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# Real Property Rights in the Slovak Republic

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## Preface

Since 1989 the Association of German Pfandbrief Banks (vdp) has been systematically analysing land registration and mortgage law in Europe (meanwhile also in the United States and in Canada) in order to provide its member institutions with practically relevant information about the status quo of the respective legal systems in this sector.

Information about the real property law in Central and Eastern Europe is of special need and importance as legal developments are, even nearly twenty years after the fall of the Iron Curtain, still subject to fundamental reforms for turning the situation to the better. Furthermore, due to language barriers detailed information is difficult to get. For the analysis of the national legal systems of this region, vdp for many years has cooperated with the Center of Legal Competence (CLC), Vienna. Also this publication was elaborated in cooperation with the CLC.

The Center of Legal Competence is an Austrian research and counselling institution which was established in 1999 as a non-profit association. Members of the association are the Austrian Federal Government, represented by the Federal Minister of Justice, the Federal Chamber of Attorneys (Bar Association), the Federal Chamber of Notaries Public, the Federal Chamber of Commerce, the Austrian Federation of Industry and the Association of Austrian Judges. The CLC serves the purpose of enhancing the legal competence of Austria for Eastern Europe and to strengthen its contribution towards promoting the legal and institutional reforms in the transition countries of Europe and Central Asia by way of research, further-training and counselling.

The CLC considers it its prime task to support the transition states in improving their legal framework conditions while creating the structures for a market economy in such central areas as property, the protection of property and property rights.

This publication about real property law in the Slovak Republic builds upon an earlier working paper issued in 2001 and follows earlier vdp publications in German language on real property law in the Czech Republic (vdp volume No. 21), in Hungary (vdp volume No. 27) and in Romania (vdp volume No. 29). Further similar publications are under preparation for the real property law in Bulgaria and Poland.

The paper “Real Property Rights in the Slovak Republic” is intended as an analysis of the legal provisions on real property and their practical application with a special focus on the Slovak Real Estate Register and the Slovak mortgage law. In the Slovak Republic, as well as in the Czech Republic and in Hungary, a unified system of land registration and cadastre exists, which is maintained by the cadastre offices under the competence of the Authority of Geodesy, Cartography and Cadastre of the Slovak Republic (*Úrad geodézie, kartografie a katastra SR*).

This paper is divided into four parts. Part I presents the essential characteristics of real property law and law of obligations concerning real property in the Slovak Republic, thereby outlining not only the latest legal developments and those to

come in the near future, but also the fact that the principle “*superficies solo cedit*” is not applied in the Slovak Republic. Therefore, according to the valid legal regulation, the land and the building on it are regarded as two separate objects; by consequence the owner of the building can be different from the owner of the land on which the building is located. Part II of this publication concerns the system of registration of real properties, focussing on the character and functioning of the Real Estate Register that comprises cadastre documentation and property rights, the types of registration and principles of registration as well as registration proceedings. Part III explores the legal and practical background of credit securing, thereby giving special importance to the mortgage loan agreements under the Slovak Banking Act which are governed by special rules. Part IV finally gives an in-depth description of the current mortgage law in force in the Slovak Republic.

The author of this publication, Mrs. Mag.iur. Dr.iur. Mgr. JUDr. *Michaela Stessl*, has studied law at the University of Vienna and the Comenius University of Bratislava and is attorney-at-law and fully licensed member of the Slovak Bar Association. Since November 2001 she has been working as a senior counsel at the international law firm Freshfields Bruckhaus Deringer in Bratislava where she specialised in corporate and real estate law, banking and finance. Mrs. *Stessl* speaks German, Slovak, Czech and English. She is also author of numerous publications regarding credit risk mitigation, real property and cross-border insolvency law in Germany, Austria and Slovakia and is a lecturer at Universities and for other institutions at home as well as abroad.

The project was carried out by the CLC and commissioned and financed together by the vdp and the Hungarian Mortgage Bank Association (“Magyar Jelzálogbank Egyesület”) in the framework of the two associations’ cooperation regarding foreign lending. Special thanks are given to Mrs. Mag. *Ninel Jasmine Sadjadi, LL.M.*, Project Manager at the CLC, who took responsibility for the content of the paper, and Mr. Dr. *Klaus Schubäus* who, based on his long lasting experience as a lawyer and real estate finance banker and as the head of cross border finance in several banks, has given valuable inputs that significantly improved the paper.

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# I Real estate law

## A Legal Framework

### 1 Material laws

In Slovakia, the following laws mainly govern the general legal aspects of ownership rights and also certain aspects related to the acquisition of ownership title or other title to real estates as well as other related questions. The laws mentioned under (i) to (iv) have a constitutional character and are therefore higher ranked in the Slovak hierarchy of laws. Laws listed under (v) to (xvi) are commonly used in the Slovak business environment in context with the acquisition of real estate. Finally, in (xvii) to (xxi) we find laws, which are also mainly relevant within zoning and constructions proceedings. Unfortunately, only a few of them are publicly accessible or available in the English language:

- i. Constitution Act No. 100/1990 Coll. (*Ústavný Zákon 100/1990 Zb.*)<sup>1</sup>;
- ii. Constitution Act No. 23/1991 Coll. which implements the Charta of Fundamental Rights and Freedoms (*Ústavný Zákon 23/1991 Zb. ktorým sa uvádza Listina práv a Slobôd*);
- iii. Constitution No. 460/1992 Coll. as amended of the Slovak National Council (*Ústava Slovenskej Republiky*);
- iv. Convention on Protection of Human Rights and Fundamental Freedoms as amended by protocol No. 3, 5 and 8, announced under No. 209/1992 Coll. (*Dohovor o ochrane ľudských práv a základných slobôd v znení protokolov č. 3, 5 a 8*);
- v. Civil Code No. 40/1964 Coll. as amended (*Občiansky Zákonník*);
- vi. Commercial Code No. 513/1991 Coll. as amended (*Obchodný Zákonník*);
- vii. Foreign Exchange Act No. 202/1995 Coll. as amended (*Devízový Zákon*);
- viii. Act No. 162/1995 Coll. on the Real Estate Register and Registration of Ownership Titles and Other Rights to Real Estate as amended – the Cadastre Act<sup>2</sup> (*Zákon o katastri nehnuteľností a o zápise vlastníckych a iných práv k nehnuteľnostiam – Katastrálny Zákon*);
- ix. Decree of the Authority for Geodesy, Cartography and Cadastre of the Slovak Republic on the implementation of the Cadastre Act No. 79/1996 Coll. as

1 Constitution Act No. 100/1990 Coll. introduced the principle of equality of ownership rights into the Slovak legal system, mainly into Articles 2 par. 2 and 124 of the Civil Code. For more details see *Svák/Cibulka*, Constitutional Law of the Slovak Republic, Poradca podnikateľ'a spol. s r.o. (2006), 87 and on; *Fekete*, Civil Code – Commentary, explanations to Article 123 and Article 124 of the Civil Code, p. 256 and 260 and on.

2 The Cadastre Act describes the Real Estate Register of the Slovak Republic and its purpose in detail and regulates the proceedings on the registration of ownership titles and other rights to real property.

amended<sup>3</sup> (*Výhláška Úradu geodézie, kartografie a katastra SR, ktorou sa vykoná Katastrálny Zákon*);

- x. Decree of the Authority for Geodesy, Cartography and Cadastre of the Slovak Republic No. 534/2001 Coll. regulates the details of work organization and on depositing and manipulation of files at the cadastre offices and the cadastral authorities – Administration Rule (*Výhláška Úradu geodézie, kartografie a katastra SR, ktorou ustanovujú podrobnosti o organizácii práce a o úschove spisov a manipulácii s nimi na katastrálnych úradoch a správach katastra – spravovací poriadok*);
- xi. Act No. 71/1967 Coll. on the Administrative Procedure as amended – Administrative Code (*Zákon o správnom konaní – správny poriadok*);
- xii. Act No. 182/1993 Coll. on Ownership of Apartments and Non-Residential Premises (*Zákon o vlastníctve bytov a nebytových priestorov*)<sup>4</sup>;
- xiii. Act No. 503/2003 Coll. on Restitution of Ownership to land and on Changes and amendments to Act of the Slovak National Council No. 180/1995 Coll. on Some Measurements on the Settlement of Ownership to Land as amended – Restitution Act (*Zákon o navrátení vlastníctva k pozemkom a o zmene a doplnení zákona Národnej rady Slovenskej o niektorých opatreniach na usporiadanie vlastníctva k pozemkom v znení neskorších predpisov*);
- xiv. Act No. 403/1990 Coll. on moderation of certain effects of property injustices as amended (*Zákon č. 403/1990 Zb. o zmiernení následkov niektorých majetkových krívd*);
- xv. Act No. 229/1991 Coll. on Adjustment of Property Rights to Soil and other Agricultural Land as amended (*Zákon o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku*);
- xvi. Act No. 116/1991 Coll. on Lease and Sublease of Non-residential Premises as amended (*Zákon o nájom a podnájom bytových a nebytových priestorov*)<sup>5</sup>;
- xvii. Act No. 50/1976 Coll. on Land Use Planning (Zoning) and Building Code – Building Act as amended (*Zákon o územnom plánovaní a stavebnom poriadku – Stavebný Zákon*);
- xviii. Act on Protection and Usage of Agricultural Land No. 220/2004 Coll. (*Zákon o ochrane a využívaní poľnohospodárskej pôdy*);

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3 The Cadastre Decree is an execution guideline to the Cadastre Act and, in particular, includes a more detailed description of what the cadastre office requires within the process of registration into the Real Estate Register. The Cadastre Act is outlined in more detail in Part II below.

4 The Act on Ownership of Apartments and Non-Residential Premises determines the conditions and process of acquisition of ownership title to apartments (i.e. flats) and non-residential premises in apartment houses, and also the rights and duties of the owners of such houses, as well as the rights and duties of the owners of apartments and non-residential premises.

5 The Act on Lease and Sublease of Non-residential Premises lays down specific rights and duties of the lessor and the lessee, as well as the grounds for termination of leases.

- xix. Act No. 135/1961 Coll. on Communication over Land as amended – Road Act (*Zákon o pozemných komunikáciách – Cestný zákon*);
- xx. Act No. 364/2004 Coll. on Waters and changes to Act of the Slovak National Council No. 372/1991 Coll. on Offences as amended – Water Act (*Zákon o vodách a o zmene zákona Slovenskej národnej rady č. 372/1990 Zb. o priestupkoch v znení neskorších predpisov – Vodný zákon*);
- xxi. Act No. 656/2004 Coll. on Energy and changes to several other Acts as amended – Energy Act (*Zákon č. 656/2004 Z.z. o energetike a o zmene niektorých zákonov*);
- xxii. Act No. 44/1988 Coll. on Protection and Utilization of Mineral Resources as amended – Mining Act (*Zákon o ochrane a využití nerastného bohatstva v znení neskorších predpisov – Banský zákon*).

## 2 Procedural laws

The general regulations of Act No. 71/1967 Coll. on the administrative procedure as amended (herein only referred as “Administrative Code”) shall apply to the cadastral procedure, unless the Cadastre Act or other statute states otherwise. In this context, Act of the Slovak National Council No. 145/1995 Coll. on administrative fees as amended (*Zákon o správnych poplatkoch*) will also be relevant for the decision of the cadastre office, for instance, on the application for incorporation.

The Civil Procedure Code – Act No. 335/2007 Coll. as amended (*Občiansky Súdny Poriadok*), is another procedural tool, in particular in regarding the enforcement of claims.

Furthermore, Act of the Slovak National Council No. 323/1992 Coll. on Notaries and Notarial Activities as amended – the Notary Act (*Zákon o notároch a notárskej činnosti*) is relevant, whenever it is necessary to involve notary public in real estate transactions as, for instance, during the signing of the transfer agreement.

Special rules apply to the transfer of real estate during execution proceedings under Execution Act No. 233/1995 Coll. as amended (*Zákon o súdnych exekútoroch a exekučnej činnosti – Exekučný Poriadok*) or in bankruptcy and restructuring proceedings under Act No. 7/2005 Coll. on Bankruptcy and Restructuring as amended (*Zákon o konkurze a reštrukturalizácii*). Finally, Act No. 572/2001 Coll. on Voluntary Auctions as amended (*Zákon o dobrovoľných dražbách*), which is only in force since 1 January 2003, regulates the process of the acquisition of the real estate being sold by out of court auction.

### 3 Recent legislative changes in real estate law and outlook

Only recently, the Slovak legislator has adopted several new laws, resulting on changes to several other laws, which are outlined below:

**a Act No. 669/2007 Coll. on Emergency Measures on Preparation of Construction of Selected Highways and High speed roads and on Amendment of the Cadastre Act as amended by Act No. 86/2008 Coll.**

The Act became effective on 11 December 2007; it regulates the expropriation of real estates in localities, which are determined for the construction of D1 highway<sup>6</sup>. The aim of the Act is to accelerate the administrative preparation of the highway construction within PPP projects, so that the contracts with the suppliers can be concluded by 1 March 2008.

The Act enables:

- the exclusion of the Slovak state's expertise in cases when the government will decide on the investment upon the feasibility study within the framework of preparation of the contracts with suppliers in the form of a public-private partnership,
- the usage of a geometric map (*geometrický plán*) without its certification by the cadastre office for the purposes of completing the expert's appraisal (*znalecký posudok*) and for the purposes of repurchase and expropriation of plots,
- that the acquisition of the ownership rights and other rights to all of the plots does not necessarily have to be proven to the building office within the building permit procedure, but to the full extent within the (later) occupancy permit procedure,
- to agree with the present owner of the building assigned for living (i.e. a residential building) securing new accommodation of new living through purchase or construction of a flat or a family house,
- to shorten the terms in the relevant procedures,
- the exclusion of the procedural provisions in the relevant procedures enabling the parties to the procedure and parties concerned to cause obstructions or to cause ineffective administration and restraint of the procedure by means of execution of unnecessary procedural acts,

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6 Highway project D1 concerns the following route through Slovakia Hričovské Podhradie – Ivachnová, Jánovce – Jablonov, Fričovce – Svinia) and R1 motorway (Nitra-west – Hronský Beňadik, Banská Bystrica – north orbital. Construction of the D1 highway together with R1 main road are together the first PPP projects in Slovakia.

- the amendment of the Cadastre Act, so that it will be possible to record in the Real Estate Register the geometric maps upon the constructor's request.<sup>7</sup>

Please note that only recently, a new bill has been submitted with the aim of increasing the number and area of localities allocated for the construction of highways and high speed roads<sup>8</sup>.

<sup>7</sup> In this context it should be noted that prior to this Act in 2007, the Slovak Ministry of Construction and Regional Development submitted another bill to the Slovak Government, which already dealt with the preparation of "strategic constructions". It never came into force. Unlike the normal case, where expropriation is done by the procedure stipulated in the Building Act, this first bill should bring a new expropriation procedure, if it concerns the construction of highways, important investments and other constructions, which will have significant economic impact for the Slovak Republic. Overall, there have been many protests from the Slovak business community, as well as from legal experts. According to some Slovak legal theoreticians, the initial bill was regarded as being in contrast with the Slovak Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms that which both protect ownership rights in Slovakia. The reasons for the criticism were the following: Firstly, the bill stipulated the "strategic plot", which is defined in the bill. It further knows "another strategic plot" which is not defined in the bill, but the Government of the Slovak Republic will have – in every single case, according to the public interest – the right to decide what is another strategic plot and what is not. Should the government decide that a "strategic construction" should be erected on a plot, the Ministry of Construction and Regional Development will issue a certificate proving that the strategic construction is in the public interest. This certificate cannot be appealed and not even the Court can reverse it. This was regarded as discrimination against the owners of such strategic plots, because in contrast to owners of "normal" plots, they cannot appeal against this decision in court. Secondly, the bill stipulated monetary reparation for expropriation of the plots according to an expert's opinion. However, the statute was very unclear on these provisions and it does not clarify what must be done if the expert's opinion is wrong. Thirdly, according to the bill, the general two-year period within which the construction must be started on the expropriated plot should be prolonged to five years. Therefore, in the case of an expropriated plot, which should serve for a strategic construction, the time limit is five years. Again, there is inequality between owners of dispossessed plots and owners of dispossessed strategic plots. Fourthly, the court will not have the right to suspend the decision of the expropriation of strategic plots as it has with the dispossession of "normal plots". Therefore, the constructor can keep a building on the strategic plot even when the court is in the decision procedure, whether it has the right to do it or not. *Valko/Tomlainová*, Deprivation of "strategic plots" in context with the Slovak Constitution and the Convention on Protection of Human Rights and Fundamental Freedoms, in Bulletin of the Slovak Bar Association 11/2007, 21 and on.

The bill was criticized not to guarantee to the owners of the strategic plots their right for effective reparation procedures and their right for judiciary and other legal protection. Furthermore, the bill was seen to constitute inequality of the parties in court. Moreover, it was considered not to fulfil the requirement for exactness and precision and to create an unequal and disadvantageous status of the owners of the expropriated strategic plots in comparison to the owners of the expropriated normal plots. On the other hand, owners of strategic plots once they have erected a building would have an advantageous status in comparison to the investors of non-strategic plots. As all these facts were in contradiction with the Constitution of the Slovak Republic and the Convention for the Protection of Human Rights and Fundamental Freedoms the initial bill did not successfully pass the legislative process.

<sup>8</sup> This refers to the following roads in the following areas: D1 Jablonov – Behárovce, D3 Žilina – Skalité state border SR/Poland, D4 Jarovce – Stupava – state border SR/Austria, R1 Banská Bystrica – Ružomberok, R2 intersections with D1 Trenčín – Košice, R8 Nitra – Topoľčany – Partizánske – R2.

**b Act No. 664/2007 Coll. on Change and Amendment of the Road Act**

The Act became effective on 1 January 2008 and it is connected with the electronic road fee collection on selected roads. Article 3g regulates some of the rights to the real estates. In accordance with these, the owner of the highway, motorway and primary road is obliged to accept in the inevitable scope and for a one-time reimbursement the right of the administrator of the electronic road fee collection system (i.e. a toll system) or a person authorised by the administrator to placement, service and administration of the toll system infrastructure and the right to control it including its connection to the technical infrastructure and supply networks.

Together with this Act, Act No. 25/2007 Coll. on the Electronic Collection of Road Toll and Act No. 639/2004 Coll. on the National Highway Company were amended as well.

**c Act No. 571/2007 Coll. on Change and Amendment of Restitution Act and of Act No. 330/1991 Coll. on Land Modifications, Arrangement of Land Ownership, Cadastre Offices, Slovak Land Fund and Land Communities**

The Act became effective on 1 January 2008 and it indirectly modified Act No. 503/2003 Coll. on Restitution of Land Ownership (Restitution Act). Article 6 of the Restitution Act states, that an alternative plot shall be transferred to the ownership of the entitled person, if this person is authorized by a decision to obtain reparation for the plots, if the claim concerns a plot with a size of more than 400 square metres and if the financial claim represents more than 5,000 SKK. The Act concerns the restitution of forest land (i.e. land belonging to the Forest Land Fund) and agricultural land (i.e. land belonging to the agricultural land fund).

Furthermore, Article 6 par. 6 of the Act states, that the entitled person may within a period of three years from the day of issuance of a valid decision of the relevant cadastral office (*obvodný pozemkový úrad*), ask the Slovak Land Fund or the administrator of forest land in the ownership of the state (*správca lesného majetku vo vlastníctve štátu*) to pay the reparation.

Finally, according to Article 6 par. 7 of the Act, if the entitled person requires the reparation in the form of an appropriate alternative plot, he/she may suggest such a plot himself/herself. The suggested plot needs to be situated in the region, the part of which is the cadastral territory where the original plot was situated. The annex of the application shall be the extract from the Real Estate Register containing data on the alternative plot.

**d Act No. 569/2007 Coll. on Geological Work**

The Act became effective on 1 January 2008 and its fifth part regulates the conditions of access to third party real estates and damage compensation for non-compliance with the law.

According to Article 2 par. 1 of the Act, geological work means geological investigation and examination. The constructor of a geological work is, after ending of the geological investigation and examination, obliged to liquidate the geological products and objects, which have been made within the geological mission. The

aim of the Act is to oblige the operator of geological works to return the land to its former state, after completion of the work.

The Act enables the transfer of geological products and objects in case of their possible utilization and determines the method of calculation of the minimal price of the geological product or object.

The Act also regulates the possibility of access to third party real estates while performing geological work.

Another aim of the Act is the improvement of transparency, acceleration and simplification of the administrative procedure.

**e Act No. 359/2007 Coll. on Prevention and Reparation of Environmental Damage**

The Act became effective on 1 January 2008 and regulates the rights and obligations of the operators by preventing and repairing of environmental damage including bearing the cost related to it.

Article 22 of the Act focuses on administrative torts. In its Section 3, the Act states that the competent authority shall impose a penalty up to 1 Mio. SKK (approximately 33,000 EUR) on a legal entity or a natural person being an entrepreneur, that has taken and performed the precautionary measures or corrective measures connected with the real estate in the ownership of a person different from the originator of the immediate threat of environmental damage, if it has not returned it to the original state. The aim of the Act is, *inter alia*, to protect third persons other than the originator of the environmental damage or its immediate threat, in particular due to the fact that these entities are operators and handlers of hazardous chemicals or other potentially harmful substances.

The following is an outlook of governmental drafts that are currently<sup>9</sup> in the Slovak legislative process:

**f Act No. 219/2008 Coll. on Amendment of Act No. 220/2004 Coll. on the Protection and Usage of Agricultural Land and on Change of Act No. 245/2003 Coll. on Integrated Prevention and Control of Environmental Pollution**

The Act, which was approved by Parliament on 21 May 2008, regulates matters related to enforceability and simplification of procedures of state administrative bodies competent for the protection of agricultural soil.

It also tightens conditions for the deprivation of agricultural soil for building and other non-agricultural purposes by means of fees for the deprivation of agricultural soil as a systematic economic method for protection of agricultural soil of the highest quality.

The usage of agricultural land for non-agricultural purposes is subject to the prior consent of the authority of agricultural land protection (*Obvodný pozemkový úrad*), where the relevant agricultural land is located. A person proposing the usage of agricultural land for non-agricultural purposes is obliged to pay a fee for the permanent

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<sup>9</sup> As of 1 March 2008.

or temporary deprivation of agricultural land in accordance with the so-called Code of evaluated land ecological unit (*kód bonitovanej pôdno-ekologickej jednotky*). The obligation to pay this fee also refers to persons who have already occupied agricultural land without a decision of the respective authority of agricultural land protection. Failing to pay this fee on time triggers a penalty in the amount of 0.5% per day of the outstanding amount, starting from the maturity day. Both, the fee as well as the penalty is regarded a revenue into the state budget.

However, in specific cases no fees will have to be paid, as for instance in the case of buildings, facilities and or other measures necessary for access and protection of agricultural land (field roads or flood-protection measures), the construction of highways, high speed roads and community roads in the ownership of the municipality pursuant to the approved land use plan or the construction of a commercial building that is classified by decision as an investment in the public interest.

In connection with the fees a governmental decree was approved determining the amount and method of payment of the fees for deprivation of agricultural soil for other than agricultural purposes, and their maturity. According to the current unapproved bill of the above-mentioned decree, the fee for one square meter of class 1 agricultural land is 500 SKK (approximately 16 EUR) whereas the fee for the lowest class land is 200 SKK (approximately 7 EUR). However, as the decree has not been approved yet, these fees can differ.

Both, the Amendment and the decree, which are subject to huge criticism by the political opposition in Slovakia, will become effective on 1 January 2009. The main criticism is that these laws will have a negative impact on future Greenfield investments by foreign investors in Slovakia.

Act No. 219/2008 Coll. also amended Act No. 129/1996 Coll. on certain measures to accelerate the construction of highways and high-speed roads. This amendment became effective on 1 July 2008.

In this context, the Act introduced certain measures to be taken in order to accelerate the settlement of proprietary rights and the preparation of the construction of highways and high-speed roads. It also refers to the regional land use planning and decision-making, the regime of deprivation of agricultural land from the Slovak Agricultural land fund (*Poľnohospodársky pôdny fond*), the deprivation of forest land from the Forest Land Fund (*Lesný pôdny fond*) and generally to the question of expropriation.

Pursuant to this Act, if forest land is designated for the construction of a highway, the consent of the owner or manager of the forest land is not necessary pursuant to Act No. 326/2005 Coll. on forests. The state administrative authority on forest management shall issue a decision on the deprivation or restriction of use and fix an appropriate term for the conclusion of an agreement where the amount and manner of compensation for the restriction of ownership rights is set out.

### **g Bill on Amendment of the Cadastre Act**

The aim of the authority submitting the Bill – the Authority for Geodesy, Cartography and Cadastre of the Slovak Republic (*Úrad geodézie, kartografie a katastra SR; Amt für Geodesie, Kartografie und Kataster der Slowakischen Republik*) – is to

respond to the ever-growing requirements and to establish a modern Real Estate Register, which would be able to provide quick and qualitative information in a way comparable to the services of other Member States of the European Union.

A further aim of the Bill is to improve know-how in the field of disposal with the real estates which will cause more transparency on the market with real estates, better orientation of the citizens as well as of the state authorities on prices of the real estates and reduction of speculation with plots.

The Bill should become effective on 1 September 2008. For more details see II.A.3 below.

**h Act No. 285/2008 on Change and Amendment of Act No. 330/1991 Coll. on Land Modifications, Arrangement of Land Ownership, Cadastre Offices, Slovak Land Fund and Land Communities**

The Act<sup>10</sup> came into effect on 31 July 2008 and introduces a reduction to the organizational structure of the Slovak Land Fund (“SLF” or “fund”) to two bodies: (i) the fund’s Council; and (ii) its general director.

Thus, the Act wants to significantly boost the supervisory and inspection activities to be carried out by an eleven member Council of the SLF. Parliament would elect the board members based on nominations by the Cabinet. This is supposed to bring transparency to the SLF because Parliament is the representative of the whole political spectrum. The Fund’s general director and deputy director should serve as its authorized representatives nominated by the Minister and appointed by the Cabinet. The submitted amendment defines issues, which allow independent action of the general director and those that require cooperation of the general director and the deputy director. The Act thus distributes powers and responsibilities of individual subjects.

The Fund’s Council is supposed to give an annual report on its activities to Parliament, which should also bring transparency into the SLF.

The Act also refers to Act No. 180/1995 Coll. on Certain Measures for the Regulation of Ownership to Land. Pursuant to Article 18 of this Act, the SLF is not allowed to use the plots owned by the Slovak state mentioned in a specific provision, plots of unknown owners and plots, the ownership of which is not recorded in accordance with provisions on land registration (i.e. the Cadastre Act), in a set of geodetic information and in a set of descriptive information. It is only obliged to lease it for the purposes of agriculture or forestry or in accordance with the decision of a competent state administrative body temporarily also for other purposes.

