Guidelines on Credit Risk Mitigation

Legal Framework in Slovakia

These guidelines were prepared by the Oesterreichische Nationalbank (OeNB) in cooperation with the Financial Market Authority (FMA)

We would like to point out that the nature of these Guidelines is intended as merely descriptive and informative. These Guidelines do not – and cannot – make any statements on the requirements imposed by supervisory authorities on credit institutions as regards their treatment of credit risk mitigating methods. Decisions by the competent authorities may diverge from the presentation given in these Guidelines. Furthermore, the Editors would like to point out that these Guidelines have been drafted with consultation by Slovak jurists and were translated from German into English. Despite the great care taken, the editors do not assume any warranty or liability for the contents, for the selection of the collaborators or for the translation. These Guidelines are intended to serve as an initial source of information and by no means replace a consultation with experts in Slovak law. The Guidelines refer to the legal situation as at 1 April 2004.

Published by:

Oesterreichische Nationalbank (OeNB)
1090 Vienna, Otto-Wagner-Platz 3

Austrian Financial Market Authority (FMA)
1020 Wien, Praterstraße 23

Produced by:

Oesterreichische Nationalbank

Editor in chief:

Günther Thonabauer, Secretariat of the Governing Board and Public Relations (OeNB)
Barbara Nösslinger, Executive Board Affairs and Public Relations Division (FMA)

Editorial processings:

Andreas Höger, Wolfgang Spacil, Florian Weidenholzer (all OeNB)
Ursula Hauser-Rethaller, Christine Siegl (all FMA)

Design:

Peter Buchegger, Secretariat of the Governing Board and Public Relations (OeNB)

Typesetting, printing and production:

OeNB Printing Office

Published and printed at:

1090 Vienna, Otto-Wagner-Platz 3

Inquiries:

Oesterreichische Nationalbank
Secretariat of the Governing Board and Public Relations
Vienna 9, Otto-Wagner-Platz 3
Postal address: Post Office Box 61, Vienna 1011
Phone (+43-1) 40420-6666
Telefax (+43-1) 40420-6696

Austrian Financial Market Authority (FMA)
Executive Board Affairs & Public Relations Division
Phone (+43-1) 24959-5100

Orders:

Oesterreichische Nationalbank
Documentation Management and Communication Systems
Vienna 9, Otto-Wagner-Platz 3
Postal address: Post Office Box 61, Vienna 1011
Phone (+43-1) 40420-2345
Telefax (+43-1) 40420-2398

Internet:

http://www.oenb.at
http://www.fma.gv.at

Paper:

Salzer Demeter, 100% woodpulp paper, bleached without chlorine, acid-free, without optical whiteners

DVR 0031577

Preface

The spreading use of innovative financial products such as securitized assets and credit derivatives and the growing volume of investments in Central and East European countries by Austrian companies is changing the face of the Austrian banking sector.

The Guidelines on Credit Risk Management have been drafted to help banks accomplish the changes to their systems and processes needed for the implementation of Basel II and as a source of information on the general market conditions in Central and Eastern Europe. A number of Guidelines will be published in the course of the year 2004 on the topics of securitization, rating models and validation, the credit approval process and credit risk management as well as credit risk mitigation methods.

The aim of these Guidelines is to achieve a common understanding between supervisory authorities and banks regarding the upcoming changes in the banking industry. In this context, Oesterreichische Nationalbank (OeNB) and the Financial Market Authority (FMA) view their role as that of partners for the domestic banking community.

This series of Guidelines entitled *Credit Risk Mitigation, Legal Framework in Central and Eastern Europe* have been drafted with the collaboration of many renowned experts from the respective countries and are designed as an introduction to security law in each country for banks operating in those countries – or planning to launch operations there – as well as for their customers. The Guidelines describe the requirements of the most frequent types of credit security and the problems that may arise in this context.

We hope that the Guidelines on Credit Risk Management will be of interest to readers and will foster a more efficient discussion of developments in the Austrian banking sector.

Vienna, September 2005

Univ. Doz. Mag. Dr. Josef Christl
Member of the Governing Board
of Oesterreichische Nationalbank

Dr. Kurt Pribil,
Dr. Heinrich Traumüller
Management Board of FMA

Table of Contents

Chapter 1: General Remarks on the Legal System in the Republic of Slovakia

I. Introduction

These Guidelines look at the *most important instruments used for securing credit risk* that are available under Slovak law. This chapter contains a short description of the Slovak legal system, which is followed by a detailed examination of the methods available for the realization of credit security. The individual chapters look at the specific details of the realization of each type of security.

The Slovak Republic was founded as an independent constitutional state with parliamentary democracy on January 1, 1993.[1] The power of the state emanates from the people who exercise these powers directly or indirectly (through elected representatives).

The power of the state is assigned to state bodies in accordance with the principle of separation of powers, and divided into legislative, executive and judicial powers. The so-called controlling bodies play a special role within the system of the governing bodies. The governing bodies are regulated by the constitution with respect to the limits, scope, type and forms of action as set out in Slovak law.[2]

A. The Legislative Branch

The National Council (the *Slovak parliament*) is the only constituent and legislative body of the Slovak Republic.[3] The Slovak parliament has 150 deputies who are selected for a four-year period in a general, equal, direct and secret ballot.[4] The constitution provides for a single-chamber national assembly. The resolutions of the parliament of the Slovak Republic must be passed by more than one-half of the deputies present to be valid. A three-fifths majority vote of all deputies is required as a minimum to pass and amend the constitution and constitutional laws.[5] The internal procedures of the National Council of the Slovak Republic (procedure for debates and activities, its committees and bodies) are regulated in the so-called internal rules of procedure.

Citizens can exercise direct legislative power through the institution of the *referendum*.[6]

[1] Sect. 1 par. 1 of the constitution of the Slovak Republic (hereinafter "Const."). The National Council of the Slovak Republic approved the first constitution of the Slovak Republic (SR) on September 1, 1992, which was promulgated in the official compilation of laws of the SR (hereinafter "Coll.") with the number 460/1992 and entered into force on October 1, 1992. At the same time, the dissolution of the Czech and Slovak Federative Republic (ČSFR) as of December 31, 1992 was laid down in the Federal Constitutional Act no. 542/1992 Coll. of November 25, 1992. On January 1, 1993, the ČSFR was succeeded by two sovereign successor states, i.e. the Czech Republic and the Slovak Republic. The federal legislative, executive and judicial powers were transferred to separate bodies of the two successor states.

[2] Sect. 2 par. 1 and 2 Const.

[3] Sect. 72 Const.

[4] Sect. 73, 74 Const.

[5] Sect. 84 Const.

[6] Sect. 93 par. 2 in conjunction with Sect. 2 par. 1 Const.; cf. also ruling PL. ÚS 38/97 of the Constitutional Court of the Slovak Republic.

B. The Executive Branch

The president and the government form the executive branch.

The *president* is the head of state of the Slovak Republic and represents the state abroad and within the country. The president serves in this function to the best of his or her knowledge and conviction, and is not bound to follow any instructions.[7] The president is elected directly by the citizens for a period of five years.[8] Laws must be signed by the president, among others, who also has the right to veto or to refuse to sign.[9]

The supreme body of the executive branch is the *government* of the Slovak Republic, which consists of the chairperson (prime minister), deputy prime ministers and the ministers.[10] The prime minister is appointed by the president of the Slovak Republic, and on his or her recommendation, the president appoints and recalls other members of the government. The government has the right to pass generally binding legal acts in the form of government directives.

C. The Judicial Branch

The Slovak court system consists of the *Supreme Court* of the Slovak Republic, *regional courts*, *district courts*, the *Supreme Military Court* and *military district courts*. The court system is a uniform system, i.e., the general courts decide on criminal law and civil law as well as commercial law matters and examine the legitimacy of decisions by administrative bodies. Court proceedings comprise three instances. Judges exercise their functions independently and impartially; the president of the Slovak Republic appoints them for an indefinite period.

The *Constitutional Court*[11] is an independent court seated in Košice. The court rules, in particular, on the constitutionality of laws, their compliance with the constitution and international treaties, on conflicts of competence between central administrative bodies of the state unless the law assigns another state body to decide on these matters, and on complaints by natural persons and legal entities on the grounds of violations of their basic rights.

The so-called *Judicial Council* of the Slovak Republic (*súdna rada*) functions as a new judiciary institution. This body consists of the chairperson who is at the same time chairperson of the Supreme Court, eight representatives elected by Slovakia's judiciary and three representatives chosen by the president, the Slovak government and the National Council.

II. Legal Sources of the Slovak Republic

The supreme legal source of the Slovak Republic is the Constitution, which was amended recently by Constitutional Act no. 90/2001, Coll., which entered into force on July 1, 2001.[12] Other generally binding regulations are *constitutional laws* and *laws* passed by the National Council of the Slovak Republic, *government*

[7] Sect. 101 par. 1 Const.
[8] Sect. 101 par. 2 Const.
[9] Sect. 87 par. 3 Const.
[10] Sect. 108 Const.
[11] Sect. 124 to 140 Const.
[12] Except for Sect. 125a, 127, 127a, 134 par. 1 and 3 as well as 151a Const., which took effect as of January 1, 2002. The Constitution of the Slovak Republic was repromulgated in full in No. 135/2001 in the official compilation of laws of the SR.

directives, the generally *binding legal provisions* of the *ministries* and of the other *government bodies*, *international treaties* as well as *rulings*[13] *of the Constitutional Court* on the *non-conformity with legal provisions*.

III. Government Control and Legal Protection

The state bodies enjoying a special status include the Supreme Audit Office of the Slovak Republic, the Public Prosecution Office and the Ombudsman.

The *Supreme Audit Office of the Slovak Republic*[14] is an independent authority that audits the financial management of the budgetary resources approved by the National Council or by the government; it also audits the management of the state's assets, liabilities, property rights and receivables, and those of public law institutions and the National Property Fund. The financial management of the government, the ministries and other central bodies of the public administration are also subject to auditing by the Supreme Audit Office.

The tasks of the *Public Prosecution Office* are the protection of rights and interests of natural persons and legal entities as well as those of the state protected by law.[15] The Public Prosecution Office is characterized by the principles of centralism, with the General Prosecutor's Office holding the highest position, and of monocratism, since each prosecutor decides individually and independently. Within the framework of the supervisory function, the prosecutor can take recourse to two types of legal remedies, i.e., the protest (*protest*) and the warning (*upozornenie*).

The institution of the *Ombudsman* (verejný ochranca práv), which was incorporated into the Constitution of the Slovak Republic only recently, is responsible for the protection of the basic rights and freedoms of natural persons and legal entities in proceedings, rulings and whenever public administration bodies fail to act. Furthermore the Ombudsman is responsible, whenever the conduct of these instititutions conflicts with the law or the principles of the rule of law or democracy.[16]

IV. Monetary Supervision and Regulation

Shaping monetary policy is one of the principal tasks of the *Narodna banka Slovenska* (Slovak National Bank, NBS)[17] in addition to the objective of keeping the internal and external value of the Slovak koruna stable; issuing banknotes and coins; management, coordination and ensuring monetary circulation, the transfer of payments and preparing the data on the transfer of payments.

The latest amendment to the Act on the National Bank of Slovakia (NBSG),[18] which took effect as of 1 May 2001, has brought the Narodna banka Slovenska into line with all the requirements necessary for adopting the *acquis communautaire* with respect to its functional, institutional, personnel-related and financial independence as well as with respect to the prohibition of direct financing of any deficit in public finances by the central bank.

[13] These special decisions make it possible to amend or repeal laws with immediate legal effect.
[14] Sect. 60 Const.
[15] Sect. 149 Const.
[16] Art. 151a.
[17] For details see www.nbs.sk.
[18] Act No. 566/1992 Coll. on the National Bank of the Slovak Republic, as amended.

A. Financial Market Supervision

The *Narodna Banka Slovenska* is responsible for *banking supervision* pursuant to Art. 6 par. 5 Banking Act.[19] The Ministry of Finance is not directly responsible for banking supervision, but the Banking Act confers certain powers in the area of banking supervision to the Ministry of Finance.[20]

Supervision of the *financial market in general* is the principal task of the *Office for the Financial Market*.[21] In addition, the *Ministry of Finance* has the competence to pass generally binding legal provisions (so-called secondary legislation) in the area of financial market supervision.

[19] Act No. 483/2001 Coll. on Banks, as amended.
[20] See Articles 7 par. 1, 28 par. 3 and 11, 76 par. 3 and 83 Banking Act.
[21] Act No. 96/2002 Coll. on Financial Market Supervision, as amended.

Chapter 2: General Remarks on Credit Security in Slovak Law

I. General

According to the Slovak legal system, a loan contract is a so-called *absolute commercial transaction*. Therefore, the Commercial Code[22] applies to this type of legal transaction regardless of whether the contractual parties are businesses or the legal transaction concerns their entrepreneurial activities.[23] The same applies to credit security, which is also governed by the provisions of the Commercial Code. If the Commercial Code only insufficiently regulates some individual forms of security or not at all, then the relevant provisions of the Civil Code[24] apply.[25]

The forms of credit security regulated *in detail* by *the Slovak Commercial Code* are bank guarantees, suretyships and the acknowledgement of debt, with provisions on suretyships and the acknowledgement of debt also being contained in the Slovak Civil Code. Civil law provisions generally do not apply to commercial transactions in this context.

Apart from the above-mentioned types of security, *some* are regulated *in the Slovak Commercial Code* and others are regulated generally in the Slovak Civil Code. The more specific provisions of the Slovak Commercial Code were drafted for commercial transactions. These provisions include, among other things, contractual penalties.

There is a category of credit security that is regulated *exclusively by the Slovak Civil Code*, with these provisions also being applicable to commercial transactions due to the subsidiarity of the Civil Code. This category includes liens, right of retention, agreements on deductions from wages and other income, the assignment by security, the assignment as collateral as well as the obligation to provide security.[26]

Provisions governing credit security are also contained in a number of other laws not mentioned above, as for example: Act No. 162/1996 Coll. on the Cadaster of Properties and on the Registration of Ownership and Other Rights in Real Property including Implementing Decree No. 79/1996 Coll., as amended; Act No. 600/1992 Coll. on Securities (as amended); Act No. 21/1992 Coll. on Banks (as amended); Act No. 328/1991 Coll. on Bankruptcy and Composition Proceedings (as amended) and Act No. 311/2001 Coll. (as amended) on the Labor Code.

There are a number of forms of security that have the effect of securing the position of a creditor only as regards the commercial aspects, e.g., insurance contracts, the additional assumption of debt or letters of credit. An agreement on interest on arrears can also function as security to a certain extent.

Slovak law is still very similar to Czech law even today, although there are some major deviations in the details. The opinion of Czech legal academia as

[22] Act No. 513/1991 Coll., as amended.
[23] Cf. Enumeration in Art. 261 par. 3 lit a to e Slovak Commercial Code.
[24] Act No. 40/1964 Coll., as amended.
[25] *Faldyna/Hušek/Des*, Zajištění a zánik závazků, Codex Bohemia, Praha 1995, 9 f.
[26] Art. 555 Slovak Civil Code regulates the obligation to provide security, which can be done by creating a lien or a suretyship. As regards the content, this is not an independent security instrument.

well as Supreme Court rulings are often drawn on when interpreting difficult legal issues in practice.

II. Collateral and Personal Security

Like in other legal systems, Slovak law groups credit security instruments into collateral and personal security.[27]

The *nature of collateral* gives creditors the right to demand satisfaction in the event of default on a claim from specific assets by obtaining a writ of execution with the entailing execution proceedings, or by disposing over of these assets – with certain restrictions – in any other manner. The guarantor does not have the right to dispose of the asset serving as collateral until the secured claim falls due; exceptions exist only in the case of real estate.

Collateral under Slovak law includes[28]:

- Liens
- Assignment as collateral
- Assignment by security, as well as
- Retention of title (including any other subsidiary agreements to the purchase contract such as the first right of purchase and the right to repurchase) as well as
- Right of retention.

Personal security involves the acquisition of additional debtors whose total assets represent additional liable assets. Under Slovak law these are:

- Suretyships,
- Bank guarantees,
- Agreements on deductions from wages and other income,
- Contractual penalties,
- Acknowledgement of debts,
- (Privative) assumption of debt as well as
- Additional Assumption of Debt

III. Obligation to Provide Security

The obligation to provide security is created primarily by agreement between the parties concerned. Security may be provided by creating a lien or a suretyship (Art. 555 Slovak Civil Code).

Pursuant to Art. 556 Slovak Civil Code, generally no one is obligated to accept an object or a right as security for any lending value higher than two-thirds of the estimated market value. Exceptions are deposits with banks and savings institutions as well as government securities that are considered eligible security in their entire amount.

According to law, when sufficient security is provided the right of retention automatically extinguishes in the event of default on a secured claim (Art. 151v Slovak Civil Code).

[27] *Dvořák,* Právna úprava a prax zabezpečenia záväzkov v práve Slovenskej republiky, in: Bulletin slovenskej advokácie č. 1/1996, 9.

[28] See this classification in: *Lazar,* Prostriedky zabezpečenia pohľadávok a možnosti ich uspokojenia v slovenskom práve, 29, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).

IV. Realization of Security

A. Realization of Collateral

If a creditor is not satisfied with the *personal* liability of a debtor, a creditor usually requests additional *collateral*. The debtor grants the creditor *property rights* to objects he or she owns to additionally secure the creditor's claim.

Collateral is characterized by the fact that the creditor is granted certain rights to precisely defined assets. The creditor has a privileged position versus other creditors at the latest by the time the assets are realized. Collateral security gives the creditor as transferee *exclusive access to* an individual *asset*. This may be an asset, which belongs to the debtor of the claim to be secured. It can also be an asset that belongs to a third person.

The main advantage of collateral security is, on the one hand, that collateral provides *greater security*, above all, in the event of *execution proceedings, bankruptcy and composition*, namely, it grants the right to satisfaction from the segregated assets of the bankrupt (as in the case of reservation of ownership) or rights to satisfaction from separated assets (as in the case of liens or retention rights). On the other hand, collateral security by law gives the creditor *priority ranking over the other creditors*, as the priority principle applies when several creditors have claims secured by collateral.

B. Realization of Personal Security

A creditor whose claims are secured by personal security has other assets in addition to the debtor's assets that can be used to satisfy a claim in the event of execution proceedings.

Personal security grants the bank a contractual claim to payment by the guarantor in the event a borrower fails to repay a debt properly or not in time upon maturity. However, the recovery rate of this type of security depends on the financial capacity of the third party. If the guarantor fails to fulfill the obligation, the bank has the right under the contractual relationship to enforce its claim against the guarantor (the same as against the principal debtor) by taking recourse to judicial action.

V. Security in Insolvency

A. General

The purpose of securing credit risk is, above all, to *secure the unsettled claims of creditors in the event of a debtor's crisis*. A debtor's crisis means the lack of sufficient funds of the debtor to settle all debts. A debtor's crisis does not mean that the debtor is completely insolvent. In this situation – as mentioned before – credit security is used to avoid competition between creditors in *individual execution proceedings* and to gain a position that is better than that of the lower classes of priority in the course of *general execution proceedings*, i.e., in the event of bankruptcy when the principle of equal treatment of creditors applies.

If the debtor's crisis is in an advanced stage, bankruptcy proceedings are opened on the entire assets of the debtor subject to execution for distribution to the various creditors of the debtor. The proceedings are managed primarily

by an administrator of the bankrupt's estate. It is the administrator's task to ensure that all creditors of the debtor are satisfied equally according to the *"par conditio creditorum" principle*. This means that if the bankrupt's estate does not have enough assets to satisfy all creditors' claims, creditors receive as a rule payment on a prorated basis equal to their respective claims.

