless the aggregate amount does not exceed the amount of

the bond. Meanwhile, this provision does not include fixed capital. Consequently, it does not refer to it and it can be subject to court proceedings and consumer claims within the court.

A person who has a net worth of \$ 50 000 or more shall file with the agency the following documents: a current financial statement, prepared by Florida certified public accountant or affidavit stating the net worth is at least \$ 50 000 with supporting documentation and a copy of the applicants recently filed federal tax return, if the applicant is a corporation. We will not plunge into long discussions whether a requirement of fixed capital can be regarded as a protection of consumers or third parties, but here, we would like to stress the clear allocation and identification of duties in respect to the control of capital and bond between pawn brokers and agency and the way of how to deal with consumer claims.

Another feature of this provision is the requirement to an applicant to be of good moral character. What is meant under the notion “good moral character”? I will prefer to cite the provisions explaining it:

...3. Not have been convicted of, or found guilty of, or pled guilty or nolo contendere to, or not have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a felony within the last 10 years and not be acting as a beneficial owner for someone who has been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a felony within the last 10 years; and

4. Not have been convicted of, or found guilty of, or pled guilty or nolo contendere to, or not have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing within the last 10 years, and not be acting as a beneficial owner for someone who has been convicted, of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing within the last 10 years...⁷⁵

⁷⁵ Florida pawn broking Act, 1996, chapter 539.001 available at http://www.leg.state.fl.us/statutes/index.cfm?App-mode=display_statute&URL.=Ch0539/ch/0539.htm (last access on 03-09-2009).

Simply, an applicant must have no judicial conviction or connection with the representatives of criminal world at least within last 10 years. The ten year period seems to be a reasonable time for a person to prove his good moral image. The scrutinizing of above mentioned provisions leads us to another interesting discovery that in effect larceny, burglary, theft, embezzlement and felony are those prohibited crimes an applicant must not be involved into or be guilty in. What about of being convicted for internet spam operations? It is definitely not covered by these provisions. Such a specification of forbidden crimes can be explained by the direct reference to the nature of pawnshop business. What is important for normal functioning of a pawnshop and its reputation? Obviously, a confidence that a pawnbroker does not steal, receive and sell a stolen property. Thus, it eliminates any connection with property crime, a stigma, that has disrupted the pawn industry for a long time.

Subsection 5 (five) deals with the application for a license. According to this provision, the main requirement is a full disclosure of personal data of applicant. It concerns individuals and legal entities such as partnerships, corporations, joint ventures etc. If applicant is not an individual, he must disclose the full name and address of each direct or beneficial owner of at least 10% (ten percent) equity interest in such person. If an applicant is a corporation, he must state the full name and address of each officer and director unless the applicant is owned by a person that as an issuer has a class of securities registered under section 12 of the securities Exchange Act 1934 or under section 15 (d). In such a case, the disclosure and statement of his personal data is not necessary.

The unique feature of this provision is the requirement that each application for a license must be accompanied by a complete set of fingerprints taken by an authorized law enforcement officer and the cost for fingerprints analysis for each person is subject to eligibility requirements and duty upon an applicant. The agency submits the fingerprints to the

Department of law enforcement for state processing, which forwards the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The fees or costs are not refundable. The necessity for such a procedure is a verification of an applicants' identity and of any adjudications throughout his life. Certainly, such a procedure will assist in finding out whether the applicant complies with eligibility requirements. But, why has it become so important to have fingerprints' analysis on the level of FBI? The adequate explanation can be traced back into the history of pawnshops in the USA. As it was already discussed in preceding chapter (chapter 1, section 2) of this thesis, the tight correlation of pawn industry with criminal world and the facts of notorious criminals engaged in pawnshop business and using pawnshops as places of hiding stolen property made law enforcement authorities elaborate a number of preventive measures in order to stop disrupting the reputation of this business practice and its advantageous characteristics.

However, let's consider whether this provision has a practical value. To realize the importance of this provision, we need to have an insight into the reports and statistical data revealing any correlation of the pawn industry with criminal world, exactly, property crime. According to the report of the Police Department of Fort Lauderdale, made by assistant chief James T. Hurley after the enactment of Florida Pawnbroking Act in 1996 as a separate statute, the Fort Lauderdale Police Department made an investigative study of the relationship between property crime and the pawn industry. The resulting report by Scott Glover and Evelyn Larrubia was astonishing. By 1995 year the reporters found that of the 50 most frequent pawners (borrowers), 39 had criminal records in Florida, and almost all of the convictions were for burglary or cocaine charges. The relationship between property crime

and drug addiction has long been established. It justifies the necessity of fingerprints' analysis on Federal Bureau of Investigation level.⁷⁶

Whether the same approach is applicable in other countries, such as Kazakhstan, we will see in the next section.

It is good to note that this subsection 5 (five) of Florida Pawn broking Act mandates the public display of the obtained license either at the front desk or counter at each pawnshop. Such a requirement is a means of consumer protection through the visual notification of legality of business conducted.

Subsection 6 (six) of the Act governs the suspension, revocation, and surrender of license and net worth requirements. In order to exercise revocation, suspension and surrender of license the licensee, either knowingly or without the exercise of due care, violates this chapter; the licensee or its applicable agents and employees no longer meet the eligibility requirements, or through gross negligence or willful noncompliance failed to comply with a written hold order; a condition exists or existed when the license was issued, would have justified the agency's refusal to issue a license.

What is the most significant in this provision is that the agency can exercise revocation, suspension and surrender of license only after a notice and hearing, thus, not violating the amendment 14th of USA constitution. It is not stated, but it can be easily derived from the wording of this provision that the suspension, revocation or surrender actions are not valid if done without notice and hearing. It clearly protects pawnbrokers or those entities engaged in pawn industry and gives them a chance to defend themselves from any wrongful allegations against them at the hearing.

⁷⁶ Hurley.T James, "Property crime and pawnshops: correlation or coincidence?", police magazine, may 2000 available at <http://ci.ftlaud.fl.us/police/hurley2.html> (last access on 21-12-2008).

Also, it is worth mentioning that the revocation, suspension, or surrender of a license does not impair or affect the obligation of any pre-existing lawful contract between the licensee and any pledgor. This statement evidently serves as consumer protection means.

However, any pawn transaction made by a person without license is voidable. This provision also clearly stipulates the possibility of conditionally license or putting on probation a person whose license is suspended and the opportunity of reinstating a suspending license or issue a new license instead of revoked one after a hearing if no condition or fact exists to justifying refusal of agency.

2.2.3 Administrative penalties

Subsection 7 is devoted to orders imposing penalties. The Agency may enter an order and impose the following: - *issue a notice of noncompliance pursuant to section 120.695; impose an administrative fine not to exceed \$5,000 for each act which constitutes violation of this section or rule or an order; directing the pawnbroker cease and desist specified activities; refusing to license or revoking or suspending a license; placing the licensee on probation for a period of time, subject to such conditions as the agency may specify.*

The Agency may enter into such an order only if a pawnbroker: *1. violated or is operating in violation of any of the provisions of this section or of the rules adopted or orders issued thereunder; 2. Made a material false statement in any application, document, or record required to be submitted or retained under this section; 3. Refused or failed, or any of its principal officers has refused or failed, after notice, to produce any document or records or disclose any information required to be produced or disclosed under this section or the rules of the agency; 4. Made a material false statement in response to any request or investigation*

by the agency, the Department of Legal Affairs, or the state attorney; or 5. Has intentionally defrauded the public through dishonest or deceptive means.

What is worth focusing on in this subsection is the ability of an agency, if the violation of this section occurs, or there is a reasonable cause to believe that a person is operating in violation of this section, to bring a civil action in the appropriate court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including a civil penalty not to exceed \$5,000 for each violation, restitution and damages for injured customers, court costs, and reasonable attorney's fees according to paragraph 7(d). The content of this provision shows the possibility of court substantial involvement in reviewing pawn transactions and evident preference to litigation.

However, subsection 7.2 indicates the chance of solving the matters without court involvement and agency can terminate any investigation or action if the offender agrees to pay a stipulated civil penalty, to make restitution or pay damages to customers or satisfy any other relief authorized herein and requested by the agency.

Thus, subsection 7 deals with administrative penalties that have nothing to do with criminal ones. The positive side of this provision is clear stipulation of what administrative penalties an agency can impose, when and what actions for.

2.2.4 Pawnbroker transaction form-pawn ticket.

Section 8 contains requirements to the pawnbroker transaction form. This form is also well known as pawn ticket. The completion of this form at the time of entering into any pawn or purchase transaction is obligatory. The transaction form serves as evidence of bargain and its a kind of protection for both, pawnbroker and consumer. The form presupposes the full and detailed written disclosure of transactions. The agency usually approves the design and format

of the transaction form, which must be 8 ½ inches * 11 inches in size and must be filled in in typed or written legible and indelible English to avoid ambiguous phrases and misunderstanding. Any transaction form must include the stipulation whether the transaction is a pawn or purchase. The way the transaction is formed is very important since it determines what usury rates will apply to the named transaction.

The front of the pawnbroker transaction form must include:

1. The name and address of the pawnshop.
2. A complete and accurate description of the pledged goods or purchased goods, including the following information, if applicable: brand name; model number; manufacturer's serial number; size; color; as apparent to the untrained eye; precious metal type, weight, and content, if known; gemstone description, including the number of stones; in the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish; any other unique identifying marks, numbers, names, or letters.
3. The name, address, home telephone number, place of employment, date of birth, physical description, and right thumbprint of the pledgor or seller.
4. The date and time of the transaction.
5. The type of identification accepted from the pledgor or seller, including the issuing agency and the identification number.
6. In the case of a pawn: the amount of money advanced, which must be designated as the amount financed; the maturity date of the pawn, which must be 30 days after the date of the pawn; the default date of the pawn and the amount due on the default date; the total pawn service charge payable on the maturity date, which must be designated as the finance charge; the amount financed plus the finance charge that must be paid to redeem the pledged goods on the maturity date, which must be designated as the total of payments; the annual percentage rate, computed according to the regulations adopted by the Federal Reserve Board under the federal Truth in Lending Act; and the front or back of the pawnbroker transaction form must include a statement that: Any personal property pledged to a pawnbroker within this state which is not redeemed within 30 days following the maturity date of the pawn, if the 30th day is not a business day, then the following business day, is automatically forfeited to the pawnbroker, and absolute right, title, and interest in and to the property vests in and is deemed conveyed to the pawnbroker by operation of law, and no further notice is necessary;
7. In the case of a purchase, the amount of money paid for the goods or the monetary value assigned to the goods in connection with the transaction.
8. A statement that the pledgor or seller of the item represents and warrants that it is not stolen, that it has no liens or encumbrances against it, and that the pledgor or seller is the rightful owner of the goods and has the right to enter into the transaction.

In the case of multiple items of a similar nature delivered together in one transaction which do not bear serial or model numbers and which do not include precious metal or gemstones, such as books and

hand tools, the description of the items must contain the quantity of items and a description of the type of items delivered.

The above-mentioned requirements stipulated in subsection 8 of Florida pawn broking Act assist mainly to law enforcement authorities to trace the stolen property and simultaneously through the requirement of fingerprints to prevent willing criminals to attempt to sell stolen item in pawnshops. The practical experience of abolishing such a requirement at the beginning of the twentieth century in Florida proved to be wrong and soon the re-enactment for detailed written disclosure of transaction and fingerprints requirements occurred.

Moreover, the period of redemption in this subsection is clearly identifiable and duly notified to the customer through the inclusion of the mandatory statement on the back of the transaction form and here, it is no more than 30 (thirty) days. The identification of the redemption period is valuable, thus, it exactly specifies the moment when the pledged property becomes the sole property of a pawnbroker and he legally can exercise his right of sale. Nevertheless, paragraph 8.IV marks that the pawn can be extended upon the mutual agreement of the parties, thus it gives a second chance to a consumer to redeem the pledged property. Today, it is possible to prolong the transaction more than two times upon the agreement of parties. However, paragraph 8.II states that the pledgor is not obligated to redeem. It presupposes the freedom of action from the part of a customer.