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10 The purpose of this Act is to establish transparency in land transfers, land changes and land rents. This follows as some unclear transfers of land have taken place especially in the High Tatra in 2007 and caused the most serious crisis in the Slovak government till now. Many facts suggest corruption or political connections between the Slovak land fund and the new assignees of the land. Therefore proposals of transformation have been outlined from both the opposition and the coalition political groupings. The Act influences the transparency of the Slovak Land Fund. The coalition, particularly the agriculture department, wants to make activities transparent by changing the structure and organisation of the Slovak Land Fund.

The Act stipulates the creation of an *online* register of all contracts, which are signed by the SLF within five working days after they have come into force. The Act proposes a strict obligation of the SLF to go public with all transfer contracts based on restitution, land change contracts and land rent contracts. There shall also be a register of substitution lots. These registers should also bring transparency to the SLF. Therefore, for the sake of preventing corruption, an obligation is proposed for the SLF to disclose contracts concluded in connection with the performance of its competence.

#### **i Bill on Change and Amendment of Act No. 40/1964 Coll. Civil Code**

The main aim of the bill is to minimize the effects of a void contract on purchase of real estates. Pursuant to Article 70 of the Cadastre Act the information on the ownership right to the real estate is truthful and binding unless proven otherwise (material publicity of the Real Estate Register – the Material Disclosure Principle<sup>11</sup>). This might lead to the situation that the person who bought a real estate in good faith and believes the data stated on the letter of ownership to be true can have its purchase rendered void by a court. This would invalidate not only all previous transactions, but also all future purchases. The buyer would have to return the real estate to the legitimate owner.

In order to minimize the negative effects of the Material Disclosure Principle of the Real Estate Register and to increase liability of the subjects authorized to draw up real estates purchase contracts, these contracts will have to be drawn up in the form of a notarial deed or will have to be authorized by an attorney. The only exceptions will be:

- contracts on purchase of real estates where one of the parties to the contract is a public body or other administrative authority,
- contracts on purchase of real estates where one of the parties to the contract is a legal entity where the state is the 100% shareholder.

Notaries and attorneys will be obliged to inform the relevant cadastral administration on the planned purchase of real estates before the execution of the notarial deed or before the authorization of the contract. In addition, notaries and attorneys will bear responsibility for the correctness of data in the contracts. In the present legal situation, the compensation of damages is often claimed from the state. Therefore, the bill aims to transfer this responsibility for compensation from the state to notaries and attorneys. However, both notaries and attorneys shall be insured for this purpose.

According to the bill, this new legislation shall come into effect on 30 September 2008 and shall only apply to contracts concluded after this date.

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<sup>11</sup> For more details see II.E.7.

## B Real estate law

### 1 Legal environment

#### a Historical overview – situation before 1989

Before 1989, the government did not have an interest in the entry of plots and changing of the owner into a state organized register. This led to the fact, that there were a large number of plots, which were not legally settled. Some lands were not registered; some were registered, but ownerless or the owner was recorded but his permanent address, date of birth and personal identification number were missing. Presently, most of these plots, which were not clarified by the law, are in rural areas (outside built-up areas)<sup>12</sup>.

In the past, there was a lack of interest from the government to keep track of notification of land into the Real Estate Register because the government was trying to suppress private ownership for citizens. The other aspect, which is not in favour of land ownership in the Slovak Republic, is that plot size is small otherwise big lots have a number of joint owners.

Frequently plots were sold informally by verbal agreement, which meant that there was an actual change in usage of the plot without a written contract of conveyance of real estate and without notification into Real Estate Register. On the grounds of this informal conveyance, the new owner started to use his or her lot.

From 1 January 1951<sup>13</sup>, when the at that time new Civil Code Act No. 141/1950 Coll. came into force, the consensual principle came into force, by which real property was not gained by entry to the Land Books but by the conclusion of a contract. Act No. 65/1951 Coll. changed this principle since 1 July 1951, which stipulated that the conveyance of real estate must involve the conclusion of a contract and the consent of the so-called District National Committee. Entry into Land Books only had a declaratory character<sup>14</sup>.

From 1964, the Civil Code at that time valid established the so-called registration principle, which was in force until 31 December 1992. By this principle, a contract on transfer of real property was valid only after registration in a state notary's office. Notification into the relevant land registry only had a registration character<sup>15</sup>. This principle was changed on 1 January 1993.

12 Currently, several 100,000 of such unknown owners exist. More details see *Orosz*, Ruling of the Constitutional court of the Slovak Republic on land of unknown owners, in *Ars Notaria* 4/2006, 27 and on.

13 More details and a historical overview see in *Kutenič*, The activity of notaries public when recording ownership title and other rights *in rem* to real estate and renewal of ownership rights to land, in *Ars Notaria* 1/2006, 19 and on; *Sudzina*, "Abandoned land" in the Slovak legal order, *Bulletin of the Slovak Bar Association* 6/2007, 35 and on.

14 *Sudzina*, "Abandoned land" in the Slovak legal order, *Bulletin of the Slovak Bar Association* 6/2007, 36.

15 *Sudzina*, "Abandoned land" in the Slovak legal order, *Bulletin of the Slovak Bar Association* 6/2007, 36.

## **b Procedure on renewal of the documentation of plots – situation after 1989**

### **ba General remarks**

The situation in Slovak real estate law needed to be changed after 1990 and so the Slovak National Council passed legislation such as<sup>16</sup>:

- Restitution acts, which deal with restitution of real property taken before 1990;
- Act No. 330/1991 on Land Modifications, Arrangement of land ownership, cadastre offices, Slovak Land Fund and land communities as amended;
- Act No. 293/1992 on the Modification of Some Ownership Rights to Real Estate as amended – regulates conditions and process of notification of non-registered real estate ownership relationships: The Act introduced a new way of registration of real estate holders into the evidence of real estates (the Real Estate Register at that time pursuant to the former Act No. 22/1964 Coll. on evidence of real estates as amended) on the basis of notarial verification. In this context, this statute also introduces the institute of the apparent owner (*domnělý vlastník*), which was subsequently widely misused, so it was abolished on 1 December 2000;
- Act of the Slovak National Council No. 180/1995 Coll. on Some Measures on the Settlement of Ownership to land as amended (Act No. 180/1995).

In the past there were two categories of plots, which became necessary to sort out after 1990<sup>17</sup>:

- non-entered plots – some plots were not evidenced in land books because they were not usable for any purpose or they were public property; and
- plots with an unknown owners.

### **bb Register of the renewed documentation on plots**

In the last years, the arrangement of ownership to plots is done in the course of the procedure on renewal of the documentation of some plots and legal relations to them upon Act No. 180/1995 that has become effective on 1 September 1995.

In this procedure, available data on plots and legal relations to them provided by tenants of the plots or by other authorized persons shall be found out from the cadastral documentation, from the documents submitted by the parties to the procedure, from the statements of the witnesses and from other evidence gained namely during the examination in the municipality and on the basis of this data, the Register of the Renewed Documentation on Plots (*Register obnovenia evidencie pozemkov – ROEP*) shall be formed.

ROEP is a register, which records all plots with unknown owners, which are recorded in the Real Estate Register and these plots are in the ownership of the

<sup>16</sup> *Kutenič*, The activity of notaries public when recording ownership title and other rights *in rem* to real estate and renewal of ownership rights to land, in *Ars Notaria* 1/2006, 23.

<sup>17</sup> *Sudzina*, “Abandoned land” in the Slovak legal order, *Bulletin of the Slovak Bar Association* 6/2007, 38.

state. Currently, more than 100,000 hectares of forest do not have an owner. Overall, in Slovakia approximately more than two million unknown and/or incorrectly documented owners exist.

Unknown owners and owners whose place of permanent residence or seat is not known are represented by the Slovak Land Fund, alternatively the State Organization of Forest Management if plots belonging to the Forest Land Fund are in question.

Act No. 180/1995 regulates this, as according to the Slovak legal system all plots should have an owner<sup>18</sup>. This Act also lays down that non-entered plots are in the ownership of the Slovak Republic or in municipal ownership. If the non-entered plot was in a rural area it came into the ownership of Slovak Republic. If the non-entered plot was urban area it came into municipal ownership. These plots are in the ownership of the Slovak Republic and the Slovak Land Fund administers them.

By Act No. 503/2003 Coll. on Restitution of Ownership to Land, a new Article 15 was introduced into Act No. 180/1995 Coll. with effect of 1 January 2004. Pursuant to Article 15 par. 1 of Act No. 180/1995, plots of unknown owners registered in the Real Estate Register during the period of at least one calendar year should become the ownership of the state and shall be vested into the administration of the Slovak Land Fund or state organization of the forest management, if plots belonging to the forest land fund are in question.

However, upon Resolution of the Constitutional Court of the SR No. 218/2005 Coll., from 4 May 2005 on the effect of Article 15 of Act No. 180/1995 was suspended until the decision of the Constitutional Court of the SR.

Due to the decision of the Constitutional Court of the Slovak Republic (PL.ÚS 11/05) Section 15 of Act No. 180/1995 is in conflict with the Constitution of the Slovak Republic and therefore lost its effect<sup>19</sup>. That means that ownership of plots with an unknown owner stayed in the ownership of actual owner and it does not revert to the state. Owners of these plots or legal successors can still prove their ownership rights. Until then, these plots will be in the administration of Slovak Land Fund or a governmental organization of forest Management.

### **c Some specific aspects of Slovak real estate law**

ca Buildings on a plot do not automatically belong to the owner of the relevant plot

As the principle *superficies solo cedit* does not apply, buildings are not automatically a dependent component of the real estate; hence, the owner of the plot of land must not be identical with the owner of the building. If a building is situated on

18 However, Article 100 (2) of the Civil Code states forfeiture of all rights in property except ownership rights, which are not statute barred even when the owner of a property did not perform his warranty based on ownership rights; *Sudzina*, “Abandoned land” in the Slovak legal order, Bulletin of the Slovak Bar Association 6/2007, 38.

19 By decision of the Constitutional Court No. ÚS 11/05-39 dated 22 August 2006, Article 15 of Act No. 180/1995 Coll. was declared to be in contradiction with Articles 1 par. 1, 20 par. 1 and 4 and 46 par. 1 and 2 of the Slovak Constitution.

a plot, being in someone's ownership, it could, but need not necessarily be, in the ownership of that person. If both real estates are in the ownership of this person, both the plot and the building are recorded on the same Ownership Certificate.

In this context, it shall be noted that for several years already, there are rumours in the Slovak legal environment to again introduce the principle of *superficies solo cedit* into Slovak law. This is in particular the aim of a new Civil Code that shall unify contractual civil law and commercial law, where several legislative working groups were established in the course of the last ten years and also currently; however, without any results yet.

cb No acquisition of real estate in good faith

Slovak law contains a presumption that the persons registered in the Real Estate Register are deemed to be the owners of the real estate. Nonetheless, this presumption may be rebutted. Where the information in the Real Estate Register is different from the actual status, the actual status is always the decisive one<sup>20</sup>. If a person wishes to challenge the validity or accuracy of the registered information, such claim must be proved (for instance, before a court).

As a general rule, a purchaser who acquires real estate from a person who is not the legal owner will not become the legal owner of the real estate even though the first person was registered as an owner in the Real Estate Register.

According to the prevailing Slovak legal theory the legitimate owner enjoys the absolute protection of his ownership rights before any other person who acquires in good faith. Therefore, if, as a result of this principle, such person would lose his ownership title, he has the possibility to sue the cadastre office or the state. It is important to note that the ownership right is not statute barred (*unverjährbar*) and therefore the legitimate owner can claim his/her right at any time.

Slovak law recognizes only some few exemptions from the principle that "no one can transfer more rights than he has". These exemptions are known as acquisition in good faith. However, these acquisitions in good faith mainly relate to either the acquisition of ownership title to movable assets (for instance, the purchase of movable assets under a commercial purchase agreement pursuant to Article 446 of the Commercial Code) or other special cases such as, the sale of a pledged/mortgaged asset by the secured creditor to a third person within the enforcement of the charge. Here the third person legally acquires ownership to the asset, even though the secured creditor is not the owner of the charge, but only acts on behalf of the charger according to Article 151m par. 1 through 6 of the Civil Code. Finally,

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20 This could, for instance, be the case where a statutory mortgage or pre-emption right was not registered with the Real Estate Register, the incorporation of the change to the title to a real estate was executed upon an invalid purchase agreement or a former owner of a real estate was successful at court, for instance, in a restitution claim.

another recognized exemption refers to the acquisition from the not entitled descendent according to Article 486 of the Civil Code<sup>21</sup>.

However, owners registered in the Real Estate Register from 1 January 1993 onwards are deemed to be *bona fide* possessors. In the case these persons remain registered as owners for more than 10 consecutive years, they are reasonably in the position to claim that they have become the owners of the real estate by way of *bona fide* possession rules.

## 2 Owners and other subjects with rights to real estate

### a Legal nature of owners and subjects with rights other than ownership rights

#### aa Owners

Owners (*vlastník*) of real estate can be private or public legal entities (i.e. companies), developers, insurance companies, banks and other financial institutions, the Slovak State and other public authorities (i.e. local authorities)<sup>22</sup>.

From the above it follows that the Slovak state and local authorities such as towns or municipalities may transfer ownership title to real estate to third persons. Generally, special care shall be taken that the seller has the proper authority to act in a real estate transaction. In this case where the seller is a local authorities or the state the investor shall take due care, whether the planned sale is in compliance with the statutes or other binding rules of the relevant authority. In practice, the sale of a real estate often requires the prior approval of the relevant decision making body of the local authority (for instance, in the case of a town, the Town's Council). In certain cases the lack of authority can trigger the invalidity of the transfer contract. Pursuant to Decision 3 Odo 21/2002 of the Highest Court of the Slovak Republic, legal acts related to property, which require the approval of the municipality's council, are only binding for the municipality after such approval has been granted. Consequently, without such prior approval, acts of the mayor of the municipality will not be regarded as valid legal acts on behalf of the municipality.

21 For more details, see the explanations to the Court Decision of the Highest Court of the Slovak Republic dated 26.02.2006, file No. 2 Cdo 196/2005, published in "From Judicial Practise" (*Z Justičnej praxe*), 2/2006, p. 23 and 27. In this decision the Highest Court ruled that a purchase contract by which a real estate was sold, is regarded as valid, although the seller was not the owner of the real estate at the time of the conclusion of the purchase agreement (as the decision on the registration of the ownership right with the Real Estate Register was pending), as long as the seller had acquired the title to the real estate afterwards. On the other hand, the Highest Court in its decision also indicates that each case requires an individual assessment of the situation, as the stability of legal relations and the rights being acquired in good faith are always to be considered. For further remarks in this respect, see *Flegel*, The reliability of ownership rights, *The Financier (Finančník)*, where the author emphasises the importance of title insurance for the owner – acquirer of a real estate. See also *Kormuthová*, The possibilities to acquire ownership rights to an asset from the non-owner in the past and today, *Judicial revue (Justičná revue)*, 11/2001, p. 1147 to 1150.

22 Certain property is excluded from private business transactions, such as natural resources or rivers, which can also be owned only by the Slovak State or municipalities. Furthermore, to some real estates the Slovak state has a statutory pre-emption right such as to agricultural and forest land or regarding constructions, which qualify as historical monuments.

Similarly, in the case where the seller is a private legal entity (i.e. a company), the Articles of Association or Memorandum of Association of the company may stipulate that certain transactions require the prior approval of the general assembly and/or the supervisory board of the company. However, such transaction remains valid, despite of the lack of prior approval. The person acting on behalf of the company (i.e. the managing director[s] or the members of the board of a company<sup>23</sup>) shall, however, be liable for any damages, which may arise from his/her unauthorized action. Unlike as in the case of a local authority, where an unauthorized act on behalf of the authority will be regarded as invalid.

#### ab Possessor

Unlike the owner, the possessor (*držiteľ*) is holding the land with his virtue and with his will. According to Article 129 of the Civil Code, a possessor is somebody, who is treating the object as his or who is performing the right for himself. Possession is in most of the cases joined with ownership to the object or concerns an object to which a legal relation exists such as a lease contract.

#### ac Detentor

On the other hand, the detentor is not someone who does not factually nor has it the will to hold the asset as its own. Moreover, it is aware that the ownership title belongs to someone else and that it possesses the asset only for a limited period of time.

#### ad Legitimate owner

The legitimate or rightful possessor (*oprávnený držiteľ*) is pursuant to Article 130 of the Civil Code somebody, who in consideration of all facts is *bona fide* right holder to the land. In this respect, it is important to outline the difference between a bona fide possessor and a mala fide possessor. The bona fide possessor is widely entitled concerning the land. He can valorise the land by, for instance, performing constructions. If the owner asks for the return of the land, the rightful possessor is entitled to compensation of costs, which arose. On the other hand, a *mala fide possessor* isn't entitled to such compensation and is obliged to pay damages, which were incurred because of illegitimate possession. Furthermore, only the legitimate possessor is able to gain ownership by positive prescription (usucaption)<sup>24</sup>.

Pursuant to Article 134 of the Civil Code, positive prescription (*vydržanie*) is a legal form of ownership acquisition, where a legitimate possessor holds the land in possession for a period of ten years and without interruption. However, land, which can be only in the ownership of the state, cannot be acquired by positive prescription (i.e. usucaption) (Article 134 par. 2 of the Civil Code). A person who treats property as its own or exercises such right for itself is deemed to be the

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23 Under Slovak law, a proxy (*prokurista*) is generally not entitled to perform real estate transactions, i.e. neither to sell or to purchase or to encumber them. Such right would have to be explicitly stipulated in the proxy's authorization.

24 See more in *Fekete*, Civil Code – Commentary, explanations to Article 123 of the Civil Code, p. 259.

possessor of the property in question. This legal institute was initially introduced into the Slovak law with effect of 1 January 1992<sup>25 26</sup>.

## **b Foreign and domestic entities**

Under Article 19a of the Foreign Exchange Act, foreign legal entities and individuals (together, foreigners) are generally allowed to acquire real estate in Slovakia. The ban for foreigners to acquire agricultural and forest land outside the built-up area of a municipality (*mimo zastavanej plochy obce*), is still valid. Consequently, foreign individuals and legal entities are entitled to acquire ownership of real estates in the Slovak Republic with the exception that they may not acquire land in the “agricultural land fund” located outside the border of the build-up area of a municipality and land in the “forest land fund” located outside the border of a build-up area of a municipality. However, the following persons may acquire agricultural and forest land:

- foreign individuals and legal entities that inherit the property,
- foreigners also with Slovak citizenship, and
- EU citizens with the right to a temporary residence permit with respect to land in the “agricultural land fund” if s/he has been farming such land for at least three years after EU accession.

Slovak legal entities with (a) foreign shareholder(s) were allowed to acquire real estates in Slovakia without any restrictions, even before the Slovak Republic joined the European Union on 1 May 2004.

Finally, the ownership right does not necessarily have to be assigned by the owner of the object of purchase. In some cases, a person who is not the owner, e.g. assignment of right of management of state property from state organizations to other entities, can also perform it.

## **3 Methods for the acquisition of real estate**

### **a Share vs. asset deal**

Commercial real estates are rather sold by way of a share deal than by an asset sale, where a company owns the real estate and the shares in it are sold. The purchaser of the shares generally acquires all rights and liabilities of the company. In this case, the owner of the real estate remains unchanged; therefore, no additional entry in the Real Estate Register is required.

<sup>25</sup> *Fekete*, Civil Code – Commentary, explanations to Article 134 of the Civil Code, p. 300.

<sup>26</sup> Until 1995, Slovak law did also recognize the presumed owner. Presumed ownership is a specific institute adopted in Slovakia in 1992 by Act No. 293/1992 Coll. and abandoned in 1995 by Act No. 180/1995 Coll. This title was awarded by notary verification to persons meeting prescribed requirements (possession of the particular land). Unless other person applied his right concerning the land for 10 years, the registered person becomes the owner on the basis of usucaption. See more in *Kutenič*, The activity of notaries public when recording ownership title and other rights *in rem* to real estate and renewal of ownership rights to land, in *Ars Notaria* 1/2006, 24; Bulletin of the Slovak Bar Association 11/2007, 21 and on; *Sudzina*, “Abandoned land” in the Slovak legal order, Bulletin of the Slovak Bar Association 6/2007, 36 and on.

A real estate may also be acquired under a contract on the sale of an enterprise or its part according to Articles 476 to 488 of the Commercial Code, which is a special type of asset deal. Typically, the purchaser also acquires liabilities and obligations other than those related to the real estate. Overall, asset deals are more complex than share deals: Regarding real estate, in order to perfect the purchase transaction, the ownership title must be registered to the benefit of the new owner.

## **b Legal grounds**

According to Article 132 of the Civil Code, the ownership right to a thing may be acquired on the basis of a purchase, donation or other contract, by way of succession, on the basis of a decision of a state authority or on the basis of other facts laid down by an act. These manners of acquisition of the ownership right likewise apply to the real estate property. The purchase or sale of a real estate is mandatorily governed by the provisions of the purchase agreement included in Articles 588 to 600 of the Civil Code. However, special laws may have to be applied if the type of the real estate requires it. Moreover, parties to a purchase agreement often agree on certain provisions of the Commercial Code (see I.C below for more details).

As already mentioned special rules apply to the sale of real estates during execution, bankruptcy and restructuring proceedings.

## **4 The object of real estate transactions**

An investor, who is looking for land in Slovakia for investment purposes, should, when selecting the land, also consider whether the land will be usable for its intended purposes<sup>27</sup> (for instance, when the investor intends to build an industrial building such as a production plant). Certain lands could be protected by a general ban or only a temporary limitation to build on it. In particular, before buying the real estate, the investor should always assess the relevant zoning (i.e. land-use planning) documentation. The land-use planning documentation is the tool determining how a certain area can be developed and used. It consists of the relevant land plan of a zone (zoning plan), the land plan of the municipality and the regional land plan of the region. The positioning of a construction is possible only on the basis of a zoning permit<sup>28</sup>. Such will not be issued, if the construction

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27 The building process in the Slovak Republic is regulated by Act No. 50/1976 Coll. on Territorial Planning and Building Act (“Building Code”) as amended. The most important decisions that must be issued within the process of the construction of a building are – the (i) decision on the positioning of the building, the (ii) building permit and the (iii) occupancy permit.

28 The position of a building is determined on the basis of a zoning permit. The decision on the positioning of the building is one type of zoning permits governed by the Building Code. A zoning permit usually already approves the technical features of the construction to be built on a certain plot of land. The decision on the positioning of the building cannot be issued, if the position of the building is in conflict with the land-use planning documentation. In that case, the prior change of the land-use planning documentation would be necessary. The decision on the positioning of the building is valid only for two years as of the date on which it entered into force, unless a longer expiry date has been set in the decision. Buildings may be constructed only with a valid building permit. Within the building proceedings the person has to prove either its right of ownership or another right to the plot (for instance, arising from a lease agreement or an easement). Newly constructed buildings may be put into use only on the basis of an occupancy permit, which allows for the use of the building for the prescribed use, and, if necessary, prescribes the terms for the use of the building.

positioning would be in conflict with the land-use planning documentation – in particular, with the zoning plan of the concrete region. Generally zoning permits and land-use planning documentations are issued and changed by municipalities, which are the respective land planning authorities.

Agricultural land and forest land fall under a specific regime. If agricultural land should be used for construction purposes then the use of such agricultural land must be changed prior to its use by the competent authority. In such a case the topsoil should be moved to other plots of land at the expense of the investor. In particular, the following applies:

In the case of agricultural land, according to Article 17 of the Act No. 220/2004 Coll. on the Protection and Use of Agricultural Soil, the district land authority shall decide on the deprivation of the agricultural soil. If forest land is concerned, pursuant to Act No. 326/2005 Coll. on the Forest Act as amended, the district forest authority as the first stage, as well as the regional forest authority as the second stage authority will decide on this. Apart from agricultural land, the deprivation of forestland for construction or other purposes is subject to various fees (see Article 9 of the Forest Act). In this context, Act No. 219/2008 Coll. must be mentioned which was only recently approved and the aim of which is to significantly tighten the conditions for the deprivation of agricultural land for building and other non-agricultural purposes. For more details, see I.A.3.f above.

When selecting the land, future use should also be taken into consideration such as the possibility of requiring an Environmental Impact Assessment (EIA) for specific constructions in order to eliminate the risk that the building could have a negative impact on the environment.

In general, additional information on the real estate can be learned out through a search in the Real Estate Register, where important information will be included in the relevant ownership certificate extract. However, it is not recommendable to only rely on the information included therein, but to additionally check the title and the thereto-related deeds thoroughly. Information in the Real Estate Register is only binding unless the opposite is proved. Therefore, if there is a discrepancy between the actual status and the registered status, the actual status would be considered as the decisive status. The reason for this is that Slovak law does not recognize the acquisition of real estate in good faith. As already mentioned in I.3.i above, as currently the compensation of damages is generally claimed from the state, a new bill aims to transfer this responsibility for compensation from the state to notaries and attorneys (for more details see also I.B.1.c.cb above).

## **5 Forms of ownership**

The Civil Code defines the term “assets” and recognizes movable assets and non-movable assets (i.e. real estates). It lays down what is ownership and stipulates the possible different forms of ownership. The provisions of the Civil Code mandatorily govern the purchase agreement applicable to the acquisition of real estate such as land and constructions. However, the parties can agree that the respective provisions of the Commercial Code may govern certain issues in the purchase agreement, mainly those not being covered by the Civil Code (for instance,

a contractual penalty or withdrawal from the agreement in the case of a party's failure).

Slovak law distinguishes between exclusive ownership and co-ownership of land and buildings. This means that a condominium style ownership is permitted where, for example, a person may be the exclusive owner of a part (unit) of a building and co-owner with other unit owners of the common areas, the structure and the land on which the building stands. Alternatively, more than one person may own the whole of a building and/or plot of land. In each case, the co-owner is said to have an "ideal" share in such common parts or the whole of the building or land plot.

A property may be owned by more than one person, either natural person or legal entity. The Civil Code recognizes co-ownership, an ownership to one asset by more than one person, and joint ownership – the ownership of spouses.

**a Co-ownership according Articles 137 to 142 of the Civil Code  
(*Podielové spoluvlastníctvo*)**

In co-ownership, more than one subject owns an object. Their relevant share specifies the ownership portions to the object. According to Article 137 par. 1) of the Civil Code, the share represents the extent to which individual co-owners take part in rights and obligations arising from the co-ownership of the common object.