However, there are several *exceptions* to the *principle of equal satisfaction* of the creditors, since different qualities are assigned to different claims. The law divides the creditors into different categories: creditors entitled to satisfaction from segregated assets, creditors entitled to satisfaction from separated assets, privileged creditors and other creditors, with the other creditors being the actual bankrupt's creditors.

B. Bankruptcy and Composition Act

The Slovak Bankruptcy and Composition Act[29] regulates bankruptcy and composition proceedings as well as compulsory composition. The purpose of the law is to reorganize the assets of insolvent debtors and to satisfy the creditors from the debtors' assets proportionately.[30]

The Slovak Bankruptcy and Composition Act mentions the so-called as a reason for insolvency, which means insolvency, on the one hand, and over-indebtedness, on the other hand. A debtor is considered insolvent, when he or she is unable to fulfill payment obligations within 30 days of their falling due; this is assumed when the debtor discontinues payments.[31] The state of insolvency is assessed objectively according to Slovak law. Thus, a debtor's lacking willingness to pay is not sufficient grounds.

A legal entity or a natural person that is an entrepreneur is also in a state of forfeiture of assets in the case of over-indebtedness. The Slovak Bankruptcy and Composition Act does not contain a definition of over-indebtedness.[32] According to prevailing opinion in Slovak legal academia, a debtor is considered over-indebted, when the liabilities of a debtor exceed his or her business assets.[33] In practice, the interpretation of this term often proves to be difficult.

Moreover, the Slovak Bankruptcy and Composition Act requires the existence of at least two creditors as well as sufficient assets of the debtor to cover the costs of the proceedings in order to be able to open bankruptcy proceedings.[34]

The bankruptcy petition may be filed by the debtor, his or her creditors, the liquidator of the legal entity or certain other persons with legitimate interests according to the law.

If the court finds that the conditions for declaring bankruptcy are fulfilled, it decides on the opening of bankruptcy proceedings by handing down a ruling. The court's ruling must contain the appointment of the estate's administrator and a request addressed to the creditors to register their claims by specifying

[29] Act No. 328/1991 Coll., as amended.
[30] Art. 1 par. 1 Bankruptcy and Composition Act.
[31] Art. 1 par. 2 Bankruptcy and Composition Act.
[32] Art. 1 par. 3 Bankruptcy and Composition Act.
[33] *Lipšic,* Problémy právnej úpravy konkurzu a vyrovnania a návrhy de lege ferenda, Právny obzor 5/1997, 518.
[34] A closer look at the jurisprudence (3 Obo 235/99 of October 8, 1999) shows that in the opinion of the Supreme Court of the Slovak Republic any statement is to be rejected according to which it is not possible to specify whether or not assets are available.

the amounts, the legal grounds as well as any security provided within 60 days of the declaration of bankruptcy. The request to register claims must state the fact that claims, which have not been registered, cannot be taken into consideration in the bankruptcy proceedings.

C. Position of the Bank in the Event of Bankruptcy

1. Segregation and Separation

It is the objective of a creditor for whom collateral (so-called real security) is pledged to obtain rights to segregated or separated assets. By means of the *right to segregated assets,* the object may be withdrawn entirely from the bankruptcy proceedings.

Pursuant to Art. 6 Bankruptcy and Composition Act the bankrupt's estate initially also includes those assets of the debtor used to secure his or her obligations.

Pursuant to Art. 28 par. 1 Bankruptcy and Composition Act *creditors entitled to separate satisfaction from the bankrupt's estate* are those creditors whose claims are secured by a lien or a right of retention, by a prohibition of sale of real estate[35] or by the assignment of a right.[36] (Art. 28 par. 6 and 7 Bankruptcy and Composition Act).

The claims of the creditors entitled to separate satisfaction from the bankrupt's estate may be *satisfied at any time* from the proceeds of the asset that served to secure their claim irrespective of the decision on the distribution of assets, i.e., the decision on the distribution of the estate after the ordinary hearing on the distribution of assets held in the course of the bankruptcy proceedings.[37]

Rights to satisfaction from separated assets do *not* constitute a right to *realization outside the bankruptcy proceedings* according to Slovak law.[38] The administrator of the bankrupt's estate is responsible for the realization of the separated assets. The administrator of the bankrupt's estate has to form a separate property from the proceeds gained in the realization. The administrator has to pay out the proceeds to the person entitled to satisfaction from separated assets, less the costs of administration, realization, delivery of the proceeds, his or her own remuneration and expenses, up to the amount of the secured claim with the consent of the court. If the proceeds resulting from the realization of the assets are delivered to several creditors entitled to separated assets, these share the mentioned costs proportionately. If the secured claim was not fully satisfied, the unsatisfied portion represents a so-called first-class claim (Art. 28 par. 2 last sentence Bankruptcy and Composition Act). This means that this claim will be satisfied in the course of the distribution proceedings only after the hearing on the distribution of assets.

[35] In practice, it is not clear what is meant, and it does not play a significant role.

[36] Pursuant to Art. 553 Slovak Civil Code.

[37] Slovak insolvency law does not have any compulsory period of deferment of 90 days after the opening of bankruptcy proceedings in the case of claims to segregated and separated assets for objects that are of significance for continuing a business like is the case in Austrian law.

[38] The rights to satisfaction from separated assets must have been created effectively before the bankruptcy petition was filed; cf. also Art. 14 par. 1 lit. f Bankruptcy and Composition Act.

Lawsuits concerning claims to separated assets or the segregation of an asset from the bankrupt's estate (creditors entitled to satisfaction from segregated assets) may only be initiated and conducted against the administrator of the estate.[39]

2. Obligations of the Bank

Generally, creditors have to register all their claims within 60 days of the day the bankruptcy petition was filed specifying the amounts, the legal grounds as well as security provided for these claims.

In addition, the creditors have to *specify whether* they want to assert their right to *satisfaction from separated assets*; for this purpose, the exact identification of the object to which the satisfaction from separated assets shall refer is necessary. However, the Bankruptcy and Composition Act does not mention the consequences of a failure to to specifying the object as precisely as possible. This merely serves as assurance for the creditor entitled to satisfaction from separated assets.

D. Problems Concerning the Realization in the Case of Insolvency

1. Ongoing Execution Proceedings

The opening of bankruptcy proceedings has certain effects under *substantive and procedural law.* Thus, all ongoing lawsuits against the debtor (borrower), whose outcome might result in a claim[40] against the bankrupt's estate, are suspended ex lege. Furthermore, neither can additional execution proceedings on the assets belonging to the estate be carried out nor new rights to satisfaction from separated assets obtained.

The amendment to the Bankruptcy and Composition Act 2000 improved the position of the *buyer of the undischarged real estate within the framework of execution proceedings on real estate* considerably:

The buyer acquires the right of ownership to real estate purchased at an auction by paying the highest bid and after the bid's acceptance is approved by the court (Art. 150 Enforcement Code). If bankruptcy proceedings are opened on the current real estate owner within this period, the court has to decide on the acceptance of the bid upon request of the administrator of the estate or the buyer.[41] The buyer becomes the real estate owner upon payment of the purchase price retroactively as of the day of approval of the bid. The proceeds of the auction are part of the bankrupt's estate.

2. Rights to Satisfaction from Separated Assets

It is one of the substantive law effects of the opening of bankruptcy proceedings that the *rights to satisfaction from separated assets extinguish*, if they were acquired within the past two months before a bankruptcy petition was filed. If the bankruptcy petition is rejected because the requirements are lacking, it is possible to enforce these rights again. If objects or claims were realized

[39] Art. 14 par. 1 lit. c Bankruptcy and Composition Act.
[40] *Kitta,* in: Konkurz a vyrovnanie – úplné znenie zákona s výkladom, EPP 7/1998, Art. 14 par. 1 lit. d and l, 19.
[41] Cf. also Art. 156 Enforcement Code.

in execution proceedings during the mentioned period of time, the proceeds from the realization also form part of the bankrupt's estate.[42]

If the proceeds from the realization of other assets belonging to the estate are *not even* sufficient for paying the remuneration and expenses of the estate's administrator as well as for the costs that are connected with the maintenance and administration of the estate and if the remuneration and the expenses of the administrator also cannot be paid fully from the advance to the costs of the bankruptcy proceedings, *a maximum of 70% of the proceeds* from the separated assets may be delivered to the creditors entitled to separated assets in accordance with Slovak law. The remaining portion of the proceeds is distributed after the estate's realization or in the course of the distribution proceedings (Art. 28 par. 4 Bankruptcy and Composition Act).

E. Avoidance of debtors' transactions

1. General

Art. 15 and 16 Bankruptcy and Composition Act regulate the *contestation of legal acts,* and Art. 42a Slovak Civil Code also contains relevant provisions.[43] The facts relevant for contesting legal acts are the same in both laws, but contesting legal acts in accordance with the Bankruptcy and Composition Act partly has other legal consequences.[44]

The avoidance of debtor's transactions serves the creditors' interests. To the bankrupt's estate are added the assets in possession of the undischarged bankrupt at the time of the declaration of bankruptcy and the assets that the bankrupt acquired during the bankruptcy proceedings. Avoidance of debtor's transactions also makes it possible to take into consideration components of the estate, which had been transferred before the bankruptcy proceedings were opened due to certain, albeit valid, legal acts.[45]

The content of the contestation of bankruptcy is a court's finding that legal acts performed by the debtor that *discriminate creditors* are legally ineffective pursuant to Art. 15 par. 1 Bankruptcy and Composition Act. The creditor and the administrator of the bankrupt's estate have the right to contest the claim, even if the claim against the debtor is already enforceable or has already been satisfied.

Art. 15 par. 1 and Art. 16 par. 1 Bankruptcy and Composition Act *entitle the administrator of the bankrupt's estate as well as the bankrupt's creditors* to enforce the contestation against the party opposing it by filing a complaint.

[42] Art. 14 par. 1 lit. c Bankruptcy and Composition Act.

[43] Act No. 509/1991, for example.

[44] The rules on avoidance of debtor's transactions stipulated in Art. 15 and 16 Bankruptcy and Composition Act supersede the rules contained in Art. 42a Slovak Civil Code. *Kitta,* in: Konkurz a vyrovnanie – úplné znenie zákona s výkladom, EPP 7/1998, Art. 15 and 16, 21. Pursuant to Art. 42a Slovak Civil Code, a creditor may request the court to rule that a debtor's legal acts, which are mentioned in par. 2 to 4 and to the extent these have an adverse effect on the satisfaction of the creditor's collectable claim, be declared legally ineffective vis-à-vis the creditor. The creditor also has this right even when the claim against the debtor resulting from a contestable legal act is already collectable or has already been satisfied. This provision is also designed to protect creditors against legal acts of the debtor intended to reduce his or her assets. However, the creditor is under the obligation to furnish evidence in judicial proceedings that the debtor's assets have actually been reduced by the contestable legal act. *Svoboda a kol,* Občiansky Zákonník – aktualizované úplné znenie zákona s vykladom, EPP/1999, Art. 42a, 38 f.

[45] *Steiner/Mazák*[2], Konkurz a vyrovnanie 65.

The debtor's legal acts, which may be contested, can be divided into several groups:[46]

2. Contestation due to Creditor Discrimination

a. Nature of Creditor Discrimination

Creditors are discriminated against if the satisfaction of the bankrupt's creditors would have been better had the legal act concerned been omitted.

Contestable are legal acts of debtors done in the past three years before the bankruptcy proceedings were initiated on the condition that

- The respective legal act was performed with the intention of causing damage to a creditor in the bankruptcy proceedings;
- The other party concerned knew of this intention (Art. 15 par. 2 Bankruptcy and Composition Act)[47].

Furthermore, a legal act is contestable by which the undischarged bankrupt's creditor was discriminated against in the bankruptcy proceedings – at the time bankruptcy proceedings are opened, the debtor becomes ex lege the undischarged bankrupt – and which occurred between the undischarged bankrupt and persons with whom he or she has a close personal relationship or a close relationship under company law within the past three years before bankruptcy proceedings were initiated, such as

- A close person such as close relatives (the group of these persons is defined in Art. 116 Slovak Civil Code[48]);
- A legal entity in which the debtor or a person he or she is close to had a share of assets of at least 10% at the time this legal act was performed;
- A legal entity in which the debtor or a person close to him or her held an executive position (e.g. managing director) or a was member of an executive body (management board), an authorized signatory or a liquidator;
- A legal entity in which the person mentioned above owned a share in the assets of at least 34% at the time the legal act was performed;

This concerns also any legal act which was performed by the debtor with a third person in the specified period of time in favor of this person. However, this does not apply if the other party provides proof that despite exercising due care he or she could not have known of the intention of the debtor to cause damage to a creditor (Art. 15 par. 3 Bankruptcy and Composition Act).

When *legal entities are debtors,* any legal act shall also be contestable that discriminated against the undischarged bankrupt's creditor and was performed in the past three years before the bankruptcy proceedings were opened between the debtor and

[46] *Kravec*, K niektorým otázkam odporovateľnosti právnym úkonom. PaP 4/1998, 15 f.

[47] Therefore, the plaintiff bears the burden of proof.

[48] Art. 116 Slovak Civil Code defines the group of close relatives. Direct or explicitly close relatives are: relatives in direct line, siblings and spouses. Relatives in the direct line are direct ancestors, direct descendants, e.g. parents and children, grandparents and children. In addition, these include siblings, irrespective of the fact if both parents or only one parent is in common. Further relatives or other persons in a corresponding relationship to said person, such as the brother-in-law, are regarded as indirect relatives. However, the prerequisite is that a close relationship exists between these persons. Cf. *Svoboda a kol,* Občiansky Zákonník – aktualizované úplné znenie zákona s vykladom, EPP/1999, Art. 116, 60.

- His or her executive body, authorized signatory, liquidator or shareholder;
- A person with a close relationship to the executive body appointed by the by-laws, the authorized signatory, liquidator or shareholder;
- A legal entity in which the debtor or the persons mentioned under a) and b) owned a share of at least 10% at the time the legal act was performed;
- A legal entity in which the person mentioned under a) and b) was part of an executive body, was an authorized signatory or liquidator;
- A legal entity in which the person mentioned under lit d) owned a share in the assets of at least 34% at the time the legal act was performed;
- The debtor acted in favor of a third party during the period mentioned; however, this does not apply, if the other party provides proof that despite exercising due care it could not have been able to recognize the debtor's intention to cause damage (Art. 15 par. 4 Bankruptcy and Composition Act).[49]

A legal act of the debtor, which was performed *in the last year* before bankruptcy proceedings were opened, is contestable on the condition that

- The amount of assets received by the debtor was smaller than the amount appropriate at the time the legal act was performed, and that the debtor was already in a state of forfeiture of assets or went bankrupt as a consequence of this legal act (Art. 15 par. 5 Bankruptcy and Composition Act);[50]
- The debtor had to pay a contractual penalty due to this legal act, which was inappropriate in relation to his or her assets (Art. 15 par. 6 Bankruptcy and Composition Act).

The creditor in the bankruptcy proceedings and the administrator of the bankrupt's estate are entitled to contestation (Art 16 par. 1 Bankruptcy and Composition Act).[51] This right can be enforced by filing a complaint against persons who

- Have agreed on a contestable legal act with the debtor as well as against their heirs,
- To whom the advantage resulting from the legal act was transferred, but only if they were informed about the reasons of contesting the legal act against their predecessor (Art. 16 par. 3 Bankruptcy and Composition Act).

F. Effects of Contestation

The legal act that was successfully contested by the bankrupt's creditor or the administrator of the bankrupt's estate does not have any effect against the bankrupt's creditors. All assets by which the debtor's assets had been reduced due to contested legal acts have to be returned to the bankrupt's estate, and if this is not

[49] The group of persons regarded as close to the debtor for the purposes of bankruptcy, is enlarged by Art. 15 par. 3 and 4 Bankruptcy and Composition Act. The significance of this legal norm consists in the fact that for providing evidence of the contestation of the legal act, the intention of the debtor to discriminate against the creditor does not have to be proven to the creditor. These are persons where it is clear that their activities are under the influence of the debtor. Cf. also the report of the Ministry of Justice containing the reasons for Item 23 of the amendment 12/1998 Z.z to the Bankruptcy and Composition Act.

[50] The amendment introduces an objective criterion which easily provable. Cf. also the report of the Ministry of Justice containing the reasons for Item 23 of amendment 12/1998 Coll. to the Bankruptcy and Composition Act.

[51] From the definition of the persons entitled to contestation it may be derived that the right to contestation exists only during the bankruptcy proceedings. *Kitta,* in: Konkurz a vyrovnanie – úplné znenie zákona s výkladom, EPP 7/1998, Art. 15 and 16, 21.

possible, compensation payments have to be made (Art. 16 par. 4 Bankruptcy and Composition Act). The right to contestation may be exercised either before or after the declaration of bankruptcy. Therefore, it is *not tied to a certain procedural stage*.[52]

G. Equity substitution law

Slovak insolvency legislation does not contain any regulations, which provide for contesting bankruptcy in cases in which a shareholder of a bankrupt company can obtain satisfaction or security for a *loan the shareholder has given to the company as substitute equity* at a critical time.

[52] For more on the periods for contesting bankruptcy proceedings, cf. *Lipšic,* Problémy právnej úpravy konkurzu a vyrovnania a návrhy de lege ferenda, Právny obzor 5/1997, 523 f.

Chapter 3: Liens

I. Introduction

This chapter gives a description of all of the rules that generally apply to liens. The Civil Code does not differentiate generally between liens on movables and liens on immovable assets like other legal systems, but rather defines fundamental principles that apply to all types of liens. Therefore, liens on claims and movables are explained exhaustively in this chapter. The special features of liens on immovable property are explained in a separate chapter, because they are very extensive and important.

II. General

A. Definition

Liens are regulated in Articles 151a through 151md and 552 Civil Code.[53] A lien is a *limited right in property* that serves to secure a claim to an object granting the right to satisfaction of a claim from the object of the lien in the event of default on the secured claim.

Article 151a par. 1 Civil Code gives a *definition of a lien*: "The lien serves to secure a claim and its appurtenances in such a manner that in the event that the claim is not fulfilled properly or on time, the lienor has the right to obtain satisfaction of the claim or petition for satisfaction of the claim from the pledged object (hereinafter "lien").

B. The Amendment to the Legislation on Liens

On 1 January 2003, the amendment[54] to the Civil Code[55] entered into force (Amendment to Legislation on Liens 2003) which instituted far-reaching changes to the Slovak lien system. For the first time ever, registered liens on assets, rights and other property rights were introduced.

For immovable property, this amendment substantially eased the strict principle of physical possession of a pledged asset in force up to now. In addition to the physical delivery required for a lien on movable assets to be valid, a new form of mode of acquisition applies, namely the registration in a central register of liens maintained by the notaries (registered lien). There are no major changes as regards the requirements on liens on immovable assets (mortgages).

The new legislation on liens has introduced the following significant innovations:

- The *registration* in a central lien register as the *mode of acquisition (delivery)* for the creation of a valid lien;
- A precise *definition* of what *assets may be the pledged as an object* of a lien;

[53] Act No 40/1964 Civil Code (Občiansky Zákonník) as amended.

[54] Act No. 526/2002 Z.z. on amendments and supplements to the Civil Code as amended in later regulations as well as on amendments and supplements of future acts was promulgated in the Slovak official compilation of laws on August 19, 2001.

[55] Act No 40/1964 Z.B. as amended. The new legislation on liens is contained in the Civil Code Articles 151a to 151m as well as in Articles 151ma to 151md.