What is peculiar in this subsection is that the provisions governing the situations when a pledgor or a seller knowingly gives a false verification of ownership or false or altered identification and receives money from the pawnbroker, commits felony of two degrees depending on the value of money received. If it is less than \$300 – felony of the third degree; is or more than \$300 – felony of the second degree. The degrading of two types of felony

determines different types of punishment identified by other provisions, reference to which is provided in the same subsection of Florida pawn broking act.

Evidently, besides the imprint of the right thumbprint of the pledgor, the transaction form additionally requires the signature of the pledgor and must be in several copies. The original and one more copy are left with the pawnbroker and another copy is given to a customer. What is this done for? The answer can be found in the following subsection 9 (nine) which is titled as “recordkeeping; reporting; hold period”.

2.2.5 Recordkeeping and hold periods.

According to subsection 9, “*on or before the end of each business day, the pawnbroker must deliver to the appropriate law enforcement official the original pawnbroker transaction forms for each of the transaction occurring during the previous business day...*”. Such a necessity can be explained by the possibility of taking speedy actions in case of discovering the stolen property being pledged or ownership being altered or falsified and an opportunity to chase and find a pledgor, who committed violations. This requirement shows that the time of a great essence to enforcement officials if they aim at increasing of quality of their investigations and reducing the degree of property crime. The hold period within which the pawnbroker must maintain the copy of each completed transaction form is one year. The pawnbroker can use the copy as evidence in court for his own protection.

Interesting to note that if the appropriate law enforcement agency supplies the pawnbroker with appropriate software, the pawnbroker shall transfer all pawn transactions electronically. In such a case, there is no need to deliver the originals or copies of transaction forms to the

enforcement official; only at the request of an appropriate law official, the pawnbroker must provide the form within 24 hours of the request.

The significance of computerization of pawnshops and maintenance of pawn transactions electronically was constantly raised by law enforcement authorities on the ground that manually entered transactions did not reflect true information, were not delivered to law authorities on time and could not be manipulated by computerized programs designed to flush out stolen property, frequent pawners or wanted persons.⁷⁷ Under the pressure of local law enforcement authorities, The Florida Department of Law Enforcement (FDLE) alleged the necessity of creating a centralized statewide database and enacting a legislation that would have made it mandatory for local law enforcement agencies to enter pawned property information into such a database. Additionally, a computerization of pawnshops was on the issue. During the 2000 legislative session, FDLE got appropriate funds for creation of such database and promotion of computerization. The purpose of the database to allow the investigators to search the contents of the pawnbrokers' transaction records to find out whether the stolen property has been pawned elsewhere in the state. The scope of database comprised any movable or pledged property including firearms. However, reporting to statewide database was required to be done on a voluntary basis⁷⁸

The same subsection demands the secure storage of all goods delivered to a pawnbroker in a pawn or purchase transaction for a period of redemption, it means, 30 calendar days. The

⁷⁷ Hurley.T James, "Property crime and pawnshops: correlation or coincidence?", police magazine, may 2000 available at <http://ci.ftlaud.fl.us/police/hurley2.html> (last access on 21-12-2008).

⁷⁸ Butterworth A. Robert, Statewide Pawnbroker transaction database, Florida Attorney General Advisory Legal Opinion, posted on 07-18-2001, <http://myfloridalegal.com/ago.nsf/printview/187BF1B349E42ABF85256A8D00550DE2> (last access on 03-06-2009).

pawnbroker must not sell or dispose of goods before the expiration of such a period. This provision is in favor of consumer. It assures consumer that the pledged goods will be maintained in an unaltered condition within the specified period. Such a requirement is fundamental since it promotes the fairness of the transaction and contributes to the normal conduct of pawnshop business.

Subsection 10 (ten) again stipulates the period when the pawnbroker can exercise his right of sale if the goods are not redeemed. After the expiration of the maturity period, the pawnbroker is obliged to keep the pledged goods within at least 30 days following such date. Certainly, if the goods are not redeemed within additional 30 days period, all rights and title vested in goods automatically transfers to the pawnbroker with the legal right of sale. After such additional period, a pledgor has no obligation to redeem goods or make any payment on a pawn; a notice to him becomes unnecessary. The value of this provision is undisputable. It definitely and timely allocates rights and duties of both parties to a transaction. It is a sort of protection to both parties: a consumer is given a chance to redeem the pledged goods through the additional period of 30 days; a pawnbroker knows the time when he can exercise his right of sale without breaching the law.

2.2.6 Pawn service charge

Subsection 11 governs pawn service charges. This subsection clearly stipulates the right of a pawnbroker to contract for and receive a pawn service charge. It was mentioned earlier that the pawn service charge includes not only expenses and losses, but also the cost of storage, title investigation and daily reports to the appropriate law enforcement authorities. The peculiarity of this subsection is that it gives exact limits on pawn service charge. It is stated that *the interest component of the pawn service charge shall be deemed to be 2% percent of*

the amount financed for each 30-thirty day period in a pawn transaction. The pawnbroker is allowed to charge any amount of pawn service charge unless the total amount together with the interest component does not exceed 25% percent of the amount financed for each thirty day period in a pawn transaction. There is one exception to this provision: the pawnbroker is entitled to receive a minimum pawn service charge of \$5 dollars for each such 30-day period. Moreover paragraph 11.e explicitly prohibits any excessive interests, charges and fees, makes them uncollectible and renders the very pawn transaction void able. The pawnbroker forfeits any right to collect twice the amount of the pawn service charge. This provision makes clear that when *a pledgor makes a partial payment on a pawn that reduces the amount financed, any additional pawn service charges shall be calculated on the remaining balance of the original amount financed.*

The paragraph 11.b indicates a legitimate extension of any pawn upon mutual agreement of parties. It specifies that the number of possible extensions is unlimited. Any extension must be not less than 30-day period and shall be evidenced in writing, a copy of which must be supplied to the pledgor with indication of a new default date and pawn service charge. In such a case the daily pawn service charge must be one-thirtieth of the original total pawn service charge. Any unused pawn service charge paid in advance by the pledgor shall be refunded by the pawnbroker.

Obviously, this subsection protects the potential consumer against the fraud and too excessive interest charges which will initially put him into the disadvantageous position. Simultaneously, it regulates the actions of pawnbrokers and prevents them from temptation to pursue unjust enrichment. This fact makes the very pawn transaction more transparent for consumers. However, the usual pawn interest charge of 2% percent was deeply criticized by

pawnbrokers not even in Florida. For example: in Arizona, pawnbrokers were gathering signatures to make a petition against 2% percent barrier that leads their business be less profitable. The amount of collected signatures exceeded 1,253. It shows the enormous worry of pawnbrokers in respect to such a fee.⁷⁹

For the purposes of this research, it is significant to know whether it is justifiable to specify such a standard pawn service charge at all. The further analysis of Kazakhstani pawn broking statutes and rules will assist us in getting to know the value of such a provision. Now, it is worth mentioning, that the long history of pawnshops' development in the USA evidences the necessity of inclusion of such a standard pawn service charge to avoid fraudulent transactions.

Additionally, subsection 11 clarifies the limitation of a pawnbrokers' liability in case of redemption of pledged goods by mail that is possible upon mutual agreement between the pledgor and the pawnbroker. The pledgor is obliged to pay all money due and a reasonable charge assessed by the pawnbroker to recover costs and expenses related to packaging, insuring and shipping of the pledged goods.

Here, the insurance steps in. The pawnbroker shall insure the pledged goods in an amount acceptable to the pledgor. It is interesting that the insurance is necessary only when the redemption by mail takes place. Thus, it is not the obligatory condition of concluding any pawn transaction. As a result, only a clear statement of a pawnbrokers' obligation to keep pledged goods securely in unaltered condition is the very protection to a consumer against negligible treatment of the goods he/she pawned.

⁷⁹ Ferguson, J, Pawnshops want referendum on new fee, Arizona Daily sun newspaper, dated from 10-08-2008 available on <http://search.ebscohost.com/login.aspx?direct=true&db=nfh&AN=2W62W62840911578&site=ehost-live> (last access on 11-14-2008).

The situation is contrary in Kazakhstan, when any pawn transaction must be accompanied by insurance of the pledged goods by the pawnbroker at his cost. Whether it is valuable to have a mandatory insurance depends on the liability of a pawnbroker in case of breaching the duty to securely maintain the pledged goods and method of punishment. Later, it will be shown that the Florida pawn broking act has definite provisions in respect of breach of duty and a number of administrative and criminal penalties which make the mandatory insurance unreasonable contrary to Kazakhstani regulation.

According to this subsection, the pawnbroker's liability for damages or loss related to the shipment of goods is limited to the amount of the insurance coverage obtained.

2.2.7 Prohibited acts

Subsection 12 enumerates prohibited acts which any pawnbroker must avoid. It contains the following prohibitions:

- (a) Falsify or intentionally fail to make an entry of any material matter in a pawnbroker transaction form.
- (b) Refuse to allow the agency, the appropriate law enforcement official, or the state attorney, or any of their designated representatives having jurisdiction, to inspect completed pawnbroker transaction forms or pledged or purchased goods during the ordinary hours of the pawnbroker's business or other time acceptable to both parties. The appropriate law enforcement official shall disclose to a claimant the name and address of the pawnbroker, the name and address of the conveying customer, and a description of pawned, purchased, or consigned goods that the claimant claims to be misappropriated.
- (c) Obliterate, discard, or destroy a completed pawnbroker transaction form sooner than 3 years after the date of the transaction.
- (d) Accept a pledge or purchase property from a person under the age of 18 years.
- (e) Make any agreement requiring or allowing the personal liability of a pledgor or the waiver of any of the provisions of this section.
- (f) Knowingly enter into a pawn or purchase transaction with any person who is under the influence of alcohol or controlled substances when such condition is apparent, or with any person using the name of another or the registered name of another's business.

- (g) Conduct any pawn or purchase transaction at a drive-through window or similar device in which the customer remains in a vehicle while conducting the transaction.
- (h) Fail to return or replace pledged goods to a pledgor upon payment of the full amount due the pawnbroker, unless the pledged goods have been placed under a hold order under subsection (16), or taken into custody by a court or otherwise disposed of by court order.
- (i) Sell or otherwise charge for insurance in connection with a pawn transaction, except in connection with the shipment of pledged goods redeemed by mail as provided in subsection (11).
- (j) Engage in title loan transactions at, within, or adjoining a licensed pawnshop location.
- (k) Lease pledged goods to the pledgor or any other party.
- (l) Operate a pawnshop between the hours of 10 p.m. and 7 a.m.
- (m) Knowingly hire anyone to work in a pawnshop who has been convicted of, or entered a plea of guilty or nolo contendere to, or had adjudication withheld for a felony within the last 5 years, or been convicted of, or entered a plea of guilty or nolo contendere to, or had adjudication withheld for a crime within the last 5 years which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any fraudulent, or dishonest dealing.
- (n) Knowingly accept or receive misappropriated property from a conveying customer in a pawn or purchase transaction.

The peculiarity of this subsection is that, first of all, consumers' age limitation. According to paragraph 12.d pawnbroker can deal with persons who are not less than 18- eighteen years old. Such a provision is reasonable due to the fact that the criminal and some administrative penalties become effective towards people at the age of 18 only. Secondly, the prohibition of requiring a personal liability of a pledgor or waiver of any liability from the part of a pawnbroker contributes to the fairness of pawn transactions and equal and just treatment of potential consumers, not depriving them of their fundamental rights. Thirdly, paragraph 12.i prohibits requirement of insurance at the cost of a consumer except in case of redemption by mail. Thus, it again prevents pawnbrokers from excessive charging and unjust enrichment. Fourthly, paragraph 12.g forbids conducting transactions at a drive-through window or any other device where the customer remains in the vehicle while transaction occurs. This measure is included for the protection of pawnbrokers against contracting with criminals, who prefer to stay unknown and gives pawnbrokers a true possibility to verify the identity of

customers. Fifthly, paragraph 12.k prohibits leasing of pledged goods as such. This preventive measure serves in favor of a pledgor and assures him/her that the pledged goods will be maintained in a good order and safely within the possession of a pawnbroker. Finally, paragraph 12.l specifies the forbidden working hours of pawnshops. As a result, pawnshops cannot operate during the night. What is it done for? Certainly, this is necessary for providing shield against criminals' attempts to dispose of stolen property unnoticeably. It is justified by the fact that often, property crime cases occur within a night time.