The co-ownership share is a feature of co-ownership. Each co-owner participates in the rights and obligations arising from co-ownership in proportion to the size of its co-ownership share. Co-ownership can be created by:

- (i) agreement,
- (ii) decision of a state authority, or
- (iii) by law<sup>29</sup>.

The Civil Code does not recognize real co-ownership, but recognises the ideal share. Therefore, the co-ownership share cannot be regarded as a precisely stated part of a real estate. Not even a numeric specification of the size of the co-ownership share means that the new co-owner would become an owner of the specified part of the object.<sup>30</sup>

Rights and obligations of co-owners create the content of the co-ownership share. All co-owners have the same rights and obligations to the object. Therefore, also a majority calculated according to the ratio of ownership shares shall decide the administration of the co-owned object.<sup>31</sup> Furthermore, a co-owner who does not agree with such administration of the common object cannot successfully take this matter before a court.<sup>32</sup>

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29 Article 5 par. 1 b) of Act No. 182/1993 Coll. on Ownership of Apartments and Non-Residential Premises.

30 See Court decisions R 61/1966.

31 Article 139 par. 2 of the Civil Code.

32 Court decision 1 Cdo 19/96.

To respect the rights of other co-owners, if the share is transferred, the Civil Code in Article 140 recognizes the pre-emption right<sup>33</sup> (*right of first refusal*). If the co-owners do not agree on the manner of exercising their pre-emption right, they shall have the right to buy the share proportionally according to the size of their shares. However, the pre-emption right is excluded if the co-ownership share is transferred to a close person.

The co-ownership right to a real estate can be cancelled either by written agreement of the co-owners or by a decision of the court (see Articles 141 and 142 of the Civil Code).

**b Joint ownership according Articles 143 to 151 of the Civil Code**  
(*Bezpodielové spoluvlastníctvo manželov*)

The joint ownership may arise only between spouses.<sup>34</sup> The joint property of spouses is dependent on the existence of the marriage, it cannot exist separately. According to Article 143a of the Civil Code, the spouses may extend or restrict the extent of their joint property stipulated by law. However, they cannot eliminate it completely. According to Article 143 of the Civil Code, the joint property of spouses shall consist of all property acquired by any of the spouses during the marriage except for

- property acquired by way of succession or donation;
- property serving according to its nature to a personal use or to an exercise of a profession of only one spouse; and
- property surrendered in the framework of regulations of the property restitution of one of the spouses who owned the surrendered property before entering into the marriage or to whom the property was surrendered because s/he is a legal successor of the original owner.<sup>35</sup>

The joint property of spouses, both movable and real estate property, is used and maintained jointly by both spouses. The spouses do not have shares specifying the exact part of the ownership right to the common thing.

The joint property of spouses shall be extinct at the moment of extinction of the marriage.<sup>36</sup> However, the court may extinct the joint property of spouses during the marriage in the following two cases:

- according to Article 148 par. 2 of the Civil Code, i.e. upon petition of any of the spouses in case of substantial reasons, particularly if the duration of joint property would contradict the good manners;
- according to Article 148a par. 2 of the Civil Code, i.e. in case one of the spouses obtained an authorisation for a business activity.

33 Pre-emption rights can be created contractually, for example, in a sale and purchase agreement. As an example, the seller and buyer may agree that, if the buyer wants to sell his real estate assets in the future, the current seller will have a pre-emption right to buy. If the buyer does not offer the real estate to the original seller, the pre-emption right is not waived, but will be preserved.

34 Article 136 par. 2 of the Civil Code.

35 For instance, the Act No. 403/1990 Coll. on moderation of certain property injustices as amended.

36 Article 148 of the Civil Code.

The extinct joint property of spouses must be settled. If the agreements between the spouses concern real estate property, they must be concluded in writing and shall become effective by entering them in the Real Estate Register. Finally, the joint ownership of spouses may cease to exist by decision of the court in criminal proceedings on the foreclosure of the state's property under the Criminal Code or on the declaration of bankruptcy under the Bankruptcy and Restructuring Act.

**c Ownership and Co-ownership to premises in residential buildings under Act No. 182/1993 Coll.**

**ca Definitions**

Act No. 182/1993 Coll. on Ownership of Apartments and Non-Residential Premises as amended ("Premises Act") lays down a detailed legal regime for residential premises (apartments, flats) and non-residential premises (office space and other business premises) as well as the residential buildings, in which the premises are located. This Act is in relation to the Civil Code a special law (Article 125 par. 1 of the Civil Code) and consequently replaces or completes the general provisions on co-ownership included in the Civil Code.

A residential building must have more than 50% of the area that is designated for living and consist of at least three flats, each of which belonging to a different owner. Besides, that the flats are generally in the exclusive ownership or co-ownership of different owners, in addition, to the exclusive ownership to specific premises, each owner also has a co-ownership share to other related elements (Article 2 par. 2 of the Premises Act). Consequently, the Premises Act does not apply to residential buildings with only one apartment and with no other attributes of a residential building.<sup>37</sup>

The exclusive ownership right to residential premises creates an integral unit with the co-ownership share to the following elements<sup>38</sup>:

- common parts of the building (for instance, the roof or the corridors),
- common facilities (for instance, the elevator)
- appurtenances of the building (e.g., a fenced garden or courtyard outside the building)
- plot beneath the building, as well as
- plot(s) adjacent to the building.

The above is co-ownership created by the operation of law (see also footnote 29).

Unlike under the Civil Code, under this Act, the owner of residential premises can always freely dispose of the premises. However, the new owner has to accede to the existing agreement on the association of owners of premises in the residential building.

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<sup>37</sup> See Court decision 4 Cdo 39/98.

<sup>38</sup> According to *Fekete*, so called accessory rights; see *Fekete*, Civil Code – Commentary, explanations to Article 125 of the Civil Code, p. 263.

The general rule applies, that each owner of the premises in the house has one vote for each premises owned by him, regardless of the respective area of these premises. For instance, if an owner owns two premises in the residential building, he would have two votes. Finally, according to Article 13 of the Premises Act, co-owners of common parts, common facilities, appurtenances as well as the land beneath and around the residential building cannot seek for dissolution of their co-ownership before a court.

Article 2 par. 1 of the Premises Act defines the apartment as a room or complex of rooms, which are by the decision of the Building Office, permanently designated for living and can serve this purpose as separate residential units.

The non-residential premises is a room or complex of rooms, which are by the decision of the Building Office permanently designated for a purpose other than living; the appurtenances of the apartment<sup>39</sup>, common parts of the building and common facilities of the building are not regarded as non-residential premises (Article 2 par. 3 of the Premises Act).

#### cb Ownership to Apartments or non-residential premises – General remarks

Pursuant to Article 4 par. 1 a) to d) of the Premises Act, the ownership right to the apartment or non-residential premises in a residential house is generally acquired by:

- the contract on transfer of ownership to the apartment or non-residential premises in a house pursuant to Article 5 of the Premises Act (hereinafter referred to as “transfer contract”),
- the contract on construction of a building (*zmluva o výstavbe domu*), construction inside of the building (*zmluva o vstavbe*) or superstructure (*zmluva o nadstavbe*) pursuant to Article 21 of the Premises Act (hereinafter all together referred to as “construction contract”),
- succession or
- the decision of a state body.

The agreement on transfer of the ownership right must be in writing and except of general elements<sup>40</sup> must include following:

- detailed description of the apartment or the non-residential premises and its location;
- specification of the co-ownership share of the owner of the apartment or the non-residential premises to the common parts of the building, common facilities, appurtenances, land and others;
- specification and description of the common parts of the building, common facilities, appurtenances, land and other;

<sup>39</sup> Article 121 par. 2 of the Civil Code: side rooms and premises designed to be used with the apartment.

<sup>40</sup> Articles 43 and following and Article 588 of the Civil Code.

- regulation of the rights to the built-up land and the adjacent land;
- specification the co-ownership share of the acquirer to the adjacent land by an agreement between the acquirer and owner of the building;
- identification of the technical conditions according to an expert's opinion, with specification of repairs needed in following 12 months;
- declaration of the acquirer that he accesses to the agreement on the owners association or the agreement on management;
- regulation of rights to facilities of civil protection, if there are such facilities in the building.

Pursuant to Article 17 of the Premises Act, the price for the apartment or non-residential premises shall be stipulated by an agreement between the seller and the purchaser. However, Article 17 also regulates some exceptions with regard to the owner. For instance, Section 3 of Article 17 of the Premises Act provides that if the apartment shall be transferred to the actual tenant and the current owner of the apartment is, *inter alia*, a municipality or another higher territorial unit, a company with state participation or an agricultural co-operative, the price cannot exceed the price stipulated in the Premises Act.<sup>41</sup>

In order to acquire newly constructed apartments and non-residential premises Articles 21 and 22 of the Premises Act apply:

In these cases, the ownership of apartments and non-residential premises may be created by the contract on construction, construction inside of the building or superstructure concluded between the constructors or between the current owners of the apartments and non-residential premises in the building and the constructors. In any case, a natural person or legal entity may be a constructor. The contract governs the mutual rights and obligations between constructors of a building, when speaking about a construction, or between the constructors and the owners of the apartments and non – residential premises in the residential building, when speaking about a construction inside of the building or a superstructure.

For the construction contract to become effective, an entry into the Real Estate Register is necessary (Article 21 par. 3 of the Premises Act)<sup>42</sup>. Similarly, Article 47 par. 1 of the Civil Code states that if an Act stipulates that an agreement requires a decision by the relevant authority, the agreement shall be effective by this decision. Due to this, it is common practice of Slovak cadastre offices and also the prevailing

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41 Articles 17 par. 6, 18, 18a and 18b of the Premises Act.

42 According to Article 6 of the Cadastre Act, the creation, change and deletion of rights to apartments, apartments under construction, non-residential premises and non-residential premises under construction are to be registered with the Real Estate Register. The constructor is also obliged to specify the mutual rights and obligations in connection with construction works that lead to the change of the size of the apartment, non-residential premises or accessions affecting the common parts of the building or common facilities of the building; the contract shall be entered into between the owner of the apartment or the non-residential premises in the building and other owners of the apartments and non-residential premises in the building. For the purpose of the entry into the Real Estate Register, documentation stating the size and location of single apartments, non-residential premises, common parts of the building and common facilities of the building and the access shall be submitted with the contract.

theory in Slovak legal practice that the entry of the ownership right into the Real Estate Register should be performed by way of incorporation pursuant to Article 28 of the Cadastre Act<sup>43</sup>.

When entering the data on the right to the apartments or non-residential premises that have been created by a contract on construction of a building into the Real Estate Register, the (i) contract on construction together with the geometrical plan and the decision on determination of the conscription number; where a (ii) contract on the construction inside of the building or (iii) on a superstructure has been concluded, the contract on construction inside of the building or superstructure of the building and the occupancy permit shall be submitted. In the above-described cases, the construction process is usually already at a certain stage.

The person stated in the contract will be registered as the owner of the apartment or non – residential premises.

In the case of apartments and non-residential premises under construction (i.e. unfinished premises), the contract on construction and the geometrical plan, contract on construction inside of the building or superstructure together with an expert's opinion on the degree of construction shall always be submitted to the respective cadastre office.

cc Acquisition of the ownership right to a construction and apartments or non-residential premises – practical remarks

Due to the complexity, the legal aspects of the process of acquisition of ownership title to a construction and apartments and non-residential premises shall be outlined in more detail. The acquisition of the ownership right to a construction (building, apartment or non-residential premises) differs not only according to the type of the construction, but also according to the agreement concluded for the realization of the construction.

(i) *Acquisition of the ownership right to a building under a contract of work pursuant to the Commercial Code*

The execution, installation, maintenance, repair or modification of a construction (building) or its part, shall be always considered as work.<sup>44</sup> Therefore, the contract for work can be considered as the most common contract for the construction of a building, not limited to but often, qualifying as family house. This contract can be concluded pursuant to Articles 536 and following of the Commercial Code.

43 However, some legal theorists doubt that the entry into the Real Estate Register shall be done by incorporation (*vkład*). According to them, if a constructor is an owner – the entry shall be done in the form of priority notice (*záznam*). In this context, they refer to Article 34 of the Cadastre Act, according to which the rights to the real estate that have been created, changed or deleted upon the decision of a state body shall be entered into the Real Estate Register by a priority notice on the basis of public documents or other deeds. Following this opinion, in the above-mentioned cases the contract on construction, construction inside of the building or superstructure shall become valid and effective already on its signing (i.e. not at the later stage of incorporation). Finally, the ownership should exist when the relevant permits or other deeds are obtained. *Petkov*, The creation of ownership right to an apartment by contract on construction of a building, construction inside of the building and superstructure, Bulletin of the Slovak Bar Association (*bulletin slovenskej advokacie*) 7-8/2006, 26 and 28.

44 Article 536 par. 2 of the Commercial Code.

Article 542 of the Commercial Code regulates the acquisition of an ownership right to the construction. If the contractor (*zhotovitel*; *Werknehmer*) builds an object at the customer's (*objednatel*; *Werkbesteller*) premises, or on his land, or on a land provided by the customer, the customer shall bear the risk of damage to the object and is the owner of the object, unless the contract provides otherwise. Therefore, if the activity aiming to construct a building is executed on the customer's land (or land provided by the submitter), the ownership right belongs to the customer from the very start of the construction.

The above stated provision of land by the constructor is governed by Article 139 of the Building Code. The term "other rights to the lands and constructions" shall be, considering the nature of the case, understood as:

- the right to use the construction or land pursuant to the lease agreement or agreement on future purchase agreement, from which results the right to execute the construction or its modifications,<sup>45</sup>
- the right arising from an easement connected to the land or construction,<sup>46</sup>
- the right arising from other legal regulations.<sup>47</sup>

As a result of the above stated, the constructor's ownership right from the contract for work is acquired directly pursuant to the Commercial Code, therefore the ownership right is entered into the Real Estate Register in the form of a priority notice. The ownership right can be entered at the following stages:

- **building under construction** – an occupancy permit for the building was not issued, the conscription number was not assigned and the construction is in a stage when, according to the submitted experts opinion, is created the constructional, technical and functional construction of first above ground floor.<sup>48</sup>
- **finished or new building** – construction firmly connected to the land and marked with a conscription number or with the issued occupancy permit.

The contract for work may be used for any type of construction, irrespective of the type of building. However, the acquisition of the ownership shall always comply with the above stated principles.

(ii) *Acquisition of the ownership right to an apartment or non-residential premises in a residential building*

The construction of a residential building is more complex. This is due to the fact that the construction of apartments is regulated by the Premises Act, which in Article 4 in accordance with Article 21, stipulates that the ownership right to apartments (and to non-residential premises) can be acquired upon the contract for construction, the contract for construction inside the building or the contract for superstructure. However, the construction of the whole building (residential building) can be realized on the grounds of the above stated contract for work.

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45 Pursuant to the provisions of the Civil Code or the Commercial Code.

46 Articles 151n-151p of the Civil Code.

47 For instance, the Energy Act or the Water Act.

48 Article 3 par. 15 of the Cadastre Act.

Therefore, for the construction of residential buildings combinations of more contracts between purchasers and builders are usually required. Usually it is the combination of a contract for work with future contract or reservation contract and later a purchase contract. However, the Premises Act presumes the usage of the contract for construction.

There are following four different stages, which we can define within the construction of a residential building:

- **Completion of the contract** – the contract for work or the contract for construction is concluded.
- Residential building **under construction** – as stated above, in this stage, if constructed under the contract for work, can be the building under construction entered into the Real Estate Register in the form of a priority notice.
- **Apartments (or non-residential premises) under construction** – In this stage of construction is the room or complex of rooms and premises, in accordance with the building permit issued for residential or other purposes, situated in a building, which has a constructed roof and is closed by external walls.<sup>49</sup> The ownership right to the apartment under construction can be entered into the Real Estate Register in this stage only on the basis of the contract for construction, because ownership right on the basis of contract for work can be acquired only to a finished apartment<sup>50</sup>.

The ownership right to the apartments and non-residential premises under construction can be entered also upon the application of the owner of the house, enclosed with the geometrical plan, decision on the conscription number and documentation showing area and location of the individual apartments, non-residential premises and common parts, common facilities and fixtures.<sup>51</sup>

- **Finished residential house and finished apartments** – ownership right to the apartments in this stage can be acquired both on the basis of the contract for work in combination with a purchase agreement or the contract for construction (if it was not acquired earlier).

The contract for construction shall include all elements required by Article 22 of the Premises Act. The contract for construction of a residential building shall among others include the regulation of rights to the land designated for the construction of the residential building, identification of the land and its size. If the builders of the residential building are not owners of the land, the rights of the builders to the land shall be arranged with the owner.

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49 Article 3 par. 16 of the Cadastre Act.

50 However, the ownership right cannot be entered into the Real Estate Register in duplicity – both to the building under construction and to apartments under construction. The record to the building under construction is therefore erased and the ownership right to individual apartments on the basis of a contract for construction is entered into the Real Estate Register in form of incorporation. It is the transformation of the building under construction to individual apartments.

51 Cadastral Bulletin No. 4/2005 – 46.

When the contract for construction is entered into the Real Estate Register, documentation showing area and location of the individual apartments, non-residential premises and common parts, common facilities and fixtures shall be included.<sup>52</sup>

(iii) *Acquisition of the ownership right according to the contract for construction inside the building or the contract for superstructure*

As stated above, Article 4 in accordance with Article 21 of the Premises Act stipulates that the ownership right to apartments (and to non-residential premises) can be acquired not only upon the contract for construction, but also upon the contract for construction inside the building or the contract for superstructure.

These two contracts shall be concluded between builders or the current owners and builders. They shall comply with the same conditions under Article 22 of the premises as the contract for construction, with the difference regarding the regulation of rights to the land in respect of the fact, that the building is already constructed and the rights to the land are settled.

The contracts shall also include the exact specification of the common areas, common facilities or common non-residential premises where it should be the construction inside the building or on the superstructure. If new apartments or non-residential premises are created by such a construction the contract shall include the regulation of ownership rights to the new apartments and non-residential premises.

If the owners of apartments and non-residential premises in the building decide on the contract for construction inside the building or the contract for superstructure, according to Article 14 (3) of the Premises Act, the decision shall take place at the owner's assembly and with at least a two-thirds majority of all owners of apartments and non-residential premises. A written vote is not allowed<sup>53, 54</sup>.

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52 Article 22 par. 6 of the Premises Act.

53 However, as the construction of new apartments and non-residential premises in the building changes the co-ownership shares of the owners to the common areas, common facilities and other fixtures, the stated provision has been found by many Slovak theoreticians to be conflicting with the basic principles of the Slovak system of law and the Constitution. According to Section 20 (4) of the Constitution, expropriation or enforced limitation of the ownership right shall be admissible only to the extent that it is unavoidable and in the public interest, on the basis of law, and in return for adequate compensation. Therefore if all owners of the apartments and non-residential premises do not agree with the realized construction inside the building or the superstructure, it is possible that some of these outvoted owners may claim damages or compensation from the court. *Strhan, M.*, Vlastníctvo bytov a nebytových priestorov – zmluvy o vstavbe alebo nadstavbe, Bulletin Slovenskej Advokácie 4/2007, 33 to 36; *Zimmerman, J./Zimmermanová, J.*, Zákon o vlastníctve bytov a nebytových priestorov, Poradca 2/2008, 188.

54 Furthermore, the provision of Article 14 (3) of the Premises Act does not solve the problem of completion of the contract with only two-thirds of the owners. With regard to the provisions of Article 21 and 22 of the Act on Ownership of the Apartments and Non-residential Premises ("the contracts shall be concluded between builders or present owners and builders"), two-thirds of the owners are not sufficient and all owners of apartments and non-residential premises in the building must sign the respective contract. This situation regarding owner's approval with the construction and their signature of the respective contract is considerably unclear. The decision of the Constitutional Court or an amendment to the Premises Act on Ownership of the Apartments and Non-residential Premises is expected. In the present situation it is therefore advisable to obtain approval and signatures of all owners. *Vojčík, P.*, K zmluvám o vstavbe a badstavbe. Končí diskusia? Bulletin Slovenskej Advokácie, 2005, č.8 s. 46 – 47.

## 6 Exercise and limitations of the ownership right

### a General

The ownership right is the most important, most complete and widest right *in rem*. It can be defined as a right of the owner to hold the object of its ownership (*ius possidendi*), to use it and consume its proceeds (*ius utendi et frutendi*) and to dispose of it (*ius disponendi*)<sup>55</sup>. This right may be performed, within the limits of the law, upon the owner's free will and can be defined as a right securing direct control over the individually defined object.

The Slovak system of law recognizes a unified type of ownership right; According to Article 20 (1) of the Constitution of the Slovak Republic, every person has the right to own property and the ownership right of everyone has equal legal standing and protection. The ownership right is also regulated by the Civil Code, which in Article 125 par. 1 stipulates that all owners shall have the same rights and duties and shall be granted the same legal protection.

Any subject can own either movable or real estate property without any value limitation. However, both the Constitution and the Civil Code provide that some assets can be owned only by the state or by specified legal entities<sup>56</sup>. More precisely, Section 4 of the Constitution provides that mineral resources, caves, ground waters, natural healing sources and watercourses are in the ownership of the Slovak republic.

According to the Slovak legal system, the right to real estate property has several particularities.

The most significant is the fact that the principle "*superficies solo cedit*" is not applied in the Slovak Republic. Therefore, according to the valid legal regulation, the land and the building on it are regarded as two separate objects. Likewise, the owner of the building can be different from the owner of the land on which the building is located.

The real property is defined in Article 119 par. 2 of the Civil Code as lands and buildings connected with the ground by a fixed foundation. Pursuant to this regulation, the building must comply with this technical condition to be regarded as a real estate property. Otherwise, this construction is considered only as movable property.

In contrary, all lands are regarded as real estate property, irrespective of its character, area or purpose. However, according to Article 120 par. 2 of the Civil Code, watercourses and ground waters are not regarded as part of the land.

There are various special regulations, apart from the Civil Code, which regulate the legal status and ownership of lands.

55 Article 123 of the Civil Code. See *Kutenič*, The activity of notaries public when recording ownership title and other rights *in rem* to real estate and renewal of ownership rights to land, in *Ars Notaria* 1/2006, 18.

56 Section 20 par. 2 of the Constitution and Article 125 (2) of the Civil Code.

**b Neighbours' rights and other limitations to the ownership right**

As stated above, the owner shall be entitled to hold the asset (subject) of his ownership, use it, consume its proceeds and dispose of it, within the limits of law. However, Section 20 par. 3 of the Constitution stipulates that the ownership is binding. It must not be misused to the detriment of others or in contradiction with general interests protected by law. By exercising the ownership right, no harm must be done to human health, nature, cultural monuments, and the environment beyond the limits set by law.

The exercise of all civil rights is furthermore restricted by the provision of the Article 3 par. 1 of the Civil Code wherein the exercise of rights and duties following from civil law relationships must not groundlessly infringe rights and lawful interests of others and must not be at odds with good manners.

As the stated Article 3 par. 1 of the Civil Code constitutes a universal obligation, special provisions impose certain obligations to the owner. They are the following:

- the neighbour's rights pursuant to Article 127 of the Civil Code; and
- the limitations of the ownership right.

Legal instruments that limit the ownership right are the following:

- the mortgage, in case of a real estate, or generally spoken, the charge;
- the easements; and
- and the retention right.

**c The neighbour's rights**

The legal regulation of neighbours' rights is based on the principle of mutuality. The protection provided to rights of one owner has to be adequate to the protection provided to rights of another. Article 127 par. 1 of the Civil Code stipulates that the owner of an asset must omit all that inadequately bothers another person or that seriously jeopardises the exercise of his rights. This is a general rule, arising from the unity of ownership rights and obligations and states a balance within the neighbour's rights.

The conception of the neighbour's rights is wide and includes following:

- the obligation of the owner according to Article 127 par. 1 of the Civil Code to not jeopardise beyond reasonable measure the neighbour's building or plot by arrangements of his plot or by arrangements of his building placed thereon without taking sufficient measures for re-enforcing of the building or plot. The reasonable measure creates a border between the authorized conduct and unauthorized conduct, and not only in relation to the particular case, but also to objectively eligible status.<sup>57</sup> If damage occurred, the injured party should be entitled to incurred costs and of damages suffered therein.<sup>58</sup>

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57 5 Cdo 117/93.

58 R 37/1985.

- the obligation of the owner according to Article 127 par. 1 of the Civil Code to not bother the neighbours with noise, dust, ashes, smoke, gases, vapour, smells, solid or liquid waste, light, shading and vibrations, or let bred animals intrude the neighbour's plot carelessly.
- the obligation of the owner according to Article 127 par. 1 of the Civil Code to not carelessly or in an unsuitable season remove roots of trees from his soil or remove branches of trees extending into his plot. The practice of courts also follows that the removing of roots or branches of trees must be appropriate.<sup>59</sup>
- the obligation of the owner according to Article 127 par. 2 of the Civil Code to fence the plot, if it is necessary and if it does not prevent a useful use of the neighbouring plots and buildings. The court may decide on fencing only after ascertaining the opinion of the competent building authority.
- the obligation of the owner according to the Article 127 par. 3 of the Civil Code to allow entrance to ones plots, or buildings placed thereon for a necessary time and to a necessary extent if it is necessary for the maintenance and management of the neighbouring plots and buildings. However, this provision does not regulate the entrance to plots or buildings of another, which is regulated e.g. by Article 134 of the Building Act.

If the owner of the thing does not respect the stated restrictions of his ownership right, the injured person shall be entitled to claim the protection of the court.

#### **d Limitations of the ownership right**

A limitation of the ownership right is a significant interference with a fundamental right. According to Section 20 par. 4 of the Constitution, expropriation or enforced limitation of the ownership right shall be admissible only to the extent that it is unavoidable and in the public interest, on the basis of law, and in return for adequate compensation.

This limitation can be temporary or permanent.

##### **da Temporary limitation of the ownership right**

Article 128 par. 1 of the Civil Code regulates the temporary limitation of the ownership right. For the temporary limitation of the ownership right, following legal conditions must be complied with:

- emergency condition or an urgent public interest must be given;
- the purpose of the use cannot be achieved otherwise;
- the property may be used only for the necessary time and to the necessary extent for the period objectively suitable for the stated purpose;
- the right for reimbursement shall arise to the owner.