- The *strengthening* of the principle of the *freedom of contract in the legal transaction to acquire a lien;*
- A stricter *priority principle;*
- The *abolition* of the *preferred lien rights* of the fiscal authorities;
- New regulations on the *realization of pledged assets*.

The new legislation on liens also applies in general to all liens created before 1 January 2003. An exception is made for matters relating to the creation and to claims under legal relationships established previously to which the former law will continue to apply.

The liens that need to be registered according to the new law in the register of liens had to be entered at the latest by 30 June 2003, as they otherwise would have expired ex lege. If an application for registration of liens on movable assets already established through physical delivery was requested by 31 March 2003, the registration became effective as of 1 January 2003.

C. Other Amendments to Laws

Furthermore, in the course of the amendment[56] to the legislation on liens, an amendment to the Act on Notaries was also passed as well as an implementing decree on the details of the liens register.[57] Furthermore, new provisions[58] on the realization of liens have entered into force, namely the law on voluntary auctions, which play an important role together with Code of Civil Procedure[59] and the Enforcement Code.[60]

Up to now, it had only been possible to create a contractual lien on movable assets effectively, if the assets were handed over to the lienor or to a third party in accordance with the contract or the creation of the lien was established in a deed, which declared the lienee's ownership of the pledged object and was required to be able to effectively dispose of the object. The resultant disadvantage, namely, that the lienee could not continue to use the object for his or her business activities turned such a lien into a "lifeless" institution for all practical purposes.

Since the amendment to legislation on liens in 2003, the creditor is now explicitly entitled to request satisfaction from the pledged asset by *judicial* enforcement or execution, but may also satisfy his or her claims directly from the pledged asset by either *directly selling it* or in a *voluntary auction* of the pledged asset.

It is not ruled out that the creditor may confer the power of attorney to a third party for the realization of the pledged asset. This third person can either can conduct the sale or auction in the name of and for the account of the creditor or in his or her own name and for the account of the creditor. A person with this type of authorization must be entered into the lien register instead of the creditor pursuant to Art. 73d par. 1 lit. f) Act on Notaries.[61]

[56] Act No. 323/1992 Coll. on Notaries and Notarial Activities, as amended.
[57] Decree No. 607/2002 Coll. Issued by the Ministry of Justice
[58] Act No. 527/2002 Coll.
[59] Act No. 99/1963 as amended.
[60] Act No. 233/1995 as amended.
[61] *Mathernová/Valová/Hucíková,* Reforma záložného práva, EPP 6-7/2003, komentár k Art. 151a Civil Code, 66.

III. Features of a Secured Claim

A lien is an *accessory right*, i.e., its existence and scope of liability depend on the secured claim.

Pursuant to Art. 151c par. 1 Civil Code, the lien secures both pecuniary claims and non-pecuniary claims whose value is fixed or whose value can be determined at any time during the life of the lien. The lien contract must contain at the least the maximum value of the pecuniary claim, if the exact value of the pecuniary claim cannot be determined.[62]

The lien also secures future claims and claims that arise under certain conditions (Art. 151c par 2 Civil Code). In this context, it is recommendable to precisely define when the lien is to expire, i.e., the exact circumstances when a claim does not arise or when a certain condition is not met.[63]

IV. Scope of a Secured Claim

The lien covers primarily the *receivable* as well as all appurtenances relating to the claim. The lien secures in addition to the principal claim, *interest*, *interest on arrears* as well as any *late charges* including the costs of the proceedings arising in connection with the enforcement (Art.151a par. 1 Civil Code).[64]

V. Object of a Lien

A. General

Article 151d par. 1 Civil Code explicitly regulates what may be used as an object of a lien. Practically all movable and immovable objects, rights and other assets (such as trademarks) apartments and non-residential premises if these are *freely transferable* and thus *sellable* [65] may be the object of a lien.

The amendment to the legislation on liens has *eased the strict application of the principle of specificness* according to which property rights can only be established on individually specified objects by allowing, for example, *groups of assets* or *companies* (shares) to be used as the object of a lien. It is also explicitly regulated that the objects of liens listed may also be used as such even if they will be created only in the future or on certain conditions (Art. 151d par. 1 and par. 4 Civil Code).

The lien covers the object itself, its *components*, *fruits* and anything *growing on it* on it as well as its appurtenances unless otherwise regulated in the lien contract or by law. Furthermore, unless otherwise agreed, the lien covers the

[62] *Mathernová/Valová/Hucíková,* Reforma záložného práva, EPP 6-7/2003, komentár k Art. 151c Civil Code, 68.

[63] *Mathernová/Valová/Hucíková,* Reforma záložného práva, EPP 6-7/2003, komentár k Art 151c Civil Code, 69.

[64] *Mathernová/Valová/Hucíková,* Reforma záložného práva, EPP 6-7/2003, komentár k Art. 151a Civil Code, 66. Pursuant to Art. 121 par 3 Civil Code, interests, interests on arrears, fees deriving from interests on arrears and costs connected to the enforcement of a claim are to considered appurtenances to the claim. Pursuant to Art. 658 par 1 Civil Code, interest may be agreed upon in the case of a pecuniary loan. If the return on a loan is not money, it is possible to agree on a larger quantity or a property of higher quality, in general, however, it must be of the same type and quality instead of interest (Art 658 par 2 Civil Code). *Svoboda a kol*, EPP 1-2/1998, Art 121, 63 f.

[65] As a result, any piece of property for which ownership can be established and that is at the same time "freely" transferable and therefore sellable, may be used as the object of a lien. Property, which does not have this characteristic either due to its nature or to special provisions are excluded from being objects of a lien, cf. *Bureš/Drapal,* Zástavní právo v soudní praxi[2]. Special laws, for example, some provisions of the Execution Code or Code of Civil Procedure may exclude the realization.

fruits and anything growing on it only as long as these have not been segregated from the principal object (Art.151d par. 2 Civil Code).

A lien may be created on several objects for the benefit of a claim.[66] The problems involved in the so-called simultaneous lien are discussed in more detail in the section on mortgages, especially in the part on the realization of simultaneous mortgages.

B. Pledging Movable Assets

Movable assets can be pledged by *handing* the asset *over* to the bank or by *registration* in a *register*. Due to the possibility of the debtor using the asset commercially, the entry into a register is the most popular form.

C. Pledging Immovable Assets (Mortgage)

The object of a mortgage is primarily the *real property* including appurtenances, growing things and fruits not yet separated. *Apartments* or *business premises* may also be the objects of a mortgage. The encumbrance of a *co-ownership share* or of an *ideal* share by a mortgage is also possible as of the time it is identified in concrete terms from total assets of the sole proprietor.[67] The size of the ideal share in the meaning of Art. 137 par. 2 Civil Code is determined primarily by legal acts (especially agreements reached by the contractual parties), legal norms or court rulings.

D. Pledging of Receivables

Receivables can also be pledged if these are objects, rights or other assets. The lien on a receivable covers interest and any other appurtenance (Art. 151mb par. 1 Civil Code).

The creation of a lien on a receivable requires a written contract between the lienor and the lienee who is at the same time the creditor of the receivable to be pledged. The lien on a pecuniary claim only becomes effective vis-à-vis a third party (*poddlžník*) if said third party is notified in writing by the lienee or the creation of the lien is proven to the third party by the lienor. An excerpt from the lien register shall be enough to serve as evidence (Art. 151mb par. 2 Civil Code). The third party is then under the obligation to perform directly to the lienor or to a third party specified by the lienor (Art. 151mb par. 3 Civil Code). The satisfaction of a pecuniary debt by a third party shall be notified to the lienee by the lienor.

If the person of the third party is identical with that of the lienor, the bank may satisfy its claim for repayment of a loan granted from the account maintained by the debtor with the bank.[68]

E. Pledging of Securities

The basis for the pledging of *securities* is found in Articles 44 through 52 Securities Act, with the provisions of the Civil Code and the Commercial Code applying subsidiarily. A security is a specific asset and not an object in the

[66] Art 151d par 5 Civil Code.
[67] *Svoboda a kol*, Občiansky Zákonník - komentár, Art 151a.
[68] *Mathernová/Valová/Hucíková,* Reforma záložného práva, EPP 6-7/2003, komentár k Art 151mb Civil Code, 85. (See also Art 151mb par 6 Civil Code).

conventional sense. A security may have the form of a security certificate, and in those cases defined by law, these security certificates may be registered (so-called de-materialized securities) in the securities register maintained by the Central Securities Depositary (this is a legal entity empowered to keep the register of securities).[69] A prerequisite for the pledging of securities is that their transferability to third persons is not restricted.

F. Pledging of Shares in Companies

The permissibility of pledging a *share in a limited liability company* is regulated in Art. 117a par. 1 through par. 5 Commercial Code.[70] According to this law, a lien is established by a written lien contract, with the requirement that the signatures of the contractual parties must be authenticated by a notary.

It is not possible to pledge such shares, if the articles of association exclude the option of transferring shares in the company. Should the articles of association contain certain requirements (e.g. approval of the general meeting) for a share to be transferred, these requirements must be complied with at the time the shares are pledged in order for such a lien to be legally valid. The transfer of such a share in a company in the event of realization of an (effective) lien shall therefore no longer require the approval of the general meeting.

A lien on a share of a company is created by the *registration in the Companies Register*. The application for the entry of the lien or for its deletion shall be submitted by the lienor or lienee.[71]

What is explicitly regulated is that during the life of the lien, the partner having pledged his or her share continues to exercise the rights relating to the share held in the company.

VI. Establishment of a Lien

The title constituting the formal right for the acquisition of a lien pursuant to Art.151c par. 1 Civil Code may be:

- A written contract,
- An agreement among heirs,
- A court ruling or a decision of an administrative body, or
- By operation of law.

In the practice of securing credit, the establishment by written contract is the most significant form. The written *lien agreement*[72] must specify the precise value of the claim to be secured as well as the object of the lien, as otherwise the lien agreement would be invalid (Art.151c par. 2 through par. 4 Civil Code). If a lien contract does not precisely define the value of a claim, it must state the maximum value (maximum amount of the claim).

[69] See also *Dědič/Baumgartner, Czech and Slovak Business Law*, 141 pp. See also the wording of Art 1 par 4 Securities Act.

[70] This has been regulated explicitly only since Act No. 500/2001, amendment to the Commercial Code effective as of 1 January 2002 was adopted, and until then it was very a controversial issue. For more details regarding permissibility before the amendment, please refer to *Čarnogurský,* transferring shares in corporations pursuant to Slovak law WIRO 2/1996, 62; as regards Austrian law see *Koppensteiner,* GmbH-Gesetz Kommentar[2], Art 76 Rz 28 pp.

[71] The contract of lien as well as the relevant documents are to be enclosed in the application that provide evidence of compliance with statutory requirements, as for example, the approval – if applicable – reached by a general meeting to the pledging of a share in a company.

[72] As regards the repeal of the written requirement, see the section in this Chapter, Creation of Liens.

Furthermore, the lien agreement shall also contain the legal grounds for the claim being secured (e.g. the loan agreement).

The object of the lien must be specified individually, as a quantity or category or in such a manner to allow it to be ascertained precisely at any time during the life of the lien.

The law specifically states that any agreement prohibiting the creation of a lien shall be invalid vis-à-vis third parties.[73]

VII. Creation of a Lien

The amendment to the legislation on liens introduced[74] as the basic method of acquiring a lien *(mode of acquisition)*, the *registration in the central lien register kept by the Chamber of Notaries*.[75] It is still possible for special laws to stipulate the entry into a special register[76] for a lien to be established.[77]

The creation of a lien on properties, apartments and non-residential premises (mortgage) is generally still contingent on the entry in the Register of Properties, and for liens on trademarks or patents, for example, the entry in the register of patents and trademarks is required. An additional entry in the liens register is not[78] required in this case.

The law explicitly requires the registration in the register of liens for a lien on an entirety of assets, rights or other assets or on a company (share in a company) to be created. If such entirety of assets comprise individual assets for which the law prescribes separate registration, then it is *compulsory* for the entry to be made in the corresponding special register for a lien to be established on an individual asset.[79]

In the case of liens on objects, apartments, rights and other assets that the lienee will acquire, which will arise only in the future, or which shall depend on a certain condition, the prior entry in the liens register is also mandatory. Furthermore, for the creation of a lien on real property, the lienee must acquire ownership to the assets or other right after the registration. In this case, as well, if applicable, it is also necessary to register the lien in a special register. As regards the creation of the lien, the special register will take note of the point in time of the acquisition of ownership or other right. However, the time of entry in the register shall always be decisive for the ranking.[80]

From the explanations given above, we may conclude that in the future the acquisition of a lien on movable property will no longer mandatorily require the *physical delivery* of the asset. However, it will continue to be possible in the future to create liens on movable assets by physically handing over the asset

[73] Art. 151d par. 6 Civil Code

[74] Art. 151e par. 1 Civil Code.

[75] Cf. Art. 73f par. 3 Act No. 323/1992 on Notaries and Notarial Activities (Notarial Rules), as amended, passed by the National Council of the Slovak Republic. The lien register is only of informal nature; cf. Mathernová/Valová/Hucíková, Reforma záložného práva, EPP 6-7/2003, komentár k Art. 151e Civil Code, 72.

[76] Register of real property, securities register of the Central Securities Depositary, trademark register, patents register, maritime register, aviation register.

[77] Art. 151e par. 1 through par. 3 Civil Code

[78] § 151e Abs 4 ZGB.

[79] It depends therefore on the will of the parties; cf. *Mathernová/Valová/Hucíková,* Reforma záložného práva, EPP 6-7/2003, komentár k Art. 151f Civil Code, 73.

[80] Cf. Art. 151k par. 1 Civil Code.

to the lienor or to a third party for safekeeping (so-called *pawn* or *possessory lien*).

The following forms of *delivery* are possible for possessory liens:

- The asset is physically handed over to the lienor (so-called *possessory lien*). The lienee is not permitted to possess the asset (not even as warehouse keeper or custodian); however, a contractual agreement on the use of the pledged asset by the lienee is considered permissible.
- An alternative is to create the lien by defining it in a *deed*, which certifies the lienee's ownership of the asset. This deed is a requirement for being able to effectively dispose over the asset.[81]
- The lienee and the lienor can also agree to hand over the asset to a third party, e.g., a trustee, who is to hold it in safekeeping.

This type of possessory lien does not require a written lien agreement. However, it can be entered into the register of liens *voluntarily* at any time. However, in such case a written confirmation on the content of the agreement must be drawn up and signed by both parties..(Art.151e par. 5 Civil Code). This type of entry is recommended, because the Slovak legislator prefers registered liens to pawns (breaks the priority principle), which is illustrated particularly well by the principle of satisfaction of several liens on one pledged object according their order of ranking in the register.[82]

Slovak law does not contain any regulations on whether the acquisition of a lien in good faith is permitted or not.

VIII. The Legal Relationship between Several Lienors

A pledged object can be pledged several times – to several creditors – and the distribution of the proceeds is governed strictly by the *priority principle*. The ranking of the liens and thus the priority is determined according to the earliest time of entry in the register of liens or in the special register. In Slovak credit securing practice, the multiple pledging of a movable asset is very common as an instrument for securing credit.

If the acquisition of several liens on movable assets is done in part by entry in the liens register and in part by physical delivery, then, as already mentioned, the liens entered in the liens register shall have priority according to their time of registration pursuant to Art.151k par. 2 Civil Code. The preferred lienor status of the state based on special laws (tax liens) that was valid until the amendment to the legislation on liens was abolished without exception by the amendment.[83]

Should several liens exist on the same object, the lienors may reach an agreement among themselves regarding the priority of satisfaction for their liens. This type of agreement on the order of ranking shall take effect when it is entered into the liens register or into the respective special register, whereby this registration must be requested jointly by all lienors involved.

[81] The pledging of a vehicle by adding a note to the so-called technical ID ("technický preukaz") is no longer admitted. It is, however, possible to pledge an airplane by noting this fact in the registration confirmation issued by the aircraft register; cf. Svoboda a kol, Občiansky Zákonník, EPP 1-2/1998, Art. 151b Civil Code, 98 ff.

[82] Cf. Art. 151k Civil Code.

[83] *Mathernová/Valová/Hucíková,* Reforma záložného práva, EPP 6-7/2003, komentár k Art. 151k Civil Code, 79.

The rights of lienors who are not party to such an agreement shall not be affected by such agreement.

IX. Transfer of the Pledged Object

Should a pledged object be transferred (under the terms of contract or ex lege[84]), then, pursuant to Art. 151h par. 1 Civil Code, the lien shall be effective toward the acquirer of the pledged object, as a rule, including the contractually agreed-on rights and obligations in their full extent. The acquirer is therefore under the obligation to accept the exercise of the lien right.[85]

The lien is therefore a so-called *absolute right,* which can generally be enforced against any person.

However, liens shall not be effective vis-à-vis the acquirer of a lien if

- The lien agreement stipulates that the lienee may transfer the pledged asset or a part of it without transferring the lien, or
- The Civil Code or a special law contains special provisions.

Furthermore, the lien shall not be transferred to the acquirer pursuant to Art. 151h par. 3 Civil Code if:

- The lienee sells the pledged asset in the course of regular business transactions within the scope of an entrepreneurial activity, or
- The acquirer acted in good faith with respect to the freedom from encumbrances of the pledged object at the time of transfer or assignment and applied the required due diligence. Nevertheless the refutable legal presumption applies according to which a lien entered into a lien register (but not into a special register[86]) excludes good faith.

The lienee and the acquirer are under the obligation to register the change in the person of the lienee in the liens register or in the respective special register afterwards if the registration according to the Code of Civil Procedure or a special law is required for the creation of the lien. In the event of damages caused by a violation of this obligation, both parties shall be jointly liable. This liability cannot be excluded by contractual agreement.[87]

Judicial enforcement or execution proceedings over the object of the lien can only be conducted if the entitled party is the lienor, or, if this is not the case, the lienor consents to the judicial enforcement or execution.[88]

X. Realization of the Pledged Asset

A. General

The amendment to the legislation on liens prescribes the following modes of realization in Art.151j par. 1 Civil Code should the debtor fail to satisfy a claim secured by the lien in time or properly:

[84] For instance, by inheritance.

[85] Pursuant to Art. 151i par. 1 Civil Code the lienee may use the pledged object in the usual manner; however, the lienee must abstain from all acts which detract from the value of the pledged object except for the usual wear and tear. The parties may regulate the individual obligations to exercise due care in detail in the lien agreement; cf. *Mathernová/Valová/Hucíková,* Reforma záložného práva, EPP 6-7/2003, komentár k Art. 151i Civil Code, 76.

[86] Cf. Art. 151h par 4 Civil Code.

[87] *Mathernová/Valová/Hucíková,* Reforma záložného práva, EPP 6-7/2003, komentár k Art. 151h Civil Code 75

[88] Art. 151h par. 6 Civil Code.

- The type and procedure defined in the lien agreement (e.g. sale by private contract),
- The voluntary sale in a public auction according to special rules,
- The realization under a title of execution according to special rules within the scope of execution proceedings (Code of Civil Procedure or Enforcement Act).

The provisions governing the satisfaction of the lien shall also apply if the secured claim has already statute barred.[89] Therefore, this is an exception to the principle of accessoriness. According to Art.151j par. 3 Civil Code, agreements which state that pledged assets automatically become the property of the lienor after a debt falls due[90] are invalid (Prohibition of Accelerating Clause).

If the lien on the secured claim is for several pledged assets, the lienor may demand satisfaction from one or from all of the assets. The following steps shall apply as general rule regardless of the concrete form of realization selected.