Consequently, it is easy to derive from these provisions that the prevention of any connections with criminals and protection of consumers as well as pawnbrokers are major points highlighted in this act. All other subsections of this provision prove this conclusion.

2.2.8 Redemption rights

Subsection 13 specifies the right of a pledgor to redeem and describes the necessary procedure to be followed. It also deals with the situation when a pawnbroker transaction form is lost. What is worth noting here is that besides original pledgor, his/her authorized representative can redeem the pledged goods by presenting the notarized authorization form from the original pledgor together with showing his/her identification. The pawnbroker shall record the personal data of a representative on a pawnbroker transaction form retained by the pawnshop and the original pledgor or his/her authorized representative must sign the pledgor's copy of the pawnbroker transaction form which the pawnbroker may retain as evidence. Such a procedure is mandatory hence this is the pawnbroker's responsibility to verify whether a person redeeming goods is an original pledgor or authorized representative.

The pawnbroker has a right not to allow the redemption if there are doubts or reasonable suspicions in respect to the true identity of a person trying to redeem. Sales tax is not collectible with the redemption of pledged goods. It is of great value to grant a pawnbroker a right not to allow redemption, that is crucial here since it determines the liability of a pawnbroker in case the redemption is executed by a wrong person. Otherwise, it would have been too detrimental to a pawnbroker to carry on the business facing constant danger of being cheated by customers.

When the pawnbroker transaction form is lost, stolen or destroyed, the pledgor must notify the pawnbroker about it in different manners: in writing, by e-mail, in person. Before delivering the pledged goods or issuing a new pawnbroker form, the pawnbroker must require the pledgor to make a written statement of the loss, destruction or theft of the pledgor's copy of the pawnbroker transaction form. A pawnbroker is entitled to a fee in amount not exceeding 2% percent in connection with each lost one.

The paragraph 13.d provides an opportunity for replacement of lost or damaged pledged goods while in the possession of a pawnbroker with the kinds of merchandise of the equal value. Such a replacement is a defense to any civil action based upon the loss or damage of the goods. It means that if a pledgor accepts replaced goods instead of original ones, he/she automatically forfeits the right to pursue any court proceedings against a pawnbroker on the ground of loss or damage of the pledged goods. It is an adequate alternative to avoid direct application to the court actions and can be much more beneficial and less time consuming for both parties to a transaction.

Subsection 14 identifies the rights of a pawnbroker in the pledged goods. It states that the pawnbroker has a possessory lien on the pledged goods pawned as security for the funds advanced. The clarification of the type of security device such as a possessory lien determines the rights and duties of parties to a transaction. It confirms that the pledged goods must be physically possessed by a pawnbroker and maintained in unaltered condition until default date, receipt of applicable funds plus accrued charge or court order or as otherwise provided by law.

2.2.9 Third parties' claims

Subsection 15 regulates the claims against purchased goods or pledged goods held by pawnbrokers. It directly concerns the rights of third parties to a misappropriated property held by the pawnbroker. It reveals the obligatory procedure to be followed in case of misappropriation of pledged goods. A claimant must notify the pawnbroker by certified mail, return receipt requested, or in person evidenced by signed receipt of the claimant's claim to the purchased or pledged goods if he/she wants to obtain possession of purchased or pledged goods held by a pawnbroker. The notice must contain a complete and accurate description of the purchased or pledged goods and must be accompanied by a legible copy of the appropriate law enforcement agency's report on the misappropriation of this property. The claimant may petition the court to order to return the property, name a pawnbroker as a defendant and serve the pawnbroker with a copy of petition, if the pawnbroker and claimant cannot resolve the matter within 10 days after the receipt of notice by a pawnbroker. The pawnbroker cannot dispose of the described in petition property until a right of possession is resolved by parties or a court order. This subsection clearly stipulates the waiver of any filing fees for petition and the service fees for the sheriff.

If court proceedings are initiated and finally the court finds that the property was misappropriated a claimant has a right to recover from the pawnbroker the cost of action including reasonable attorneys' fees. Reasonable fees are intentionally included to prevent successful claimants to charge excessive fees from a pawnbroker which they in fact did not incur.

Moreover, a pawnbroker has a kind of protection in case if a conveying customer (a person who pledged the misappropriated property) is convicted of theft, violation of this section or dealing in stolen property, according to paragraph 15.2 the conveying customer must repay the pawnbroker the full amount of money he received from the pawnbroker for the pledged property together with all applicable pawn service charges upon the court order. Here, the subsection contains explanation that a used term "convicted of" includes a plea of *nolo contendere* to the charges or any agreement in which adjudication is withheld. Additionally, the conveying customer bears responsibility of paying all attorney's fees and taxable costs incurred by the pawnbroker in the process of defending a replevin action or any other civil matter whereas it is found that the conveying customer violated this paragraph.

Thus, the pawnbroker has an opportunity to recover expenses begot by the customer who pledged misappropriated property so to avoid extra losses. However, the risk of acceptance of misappropriated property still goes with a pawnbroker as well as the risk to be involved in court proceedings. That's why the subsection 9 of this Act governing recordkeeping and hold periods again proves to be adequate and valuable.

Meanwhile, if the court finds that the claimant failed to comply with the requirements of paragraph 15.a or otherwise finds against the claimant, then the claimant is liable for the

defendants' costs plus reasonable attorneys' fees according to paragraph 15.c. To our mind, it serves like a warning to potential claimants: think twice before you claim misappropriation and go to the court, it can cost you a good sum of money. Thus, you must be sure and have a reasonable cause to believe that the misappropriation has occurred.

The paragraph 15.d specifies that the sale, pledge or delivery of tangible personal property to a pawnbroker by any person in this state is considered to be:

1. An agreement by the person who sells, pledges, or delivers the tangible personal property that the person is subject to the jurisdiction of the court in all civil actions and proceedings arising out of the pledge or sale transaction filed by either a resident or nonresident plaintiff;
2. An appointment of the Secretary of State by any nonresident of this state as that person's lawful attorney and agent upon whom may be served all process in suits pertaining to the actions and proceedings arising out of the sale, pledge, or delivery; and
3. An agreement by any nonresident that any process in any suit so served has the same legal force and validity as if personally served in this state.

The careful reading of this paragraph makes clear that not only residents of the United States can participate in pawn transactions and be involved in court proceedings in Florida, but the same applies to nonresidents. It explicitly speculates that by pledging, sale or delivery of tangible personal property to a pawnbroker a nonresident agrees to appoint the Secretary of State as a lawful attorney and agent who takes a duty to represent the interests of a nonresident in all suits pertaining to the actions and proceedings arising out of the sale, pledge or delivery. Such an agreement by any nonresident is legally enforceable and valid as if personally served in Florida. Subsequently, it provides a convenient solution to a nonresident to equally participate and defend its interests in court proceedings involving pawnbrokers and issues with pawn transactions without being present in the state. It prevents the pawnbrokers intentionally involve in fraudulent pawn transactions with nonresidents. It is obvious that preliminarily such a provision in the best interests of a consumer.

Subsection 16 regulates hold orders and goes together with subsection 15. The written hold order is placed on property by an appropriate law enforcement official when there is a probable cause to believe that the property currently in the possession of a pawnbroker was misappropriated. Such an order imposes a holding period of no more than 90 days unless the court extends it. The law enforcement official can rescind any written hold order in writing, but he/she cannot impose more than one hold order on property. Why? The answer is evident: a right to impose an unlimited number of hold orders will definitely hinder the normal conducting of pawn transactions since the pawnbroker will have no right to sell or redeem the possessed property within holding period. It ceases the normal business operation and leads to extra losses and expenses to a pawnbroker. Moreover, while a hold order is in effect, the pawnbroker must release the property subject to the hold order to the custody of the appropriate law enforcement official upon request for use in criminal investigations (subparagraph 16.2). Certainly, such a release is not considered to be a waiver or release of a pawnbroker's property rights or interest in the property. However, upon the completion of criminal proceedings, the property is either returned to the pawnbroker or upon the court order has other disposition. Against such other disposition a pawnbroker is protected by having a conveying customer to pay restitution to the pawnbroker as specified in subsection 15, paragraphs 15.2 and 15.3.

Paragraph 16.b requires a pawnbroker to give notification to a law enforcement official about the expiration of a holding period by certified mail, return receipt requested. If, after 10 days of receipt of notice by a law official, the pawnbroker does not receive the extension of a hold order on the property by court and the property is not the subject to proceedings in subsection 15, title to the property transfers to a pawnbroker by operation of law, free of any liability for claims but still subject to restrictions stipulated in the pawn transaction contract and to the

provision of this section. Such a provision protects a pawnbroker due to time limits implication. Such time limits make the process of considering and investigating the pawn transaction by law authorities speedier with fewer losses incurred to the pawnbroker business. It is much better than a vague or absent time limits provision which would make a pawnbroker to wait an indefinite period of time before to get assurance that the hold order is expired and there are no problems with possessed property.

Paragraph 16.c clarifies the content of a hold order: *1. The name and address of the pawnbroker. 2. The name, title, and identification number of the representative of the appropriate law enforcement official or the court placing the hold order. 3. If applicable, the name and address of the appropriate law enforcement official or court to which such representative is attached and the number, if any, assigned to the claim regarding the property. 4. A complete description of the property to be held, including model number and serial number if applicable. 5. The name of the person reporting the property to be misappropriated unless otherwise prohibited by law. 6. The mailing address of the pawnbroker where the property is held. 7. The expiration date of the holding period.*

The signing of a hold order and dating a copy of this order by the pawnbroker or its representative is obligatory and serves as evidence of receipt of a hold order.

2.2.10 Criminal Penalties

Subsection 17 refers to criminal penalties imposed on pawnbrokers. What's worth noting is that penalties are imposed according to the degree of wrongdoing. For example: a person who engages in business as a pawnbroker without obtaining a license commits a felony of the third

degree, punishable as provided in s.775.082, s.775.083, or s.775.084 which indicate an period of imprisonment (paragraph 17.a)

The violation of this section 539.001 of Florida pawn broking act as well as willful commitment of false entry in any record required by this section is regarded as misdemeanor of the first degree, punishable according to s. 775.082 or s. 775.083.

This subsection 17 contains a clear stipulation that clerical and recordkeeping errors such as typographical errors or scribes' errors are subject to the administrative remedies as provided in this act.

Subsection 18 grants a right to an agency to petition a court for a preliminary or permanent injunction against a pawnbroker.

Subsection 19 requires the Department of law enforcement, on request, supply to the agency all materials containing arrests or conviction records which it possesses concerning the individual applying for or holding a license.

2.2.11 Additional ordinances.

Subsection 20 indicates a right of any county or municipality to enact ordinances that are in compliance with but no more restrictive than this section 539.001. Any conflicting with this subsection ordinance is void. However, it does not have any impact on an authority of a county or municipality to establish land use controls or require a pawnbroker to secure a local occupational license.

The practical importance of the subsection 20 is vivid. It ensures the effectiveness and practical compliance with this section 539.001 of Florida pawn broking act through preventing derogations from the provisions of this section by means of enacting more restrictive, loose or contradicting ordinances on a county or municipal level. Thus, this Act supersedes all other ordinances. It is beneficial from the legal point of view hence it provides an explicit fundamental legal basis for regulating pawn industry in Florida and avoids ambiguity, misunderstanding and chaos which various conflicting ordinances lead to. It is convenient for as pawnbrokers so and consumers who are aware of unchangeable, mandatory rights and duties they bear while carrying on pawn transactions. It is convenient for legal practitioners who have a basic law to rely upon within the process in any suit related to pawn transactions.