Reimbursement is generally provided in money and is always limited by the price of the used object in the time of its usage. Besides the right to the reimbursement, the owner shall be entitled to compensation of damages for damage occurred to

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<sup>59</sup> R 520/1985, R 37/1985.

the object in consequence with its usage. Special regulations provide for situations where the ownership right can be temporarily limited.<sup>60</sup>

db Permanent limitation of the ownership right

A permanent limitation of the ownership right by the decision of an authority is identified as an expropriation. It is a forced deprivation or forced transfer of an ownership right to a land or building based on administrative decision. It is also a legal cause for extinction of the ownership right. The general principles for expropriation are laid down in Article 128 par. 2 of the Civil Code. Accordingly, in the public interest, an asset may be expropriated or ownership thereof may be restricted, unless the purpose can be achieved otherwise; the expropriation or restriction may be done only on a legal basis, only for this purpose and for compensation.

More detailed legal conditions for the expropriation are laid down by the provision of the Building Act. Lands, building and rights to them, necessary for construction of buildings or accomplishment of measures in the public interest, can be expropriated or ownership rights to them can be limited.

The measures in the public interest are, according to Article 108 par. 2 of the Building Act, for instance, the following:

- construction and administration of motorways, roads and local communications inclusive of setting up of their protective zones as well as construction of pipelines for fuels under Act No. 135/1961 Coll. on Road Communications (Road Act);
- construction of power works for the generation or distribution of electricity under Act No. 656/2004 Coll. on Energetic;
- purposes of extraction of deposits of minerals under Act No. 44/1988 Coll. on The Protection and Use of Mineral Resources (Mining Act);
- construction or operation of water works under Act No. 364/2004 Coll. on Water (Water Act).

As expropriation is the most serious intervention with the ownership right, the legal conditions must be complied with. The expropriation or limitation of the ownership right is allowed under the following conditions:

- the public interest has to be proved, always in each individual case, and it must be proved in the expropriating proceedings;
- the purpose of the expropriation must be in compliance with this public interest;
- the subsidiary principle must be fulfilled, it must be proved that the attempt to obtain the object of the expropriation by other way (mainly an agreement with the owner) was not successful;
- the expropriation can be executed only pursuant to the Act;

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<sup>60</sup> For instance, Act No. 31/2001 Coll. on protection against fires as amended.

- the expropriation may be performed only for compensation, mainly monetary compensation, unless the Act shall provide otherwise.

The Building office conducts the expropriating proceeding. It starts upon the motion of a state authority, legal or natural person, who shall use the object for the purpose for which it is expropriated. The proof that the attempt to obtain the object of the expropriation by other means was not successful constitutes a part of the motion.

As stated above, the expropriation may be performed only for compensation. The compensation and the manner of its payment are besides the subject, extent and purpose of the expropriation, also part of the decision on the expropriation. The other parts of the decision are the period in which the expropriated land or building must begin to be used for the expropriation purpose and the conditions for submitting an application for termination of the expropriation. The period in which the expropriated land or building must begin to be used for the expropriation purpose cannot be longer than two years.<sup>61</sup>

The permanent limitation of an ownership right is also governed by other legal regulations.

Pursuant to Article 9 par. 5 of Act No. 229/1991 Coll. on adjustment of ownership rights to land and other agricultural property as amended, the cadastre office can create an easement to a real estate, if it is necessary for the protection of the environment or protection of other owner's interests.

According to Article 8 of Act No. 129/1996 Coll. on some measures for accelerating the development of highways and roads for motor vehicles as amended, the land for construction of a highway can, under certain conditions, be expropriated as well.

#### dc Easements

Easements include various limitations of the ownership right to a real estate property, in favour of another subject. According to Article 151n par. 2 of the Civil Code, easements shall restrict the owner of a real estate property in favour of someone else in the manner that he must suffer something (*pati*), omit something (*facere*) or do something (*non facere*).

The rights corresponding to the easements shall

- be connected with the ownership of a certain real estate property (*in rem*), or
- belong to certain person (*in personam*).

Easements connected with the ownership of a real estate property (for instance, the right to access) exist without regard to who owns the real estate property and shall be transferred together with the acquisition of the ownership of the property. However, easements belonging to a certain person (for instance, the habitation right) cannot be transferred and cease to exist, at the latest, upon that person's death.

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<sup>61</sup> Article 115 par. 2 of the Building Act.

An easement can be created by:

- written agreement;
- will connected with results of the inheritance proceedings;
- approved agreement of heirs;
- decision of a state authority;
- law<sup>62</sup>;
- way of uninterrupted bona fide possession for a certain period<sup>63</sup>, prerequisite for such acquisition of an easement is a confidence of person that this right corresponding to the easement is rightfully held.<sup>64</sup>

According to Article 151o of the Civil Code, the acquisition of a right corresponding to the easement requires an entry in the Real Estate Register. The process of easement registration is substantially similar to that for real estate transfers. The registered easement should be visible on the Letter of Ownership, in Section C.

Easements shall become extinct on the basis of:

- operation of law; if reasons predicted by the law occurred (i.e. if such permanent changes occurred that the asset can no longer serve to the needs of the entitled person or to a more prosperous use of his real estate property<sup>65</sup>);
- a decision of the competent authority (a court or an administrative authority);
- an agreement; according to Article 151p par. 1, the written form is required. An agreement shall extinct any easement, regardless of the manner of its creation;<sup>66</sup>
- death or dissolution of the entitled person; this applies to cases where the easement is created *in personam*;
- destruction of the real estate property;
- merger of rights and obligations according to Article 584 of the Civil Code<sup>67</sup>;
- lapse of time according to Article 578 of the Civil Code.

Extinction of an easement on the basis of an agreement requires an entry in the Real Estate Register.<sup>68</sup>

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62 For instance, Article 9 of Act No. 229/1991 Coll. on adjustment of ownership rights to land and other agricultural property as amended; Article 109 of the Building Act.

63 Article 134 of the Civil Code.

64 5 Cdo 39/99.

65 Article 151p par. 2 of the Civil Code.

66 Court decision R 14/1988.

67 Pursuant to Article 584 of the Civil Code, if the right and duty (obligation) merge in one person in any way, the right and duty (obligation) shall become extinct, unless a special law stipulates otherwise.

68 Article 151p par. 1 of the Civil Code.

## 7 Protection of the ownership right

The ownership right is protected by the whole Slovak system of law. The Constitution, in Section 20 par. 1, defines that the ownership right of all owners has the same legal content and deserves the same protection. The protection of the ownership right is consequently secured both by the public (as criminal, administrative or finance law) and private law (as civil, commerce or labour law). Each of these legal regimes has its own instruments for the protection of the ownership right.

The protection provided by the Constitution secures the same perquisites for all; however it cannot be applied without compliance with legal conditions, regulated mainly by the Civil Code.<sup>69</sup>

The legal protection of the ownership right provided by the Civil Code is broad. As stipulated in Article 1 par. 1, the Civil Code protects the inviolability of ownership. Among the instruments for protection, the principle of protection stated in Article 3 par. 2 has the most significant position. The other instruments of the civil law, provided by the Civil Code, can be divided into two groups – general and special.

The general instruments for legal protection of the ownership right include mainly the following:

- protection of the relevant authority according to Article 4<sup>70</sup>;
- preliminary protection by the municipality according to Article 5<sup>71</sup>; and
- self-help according to Article 6<sup>72</sup>.

The substantive perquisites for the special instruments are provided in Article 126 of the Civil Code, i.e. the right to protection against anyone who unlawfully infringes its ownership; in particular, the owner may demand hand-over of the property from the person who unlawfully retains his property.

In addition, pursuant to Article 131 par. 1 of the Civil Code, an unlawful possessor must always hand over the asset to its owner together with all its proceeds and compensate the damage caused due to the unlawful possession. However, s/he may deduct costs necessary for the maintenance and operation of the asset.

The analogous right shall belong to the person who is entitled to hold the property.

<sup>69</sup> Decision of the Slovak Constitution Court ÚS 59/94.

<sup>70</sup> According to Article 4 of the Civil Code, anyone whose right was jeopardized or infringed may assert his/her protection with the relevant authority of state administration. Unless an act stipulates otherwise, the competence to such protection shall fall within the jurisdiction of courts.

<sup>71</sup> Accordingly, should an obvious infringement of a quiet state (peaceful use) have occurred, the protection can be sought with the relevant state authority. This authority may provisionally prohibit the infringement or command that the previous state of affairs be restored. The rights to assert the protection with a court shall not hereby be affected.

<sup>72</sup> Pursuant to Article 6 of the Civil Code, should an unlawful infringement of a right be immediately threatening, the infringed person itself may avert the infringement in an adequate way.

## C Creation and transfer of real estate property

### 1 General remarks

According to Article 132 of the Civil Code, the ownership right to an asset may be acquired on the basis of a purchase, donation or other contract (for instance, a contract of exchange), by way of succession, on the basis of a decision of a state authority or on the basis of other facts laid down by an act. These manners of acquisition of the ownership right likewise apply to the real estate property.

The purchase contract, the contract of exchange and the donation contract can be considered as the most common contracts for acquiring property. There are no standardized forms of contracts for acquiring the real estate property in the Slovak Republic and each party can draft the contract.

A contract on purchase of real estate can be related to any kind of real estate (i.e. land, building, apartments or non-residential premises<sup>73</sup>) and is regulated in Articles 588 and on of the Civil Code (hereinafter referred to as the “Purchase agreement”). The Purchase agreement must be concluded in writing and a notary public must verify the signature of the transferring party. The Purchase agreement can be defined as a consensual contract in which the seller has the duty to hand over the object of sale to the buyer and the buyer has the duty to take over the object of sale and to pay the seller the agreed purchase price (Article 588 of the Civil Code). The main aim of this contract is the assignment of the ownership right from the seller to the buyer.

The Purchase agreement has to include all elements required by law, especially the Civil Code, such as the identification of the parties to the contract, the precise identification of the property which should be transferred and in the case of the purchase contract also the price or at least the identification of a method through which it will be determined. The Purchase agreement has two essential features – the arrangements of contractual parties on the subject of the purchase and the purchase price. When residential and/or non-residential premises are the subjects of the transfer, additional features have to be included.

The Purchase agreement becomes valid and effective upon its execution by the parties, unless agreed otherwise<sup>74</sup>. As to further formal requirements, as already mentioned above, the signature of the transferor must be notarized before a notary public. In addition, the will of both parties must be expressed in one deed (Article 46 par. 2 of the Civil Code). However, the transfer of ownership title to the real estate will be perfected only upon the incorporation of the ownership title in the Real Estate Register, i.e. at the moment of the registration of the transfer with the cadastre administration office of the competent cadastre authority<sup>75</sup>. Slovak law

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73 As outlined in I.B.5.c above, for apartments and non-residential premises, the special regime under the Premises Act applies.

74 Decision of the Highest Court of the Slovak Republic Cdo 196/2005 dated 26 February 2006.

75 The acquisition of the real estate property by contract requires two basic steps. Firstly, the Contract is drafted when the contractual parties agree on the essential elements of the contract. It must be executed in writing; otherwise it is null and void. Secondly, the ownership right to the real estate is acquired by means of an entry into the Real Estate Register in accordance with the Cadastre Act.

recognizes the principle that no one could transfer more rights than he has (*nemo plus iuris ad alium transfere potest quam ipse habet*). Consequently regarding real estates, an acquisition of ownership title in good faith is generally not possible (for more details see I.B.1.c.cb). Changes planned by the recent Bill on changes and amendments of the Civil Code in order to reduce the negative effects arising from a void Purchase contract are outlined in detail in I.A.3.i above.

## 2 Pre-contract negotiations

Bigger commercial real estate transactions usually start with a letter of intent or memorandum of understanding, where the principal terms agreed between the parties are laid down. Although Slovak law does not explicitly recognize the above-mentioned legal instruments, it is common to conclude an *innominate* contract according to Articles 269 par. 2 of the Commercial Code, which are generally not legally binding.

Prior to concluding the final purchase contract, it is possible to conclude a pre-contract, i.e. an agreement on a future purchase agreement according to Articles 289 to 292 of the Commercial Code (*zmluva o budúcej zmluve o kúpe*) including a sample of the purchase agreement. It is a preliminary agreement in which the parties undertake to conclude a future purchase contract, with respect to the agreed property, and within the stated period of time. This agreement must be in writing and must include essential elements of the purchase contract or at least set forth the method for specifying these elements – a supplementary contract may also be concluded.

The obligation to conclude the future purchase contract shall be terminated if the circumstances, which the parties took into account when establishing the obligation, changed to such an extent that the liable party could not be reasonably expected to conclude the contract.

If the liable party fails to enter into the purchase contract, the entitled party may demand specification of the future purchase contract through a court or by a person designated (for instance, an arbitrator) or the entitled party may claim damages caused by the breach of the obligation to conclude the said contract. When the entitled party decides to bring its claim before the court, the court within its proceedings will then decide whether there are conditions that the will of the obliged party shall be replaced or given or not. Contractual penalty clauses to the benefit of the purchaser may be included in the pre contract in order to motivate the seller to fulfil its obligations. The entitled party may claim damages together with the demand to specify the purchase contract in the case the other party has unjustifiably refused to negotiate the contract.<sup>76</sup>

In practice, at this stage the buyer should start to carry out a legal *due diligence* (i.e. all legal documents relating to the property are to be reviewed). In this context, a research in the Real Estate Register should be performed to ensure that the seller is the owner of the real estate and no encumbrances are affecting the property. The following issues should be verified in more detail: (i) the seller shall be the holder of a free, unrestricted and valid ownership title. In this regard, it is recommendable

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<sup>76</sup> Article 290 par. 2 of the Commercial Code.

to verify not only the validity of the ownership of the seller, but also of its legal predecessors; (ii) no registered or unregistered liens or other rights *in rem* are connected to the real estate, as such would be acquired by the purchaser together with the real estate and which are binding for the purchaser; or (iii) no other rights or proceedings affect the real estate.

If the pre-contract is signed and the conditions to the purchase are fulfilled, one party or both parties is/are entitled to invite the other to conclude the purchase agreement. A pre contract will not be entered into the Real Estate Register.

Where no conditions prior to the purchase need to be fulfilled, the parties will only use the purchase agreement.

### **3 Content of the Purchase agreement**

An agreement for the sale and purchase of real property must, as already mentioned, be in writing, and must contain all main terms and conditions as specified by the law. Both the seller and the buyer must sign it. A notary public must notarize the signature of the seller.

The elements of the Purchase agreement can be divided into essential and non-essential features. The essential features are:

- specification of the real estate (land and/or building) in accordance with the data following from the respective Ownership Certificate (if a description of the real estate is not in compliance with the law, it can be considered as null and void), and
- specification of the purchase price and the conditions of payment of the purchase price.

An object must be qualified for purchase (objects not qualified for purchase are e.g. objects that are mandatory in the exclusive ownership of the state – caves, mineral resources, ground water, natural healing sources, etc.) and identified sufficiently. Sufficient identification of the object of sale is understood as identification in terms of quality and quantity. The object of sale must be free from any factual or legal defects.

The purchase price is the reimbursement for the object of sale and represents its equivalent in value in monetary terms. The purchase price must be determined either by a definite financial sum or must be otherwise determinable; in anyway it needs to be clearly defined. The contractual parties determine the purchase price by means of an agreement. The Purchase agreement usually also comprises other elements; these however are not characterized as essential for its conclusion, for instance, the agreement on a pre-emption right, retention of title or right of repurchase (side agreements).

In addition, it is advisable that the purchase agreement includes also the following:

- the respective legal title of transfer under which the seller acquired ownership
- the specification of the parties of the agreement

- all liabilities encumbering the property<sup>77</sup> (mortgages, easements, pre-emption rights, leases)
- the conditions for withdrawing from the agreement
- a date of a handover/takeover of the property
- the warranty of the seller that it is the sole unrestricted owner of the property and that the real estate is and will remain in the (legal and actual) condition described in the agreement until registration of the ownership title of the purchaser in the Real Estate Register, and
- the party, which will file the application for registration of the incorporation of the ownership right *in rem* of the purchaser with the Real Estate Register (in the case the purchase agreement lays down any conditions precedent, such must be fulfilled prior to the filing with the cadastre office).

#### **4 Representations and warranties of the seller – Liability for defects of the object of sale**

If the object of sale has defects that the seller is aware of, it must inform the buyer about them in the course of negotiations on the Contract (Article 596 of the Civil Code).

According to the law, should any representation of the seller come out as untrue, the seller may be held liable to the buyer. Pursuant to Article 443 of the Civil Code, in the case of a misrepresentation from the seller's side, the purchaser is entitled to:

- (i) withdraw from the Purchase agreement,
- (ii) demand an adequate reduction of the purchase price (discount) and/or
- (iii) compensation for damages.

It is not liable however for defects to the object of sale that it has informed the buyer about before the conclusion of the Contract<sup>78</sup>.

If a defect that the seller did not inform the buyer about is subsequently revealed, the buyer has the right to an adequate discount from the agreed price corresponding to the nature and extent of the defect; if the defect makes the object of sale useless, the buyer also has the right to withdraw from the Contract (Article 597 par. 1 of the Civil Code).

It is irrelevant, whether the seller himself was or was not aware of the defects of the object of sale. By “defect revealed subsequently”, it is to be understood as a defect that was unrecognisable during the conclusion of the Contract.

Warranties to the purchaser should provide a higher degree of legal certainty on the subject of purchase. However, warranties cannot replace a due diligence, which in general shall be performed by a purchaser.

<sup>77</sup> Again, it must be noted that not all encumbrances must be visible in the ownership certificate extract. Therefore, the purchaser should thoroughly investigate this matter.

<sup>78</sup> Decision R 9/2003; see *Vojčík*, Civil Code – a short commentary, Iura Edition (2008), remarks to Article 597, p. 750.

In Slovak business practice, sellers usually provide contractual warranties to the purchaser. In general, the seller explicitly gives the warranty it is the owner of the real estate. Moreover, the declaration that the real estate can be used for a specific purpose is given. Furthermore the seller provides declarations on any third party rights, easements, potential disputes, and environmental or other issues.

Real estate may be contaminated as a result of current and former uses. In Slovakia, the “polluter pays” principle applies: the person who spilled, released or discharged a substance will normally be liable for any ill-effects it causes. As soon as ownership rights to real estate are transferred, the new owner becomes liable for any liabilities arising from environmental law. Moreover, an environmental impact assessment of a proposed construction must be submitted to the building authority in order to receive a zoning permit. The zoning permit sets the conditions under which the development may be carried out to prevent potential contamination.

The statute period of limitation to enforce a claim under the Civil Code is three years. It is to be noted that ownership rights cannot become statute-barred.

#### **a Withdrawal from the Purchase agreement**

Withdrawal from the contract is a unilateral legal act that results in the cancellation of the Contract from the beginning<sup>79</sup>.

The seller may withdraw from the Contract only on condition that the defect makes the object of sale useless. The object of sale is useless when its defect is inherent and permanent, which causes the impossibility to use the object of sale in an agreed and usual way.

The buyer has the right to withdraw from the Contract if the seller made him sure that the object of sale has certain qualities, in particular qualities stipulated by the buyer, or that it has no defects and this statement is shown to be false (Article 597 par. 2 of the Civil Code).

In this situation, the defect does not have to make the object of sale useless in order for the buyer to be able to withdraw from the Contract. The right to withdraw from the Contract becomes statute-barred after three years<sup>80</sup>.

#### **b Reduction of the purchase price (discount)**

The amount of the discount is not directly statutorily regulated. For these purposes, it stipulates a principle of adequacy: the discount must correspond to the type and extent of the defect.

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79 See Article 48 par. 2 of the Civil Code. According to Slovak legal theory, the law constitutes a legal fiction that in the case the seller withdraws from the purchase agreement it did not finish to be the owner of the object of sale and therefore did not transfer ownership title to the real estate. However, this view is criticized by other legal experts; for more details see *Sedlačko*, The ownership right of the acquirer after withdrawal from the agreement of one of its predecessors, *Judicial revue (Justičná revue)*, 12/2007, 1631; *Vojčík*, Civil Code – a short commentary, remarks to Article 588, p. 740 and 741.

80 Decision of the Highest Court of the Slovak Republic 1 Cdo 42/94.

### **c Compensation for damages**

The buyer has the right to compensation of necessary costs related to the exercise of his rights from liability for defects (Article 598 of the Civil Code). This concerns, for instance, costs for expert inspection of the object of sale necessary for the detection of the defect and examination of its extent.

In this context, the buyer must inform the seller of the defects without undue delay, i.e. as soon as he became aware of the defect. To be able to enforce the compensation of the necessary costs for the buyer in court, he is obliged to inform the seller about the costs within a period of 24 months from the takeover of the object of sale (Article 599 of the Civil Code).

The defect of the object of sale, which the seller is liable for, may also cause damage to the buyer. In accordance with Article 600 of the Civil Code, the exercise of rights from liability for defects does not affect the right to compensation of damage. This means that the buyer is entitled to claim the compensation of damage as well as the compensation for a defect of the object of sale, provided that the statutory requirements for its enforcement are fulfilled.

## **5 Rights and obligations of the contractual parties**

The seller is obliged to fulfil the object of sale duly and in time, i.e. to hand it over to the buyer. He is also entitled to withhold handover, if the buyer does not pay the purchase price on time. If the buyer has not paid the purchase price even in the additional term for payment, the seller is entitled to withdraw from the contract.

The buyer is obliged to pay the agreed purchase price in time as well as to take the object of sale duly and in time. Payment of the purchase price is often effected by deposit into an escrow bank account, which is administered by a notary public or a bank as a trustee.

Unless agreed otherwise, the danger of possible destruction and possible impairment of the purchased object including proceeds shall pass to the buyer along with the acquisition of ownership title. If the buyer acquires ownership before the purchased object is handed over to him, the seller shall have the rights and duties of a custodian.

## **6 Purchase price**

In general, the purchase price is a result of the negotiations between the parties. In Slovakia, there is no fixed methodology for assessing the value of the property for investment purposes. Therefore, international developers and investors often apply a methodology used in their home countries. Recently, in particular banks, insurance companies or other financial institutions make use of the so-called price map (*cenová mapa*) – a real estate database which provides its registered users with specific information on land and other real estate for valuation purposes.

The price for a real property is a product of the location of the property and the market value per square metre. The market value considers, among others, the location of the property and its type and condition. The general value of the real property may also be determined by valuation of the property by an independent

expert according to Act No. 382/2004 Coll. on valuers, interpreters and translators as amended. In addition, Decree of the Slovak Ministry of Justice No. 492/2004 Coll. on estimation of the general property value stipulates several rules for property assessment (including real estates).

Sometimes, the purchase agreement includes the wording that the price must be in accordance with generally binding regulations on prices, as it otherwise would be null and void.

According Article 40a of the Civil Code, a purchase contract including a price, which is in contradiction with generally binding pricing rules, is conditionally void. This means that it is only void, if the affected party would appeal its invalidity<sup>81</sup>.

The generally binding pricing rule is regarded as Act No. 18/1996 Coll. on prices as amended, which is in force from 1 January 2004 on, and its execution Decree No. 87/1996 Coll. as amended. However, due to the fact that neither of the laws refers to real estate, in Slovakia currently no real estate pricing rules are in force. Moreover, following the current Concept on Price Politics of the Slovak Republic, which was jointly prepared by the Slovak Ministry of Finance, the Ministry of Economic, the Slovak Antimonopoly Office and Regulatory Office for Network Industries in December 2007, the prices for real estate are not regulated<sup>82</sup>.

In this context it should be noted, that in the case the price for the real estate is disproportional, it could be considered as being in contradiction with good standards (*dobré mravy*) pursuant to Article 39 of the Civil Code.

Real estate is subject to two types of real estate taxes – land tax and building tax, both of which are paid annually. The real estate tax rate falls within the competence of the relevant municipality's territory and can therefore be different. In addition, it can be changed annually.

In general, the value added tax is mentioned in the purchase agreement as a separate position and in addition, in the total amount of the purchase price. Currently, VAT is 19%. However, the sale of land, except for construction land, is not subject of VAT. In the case the purchaser is a registered VAT payer, it may under certain circumstances deduct the tax.

The profit from the sale of a real estate is to be taxed by income tax in the amount of 19%. The amount of the income tax is identical for both natural persons as well as legal entities. However, some exemption may apply for natural persons being owners of a real estate or apartment. Donation tax and inheritance tax were already abolished as of 1 January 2004. Real estate transfer tax was abolished as of 1 January 2005.

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81 *Vojčík*, Civil Code – a short commentary, Iura Edition (2008), remarks to Article 588, p. 739.

82 The Slovak Government by its Resolution No. 8/2008 on 9 January 2008 adopted the Concept.

## 7 Side agreements to the Purchase agreement

### a General

As the retention of title pursuant to Article 601 of the Civil Code as well as the right of repurchase according to Articles 607 to 609 of the Civil Code do not apply to real estates, the following text will not deal with them.

### b Pre-emption right

The right of pre-emption is regulated in Articles 602 to 606 of the Civil Code. The right of pre-emption belongs to the seller who sells the object of sale under the reservation that if the buyer wants to sell the object of sale he purchased, he shall offer it to the seller first. If the buyer does not want to sell the object of sale, the pre-emption right is no longer relevant. Consequently, the right of pre-emption is primarily agreed on between the contractual parties (the seller and the buyer), in particular to the benefit of the seller. However, the parties may agree that a pre-emption right should also have effects for other persons than those outlined below.

The pre-emption right may constitute<sup>83</sup>:

- a contractual legal relationship (right *in personam*)
- a real right relationship (right *in rem*)

The pre-emption right is a contractual legal relationship; it applies to contractual parties exclusively. The pre-emption right imposes a duty only upon the person who promised to offer the object of sale to a purchaser (Article 603 par. 1 of the Civil Code). Moreover, a pre-emption right is not effective for legal successors (Article 604 of the Civil Code).

The pre-emption right may be agreed also as a right *in rem* that is also effective for the legal successors of the buyer (Article 603 par. 2 of the Civil Code). The agreement must be concluded in writing and the pre-emption right shall be perfected by its entry into the Real Estate Register. Unless the seller bought back the object of sale from the buyer, the pre-emption right shall remain preserved even for the legal successor.

Article 603 par. 3 of the Civil Code stipulates the legal consequences in case of violation of the pre-emption right. The entitled person may either demand the acquirer offer him the object of sale to purchase it or to preserve his pre-emption right.

The determination of the purchase price of the object of sale with a pre-emption right and the time limit within which this amount must be paid, are determined by agreement between the parties. If the parties do not come to an agreement, then Article 606 of the Civil Code stipulates that a person who is entitled to buy the object of sale must pay the price offered by somebody else. Unless the entitled person can buy the object of sale or unless s/he can meet the conditions offered

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83 A legal pre-emption right is included in Article 140 of the Civil Code to the benefit of the co-owners in a residential building or other such rights.; see *Vojčík*, Civil Code – a short commentary, Iura Edition (2008), remarks to Article 602, p. 758 and 759.

other than the price and unless they may be settled by an estimated price, the pre-emption right shall become extinct.