B. Procedure of the Realization

1. Notification on the Initiation of Proceedings

The bank is obligated to inform the *lienee in writing* of the *initiation* of the *realization proceedings*, and if the identity is unknown, the *debtor*, and concerning the liens in the liens register, the *notary* who keeps the liens register as well. In the written notification of the initiation of realization proceedings, the lienor must indicate the type of realization selected.[91]

After this notification, the lienee no longer has the right to transfer the pledged object without the consent of the lienor. However, any breach of this prohibition, shall not have any effect vis-à-vis persons who have acquired the pledged object from the lienee in the course of regular business transactions within the scope of entrepreneurial activities, except in cases in which the acquirer knew of the initiation of the realization of the lien, or, considering the overall circumstances ought to have known about it.[92]

The lienor shall have the right vis-à-vis the lienee to demand reimbursement for the necessary and actually incurred costs related to the realization of the lien.

2. Start of the Realization of the Lien

The mutual rights and obligations of lienors and lienees are defined in detail by the law.[93]

The contractually defined realization of a lien and the auction may be carried out generally only *30 days* after the *notification* of the lienee regarding the initiation of the realization proceedings by the bank in the role of lienor pursuing the realization or after the date of registration of this fact in the liens register. After the notification of the initiation of the realization proceedings, the lienor

[89] Art. 151j par. 2 Civil Code.
[90] Unless the law regulates otherwise.
[91] Art. 151l par. 1 Civil Code.
[92] Art. 151l par. 2 Civil Code.
[93] Articles 151l through 151ma Civil Code.

and the lienee may reach an agreement that the realization by the lienor should take place before the expiry of the 30-day period.

The bank may at any time – also during the realization of the pledged asset – change the originally agreed-on type of realization, but must inform the lienee of this change.[94]

The lienee is under the obligation to accept the realization of the lien and is under the obligation to provide the bank with the required assistance. The lienee must hand over the pledged asset and any documents required for the acceptance, transfer and use of the pledged asset, and provide any assistance agreed-on in the lien agreement. The same shall apply to any third party in possession of the pledged asset.

When selling the pledged asset, the lienor acts in the name of the lienee. Furthermore, the lienor shall inform the lienee of the course of the realization especially of all facts that could have an influence on the selling price.[95] In the event the lien agreement specifies a suitable type of realization other than the public auction, the lienor shall be under the obligation to exercise the appropriate due diligence when conducting the sale. The lienor shall sell the pledged asset for a comparable price that the same or a similar object could have usually been sold for at the same time and at the same place.[96]

Immediately after the sale of the pledged asset, the lienor shall hand over a written report to the lienee on the realization of the pledged asset, containing the information prescribed by law.[97] The lienor must be able to furnish evidence to the lienee of the costs arising in connect with the realization of the pledged assets.

Should the proceeds of the sale exceed the secured amount after deduction of the necessary and actually incurred costs, the lienor shall immediately hand over the excess amount to the lienee.

3. Realization of Liens by Several Lienors

Should the object of a lien serve to secure the claims of several creditors, the lienor shall inform the creditors coming before in the order of ranking in writing of the realization.[98] In this case, the 30-day period shall run as of the date of notification of all creditors. Before the expiry of this period, the lienor initiating the realization may not sell the pledged asset. The proceeds in excess of the secured claim shall be handed over to the lienee after deducting the necessary and effectively incurred costs of the realization.

If the first-ranking lienor is the one *initiating the realization* in the case of several creditors, the pledged asset is transferred to the acquirer free from encumbrances of next-ranking lienors. The proceeds must be deposited with a notary. If the proceeds of the realization exceed the amount of the secured claim of the first-ranking creditor after deducting the necessary and actually incurred costs of the realization (hyperocha), the next-ranking lienors have

[94] Art. 151m par. 3 Civil Code.
[95] Art. 151m par. 6 and 7 Civil Code.
[96] Art. 151m par. 8 Civil Code.
[97] Art. 151m par. 9 Civil Code.
[98] Art. 151ma par. 1 Civil Code.

the right to obtain satisfaction of their claim from the remaining proceeds in accordance with their ranking.

If a subsequent-ranking lienor is the one *initiating the realization* in the case of several creditors, the pledged asset is transferred to the acquirer encumbered with the liens of the prior ranking lienors. The lienor initiating the realization must inform the acquirer of the fact that the pledged asset is being transferred encumbered by a lien (Art.151ma par. 6 and 7 Civil Code). The lienor and the acquirer are under the obligation in this case as well to ensure the required registration of the change in the person of the lienee in the lien register or in the respective special register if the Civil Code or special law prescribes this mode of acquisition for the establishment of the lien. Should this registration fail to be done, both parties shall be jointly liable for any damages that may arise from the breach of this obligation.

Finally, any lienor may satisfy the creditor initiating the realization of the lien after it has been started, thus the paying lienor enters into the rights of the party initiating the realization and acquires his or her claim and lien. The lienor initiating the lien cannot refuse satisfaction of his or her claim by another creditor.

XI. Extinguishment of a Lien

Pursuant to Art. 151md par. 1 lit. a) through h) Civil Code, a lien extinguishes when:

- The secured claim extinguishes;
- All objects (individual, and entirety of assets), rights or other assets to which the lien relates extinguish;
- The lienor relinquishes the lien;
- The lien was established only for a limited period of time, and the period has expired;
- The lienee transfers the pledged asset in the course of regular business transactions within the scope of entrepreneurial activities or the pledged asset is acquired by a third party in good faith believing the asset to be free of encumbrances;
- The lienee has sold the pledged asset and the lien agreement permitted the transfer without the encumbrance by a lien;
- The realization of the lien is carried out in accordance with the lien agreement or other special provisions.

If a movable asset has been physically handed over, the lienor must immediately return it to the lienee when the lien extinguishes (Art. 151md par. 4 Civil Code).

Chapter 4: The Mortgage

I. Introduction

This chapter explains the general rules that apply to mortgages before going into the problems that arise in connection with the concept of real property and with the scope of a mortgage. Subsequently, the basic principles governing the cadastral register are described. Explanations on the realization process in the case of real property used as security for loans are given at the end of the chapter.

II. General

A. Introduction

Slovak law does not contain separate provisions specifically for liens on real property. Therefore, the general rules on liens of the Code of Civil Procedure apply unless a reference is made to special provisions for liens on immovable assets. The mortgage under Slovak law can be compared very well to the mortgage under Austrian law, because these also depend on the existence of the claim. Slovak law does not recognize a non-accessory land charge like in Germany.

B. The Title Transaction

The contract on the establishment of a mortgage (*lien agreement*) between the lienee and the lienor must be *executed in writing*; otherwise, it is an absolutely void legal transaction.[99]

The lien agreement *must* contain – otherwise it is void – the following *minimum content*:[100]

- The precise identification of the pledged object, and
- The claim that is secured by the mortgage.

A lien agreement presented to the cadastral administration[101] must bear the signature of the property owner.[102] The law does not prescribe that the signatures must be certified by a notary, but it is recommendable in any case.

C. The Mode of Acquisition

For a mortgage to be validly established, the law requires in addition to the transaction, the *mode of acquisition in the form of the incorporation* of the mortgage (*"vklad"*) in the cadastral register.[103]

The incorporation of mortgages on real property becomes legally effective pursuant to Art. 28 par. 3 Act on the Register of Properties and Registration of Ownership and Other Rights in Real Property (hereinafter: Cadastral Register

[99] Cf. *Svoboda a kol,* Občiansky Zákonník, EPP 1-2/1999, Art. 552 Civil Code, 183. Art. 40 par. 1 Civil Code.

[100] In practice, it is recommendable to draft the lien contract as detailed as possible.

[101] The cadastral administrations are responsible for the cadastral register of real property for the territory of their district.

[102] See also the position of the Slovak Supreme Court No. Cpj 33/01 according to which the contract on property transfer must be in writing; the document must contain the declaration of the will of the parties and their signatures.

[103] The incorporation procedure is regulated in Art. 28 through 33 Act No. 162/1996 Coll. Cadastral Register Act passed by the National Council of the Slovak Republic. Art. 151e par. 2 Civil Code.

Act) as of the time of *approval of the incorporation of liens on the real property by the cadastral administration*. When we speak in the following of the incorporation or registration of the mortgage in the cadastral register, this always refers to the time of approval of the incorporation. The approval of the *incorporation of the mortgage* is therefore constitutive, i.e., this means that the mortgage is created by the entry in the register and not by the conclusion of the lien agreement. The lien agreement is therefore a executed contract. In contrast, the legal effect of the incorporation of the mortgage based on a contract on the *transfer of ownership* of residential and business premises to a tenant takes effect already on the day of *delivery* of the *application for incorporation* (Art. 28 par. 5 Cadastral Register Act).

III. Some Problems

A. Definition of Real Property

1. General

Immovable assets (*nehnuteľnosti*), i.e., *real property*,[104] are plots of land and buildings, which are connected to the ground by a solid foundation.[105] Premises such as apartments and commercial and office space are also considered real property. Vice versa, it may be derived that all other types of property are movable property.[106]

2. Plots of Land

A plot of land is always an *immovable property* regardless of the size or zoning. In civil law practice, land is divided into plots and every plot is assigned a number. The cadastral register contains the individual plots of land and their borders.[107] The law[108] defines a plot of land as part of the earth's surface that is separated from the neighboring part of the earth's surface by a border.[109]

3. Buildings

Buildings[110] are only then considered real property if they are firmly connected to the earth by a solid foundation (i.e., permanently). The buildings do not always need to be buildings in the conventional sense. The term building may also include technical installations, such as transformation stations that are fixed to the earth's surface or gas or water containers if they have the features defined for buildings.

Buildings are recorded in the cadastral register with a *prescription number.*[111] If the owner of a plot of land is at the same time the owner of

[104] Immovable property is the equivalent of real property.
[105] Art. 119 par. 2 Civil Code
[106] *Svoboda a kol,* EPP 1-2/1998, Art. 119, p. 62.
[107] Cf. also Vgl *Hornansky,* in: Wiener Konferenz über ein modernes Grundbuch Vol. XIX, MANZ (1998), 44 ff
[108] Art. 3 par. 1 Register of Properties and Registration of Ownership and Other Rights in Real Property Act
[109] Pursuant to Art. 10 par. 2 Act. No. 258/1993 Coll. on Slovak Railway Regulations, as amended, passed by the National Council of the Slovak Republic, plots of land used for railroad transportation may not be pledged.
[110] The concept of building is not explicitly defined in the Civil Code, therefore the building laws as laid down in Act No. 50/1976 Coll. on Territorial Planning and Building Codes (Building Act), as amended, are also used for interpretations.
[111] This is the equivalent to the parcel number in the case of a parcel of land.

the building, Part C of the ownership sheet shall contain the following: "Lien on building with prescription number XXX. Lien on parcel of land with the parcel number YYY/Z."

Buildings that can be transported such as market stands and garden huts and are not firmly connected to the earth are not real property. It makes no difference whether or not an approval has been issued for the erection of such building.

A major difference to Austrian law is the fact that in Slovak law the principle of *superficies solo cedit* does not exist. Therefore, a building is ex lege not part of a plot of land on which it stands. Plots of land and buildings are two independent objects of a lien, and the pledging of a real property does not automatically mean that the building on it has also been pledged.[112] Buildings are therefore independent objects of legal transactions and can be encumbered by a mortgage.[113]

4. Premises

A mortgage can also be established on *apartments* and *business premises*. According to Art. 3 par. 2 Condominium Act[114] this means that these premises are subject to the same legal provisions as real property. They can be independent objects of a legal transaction and therefore be encumbered by a lien (Art. 118 par. 1 Civil Code).[115] However, it is possible to create a mortgage only if these premises are separated accordingly and have been entered as such into the cadastral register. Apartments and business premises are identified in the cadastral register by a separate number.

5. Buildings under Construction

Newly erected buildings may also be registered in the cadastral register as of a certain construction phase and serve as an object for securing a loan.

The registration of *a building under construction* in the cadastral register is possible even if no acceptance of construction work has been issued yet[116] and no registration number has been assigned, but the building under construction is in a construction phase that would allow an expert to determine the structural and functional layout of the first storey.[117]

Parts of a building under construction are eligible for registration in the cadastral register and thus may serve as a pledged object if the premises are for residential or non-residential purposes according to the construction permit and are in a building that already has external walls and a roof.[118] Prior to being

[112] *Svoboda a kol,* Občiansky Zákonník – komentár[3], Art. 120.

[113] Cf. *Čarnogurský,* Hypotekárne právo, EPP 10-11/1999, 293 f on conditions for mortgaging a building.

[114] Act No. 182/1993 Z.z on Ownership of Apartments and Business Premises as amended.

[115] The relevant section of Art. 118 par. 1 Civil Code reads as follows: "… *may be the subject of a legal relationship under civil law…*". In contrast to liens, ownership rights to premises are established already at the time the application for incorporation is delivered to the competent cadastral administration, not after the approval of the incorporation.

[116] This is the definitive and final decision of the building authority that the building may be used according to the purpose of use applied for and that the technical construction of the buildings has been done properly.

[117] Art. 3 par. 15 in conjunction with Art. 6 par. 1 lit c Cadastral Register Act. If a building under construction is entered into the cadastral register, pursuant to Art. 46 Cadastral Register Act the presentation of the geometric plan, the legally binding building permit and the expert opinion on the price of the building under construction are required. The person stated in the building permit is registered as the owner.

[118] Art. 3 par. 16 in conjunction with Art. 6 par. 1 lit d Cadastral Register Act.

eligible for registration, the building under construction shall be governed by the property right relating to the real property.

6. Buildings on Land Owned by Third Parties

The principle of *superficies solo cedit* has always applied in Slovakia only to a limited extent.[119] In the year 1951 the so-called Building Law (*právo stavby*) was introduced together with the Civil Code.[120] This legal institution made it possible to erect buildings on land owned by third parties. In this manner, a large number of agricultural cooperatives were founded. Problems exist to this day on the separation of the legal relationships created this way.

The problems were solved in part by Act No 199/1995 Zz, which amended the Building Act[121] especially for buildings owned by municipalities and the state. Article 58 par. 2 Building Act[122] stipulates that *"the owner must prove that he or she is the owner of the parcel of land although it is permissible for the owner to have another right to the parcel of land pursuant to Art. 139 par. 1 that entitles him or her to erect a building on the parcel of land."*[123]

Today, Art. 120 par. 2 Civil Code contains the provision that a building structure is not part of the parcel of land.

B. Scope of the Mortgage

The mortgage encumbers the real property including its parts, appurtenances and any things growing. Fruits are included only if they are not segregated[124] and only if it is not regulated otherwise in the lien agreement. The law excludes so-called civil law fruits such as rents from mortgages. However, it is possible to pledge such receivables separately, with the pledging following the rules for the pledging of future receivables.

A *component* of an object is everything that belongs to it and cannot be separated from it without devaluating the object itself.[125]

As already mentioned, buildings are not *components of parcels of land*.[126] Components of a parcel of land are therefore only plants permanently growing on it such as trees or bushes unless regulated otherwise by special provisions.[127]

The components of a building structure usually include added-on structures, additional floors, and conversions of already existing structures. Pursuant to Art. 2 par. 4 and 5 Condominium Act, the "common parts" of a building are considered components of a condominium building such as the building's foundation, roofs, hallways, surrounding walls, façade, entrances, staircases, common terraces, roof substructures, attics, supporting structures and common building facilities.

[119] Cf. Svoboda a kol, Občianský zákonník – I. diel Komentár, Art. 135c, 198 f

[120] Art. 160 Act No. 141/1950 Sb; cf. comment to first Civil Code in Štefanko, Prvý Občiansky Zákonník Platný od roku 1951 do roku 1964, 120 ff

[121] Act No. 50/1976 Z.B. on Territorial Planning and Building Codes, as amended.

[122] This provision was repealed as of August 1, 2000

[123] Art. 139 Building Act specifies the conditions under which a building may be erected on a third-party's land.

[124] Art. 151d par. 2 Civil Code.

[125] Art. 120 par. 1 Civil Code..

[126] Unlike the Austrian Civil Code pursuant to which permanent structures shall be considered as dependent components of the property (cf. Art. 297 Austrian General Civil Code); Feil, Land Register Act[3] Art. 2 Rz 6.

[127] Cf. also Art. 295 Austrian Civil Code.

Appurtenances serve the use of the principal object and belong to the owner of said object. All ancillary rooms and premises dedicated to be used together with the apartment are considered appurtenances.[128]

C. Special Types of Mortgages

1. Simultaneous Mortgage

This section will briefly explain the simultaneous mortgage[129] as a special form before going into more detail in connection with the realization.

Although simultaneous mortgages are not regulated by law, they are often used in practice. A simultaneous mortgage is created when a *claim* is secured by a lien on *several real properties*. The bank has a choice of which pledged real property to realize in the event of default of the debtor.

If the bank does not indicate any preference, it will be *satisfied* from the proceeds of the realization of all of the real properties *proportionally*. The ratio of satisfaction from the proceeds of the realization is determined by the ratio of the remainder of the realization proceeds of each of the real properties pledged after the first-ranking mortgage creditors have been satisfied.

The simultaneously mortgage is identified in the cadastral register by the entry in Part C of the ownership sheet indicating the real properties to which the simultaneous mortgage relates.

2. Maximum Amount Mortgage

If the precise value of the secured claim is not defined unequivocally, it is possible to define a maximum amount for the claim and to secure this claim by a so-called maximum amount mortgage. Thus the principle of accessoriness is weakened in the case of maximum amount mortgages (see also Chapter 3).

IV. The Cadastral Register

A. General

The cadastral register defines the dimensions of the real property, records and describes it.[130] Furthermore, the cadastral register contains information on rights relating to this real property, specifically ownership rights, liens, real charges and equivalent rights, real rights to first purchase and other rights, rights deriving from the administration of state and municipal property, and rental rights that have a term of longer than five years. The cadastral offices for the territory of a district and the cadastral administrations for the territory of a district are responsible for the administration of cadastral matters.

The cadastral register serves as an information system, in particular, for taxation purposes, for the valuation of real properties and for the establishment of further information systems for real properties as well as for the protection of real property rights, of the existing agricultural and forestry land, of the envi-

[128] The assignment as an appurtenance to a building may be evaluated with the help of Art. 8 par. 1 in Decree No. 58/1993 Coll. as amended, which formulates Act No. 317/1992 Z.B. passed by the National Council of the Slovak Republic on property tax in concrete terms.

[129] Cf. *Carnogurský,* Hypotekárne právo, EPP 10-11/1999, 321 ff.

[130] Art. 1 par. 1 Cadastral Register Act .

ronment, of natural resources, of national and other cultural monuments (Art. 2 Cadastral Register Act).

The cadastral registration procedure prescribes four types of registration: the incorporation, the priority notice and the annotation, and only much later in connection with the priority principle the so-called docket.[131]

B. Types of Registration

1. Incorporation

The incorporation (*vklad*) is the registration of those legal relationships relating to real property having as legal basis a contract under civil law or commercial law.[132]

The incorporation is a *constitutive legal act* based on which a *right* in a real property *is created*, *changed* or *deleted*, specifically at the time a legally binding decision of the cadastral administration on the approval of the incorporation is issued[133]. The legally binding decision of the cadastral administration is therefore a prerequisite for incorporation.[134]

2. Priority Notice

The *priority notice*[135] (*záznam*) serves to register rights in real property that have been created, changed or deleted by one of the following legal grounds:

- Decision of a state body (e.g. pursuant to Art. 135c Civil Code),[136]
- Awarding of a contract in a public tender procedure,
- Adverse possession pursuant to Art. 134 par. 1 Civil Code,
- Things growing (Art.135a Civil Code) or processing (Art. 135b Civil Code).