Subsection 21 specifies the rulemaking authority of the agency and its right to adopt rules to implement the provisions of this section.

2.2.12 Confidentiality

It is necessary to mention that the following section 539.003 concerns confidentiality of all records related to pawn transactions which a pawnbroker delivers to law enforcement authorities and their exemption from s.119.07(1) and s.24(a), Article 1 of the State Constitution and can be used only for official law enforcement purposes. However, this provision does not forbid a law enforcement authority to disclose personal data (name and address) of a pawnbroker, conveying customer and a description of a pledged item to an alleged owner of a pawned property, referred to as claimant.

Important to remark that together with creation of centralized statewide database, there were a lot of inquiries from the part of pawnbrokers whether the information they provide for inclusion into statewide database will retain their confidential and exempt status under the provision 21 of Florida pawn broking act. The Attorney General, Robert A. Butterworth speculated upon this issue and drew a conclusion that it is not the agency (here, FDLE) holding the record determines the confidential and exempt status of provided records, but the very identity of delivered record itself. Thus, records identified as pawnbroker transactions' records delivered to FDLE for inclusion into statewide database retain their confidential and exempt status according to section 539.001, subsection 21, Florida pawn broking act. He based his conclusion upon the cases such as *City of Riviera Beach v. Barfield* and *State v. Buenoano*.⁸⁰

This fact shows the significance of keeping pawnbroker records confidential when they are subject to criminal investigation. It gives a protection to pawnbrokers' business against the mass disclosure of a pawned items being in his possession, loss of clientele, if it turns out that one of pawners was a criminal or wanted person. The pawnbroker can assist in finding out the stolen property and criminals who pawned them. But, a pawnbroker cannot predict and identify the true identity of all pawners he/she deals with until the recordkeeping's study or a fingerprints' analysis proves it.

2.2.13 Remarks

After a detailed observance and analysis of a contemporary pawn broking Act of Florida, we can do preliminary conclusions. First of all, it is necessary to note that within a long history of

⁸⁰ Butterworth A. Robert, Statewide Pawnbroker transaction database, Florida Attorney General Advisory Legal Opinion, posted on 07-18-2001, <http://myfloridalegal.com/ago.nsf/printview/187BF1B349E42ABF85256A8D00550DE2> (last access on 03-06-2009).

pawn broking in Florida, the modern version contains a number of modifications which are directed at ensuring equal treatment of both parties (a pawnbroker and consumer) to a pawn transaction by law. The above-mentioned provisions are attempted to equally allocate the duties and rights between two parties: a consumer and a pawnbroker by means of clearly stipulating the scope of collateral, the formal requirements to a filling in a pawn transaction form, specifying conditions on redemption of goods, enumerating a number of administrative and criminal penalties according to the degree of wrongdoing and indicating punishable violations or wrongdoings from the side of a pawnbroker, imposing time limits to avoid extra losses and ambiguity.

Moreover, the Act regulates the allocation of rights and responsibilities not only between two parties, but expands to a third party involvement since it provides a detailed procedure for a third party alleging a misappropriation of a pawned property in the possession of a pawnbroker. It speculates upon rights of a third party, referred to as claimant in subsection 15 of this act, as well as the third party responsibilities in case of a wrong allegiance.

Additionally, it makes a significant focus on the maintenance and facilitation of relations between pawnbrokers and law enforcement authorities; it aims at reducing a misappropriation of a stolen property, reducing the amount of property crime generally and erasing the unattractive stigma of a close correlation of pawn industry with criminal world. The close connections with law authorities prescribed by subsections 3,9,15,16,17,19 can be found excessive, especially, subsection 9 requiring a daily delivery of pawn transaction forms to appropriate enforcement official. However, as it was mentioned above in the analysis of this subsection, such a requirement is justified due to a high potential of tracing a stolen property

through pawnshops and high risk of easy convertibility of stolen property into liquid funds in pawnshops by criminals.

Such a carefully thought over provisions will contribute to the due maintenance of pawnbrokers' business and elimination of fraudulent transactions within pawnshops which, in their turn, lead to higher social trust to pawn industry and an "honest" reputation.

However, we need to do one important remark. Despite of attempts to provide equal standing of all parties to pawn transaction, the law is mainly consumer-oriented (debtor-oriented). The evidences lie in too stringent license requirements. As it was stated earlier, despite a right to revoke, suspend and surrender a license at any time, when there is a ground to believe in wrongdoing from the side of a pawnbroker, the license must be renewed annually. I agree with opinions of pawnbrokers that it only hinders the normal operation of pawnshops and the very provision is of no vital value. Moreover, the process of applying for license seems to be too complicated with involvement of various authorities such as agency and FBI and local law enforcement department. It is aggravated by the provision 20 related to conflicted ordinances. While it clearly states that Florida pawn broking act supersedes other ordinances on the county and municipal level, it does not affect a right of municipal and county authorities to impose additional land use controls and requirement to obtain a local occupational license. Thus, it turns out that a pawnbroker has to secure more than one license.

Such a requirement can hardly be found in favor of pawnbrokers. The justifications are the prevention of criminals in engaging in pawnbroker's business or conduction of fraudulent transactions. But, the main reason seems to be the elimination of density of pawnshops, which

are usually located in urban areas where the ratio of potential borrowers is high. The contemporary tendency shows that the location of pawnshops is too dense in some regions.

Nevertheless, the advantages of this act outweigh disadvantages, especially, if we take into mind that the developed sales' market in the USA provides pawnbrokers with a field of action (sale of unredeemed property), high demand of consumers in the property sold by pawnbrokers and the wide scope of collateral practically realizable.

Moreover, during 2000 legislative session, the Florida senate reviewed the pawn broking act and elaborated recommendations for amendments as a reaction to a national mass media criticism of the pawn industry. The national channel Dateline NBC on May 11th, 1999 hid cameras in "Buck's Eagle Pawnshop" in the Manatee County, Florida. It evidenced that among pawners (borrowers) were representatives of criminal world who managed to convert the stolen property into cash. The Florida Pawnbrokers' Association immediately criticized the national broadcast for unfair portraying of pawnbrokers' practice. It was unjust for spectators to assume that there were common practices in the pawn industry.⁸¹

Thus, the Florida Senate took urgent measures to cure the status of pawnshops in a society and provide a better consumer protection for those who became victims of property crime and whose property was pawned. The recommendations required the creation and distribution of a "victim rights brochure", to inform victims of their rights under Florida law to recover stolen property from a pawnshop; publication of a form petition in chapter 539, F.S which could be used by victims in order to initiate a court action to recover their property from a pawnbroker;

⁸¹ Florida senate, Interim project report January 26, 2000, available at http://www.flsenate.gov/data/Publications/2000/Senate/reports/interim_reports/pdf/00-26cj.pdf (last access on 03-25-2009).

clarification that a criminal court judge is authorized to determine ownership of property and order any appropriate restitution in addition to the civil petition remedy already provided for in chapter 539 to prevent victims to go through a separate proceeding before a different judge in order to recover a property from a pawnshop.

As a result, after implementation of all amendments, recommendations and innovations to the Florida Pawn broking Act, the effective maintenance of pawnshops was facilitated and the unattractive stigma is gradually dissipating. As Chief Hurley states: “The revolving door of justice leads through a pawnshop”.⁸²

It proves the practical value of Florida Pawn broking act and makes it an excellent sample for comparative analysis with such recently enacted Kazakhstani legislation on pawnshops.

⁸² Hurley.T James, “Property crime and pawnshops: correlation or coincidence?”, police magazine, may 2000 available at <http://ci.ftlaud.fl.us/police/hurley2.html> (last access on 21-12-2008).

2.3. Kazakhstani legislation on the pawn industry v. Florida Pawn broking Act

It does not require a high technology company to have a license to innovate. As I learned from the pawn shop, even the world's oldest profession is ripe for new thinking.⁸³

2.3.1 General background

As it was mentioned earlier, nowadays in Kazakhstan there is a tendency of expanding the pawn industry. Today, the total number of pawnshops is about 72, not taking into consideration their subsidiaries. Only in Almaty there are 25 pawnshops and 30 their subsidiaries in comparison with one municipal pawnshop which operated in Almaty by 1995. This number is always growing, which shows the importance of regulation of the pawn industry in Kazakhstan due to the increased consumer demand in short loans and the necessity to develop a micro credit market⁸⁴.

What is significant in regard to the analysis of two jurisdictions of Kazakhstani legislation and Florida pawn broking act is that Kazakhstani legislation related to pawnshops is enacted on the national level and due to the unitary system of the country, there are no state specific statutes or acts on municipal or county level having the same legal power as in the USA where the federal system of the country supposes the incorporation of separate legislation on state level. That is why the Florida pawn broking act provisions are applicable only to Florida and can be different in other states of the USA, while in Kazakhstan the national legislation is to be superficial and to be followed by all states, counties, municipalites. This fact determines

⁸³ Rossin E. Jack "The Pawnshop chronicles: street wisdom for the business world", published by Rossin E. Jack, USA, 2003, p121.

⁸⁴ Vigodi lombardnogo kreditovaniya (benefits of pawn shops' credits), article available on www.afn.kz/cont/publish836728_669.doc (last access on 03-22-2009).

the effect of the legislation on the whole pawn industry. Thus, in Kazakhstan, the legislation has a greater effect concerning the pawn industry all over the country, whereas in Florida it has impact only on Florida pawn industry, not actually related with other states. This suggests the significance of the existing provisions regulating the pawn industry in Kazakhstan and the necessity of being very careful in elaborating recommendations to the contemporary legislation. It requires a very detailed analysis to provide a true vivid view on the modern legislation in Kazakhstan and provide optimal solutions to existing problems.

When Kazakhstan gained independence and sovereignty after the break of Soviet Union, the civil codex containing the general provisions on the pawn industry was enacted in December, 1994. Until nowadays, the civil codex of Kazakhstan provides general provisions on the regulation of pawnshops under articles 318 -328, which was amended in august, 2006.

Today, the pawn industry in Kazakhstan is regulated by a number of legislative acts such as: The civil codex of Kazakhstan, the order of President of Republic of Kazakhstan about business associations having a legal power of a statute, the statute on limited liability companies and companies with additional liability, the statute on state regulation and control of the financial market, the criminal codex of Kazakhstan, the legislation of RK about administrative penalties. Earlier, the rules on opening, licensing, regulation, cessation of pawnshops' activity, elaborated by the National Bank dated from September 5th 2001 № 332 February lost their power and were superseded by the rules on opening, licensing, regulation, cessation of pawnshops' activity, approved by the Agency of the Republic of Kazakhstan on the regulation and control of the financial market and financial organizations(*inter alia* referred as Agency) entered in force since February 16th , 2004, № 43 were one of the main legislative acts on the pawn industry. However, after enactment of significant amendments to

the legislation of Kazakhstan which mainly concerned banks and pawnshops in 2006 (as a result pawn shops are no more subject to licensing requirements), these rules lost their full legal power.⁸⁵

Meanwhile, the above list of acts on the pawn industry evidences that the legislation of Kazakhstan on the pawn industry was recently enacted and does not possess such a long and rich history as Florida Pawn broking act and moreover, it is scattered that makes it a subject to careful review, whereas the Florida pawn broking act represents a separate detailed statute on the pawn industry which is easier and more convenient to use as for legal practitioners, so and consumers and pawnbrokers themselves.

However, for the purposes of this thesis, we will focus attention and analysis on the civil codex of Kazakhstan with relevant references to other above-mentioned legislative acts.

The reason for such a choice is determined by the contents and significance for our comparative analysis of selected statutes on the pawnshops. The civil codex contains provisions similar to Florida pawn broking act and concern general provisions such as a definition of a pawnshop, opening, registration conditions, scope of collateral, procedure on pawning the goods and insurance requirement in respect to the establishment and maintenance of pawnshops.