If the time period within which the object of sale should be purchased is not agreed, the entitled person must pay the price of the real estate within two months after the offer. If this period lapses, the pre-emption right becomes extinct. The offer must be made in writing.

## II Real Estate Register

### A Character and function of the Real Estate Register

#### 1 Legal background

Since 1 January 1993, in Slovakia the current, valid concept of evidence of real estate is in force. This concept of evidence was, at that time, based on Act No. 265/1992 Coll. on the registration of ownership and other rights *in rem* to real estate as amended, Act No. 266/1992 Coll. on the Real Estate Register as amended as well as on the Decree of the Slovak Authority of geodetic, cartographic and cadastre No. 594/1992 Coll..

Since that time, also the (former) land books (*pozemkové knihy; [ehemalige] Grundbücher*) and the railway books (*železničné knihy; Eisenbahnbücher*) are included in the Real Estate Register (*kataster nehnuteľnosti; Liegenschaftskataster*). In general, all documentation (*operáty evidencie nehnuteľností; [ehemalige] Operate der Liegenschaftsevidenz*) previously maintained by the geodetic and cartographic authorities, was converted into cadastral documentation (*katastrálne operáty; Katasteroperate*)<sup>84</sup>. All legal registrations and information included in the above-mentioned previous evidence of real estate was considered as reliable, unless otherwise proved.

<sup>84</sup> Until 1950, in the territory of the Slovak Republic, the Land Book Code from 1855 (*Pozemkovoknižný Poriadok*) was relevant with respect to the recording of real estate. The Land Book Code governed the land books and the registration process into these.

In 1950 a significant change came about, when, at that time, a new Civil Code (Act No. 141/1950 Coll.) was introduced and the principle that the registration with the land book had constitutive effects was abolished. At that time it was, according to Act No. 65/1951 Coll., therefore possible to acquire ownership to real estate only upon a title (for instance, an agreement) and approval of the National District Committee.

In 1964, under Act No. 22/1964 Coll. on the evidence of real estate geodetic and cartographic authorities as well as under the, at that time valid, Notary Code – Act No. 95/1963 Coll. the state notaries were authorized to perform registrations. However, the registration into the evidence of real estate had only declaratory character as it only concerned technical data. On the other hand, the registration of agreements on the transfer of ownership performed by a state notary had constitutive effects, i.e. the ownership title was validly established only by the decision of the notary. Such decision was then to be recorded by the respective administrative geodetic and cartographic office in the evidence of real estate. By Act No. 264/1992 Coll., which amended the Civil Code, the above-mentioned laws were abolished and the registration into the Real Estate Register again was introduced as a requirement for the valid acquisition of ownership title and other rights *in rem*. For more details on the historical overview on systems and methods of real estate recording in the territory of the Slovak Republic see *Lazar a kolektív*; Civil law, third edition, IURA EDITION, 2006, p. 526 and on; other historical information see in *Štefanovič*, Land law, EUROUNION, Bratislava 2006, p. 45 and on; *Ebner*; Real estate law and law on security devices in the Czech Republic, p. 36 and on; *Kutenič*, The competence of notaries with respect to the evidence of ownership rights and other rights *in rem* to real estate and die renewal of ownership rights to a land, *Ars Notaria*, 1/2006, 18 and on.

In this context it is to be mentioned that a rather big number of land plots are still so-called abandoned land; see also *Sudzina*, Abandoned land in the Slovak jurisdiction, *Bulletin Slovenskej Advokácie*, 6/2007, 35 and on. *Opatovský/Pavlovič*, The Real Estate Register – how further? 1. and 2. part, *Ars Notaria* 2/2007, p. 9 and on and 3/2007, p. 13 and on.

Currently, the evidence of real estate is governed by Act No. 162/1995 Coll. on the real estate register and registration of ownership and other rights to real estate as amended (herein referred to as “Cadastre Act” [*Katastergesetz*]) and the Decree of the Slovak Authority of geodetic, cartographic and cadastre No. 79/1996 Coll. on the implementation of the Real Estate Register and registration of ownership title and other rights as amended (herein referred to as “Cadastre Decree” [*Durchführungsverordnung zum Katastergesetz*]). The Cadastre Decree is an execution guideline to the Cadastre Act and, in particular, includes a more detailed description of what the cadastre office requires within the process of registration into the Real Estate Register. It is worthwhile to mention that the Real Estate Register law was subject of a broad amendment in 2004<sup>85</sup>.

## 2 General remarks

The Real Estate Register defines the dimensions of the real estate, as well as records and describes it. Furthermore, the Real Estate Register according to Article 1 par. 1 of the Cadastre Act contains information on rights relating to real estate, specifically ownership rights, charges and other encumbrances as easements, pre-emption rights *in rem*, and other rights and obligations deriving from easements, as well as rights arising from the administration of state and municipal property as well as property from higher territorial units, and finally certain lease rights as rights *in rem* (i.e., lease agreements regarding plots having a term of longer than five years<sup>86</sup>; cp. below at II.C.3.c).

Article 19 of the Cadastre Act stipulates that owners and other entitled persons are obliged to insure that all cadastral data concerning the real estate or its owner and the changes of this data are properly recorded, to report all changes to the cadastre office within 30 days from the day of creation, change or termination of the decisive facts. At the latest, after the cadastre office requests submission of the documents in the determined period for the entry of this data into the Real Estate Register; natural persons are not obliged to report data on the real estates mentioned in public and other deeds.

The Real Estate Register comprises the relevant cadastre documentation (*katastrálny operát*) for the relevant cadastral area. Cadastre documentation is a set of documentary materials containing data included in the Real Estate Register of one cadastral area. The cadastre offices for the territory of a district are responsible for the administration of cadastral matters.

In addition, the Real Estate 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 estate rights, of existing agricultural and forestry land, of the environment, of natural resources, of national and other cultural monuments (Article 2 of the Cadastre Act).

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85 Act No. 173/2004 Coll. amended the Cadastre Act with effect of 15 April 2004. See in this regard also *Tomašovičová/Koprďová*, The amendment to the Cadastre Act, *Ars Notaria*, 3/2004, p. 7 and on.

86 However, not sub leases.

The information registered in the Real Estate Register is public. Generally everyone has access to the documentation recorded therein and to make extracts, copies or outlines thereof. However, the collection of deeds (*zbierka listín*), which includes, in particular, agreements, decisions of state authorities or other deeds, is not publicly accessible. In addition, certain information recorded by the cadastral authority, such as personal data of holders of rights, or typically the amount of the claim secured by a mortgage, is confidential. As the Real Estate Register is publicly accessible, it is assumed that third parties are to have knowledge of the content of the records kept by the Real Estate Register.

Recently, an electronic online system of the Real Estate Register was established. The information is accessible through the internet and is free of charge. However, it has only informative character, i.e. electronic extracts are not legally binding. Compensation for damages caused by mistake of a cadastral authority can be claimed from the Geodesy, Cartography and Cadastre Authority of the Slovak Republic.

Applications for registration with the Real Estate Register will be dealt with in the order in which they are received. The year, the month, the date, the hour and the minute of the submission shall be marked on the application for registration.

### **3 Outlook: Governmental Bill on the Amendment of the Cadastre Act**

The Authority of Geodesy, Cartography and Cadastre of the Slovak Republic (herein further referred to as “Authority”) has recently published a bill on amending the Cadastre Act with the aim of specifying the legal regulation of the state administration in the field of the Real Estate Register.

Due to the dynamically developing real estate market the requirements for the users of the Real Estate Register in particular in context with its function of an information system on ownership and other rights related to real properties significantly increased. The intent of the Authority is to respond to these ever-growing requirements and to establish a modern Real Estate Register, which is able to provide quick and qualitative information in a way comparable to the services of other member-states of the European Union.

The bill is focused on:

- simplification of the procedure on the approval of incorporation,
- extension of the cadastre office’s competence (information from the Real Estate Register regarding any area or district can be requested or provided by every cadastre office in the whole territory of the Slovak Republic),
- method of provision of the information in the form of an extract from the Real Estate Register only as a public deed,
- specification of the provisions on the renewal of the cadastral documentation,
- making the services of the Real Estate Register available online; online services are to comprise the provision of information from the Real Estate Register as well as the filing of applications for registration in the Real Estate Register.

In context with the contemplated electronic application proceedings, the following shall be outlined: According to the proposed Article 30 par. 3 to 6 of the bill, prior to the submission of the application for incorporation the parties to the procedure may submit a notification on the intended application for incorporation in an electronic form that will be disclosed on the web site of the cadastre office. The notification will be electronically sent to the competent cadastre office. If the party does not submit the application for the incorporation within 90 days from the date of the delivery of the electronic notification, the cadastre office will delete the notification.

The application for incorporation must – as it is the case now – be submitted in written form and contain mandatory content. In addition, two duly signed copies of the contract upon which the right to the real estate shall be entered into the Real Estate Register form the annex of the application for incorporation as well as several other legally prescribed annexes. In this regard Article 30a regulates special provisions on the electronic application when entering the incorporation:

- The application for the incorporation may be submitted by electronic means. The application for the incorporation shall contain the elements stated in Article 30 par. 4 and the electronic address of the party to the procedure, to which the confirmation on the approval of the incorporation shall be delivered. The application for the incorporation shall be signed by way of an electronic signature<sup>87</sup> of the party to the procedure.
- If the application for the incorporation is submitted by electronic means, the annexes to the application for the incorporation pursuant to Article 30 par. 5 shall also be in electronic form.
- The cadastre office shall insert the date, hour and minute of the delivery of the application for the incorporation to the application for incorporation that has been delivered by electronic means.

Article 35a of the Cadastre Act also includes special provisions on the electronic application when entering a priority notice. The public deed or other deed determined for entry by priority notice may be submitted by electronic means without the application or on the application.

The application shall always be provided with the electronic signature of the applicant. If the application is being done by electronic means, the annexes to the application for the priority notice must be in electronic form. These shall be submitted together with the application.

The cadastre office shall electronically send an extract from the ownership certificate to the persons whose rights to the real estate have been affected not later than on the working day following the date of the entry of the priority notice into the land register, if it has the electronic addresses of these persons.

The bill was supposed to become effective on 1 September 2008. Only recently it was rejected by the Parliament and is now subject for review and resubmission. However, the review is not expected to bring about any major changes.

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<sup>87</sup> Act No. 215/2002 Coll. On electronic signature as amended.

## B Administrative structure of the Real Estate Register

The Real Estate Register is operated by the relevant cadastral authorities (*katastrálny úrad*), which are responsible for maintaining and updating it. Each region in the Slovak Republic has one cadastre authority, which again is territorially divided in several cadastre offices (*katastrálna správa*). Their number depends on the number of districts in the relevant region. The cadastre office on the territory of which the real estate is located is competent for the related cadastral procedures. Furthermore, each district is split into several cadastral areas (*katastrálne územie*) and municipalities (*katastrálna obec*).

Currently, there are 8 cadastral areas (Banska Bystrica, Bratislava, Kosice, Nitra, Presov, Trencin, Trnava and Zilina) and 74 cadastre offices operating the Real Estate Register in the Slovak Republic. Each cadastral area has one cadastre authority. Each cadastre authority of the relevant cadastral area consists of several cadastre offices which operate the Real Estate Register. According to Article 3 par. 8 of the Cadastre Act, a cadastral area is an area – technical unit composed of territorially closed, commonly recorded set of plots in the Real Estate Register.

## C Content of the Real Estate Register

### 1 Real Estate Register

In the Real Estate Register, the following real estate related information shall be the subject of registration therein (Article 6 of the Cadastre Act): see also definitions in Article 3 and 9 of the Cadastre Act.

The following items shall be recorded in the Real Estate Register:

- cadastral areas,
- plots<sup>88</sup> delimited by the following borders<sup>89</sup>
  - the ownership border,

<sup>88</sup> The plot is a part of the earth's surface separated from the neighbouring parts by the border of a territorial administrative unit, from the cadastral area, built – up area of the municipality by the border delimited by the right to the real estate, by the border of the tenure or by the border of the type of the plot or by the border of the way of the plot usage (Article 3 par. 1 of the Cadastre Act). In the Real Estate Cadastre plots can be divided into:

- arable land,
- hop gardens
- vineyards,
- gardens,
- orchards,
- permanent grass growth,
- forest plots,
- water areas,
- built – up areas and courtyards,
- other areas.

<sup>89</sup> The border of the plot is determined by the break points. The border of the neighbouring plots delimited by the ownership right is considered the border of real tenure, if it is recognized by the owners of the neighbouring plots and if it not at issue (Article 3 par. 2 of the Cadastre Act).

- the ownership border, united into the bigger units,
- the tenure border,
- the border of the plot type,
- the border of the way of usage,
- the border of the cadastral area,
- the border of the built – up territory of the municipality;
- buildings connected to the ground by solid foundation that are either
  - marked with a conscription number,
  - or not marked with a conscription number,
  - buildings under construction<sup>90</sup> in connection with the creation, change or deletion of the right to them,
  - underground buildings namely on the places of their penetration into the earth’s surface,
  - aboveground buildings namely on the places of the penetration of their external perimeter with the earth’s surface or with the projection of their external perimeter to the earth’s surface;
- apartments, apartments under construction<sup>91</sup>, non–residential premises and non–residential premises under construction in connection with the creation, change or deletion of the rights to them; these shall be recorded only in the file of the descriptive data of the Real Estate Register namely by the data on numbering, owners and ownership relations;
- protected parts of the nature and land and cultural monuments;
- rights to real estate recorded in the Real Estate Register, rights to the buildings, apartments and non – residential premises upon the contract on building, construction inside of the building or superstructure of a building<sup>1a</sup>), as well as other facts connected with the rights to the real estate, namely notification on bankruptcy against the owner of the real estate, commencement of the execution of the judgment by sale of the real estate, commencement of the expropriation and commencement of the execution by sale of the real estate (hereinafter referred to as “fact connected with the right to the real estate”).

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90 The building under construction for the purposes of the registration in the Real Estate Cadastre is a building for which a decision on final building approval has not been rendered nor a conscription number has been assigned and is at least in the state of construction that the building and technical and functional structure of its first above – ground floor is evident from the submitted expert’s opinion (Article 3 par. 15 of the Cadastre Act).

91 The apartment under construction or non – residential premises under construction is a room or set of rooms determined under the building permit for living or for a purpose other than living, if it is situated in a building whose state of construction is that it is externally closed by peripheral walls and the roof of the construction (Article 3 par. 16 of the Cadastre Act).

Furthermore, the Real Estate Register contains the following data according to Article 7 of the Cadastre Act:

- geometrical determination<sup>92</sup> and location of the real estates and cadastral areas,
- parcel<sup>93</sup> numbers, plot types and sizes, conscription numbers of the buildings, data on the plots on the built-up area of the municipality, data on types of protected real estates, on prices of agricultural plots and forests and data on real estate usage<sup>94</sup>, selected data on incorporation of the plots into the agricultural land fund or into the forestry land fund, data on soil evaluations – ecological units, selected data on the creation and protection of the environment and selected data for other information systems on real estate,
- data on rights to the real estate, data on the owners of the real estate (hereinafter referred to as “owner”) and on other persons entitled to the rights to the real estates (hereinafter referred to as “entitled person”) if there is a natural person, his/her name, surname, surname at birth, date of birth, personal number and the place of the permanent residence, if there is a legal entity, its name, seat, identification number, as well as the facts connected with the rights to the real estate,
- data on the fundamental and exact location of point fields or data on point fields (*bodové polia*),
- settlement (*sidelné*) and non-settlement geographical names.

## 2 Cadastral documentation

Cadastral documentation consists of documentary materials necessary for the administration of the Real Estate Register and for the renewal of cadastral documentation. Following Article 8 of the Cadastre Act, cadastral documentation comprises the following parts:

- a set of geodetic information, represented by cadastral maps, maps of a specific documentation, geometric maps, records of the detailed measurements of changes, list of coordinates, data on the connection of break points and other geodetic documentation;

92 Geometrical determination of the real estate or cadastral area is the delimitation of the shape and size of the real estate or cadastral area by their boundaries (Article 3 par. 4 of the Cadastre Act). A cadastral map is a large- scale planimetric map (*polohopisná mapa veľkej mierky*) depicting all the real estates and cadastral areas recorded in the Real Estate Cadastre. The plots shall be depicted on the cadastral map by the projection of their boundaries into the projection plane and are marked by parcel numbers and generally by the symbols of the plot types (Article 3 par. 10 of the Cadastre Act).

93 The parcel is a geometrical determination and location and depiction of the plot on the cadastral map, on the map of stated documentation or on the geometric plan with a marking of its parcel number (Article 3 par. 3 of the Cadastre Act).

94 The usage of a real estate is described in Section A of the relevant Ownership Certificate and is expressed by a number code together with the respective explanation thereto.

- a set of descriptive information<sup>95</sup>, which is represented by
  - the data on cadastral districts, on parcels, on rights to real estates, on the owners and other entitled persons namely, in the case of a natural person their name, surname, surname at birth, date of birth, personal identity number and permanent residence, in the case of a legal person their name, seat and identification number, if assigned, or other identification data on the facts connected with the rights to real estates, on announced changes as well as on changes found discovered when examining the changes, by revision of cadastral data and by renewal of cadastral documentation;
  - the data on settlement and non-settlement names;
- the collection of deeds, which mainly contains duly signed written copies of contracts, agreements and declarations made in writing by the entering entity of the entry of real estates owned by legal entities (hereinafter referred to as: “contract”), written forms of the decisions of any state authorities and notarial certificates (hereinafter referred to as: “public deed”) as well as other deeds,

95 Pursuant to Article 13 of the Cadastre Decree the following applies:

Data on plots shall contain a parcel number, area, type of the plot, if it is an agricultural plot or forest plot, also data on the price, if it provides the price of the single plots, data on the owner, on the tenant, on the holder or on other authorized person and other descriptive data. The data on the plots can be divided into: data on the “C” register parcels registered on a cadastral map, data on the “E” register parcels registered on the map of the specific cadastral documentation that are united into larger units or divided into several parcels on the cadastral map; legal relations are established upon them and the boundaries in the field are not visible. Data on the buildings shall contain a parcel number, conscription number of the building and the numbers of the ownership certificates, or other numerical or descriptive identification data.

Data on buildings under construction shall contain parcel number of the plot, on which a building will be constructed, numbers of the ownership certificates, or other numerical or descriptive identification data.

Data on apartments and non-residential premises contain the conscription number of the building, the parcel number of the plot on which the building has been constructed, address, floor number, apartment number, type of the non-residential premises, share in the common parts and common facilities of the building, share in the plot and other identification data.

Pursuant to the contract on construction, data on apartments under construction and on the non-residential premises under construction shall contain the parcel number of the plot, on which the building has been constructed, floor number, apartment number, type of the non-residential premises, share in the common parts and in the common facilities of the building, share in the plot and other descriptive and identification data. Pursuant to the contract on superstructure or construction inside of the building (*zmluva o nadstavbe a vstavbe*) data on apartments under the construction and on the non-residential premises under the construction shall contain the conscription number of the building, the parcel number of the plot on which the building has been constructed, address, floor number, apartment number, type of the non-residential premises, share in the common parts and common facilities of the building, share in the plot and other identification data.

According to Article 14 of the Cadastre Decree, data on the rights and other relations to real estate shall contain data on rights to real estate registered in the Real Estate Register, data on rights to real estate that were created upon a contract on construction, construction inside of the building or superstructure (*zmluva o výstavbe, vstavbe alebo nadstavbe*) and data on other facts related to the rights to real estate. As far as a parcel is concerned, possession, lease or administration of the real estate that is not in the ownership of the state, is to be specified by special laws.

which in accordance with law certify the rights to the real estate (hereinafter referred to as: “other deed”) and the documentation of settlement and non-settlement geographic names<sup>96</sup>;

- summary data of the land fund register,
- the land books, the railway book and their documentation. The land books<sup>97</sup> and the railway book serve as a source of data on the cadastral districts, on parcels, on owners and on rights to the real estates;
- specific records of contracts, public deeds or other deeds which prove or certify the rights to the part of a plot created by a geometric map, where a line building or other general welfare building is built (hereinafter referred to as: “a part”).

A copy of cadastral documentation or of its part will only be issued for the reasons stated in this Act. The copy includes all the data and appurtenances of valid cadastral documentation and can be made only from valid cadastral documentation.

Invalid cadastral documentation is an archival document of permanent documental value. With invalid cadastral documentation, the reason and the date of the beginning of its invalidity shall be indicated.

The land books and the railway book are considered archival documents of permanent documental value.

### **3 Ownership Certificate and its function**

#### **a General remarks**

The title of an owner to the real estate may be verified by checking the ownership certificate (*list vlastnictva*). The ownership certificate is a public document that may be obtained by anyone. An extract may be obtained either from the relevant cadastre office for a small fee or from the *online* cadastre portal; however, the latter has only for informative purposes. The ownership certificate has three significant sections that contain the following information pursuant to Article 15 of the Cadastral Decree:

- Section A: Information about the real estate, both the land including the identification of the land plot and/or of any building structures on that land (prescription number, concession number), provided the building belongs to the same owner
- Section B: Identity of the owner or co-owners, size of each co-owner’s share and mode through which the real estate has been acquired

<sup>96</sup> Deeds being relevant in proceedings when a priority notice will be recorded in the Real Estate Register are outlined in more detail in II.F.2.

<sup>97</sup> As mentioned above, land books are an older form of registration of rights to real estate. However, they are still being used and therefore they are regarded as of long-term documentary value. According to unofficial information provided by a representative of a cadastre authority, today, approximately 95% of the data of the former land books are already stated on the ownership certificate. Pursuant to Article 46 of the Cadastre Decree, the land books are arranged upon the districts and are administrated by the cadastre offices competent for the administration and updating of the Real Estate Register.

- Section C: Information about certain encumbrances, such as mortgages (including the identity of the secured creditor and the indication under which agreement the mortgage was created, but not the amount of the secured claim<sup>98</sup>, or any other document being relevant for the creation of encumbrances), easements, certain pre-emption or other rights *in rem* (for instance, leases to certain land).

**b Some specific aspects**

ba Buildings on a plot do not automatically belong to the owner of the relevant plot

For more details see I.B.1.c.ca above.

bb A caution warns that certain changes regarding the legal status of a real estate are taking place

If certain proceedings concerning a real estate have commenced, which may affect the legal status of this real estate, or otherwise the ability of the owner of the real estate to dispose of its property would be restricted, the cadastre office must insert a caution<sup>99</sup> (*plomba; Plombe*) (for instance, V 111/07-plomba) in the relevant section of the ownership certificate and in the Real Estate Register. Such caution is visible on the ownership certificate and generally means that, before the extract has been issued or the Real Estate Register was inspected, the cadastre office has already received an application for a constitutive registration or for the registration of a public priority notice regarding this real estate. Overall, it indicates that a respect proceeding is still pending.

bc Some restrictions may still not be visible

In principle, anybody may trust in good faith that the records in the Real Estate Register are complete and correct, if at the moment of acquisition of title no proceedings have been registered which contest the actual status of the Real Estate Register or if the Real Estate Register content does not give rise to controversial provisions which would contradict the prevailing legal situation. The following important legal issues may, however, not be apparent from the ownership certificate:

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98 In context with the registration of a mortgage by incorporation into the Real Estate Register, the cadastre office will enter the mortgage and also any changes to it in the future, the name of the creditor, the number of the mortgage agreement and the type of the secured claim (for instance, whether the claim arises from a credit or a loan agreement). Other facts will not be entered into the Real Estate Register for reasons of the protection of personal data according to Articles 16 and 17 of Act No. 256/1992 Coll. on the protection of personal data in information systems. Consequently, the ownership certificate does not include any information on the amount of the secured claim.

99 A distinction should be made between a caution and a public note (*poznámka*), as both may be found in the extract. Whilst the former has the meaning as described above (and indicates whether or not proceedings at the Land Registry itself are pending), the latter usually shows whether or not certain external events have occurred that may affect the real estate. These external events may, for example, be pending execution proceedings, bankruptcy proceedings in respect of an owner, injunctions affecting the real estate or litigation over the determination of title.

- leases (leases of land concluded for a term of at least five years are registered in the Real Estate Register, although it is not conditional for their creation).
- pre-emption rights established by virtue of law.
- some statutory mortgages (for instance, Article 15 of Act No. 182/1993 Coll., as amended, which, despite the requirement for its registration, is usually not registered<sup>100</sup>).
- pending execution, court order, bankruptcy or other proceedings, where a third person claims an ownership right to the real estate, due to a certain time gap between the time when the relevant event has occurred and the time when actually notified to the Real Estate Register.
- easements created under special Acts (e.g. easements created under the Electronic Communications Act No. 610/2003 Coll.).

bd No acquisition of real estate in good faith

For more details see I.B.1.c.cb above.

### **c Entries of lease rights to plots in the Real Estate Register**

Entries of lease rights to plots in the Real Estate Register are done by priority notice according to Article 34 of the Cadastre Act. This information should be inserted into Section B of the ownership certificate, which concerns data related to owners and other entitled persons<sup>101</sup>.

However, there is no consistency to how each individual cadastre office inserts information about lease rights to plots in the relevant section of the ownership certificate. From our research we learnt that, for example, the above-mentioned lease rights could be written also in Section B or in the Notes (*poznámky*) at the end of the ownership certificate (although this part is usually used to give extra information on information already given in Section C – liens). In addition, sometimes this information is not included at all, because this serves only informative purposes and therefore parties do not often apply for this application. In practice, such information may only be obtained, when the seller informs the buyer of such fact (see also II.C.3.b.bc)<sup>102</sup>. Overall, a registered lease right does not constitute a right *in rem*. In this case, the registration with the Real Estate Register serves purely informative purposes.

100 For instance, the statutory mortgage of the community of co-owners, which validly exists despite the lack of its entry into the Real Estate Register, as the entry would serve only a declaratory purpose.

101 See Article 15 par. 2 b) of the Cadastre Act.

102 Decree No. 534/2001 of the Authority for Geodesy, Cartography and Cadastre of the Slovak Republic regulates the details of work organization and on depositing and manipulation of files at the cadastre offices and the cadastral authorities (Administration Rule). This decree stipulates in Article 8 that the cadastre office administers different kinds of Registers. For instance, "Register N" contains data on rental rights to the real estate. However, as this register is not publicly available and was created solely for administration purposes.

## D Types of registration

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 caution<sup>103</sup>.

### 1 Incorporation

The incorporation (*vkład; Einverleibung*) is a kind of registration of those legal relationships relating to real estate, which are based on a contract.