These entries are to be recorded by the competent cadastral administration based on the relevant deeds. The registration itself does not have any influence on the creation, change or deletion of the rights mentioned (Art. 5 par. 2 Cadastral Register Act); it is only of *declarative nature*.

The priority notice is not subject to the provisions of the Administration Code (cf. Art. 34 par. 3 Act on the Register of Properties and Registration of Ownership and Other Rights in Real Property); it is an administrative procedure sui generis. The cadastral administration does not reach a decision on the matter as such, but rather only on whether or not the formal requirements for the registration are met.

[131] See Art. 4 par. 7 Cadastral Register Act.

[132] Among these are for example sales agreements (Art. 588 ff Civil Code), barter agreements (Art. 611 Civil Code), gift agreements (Art. 628 ff Civil Code), separate agreements to purchase agreements such as right of first purchase (Art. 602 ff Civil Code) or agreements on the establishment of a lien (Art. 151a ff Civil Code). Furthermore, the following agreements serve as a basis to the incorporation in the cadastre of real estate: the agreement on dissolution and separation of the share in co-owned property pursuant to Art. 141 Civil Code as well as the joint ownership of spouses pursuant to Art. 149 par. 2 and Art. 149a Civil Code. More details in *Lazar a kol,* Základy občianskeho hmotného práva 1, IURA EDITION (2004), 340 ff.

[133] Art. 5 par. 1 Cadastral Register Act.

[134] The situation is different in Austria. Here, decision-making is reserved to cadastral courts and, in addition, the time of entry is decisive, not the time of decision.

[135] Art. 34 Cadastral Register Act.

[136] Typically, this means the expropriation of property pursuant to the provisions laid down in the Building Act; *Štefanovič,* Katastrálny Zákon, EPP 10-11/1999, notes to Act. 34 Cadastral Register Act , 110.

It enters the priority notice ex officio[137] upon request of the owner or another entitled person. The application must be submitted *in writing* and meet the statutory rules regarding the content.[138]

If a public document or another deed is available for the registration of a priority notice that certifies the ownership of the real property by another person, the cadastral administration shall omit a new priority notice. However, it shall enter the priority notice if the public document is a final declaratory judgment that a right to the real property exists in this concrete case (Art. 36a Cadastral Register Act). In the event the priority notice is not registered, the cadastral administration must request the concerned person either to enter into an agreement or to petition a court to reach a declaratory judgment on the real property right pursuant to Art. 80 lit. c Code of Civil Procedure.[139]

3. Annotation

The *annotation*[140] (*poznámka*) in the cadastral register means that the power of disposal of the owner of the real property either is *restricted* or otherwise serves as *information on the rights* to the property.

The annotation can be done based on a final decision of a court or of another government body or on the request of an entitled person.

The cadastral administration also enters annotations into the register regarding any doubts of credibility regarding the information in the register on the rights to a property.

An annotation is *firstly, a conditional entry* that becomes unconditional after the requirements stipulated in the Cadastral Register Act are met. The entry is done on a preliminary ownership sheet, which may not be made available until the procedure described above has been completed.[141]

Like the priority notice, the annotation has no influence on the creation, change or deletion of real property rights. On the contrary, it serves to illustrate the facts and legally relevant aspects regarding the real property or a person. In particular, it serves the purpose of protecting third parties.

C. Principles of the Cadastral Register

1. The Incorporation or Intabulation Principle

The intabulation principle is of relevance in Slovak law only in certain legal relationships, specifically for the creation, change or deletion of ownership rights and other real property rights under civil law contracts and rights to real property that serves as a contribution in kind for a company.[142] *The incorporation*

[137] Duty of submitting public and other documents of government bodies and notaries to the cadastral administration, cf. Art. 21 Cadastral Register Act

[138] Art. 35 par. 2 Cadastral Register Act

[139] Art. 38 of Decree No. 79/1996 Coll., as amended, passed by the Slovak Office of Geodesy, Cartography and the Cadastre in addition to the Cadastral Register Act, contains an accurate list of those documents that entitles a party to be entered into the cadastral register; Cf. also *Štefanovič,* Katastrálny Zákon, EPP 10-11/1999, explanations to Art. 34 Cadastral Register Act, 111.

[140] Art. 38 ff Cadastral Register Act

[141] Art. 44a par. 2 Decree of the Slovak Office of Geodesy, Cartography and the Cadaster; cf. *Gaisbacher/Peceň a kol*, Základy pozemkového práva – Komentár, 238.

[142] Cf. *Pápayová,* Niektoré praktické otázky vkladu nehnuteľností do základneho imania spoločností s ručením obmedzeným, Justičná revue 1/1999, 33 ff.

and thus the *legally binding creation of a mortgage* take effect with the *final decision* of the cadastral administration regarding the *approval* of the incorporation. The incorporation of the mortgage in the cadastral register is therefore one of the prerequisites for the creation of a mortgage especially in cases in which a contractual lien is to be established.

All information entered into the cadastral register is checked on the basis of excerpts and certified copies from the cadastral register. Any legal relationships with third parties and vis-à-vis certain bodies are proven by the entry in the ownership sheet.

Certain legal relationships do not require any incorporation or priority notice in the cadastral register for these to be established, as they are created based on other facts, e.g. a judicial lien.[143] However, the change in a legal relationship must be proven in any case by the relevant excerpts from the cadastral register.

2. The Application Principle

The procedure on the approval of the incorporation of rights in the cadastral register is always initiated by application of the parties to the procedure. The Cadastral Register Act regulates[144] in detail the requirements an application to the cadastral administration must meet including the entire required documentation.[145]

3. The Principle of Legality in the Incorporation

The cadastral administration examines the validity of the contracts, in particular, the rights of disposal of the person transferring the rights and furthermore whether or not the action has been done in the prescribed form and the declaration of intent is credible, sufficiently precise and understandable. It examines whether freedom of contract exists at all and ensures that there are no restrictions on the rights of disposal.

The official notice promulgated by the Office for Geodesy, Cartography and Cadastre regulates in detail the mode of procedure for assessing the validity of deeds and the elimination of any defects that may exist. It is the duty of the cadastral office to decide whether a deed contains the prescribed contents.

[143] *Lazar a kol,* Základy občianskeho hmotného práva 1, IURA EDITION (2004), 346.

[144] Art. 30 par. 3 and par. 4.

[145] The following annexes shall be presented to the cadastral administration: among others, a counterpart of the legal title of the secured claim either the original or a certified copy (e.g. the credit or loan agreement). Furthermore, the lien contract executed in as many counterparts as needed for each of the contractual parties to receive one counterpart and for the court to receive three counterparts; in addition - if the applicant is a legal entity – an excerpt from commercial register either the original or a certified copy as a single counterpart which is not older than three months (Art. 30 par. 4 Cadastral Register Act).

4. The Principle of Specificness

The principle of specificness (also referred to as the principle of preciseness or clarity[146]) applies in the exact identification and determination of the object of the lien: the real property. This is intended to ensure the preciseness, clarity and conciseness of every single entry into the cadastral register.[147]

5. The Priority Principle

a. General

This principle finds expression in Slovak cadastral legislation by giving priority to the party having delivered an application for incorporation in the cadastral register first, and in the use of the so-called docket.

b. Sequence of Applications for Incorporation in the Cadastral Register

The rights in the real property are generally entered in the sequence the individual applications for registration in the cadastral register are received by the cadastral administration.[148] The cadastral administration makes a note on the written counterpart of the application of the date and the time of delivery.

The cadastral administration decides on the application for incorporation within 30 days of delivery. Slovak cadastral practice shows, however, that this period is not observed at all even though it is stipulated by law. On the contrary, in the case of incorporation the usual period is over one year especially in the Bratislava region.[149] This problem is very hard to solve in practice and is based on the excessive workload of the individual cadastral administrations, though it is ameliorated in part by the fact that the incorporation application for a right contains a sealing docket number.

The rights to a real property are registered in the ownership sheet[150] (*list vlastnictva*), thus rendering them trustworthy and binding cadastral information.

[146] *Rapant,* K niektorým otázkam úpravy princípu verejnosti od pozemkových kníh po kataster nehnteľností Slovenskej republiky, Právny obzor 5/2000, 387.

[147] *Rapant,* K niektorým otázkam úpravy princípu verejnosti od pozemkových kníh po kataster nehnteľností Slovenskej republiky, Právny obzor 5/2000, 387. See also *Lazar a kol,* Základy občianskeho hmotného práva 1, IURA EDITION (2004), 348.

[148] Art. 41 par. 2 Cadastral Register Act. Special provisions may provide something different as e.g. Act No. 511/1992 Z.B. on Administration of Taxes and Charges and Changes in the System of Territorial Fiscal Authorities, as amended.

[149] Cf. the statistics relating to non-compliance with statutory deadlines at the individual cadastral offices in *Horňanský,* K plneniu úloh katastra nehnuteľností, Justičná revue 8-9/1999, 28.

[150] The principal part of the documentation is the ownership sheet. The A-sheet (total of assets) contains all properties that are object of property rights and information regarding these, respectively the dimension and the type of the plot of land, the assignment to the municipality's zoning area and any further information. The entries are numbered chronologically. The B-sheet (property) contains the names of all lienees, the birth dates of all natural persons resp. identification numbers of organizations, the co-ownership share, the type of acquisition (according to a document), the permanent residence and other information. The C-sheet (encumbrances) contains real charges, lien, real right to first purchase, other real rights and other necessary information containing further explanations. However, the ownership sheet does not contain information on the amount of any mortgage and this could be a problem, especially for banks. Banks usually belong to the group of parties authorized to inspect the collection of documents.

c. The Legal Effect of the Sealing Docket Number

The sealing docket number on the changes to real property rights is a relatively new legal institution in Slovak cadastral law.[151]

The cadastral administration enters a sealing docket number on the ownership sheet[152] or in the land register[153] at the latest on the workday after delivery of the contract, the public document or any other deed for registration, or in the railways register[154] that shows that the right stated in the cadastral register is subject to a change.

This sealing docket number expires with the incorporation, the priority notice, the final dismissal of the proceedings or the final rejection of the incorporation.It is entered in the rank that corresponds to the receipt of the application by the cadastral administration.[155]

6. The Principle of Public Availability (Formal Disclosure Principle)[156]

The cadastral records[157], which are a set of documentation materials required for the administration of the cadastral register and the updating of the cadastral records (cf Art. 8 par. 1 Cadastral Register Act), are *available for inspection to the public*. The cadastral records that form the cadastral register are grouped by cadastral zone. *Any person whomsoever* is entitled to make *excerpts*, *copies* or *sketches* from these records.[158]

Upon request, the cadastral administration issues a confirmation excerpt, a confirmed copy or the identification of a parcel of land from the set of geodesic information that is deemed to be a public document.

A confirmation excerpt or a confirmed copy from the ownership sheet to a real property is not prepared by the cadastral administration if a docket has been recorded. In this case, the cadastral administration issues a copy of the ownership sheet to the owner of the real property or another entitled person[159] with the note that a docket has been entered.

The cadastral administration also prepares counterparts and copies from the cadastral records upon request that are not public deeds and provides other information.

[151] On problems relating to the legal concept of the sealing docket number in Slovak law cf. *Hošovský,* Nie je plomba ako plomba, BSA 6/98, 26 ff.

[152] In this context, please note Art. 36 of Decree of the Slovak Office of Geodesy, Cartography and the Cadaster.

[153] The land register served as evidence before the introduction of the cadastral register.

[154] The land registers are part of the cadastral records and are kept in the cadastral offices. They were kept in government notaries from 1964 to 1993 serving only as an information source, because a completely new system of records was established in 1964. The land registers still serve as a source of information.

[155] Art. 44 par. 2 Cadastral Register Act. *Štefanovič,* Katastrálny Zákon, EPP 10-11/1999, notes to Art. 44 Cadastral Register Act, 118.

[156] This is a traditional principle, which has already been used with the land registers, cf. *Štefanovič,* Katastrálny Zákon, EPP 10-11/1999, notes to Art. 68 Cadastral Register Act. 133.

[157] The cadastral records include the complex of geodic information, the complex of descriptive information, the collection of documents, the information given in the cadastral register on the state of the soil, the land registers, the railway register and its records as well as the separate evidence in publically available and other documents.

[158] Art. 68 par. 1 Cadastral Register Act. In contrast, documents are made publicly available only to a limited extent (cf. Art. 8 par. 1 lit c Cadastral Register Act), as the inspection or work with the collection of documents is permitted only to owners or other entitled persons or persons carrying out geodic activities in connection with the correction of real property borders or persons drawing geometric plans, define property borders or carry out such expert activities in the field of geodesy, cartography or cadastral data.

[159] E.g, the executor or the administrator of the asset.

7. The Principle of Legitimate Expectation (substantive disclosure principle)

Certain cadastral data regulated by law are *credible until the opposite is proven true*.[160]

The data in the cadastral register therefore constitute a *refutable presumption*[161] regarding the registered legal and other facts that can be refuted by presenting the required documents especially by a final decision of a competent government body. According to the jurisprudence of the Supreme Court, the facts of the matter shall always prevail over the facts registered in the cadastral register (limits of substantive disclosure).[162] Nevertheless the acquisition of a real property in good faith with respect to the facts entered into the cadastral register can therefore be ruled out.[163]

The binding information contained in the cadastral register serves as a basis for written counterparts of public documents and others. The information is used, in particular, for the protection of the rights to the real property, for the purpose of the administration of taxes and charges, for the protection of agricultural and forestry land, for shaping and protecting the environment, and for business activities and information systems on real property.[164]

V. Extinguishment of the Mortgage

The *substantive* extinguishment of a mortgage is regulated in Art. 151md par. 1 Civil Code, with the list being merely a *demonstrative list* of the possible types of extinguishment. Furthermore, the mortgage must be *formally* deleted from the cadastral register based on a decision by the competent department of the cadastral office of the local government.

As an accessory right, the lien shall become extinguished generally at the time the *claim is extinguished* especially when it is satisfied.[165] In certain cases, the law stipulates that when the original claim secured extinguishes, the mortgage secures the new claim. This happens, for example, in the case of *novation* and when the *debtor* or the *creditor changes* (cf. Articles 516 ff Civil Code).[166]

When the object of the pledge extinguishes, the mortgage established to secure the claim also extinguishes ex lege.[167] For example, if a building is pledged, the mortgage also extinguishes when the building is destroyed (e.g. by fire). The cadastral register takes note of this fact by entering an annotation (*"záznam"*). The annotation has only a declaratory effect.

By *paying the value of the pledged real property* to the lienor who is obligated to accept this payment, the mortgage is also extinguished. Subsequently,

[160] Art. 70 par. 1 L Cadastral Register Act in conjunction with Art. 7 lit a through e L Cadastral Register Act.

[161] *Horňanský,* Liegenschaftsverwaltung – Grundbuch und Kataster, in *Rechberger* (Publ.) Tagungsbeiträge zur Wiener Konferenz über ein modernes Grundbuch (1998), 49.

[162] See also the decision of the Supreme Court of the Slovak Republic of October 27, 2000, 2 Cdo 67, according to which the courts are authorized to answer the question on the right of ownership as a preliminary question in proceedings on the right of free ownership, with the courts have the right to deviate in their decisions from the situation in the cadastral register.

[163] As Slovak law explicitly permits purchases in good faith in only two cases – commercial purchase and acquisition of presumptive heirs – it may be concluded that a purchase in good faith is excluded in all other cases.

[164] Art. 71 par. 1 Cadastral Register Act.

[165] *Svoboda et al,* Občiansky Zákonník, EPP 1-2/1999, § 151g, 104.

[166] *Čarnogurský,* Hypotekárne právo, EPP 10-11/1999, 334 ff.

[167] In the case of plots of land, it is hardly feasible for a mortgage to extinguish due to a plot of land ceasing to exist.

the cadastral administration deletes the mortgage based on the confirmation of the lienor on the payment of the value of the real property (*"kvitancia"*). In practice, the deletion of the mortgage in the cadastral register upon the request of the bank is possible though done seldom even when the debtor has not yet paid his or her debt (e.g. repayment of a loan).[168]

Should the creditor fall into *default of acceptance*, meaning that if the creditor does not accept the payment to satisfy the claim and this is the only reason the debtor cannot meet the secured obligation, the debtor has the right to *deposit the pecuniary amount with the court*.[169]

As the mortgage is already extinguished ex lege, the deletion in the cadastral register is done by entering an annotation ("*záznam*"). This entry does not have any influence on the creation, change or deletion of rights, but rather only serves as proof.[170] A confirmation on the deposit of an amount in the value of the real property with the court must be attached to the application for deletion of the mortgage in the cadastral register.

A possible reason for the deletion of the mortgage can be the relinquishment of the mortgage. This relinquishment is effective in the form a notarial record, which serves as the basis for the deletion.

If the mortgage was *limited in time* in the lien agreement, it extinguishes when the *time expires*. In this case, as well, the substantively deleted mortgage must be deleted formally in the cadastral register.

VI. Realization of the Mortgage

A. General

As already mentioned, Art.151j par. 1 Civil Code prescribes the following types of realization should the debtor fail to satisfy a claim secured by a lien in time or properly:

- The type and procedure defined in the lien agreement (e.g. open market sale);
- The voluntary sale in a public auction according to special rules (out-of-court auction);
- The realization under a title of execution according to special rules within the scope of execution proceedings (Code of Civil Procedure or Enforcement Act).

The realization according to the lien agreement and the realization in a public auction are considered forms of *out-of-court realization*. In the two cases, the lienor acts in the name of the lienee by a statutory mandate.[171]

B. Open Market Sale

In the case of the open market sale, Article 151m par. 8 Civil Code only defines that the lienor must act with *due diligence* when executing the realization. This

[168] Cf. the statement of the Slovak Office of Geodesy, Cartography and the Cadastre 23S 360/96: "*If the parties have not agreed on how the lien extinguishes directly in the lien contract, the lien extinguishes according to the mode of extinguishment as provided for in Art. 151g Civil Code, among other things, also by depositing of a sum of money*".

[169] Art. 568 Civil Code.

[170] *Hornanský,* Liegenschaftsverwaltung – Grundbuch und Kataster, in: Tagungsbeiträge zur Wiener Konferenz über ein modernes Grundbuch, *Rechberger* (Publ.), 47.

[171] Art. 151m par 6 Civil Code.

means, among other things, that the lienor shall sell the pledged asset for a comparable price that the same or a similar object could have been sold for at the same time and at the same place.

For the protection of the contractual parties, *detailed specifications* are to be included in the lien agreement. This will depend also on how fast and how expensive this type of realization is in practice. There is hardly any practical experience in Slovakia as regards this type of realization. There is no jurisprudence on how a lien agreement must be formulated in order for it to actually be effective.

C. Out-of-Court Auction

The out-of-court auction of the pledged real property is carried out according to the Law No 527/2002 Coll., as amended, on voluntary auctions (Auction Act) upon application of a lienor.[172] The lienor does not have to have an executory title, but rather it will be enough to present a written declaration on the *existence*, *amount* and *due date* of the claim.

A *private auctioneer* carries out the out-of-court auction in accordance with the contract on the execution of the auction.[173] The private auctioneer must ensure that the announcement of the auction is recorded in the register of auctions kept by the Slovak Chamber of Notaries.[174] The auctioneer sends the notification also to those lienors who were named by the lienor initiating the realization.

The Act on Auctions does not define a *minimum bid*. Real property must be appraised by a *court expert*.[175] However, the law does not indicate that the appraisal value of the real property should guide the auction. The maximum bid must generally be paid immediately after the close of the auction; if the purchase price exceeds SKK 200,000 (approx. EUR 4,880), it can be paid within fifteen days.[176]

If the auction fails, it is repeated. Experience has shown that the settlement of a realization can take up to *two to three months*.