Within the process of observing and comparing Kazakhstani legislation to Florida pawn broking act, there are references to other above-mentioned legislative acts on the ground that they provide additional information on administrative penalties or criminal penalties, for

⁸⁵ Razmer ustavnogo kapitala lombarda (pawnshops' capital requirement), forum chat available on <http://forum.zakon.kz/index.php?showtopic=57932> (last access on 11-03-2009).

example. The translation of all provisions of Kazakhstani legislation into the English language is done by the thesis writer as well as transliteration of specific terms.

It is worth stressing once more that the legislation of Kazakhstan is recently enacted in comparison with Florida pawn broking Act which went through a long legislative history before being promulgated as a separate statute on the pawn industry in 1996. That's why the analysis will focus on the contemporary legislation only without deep historical overview and the elaboration of recommendations to the now existing legislation due to its comparison with Florida pawn broking act. However, it is important to observe crucial amendments to the legislation of Kazakhstan related to the pawn industry which happened within its rather short history.

It is necessary to start our review with the definition of pawnshops in Kazakhstani legislation. Three years ago, according to the civil codex of Kazakhstan, article 328: "*Pawnshop is a legal entity (commercial organization), which is not a bank as such, which legally carries on bank and other transactions in national currency on the condition of having a license issued by the authorized body on the regulation of the financial market and financial organizations and the National Bank of Kazakhstan*".⁸⁶

The rules on opening, licensing, regulation and cessation of pawnshops' activity elaborated by the National Bank, dated from September 5th 2001, № 332 (further referred as rules), contained the similar definition of a pawnshop in chapter 1 (one) titled as general provisions, but the rules identified what kind of bank and other transactions, a pawnshop is entitled to carry on: *1. Pawn transactions – maintenance of short loans secured by negotiable valuable*

⁸⁶ Grazhdanskii Kodeks Kazakhstana (Civil codex of Kazakhstan) available in Russian and Kazakh languages on www.inform.kz, old version. (last access on 03-22-2009).

*documents and movable property. 2. Safe (storage) operations – services on storage of valuable documents, issued in paper form, other documents and clients' valuables, including the renting of safes, cases and rooms. 3. Maintenance of leasing activity. 4. Purchase, sale, storage, maintenance and acceptance as collateral of jewelries, containing precious metals and stones.*⁸⁷

Thus, the pawnshops were entitled to carry on specific bank operations through obtaining two licenses: one from the authorized body on the regulation of the financial market and financial organizations for purchase and sale, storage and acceptance as collateral of jewelries and movable property, leasing; second license from the National bank to carry on safe (storage) services.

In January 5th 2006, the statute of RK on inclusion of amendments and additions in some legislative acts of the Republic of Kazakhstan on the issue of licensing and consolidated control was enacted according to which the activity of credit organizations and pawnshops was no longer a subject to licensing requirements. These amendments mainly concerned the statute on banks and bank activity in the Republic of Kazakhstan. Thus, the pawnshops were also no more a subject to licensing requirements as financial institutions carrying on specific bank transactions. So, they were not obliged to obtain two licenses on carrying on specific bank transactions from the National Bank and Agency as it was earlier. Consequently, pawnshops were no more under the strict supervision of bank and agency, which stringently

⁸⁷Pravila Nacionalnogo Banka, Pravila sozdaniya, lisenzirovanya, regulirovaniya i prekracheniya deyatelnosti lombardov ot 09-05-2001, N 332, available on <http://www.pavlodar.com/zakon/?dok=00016&ogl=02001&og=1> (last access on 03-20-2009).

controlled the operation of pawnshops, fairness of transactions, revocation, suspension and surrender of its license.⁸⁸

Such an amendment was preconditioned by the enactment of another statute on inclusion of amendments and additions into some legislative acts of the Republic of Kazakhstan on the issue of licensing and consolidated control dated from December 23rd 2005 year, № 107-III LRK (Law of Republic of Kazakhstan) according to which the transactions within a pawnshop were excluded from the scope of bank transactions. Thus, the article 5 of the statute on banks and bank activity of RK stating that: *“The organization conducting specific bank transactions is a legal entity which is not a bank as such, legally maintains specific bank transactions on the basis of obtaining license from the authorized body and (or) National bank or according to the legislative act of the Republic of Kazakhstan”* was no longer applicable to pawnshops.⁸⁹

As a result, the strict bank control was eliminated and the regulation of pawnshops became more liberalized. It is interesting to note that despite of above mentioned amendments, the scope of transactions including specific bank transactions such as safe (storage) services were not affected. But, the new version of the article 328 of the civil codex (general provisions) does not include neither leasing nor safe transactions. Simultaneously, the article 784 of the civil codex (specific provisions) enacted later than the codex containing general provisions, exactly in 1999, specifies the safe transactions as transactions taking place in the pawn shop. Thus, we can conclude that the amendments affected mainly licensing and leasing, whereas

⁸⁸ Razmer ustavnogo kapitala lombarda (pawnshops' capital requirement), forum chat available on <http://forum.zakon.kz/index.php?showtopic=57932> (last access on 11-03-2009).

⁸⁹ Razmer ustavnogo kapitala lombarda (pawnshops' capital requirement), forum chat available on <http://forum.zakon.kz/index.php?showtopic=57932> (last access on 11-03-2009).

other provisions still valid. What is also important is that negotiable documents as collateral were also excluded after the incurred amendments, but impliedly, not explicitly expressed, still subject to safe transactions conducting in the pawn shop.

Additionally, it had an impact on the minimal capital requirements. In January 17th 2003 before the enactment of above mentioned amendments, the order of the National Bank of RK about minimal capital requirements for organizations, carrying on specific bank transactions, № 1, amended in June 25th, 2005 established the minimal net worth for organizations carrying on credit and pawn transactions in the amount of 40.000.000,00 million tenge (Tenge-Kazakhstani national currency).⁹⁰

Subsequently, after enactment of above-mentioned amendments, this minimal capital requirement was no longer applicable to pawnshops since January 2006 on the ground that pawnshops no longer referred to organizations conducting specific bank transactions. Since that time there were a lot of disputes related to minimal net worth of pawnshops. Until the 5th of august 2008, it was unclear what minimal capital requirements were applicable to pawnshops. Today, the minimal capital requirement is 5 000 000, 00 million tenge. We are hardly able to find out why 5 000 000, 00 million tenge were chosen instead of 40 000 000,00 million tenge as earlier.

But, such a decrease in net worth requirement related to pawnshops once again proves the liberal position of law towards pawnshops in Kazakhstan. Moreover, after the elimination of stringent license requirements, any person can engage into the business of a pawnbroker whether it is a legal entity or individual. We even can say that pawnshops refer to a sphere of

⁹⁰ Razmer ustavnogo kapitala lombarda (pawnshops' capital requirement), forum chat available on <http://forum.zakon.kz/index.php?showtopic=57932> (last access on 11-03-2009).

small and medium businesses. Today, banks are not really interested in pawnshops' activity as such on the ground that this practice does not incur high profits. That's why a wide network of pawnshops in Kazakhstan, only "Valut-Transit" Bank maintains. Other pawnshops are mostly private commercial entities. This fact shows that the essence and structure of pawnshops today is close to pawnshops in USA, where pawnshops are mostly private commercial entities which focus on short secured consumer credit practice, and initially are established as commercial entities providing micro loans.

2.3.2 Definitions of pawnshop, collateral, pawn service charge

Now, it is worth analyzing separate provisions of the contemporary legislation of pawnshops in Kazakhstan in comparison with Florida pawn broking act' relevant provisions. Pre-eminently, we focus on civil codex, general provisions dated from 1994 and civil codex, special provisions dated from 1999 year. Here, pawnor is in Kazakh: *кепіл беруші (kepil berushi)*, and in Russian: *залогодатель (zalogodatel')*; pawnee is in Kazakh: *кепіл ұстаушы (kepil ustaushi)*, and in Russian: *залогодержатель (zalogoderzhatel')*.

Article 302 of the civil codex, general provisions, indicates requirements applicable to collateral. The pawn charge includes price and interest rate in the amount accrued to the moment of its redemption, losses, delayed expenses, fees, and storage expenses. This definition completely corresponds to the definition given in the Florida pawn broking act. However, paragraph 302.2 states that the pawn charge can also include any potential future fees upon the parties' agreement.

Article 328 of civil codex, general provisions specifies that the pawnshops (referred as a Lombard) registered as pawn shops are specialized institutions which can maintain pawn

transactions secured by movable property designated for personal use for obtaining short-term loans by citizens of the Republic of Kazakhstan. The exclusive transactions which a pawnshop provides are: maintenance of short term loans secured by movable property; maintenance, storage and sale of jewelries, containing precious metals and stones; a right to conduct investments' activity.

As a result, in respect to the scope of collateral, it coincides with Florida definition of the security. However, the Kazakhstani legislation separately indicates jewelries as a type of collateral and as well as Florida pawn broking Act, allows the purchase-sale transactions be legally conducted in pawnshops. Moreover, the safe operations, being specific bank transactions, are still stipulated as transactions taking place in pawnshops. Finally, autos are not separated from the scope of movable property capable of being pawned contrary to Florida statute. Thus, pawnshops are entitled to conduct auto loans.

However, it is significant to note that reality does not correspond to the definition, given by Kazakhstani legislation. The broad scope of collateral and activity determined by above definitions are in fact much narrower. The pawnshops mainly accept jewelries as the commonest type of collateral, then, automobiles, and rarely, other types of personal property such as audio or video equipment. Such an unwillingness to practically realize a broader scope of collateral and activity is determined by contemporary market conditions. The market is overloaded with a variety of items of personal property and it is difficult to sell the unredeemed pledged property such as video, audio, even fur coats while the speedy turnover coefficients are very important for pawnshops' profitability. Furthermore, the depreciation and fashion changeability in respect to such personal property designated for consumer use (technical equipment, clothes) also have impact on pawnbrokers' decision to accept them as

collateral. The situation is aggravated by difficulty to properly evaluate these items on the ground that at the moment of their sale their value probably will be less than when they were pawned. Kazakhstani pawnshops try to avoid taking such a risk related to sale of unredeemed property. That's why jewelries as collateral constitute 90% of all pawned items in Kazakhstani pawnshops. The automobiles are more frequently accepted by pawnshops after jewelries owing to their low depreciation value and high market demand and more or less stable market price. Nevertheless, it also begets additional expenses due to the fact that automobiles need a remarkable storage space, which pawnshops usually rent. It explains why pawnshops have started to divide according to specification of activity: pawnshops working only with jewelries and auto pawnshops, accepting only automobiles.⁹¹ The situation is contrary in Florida, USA where the scope of collateral is practically realizable.

In regard to firearms, which create a problem in USA and are included into the scope of personal property frequently pawned, the situation is different in Kazakhstan. Firearms cannot be pawned or pledged on the ground that there is a prohibition on their carrying by citizens of Kazakhstan, sale or use at all. To get a firearm, you need to obtain a special license which is given to a very limited number of people such as representatives of Hunters' association and employees of specific organizations (guardians or militaries). However, employees as well as military people can carry the firearm only within the working hours and within the limits of their work space and can apply them only in extremely necessary cases. Thus, the firearms never serve as collateral in pawn shops due to a very limited access to them. According to criminal codex of the Republic of Kazakhstan, article 251, illegal purchase, use, transfer, sale, storage, transportation or carrying of firearms, exploded items except the hunting type rifle are punished by imprisonment up to 5 years, or arrest up to 6 months, or imprisonment up to 5

⁹¹ Iskanderov Ruslan, "Prozent i zalog" (Pawn and interest rate) internet-article dated from 02-23-2006, available in Russian on <http://www.gazeta.kz/art.asp?aid=71932> (last access on 03-11-2009).

years together with fee in the amount of the salary or any other profits (up to 200 monthly calculated indices).⁹²

2.3.3 Pawn-ticket

The same article 328, paragraph 2 of civil codex stipulates that the contract on pawning of items in a pawn shop is concluded by giving out a pawn-ticket. But, neither this article nor the Rules do stipulate the contents of the pawn-ticket. There is no clear requirement what information such a pawn ticket must contain, thus, this issue is left to the very pawnbrokers. Only article 307 that refers to any contract related to secured credit transactions, stipulates that such a contract must contain the collateral, its value (market price), nature and amount of redemption price and the date of maturity period. The contract must indicate what party possesses the collateral and how this party can use it. The contract must be concluded in the written form. Without compliance with these requirements, the contract is invalid. However, it does not specifically refer to a pawn-ticket, but we assume that this provision is applicable and does not contain such stringent and detailed requirements as Florida pawn broking act. Apparently, it gives a freedom to pawn brokers whether to reveal further details of a pawn transaction or not. It is completely contradictory to strict requirements of Florida statute to pawnbroker transaction form.