The incorporation has constitutive effects, i.e. upon the legally binding approval of incorporation by the respective cadastre office a right to a real estate is validly created, changed or deleted (Article 5 par. 1 of the Cadastre Act). The incorporation process is outlined in more detail in II.G.1 below.

### 2 Priority Notice

The priority notice (*záznam; Vormerkung*) serves to register rights to real estate that have been created, changed or deleted by one of the following legal grounds:

- Decision of a state body (for instance, pursuant to Article 135c of the Civil Code),
- by award in a public tender procedure,
- positive prescription of ownership pursuant to Article 134 par. 1 of the Civil Code,
- Things growing (Article 135a of the Civil Code) or things being processed (Article 135b of the Civil Code).

These entries are to be recorded by the competent cadastre office based on the relevant deeds. The registration itself does not have any influence on the creation, change or deletion of these rights and hence has only a declarative character (Article 5 par. 2 of the Cadastre Act).

According to Article 34 par. 3 of the Cadastre Act, the priority notice is not subject to the provisions of the Administration Code; it is an administrative procedure *sui generis*. The cadastre office only decides on whether or not the formal requirements for the registration have been met.

It enters the priority notice by law upon request of the owner or another entitled person. The application must be submitted in writing and meet the statutory rules regarding its content.

If a public document or another deed is available for the registration of a priority notice that certifies the ownership of the real estate to another person, the cadastre office shall not perform 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 estate exists in this concrete case (Article 36a of the Cadastre Act). In the

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103 More details see in *Lazar a kolektiv*, Civil law, third edition, IURA EDITION, 2006, p. 531 and on.

event the priority notice is not registered, the cadastre office must invite the person concerned either to enter into an agreement, or to petition a court to reach a declaratory judgment on the real estate right pursuant to Article 80 lit. c of the Civil Procedure Code.

### **3 Annotation**

The annotation (*poznámka; Anmerkung*) in the Real Estate Register means that the power of disposal of the owner of the real estate either is restricted or otherwise serves as information on the rights to the real estate.

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

The cadastre office also enters annotations into the register, if someone doubts the credibility of the information in the Real Estate Register on the rights to a property.

Initially, an annotation is a conditional entry that becomes unconditional after the requirements stipulated in the Cadastre Act are met. The entry is done on a preliminary ownership certificate, which is generally not available until the procedure described above has been completed.

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

## **E Principles of the Real Estate Register<sup>104</sup>**

### **1 The Incorporation or Intabulation Principle (*Intabulácia; Einverleibungsprinzip*)**

The intabulation principle is of relevance in Slovak law only for the creation, change or deletion of ownership rights and other rights *in rem* to real estate under contracts either based on the Civil Code or the Commercial Code (for instance, if a real estate should serve as a contribution in kind for a company). The incorporation and thus the legally binding creation of the above-mentioned rights take effect with the final decision of the cadastre office on the approval of the incorporation.

All information entered into the Real Estate Register is verified on the basis of excerpts and certified copies from the Real Estate Register. Any legal relationships with third parties and proceedings before certain bodies (for instance, a court) are proven by an entry in the ownership certificate.

Certain legal relationships do not require any incorporation or priority notice in the Real Estate Register in order to be established, as they are created based on other facts (for instance, statutory mortgages). However, the relevant excerpts in any case must prove the change in a legal relationship from the Real Estate Register.

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<sup>104</sup> *Lazar a kolektív*, Civil law, third edition, IURA EDITION, 2006, p. 538 and on; *Horňanský*, Real Estate Register in practice, epos, 2003, p. 341 and on.

## **2 The Application Principle<sup>105</sup>**

The procedure on the approval of the incorporation of ownership title and other rights *in rem* in the Real Estate Register is always initiated by application of the parties to the procedure (Article 30 par. 1 of the Cadastre Act). The Cadastre Act regulates in detail the requirements an application to the cadastre office must meet including all the required documentation.

## **3 The Principle of Legality in the Incorporation**

The cadastre office 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 manner and the declaration of intent is credible, sufficiently precise and understandable. Furthermore, it examines whether freedom of choice is given and ensures that there are no restrictions on the rights of disposal.

The Cadastre Decree regulates in detail how the cadastre office should assess the validity of deeds and eliminate any defects that may exist. It is the duty of the cadastre office to decide whether a deed contains the prescribed content or not.

## **4 The Principle of Speciality**

The principle of speciality (also referred to as the principle of preciseness or clarity) applies to the exact identification and determination of the charged asset the real estate. This is intended to ensure the preciseness and clarity of every single entry into the Real Estate Register.

## **5 The Priority Principle**

### **a General**

This principle finds expression in Article 42 par. 2 of the Cadastre Act by giving priority to the party having delivered an application for incorporation in the Real Estate Register as first, and in the use of the caution (*plomba*) which must be inserted after the respective application for incorporation was delivered to the cadastre office.

### **b Order of applications for incorporation in the Real Estate Register**

The cadastre office generally enters the rights in the real estate in the sequence the individual applications for registration in the Real Estate Register are received. The cadastre office puts a remark on the duly signed written copies of the application of the date and the time of delivery.

The rights to a real estate are registered in the ownership certificate, thus rendering them trustworthy and binding cadastral information.

### **c The legal effects of a caution (*plomba*)**

The cadastre office enters a caution on the ownership certificate (or in the land book or railway book) at the latest on the workday after delivery of the contract, the public document or any other deed for registration, or in the railway books.

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105 Also named the Principle of Free Choice, see *Lazar a kolektiv*, Civil law, third edition, IURA EDITION, 2006, p. 539.

The caution indicates that the right stated in the Real Estate Register is currently subject to a change.

This caution expires when an incorporation or priority notice is performed, by final dismissal of the proceeding or the final rejection of the incorporation. It is entered in the rank that corresponds to the moment of the delivery of the application to the cadastre office. For more details see II.G.1.d below.

## **6 The Principle of Public Availability (Formal Disclosure Principle)**

### **a Unrestricted access to the cadastral documentation**

Pursuant to Article 68 par. 1 of the Cadastre Act, cadastral documentation is publicly accessible. Anyone shall have the right to inspect cadastral documentation and to make extracts, copies or sketches thereof.

When inspecting cadastral documentation or when providing personal data from the Real Estate Register, the personal data shall be accessed or provided in the extent of a name, surname, surname at birth, date of birth and legal residency. This extent of personal data shall also apply to the publication of personal data from the cadastral documentation (Article 68 par. 2 of the Cadastre Act).

In general, publication of a personal identification number and data on the price of agricultural land and forest is forbidden. In addition to personal data from the cadastral documentation mentioned above, a personal identity number and data on the price of agricultural land and forest shall be made accessible to the owner of this real estate for inspection or it shall be provided on her/his request.

### **b Restricted access to the collection of deeds**

The publicity of the collection of deeds (Article 8 par. 1 c) of the Cadastre Act) shall be limited and shall be enabled only to the owners or other entitled persons or to the person carrying out geodetic activities concerning the land consolidation pursuant to specific provision, or to the person producing the geometric maps or laying out plot boundaries, or to the person carrying out expert activities in the field of geodesy, cartography and Real Estate Register, or to the person producing maps of value of real estate (i.e. a list including the value for real estates of a certain area, which is currently only existing for arable land; however, according to a bill to the Cadastre Act, in the future it should concern all types of land).

### **c Other remarks**

Data on prices of agricultural land and forests shall be provided to state bodies for the establishment of their information systems or to persons producing (maps of value). Upon request, the cadastre office shall execute a certified extract or an authorized copy from a set of geodetic information, a certified extract or an authorized copy from the set of descriptive information, from the land books and the railway book (hereinafter referred to as: “the certified extract or the copy”) and make an identification of the parcel as well. The certified extract or the copy, or the identification of the parcel are public deeds. A certified extract or copy of the ownership certificate issued to a natural person, who is the owner of the real estate, may upon their request, also contain in addition to personal data stated in

Article 68 par. 2 of the Cadastre Act their personal identification numbers (Article 69 par. 1 of the Cadastre Act).

The cadastre office will not execute a (i) certified extract or copy from the ownership certificate to the real estate on which a caution pursuant to Article 44 par. 1 of the Cadastre Act is indicated; an (ii) extract or copy from the ownership certificate with an indication that on the ownership certificate a caution on the change of the right to the real estate is made. The cadastre office hands this over to the owner or other authorized person or a person authorized pursuant to a specific provision (Article 69 par. 2 of the Cadastre Act).

Upon request, the cadastre office shall also execute those copies of cadastral documentation, which are not public deeds, and shall also provide other data. An extract or copy of cadastral documentation, which is not a public deed, issued to a natural person who is the owner of the real estate, may on his/her request include, in addition to personal data stated in Article 68 par. 2 also include their personal identification number.

Selected data pursuant to par. 3 of Article 69 of the Cadastre Act may also be provided by a legal entity established by the office for the purpose of carrying out geodetic and cartographic activities.

Pursuant to Article 69 par. 5 of the Cadastre Act, anyone shall be allowed to request a certified extract or copy and the identification of the parcel, copies, which are not public deeds or any further information from any cadastre office. If this cadastre office is not competent, it shall submit the request to the competent cadastre office.

Upon request, the cadastre office 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.

## **7 The Principle of trustworthiness and the binding character of cadastral data (Material Disclosure Principle)**

According to Article 70 of the Cadastre Act, cadastral data stated in Article 7 shall be trustworthy if not proven otherwise.

The cadastral data, namely the data on the rights to the real estates, the parcel number, the geometrical identification of the real estate, type of the plot, the geometrical identification and the area of the cadastral district, the name of the cadastral district, the area of the agricultural unit or the forest unit or the organizational unit, the data on fundamental and exact location of point fields or data on point fields (*polohové bodové polia; Lagefestpunktfelder*), the data on standardized geographical names, shall be trustworthy and binding if not proven otherwise. The extent of the parcel, if determined in digital form by renewing cadastral documentation by means of a new survey performed after the effectiveness of the Cadastre Act, shall also be considered trustworthy and binding.

Article 71 of the Cadastre Act governs the usage of binding cadastral data. The binding cadastral data shall be used particularly for the protection of the rights to the real estates, for the purposes of administration of the taxes and charges, for

the protection of the agricultural land fund, for the protection of the forest land fund, for the creation and the protection of the environment, for economic activities and for information systems on the real estates.

The binding cadastral data shall serve as a basis for the issuance of a written form of public deeds and other deeds. However, the cadastral data, the trustworthiness of which has been rebutted, shall not be used.

## **F Corrections of wrong entries in the Real Estate Register**

### **1 Responsibilities of the cadastre offices**

In cadastral proceedings the rights to real estates shall be entered, and the following shall be decided upon: changes of the borders of the cadastral areas, examination of the changes of the data in the Real Estate Register, the correction of the mistakes in the cadastral documentation and the renewal of cadastral documentation.

The cadastre office on the territory of which the real estate is situated is competent for the cadastral procedure.

The general regulations of the Administrative Code shall apply to the cadastral procedure, unless the Cadastre Act or other statute states otherwise. However, the general regulation of the Administrative Code does not apply to the procedure on the change of the border of the cadastral area.

When administering and renewing the Real Estate Register the cadastre office shall cooperate with municipalities, owners, holders, tenants and other authorized persons, as well as with particular state bodies (Article 45 of the Cadastre Decree).

The cadastre office organizes and utilizes the cooperation of the owners, holders, tenants and other authorized persons when administering, updating and renewing the Real Estate Register in order for the Real Estate Register to fulfil all its functions in favour of the owners, holders, tenants and other authorized persons. On the other hand, the cadastre office must also ensure this cooperation so that the Real Estate Register has its function also for the benefit of the municipalities and the state.

Under Article 57 of the Cadastre Act it is stipulated that the cadastre offices in cooperation with municipalities will review the announced or otherwise ascertained changes of the cadastral data. Neither general provision of the Administrative Code nor the provisions of Articles 23 to 25 of this Act shall be applied to the review and performance of changes of the cadastral data.

The cadastre office shall, even without an application being filed (Article 59 of the Cadastre Act):

- correct the cadastral data if this is in conflict with a public deed or other deed or with the results of review of the changes of cadastral data or with the results of the revision of cadastral data,

- in cooperation with the owners and other entitled persons correct the wrongly delineated plot boundaries in the cadastral map,
- in cooperation with state authorities, municipalities, notaries, the owners and other entitled persons correct the cadastral data caused by mistakes in writing and counting and by other obvious mistakes in written forms of legal acts, in public and other deeds.

## **2 Rights of other persons affected by the cadastre offices' activities**

When correcting the mistakes of the cadastral documentation, the owners and other entitled persons are obliged to provide true and exact information and to submit the relevant documents to prove it. If necessary, they are obliged to take part in the cadastral procedure.

A person, whose rights, legally protected interests or obligations are concerned with the cadastral data, may at anytime apply for the elimination of the mistakes in the cadastral documentation. The cadastre office is obliged to correct the mistakes within 30 days, or in some cases within 90 days from the delivery of the written application.

The correction of mistakes in the cadastral documentation shall not influence the creation, change or termination of the rights to the real estates; this shall not apply in the case of the correction pursuant to Article 59 par. 1 a) and Article 78 par. 1 of the Cadastre Act.

Finally, the general provisions of the Administrative Code shall apply to the correction of mistakes in the cadastral documentation, if the correction of data stated in the ownership certificate is concerned; this shall not apply in the case of correction of the plot area registered in the map of the relevant cadastral documentation.

## **G Registration proceedings**

### **1 Incorporation proceedings**

#### **a General**

If the procedure on the approval of the incorporation is being held by more than one cadastre office, the respective cadastre office gives notice about the commencement of the procedure to the other cadastre offices concerned without undue delay; after the conclusion of the procedure the respective cadastre office shall send one duly signed copy of the contract including the annexes or its copy to the other cadastre offices concerned for the purposes of recording of the data on the rights to real estate into the ownership certificate (Article 36 of the Cadastre Decree).

According to Article 28 of the Cadastre Act, the rights to the real estates stated in Article 1 par. 1 of the Cadastre Act (hereinafter only referred to as "rights to real

estates<sup>106</sup>)<sup>106</sup> arising from contracts<sup>107</sup> are to be entered in the Real Estate Register by incorporation unless specified otherwise in this Act. These rights to the real estates are generally created, changed or deleted by incorporation to the Real Estate Register. The incorporation is effective only upon a valid decision of the cadastre office.

In contrast, the legal effects of the incorporation when transferring state property to other persons pursuant to a specific Act are created upon a legally effective decision on its approval on the date determined in the application for the incorporation. Such application of the incorporation shall be, at the latest, submitted at the day determined in the application as the day of effectiveness of the ownership.

Furthermore, it must be noted that the legal effects of the incorporation from a contract on the transfer of an apartment and non-residential premises in the ownership of the tenant shall, in accordance with a specific provision, be created upon the effective decision on its approval on the date of delivery of the application for incorporation.

The Cadastre Act stipulates that anyone is entitled to inspect the records of delivered applications for incorporation.

As mentioned above, according to Article 29 of the Cadastre Act, the incorporation can be performed upon a legally effective decision by the cadastre office.

#### **b Application for registration of the incorporation of the right *in rem***

Article 30 of the Cadastre Act stipulates that the proceeding on the approval for the registration of the transfer of the right commences on the basis of an application for registration of the incorporation of the right *in rem* of the party to this proceeding. The application for the incorporation must be submitted in writing and shall include:

- name (business name) and permanent address (the seat) of the party to the procedure,
- specification of the cadastre office that is the addressee of the application,
- specification of a legal action upon which the right to the real estate shall be created, changed or deleted; if the subject of the application for incorporation are legal relations arising from more than one legal act, all of them shall be specified,

<sup>106</sup> Ownership rights, charges and other encumbrances as easements, pre-emption rights *in rem*, and other rights and obligations deriving from easements, as well as rights arising from the administration of state and municipal property as well as property from higher territorial units, and finally lease rights as rights *in rem* (i.e., leases having a term of longer than five years).

<sup>107</sup> The contracts are based on the Civil Code, the Commercial Code or other laws, for instance, purchase, donation or barter agreements, agreements on the establishment of rights that are equivalent to an easement, mortgage agreements, innominate contracts or agreements on the security transfer of rights based on the Civil Code; furthermore, the agreement on the sale of an enterprise (or part thereof), agreement on the purchase of a leased asset or the written declaration of the shareholder on the in-kind contribution into the company, which are based on the Commercial Code. The agreement on the transfer of ownership title to a flat or a non-residential premise according to Act on ownership to flats or non-residential premises. See *Lazar a kolektív*, Civil law, third edition, IURA EDITION, 2006, p. 532.

- number of the ownership certificate and the name of the cadastral area, if the right to the real estate to be affected by the incorporation has already been entered into the Real Estate Register, and
- determination of the day when the incorporation by the transfer of the state-owned property to other persons pursuant to specific provision shall become effective.

In particular, the following documents comprise the annexes to the above-mentioned application of incorporation:

- the contract upon which the right to the real estate shall be entered in the Real Estate Register; the contract shall be executed in the same number of duly signed copies as is the number of parties to the procedure as well as three duly signed extra copies,
- public deed or other deed certifying the right to the real estate, if this right to the real estate has not already been entered in the ownership certificate,
- specification of parcels, if the ownership right to the real estate has not been entered in the ownership certificate,
- geometric map,
- evaluation of real estates (the requirement of an expert's appraisal on the evaluation of the real estate, although still stipulated in the law, currently does not generally apply. It concerned the old legislation, according to which real transfer tax had to be paid by the purchaser of a real estate. However, it still applies, where a building under construction, flat or non-residential premises not being registered with the Real Estate Register is subject of a transfer.),
- extract from the Commercial Register or other register, if the party to the procedure is a legal entity,
- authorization contract, if the party to the procedure is represented by an authorized representative; the signature of the grantor of the power of attorney shall be authorized pursuant to specific provisions,
- tax payment or similar receipt, if the purchaser is obliged to pay tax or other payment pursuant to a specific provision.

The cadastre office is bound by the application of the party to the procedure. It must furthermore indicate the date and hour of the delivery of the application for incorporation on the application.

### **c Examination of the validity of the documents**

According to Article 31 par. 1 of the Cadastre Act, the cadastre office will then examine the validity/effectiveness of the contract, namely the title of the transferors disposing of the real estate, the determined form of the legal act, the trustworthiness, explicitness and comprehensibility of expressions of the will and whether contractual freedom or the right to dispose of the real estate are not limited. When deciding on the approval of the incorporation, the cadastre office shall also take into account legal and other facts that could influence the approval of the incorporation.

In the procedure on the approval of the incorporation, pursuant to Article 36b of the Cadastre Decree, the following are examined in particular whether:

- the application for the approval of the incorporation has been submitted by a party stated in the contract or its legal representative,
- the application for the incorporation has been submitted within the three-year period since the date of the conclusion of the contract,
- any factual or legal changes impeding the incorporation in the Real Estate Register have occurred in the period between the conclusion of the contract and the decision on the approval of the incorporation.

When examining the validity of the contract it shall be determined, whether the legal act does not interfere with the Cadastre Act, with its content or its purpose, whether it evades it or whether it is against good morals, especially, whether:

- the party has had the contractual capacity,
- the party with no contractual capacity has been represented by the legal representative or other representative,
- an authorized representative has acted on behalf of the legal entity,
- the contract has been concluded in the form of a notarial deed, if a party to this contract is illiterate,
- the contract is indeed an outcome of the written expression of the wills of the parties stated in this contract with special respect to those persons, whose right is been deleted or restricted upon this contract,
- there are no circumstances impeding the conclusion of the contract, that interfere with the disposal of the real estate and whether a consent has been given to the legal act of the party, who has restricted capacity to dispose of the real estate, or to the contract as a whole.

#### **d Insertion of a caution**

According to Article 36a of the Cadastre Act, ownership certificates must be sealed on the day of delivery of the contract, public document or other deed or on the day of the commencement of the procedure on correction of an error in the cadastral documentation or on the day of delivery of the protest of the prosecutor, however, not later than on the following day.

If the caution refers only to a particular real estate or only to a particular co-ownership share, the caution shall be recorded in part A or part B of the ownership certificate.

If the change affects all the data registered on the ownership certificate, then the caution shall be recorded in part C of the ownership certificate.

The caution consists of the number of the register that is separated by a slash from the two-digit number of the year, for instance: "V 123/96 – docket seal". During the electronic administrative process, the caution is to be recorded on the computer immediately after the file has been received.

If the caution relates to rights to real estates registered in the Real Estate Register, the caution shall be recorded behind the last entry or next to the data to which the caution relates. The caution shall be marked for instance: “V 888/93 – caution” (*V 888/93 – plomba*) or “Z 333/93 – docket seal” (*Z 333/93 – plomba*). If an incorporation or priority notice will be performed, all the valid data on the concerned real estate including co-ownership shares shall be transcribed from the Real Estate Register into the ownership certificate.

According to Article 69 par. 2 of the Cadastre Act, if a seal is inserted on the ownership certificate, a confirmed extract or copy of the ownership certificate should not be issued to anyone. However, regardless of this, the cadastre office can issue an extract or a copy of the ownership certificate with the indication that a caution is included on it<sup>108</sup> to the owner or another entitled person.

### **e Proceeding of the approval for the incorporation**

If the conditions for incorporation are fulfilled, the cadastre office approves the incorporation; otherwise it shall reject the application. If the conditions for incorporation are fulfilled only in part of the application, and if it is advisable, the cadastre office may decide only on the part of the application (Article 31 par. 3 of the Cadastre Act).

According to Article 32 par. 1 of the Cadastre Act, the cadastre office must decide on the application for the incorporation within 30 days from the delivery of the application. In the special case of Article 28 par. 4 of the Cadastre Act – the accelerated proceeding, it must decide within 15 days from the delivery of the application. The accelerated proceeding has been applied for and payment of the higher administration fee in the amount of 6,000 SKK is proved. If the decision is not made within this period, it shall be made within the 30 days. However, the cadastre office then has to return the difference of the administration fee (i.e., 4,000 SKK).

The decision on the approval of the incorporation is indicated, according to Article 31 par. 4 of the Cadastre Act, in the contract by the cadastre office. In particular, this includes:

- the date when the cadastral office decided on the incorporation,
- the signature of the person who approved the incorporation,
- the stamp of the cadastral office.

According to Article 37 of the Cadastre Decree, the decision on the approval of the incorporation shall be generally marked on the first page of all the duly signed copies of the contract with the following text: “Incorporation approved on the date [•] under the No. V-...19.; the decision comes into effect on this day”. As already mentioned above, the decision on the approval for the registration of the transfer of the ownership right (registration of the “incorporation” of the ownership right) to real estate in the ownership of the state to another person pursuant to a special

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108 *Lazar a kolektív*, Civil law, third edition, IURA EDITION, 2006, p. 534.

regulation<sup>109</sup> or of the transfer of the ownership right to an apartment or non-residential premises pursuant to the Premises Act shall generally be marked on the first page of all delivered and duly signed copies of the contracts with the text: “Incorporation approved on the date [•] under the No. V-.../..01, the incorporation comes into effect on the date [•].” (“*Vklad povolený dna [•] pod c. V-.../..01, právné účinky vkladu nastali [•]*”). However, the fundamental data on the approval of the incorporation may also be recorded by a stamp print.

Pursuant to Article 33 of the Cadastre Act, an employee of the cadastre office, having university education and a special qualification, is the qualified person to decide on the application for incorporation. A special qualification is to be understood as the entire theoretical and practical experience and knowledge of generally binding legal regulations as well as other legal provisions regulating and related to the Real Estate Register<sup>110</sup>.

The decision on the approval of the incorporation becomes effective on the day of its indication. The decision on approval of the incorporation cannot be appealed against.

The cadastre office shall deliver the contract including the indication of the decision on approval of the incorporation to all parties to the procedure (Article 31 par. 7 of the Cadastre Act). Pursuant to Article 37 par. 3 of the Cadastre Decree, after the decision on the approval of the incorporation by the cadastral administration becomes effective, one duly signed copy shall be deposited in the collection of documents,<sup>111</sup> and one duly signed copy shall be sent to the party. If the real estate is situated on the area of more than one cadastral office, the cadastre office that has decided on the approval of the incorporation will send one duly signed copy of the contract together with the annex to the cadastre office concerned.

## **f Suspension or termination of incorporation proceedings**

There is a possibility to file an appeal against the decision of the cadastre office, by which the approval for incorporation of the right *in rem* was rejected. Pursuant to Article 31 par. 8 of the Cadastre Act, the appeal shall be filed in the cadastre office (which has rendered the decision) within 30 days from its delivery. If the cadastre office does not allow the appeal in its whole extent, the court shall decide on it.

According to Article 31a of the Cadastre Act, the procedure on the application for incorporation is suspended, if:

- the procedure on a preliminary question has been commenced,

<sup>109</sup> Act No. 92/1991 Coll. on the transfer of property of the state to other persons as amended

<sup>110</sup> Details on the issuance and withdrawal of the authorization for the qualification to decide on the application for the incorporation shall be determined by a generally binding legal regulation to be issued by the Office.

<sup>111</sup> Article 37 par. 3 of the Cadastre Decree still states that one counterpart accompanied by the evaluation of real estate shall be sent to the tax administrator. However, as real estate transfer tax was abolished as of 1 January 2005, this provision is no longer valid. As a consequence, it is now necessary to submit the transfer (purchase) contract with a counterpart for each party, plus two additional ones.

- the administration fee has not been paid,
- the party to the procedure has been requested to submit, within a specified term, a public deed or other deed proving the right to the real estate, or if he has been requested to eliminate mistakes in the application or annexes thereof,
- all the parties to the procedure suggested so; however, in such a case the suspension shall not last more than 60 days.

On the other hand, pursuant to Article 31b of the Cadastre Act, the procedure on the approval of incorporation will be terminated, if:

- the proposal was not submitted by the party to the procedure,
- the party to the procedure had terminated the contract before the decision on the approval of the incorporation was issued,
- the application for the incorporation has already been rejected for the reason stated in Article 31 par. 1 of the Cadastre Act,
- the party to the procedure has withdrawn the proposal and other parties to the procedure have agreed therewith,
- the administration fee has not been paid within the specified period,
- the party to the procedure failed to eliminate mistakes in the application for the incorporation or in its annexes within specified period.