Generally, the *lien rights attached* to a property do *not expire*[177] with the acquisition by the purchaser, unless there are special provisions that stipulate otherwise.[178]

D. Execution According to the Enforcement Act

The following section discusses the "*classical" judicial realization* of the pledged asset according to the provisions of the Enforcement Act. The execution according to the Code of Civil Procedure is not discusses here because of the *time-consuming court proceedings* (could take *over two years*) and the lacking relevance in practice.

[172] Art. 7 par. 1 Auction Act.
[173] Art. 16 Auction Act.
[174] Art. 17 Auction Act
[175] Art. 12 par. 1 Auction Act.
[176] Art. 26 Auction Act.
[177] § 31 Auction Act.
[178] Cf Art. 151ma Civil Code .

1. General

a. The Petition for Execution

Execution proceedings are initiated on the petition of the entitled party.[179] The petition for execution is attached to the executory title, which must contain a clause on the legal validity and enforceable nature of the title (*enforcement clause*). An executory title may also be an enforceable notarial record.[180] The petition for execution is then served to the bailiff (*exekútor*).

The bailiff must present to the competent court within fifteen days of delivery of the correct and complete petition for execution, the document together with the application to carry out the execution. Within another fifteen days, the court orders the bailiff with the task of conducting the execution (Art. 44 ff Enforcement Act). An appeal may be lodged against a decision to refuse to give such an order.

Afterwards, the bailiff shall send a notification to the entitled party on the initiation of the enforcement proceedings, which will also indicate the type of enforcement. Furthermore, the bailiff will notify the parties on the preliminary costs of the execution and shall request[181] the party obliged to pay to do so voluntarily and instructs said party of the option to raise defenses against the execution.[182] At the same time, the party obliged to pay shall be prohibited from disposing over the assets subject to the execution.

After the expiry of the period to raise defenses or after the decision of the court to reject the defenses takes legal effect, the bailiff issues an *execution order* (Art. 52 Enforcement Act, *exekučný príkaz*). A decision by the court to grant the defenses may be *appealed*. Should the court decision become final, the execution shall be dismissed.

b. The Notarial Record

The notarial record (*"notárska zápisnica"*) is not an instrument for securing debt in the convention sense. However, its economic function as a means of securing debt is undisputed. It is an enforceable *executory title*. It plays a major role in execution proceedings. Based on a notarial record, an execution can be carried out *directly*.

The *mandatory minimum content* of the notarial record is regulated by Articles 46 ff Act on Notaries. The notarial record states the legally binding obligation, the entitled persons and the persons under obligation to pay, the legal grounds, the object and time of performance and the consent of the person under the obligation to pay to the enforcement of the execution. In practice, the notarial record is established together with the lien agreement before a notary. It is important to note that in the event of the absolute nullity of the legal transaction whose debt is to be covered by the notarial record, neither the execution according to the provisions of the Code of Civil Procedure nor that according to the Enforcement Act can be conducted.[183]

[179] Articles §§ 38 ff Enforcement Act.
[180] Art. 41 par. 2 Enforcement Act.
[181] Raising defenses and appeals may be used as recourse in execution proceedings.
[182] Art. 47 in conj. with Art. 50 Enforcement Act.
[183] *Krajčo/Bajcura,* O súdnych exekútoroch a exekučnej činnosti – Exekučný poriadok, Art. , 82 f.

2. Realization of Real Property through Auctions

a. Requirements

A mandatory requirement for the enforcement through the sale of a real property is – apart from the notification of the entitled party and of the obligated party – that *the real property be owned by the obligated party*. The ownership of real property is usually proven by an excerpt from the register of real properties.

The *consent of the entitled party* to the sale of the real property is another essential condition for the execution of real property (Art. 134 par. 1 Enforcement Act). The law does not specify in detail until when the entitled party must grant his or her consent.

b. Tasks of the Bailiff

The bailiff notifies all entitled parties, all obligated parties as well as all other parties with legitimate interests named in the register, and the mortgage creditors of the initiation of enforcement procedures, with the notification having to state the real property subject of the execution. This shall take place in accordance with the provision of the Cadastral Register Act and the relevant implementing decrees.[184]

The bailiff shall furthermore request the entitled party to grant his or her consent to the execution by selling the specified real property. Should the entitled party refuse this, the enforcement procedures are discontinued.[185]

The *obligated party* is then *prohibited from selling the real property* subject of the execution stated in the notification or to *transfer it to other third* parties by a legally permissible transaction or to encumber it by rights granted to third parties.

c. Description of the Valuation

After the issuance of the decree to carry out the execution by selling the real property and serving the notice to all persons and bodies named, the actual execution proceedings begin (Articles 134 through 178 Enforcement Act). First, the bailiff conducts an appraisal of the value of the real property. To this end, the bailiff must order an *expert opinion* ("*znalecký posudok*") to determine the price of the real property including all of its components that are subject to the same legal fate as the principal object. A controversial issue is whether the *appurtenances of a real property* must also be included in this expert opinion.

d. The Public Auction

The enforcement by way of sale of the real property is conducted in a *public auction* according to Articles 140 ff Enforcement Act. This constitutes the mode of procedure of the bailiff, the execution court and of any other bodies or persons involved in the auction for the purpose of realizing the real property concerned by the forced transfer of ownership to the party awarded the bid at the auction.

[184] Cf. Art. 7 par. 1 lit c in conj. with Art. 70 par. 1 and 2 Cadastral Register Act.
[185] Art. 57 par. 2 Enforcement Act.

After the *preparation of the auction* and the depositing of the security, the bailiff shall request the interested parties to make their bids[186]. After this time, it is no longer possible to hand over a security deposit and demand to participate in the auction.

The *lowest bid* corresponds to the market price of the real property arrived at in the appraisal.[187] If a bid is made that is higher than the market price and no further bids are made, the bailiff declares the auction to be over and awards the property to the highest bidder. If several bids are made that have the same price, the bailiff awards the property by drawing lots (Art.146 Enforcement Act).

e. Allotment

Objections may be raised against the allotment.[188] The *period for raising objections* depends on the person raising the objection.

The allotment is subject to the approval of the court that is given in the form of a ruling. This ruling may be appealed (Art. 148 par. 1 Enforcement Act). The bailiff shall serve the ruling on the allotment to the persons named in it.[189]

The judicial approval of the allotment has a *constitutive effect*, thus establishing a new ownership status of the auctioned real property. The entry in the register of real properties by way of a priority notice (*záznam*) has only a declaratory effect. The court ruling must therefore contain everything required for entering the real property in the register of properties.[190]

Pursuant to Art. 149 Enforcement Act, in the event the *court rejects the allotment,* the auction is continued with the penultimate bid.

The conditions of the first auction generally apply to *second auctions* (*opätovná dražba*) that are held when the person awarded the bid does not pay the highest bid in time and properly. The lowest bid must be at least 75% of the market price stated in the expert opinion.[191]

f. Acquiring Ownership

The allotment does not mean that the person awarded the bid automatically becomes the owner of the auctioned real property. The person awarded the bid becomes owner only after paying the highest bid and the approval of the allotment by the court; the ownership is effective retroactively as of the day of allotment. If the period is long, the person awarded the bid is allowed to take possession of the auctioned real property in the mean time.[192]

[186] Art. 144 Enforcement Act.
[187] Art. 142 par. 2 Enforcement Act.
[188] Cf. Art. 184 Austrian Enforcement Act (Objection to allotments).
[189] In general, these are entitled party, the obligated party, the bidder and those persons who objected the allotment, furthermore the local office of the cadastral department competent for making entries in the register of properties and finally, the local tax office (Art. 148 par. 2 Enforcement Code).
[190] The requirements of Art. 42 Cadastral RegisterAct shall be met.
[191] Art. 143 Enforcement Act.
[192] Art. 150 par. Code of Civil Procedure EO.

g. The Distribution of the Proceeds of the Auction

The Order of Ranking

One of the most controversial problems in the realization of real property is the *order of ranking of satisfaction of the creditors*.[193] The provisions of the Enforcement Act relating to the *hearing for distribution of proceeds* (*"rozvrhové pojednávanie"*) apply (Articles157 ff Enforcement Act). Decisive is the point in time the petition for execution is served to the bailiff. The bailiff shall be bound by the fixed order of ranking and cannot include more than the sum stated in the petition for execution in the assets to be distributed.[194]

Hearing for the Distribution of Proceeds

The fixing of a date for a hearing for the distribution of the proceeds is done after the *highest bid is completely adjusted* and after the *approval of the allotment by the court* (Art. 154 Enforcement Act).

Immediately before the actual hearing, after ascertaining who of the summoned parties is present and who is not, the bailiff states the "consolidated assets to be distributed". Those creditors who have filed a petition for satisfaction of their claims pursuant to Art. 140 par. 2 lit. i Enforcement Act have the right to demand payment of a higher amount than the one claimed in the petition until the end of the hearing. This requires proof of the amount of the claim directly from the execution title or from documents that the creditor presented already at the time of filing the petition. According to Art. 154 par. 2 Enforcement Act, it may be concluded that the hearing for the distribution of the proceeds is not to be repeated.

h. Priority of Satisfaction

The claims to be adjusted from the assets available for distribution are grouped into *seven priority ranks* for the satisfaction of the claim pursuant to Art. 157 par. 1 Enforcement Act in:

1. *Rank:* *Court fees* and *execution costs*;
2. *Rank:* Claims under *mortgage and municipal loans* that serve to cover the nominal value of *mortgage bonds* and municipal obligations which were issued by (mortgage) banks;
3. *Rank:* Claims secured by statutory, contractual, judicial or executive *liens*, by *assignment as security*, *assignment of claims* or, secured by a prohibition to sell applicable to the entire real property; the priority ranking of a claim is determined by the time of creation of the lien or after the prohibition to sell becomes effective;
4. *Rank*: *Claims of the entitled creditor*, from taxes, fees, custom duties and from state guarantees realized, from contributions to the health, pension or unemployment insurance systems as well as from servitudes

[193] Cf. also *Bramerdorfer,* Kreditsicherheiten in der Slowakei: Zwangsvollstreckung und vollstreckbarer Notariatsakt, Gewerbliche Genossenschaft 5/98, 52 ff; see also the notes to Art. 151c Civil Code in Občiansky Zákonník, EPP 1-2/1999, 102.

[194] The distribution assets consist of the following: the amount of the highest bid, its interests, the portion of the collateral of the buyer who caused the second auction and the amount of the claims pursuant to Art. 143 par. 1 Enforcement Code, as well as the amounts equal to the monetary claims pursuant to Art. 152 par 1 Enforcement Code (*ustalená rozdelovaná podstata*, so called estimated assets or consolidated assets).

that the acquirer of the real property has assumed and are credited to the highest bid;

5. *Rank:* Unpaid *support payments* due on the day of the distribution:
6. *Rank: Other claims of the state;*
7. *Rank: Other claims.*

Lower ranking claims shall only be satisfied when the claims of the preceding ranks have been *satisfied in full*. If several claims of the same rank cannot be satisfied in full, these are satisfied proportionally in accordance with their amounts.[195]

Interest for the last three years prior to the allotment, and *court and execution costs* are satisfied in the *same rank as the principal claim*. If the assets for distribution do not suffice for these to be completely satisfied, they are satisfied proportionally in the rank of the principal claim. If the proceeds of the auction exceed all claims of Art. 157 Enforcement Act, the bailiff must payout the excess amount after satisfying all claims.

The bailiff must keep a record of the hearing for the distribution of the proceeds. The distribution of the proceeds is approved by the execution court by issuing a ruling. The *record of the distribution* is sent to all persons and bodies who were summoned to the hearing for distribution (Art. 164 Enforcement Act).

After delivery of the final distribution ruling by the bailiff, the bailiff shall transfer the amounts due to the entitled persons.[196]

E. Excursus: Realization of a Simultaneous Mortgage

If several independent objects (real property) have been pledged to secure the same claim, the bank as lienor pursuant to Art. 151j par. 4 Civil Code shall be entitled to demand satisfaction of the entire claim or part of the claim from any one of the pledged objects.

The multiple mortgage or *simultaneous lien on several real properties* ("simultaneous mortgage")[197] could cause a breach of the principle of equal treatment of creditors in certain circumstances when enforcing claims through the sale of real property. For this reason, Art. 158 Enforcement Act contains *special provisions* for the distribution of the assets from real property encumbered by a simultaneous mortgage.

Decisive for the application is *not* the fact whether all real properties are auctioned at the same time, or if this is done by one or by several bailiffs or if the execution is carried out according to the Enforcement Act or the Code of Civil Procedure. The limit for the proceeds to be distributed is in any case the rate set at the hearing for the distribution of the proceeds. The conditions for the judicial procedure are:

- The same claim must be secured by liens on several real properties, and
- By the date of the hearing for the distribution of the proceeds from all or at least one of the real properties pledged has been sold in this manner.

[195] The problem of which method of satisfaction is to be applied in the case of realization, i.e., priority pursuant to Art. 151c par 1 Civil Code or proportionality pursuant to Art. 157 par. 1 Enforcement Code – cf, *Bramerdorfer,* Gewerbliche Genossenschaft, 53.

[196] Art. 165 par. 2 Enforcement Act.

[197] See Exekučný Poriadok – úplné znenie zákona s komentárom, Art. 158, 119; Cf. Art. 15 Austrian Civil Code.

A difference is made between two feasible cases:

Case 1: If in the course of the auction all real properties are sold that served as the pledged objects to secure claims under a simultaneous mortgage, the *satisfaction* of this claim shall be done as follows (Art. 158 par. 1 Enforcement Act):

- First, the *claims* mentioned above pursuant to *Art. 157 par. 1 lit a to b Enforcement Act* (first and second-ranking claims) are satisfied;
- Subsequently, *the remainder of the assets to be distributed* is calculated after the claims mentioned above have been satisfied;
- Finally, the *sum of the remaining assets for distribution is calculated*, with the claims of the simultaneous mortgage creditor being compared to the total remaining amount for distribution. This ratio is allotted to the simultaneous mortgage creditor from each of the remaining distribution assets.[198]

The lienor can also request satisfaction of the claim according to another ratio.

Case 2: It is also feasible that the *simultaneous mortgage creditor does not sell all but only some or just one real property* (Art. 158 par. 2 Enforcement Act). In this case, the basis for the calculation of ratio of the satisfaction of claims is the value of all real properties, both the auctioned properties and the ones not auctioned off. This value is determined according to general rules. However, the application of the price rules promulgated is recommendable.[199]

The sum of the appraisal value of all real properties is computed. The claim of the simultaneous mortgage creditor is defined in relation to the total sum of the appraisal value of all simultaneously pledged real properties.

Should the creditor petitioning for satisfaction use only this ratio of the proceeds from the only piece of real property auctioned, the creditor is satisfied proportionally and the lower ranking lienors are not at a disadvantage due to the auctioned property.

Should the simultaneous mortgage creditor receive satisfaction disproportionately, the other lower ranking creditors concerned can demand that their claims be secured by establishing a lien on the real properties not yet auctioned. The rank is determined by the rank of the creditor whose claim from the simultaneous mortgage has already been satisfied.

F. Realization in Insolvency

Creditors with rights to separated assets[200] whose claims are secured by *mortgages* are satisfied from the proceeds of any realization of a real property in the order of ranking of the creation of the legal grounds for the right to separated assets. For the rank of a statutory mortgage, the day of the priority notice in the cadastral register shall be decisive. With the realization of a pledged object (assets), the liens of the creditors entitled to separate satisfaction from the bankrupt's estate also extinguish ex lege.[201]

[198] The claim secured by a simultaneous mortgage is settled in cash without the creditor explicitly requesting this. However, the creditor may demand that the claim be satisfied by means of a bank transfer or by other means. The agreement must be reached between the bailiff and the simultaneous mortgage creditor.

[199] Official Notice No. 465/1991 Z.B. as amended.

[200] Pursuant to Art. 28 1 Cadastral Register Act, creditors with rights to separate satisfaction are those creditors whose claims are secured by a lien or a right of retention, by a prohibition of sale of a real property or by the assignment of a right.

[201] Art. 28 par. 9 Cadastral Register Act.

Art. 28 par. 5 Bankruptcy and Composition Act regulates the procedure in the case of *satisfaction of creditors entitled to separate satisfaction from the bankrupt's estate in the event of the sale of a company* (or share in a company) *or* the *entirety of assets* (e.g. stocks) if a piece of real property X, for example on which a creditor with rights to separated assets has a lien, belongs to a company. The proceeds of the assets that served to secure the claim of the creditor with rights to separated assets (i.e. property X) are determined by multiplying the proceeds of the sale of the company with a coefficient. The coefficient corresponds to the ratio between the (individually calculated) appraisal value of real property XY and the assessed value of the company (Art. 18 par. 4 Bankruptcy and Composition Act).[202]

The costs of the administration and the realization of the bankrupt's assets are deducted from the proceeds calculated as well as those for the transfer of the proceeds and the remuneration and expenses of the administrator. The amounts to be deducted are determined by multiplying the coefficient with the total costs of the administration, the realization, the transfer of the proceeds, the remuneration and the expenses of the administrator that relate to the company.

If the undischarged bankrupt is at the same time the lienee, the declaration of bankruptcy renders the secured claim due and the lienor (creditor with rights to separate satisfaction) can petition the court for the satisfaction of claim from the separated assets.

If the undischarged bankrupt is not the lienee at the same time, the lienor can petition the court for satisfaction of the claim falling due in the proceedings against the lienee only as claim in the bankruptcy proceedings, because the pledged object is not part of the bankrupt's estate.

The realization is done either in the course of the auction or outside of the auction, depending on the realization plan agreed at the meeting of creditors.

[202] Act No. 36/1967 Z.B. on Experts and Interpreters as amended in Act No. 238/2000 Z.z.

Chapter 5: Assignment by Security – Fiduciary Transfer of receivables

I. General

The *assignment by security of a claim (fiduciárna cesia)* pursuant to Art. 554 Civil Code is the transfer by the debtor (borrower) or a third person (assignor) of his or her receivable to a third party for the purpose of securing another claim of the creditor (new creditor; bank). In this context, the provisions on the assignment of claims pursuant to Articles 524 ff Civil Code must be adhered to.[203]

Pursuant to Art. 525 the personal receivables or such receivables that are not subject to the execution, and receivables whose assignment would be contrary to the agreement of the parties cannot be assigned. The receivables that cannot be the subject of an execution are defined in Articles 317, 319 Code of Civil Procedure.[204]

The assignment by security of the secured claim turns the bank into a creditor for this claim, thus making it the holder of two claims. The debtor of the assigned claim (third party) has the position of a primary debtor and the bank does not need to turn to the assignee first to demand satisfaction of the claim.[205]

In the event of *bankruptcy* of the borrower who has assigned a claim, the bank has the right *to satisfaction from separated assets*.

II. Assignment Agreement

According to Art. 524 par. 1 Civil Code, a written *assignment agreement* is required that contains the purpose of the assignment and precisely defines the claim to be secured. It is not permitted to include clauses that would give the creditor the right in the event of default on payment to dispose of the secured claim at his or her discretion.[206]

The purpose of securing a claim is the primary aspect here as well: If a debtor meets his or her obligations, the creditor must transfer the receivable back to the debtor. In practice, the assignment agreement often stipulates the satisfaction of the creditor's claims to be a resolutory condition.[207]

With the assignment of a claim to a creditor, all appurtenances,[208] as well as all rights relating to it and any security provided (also mortgages) are transferred.