In reality, the pawn-ticket indicates the pledged item, sum paid, maturity date and interest rate. Evidently, there is no necessity to take fingerprints' analysis and find out the identity of a pawner. This fact is justified by the absence of any specific provisions either in the civil codex or in the Rules of Agency related to facilitation of relations between pawn shops and police departments. In Kazakhstan, police departments do not supervise pawn shops as they do in

⁹² Ugolovnii kodeks Respubliki Kazakhstan (Criminal codex of the Republic of Kazakhstan) available on http://www.akorda.kz/www/akorda_kz.nsf/sections?OpenForm&id_doc=C306D670B9C4E0624625726B004A0453&lang=ru&L1=L3&L2=L3-26 (last access on 03-25-2009).

Florida. The pawnbrokers are not obliged to deliver pawn transaction forms or report to police departments or law enforcement officials unless there are clear evidences of pawning a stolen property through a pawn shop and within the process of criminal investigation, on the request, the pawn shops can present the required information to law enforcement officials. But, in fact, the pawn brokers can acquire special protective measures from accepting stolen property, especially jewelries. When we attended the pawn shop to pledge certain valuable items we were required to leave identity card until the maturity date. The Kazakhstani identity card is equivalent to passport, containing all personal data and a colored photo of a citizen with a signature. This identity card serves as a passport within the limits of the country and valid in other countries with which Kazakhstan has no visa requirements. It is a valuable document, the loss of which is punishable by administrative penalties and subject to police review (before giving out an identity card, an appropriate law enforcement authorities investigate the data given in application for it and in case of fraud, the prosecution is followed). In case of automobiles, the pawnshops require auto title document being left in their possession. (Drive licenses). However, in case of non-residents as pawners, the situation is ambiguous. But, we can assume that is again subject to the contract and agreement between a pawnor and pawnee.

2.3.4 Insurance of the pawned property.

Paragraph 328.2 of civil codex states that all pledged items are transferred to a pawn shop and the pawn shop is obliged to insure in favor of a pawnor the pawned goods in the amount of their full value at his own account. The value is determined according to the market price of the goods of the same class and quality at the moment of their pawning. Again, the insurance is obligatory since the very pawn transaction occurs, whereas in Florida it is mandatory only in case of shipping arrangements as a condition of redemption by mail. But, the Florida pawn broking act contains explicit provisions in respect to liability for negligible attitude,

replacement opportunity and a number of administrative penalties, while Kazakhstani legislation, exactly, paragraph 328.4 of civil codex stipulates that the pawn shop is liable for loss and damage of pledged goods, if it does not prove that such a loss and damage was a result of unavoidable force (force-majeure). There is a replacement opportunity indicated in the article 314 of the civil codex only on the agreement of a pawnee (pawnbroker).

Paragraph 328.3 indicates that the pawn shop is not entitled to use or dispose of the pledged goods. It serves as the consumer protection and assurance that the pledged property will be properly saved. It corresponds to the relevant provisions of Florida pawn broking act, paragraph 9.c.

Article 313 concerns the consequences of the loss or damage of the pawned item. It stipulates that the pawnee is liable for the loss of the pawned item in the full amount of its market price; for damage in the amount on which the real value of goods decreases. If in the result of its damage, the pawned item changes significantly and cannot be used according to its direct designation, the pawnor has a right to refuse accepting collateral back and demand the restitution for it. Other liabilities in regard to the pawned goods can be provided by the contract.

2.3.5 Storage of the pledged goods, recordkeeping and cessation of pawn transaction.

Article 312 of the civil codex, general provisions, regulates the storage and maintenance of the pledged property. Subparagraph 312.1.1 states that as pawnee (in other cases as borrower so and creditor, depending on who possesses the property) must take special measures, necessary for providing safety of the pledged property, including the defense of this property from the third parties' claims. According to subparagraph 312.1.2 a pawnee must immediately

inform another party about the threat of loss or damage to the pledged goods. Paragraph 321.2 provides that the pawnor is entitled to check the conditions of storage, state, amount of the pledged property in fact or by documents' inspection while it is being in the physical possession of another party. Paragraph 321.3 stipulates that in case of strong violation of obligations by the pawnee, pointed out in paragraph 321.1 of this article, creating the threat of loss or damage of the pledged property, the pawnor is entitled to require the cessation of the pawn transaction before the expiration of maturity date.

However, the same right of cessation of the pawn transaction a pawnor can execute by full payment of the price together with accrued interest and charges according to article 322 of the civil codex, regulating the cessation of a pawn transaction. Additionally article 322 provides other possibilities of the pawn transaction cessation by fulfilling the obligation secured by the collateral, in case of loss of the pledged property or cessation of pledgor's right if he/she has not apply to the rights, stipulated in paragraph 2, article 314 of this codex; by sale through public auction. Paragraph 322.2 mandates that a special record about the cessation of a pawn transaction must be made in the register, where the pawn contract was registered (filed). Paragraph 322.3 mandates the pawnee immediately return the pledged property in case of fulfilling the obligation secured by collateral by pawnor or when a pawnor uses his rights under above-mentioned article 321.3 of this codex.

Thus, recordkeeping is mandated especially in the article 308 of the civil codex and concerns any secured loan transactions or pledges. It stipulates that the body responsible for registering pawn transactions must have and maintain a special register for such transactions and stand in the interests' of pawnees (pawnbrokers). If the essence and the contents of the pawn transaction change, the re-registration must take place. If the title to the pledged property

transfers to another person, the appropriate record is entered into the register indicating the transfer of the pawn to a new owner. Paragraph 308.3 states that the pawnor who fulfilled the obligation secured by a pawn, can require the annulment of the record in the register. The pawn broker or pawnee must annul such a record within a reasonable time, otherwise the pawnor can demand restitution for incurred losses.

This recordkeeping provision, article 308 refers to all pledge transactions, not specifically, to pawn shops. But, we assume that this provision applies to pawn shops as general due to the absence of any other clear provision related to this issue and taking into consideration that these general provisions are mandatory for any type of secured transactions, based on pledge.

In comparison with Florida pawn broking act, the period of storage of records, the detailed conditions on how to maintain recordkeeping and what information is a subject to recording are not clearly specified in the civil codex specifically referring to pawn shops. Thus, this issue is left to the discretion of pawn brokers. What is clear and expressly stated is that recordkeeping is obligatory.

2.3.6 Mandatory rules on conducting pawn transactions.

Three years ago, paragraph 328.5 regulated the rights of a pawnbroker in case of unredeemed goods. After the expiration of the maturity period, the grace period of 1 month followed. At the end of 1month grace period, all rights and title of pledged goods was vested into a pawnbroker, which on the basis of notary's approval document can sell the unredeemed goods. After these mentioned requirements of grace period and notary's document obtainment are satisfied, the pawn shop had no pretensions to a pawner even if the sum of money got

through the sale of property is not sufficient. It was not stated, but was definitely implied that the same concerns the pretensions of a pawner to a pawn shop.

Today, paragraph 328.5 mandates that pawnshops can conduct their activity only on the condition of having the Rules on exercising pawn transactions which are approved by the highest authority of the pawn shop and must contain the following information:

1. the highest amount of credits given and the longest redemption periods
2. the highest interest rates on given credits.
3. charges for conducting pawn transactions.
4. rights and duties of the pawn shop and its clientele, their liabilities.
5. the order of giving out the duplicate of the pawn ticket in case of his loss by a pawnor.
6. other conditions.

These rules must be located in the most visible place in the pawn shop, available for observance by clients.

2.3.7 State registration instead of licensing requirements.

Thus, instead of mandatory requirement of obtaining licenses and locating them in available for potential borrowers place, the Rules elaborated by the very pawn shop are required today. Pawn shops are exempted from any license requirements but as legal entities are subject to mandatory registration in the appropriate juridical authorities of the Republic of Kazakhstan according to the article 42 of the civil code of Kazakhstan. For state registration the pawn shops as well as other legal entities-commercial organizations, need to elaborate charter (or articles of association) which must contain the objectives, name of entity, location, order of its

organization and competence of its employees, conditions of its reorganization and cessation of activity. Such a charter must be accompanied by the shareholders' contract, founders of a pawnshop if there more than one founder. The conditions of the contract must not be contradictory to the charter. The contract contains the obligation of shareholders to establish a legal entity, order (allocation of rights and duties) of their cooperative activity aimed at establishment of this legal entity, the conditions of transfer of the shareholders' property into the possession of legal entity and shareholders participation in the maintenance of it (control), the order and conditions of distribution of net profits (dividends) and exit possibility for shareholders and approval of the charter.⁹³

The registration can be refused on the ground of violation of order of establishment of the legal entity according to the legislation of RK or inadequacy of charter and shareholders' contract to the requirements of the law. However, the registration cannot be refused on the reason of unreasonableness of the creation of legal entity. The re-registration is foreseen by article 42, paragraph 6, Civil codex and obligatory in case of decrease of net worth capital; name change and the change in the staff of shareholders or founders in partnerships (there is an exception, when the partnership's founders' register is maintained by person, who is a professional participant of a market of valuable documents and have an appropriate license). The amendments done without a re-registration of a legal entity are invalid. In case of entering other amendments, the legal entity must notify the appropriate registration body in a month.

⁹³ Grazhdanskii kodeks Kazakhstana (osobaya chast'), poslednaya versiya (civil codex of the Republic of Kazakhstan (specific provisions) last version), available in Russian and Kazakh on http://www.akorda.kz/www/akorda_kz.nsf/sections?OpenForm&id_doc=00B17BEFD678EF (last access on 03-19-2009).

The legal entity is, in case of commercial organization, organized as only state enterprise, business association, partnership, company, or joint venture according to article 34, civil codex of RK. Pawn shops are legal entities and commercial organizations and this provision applies to them. Thus it is more limited in comparison with the relevant provision of Florida, subsection 1, definition, which allows the establishment of a pawnshop as a legal entity in any form.

2.3.8 Requirements to the pawnshops' employees.

The consideration of requirements related to employees and founders of a pawn shop, it is worth remarking that after the elimination of license securing and strict supervision of pawn shops by National Bank, there are no such detailed provisions as in Florida pawn broking act. The pawnshop can be opened by any person. This fact means that his/her judicial biography does not matter on practice. Earlier, the National bank approved the working staff of pawn shop employees and required them have a high education and professional experience, especially of main accountants. After the National bank, the obligation to control the competence of pawn shops' employees was shifted to the Agency on control and regulation of financial market and financial organizations according to the rules dated from february 16th 2004, № 43. Today, those high requirements are apparently not applied to pawn shops any more. However, the provisions in regard to how maintain the accountant data and record keeping elaborated by National bank in 2005 year are still relevant. The control of the pawnshops' employees competence is now imposed on founders of pawnshops, their shareholders, managers. However, according to the Legislation of the Republic of Kazakhstan about administrative penalties, article 178, the appointment of a person without the certificate of professionalism on the position of the main accountant leads to imposition of

administrative fee on a legal entity from 100 up to 500 monthly estimated data, on an individual from 100 up to 200 monthly estimated data.⁹⁴

2.3.9 Sale of unredeemed goods.

Article 319, paragraph 6 of civil codex regulating the realization of pawned goods, provides for an opportunity to get deficiency from the pawner by a pawnbroker without consideration of accrued charge (so, it concerns only the price paid for it) if it is not stipulated otherwise in the contract or other legislative acts (which is not). The same paragraph 319.6 specifies that in case of surplus as a result of sale of unredeemed goods, the surplus must be returned to a pawnor.