## **2 Entry of a priority notice (*záznam; Vormerkung*)**

### **a When does the priority notice apply?**

Article 34 of the Cadastre Act stipulates that the rights to the real estates stated in Article 1 par. 1 of the Cadastre Act, are entered in the Real Estate Register by a priority notice, namely pursuant to public deeds and other deeds for the following reasons:

- Rights which were created, changed or terminated by operation of law (for instance, inheritance or transfer of property from the state to the municipality),
- the decision of a state authority (for instance, court decision on the assignment of a construction built on a foreign plot into the ownership of the owner of the plot pursuant to Article 135c of the Civil Code);
- the award of a bidder in a public sale; the positive prescription, the increase or processing; the rights to the real estates certified by notary public;
- the rights to the real estates arising from the lease;
- from the contracts on transfer of the administration of the state property or pursuant to other facts testifying the delegation of administration of the municipality property or the administration of a higher territorial unit property or rights from leases<sup>112</sup>.

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112 *Lazar a kolektiv*, Civil law, third edition, IURA EDITION, 2006, p. 535.

### **b Documents which serve as the legal basis for the priority notice**

In order to perform a priority notice, if the right to real estate has been created, changed or deleted by operation of law, the following documents are acceptable, namely:

- a notarial deed issued upon a special regulation (for instance, a verified declaration on the positive prescription of ownership title to real estate or on the positive prescription of a right comparable to an easement<sup>113</sup>),
- an application accompanied by the effective decision on the divorce of the marriage or its verified copy if there is a deletion of the community property of spouses who have not entered into an agreement on settlement of the community property within three years or who have not submitted a petition on settlement of the community property within three years<sup>114</sup>,
- an application, if there are rights to an asset of another<sup>115</sup>,
- an application accompanied by document relating to the creation, change or deletion of a right related to a person; if there is a right to an asset of another that is bound to a person<sup>116</sup>,
- an application accompanied by a written notice on the expiry of time, if the charge was established only for a definite period of time<sup>117</sup>,
- a judgment of the court, if the easement (*vecne bremeno*) terminates due to disproportion between the easement and the advantage of the entitled person<sup>118</sup>,
- an application, if the administration of the property of the state is concerned<sup>119</sup>,
- an application, if a withdrawal from a contract took place<sup>120</sup>, accompanied by: (i) a written expression of the will of the contract parties on withdrawal with verified signatures, or (ii) a court judgment if another legal action relates to the right to real estate,
- a declaration of the spouses including verified signatures, if the real estate acquired during the marriage is in the community property of the spouses<sup>121</sup>, and a marriage certificate.

It is to be noted that the right to the real estate pursuant to Article 1 par. 1 of the Cadastre Act that has been established by means of a judicial decision on the

113 Article 2 of Act of the National Council of the Slovak Republic No. 293/1992 Coll. on the regulation of some property relationships to real estates as amended; Article 63 of the Notary Act.

114 Article 149 par. 4 of the Civil Code.

115 Article 12 of Act No. 110/1964 Coll. on telecommunication as amended.

116 Article 151p par. 2 of the Civil Code.

117 Article 151g of the Civil Code.

118 Article 151p par. 3 of the Civil Code.

119 Article 34 of Act of the National Council of the Slovak Republic No. 330/1991 Coll. on land arrangements, settlement of land regulations, land authorities, the land fund and the fund on land cooperatives as amended.

120 Article 48 of the Civil Code.

121 Article 143 of the Civil Code.

invalidity of a legal act shall not be entered in the Real Estate Register, if the right to the real estate has been affected by another legal modification.

General provisions of the Administrative Code do not apply to the entry of a priority notice.

### **c Other requirements**

According to Article 35 of the Cadastre Act, the cadastre office shall enter a priority notice (i) without an application<sup>122</sup>, or (ii) upon the request of the owner or other entitled person. The application for entry of the priority notice shall be submitted in a written form and must comprise:

- the name (business name) and the permanent address (the seat) of the applicant,
- the designation of cadastre office, that the application is addressed to,
- the public deed or other deed, which certifies the right to the real estate,
- the designation of enclosures.

Pursuant to Article 36 of the Cadastre Act, the cadastre office must assess whether the submitted public deed or other deed is free of mistakes in writing or counting and of other obvious mistakes and whether it includes the requirements pursuant to this Act<sup>123</sup>.

If a public deed or other deed is qualified for the entry of priority notice, the cadastre office enters the priority notice in the Real Estate Register.

Pursuant to Article 36a of the Cadastre Act, if the ownership right to the real estate is entered in the ownership certificate and for the entry of the priority notice, an additional public deed or other deed not based on the data of the Real Estate Register, is submitted, the cadastre office will not enter the priority notice and shall return the public or other deed to a person whose right to the real estate is given evidence by the deed, or to the person who submitted it, and invites the affected persons to conclude an agreement or to file an application for determination of the right to the real estate in court; however, the priority notice shall always be entered if the public deed has the effect of a legally effective decision on the right to the real estate.

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122 According to Article 21 par. 1 of the Cadastre Act, state authorities, state legal entities and notaries are obliged to submit to the cadastre office all public deeds or other deeds concerning real estate or rights to real estate issued by them as well as all data in connection with the evidence of real estate or rights related to it in the Real Estate Register within 30 days of the day of their issuance or final validity.

123 If the requirements for the entry of a priority notice have not been met, the cadastre office returns the public document or other deed to the person, who has executed it and demands correction of the mistakes setting a period for the correction. If a mistake in writing, counting or other relevant mistake after the submission of the application for the incorporation of the contract is discovered, its correction will be performed by a clause at the end of the text, if the parties agree so. The clause must indicate the incorrectness, the correct wording and the date of the correction, the signatures of the parties as well as the signature and round stamp (Article 41 of the Cadastre Decree).

### **3 Record of an annotation (*poznámka; Anmerkung*)**

#### **a Function of the annotation**

According to Article 38 of the Cadastre Act, the annotation shall express the facts that restrict the owner's right to dispose of the real estate, or informs on the real estate or on the right to the real estate. Upon the notice of the court or other state body, or upon request of another entitled person pursuant to specific provisions, the cadastre office shall enter an annotation in the Real Estate Register mainly on the commencement of the following proceedings: the enforcement by means of the sale of the real estate, the filing of a petition for bankruptcy against the real estate owner, the commencement of an expropriation procedure and the preliminary measure, by which the disposal of the real estate is prohibited (Article 39 of the Cadastre Act).

#### **b How the annotation will be entered into the ownership certificate**

The annotation shall be entered into the ownership certificate namely upon a notice concerning the particular real estate with the following text (Article 43 par. 1 of the Cadastre Decree): "Annotation of the declaration of bankruptcy on the enforcement of the decision by sale of the real estate" or "Annotation of the commencement of enforcement proceedings by sale of the real estate" or "Annotation of the commencement of expropriation procedures" or "Annotation of the resolution of the court on a preliminary measure" or "Annotation of the notice on the commencement of enforcement proceedings through an executor by sale of the real estate".

Pursuant to Article 43 par. 2 of the Cadastre Decree, the annotation will be recorded in part B of the ownership certificate. The cadastre office shall also indicate in the Real Estate Register an annotation on the fact that the trustworthiness of data in the Real Estate Register regarding a right to the real estate has been questioned.

The cadastre office will delete the annotation either without an application or upon the request of the person who submitted the application for its entry, if it is proven that the reasons for its entry have ceased to exist.

It is to be noted that the general provisions of the Administrative Code shall not apply to the entry of an annotation.

#### **c Documents that may serve as a legal basis for the entry of an annotation**

The following documents are acceptable for entry by an annotation that should restrict the owner's disposition of the real estate:

- resolution of the court on the preliminary measures prohibiting the disposition of the real estate,
- resolutions of the court on the declaration of bankruptcy, execution order on the enforcement by sale of the real estate,
- decision on securing a tax arrear by establishing a mortgage,
- decision on the commencement of a tax enforcement procedure,

- tax execution order, customs execution order or public document or other deed on a right to the real estate that doubts the trustworthiness of the data in the Real Estate Register regarding a right to real estate (Article 44 par. 1 of the Cadastre Decree).

For an entry of an annotation that informs about the real estate or about its owner, the following is acceptable: a notice on the commencement of the enforcement by sale of the real estate, notice on the commencement of a tax execution procedure or custom execution procedure, resolution on the execution by sale of the real estate or resolution on the commencement of the expropriation procedure or another public deed (Article 44 par. 2 of the Cadastre Decree).

#### **4 General provisions on the entry of rights to real estates into the Real Estate Register**

The following provisions generally apply to all kind of proceedings for the registration rights to real estates included in the Cadastre Act and are therefore of general importance.

##### **a Method of registration of rights to real estates (Article 41 of the Cadastre Act)**

The rights to the real estates are entered in the ownership certificate and in the set of descriptive information of the Real Estate Register; in this way they become trustworthy data or even binding data of the Real Estate Register.

Rights to the same real estate will be entered in the order in which the contracts, public deeds or other deeds on the creation, change or termination of the right to the real estate for the entry in the Real Estate Register were delivered to the cadastre office.

##### **b Qualification of contracts, public deeds and other deeds for the entry in the Real Estate Register (Article 42 of the Cadastre Act)**

###### **ba General requirements for the content of contracts and deeds**

For the entry of the right to real estate in the Real Estate Register the following is required: a contract, public or other deed, executed in writing in the state language, Czech language or in the certified translation of the contract, free of mistakes in writing and counting and free of other obvious mistakes.

The contract, public deed or any other deed shall include an indication of:

- parties to the rights to real estate; in the case of a natural person their name, surname, surname at the birth, the date of birth, personal identity number and permanent residence, in the case of a legal person their name, registered seat and identification number if assigned, or other identification data,
- a legal act, its subject, place and time,
- the real estates according to cadastral districts, parcel numbers of the plots recorded in the set of descriptive information, types of the plots, the conscription numbers of the buildings and the co-owners' shares expressed by the fraction of the whole, the areas, and in case of the entry of the co-owners' shares smaller than the whole, also the areas relating to the co-owners' share.

## bb Notarisation requirements

The following signatures must be certified before a notary public pursuant to specific provisions (notarisation)<sup>124</sup>: the signature of the (i) transferor (seller) on the contract, (ii) person obliged from pre-emption, (iii) obliged person in case of the establishment of the easement or (iv) entitled person if the contractual easement expires, (v) co-owners on the contract on dissolution and settlement of co-ownership or in the settlement of community property of spouses. If a proxy represents these above-mentioned persons, their signatures on the authorization document shall be certified as well. This does not apply if the party to the contract is a state body, the National Property Fund of the Slovak Republic, the Slovak Land Fund, a municipality or a higher territorial unit.

From the above summary it follows that in the case of a mortgage agreement, the signature of the mortgagor (chargor) does not have to be certified. However, although law does not require this, it is commonly required by the banks that the signature of the mortgagor should be certified.

## bc Examination of the contracts and deeds

If the duly signed written copy of the contract, public deed or other deed includes mistakes in writing or counting or any other obvious mistakes which make it incomprehensible or uncertain, or if the requirements pursuant to par. 1 of this Article are not fulfilled, the cadastre office will return it to the person that elaborated it or to the person that submitted the application for the entry or to the owner or any other entitled person. In addition, the cadastre office specifies the period for its correction or completion.

When evaluating the documents, pursuant to Article 39 of the Cadastre Decree, the cadastre office must review whether the contract, public document or other deed contains:

- the name of the cadastral area,
- the plot depicted as a parcel with parcel number,
- type and extent of the plot,
- conscription number of a house, (if possible) orientation number of the entrance with an indication of the parcel number of the parcel depicting the plot, on which the building has been constructed,
- the number of an apartment, floor number, address, share in the common parts and in the common facilities and other descriptive and identification data, if the subject matter of the entry is a right to an apartment,
- the number of a non-residential premises, floor number, address, share in the common parts and in the common facilities of the building and other descriptive and identification data, if the subject matter of the entry is a right to a non-residential premise,

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<sup>124</sup> Pursuant either to the Notaries Act or Act of the National Council of the Slovak Republic No. 15/1993 Coll. on the authentication of deeds and signatures on deeds by the district offices. Please note that additional apostillation or (super) legalisation duties may arise where a person signs before a foreign notary public (i.e. other than a Slovak notary public).

- name, surname, maiden name and place of permanent residence (seat) of the owner of the real estate or of another authorized person,
- date of birth, personal number (identification number of the organization) of the owner of the real estate or of another authorized person,
- verified signatures of the transferor, where required (Article 42 par. 3 of the Cadastre Act),
- co-ownership share expressed by a fraction of a whole and an extent related to it in the case of the entry of the co-ownership shares that are lesser than the whole.

The cadastre office examines, whether the decisions of the state bodies are effective or enforceable and whether these decisions and other deeds, that confirm or verify a legal relation, contain mistakes in writing, counting or other relevant mistakes, whether the real estate is designated as mentioned above and whether it includes all requirements as stated in the Cadastre Act (Article 40 of the Cadastre Decree).

**c      Periods for making the entry in the Real Estate Register  
(Article 43 of the Cadastre Act)**

The cadastre office must perform the entry pursuant to Article 41 of the Cadastre Act:

- on the day when the decision on the approval of the incorporation has become effective, at the latest on the next day,
- within 60 days from the delivery of the public deed or other deed qualified for the priority notice which proves or certify the creation, the change or the termination of the right to the real estate,
- on the day of the delivery of a public or other deed for the entry of the annotation, at the latest on the next day.

If an auction pursuant to specific Act is concerned, the subject of which is an apartment, a house or other real estate, the cadastre office shall indicate the data on the auction at least three months from the day of the delivery of the notarial deed of the auction, and if a judicial procedure on determination of nullity of the auction has been commenced, until the end of this procedure. In this context, Article 39 par. 3 applies to the deletion of the annotation.

**d      Entry of the caution on the change of the rights to the real estates  
(Article 44 of the Cadastre Act)**

The cadastre office inserts a caution on the (i) change of the right to the real estate or the (ii) commencement of cadastral procedure on the correction of a mistake or the (iii) commencement of a procedure on the prosecutor's protest in the ownership certificate or in the land book, or in the railway book, at the latest on the next working day after the day of the delivery of a contract, public deed or other document for the registration for incorporation or priority notice, or if cadastral procedure on the correction of a mistake in cadastral documentation or procedure on the prosecutor's protest has commenced.

The caution shall be deleted by the entry of incorporation or priority notice, or by a legally effective decision on the rejection of the application for incorporation, or by a legally effective decision on the termination of the procedure, or by a legally effective decision on the correction of a mistake in cadastral documentation.

The cadastre office caution has to mark the caution in the order in which the applications for the entry in the Real Estate Register were delivered.

## **5 Specific provisions on the entry of rights to the real estates**

### **a Ownership title transfer not to all parts of a newly created specific parcels (Article 45 of the Cadastre Act)**

If the entry of the transfer or the transition of the ownership right to a plot where a linear building (*liniová stavba*) or other public-service building is built or where a garden allotment is situated, is applied, the special procedure pursuant to par. 1 and 2 of Article 45 of the Cadastre applies. For instance, the entry of the ownership right to the real estates will not be performed, if the transfer or transition of the ownership right has not been carried out to all the parts, which pursuant to the geometric map form a new parcel.

The cadastre office will not integrate contracts, public deeds or any other deeds to the collection of documents in cadastral documentation before the transfer or the transition of the ownership rights to all the parts, but it will keep them in a special file of cadastral documentation.

### **b Other specific issues (Article 46 of the Cadastre Act)**

#### **ba Requirements for the entry of data after a split or merged real estate under Article 46 par. 1 and 2 of the Cadastre Act**

A geometric map must be enclosed to the contract, public deed or other deed on the rights to the real estates, which were created by the division or the merger of the real estates, as well as to the contract, public deed or other deed on the easement to a part of the real estate.

When entering data on the rights to the real estate, the person referred to as the owner shall be the person stated in the public deed or other deed, if not proven otherwise.

#### **bb Requirements for the entry of rights to new buildings and buildings under construction as well as (un)finished apartments and non-residential premises under Article 46 par. 3 to 8 of the Cadastre Act**

When entering data on the right to the new building pursuant to Article 6 par. 1 c) 1. of the Cadastre Act, the person stated in the decision on the assignment of the conscription number will be entered as the owner, unless proven otherwise. The right to the real estate shall be entered in the Real Estate Register upon the application comprising the enclosures on data on personal identification number in the case of a natural person, or data on identification number in the case of a legal person, and decision on the determination of a conscription number. A geometric map shall be attached to the application, if the building or the built-up plot with a building is not registered in the set of geodetic information.

When entering the data on the right to the new building as stated in Article 6 par. 1 c) 2., 4. and 5. of the Cadastre Act, the person stated in the occupancy permit shall be entered as the owner.

When entering data on the right to the building under construction, a valid building permit, a geometric map as well as an expert opinion on the value of the building under construction must be submitted; the person referred to in the valid building permit will be entered as the owner.

When recording data on the right to apartments or non-residential premises, which have been established upon a contract on building, construction inside of the building or superstructure of a building, then a contract on the building along with a geometric map and decision on the determination of conscription number, a contract on construction inside of the building or superstructure of a building along with the occupancy permit must be submitted; the person stated in the contract shall be entered as the owner of the apartment or non-residential premise.

When recording data on the right to an (unfinished) apartment or (unfinished) non-residential premise under construction, a contract on the building of a house along with a geometric map, a contract on the construction inside a building or superstructure of a building and an expert opinion on the state of their construction shall be submitted; the person stated in the contract will be entered as its owner.

When entering the data on the right to the buildings made by re-building or by new building of the buildings destroyed or damaged by war, the person stated in the certificate authorized by a notary public shall be entered as the owner.

**c The notification on the entry to the parties  
(Article 47 of the Cadastre Act)**

The cadastre office shall notify the parties to the procedure as well as those persons, whose right to the real estate has been affected by the entry, of the fact that the entry in the Real Estate Register has been carried out; the notification shall be made no later than 15 days from the day of the entry<sup>125</sup>. The cadastre office shall send one duly signed copy of the extract from the ownership certificate to the parties and natural and legal entities mentioned above, within 15 days from the date of the entry of the data into the ownership certificate. Furthermore, it invites the purchaser (the new owner) to permanently indicate the border of the newly created plots.

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125 Certain legal entities are to be notified on the entry if stipulated so by a special regulation.

## III Credit securities

### A General

#### 1 Financing of real estate by Slovak banks

Slovak banks are providing credits for the financing of real estate by (i) regular credit/loans governed by the provisions of the Commercial Code (see III.B.1 below); consumer credits/loans under the Consumer Credit Act (see III.B.5 below) (both referred to as “regular credits/loans”); or by (ii) specific mortgage loans according to the provisions of the Banking Act on specific mortgage banking transaction (*Hypotekárne bankovníctvo*; see III.B.3 below). Financing of real estate by way of regular credits/loans is preferable for corporate clients as well as retail clients – natural persons. From the legal perspective, loans for financing real estate that are not subject to the regulation of the Banking Act, are therefore concluded under the provisions of the Commercial Code, which is more flexible than the Banking Act regulating mortgage loans.

In general, a bank is an entrepreneur, usually in the position of the creditor. Under Article 2 par. 1 of the Slovak Banking Act No. 483/2001 Coll. as amended (hereinafter referred to only as the “Banking Act”, *Zákon o bankách č. 483/2001 Z.z.*), a (domestic) bank is a legal entity with its registered seat in Slovakia, established as a joint stock company, which predominantly (i) takes deposits and (ii) provides credits. A bank must hold a banking license in order to provide these (core) banking activities. A credit/loan means, under the Banking Act, funds temporarily provided in whatever form, including factoring and forfeiting.

Furthermore, pursuant to Article 3 par. 2 of the Banking Act, no legal entity or natural person is permitted to provide, without a banking license, credits within the scope of its business activities, funded by deposits received from other persons on the basis of a public call. However, if another legal entity or natural person (other than a bank), that has the provision of credits and loans as the objective of its business activity and would not fund its credits by deposits from the general public, this prohibition of the Banking Act would not apply. Consequently, entities other than banks also provide credits from their own funds, and can therefore be in the position of a creditor<sup>126</sup>.

Please note that the Banking Act states that a bank may, along with its core banking activities, also perform non-core banking activities, if stipulated so in its banking license<sup>127</sup>. Such non-core banking activity is, for instance, the performance of specific mortgage banking transactions (*hypotekárne bankovníctvo*) pursuant to Article 67 and following of the Banking Act, where mortgage loans (*hypotekárny uver*)<sup>128</sup> are provided and these loans are to be refinanced through the issuance of specific bonds (the “specific mortgage loans”; for more details see III.B.3 below). Amendment No. 659/2007 Coll. to the Banking Act, which is effective since 1 January 2008,

126 See also *Kopál*, Commercial law (*Obchodné Právo*) 3/2008, p. 10 and on.

127 See Article 2 par. 1 and 2 of the Banking Act.

128 Regarding this special type of mortgage loan see III.B.3 below.

introduced the word “specific” into Article 2 par. 2 lit. n) of the Banking Act in order to clarify that the mortgage loans provided under the special regime of the Banking Act, are regulated differently from other common mortgage loans (under the Commercial Code), although the collateral for the loan in both cases is real estate (*osobitné hypotekárne obchody – “hypotekárny obchod” podľa § 67 ods. 1).*

## **2 Financing of real estate by foreign banks under a European passport**

### **a General remarks**

Article 11 of the Banking Act mainly governs activities of foreign banks and their respective branches in Slovakia under a European passport. Foreign banks through their branch offices, which have a respective banking licence, may perform banking activities. A foreign bank is a legal entity with its seat outside the territory of the Slovak Republic, which has a license to perform these activities granted in its home country. On the other hand, a branch office of a foreign bank is an organizational unit of a foreign bank located in the territory of the Slovak Republic, which directly performs main banking activities. A foreign bank having its seat in a Member State may conduct, through its branch office, banking activities in the territory of the Slovak Republic without a banking license, if a license to perform these activities has been granted to this foreign bank in a Member State, subject to a written statement from the supervisory authorities of the Member State concerned delivered to the National Bank of Slovakia. However, the above does not refer to the specific mortgage banking transactions mentioned above. Consequently, a branch of a foreign bank, which wants to provide mortgage loans connected with specific mortgage banking transactions, must apply for a banking license in advance according to Article 8 of the Banking Act.

In addition, a foreign bank (i.e. itself, but not through a branch) is furthermore generally authorized to carry out banking activities on the basis of a notification of the intended banking activities to the supervisory authority of the Member State concerned delivered to the National Bank of Slovakia before the first bank transaction is conducted. Again, specific mortgage banking transactions are excluded here.

Please note that activities of banks and branch offices of foreign banks are subject to supervision exercised by the National Bank of Slovakia (NBS).

### **b Excursion: Specific mortgage banking activities are excluded from the European passport**

It is to be noted that foreign banks cannot provide mortgage loans under the special regime of the Banking Act under the EU-passport. Consequently, in order for a foreign bank to carry out specific mortgage banking activities under the Banking Act in Slovakia, it must establish a branch in Slovakia and apply (through the foreign bank) to the NBS for a license to carry out specific mortgage banking transactions.

In addition, according to Article 8 par. 9 of the Banking Act, the performance of mortgage banking transactions is permissible in the banking license only under the condition that the foreign bank requesting the license, is already in the possession of a such a license in the state of its registered seat and if the laws of this state guarantee the same rights for mortgage debtors and for owners of mortgage bonds issued in the Slovak Republic pursuant to special Acts. This also includes the same

position in bankruptcy proceedings of mortgage debtors and of owners of mortgage bonds and at least in the extent as set out under Slovak law.

For more details on the mortgage loan please see at III.B.3 below.

### 3 Syndicated lending

In Slovak banking practice, syndicated credits/syndicated loans (*syndikované úvery*) where several banks act towards the borrower as one financier, are very common. The banks are usually named as a *consortium* or *syndicate of banks*, which jointly provide the financial means. In general, a syndicate of banks has one or several arrangers and the participating banks have agreed to participate under the terms and conditions specified by the arranger(s). Typically it is one bank, which has the position of the *agent*, i.e. the bank acting on behalf of the syndicate or consortium towards the borrower (i.e. the agent).

As Slovak law does not recognize a syndicate credit agreement, the general provisions of the credit agreement apply here as well. The principle of freedom of choice applies to the syndicated credit agreement. Consequently, it is fully at the discretion of the parties to lay down their rights and obligations. Due to the fact that the participating banks are very often foreign banks, such syndicated credit agreements are very often governed by foreign law and executed in a foreign language. In the case of a pure Slovak syndication, Slovak law applies. In particular, it is an innominate contract under Slovak law. The *security agent* ensures the security documentation. It can, but does not necessarily have to be the subject, who is also entitled to perform, on behalf the other banks, the enforcement of the relevant security device that has been created in order to secure the syndicated loan. Pursuant to the ratio of the provided funds, each participating bank will then be satisfied from the achieved proceeds accordingly.

In Slovak banking practice, almost every bank provides syndicated loans. It depends on the relevant bank which securities and documentation will be required from the borrower in the respective syndicated loan transaction. It is possible that a syndicate may already be created at the start of financing as well as in the course of such transaction.

In practise, a problem may arise due to the accessory character of the pledge. Therefore, due care should be taken to insure that the security agent will not act only on its behalf, but also on behalf of the other members of the consortium. The security agent should therefore act as a joint creditor, particularly regarding enforcement proceedings related to the mortgage. The establishment of the joint creditor status is laid out, as is often the case in foreign transaction, in an intercreditor agreement (*medzi-veriteľská zmluva*) or similar agreement by a so-called parallel debt clause<sup>129</sup>.

<sup>129</sup> Slovak law does not recognize the security agent's concept, i.e. a simple agency is not sufficient to create a same ranking security for all creditors. Without the establishment of a joint creditor concept (if necessary combined with a parallel debt), the security may not be established to the benefit of multiple creditors, unless such creditors are joint and several. The parallel debt clause stipulates that the security agent shall be the joint creditor of every obligation of the mortgagor *vis-à-vis* the members of the consortium under the syndicated loan agreement and, in particular, that it is entitled to independently enforce these obligations, when they are due, against the mortgagor.

With regards to this topic, in Slovakia there is no uniform banking practice and many questions are still open. For instance, it is not really clear whether it is better for the banks to all sign the mortgage agreement or whether it is enough for the agent to sign on their behalf under a granted power of attorney, as usually sufficient in foreign transactions. Another question, in both of the above cases, is whether all of the creditors must be registered or in the case of a change in the consortium represented by a security agent, whether such change would have to be registered with the relevant cadastre office or not<sup>130</sup>. The parallel clause should generally provide sufficient certainty in this regard. However, the lack of case law is a fact that cannot be neglected.

A recent example in Slovakia confirmed the above-mentioned uncertainties. A Slovak bankruptcy court refused the application of the total amount of the syndicated claim applied by the security agent and therefore recognized only the security agents' claim, with the argument that the security agent does not have the entire amount of the secured claim in its accounting/balance sheets. In addition, the applications of the outstanding claims applied by the other members of the consortium were not recognized as secured claims with the argument that they are not party to the respective mortgage agreement. Thus, their claims were only recognized as unsecured claims.