III. Notification of Third-party Debtor

A *notification of the third-party debtor* is required. The third-party debtor must be notified immediately by the creditor. Until that time, it is possible for the debtor to make payments discharging the debt to the existing creditor. In

[203] *Kopáč,* Obchodní kontrakty I. Díl, Praha Prospektrum (1993), 195.
[204] Act No 99/1963 Coll., as amended.
[205] *Plank,* Právna úprava a prax zabežpečenia záväzkov v práve Slovenskej republiky, Bulletin slovenskej advokácie 1/1996, 14 f.
[206] *Svoboda a kol,* Občiansky zákonník- komentár, Art. 554, 394.
[207] *Lazar a kol.,* Základy Občianskeho hmotného práva, 2. Zväzok, 78; zur Praxis der Banken siehe *Adamcová,* Zabezpečenie pohľadávok v praxi bánk v SR, 156, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).
[208] Cf. Art. 121 par. 3 Civil Code.

practice, this notification can be omitted and the existing creditor can continue to demand the fulfillment of the claim within the scope of a mandate agreement instead of the new creditor. The notification of the third-party debtor does not have a constitutive effect.

IV. Assignment of Future Claims

The *assignment of future claims* is not ruled out by the law. However, a prerequisite is that the assignment agreement must specify the claim precisely regarding the amount and type, naming the creditor, debtor and stating the term of the agreement. So-called *global assignments* usually do not meet these criteria and are not permitted under Slovak law for this reason.[209]

[209] However, there are no rulings regarding the problems mentioned. Furthermore, it is not permitted to relinquish future rights pursuant to Art 574 par. 2 Civil Code

Chapter 6: Assignment as Collateral – Fiduciary Transfer of Assets

I. General

According to Art. 553 Civil Code, the performance of an obligation can also be secured by assigning a right of the debtor to the creditor. The legal basis is a contract between the creditor and the debtor on the "*securing of a claim by assignment of a right*", which requires the written form (Art. 553 par. 2 Civil Code). The assignment as collateral is accessory in nature.

The law does not regulate the requirements of this contract in detail and especially does not specify which rights can be the object of the contract. Given the purpose of the assignment, namely to secure a claim, it follows that the rights assigned can only be *conditional rights that extinguish* when the conditions are met. This means that the right of the transferee automatically ends when the condition is met, i.e., with the fulfillment of the claim.

The cancellation clause is the fulfillment of the secured claim and when this happens, the legal transaction becomes ineffective.[210] To highlight the securing function of the contract, this condition should be stated explicitly in the agreement.[211] As the law does not say anything about how the right assigned as security is to be transferred back to the debtor after payment of the debt, both among academics and in practice, it is assumed that the freedom of contract applies.[212]

II. Nature

The *real security* for the creditor pursuant to Art. 553 par. 1 Civil Code is created when the debtor owing a secured obligation assigns a right vis-à-vis a third party in the favor of the creditor.[213] The right must be one that is exclusively the right of a debtor, for example, a receivable that the debtor is entitled to.[214] In the case of cession, in contrast, it is possible for a third party to assign his or her right to the creditor.

According to the prevailing opinion among Slovak academics, *property rights* (to movable and immovable assets) can be the object of a security agreement.[215] The right assigned as security must be stated in concrete terms to a sufficient extent to meet the requirement of being specific. The rights assigned can be, for example, rights equivalent to servitude or rights granted by securities.

[210] *Svoboda a kol,* Občianský zákonník, Eurounion, Bratislava 1994, str. 394; the lien is retransferred from the creditor to the debtor ex lege, see *Števček,* Otázniky nad zabezpečením záväzku prevodom práva, 311, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).

[211] *Kopáč,* Obchodní kontrakty I. Díl, Praha Prospektrum 1993, 194.

[212] *Giese/Dušek/Koubová/Dietschová*, Zajištění závazkú v České republice, Praha, C.H. Beck 1999, str. 100. See *Nárožný,* Zabezpečovací prevod práva, 301 ff, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002) for the alternative possibility of a contractual agreement on the obligation to retransfer the right that served as security.

[213] *Giese/Dušek/Koubová/Dietschová*, Zajištění závazkú v České republice, Praha, C.H. Beck 1999, str. 104.

[214] The debtor of the right transferred and the creditor being secured cannot be one and the same person: this would cause the claims to extinguish on the grounds of confusion pursuant to Art. 548 Civil Code.

[215] According to the predominantly Slovak opinion in academic circles, transferable rights must be transferable assets, which include ownership rights; cf. *Lazar a kol.,* Základy Občianskeho hmotného práva, 2. Zväzok, 78; *Lazar,* Prostriedky zabezpečenia pohľadávok a možnosti ich uspokojenia v slovenskom práve, 30, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002); aA etwa *Pavelková,* Zabezpečovací prevod práva – aj vlastníckeho práva?, Justičná revue, 6-7/2000, 736 ff.

Therefore, the assignment of rights is frequently used within so-called *repo operations*. A credit is granted to a debtor only if the debtor assigns his or her rights from certain transferable securities. After repayment of the loan, the creditor must return the obtained securities to the debtor. However, within the scope of the assignment as collateral, it is not permitted to assign rights that will arise in the future.[216]

III. Transferring the Security

The security is transferred by different methods depending on the nature of the right being assigned: If the assignment relates to a receivable, the provisions on the assignment of receivables apply. If the assignment relates to the ownership of movable or immovable assets, the provisions on the acquisition of property rights apply.[217]

The assignment as collateral of a right *is different from a lien* in that in the case of a lien the lienee does not lose his or her (ownership) rights to the pledged object, while this does happen when assigning rights. Therefore, the *debtor* does *not have the right of disposal* over the object that was assigned[218] as collateral unless agreed otherwise.[219]

In contrast to Austrian law, Slovakia law permits the contractual parties to agree to transfer ownership to movable assets pursuant to Art. 133 par. 1 Civil Code in such a manner that the creditor becomes the *new owner* of the asset, but the *debtor* continues to *keep* the asset with the right to use it in accordance with its function and purpose. In practice, the legal instrument of a lending agreement is often used granting the debtor the right to continue using the asset, which legally already belongs to the creditor.

The creditor becomes a "fully entitled acquirer" of the right assigned.[220] Therefore, the creditor who has acquired ownership of a real property is registered in the *ownership sheet* of the competent cadastral office not in the C sheet like in the case of liens, but rather in the B sheet – identification of owner.

In contrast, the opinion among Slovak academia states that the right assigned to the acquirer does not have unrestricted full effect, but is limited to the purpose of securing credit. This means that any re-selling or pledging of such a right assigned to secure a debt is viewed as contra bonos mores[221] and thus as null and void.[222]

[216] *Nárožný,* Zabezpečovací prevod práva, 297, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).

[217] A bill of exchange as defined in securities law cannot be used as a transferable right, as the endorsement due to which the bill of exchange is transferred cannot be conditional; cf. Art. 12 par. 2 Act No. 191/195 Z.B. Act on Bill of Exchange and Cheques as amended.

[218] *Mikeš/Švestka,* Nad základnimí otázkami zajištění závazků převodem práva, in: Právní rozhledy č. 6/2001, 253.

[219] *Nárožný,* Zabezpečovací prevod práva, 298, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).

[220] Art. 39 Civil Code .

[221] *Mikeš/Švestka,* Nad základnimí otázkami zajištění závazků převodem práva, in: Právní rozhledy č. 6/2001, 253.

[222] *Nárožný,* Zabezpečovací prevod práva, 298, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).

IV. Realization

If the debtor fails to meet his or her obligation, the creditor has the right to satisfy his or her claim to make up for the loss unless another agreement has been reached.[223] Slovak academic circles have divergent opinions in the case of assignment by security regarding the permissibility of an accelerating clause in an agreement in the event of non-performance by the debtor.[224]

In case of bankruptcy, the transferee has the position of a *creditor with the right to separate satisfaction* (Art. 28 Bankruptcy and Composition Act).[225] In the event of bankruptcy of the transferee, the debtor – if the debt been has fully repaid – has the position of creditor with the right to satisfaction from segregated assets.

V. Extinguishment

The Assignment as Collateral extinguishes when:

- The obligation is met;
- The debtor fails to meet the obligation and the security is realized[226];
- An agreement to this effect has been entered into[227] and
- The right assigned ceases to exist.

[223] *Lazar a kol.,* Základy Občianskeho hmotného práva, 2. Zväzok, 78.

[224] Even though in the case of the transfer of an ownership right as security, the creditor is still registered in the register of properties as the owner; cf. *Števček,* Otázniky nad zabezpečením záväzku prevodom práva, 323, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002)..

[225] On permissibility see *Števček,* Otázniky nad zabezpečením záväzku prevodom práva, 316, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002); in contrast and similar to the provisions on the prohibition to agree an accelerating clause see *Nárožný,* Zabezpečovací prevod práva, 303, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).

[226] In this case) the paradox situation occurs in which the realization according to the regulations on enforcement for real estate property can not be executed neither pursuant to the Code of Civil Procedure nor to the Enforcement Code, as these regulations require that the property be owned by the obligated person. By contrast, the creditor cannot carry out the realization, as the creditor can exercise the right transferred only to a limited extent as mentioned above; for more details see *Nárožný,* Zabezpečovací prevod práva, 303, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).

[227] The parties to a contract may replace the existing security with a new one by novation (Art. 570 Civil Code) or the creditor may relinquish the right (Art. 574 Civil Code)

Chapter 7: Suretyship

I. General

Under a suretyship, a guarantor promises to satisfy the claim of a creditor if the debtor fails to do so.[228] The suretyship is security for a third party's debt.[229] The legal institution of suretyship is regulated in the Civil Code and in the Commercial Code. Commercial transactions are always subject to the provisions of Articles 303 through 312 Commercial Code.[230] As the loan agreement is a so-called absolute commercial transaction, the Commercial Code provisions also apply to banks. The regulations on suretyships under civil law are not applied subsidiarily.

II. The Suretyship under the Commercial Law

A. Origin

Pursuant to Art. 303 Commercial Code, the suretyship is created by a written declaration of the guarantor addressed to the creditor and gives the name of the debtor in whose favor the suretyship has been assumed. Furthermore, the obligation to be secured must also be specified therein. Unlike the situation under Austrian law, the suretyship is created by a *unilateral letter of commitment* of the guarantor that has to be *in writing*. The consent of the creditor or of the debtor is not required for a suretyship to be created.[231]

It is *not required* that the suretyship be *explicitly named* as such. For the creation of the suretyship it is irrelevant whether the obligation of the debtor is invalid due to his or her lack of capacity to contract as long as the guarantor knew of this fact when signing the letter of commitment.[232]

Only *valid claims* can be secured by a suretyship.[233] A suretyship can also be assumed for *future claims* and *contingent claims*.

B. Scope

Generally, the scope of the suretyship covers the principal debt between the creditor and the debtor including any related interest and interest on arrears. The guarantor shall not be liable for any contractual penalties (agreed between the creditor and the debtor) or any damages incurred by the creditor. Neither can the creditor demand reimbursement of legal fees. However, the guarantor has the right to enter into such an obligation in the letter of commitment or to accept liability as guarantor and payer.

[228] For more details, *Plank a kol,* Občianske právo s vysvetlívkami[1], Iuraedition, Bratislava 1996, 1997, 462.

[229] *Lazar a kol.,* Základy Občianskeho hmotného práva, druh0 prepracovan0 vydanie, Iura Edition (2004), 2. Zväzok, 70.

[230] If the underlying claim is a commercial transaction, the suretyship is governed by the provisions of the Commercial Code. Pursuant to Art. 262 par. 1 Commercial Code, the parties to a contract under Civil Law may also agree to apply the Commercial Code provisions. In this case, the provisions under the Commercial Code on suretyship shall apply only if the surety agrees or knew of this agreement at the time the suretyship was created.

[231] *Faldyna/Hušek/Des*, Zajištění a zánik závazkú, Codex Bohemia, Praha (1995), 60 f.

[232] The creditor bears the burden of proof that the surety knew of the lacking legal capacity; cf. *Moravčík/Ovečková,* Obchodný zákonník – komentár, Art. 488.

[233] Art. 304 Commercial Code.

C. Taking Recourse to the Guarantor

The creditor can only request *the guarantor to satisfy* a claim if the (principal) debtor fails to meet his or her obligations within an appropriate *period of time after being requested in writing (*by the creditor) *to do so* (Art. 306 Commercial Code).[234] Only as of this time, can the creditor demand at the same time of both, i.e., of the debtor and of the guarantor, that the claim be satisfied. If both are requested to satisfy a claim, each shall pay the same amount, with the obligation of one of the two parties being extinguished automatically when the other makes a payment. If the suretyship secures only part of the debt, the scope of liability is not reduced in the event of a partial payment as long as the debt is not repaid in the amount secured.

The request of the bank may be omitted in exceptional cases if it cannot be delivered to the debtor[235] or there is no doubt that the debtor will not be able to satisfy the bank's claim, which may be assumed, if the debtor has declared bankruptcy.

The request for payment can be made only after the debt falls due. If it is sent before this time, it is not valid.

The guarantor has the right to raise *all of the defenses* that the debtor is entitled to raise against the bank granting the secured loan.[236] The guarantor can also raise the defense that the receivables of the debtor should be netted against the claims of the creditor. Furthermore, the guarantor can also net own claims against the claims of the creditors (Art. 306 par. 2 Commercial Code).

Should the guarantor intend to satisfy the creditors, then the guarantor shall *inform* the debtor of this *immediately*. The debtor must inform the guarantor thereafter immediately of any defenses that he or she has the right to raise against the creditor. These defenses must be well-founded: Should the defenses that the debtor has informed the guarantor of be ineffective vis-à-vis the creditor, the debtor is obligated to reimburse the guarantor for any legal fees. Should the guarantor have satisfied the creditor without informing the debtor, then the debtor has the right to raise all defenses against the guarantor that he or she would have been entitled to against the creditor.

D. Extinguishment

The suretyship extinguishes generally when the principal debt is redeemed (Art. 311 par. 1 Commercial Code). Art. 311 par. 2 Commercial Code contains to exceptions: First, the suretyship does not become extinguished if the secured debt ceases to exist due to the impossibility of being satisfied by the debtor, but could still be satisfied by the guarantor, and second, if the debt becomes extinguished because a legal entity ceases to exist.

Pursuant to Art. 310 Commercial Code, the claim of the creditor against the guarantor does not become statute barred before the claim vis-à-vis the debtor becomes statute barred. If the debtor *acknowledges a debt*, as of this time a new statute of limitation starts, which thus also prolongs the statute

[234] A court summons is therefore not required.

[235] This would be the case if the debtor's residence were unknown or if a legal entity could not be served notifications at the address in the Commercial Register..

[236] *Suchoža,* Obchodný zákonník a súvisiace predpisy – komentár, Art. 349.

of limitation of the suretyship; however, this shall only apply if the suretyship is not defined as limited in time in the guarantor's letter of commitment.[237]

If there are several *guarantors*, each of them is liable for the entire amount owed. The guarantors are liable as *joint and several debtors* (Art. 307 par. 1 Commercial Code in conjunction with Art. 293 par. 1 Commercial Code).

In the event of *novation of the principal debt*, the suretyship shall also cover the new debt.[238] If the guarantor does not consent to securing the new debt, the security continues but covers only the amount of the original debt and the guarantor retains the right to raise all of the former defenses.

III. The Bank Guarantee as a Special Form of Suretyship

The bank guarantee is a *special form of suretyship*[239], which is common business practice and used frequently and effectively as means of securing debt. The bank guarantee is used regularly in international commercial transactions.[240]

B. Origin

The bank guarantee as an instrument for securing credit is created by a *written declaration* of the guaranteeing bank (guarantor) in the form of a so-called deed of guarantee in which it promises to satisfy the pecuniary claim of the beneficiary bank (beneficiary) up to a certain amount if the debtor fails to perform or based on other conditions set out in the deed of guarantee (Art. 313 Commercial Code). The deed of guarantee contains all the details in the event of non-performance of the debtor.

Usually an *agency contract* exists between the guarantor and the person whose debt is being secured.[241] Under this agreement, the bank undertakes the guarantee at the conditions agreed on.[242] With the delivery of the deed of guarantee to the beneficiary bank, it becomes binding.[243]

The bank guarantee is used mainly to cover pecuniary claims; however, the guarantor can only assume the obligation to pay a sum of money that corresponds to the default amount of the beneficiary.

C. Guarantee by Several Banks

If the bank confirms its guarantee by a second bank, the two banks providing security are jointly and severally liable. If the second bank pays an amount to the beneficiary, it has the right of recourse vis-à-vis the guaranteeing bank. When a bank only informs the creditor that another bank is granting a guarantee in the creditor's favor, this does not create an obligation from the guarantee for the bank providing this information; however, it is liable for any damages resulting from false information (Art. 315 par. 2 Commercial Code).

[237] *Moravčík/Ovečková,* Obchodný zákonník – komentár, Art. ,489.
[238] Art. 572 par. 1 Civil Code.
[239] *Štenglová/Plíva/Tomsa a kol,* Obchodní zákonník – komentář, Praha C.H. Beck (1998), 669; Cf. Art. 322 par. 1 Commercial Code.
[240] *Giese/Dušek/Koubová/Dietschová*, Zajištění závazků v České republice, Praha, C.H. Beck 1999, str. 240.
[241] Cf. also Art. 322 par. 2 Commercial Code.
[242] Autorský kolektív: Obchodný zákonník s podrobným komentárom pre právnu a podnikateľskú prax, Práca, Bratislava (1992), 324.
[243] *Štenglová/Plíva/Tomsa a kol,* Obchodní zákonník – komentář, Praha C.H. Beck (1998), 670.

D. Abstractness

The guarantee agreement exists irrespective of the secured debt and therefore its nature is abstract; the guarantor cannot simply take recourse to defenses raised by the debtor vis-à-vis the creditor that arise from the debtor's legal relationship with the creditor. The lacking accessoriness and subsidiarity is therefore the major difference to the suretyship.[244] Unlike the suretyship, the guaranteeing bank can be placed under the obligation to satisfy a claim without receiving a prior request for payment from the debtor motivated by a written request of the creditor (Art. 317 Commercial Code). However, the deed of guarantee may contain a deviating clause stating that the beneficiary must first request the debtor to pay.[245] Furthermore, it may state that apart from the written request for payment, additional documents must be presented (Art. 319 Commercial Code).

E. Assignment of a Guarantee

If a debtor only pays part of the debt and the amount guaranteed in the contract is equal or higher, this shall not have any influence on the scope of the guarantee pursuant to Art. 316 par. 2 Commercial Code. The beneficiary generally has the right to assign the claim (right to draw) under the bank guarantee to a third party without having to change the persons committed in the secured debt. If it follows from the contract according to Art. 318 Commercial Code that the creditor is entitled to enforce his or her the rights under the bank guarantee only when the debtor fails to perform; in this case the creditor can only assign the rights under the bank guarantee together with the secured claim.[246]

F. Refunding Payments

Should a creditor receive a payment under the bank guarantee without justification and to which the creditor was not entitled vis-à-vis the debtor, the creditor must refund the payment considered unjustified enrichment. However, before the debtor can collect the amount, he or she must reimburse the amount paid by the bank. The bank itself does not have any claims under the title of unjustified enrichment vis-à-vis the creditor, and any contractual provisions stating otherwise are invalid.[247]

G. Extinguishment

If a *bank guarantee of limited time* is agreed on, said bank guarantee shall expire if the creditor does not request payment in writing within the agreed-on time or does not present the required documents (Art. 321 Commercial Code).