Additionally, article 318.2 indicates a public auction as means of sale of unredeemed goods which can be initiated by a pawnee independently without application to the court proceedings but which is mandatory. There is no such stipulation in Florida pawn broking act. In Florida, a public auction is one out of number of other means of realization of unredeemed goods.

Article 319, paragraph 4 stipulates that before the beginning of auction, the court or trustee can require the preliminary guaranteed charge from the participants of the auction which is included into the final price paid for the goods or returned at the end of auction. Such a preliminary charge is not returned to the participant who wins the auction but does not pay the final price. It is left with the court or a trustee. It is also specified that any legal entity or citizens of RK including pawner and pawnee can participate in the auction.

⁹⁴ Zakonodatelstvo Respubliki Kazakhstan ob administrativnih narusheniyah (Legislation of the Republic of Kazakhstan about administrative penalties) available on http://www.akorda.kz/www/akorda_kz.nsf/sections?OpenForm&id_doc=26D430A0D69A7F4D462572340019E771&lang=ru&L1=L3&L2=L3-26 (last access on 03-25-2009).

Paragraph 319.5 states that in case of less than two buyers, the auction is not held and the pawnee (pawnbroker or creditor) is entitled to convert the unredeemed property into his sole property according to its current market price, established by a court or trustee or persons having a license on doing evaluation, or to require additional auction.

Paragraph 319.7 identifies that the pawner and guarantor can cease the sale of unredeemed goods before the auction takes place by fulfilling their obligations to the contract. Any agreement limiting this right is invalid.

Paragraph 328.7 also states that the conditions of the contract on the pawning of goods in the pawn shop, containing limitations of the rights of the pawner in comparison with the rights given to him/her by this Codex and appropriate legislative acts, are invalid since the moment of contract conclusion. Instead of such conditions, the appropriate provisions of this codex and legislative act are applied. Article 320 states the duties and rights of a trustee appointed to conduct auction.

Despite the vivid description of how to realize or sell the unredeemed property provided by articles 318, 319, 320 of the civil codex, on practice, they are not complied with according to media reports. The pawnshops usually dispose of the unredeemed property through the branch of shops, they have connection with. Such a practice was not prescribed, but is practically most common. Due to the liberal attitude to pawn shops, such a practice was rarely prosecuted. Even controlling authorities give discretion to pawn shops in selling the goods

through the branch of connected shops on the ground that auctions are too time-consuming and complicated.⁹⁵

Thus, on practice, the sale of unredeemed goods proceeds in similar manner as in Florida. But, distinctive to pawn shops in Florida, rarely Kazakhstani pawn brokers sell items within the pawn shops themselves.

2.3.10 Interest rates.

What is the most peculiar that neither the civil codex nor the rules impose any interest rate ceilings which are subject to the contract between two parties: a pawnor and a pawnee as well as the maturity period is also left to pawn shops to determine and subject to contract. It gives a complete freedom to pawn shops, which makes their business more profitable.

On practice, the pawn shops usually have interest rates from 9 up to 12% percent per month. The maturity period is short from 1 up to 3 months. The longer the maturity period, the less the interest rate is. The pawn brokers estimate the collateral, no matter what type it is, lowly – no more than 50-60% percent of its real market price. Approximately, 70% percent of this estimated value the loan comprises which a client needs to return with a charge of 9-10% percent per month.

Such a situation once more contradicts to what happens in Florida, where the act limits interest rates and stipulates the longer redemption period. For Florida pawnbrokers such interest rates are unbelievable.

⁹⁵ Iskanderov Ruslan, “Prozent i zalog” (Pawn and interest rate) internet-article dated from 02-23-2006, available in Russian on <http://www.gazeta.kz/art.asp?aid=71932> (last access on 03-11-2009).

2.3.11 Safe services.

It is necessary to focus attention on other services, which pawn shops can provide in Kazakhstan: safe services. The civil codex (specific provisions) contains provisions, addressing safe services conducted by pawn shops exactly and regulate them. Article 784 stipulates that the contract on storing the goods in the pawn shop is formed by the giving out of personal safe bill (check). Paragraph 784.2 states that the goods delivered to a pawn shop for storage, are a subject to evaluation upon the agreement of parties according to the market price on the things of the same nature and quality, which is usually established in trade, at the moment and place of the acceptance of the goods for storage. In such transaction, a party who gives an item for storage is a ‘safer’, in Kazakh: *жүк беруші (zhuk berushi)*; in Russian: *поклажедатель (poklazedatel’)*, while another party, who accepts goods and stores them is a ‘safee’, in Kazakh: *сақтаушы (saktaushi)*; in Russian: *хранитель (hranitel’)*.⁹⁶

The same article, paragraph 3 mandates the insurance of the accepted for storage goods in the full amount of its value, estimated according to above paragraph 784.2 of this article.

Article 785 regulates the cases when the ‘safer’ does not take the stored goods after the expiration of a maturity period, a pawn shop is entitled to keep the goods safe within 3 months. After the grace period of 3 months finishes, a pawn shop can sell the unredeemed goods in the order, stipulated in article 781 of this codex.

⁹⁶ Grazhdanskii kodeks Kazakhstana (osobaya chast’), poslednaya versiya (civil codex of the Republic of Kazakhstan (specific provisions), last version), available in Russian and Kazakh on http://www.akorda.kz/www/akorda_kz.nsf/sections?OpenForm&id_doc=00B17BEFD678EF (last access on 03-19-2009).

The same article states that the sum, got in the result of the sale of the unredeemed goods, the price for storage and other charges related to a pawn shop are paid out and the rest of the sum is given back to an owner of the safe bill when the bill is presented.

Article 781 stipulates that the 'safer' is obliged to take the stored goods back. However, if he/she does not take the goods back, the safer must give him/her a due notice not less than in a month before demanding the sale of the unredeemed goods if other legislative acts or a contract provide otherwise.

2.3.12 Other provisions.

The pawn shops in Kazakhstan are subject to cessation or liquidation according to the type of legal entity they represent or were created like. In such situations, the statutes on limited liability companies, stock corporations, partnerships are applied.

The legislation of the Republic of Kazakhstan about administrative penalties governs the imposition of administrative penalties for administrative breaches in the field of entrepreneurial activity (chapter 14), breach of requirements of the legislation of the Republic of Kazakhstan to microcredit organizations (article 168), breach of obligatory insurance (article 175), breach of requirements to the order of appointment of managers of financial organizations, untimely notification of appropriate authority about opening or cessation of subsidiaries lead to the imposition of administrative fee upon a physical body not more than 200 monthly calculated indices, on legal entity – not less than 200 monthly calculated indices (estimated data).⁹⁷

⁹⁷ Zakonodatelstvo Respubliki Kazakhstan ob administrativnih narusheniyah (Legislation of the Republic of Kazakhstan about administrative penalties) available on http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=26D430A0D69A7F4D462572340019E771&lang=ru&L1=L3&L2=L3-26 (last access on 03-25-2009).

There are no clear provisions governing the claims by third parties against purchased goods or pledged goods held by pawn brokers, which is again subject to a contract between a pawnor and a pawnee. We assume that the misappropriation issues are covered by criminal codex of Kazakhstan but do not specifically refer to transactions within a pawn shop as well as identification of criminal penalties. The same concerns hold orders' issuance.

2.3.13 Remarks.

As a conclusion, after such a careful observation and comparison of two jurisdictions, Florida pawn broking act and Kazakhstani legislation, we assume that the result of such an analysis explicitly shows that two jurisdictions adopted two distinctive positions related to pawn industry, completely contradictory to each other. This conclusion leads us to elaborate the table of distinctions between Florida pawn broking act and Kazakhstani legislation, which serves as the basis for providing recommendations to Kazakhstani legislation in respect to pawn shops' regulation (Appendix I).

As it was clearly shown within the comparative analysis of two jurisdictions, they have almost nothing in common. The distinctions concern such vital legal issues relevant to the pawn industry such as licensing requirements, interest rates regulation, sale of unredeemed goods, administrative penalties, disclosure requirements, eligibility requirements to employees and founders of a pawn shop, law enforcement authorities' relations with, recovery of surpluses and deficiencies within a pawn transaction, misappropriation of the pledged goods, hold orders, record keeping requirements and etc.

What is common between two jurisdictions is the contemporary grace period of three months, definition of the pawn service charge, purchase-sale transactions available at the pawn shop and theoretically the scope of collateral which in reality is much narrower in Kazakhstan, but simultaneously the scope of activity of pawn shops in Kazakhstan is broader than in Florida.

The distinctions, due to the issues they cover, are much more important to us to draw conclusions. What makes this analysis valuable that it definitely outlines that the Kazakhstani legislation is pawnbroker-oriented (creditor-oriented), while Florida pawn broking act is more consumer (debtor) - oriented. Such a valuable discovery highlights the following fact: Kazakhstani legislation is mainly focuses on the protection of creditors and creating optimal conditions for business development, whereas Florida legislation is mostly concentrated on consumer protection means. Such a conclusion is proved by factual data, mentioned within the analysis and apparently tightly corresponds with the primary objectives two countries try to pursue. In the USA, the consumer protection plays a very important role and is already one of the most pre-eminent issues since the enactment of the 14th amendment to their constitution. The whole legal system of the USA is considered to be pro-debtor-oriented. Exactly, in Florida, the controlling body such as the Department on agriculture and consumer protection also affects the modern tendencies in the pawn industry. It is evident that the Agency in Florida, which has a primary aim to protect consumers, imposes stringent requirements on pawn brokers to avoid the violation of consumer fundamental rights.

In Kazakhstan, the perspectives are different. The main contemporary objective of the government of Kazakhstan is to facilitate the growth and stabilization of the financial market, the competitiveness of financial organizations and stimulate the incorporation of modern technological innovations and know-how into the activity of financial institutions. Without

doubts, the protection of consumers and transparency of financial organizations' activity are vitally important as well as the development of the financial market, on the ground that the sound financial system is impossible without a healthy consumer protection regulation. Kazakhstan endeavors to optimize both issues: consumer protection and business structure growth. The strict regulations concerning these important issues affect most of financial institutions, especially bank system and large corporations. But, the pawn shops used to be under the most stringent control by 2006 year, are now almost exempted from such supervision by two controllers such as National bank and Agency, the strict control was loosened and exchanged by the freedom of contract. The contract freedom is in the basis of all pawn transactions. The civil codex comprises the general provisions on regulation of loan transactions, secured by something, no matter whether they take place in the pawnshop or any other credit institutions. Only some general provisions such as article 328, specific provisions among which are articles 781-784, exactly refer to pawn shops and mention the pawn shops within their context.

Such a crucial transfer from the stringent control to the contract freedom is suggested by the contemporary tendency of supporting the development of small and medium sized enterprises, which pawnshops refer to. The practical implementation of the contract freedom proves to be more effective in respect to the growth of pawn shops as small and medium sized enterprises. At least, according to media reports their number is always rising gradually.⁹⁸

The contract freedom does not mean the complete freedom for pawnbrokers. Even general and specific provisions of the civil codex of Kazakhstan, statutes on limited liability

⁹⁸ Agenstvo Respubliki Kazakhstan po regulirovaniu i nadzoru finansovogo rinka i finansovih organizasii (Agency of the Republic of Kazakhstan on regulation and control of the financial market and financial organizations) available on http://www.edu-cip.kz/ru/index.php?option=com_content&task=view&id=2506&Itemid=383 (last access on 03-22-2009).

companies, partnerships, stock corporations and other legislative acts provide mandatory requirements to be followed by any person or legal entity engaged in the pawn industry. However, there is no more any separate regulation on pawnshops' activity (for example: rules on opening, licensing, regulation and cessation of pawnshops' activity elaborated by the National Bank and rules approved by Agency are no more relevant) and the pawn transactions are considered in the range of other loan transactions.