Should the guarantor meet his or her obligations under the bank guarantee, the guarantor has the right of recourse vis-à-vis the debtor the same as in the case of a suretyship.[248]

[244] *Lazar,* Prostriedky zabezpečenia pohľadávok a možnosti ich uspokojenia v slovenskom práve, 32, in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).

[245] This is possible, as these are dispositive legal provisions; see also *Holeyšovský,* Zástavní právo. Zástavní právo, ručenií, bankovní záruka a ostatní zajišťovaci prostředky v podnikatelské, bankovní a právní praxi, drohé vydanie, Praha, Newsletter 1995, 98 ff.

[246] *Giese,/Dušek/Koubová/Dietschová,* Zajištění závazkú v České republice, Praha, C.H. Beck (1999), 243.

[247] Obchodný zákonník s komentárom, Poradca 97 Žilina, 9-10/1997, 209.

[248] *Suchoža,* Obchodný zákonník a súvisiace predpisy – komentár, Art. 357.

Chapter 8: Cumulative Assumption of Debt and Additional Assumption of Debt

I. General

A bank granting credit can protect itself against the default of one borrower by enlarging the liability fund by another debtor. A difference is made the between cumulative assumption of debt and the additional assumption of debt.

II. Cumulative Assumption of Debt

The *cumulative assumption of debt* (*kumulatívna intercesia*) is regulated in Art. 531 par. 2 Commercial Code. Based on a written agreement with the creditor, a new debtor joins the existing debtor without requiring a new contract with the existing debtor. The two debtors are *jointly and severally liable*, and there is no right of recourse.[249] The new debtor can raise *all defenses the existing debtor is entitled to against* the bank. The content of the contractual relationship does not change.

III. Additional Assumption of Debt

The *additional assumption of debt* (*pristúpenie k záväzku*) is regulated in Articles 533, 534 Civil Code. The new debtor declares to the creditor in a written agreement that he or she will cover the pecuniary debts of the existing debtor. The new debtor thus enters into a *separate obligation*. This agreement is executed without the consent of the existing debtor, in some cases, even against the will of the existing debtor.[250] The existing debtor is not discharged from the debt and the two debtors are *jointly and severally liable*.[251] The new debtor has the right to raise all defenses against the creditor the existing debtor is entitled to.

In contrast to the cumulative assumption of debt, the additional assumption of debt is only possible for pecuniary debts. The right of recourse between the new debtor and the existing debtor exists.

[249] *Suchoža a kol,* Obchodný zákonník a súvisiace predpisy – komentár, Art. 378.
[250] *Suchoža a kol,* Obchodný zákonník a súvisiace predpisy – komentár, Art. 378.
[251] Art. 511 par. 2 Civil Code .

Chapter 9: Special Forms

I. Agreements on Deductions from Wages and Other Income,

A. General

The civil law instrument of securing credit, the *agreement on deductions from wages and other income* pursuant to Art. 551 Civil Code is also applicable to commercial transactions[252] although its relevance for commercial law is assessed as minor.[253] The security in the form of an agreement to make deductions from wages and other income can only be provided by a debtor who is a natural person. This type of security corresponds to the assignment of wages as collateral.

By entering into a *written agreement* on deductions from wages and other income, the debtor consents to gradually repaying a debt by having his or her wages reduced by an amount agreed between the employer and the creditor.[254] This instrument thus has two functions: security and to settlement of a debt.

If the *creditor* and the *employer as the wage-paying party* are not identical as an exception, a contractual relationship between three parties exists: The creditor of the secured claim is only then entitled to the payout of the sums deducted from the wage when the creditor presents to the employer the agreement on the garnishment.

B. Restrictions

Pursuant to Art. 551 par. 1 Civil Code, *wage deductions* are *not permitted to be greater than* the amounts permissible in enforcement proceedings pursuant to Articles 276 through 302 Code of Civil Procedure.[255] The limit is therefore the *subsistence minimum*. Any portion of the wage deduction in excess of this minimum is null and void, and constitutes unjustified enrichment of the creditor.[256] The culpable violation of the duties of the employer can entail compensation for damages.[257]

The agreement on deductions from wages and other income requires the *written form*. It can be accorded within the scope of a settlement before a court.[258] This agreement can be used to secure only pecuniary claims.[259] The object of the agreement may be either a claim to a wage of the debtor in the meaning of Act No. 311/2003 Coll. Labor Code or a claim to other income

[252] In addition, the legal practice of agreements on deductions from wages is regulated also in Art. 246 Labor Code; this agreement is reached between the employer and the employee. Art. 1 par. 2 Commercial Code in conjunction with Art. 261 par. 6 Commercial Code.

[253] Občiansky zákonník s komentárom, Poradca 97 Žilina, 13/1997, 132 f.

[254] Generally, the creditor and the employer are one and the same person; cf. *Svoboda*, Občiansky zákonník, Art. 391.

[255] Cf. also the Official Notice of the government of the Slovak Republic No. 89/1997 Zz.

[256] Art. 41 Civil Code.

[257] *Lazar a kol.,* Základy Občianskeho hmotného práva, druhé prepracované vydanie, Iura Edition (2004), 2. Zväzok, 76.

[258] Sammelband der Stellungnahmen, Bericht über Gerichtsentscheidungen und Entschiedungen der Obersten Gerichte der ČSSR, ČSR und SSR, I, 1965-1967, SEVT Praha (1974), 154, item 10. Articles 69 and 99 Code of Civil Procedure.

[259] *Giese/Dušek/Koubová/Dietschová,* Zajištění závazkú v České republice, 284; *Svoboda a kol,* Občiansky zákonník, Art. 392.

replacing the wages of the debtor pursuant to Art. 299 Code of Civil Procedure (e.g. pension, health insurance benefits or stipends).[260]

C. Miscellaneous

The *effectiveness of the agreement* on deductions from wages and other income is determined, on the one hand, by the due date of the claim secured, and on the other hand, by the point in time the agreement is presented to the employer. The order of ranking of satisfaction of the creditor depends on the *time of presentation* of the agreement (*prior tempore potior iure*), also in relation to those claims because of which the garnishment of wages was ordered in judicial enforcement proceedings.[261] A violation of these effects also entails compensation for damages.

If a debtor settles his or her debts after wage deductions have been started, such agreement is rendered ineffective. Should the debtor change employer before the claim of the creditor is satisfied in full, the obligation to deduct from wages is transferred to the new employer as soon as the new employer learns of the existence of such an agreement.[262] Furthermore, the effectiveness of such an agreement shall expire if the creditor and the debtor agree to the termination of the agreement, and, if the debtor loses entitlement to a wage or other income.[263]

[260] *Lazar a kol.,* Základy Občianskeho hmotného práva, druhé prepracované vydanie, Iura Edition (2004), 2. Zväzok, 75.

[261] *Lazar/Švestka a kol,* Československé občianske právo[2], Obzor Bratislava (1987), 40.

[262] Here it is not relevant whether the creditor, the debtor or the former employer informed the new employer about the existence of the agreement.

[263] *Lazar a kol.,* Základy Občianskeho hmotného práva, druhé prepracované vydanie, Iura Edition (2004), 2. Zväzok, 76.

Chapter 10: Concluding Remarks

In comparison to Austrian security interest law, the following significant differences exist:

Apart from the principle of physical possession of pledged assets that applies to *movables,* it is also possible to pledge assets by entry in the *liens register*, kept by the Chamber of Notaries. This makes it possible to create the non-possessory lien in which the borrower can continue to use the pledged assets also on movable assets. *Liens* on *receivables* can also be entered into this *register* (see Chapter 3).

The creation of a *lien* requires the *written form*.

As regards the definition of concepts, it is important to note that under the Slovak law, the term *real property* does not only include *parcels of land,* but also *premises* and *buildings* (see Chapter 4). It should also be noted in this context that the principle of *superficies solo cedit does not exist* in the Slovak Republic, and *buildings* therefore can have a legal fate that is separate from that of the parcel of land (see Chapter 4).

The *bank guarantee* is treated as a special form of suretyship by the law. Although the law does not rule out guarantees assumed by others than banks, these are never used in practice (see Chapter 7).

The *assignment as collateral* can only be created as security for a debt by the borrower himself or herself and not by a third party (see Chapter 6).

The *notification of third-party debtor* in the case of assignment by security is required only for the cession to be effective vis-à-vis the third-party debtor and not for the creation of a lien (see Chapter 6).

If the other assets in *bankruptcy proceedings* are not enough to cover the costs of the bankruptcy proceedings (these are also the costs related to the maintenance and administration of the assets), the *claims to separated assets* (e.g. liens) are *satisfied* only up to a *maximum* of *70%* (see Chapter 2).

In contrast to the *cumulative assumption of debt*, the new debtor can only assume a pecuniary debt in the case of the *additional assumption of debt*. The *cumulative assumption of debt* applies to *all types of debt*.

Legal Sources

Zákon č 97/1963 Zb	idgF Zákon č 382/2004 Z.z. o medzinárodnom práve súkromnom a procesnom v znení neskorších predpisov (Act on International Private and Procedural Law)
Zákon č 99/1963 Zb	idgF Zákon č 371/2004 Z.z. Občiansky súdny poriadok (Code of Civil Procedure)
Zákon č 40/1964 Zb	idgF Zákon č 404/2004 Z.z. Občiansky Zákonník (Civil Code)
Zákon č 71/1967 Zb	idgF Zákon č 527/2003 Z.z. o správnom konaní (Administration Code)
Zákon č 50/1976 Zb	idgF Zákon č 608/2003 Z.z. o územnom plánovaní a stavebnom poriadku (stavebný Zákon) (Building Act)
Zákon č 513/1991 Zb	idgF Zákon č 432/2004 Z.z. Obchodný Zákonník (Commercial Code)
Zákon č 328/1991 Zb	idgF Zákon č 411/2004 Z.z. o konkurze a vyrovnaní (Bankruptcy and Composition Act)
Zákon č 460/1992 Zb	idgF Zákon č 420/2004 Z.z. o notároch a notárskej činnosti (Notársky poriadok) (Act on Notaries)
Zákon č 460/1992 Zb	idgF Zákon č 323/2004 Z.z. Ústava Slovenskej Republiky (Constitution of the Slovak Republic)
Vyhlaška Ministerstva spravodlivosti	
SR č 493/1991	ktorou sa vykonávajú niektoré ustanovenia Zákona č 328/1991 Zb o konkurze a vyrovnaní v znení vyhlašky č 398/2001 Z.z. (Promulgation of the Ministry of Justice of the SR, amending some provisions of the Bankruptcy and Composition Act, as amended by Decree No 398/2001 Z.z.)
Zákon č 162/1995 Z.z.	idgF Zákon č 173/2004 Z.z. o katastri nehnuteľností a o zápise vlastníckych a iných práv k nehnuteľnostiam (katastrálny Zákon) (Act on the Register of Properties and Registration of Ownership and Other Rights in Real Property)
Zákon č 233/1995 Z.z.	idgF Zákon č 514/2003 Z.z. o súdnych exekútoroch a exekučnej činnosti (Exekučný poriadok) a o zmene a doplnení ďalších Zákonov (Enforcement Code)

Vyhlaška Úradu geodézie, kartografie a katastra SR	
SR č 79/1996 Z.z.	ktorou sa vykonáva Zákon Národnej rady SR o katastri nehnuteľností a o zápise vlastníckych a iných práv k nehnuteľnostiam (Promulgation of the Office for Geodesy, Cartography and Cadastre of SK to the Act on the Register of Properties and Registration of Ownership and Other Rights in Real Property)
Zákon č 311/2001 Z.z.	idgF Zákon č 365/2004 Z.z. Zákonník práce (Labor Act)
Zákon č 483/2001 Z.z.	idgF Zákon č 215/2004 Z.z. o bankách (Banking Act)
Zákon č 96/2002 Z.z.	idgF Zákon č 439/2004 Z.z. o dohľade nad finančným trhom a o zmene a doplnení niektorých Zákonov (Act on the Supervision of Financial Markets)
Zákon č 527/2002 Z.z.	o dobrovoľných dražbách (Act on Voluntary Auctions)
Vyhláška č. 607/2002 Z.z.	ktorou sa ustanovujú podrobnosti o Notárskom centrálnom registri záložných práv Ministerstva spravodlivosti SR (Promulgation of the Ministry of Justice of SR that regulates the details of the Central Liens Register)

Bibliography

Adamcová, Zabezpečenie pohľadávok v praxi bánk v SR, S., in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002)

Autorský kolektív: Obchodný zákonník s podrobným komentárom pre právnu a podnikateľskú prax, Práca, Bratislava (1992).

Bramerdorfer, Kreditsicherheiten in der Slowakei: Zwangsvollstreckung und vollstreckbarer Notariatsakt, Gewerbliche Genossenschaft 5/98.

Bureš/Drapal, Zástavní právo v soudní praxí[2], Codex Bohemia, Praha.

Čarnogurský, Hypotekárne právo, EPP 10-11/1999,

Čarnogurský, Übertragung von Anteilen an Kapitalgesellschaften nach slowakischem Recht, WIRO 2/1996, S.

Čarnogurský, Hypotekárne právo, EPP 10-11/1999,

Bureš/Drapal, Zástavní právo v soudní praxí[2], Codex Bohemia, Praha.

Dědič/Baumgartner, Tschechisches und slowakisches Wirtschaftsrecht, Schriftenreihe des FOWI.

Dvořák, Právna úprava a prax zabezpečenia záväzkov v práve Slovenskej republiky, in: Bulletin slovenskej advokácie č. 1/1996.

Faldyna/Hušek/Des, Zajištění a zánik závazkú, Codex Bohemia, Praha 1995.

Feil, Grundbuchsgesetz[3]

Gaisbacher/Peceň a kol, Základy pozemkového práva – Komentár, Heureka (1999).

Giese/Dušek/Koubová/Dietschová, Zajištění závazkú v České republice, Praha, C.H. Beck 1999.

Holeyšovský, Zástavní právo. Zástavní právo, ručenií, bankovní záruka a ostatní zajišťovaci prostředky v podnikatelské, bankovní a právní praxi, drohé vydanie, Praha, Newsletter 1995.

Horňanský, K plneniu úloh katastra nehnuteľností, Justičná revue 8-9/1999.

Hornanský, Liegenschaftsverwaltung – Grundbuch und Kataster, in: Tagungsbeiträge zur Wiener Konferenz über ein modernes Grundbuch (1998), Rechberger (Hrsg), Manz Wien.

Horňanský, K plneniu úloh katastra nehnuteľností, Justičná revue 8-9/1999.

Hošovský, Nie je plomba ako plomba, BSA 6/98.

Kitta, Konkurz a vyrovnanie – úplné znenie zákona s výkladom (Konkurs und Ausgleich – vollständige Fassung des Gesetzes mit Erläuterungen), Ekonomický a právny poradca podnikateľa 7/1998; wird zitiert: Konkurz a vyrovnanie – úplné znenie zákona s výkladom, EPP 7/1998.

Koppensteiner, GmbH-Gesetz Kommentar[2], Orac, §,

Kopáč, Obchodní kontrakty I. Díl, Praha Prospektrum (1993),

Kopáč, Obchodní kontrakty II. díl, Praha Prospektrum (1993),

Koppensteiner, GmbH-Gesetz Kommentar[2], Orac,

Krajčo/Bajcura, O súdnych exekútoroch a exekučnej činnosti – Exekučný poriadok, Eurounion, §,

Kravec, K niektorým otázkam novelizácie zákona o konkurze a vyrovnaní, PaP 3/1998,.

Lazar/Švestka a kol, Československé občianske právo[2], Obzor Bratislava (1987.

Lazar a kol, Základy občianskeho hmotného práva. 2. Zväzok, IURA EDITION (2004.

Lazar a kol., Základy Občianskeho hmotného práva, 2. Zväzok, IURA EDITION (2004).

Lazar, Prostriedky zabezpečenia pohľadávok a možnosti ich uspokojenia v slovenskom práve, S., in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).

Lazar/Švestka a kol, Základy občianskeho hmotného práva. 2. Zväzok, IURA EDITION (2004).

Lazar a kol., Základy Občianskeho hmotného práva, 2. Zväzok, IURA EDITION (2004Československé občianske právo[2], Obzor Bratislava (1987).

Lipšic, Problémy právnej úpravy konkurzu a vyrovnania a návrhy de lege ferenda, Právny Obzor 5/1997,.

Lochmanová, Dokumentární akreditiv, S., in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).

Mathernová/Valová/Hucíková, Reforma záložného práva, EPP 6-7/2003, komentár k § 151a ZGB, S.

Mikeš/Švestka, Nad základnimí otázkami zajištění závazků převodem práva, in: Právní rozhledy č. 6/2001, S.

Moravčík/Ovečková, Obchodný zákonník – komentár, Iura Edition.

Nárožný, Zabezpečovací prevod práva, S., in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).

Obchodný zákonník s komentárom, Poradca 97 Žilina, 9-10/1997.

Pápayová, Niektoré praktické otázky vkladu nehnuteľností do základneho imania spoločností s ručením obmedzeným, Justičná revue 1/1999.

Pavelková, Zabezpečovací prevod práva – aj vlastníckeho práva?, Justičná revue, 6-7/2000.

Plank a kol, Občianske právo s vysvetlívkami[1], Iura Edition, Bratislava 1996.

Plank, Právna úprava a prax zabežpečenia záväzkov v práve Slovenskej republiky, Bulletin slovenskej advokácie 1/1996.

Plank a kol, Občianske právo s vysvetlívkami[1], Iura Edition, Bratislava 1996.

Rapant, K niektorým otázkam úpravy princípu verejnosti od pozemkových kníh po kataster nehnteľností Slovenskej republiky, Právny obzor 5/2000.

Sammelband der Stellungnahmen, Bericht über Gerichtsentscheidungen und Entschiedungen der Obersten Gerichte der ČSSR, ČSR und SSR, I, 1965-1967, SEVT Praha (1974).

Štefanko, Prvý Občiansky Zákonník Platný od roku 1951 do roku 1964.

Štefanovič, Katastrálny Zákon, EPP 10-11/1999, Erl zu § 34 KatG.

Steiner/Mazák[2], Konkurz a vyrovnanie - Systematický Výklad), IURA EDITION (1996).

Suchoža, Obchodný zákonník a súvisiace predpisy – komentár, Eurounion (2002).

Svoboda, Výhrada vlastnictvi podle Občanského zákonníka, Právnik 10/2001.

Svoboda a kol, Občiansky Zákonník – aktualizované úplné znenie zákona s výkladom, Ekonomický a právny poradca podnikateľa 1-2/1999.

Svoboda a kol, Občianský zákonník, Eurounion, Bratislava 1994.
Svoboda, Výhrada vlastnictvi podle Občanského zákonníka, Právnik 10/2001.
Štefanko, Prvý Občiansky Zákonník Platný od roku 1951 do roku 1964.
Štefanovič, Katastrálny Zákon, EPP 10-11/1999, Erl zu § 34 KatG.
Štenglová/Plíva/Tomsa a kol, Obchodní zákonník – komentář, Praha C.H. Beck (1998).
Števček, Otázniky nad zabezpečením záväzku prevodom práva, S., in: Zabezpečenie pohľadávok a ich uspokojenie, VII. Lubyho právnické dni, IURA EDITION, Bratislava – Trnava (2002).

Abbreviations

Cadastral Register Act	Act on the Register of Properties and Registration of Ownership and Other Rights in Real Property (*im Gesetz Nr 162/1996 Coll. über den Liegenschafts-kataster und über die Eintragung von Eigentum und anderen Rechten an Liegenschaften*)
NBS	Narodna banka Slovenska
SR	Slovak Republic