But, in the comparison with Florida pawn broking act, the Kazakhstani pawn brokers have more discretion in establishing interest rates, redemption periods, purchase price, pawn service charges and they are not obliged to do daily reports to law enforcement authorities contrary to Florida. The less strict cooperation between law enforcement authorities and Kazakhstani pawn brokers is determined by the less risk connected with pawn broking as in Florida such as property crime and firearms sale. As it is mentioned earlier, the very legislation provides prohibition on carrying the firearms in Kazakhstan and practically the scope of collateral is limited in Kazakhstani pawn shops up to jewelries, automobiles and small number of technical equipment on the ground of market being overloaded with them which hinders their disposition in case of absence of redemption. These facts contribute to less problems connected with firearms (they are not accepted at all) and property crime – it concerns in fact only jewelries and automobiles, but the pawnshops can take specific measures to protect themselves: to ask for identity card or passport, auto license and document of title to automobile. Simultaneously, these facts almost eliminate the necessity of very tight cooperation with law enforcement authorities.

Conclusion:

As a result of our prolific comparative analysis, we have come to a conclusion that Kazakhstani legislation is more pawnbroker-oriented and it is based on contract freedom conception contrary to the detailed stringent legislation of Florida. The main reason is the position and development of local financial markets, which we must not forget about. But, this fact has not hindered us to fulfill the main objective of this thesis.

Despite of all positive sides of Kazakhstani legislation, aimed at providing micro credit opportunities to potential consumers and facilitating the growth of small and medium-sized enterprises, the pawnshops refer to, it is necessary to stress that it is fresh and recently enacted and subsequently subject to review.

Our analysis has led us to elaboration of recommendations related to the contemporary Kazakhstani legislation based on the example of Florida pawn broking act, which was the primary objective of this research:

1. The necessity of elaboration of separate statute on pawn broking.
2. The interest rate ceilings' establishment.
3. The reconsideration of articles 318-320 of civil codex, general provisions related to sale of unredeemed pledged property.
4. The elimination of possibility of recovery of surpluses and deficiencies as a consequence of sale of unredeemed goods.
5. The pawn service charges reconsideration.
6. The elaboration of detailed recordkeeping requirements.

7. The facilitation of practical realization of the existing legislation on the pawn industry.

In respect to the first recommendation, it is worth mentioning that when the provisions regarding pawnshops are separately stipulated covering all important issues concerning two parties to pawn transactions as it is done in Florida, it is much easier to get acquainted and work with such legislation as for legal practitioners, so and for individuals wishing to engage into pawnbroker's business and potential consumers. It is easier to make it available for observance to people, who are eager to know their rights and duties when participating in a pawn transaction. The example of Florida pawn broking act, highlighting all vitally significant issues related to the pawn industry and its participants make it convenient for use and less time consuming than searching for relevant provisions in different statutes.

The second recommendation is primarily based on the experience of Florida legal practitioners dealing with pawn broking. The contract freedom promulgated in Kazakhstan suggests the establishment of interest rates by pawn brokers themselves and leaves a chance to consumers either agree to given conditions or to find another pawn shop with more optimal conditions. However, such a provision is unpractical and is possible only theoretically. In reality, most of the pawnbrokers abuse this provision by establishing very high interest rates from 9 up to 12% percent and simultaneously practicing very short redemption rates. For pawn brokers it makes their business more profitable, but for potential consumers it seems to be problematic. In fact, consumers cannot allow chasing around from one pawnshop to another in searching for more favorable conditions. When the need forces a person to apply to a pawn shop, he/she does not really possess sufficient time to look around all pawnshops in his region to find out more optimal interest rates. Thus, practically, in this situation only pawnbrokers are winners.

There may be some proponents to this allegation, stating that in Kazakhstan due to the factually narrow scope of collateral accepted by pawnbrokers and difficulty in selling unredeemed goods, such high interest rates are justifiable. Now, we can agree with such statement, but the more financial market develops, the more actual the necessity for interest rates' ceilings becomes. We do not state that usury laws must be amended immediately, but we believe that this necessity will become acute soon.

The third recommendation relates to the reconsideration of articles 318-320 of the civil codex, mandating the sale of unredeemed pledged goods by means of the public auction. The reality proves that this procedure is highly unpractical and time consuming. As it is stated earlier in this research the pawnbrokers circumvent this provision by selling most of unredeemed goods through the branch of shops they have business connections with. If, the practical realization shows the complicatedness of the mandated procedure and its total circumvention, what is the value of these provisions? They simply exist theoretically and far from reality, which makes them useless in respect to pawnshops. We assume that these provisions, adequate for other loan transactions and credit institutions such as banks, are not applicable to pawnshops. In this case, the discretion must be given to pawn brokers in their endeavors to sell unredeemed property and the public auction can be one of the possibilities of legal disposition of unredeemed property.

The fourth recommendation specifically refers to a possibility to recover deficiencies and surpluses in case of sale of unredeemed property by pawnbrokers. Such a possibility, provided by Kazakhstani legislation is again unpractical due to the following reasons: first of all, due to the difficulty of selling unredeemed goods, the pawn broker incurs additional expenses in

finding out the sources of sale and it is time consuming. Despite the fact, that the pawn broker can include the additional expenses into the purchase price of the pledged goods, it is difficult to predict whether at the moment of expiration of maturity period and sale of the goods, the market price of them does not decrease or due to their depreciation value it does not lose its original price. Thus, taking into consideration that the pawnbroker assumes a greater risk, the surplus must be left with him/her at least within a pawn transaction. In regard to a deficiency the facts show that if a person goes to a pawnshop to pledge goods, his/her financial situation is far from stable and obviously if the pawnor is not willing to redeem goods, it is even more impossible to recover deficiency from him/her due to the absence of sufficient cash. Consequently, this provision related to recovery of deficiency and surplus is of little practical value. It is relevant for other credit institutions, but not for pawnshops. The Florida pawn broking act specifies that the pawnbroker assuming a high risk by accepting collateral in case of its being unredeemed is entitled to surpluses and is not obliged to give it back or ask for deficiencies from the customer. Such a provision equals both parties to a transaction.

The fifth recommendation concerns the pawn service charges, which according to Kazakhstani legislation again subject to a contract and can include even potential future expenses incurred. There are again no limits on them and it can be easily abused by pawnbrokers, who can excessively charge, thus concluding fraudulent transactions. Once, the contract is signed, the consumer has no means to protect himself/herself against such an abuse. The limitation of pawn service charges is necessitated by the fact that most of consumers in pawnshops are not merchants; they are ordinary people, who can possess little or no knowledge about the peculiarity of transactions and real market price of the pledged goods.

The sixth recommendation concerns the elaboration of detailed recordkeeping requirements. Despite the absence of real problems in selling of firearms through pawnshops as in Florida not applicable to Kazakhstan, there is a possibility to convert stolen property such as jewelries through a pawn shop. Due to the contract base of pawn transactions, it is in the discretion of pawnbrokers to establish additional protection measures against dealing with criminals. But, due to the fact that there are no clear requirements to the employees and founders of a pawn shop in Kazakhstan, there is a practically possible situation of establishing the pawn shop by people having connections with criminals or having convictions in past. Moreover, we cannot be confident that all pawn brokers are of good moral character. Under the temptation of getting a profit, a considerably honest pawn broker can engage into dealing with criminals and knowingly accept the stolen goods. In such situation, the recordkeeping is adequate. The Florida pawn broking act provides for detailed recordkeeping requirements including personal data, address, signature, fingerprints' analysis. In Kazakhstan the fingerprints' analysis will not be relevant due to complicated procedure of doing analysis of fingerprints by law enforcement authorities, but the requirement of documents such as identity card or document of title to the pledged goods are applicable and in fact are already applied by some pawnshops. This requirement can be mandated by law to assure that all pawnshops follow this procedure. Additionally, the period of storage of these documents must be exactly provided by law and not less than a year specifically in respect to pawnshops. This measure at least will give full data including the description of the pawned item to law enforcement authorities to trace the stolen property and find out criminals engaged in burglary. Moreover, these facts necessitate the more stringent requirements to the employees and founders of pawnshops.

The seventh recommendation focuses on the practical realization of the existing legislation related to pawnshops in Kazakhstan. It specifically concerns the scope of collateral. Despite

the fact that the Kazakhstani legislation indicates any movable property, capable of being served as collateral, the reality shows that it is narrowed up to jewelries, automobiles and a very small amount of technical equipment. The reasons for such practically limited scope are lack of professional evaluation of the goods besides jewelry and automobiles and the limited possibilities of selling them in case of non-redemption without incurring losses by pawnbrokers.

The conclusion is that the practical realization of a broader scope of collateral as well as other above mentioned recommendations are tightly dependant on the development of the financial market in Kazakhstan. The more developed the market, the higher convertibility of goods takes place, the more possibilities in selling versatile unredeemed goods pawnbrokers have, the more willing they become to accept more various goods as collateral. It consequently increases the ratio of potential borrowers and contributes to the development of micro-credit market.

Finally, it is important to remark that despite all above recommendations which are derived as lessons from the rich experience of pawn broking in Florida, one of the most important advantages of Kazakhstani pawnshops in comparison with Florida act is the absence of unattractive stigma. Pawnshops are not considered to be a ‘dwelling of evil’⁹⁹, the people have more positive attitude to them and go to pawnshops as a micro credit institution without granting the pawn transaction as a disgusting and humiliating practice. It is mostly determined by the necessity in micro credit organizations and high consumer demand which well contribute to the slow but steady growth of pawnshops in Kazakhstan.

⁹⁹ Metaphor used by thesis writer to stress the idea

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Appendix I:

Table of main distinctions between Florida pawn broking Act and Kazakhstani Legislation on the regulation of pawn industry¹⁰⁰:

Florida Pawn broking Act , 1996	The Kazakhstani legislation on the pawn industry, civil codex (general provisions) 1994, civil codex (specific provisions) 1999
1. the state-level regulation.	1. the national –level regulation.
2. the mandatory licensing requirements.	2. no licensing requirements, only registration.
3. detailed recordkeeping requirements, specific provisions in respect to pawn ticket requirement.	3 only general recordkeeping requirements, no specific provisions related to pawn ticket contents.
4. mandatory interest rate ceilings.	4. no interest rate ceilings, subject to contract.
5. limitation on pawn service charges.	5. no limitation on pawn service charges, subject to contract.
6. no recovery of surpluses and deficiencies in case of sale of unredeemed goods.	6. the possibility of recovery of surpluses and deficiencies in case of sale of unredeemed goods.
7. the tight relation of law enforcement authorities with pawnbrokers through the requirement of daily reports and delivery of transaction forms to appropriate law official.	7. no requirement of daily reports and delivery of pawn transaction forms ot appropriate law officials, thus less close relations with law authorities.
8. explicit requirements to founders and employees of pawnshops, forbidding people to conduct pawnshop with less that 10 years past of their conviction on felony or larceny.	8. no specific requirements to employees and founders of a pawn shop, except accountants. The issue is left at the dsicretion of founders of pawnshops.
9. the redemption period is established by law.	9. the redemption period is subject to contract.
10. specific provisions governing claims of third parties against goods in the possession of a pawnbroker.	10. no specific provisions governing claims of third parties against goods in the possession of a pawnbroker.
11. insurance is only in case of redemption by mail.	11. Insurance is obligatory.
12. the scope of collateral is broad on practice.	12. the scope of collateral is in fact limited, but prescribed by law.
13. the legislation is more consumer-oriented (debtor -oriented).	13. the legislation is more creditor-oriented (pawnbroker-oriented).

¹⁰⁰ The table is elaborated by Issabekova Saule, student of CEU, IBL