## **B Real estate financing**

### **1 Credit agreement (*Úverová zmluva, Kreditvertrag*)**

#### **a General remarks**

##### **aa Definition**

In Slovakia, real estate financing by way of a credit under a credit agreement pursuant to the Commercial Code is the most frequently used method of financing<sup>131</sup>. Please note that for this form of financing the English designation loan (beside credit) is also commonly used. The credit contract is regulated in Article 497 through Article 507 of the Commercial Code. In accordance with Article 261 par. 3 d) of the Commercial Code, this legal institute is considered an absolute commercial relation. Accordingly, the Commercial Code is to be applied even if the contract will not be concluded between entrepreneurs or if the legal transaction would not concern their entrepreneurial activities. The same applies to credit security devices, which are also governed by the provisions of the Commercial Code. Only in the case that the Commercial Code would regulate a specific security device insufficiently or not at all, then the relevant provisions of the Civil Code apply.

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130 This would mean that any future change of these creditors must be duly notified and registered with the respective authorities keeping the respective register.

131 Currently, the banks are financing real estate mainly through regular loans that are not subject to the specific requirements of mortgage loans according to the Banking Act. According to the Banking Act mortgage loans are financed at least to the amount of 90% by the issue and sale of mortgage bonds by such bank. However, regardless of whether the financing is provided through regular loan or mortgage loan, in both cases receivables of the bank are secured by a mortgage to specific real estate registered with the cadastral authority.

### ab Importance of General Business Terms and Conditions

Under Slovak law, the provisions on the credit agreement are predominantly non-mandatory (the only one exemption being Article 499 of the Commercial Code). Therefore, the content of a credit agreement, in particular the details on the credit, terms of its provision and drawing or its settlement after the credit expires, are purely a result of the parties negotiations. However, it is obvious that the bank will often have the stronger position than the borrower. A significant proof is for example, that banks generally use their own forms on credit agreements, which often include the bank's General Business Terms and Conditions – GBTC (*Všeobecné podmienky na poskytovanie hypotekárnych úverov; Všeobecné podmienky na poskytovanie úverov zabezpečených záložným právom k nehnuteľnostiam*)<sup>132</sup>. On the other hand, the clients may choose between several offers of several banks as well. In Slovak practice, the bank's GBTC are of utmost importance for the parties of a credit transaction as they often will lay down, for instance, the special law that applies to the relationship (i.e. whether the relationship will be governed by the Commercial Code and/or the Consumer Credit Act or the Banking Act) and further obligations of the mortgagor such as, for instance, to insure the real estate (i.e. the construction) or to provide additional security devices such as the agreement on payroll deduction (*dohoda o zrážkach zo mzdy*), a blank promissory note (*vlastná blankozmenka*) or a guarantee (*ručenie*). Sometimes the bank may – either directly through the credit agreement or through its GBTC – also insist that the borrower insures the repayment of the credit (*poistenie úveru*), or enters into a life insurance contract. If an event of default occurs, the payment of the insurance company generally to the amount of the secured claim will then be paid for the benefit of the bank (*vinkulácia*).

In this context the generally applicable principle of Article 264 of the Commercial Code should be noted, according to which for the determination of rights and duties arising from a relationship, the commercial practice (i.e. trade usage) must be taken into consideration, unless such trade usage contradicts statutory provisions. Furthermore, pursuant to Article 264 and 265 of the Commercial Code, the performance of rights being in contradiction with the principle of fair commercial relations, does not enjoy any legal protection.

### ac Applicable law/Jurisdiction

It should be noted, especially for foreign banks having no branch in Slovakia that a credit agreement does not necessarily have to be governed by Slovak law. This follows from the Slovak International Private and Process Law, according to which, to pure obligatory contracts including a “foreign element”, the principle of free choice of law applies. Consequently, a law other than Slovak law, determined by the parties, may govern a credit contract, even if the financed real estate is in Slovakia. Therefore, in Slovak practice it is often the case that, for instance, foreign banks apply their relevant laws to their credit agreements, simply for the reason that they are familiar with it. However, the respective mortgage agreement under which a mortgage to the financed real estate will be established in order to secure the banks claim for repayment must be governed by Slovak law. This follows from

<sup>132</sup> *Suchoža a kolektív*, Commercial Code – Commentary, explanations to Article 497 of the Commercial Code, p. 733.

the Slovak International Private and Process Law as well, which states that for real estate always the laws where it is located (*lex rei sitae*) apply.

#### ad Arbitration clauses

In cases where the credit agreement is governed by Slovak law, a common means is the use of an arbitration clause often specified either in the credit agreement itself or in the banks GBTC. The arbitration clause typically lays down that any possible disputes between the parties will be settled by arbitration proceedings pursuant to Act No. 244/2002 Coll. as amended and that the arbitration court will be the Permanent arbitration Court of the Banking association of the Slovak Republic pursuant to act No. 510/2002 Coll. as amended on payment relations.

#### ae Basel II – principles

Finally, as of 1 January 2008, the Basel II regime applies to Slovak banks. Consequently, the methods of evaluation and practice of lending are now stricter for Slovak banks. The higher standards for the capital requirements of banks, in particular the requirements regarding the bank's equity, will probably lead to a significant increase of the interest rates of credit agreements for the borrowers.

### **b Content and form of the credit agreement**

Under the credit contract, the creditor obliges itself to provide the debtor, upon request, with a specific amount of financial means and the debtor obliges itself to return to the creditor the provided financial means as well as to pay interest (Article 497 of the Commercial Code).

According to Slovak legal theory, the credit contract is a consensual contract. Therefore, in order to create the contractual relationship it is sufficient for the contractual parties to reach an agreement on the essential features of the contract that are the:

- determination of the contractual parties,
- obligation of the creditor to provide the debtor with financial means upon the request of the debtor,
- determination of the amount of this financial means,
- obligation of the debtor to return the financial means provided and to pay the interest.

Apart from these essential features of the credit contract, the contractual parties usually also agree on other terms, for instance, the security device of the respective credit, the amount of the interest, the way of provision of the financial means, the maturity date of the credit, the purpose of the credit or a contractual penalty.

The credit contract does not necessarily have to be executed in writing to be valid. However, in practice it is usual that the credit contract has a written form.

The credit contract is often used in combination with other contracts regulated in the Commercial Code that relate to each other (for instance, a collection agreement [*Zmluva o inkase; Inkassovertrag*], contract on the opening of a deposit bank account [*Zmluva o vkladovom úcte; Vertrag über das Einlagenkonto*], contract on

the opening of a documentary letter of credit [*Zmluva o otvorení akreditívu; Vertrag über die Eröffnung eines Akkreditives*]).

The contractual parties may determine the amount of credit in Slovak crowns or in a foreign currency, unless this would be in contradiction to the Slovak Foreign Exchange Act. In the latter case, the term foreign exchange credit is used. Unless the parties have agreed upon this in the contract, the debtor has the right to return the financial means and to pay the interest in a different currency other than the currency in which s/he obtained the credit (Article 498 of the Commercial Code).

### **c Rights and duties of the creditor**

From Article 499 of the Commercial Code it follows that the creditor has the possibility to agree on the remuneration for the provision of the financial means, only provided that

- (i) the provision of credits falls within the creditor's scope of business activities<sup>133</sup> and
- (ii) the amount of the remuneration has been established in the credit contract<sup>134</sup>.

The parties to the contract can agree that the credit may be provided only for a specific purpose (Article 501 par. 2 of the Commercial Code). It is general practice that banks provide such targeted credits. Where the purpose of the credit would be violated, reference is made to the withdrawal reasons as set out below.

According to Article 500 par. 1 of the Commercial Code, the debtor may claim that the financial means are made available to him within the time period stipulated in the contract. If no such period is stipulated in the contract, the debtor may assert this entitlement until the contract is terminated by one of the parties. On the other hand, it is stipulated in Article 501 par. 1 of the Commercial Code that the creditor is obliged to make the financial means available to the debtor upon request. Consequently, the monetary means are to be provided at the time as specified by the debtor, or otherwise without undue delay.

### **d Rights and duties of the debtor**

From the moment of the provision of the financial means the debtor is obliged to pay interest on these means. Although, as already mentioned, for the creation of the credit contract an agreement on the amount of the interest is generally not required. However, the law somehow expects the parties to agree on the amount of interest in the credit contract. The parties may agree on a fix interest rate, i.e. a rate that will not be changed during the existence of the credit relationship. However, in practice banks usually agree on a flexible interest rate.

If the amount of the interest has not been stipulated in the credit contract, the statute determines the obligation of the debtor to pay interest in the highest possible amount

<sup>133</sup> This is always the case, where banks are involved.

<sup>134</sup> In such a case the bank may claim the remuneration even if there was no drawdown request from the debtor side. *Suchoža a kolektív*, Commercial Code – Commentary, explanations to Article 500 of the Commercial Code, p. 736.

statutorily specified. However, such a statutory maximum interest rate, as indicated in Article 502 par. 1 of the Commercial Code, has not been established yet<sup>135</sup>. Therefore, if the interest cannot be specified by this method the debtor is obliged to pay the interest usually required for credits provided by banks in the place, where the debtor has its registered seat, at the time of the conclusion of the credit contract. Should the parties agree upon interest higher than statutorily admissible, the debtor is obliged to pay interest in the highest admissible amount.

The debtor is obliged to return the granted financial means within the set period of time, otherwise within one month from the day the creditor asks the debtor to return the financial means (Article 504 of the Commercial Code). If the debtor does not return the financial means within the set period of time or within the statutory period of time, it will be in default. In this case the debtor must pay the interest resulting from the credit as well as the interest resulting from the default (default interest), unless stated otherwise in the contract. From this it follows that the parties must draw attention to the question of interest when concluding a credit contract in order for the will of the parties to be clear.

#### **e Termination of the credit contract**

Articles 506 and 507 of the Commercial Code stipulate the following withdrawal grounds<sup>136</sup> that entitle the creditor to withdraw from the credit contract, if the:

- debtor is in default with payment of two or more instalments, or
- debtor is in default with payment of one instalment for a period longer than three months, and
- debtor misused the credit for another purpose<sup>137</sup>, or
- the possibility to use the credit for the agreed purpose ceased to exist.

Finally, pursuant to Article 500 par. 2 of the Commercial Code, both parties may also terminate the credit agreement by termination notice. Unless the parties agree on a specific notice period, the following applies:

The creditor may terminate the agreement with effect at the end of the calendar month following the month in which the notice was delivered to the debtor. However, the debtor may always terminate the credit contract with immediate effect.

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135 For more details see *Suchoža a kolektív*, Commercial Code – Commentary, explanations to Article 497 of the Commercial Code, p. 733.

136 The Commercial Code in its Articles 344 and on provides a general rule according to which the party is entitled to withdraw from the agreement if the other party grossly violates its contractual obligations, and provided it notifies the violating party without undue delay after having learnt about the respective violation. In case of a minor violation of a contractual obligation, such withdrawal may be performed only if, after a reasonable grace period, the other party continues to break its contractual obligations. In addition, Slovak law enables the parties to agree on special withdrawal reasons (i.e. other than those mentioned in Article 344 and on of the Commercial Code). With regard to some differences between the termination of agreements by termination notice and by withdrawal it should be noted, that in the case of a termination notice, the agreement terminates only after expiration of the notice period, whereas in the case of a withdrawal, the agreement terminates immediately after delivery of the notification on withdrawal from the other party.

137 In this context see also Article 501 par. 2 of the Commercial Code.

## **2 Loan agreement (*Zmluva o pôžičke, Darlehensvertrag*)**

### **a General remarks**

The loan contract is regulated in Articles 657 and 658 of the Civil Code. If the loan contract was concluded between entrepreneurs, the general provisions on commercial obligation relations of the Commercial Code can also be applied to this agreement.

Upon the loan contract the creditor supplies the debtor with assets determined by type, mainly money, and the debtor pledges to return the assets of the same type after lapse of the agreed period of time.

The loan contract is a real contract. For the creation of the obligation relationship, an agreement of the contractual parties on essential elements of the contract is not sufficient. The delivery of the object of the loan to the debtor by the creditor is required.

For the validity of the loan contract a written form is not required. However, it is recommended because of the legal security of the parties.

The loan contract is usually without remuneration. In the case of a financial loan, it is possible to agree on interest.

### **b Differences between the credit contract and the loan contract**

- The payment of interest is an element of the credit contract; in the case of a loan contract, this obligation is created only upon the explicit agreement of the parties.
- Only financial means may be the subject of the credit contract; other assets determined by type (not only financial means) may serve as the object of the loan contract.
- The credit contract is created upon the agreement of the parties that the creditor will provide the debtor with financial means upon the debtor's request; the loan contract is created upon the delivery of the lent asset.
- Pursuant to the credit contract, the obligation of the debtor to return the received assets is created by the request of the debtor towards the creditor to provide him with financial means; upon the loan contract this obligation is created at the time of the contract's conclusion.

## **3 Mortgage loan agreements under the Banking Act (*Hypotekárna úverová zmluva; Hypothekarkreditvertrag*)**

### **a Legal background**

Articles 67 through Article 88 of the Banking Act govern the legal aspects of mortgage banking transactions and, in particular, of the specific mortgage loan. An institution interested in the provision of these specific mortgage loans must have a banking license for the performance of mortgage banking transactions (*hypotekárna banka*, the "specific mortgage banks")<sup>138</sup>.

<sup>138</sup> Regarding certain limitations for foreign banks to perform mortgage-banking transaction, see III.B.1.a.ab above. In addition, the mortgage loan provides the mortgage bank a preferred position within the enforcement proceedings under the Execution Code; see IV.J.4.c below.

For the purposes of this Act, a **mortgage transaction** means the provision of mortgage loans and the thereto-related issuance of mortgage bonds<sup>139</sup>. Under Article 14 par. 1 of Act No. 530/1990 on Bonds as amended (the “Bonds Act”), a **mortgage bond** is a bond, the nominal value including proceeds of which is duly covered by the claims of a bank or branch of a foreign bank from the mortgage loans secured by a mortgage or is covered by substitution pursuant to Article 16 par. 5 of the Bonds Act and has the designation “mortgage bond”.

In general, mortgage bonds issued may only be duly backed by the mortgage bank’s claims from mortgage loans which are secured by a pledge on real estate in accordance with Article 74 of the Banking Act and which do not exceed 70% of the value of the pledged real estate valued in accordance with Article 73 of this Act.

A mortgage bank may provide mortgage loans according to its GBTC (general business terms and conditions) in force for the granting of mortgage loans. In particular they must contain:

- a) the due form of the application for a mortgage loan,
- b) a procedure for applying for a mortgage loan,
- c) the terms and conditions for granting mortgage loans, including an overall definition of the type, method and extent of securing a mortgage bank’s claims under a mortgage or municipal loan agreement and the definition of costs to be claimed from the client and associated with the mortgage loan and the conclusion of such an agreement,
- d) the manner in which a mortgage loan agreement may be terminated,
- e) a procedure to be followed by a mortgage bank in the event of default by the debtor on repayment of a mortgage loan or its accessories,
- f) changes in a mortgagor’s situation, which entitles a mortgage bank to demand early repayment of a mortgage loan,
- g) the conditions for the performance of the mortgage established to secure the mortgage loan.

The **mortgage loan** is a loan with a maturity of at least four years and a maximum of thirty years, secured by the mortgage established upon a domestic real estate, including an uncompleted construction, which is at least to the amount of 90% financed by the issue and sale of mortgage bonds by a mortgage bank pursuant to a separate regulation, which a mortgage bank provides for the following purposes: the (i) acquisition of domestic real estate or any part thereof, (ii) construction or modification of existing structures, (iii) maintenance of domestic real estate, (iv) repayment of an outstanding loan drawn for purposes specified in (i) to (iii), which is a mortgage loan provided by a mortgage bank in bankruptcy, or (v) repayment of an outstanding loan drawn for purposes mentioned in (i) to (iii) other than a mortgage loan.

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<sup>139</sup> According to the Banking Act, another mortgage banking transaction is the provision of municipal loans and the thereto-related issuance of municipal bonds by a mortgage bank.

A mortgage loan agreement must be in writing and it must contain:

- the identification data of the mortgage bank and the client in at least the following detail:
- the first name, surname, birth register number, if assigned, the date of birth and the address of permanent residence, where a natural person is concerned,
- the name, the identification number, if such has been assigned, and the address of registered office and place of business, where a legal person is concerned,
- the amount of a mortgage loan granted and its maturity, the rules for payments of the principal amount and interest on the granted mortgage or municipal loan, the level of per annum percent interest rate on the granted mortgage or municipal loan and a detailed specification of other costs to be claimed from the client that are associated with the mortgage or municipal loan and the conclusion on an agreement on such a loan,
- the precise designation of the domestic real estate to which a mortgage loan is granted; the precise designation of such domestic real estate in a later supplement to a mortgage loan agreement, concluded no later than before a part of the funds is provided under the mortgage loan, shall be deemed sufficient (regarding the requirements on the collateral to be provided within such loan, see more details in IV.F.5),
- the conditions dependent on objective circumstances, on the occurrence of which the amount of the yearly percent interest rate or other costs to be claimed from the client may be adjusted,
- a detailed specification of the type, method and extent of the securing device to secure the mortgage bank's claims under a mortgage loan agreement,
- other terms and conditions for the granting and the repayment of a mortgage loan required according to the mortgage bank's general terms and conditions for the granting of such mortgage loans,
- the conditions for an eventual accelerated repayment of a mortgage loan at the client's initiative.

The information that a mortgage bank is obligated to make available within its operating premises according to Article 37 par. 1 of the Banking Act must also include the mortgage bank's GBTC for granting mortgage loans in accordance with paragraph 1 and the percentage amount of the state contributions pursuant to Article 84 par. 1 and Article 85a par. 1 of the Banking Act set for individual calendar years. The mortgage bank is obliged to provide the client with additional information at his/her request.

A list and the amounts of mortgage loans, mortgages and claims of a mortgage bank related thereto that serve to cover the mortgage bonds, or other assets serving as substitute coverage, must be kept by a mortgage bank separately in its register of mortgages (*Register hypoték*). The register of mortgages and the documents on the basis of which the entries have been recorded therein must be kept separately by a mortgage bank from other documents and protected against misuse, destruction,

damage or loss. In addition, a mortgage bank is obliged to maintain separate analytical records of its mortgage banking transactions in its accounting system.

The National Bank of Slovakia will always appoint a **mortgage officer** (*Hypotekárny správca*) who supervises the performance of mortgage banking transaction according to the Banking Act and on the act on Bonds. In particular, s/he supervises the fulfilment of requirements for the issuance and the coverage of mortgage bonds. In addition, s/he supervises whether the mortgage bank fulfils its obligations in terms of the provision and security of the mortgage loans including its obligations in context with the mortgage register.

## **b Practical outlook**

Through research with several local banks several different opinions were presented here. Currently there are mixed opinions whether it is a worthwhile investment for banks or not. One opinion was that currently in Slovakia a diversion from the mortgage loans has been documented. This is a result of the strict provisions arising from the Banking Act that sets certain limitations for the provision of mortgage loans simply through the obligation to refinance these loans by mortgage bonds.

As a matter of fact, in Slovakia there is a lack of institutional investors. However, in the past it was often the banks themselves, which not only issued, but also (together with insurance companies) purchased such mortgage bonds.

According to some banks the investment is unattractive due to the fact, that the issuance of these bonds incurs expenses. Furthermore, according to another bank, mortgage bonds are also offered to private banking clients. The bonds are sold in blocks periodically and are not offered on the stock exchange. For clients it is profitable because of the reduced price and the security of the standing of the issuer, which is a bank.

In addition to this, the main reason for the past preference of this kind of banking loans was the provision of certain contributions to the interest rates from the state that is, however, currently very low<sup>140</sup>. As well as this, more bureaucracy is connected with these types of mortgage loans. Consequently, at the moment the mortgage loan is not so frequently used.

## **4 Leasing of real estate**

In Slovakia, another increasingly more important device for the financing of real estate is the leasing of real estate. Slovak law does not contain a strict definition of leasing; the respective provisions of the Civil and Commercial Code are applicable.

It is financial rent, more specific, the rent of a real estate with the lessee's option right to buy the leased real estate, for a certain value defined in advance, if the lessee uses it in exchange for in advance agreed instalments to the lessor during the agreed period. In general, the lessor has the ownership title to the land and to

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140 From one bank it was learned that the state contribution amounts to 2.5%, whereby the bank provides 1% and 1.5% by the state. However, the applicant must fulfil certain requirements as for instance a certain age (at least 18 years but not older than 35 years) and limit of gross income (not more than approximately 26,576 SKK).

the construction, which it constructs on the land according to the needs of the lessee. During the term of the financial leasing, the lessee is allowed to already use the real estate for its business purposes.

In comparison with the mortgage loan agreement the leasing agreement has mainly advantages in the field of tax and accountancy. In the case of leasing, the property may be amortized faster than usual. In accordance with Act No. 595/2003 Coll. on Income Tax, in general, real estate is placed in a group with an amortization period of 20 years, whereas the leasing of real estate allows for the amortization in full amount within 12 years. Leasing is therefore often regarded as a proper method of tax optimization.

Currently in Slovakia, the leasing of real estate can be found mainly in the field of industrial and logistics objects. However, it has only recently become a method of financing a real estate, but will undoubtedly become more important in the future.<sup>141</sup>

## **5 Consumer credit agreement**

### **a General remarks**

Although this credit financing form typically does not belong to the methods of real estate financing<sup>142</sup>, it shall for the following reasons also be mentioned here: One reason is that only recently this legal institute has been amended in a broad extent and should therefore be of particular interest to the banks. In particular, it is to be noted that the amended legislation introduced several new definitions, which will carry greater relevance in the future for the Slovak banking environment.

With the aim of increasing consumer protection, Amendment 2008 amended the Act on Consumer Credits as well. Regulation of consumer credits is included in several applicable European Directives, such as Council Directive 93/13/EEC on unfair terms in consumer contracts, Council Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, or Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business practices to consumers in the internal market.

In comparison to the previous legal regulation, Amendment 2008 introduces a new definition of consumer credit and a new specialized form of the contractual conditions of such agreement, which should be determined by a generally binding regulation

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141 Currently, not all Slovak leasing companies provide the leasing of real estates. Among the most experienced companies are UniCredit Leasing Real Estate s.r.o. and Tatra-Leasing, s.r.o. Furthermore, IMMORENT Slovensko, s.r.o. (partner of the Slovenská sporiteľňa) and VÚB Leasing, a.s. provide the leasing of real estates.

142 Article 1 par. 2 a) of the Act on Consumer Credits explicitly stipulates that this Act does not apply to credits provided for the purpose of acquiring either an existing or a designed real estate or for additional or other construction work related to finished constructions and their maintenance.

to be issued by the Ministry of Economy of the Slovak Republic<sup>143</sup>. It would therefore be possible to rely on officially published information, for instance, on the average value of the annual percentage rate of costs for the relevant consumer credit, while the average value of the annual percentage rate of costs should be stated for several different types of consumer credits to cover the actual situation on the financial market.

Consumer credit is a temporary provision of financial means upon the consumer credit agreement by means of a deferred payment, a loan, a credit or any other legal form<sup>144</sup>. This financing method is advantageous mainly for clients who do not want to, or cannot secure their credit with a real estate and need a lower amount than via a mortgage loan. Therefore, a significant feature of the consumer credit is that a provided consumer credit amounts from a minimum of 201 EUR, to a maximum of 20.000 EUR.

A creditor is a natural person or legal entity that provides the consumer with credit within the scope of its business activity. Only a natural person who has been provided with a consumer credit for a purpose other than for the performance of his/her employment or business may be in the position of a consumer.

Article 4 par. 6 of the Act on Consumer Credits bans the settlement of the debt from the consumer credit by a check or a promissory note. The creditor may accept them only when the securitisation amount of the promissory note was filled in accordance with provisions stipulated by the Act<sup>145</sup>.

Furthermore, consumers are entitled to repay their consumer credit earlier. The maximum charge for repayment of the consumer credit is now mandatory stated in Article 6 par. 3 of the Act on Consumer Credits. This is a consequence of the

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143 Under the new provisions the consumer shall be informed in writing about the contemplated contractual conditions before entering into the agreement on consumer credit. In addition, the creditor is at the consumers' request, bound to provide additional information by means of the stated standardized form. In this context Article 3 par. 10 of the Act on Consumer Credits stipulates that the maximal amount of the payment for providing the consumer credit shall be stated by a governmental regulation. According to the Slovak legislator, this should prevent excessively high payments and thus the abuse on the financial market prohibited. Finally, through this, proper protection for the participants of such agreement is provided.

144 Typically, the special provisions on consumer credits shall be applied to the general provisions of other types of agreements. More details on this see in *Maliar*; Consumer credits in Slovakia after implementation of the respective EU Regulation, *Judicial revue (Justičná revue)*, 4/2007, p. 544.

145 The creditor should be allowed to accept a note or check only for securing his/her claims from the consumer credit only in the case of securing note and the note amount shall be in the maximum amount of the actual amount of un-repaid consumer credit and its appurtenances (including the contractual penalties and other claims of the creditor from the agreement on consumer credit) in amount of a maximum of 30% of the principal from the provided consumer credit. The accepted note, or the note filled by the creditor contrary to the previous sentence cannot be accepted by the creditor and s/he shall be obliged to deliver it to the consumer on request. The provisions of this section apply also in the case of a change of the owner of the note or assignment of rights from the note. This obligation follows the request included in the Council Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit. The purpose of this regulation is to prevent usage of blank notes for repaying the consumer credit.

fact that the amount of the charges in many cases was too high and therefore, premature repayment of the debt was generally disadvantageous in the past.

Finally, in order to increase related consumer awareness, creditors are obliged to submit data on newly provided consumer credits to the Ministry of Finance and the National Bank of Slovakia, which will then publish information from this data.

Overall, this type of agreement provides for better legal protection of the debtor/consumer than other forms of financing.

### **b Form and content of a consumer credit agreement**

The consumer credit agreement is regulated in Article 4 and on of Act No. 258/2001 Coll. on consumer credits. It specifies the definition of the consumer credit by adding the credit as another form of consumer credit agreement and alters the definition of the charge.

In order for the consumer credit agreement to be valid, it must be in writing.

Article 4 par. 2 of the Act on Consumer Credits introduces an enumeration of mandatory requirements for the consumer credit agreement. As a new condition it stipulates the duty to provide for the above stated average value of the annual percentage rate of costs and also the annual percentage rate of costs and overall costs of the consumer related to the consumer credit for easier comparison of the provided consumer credits. As already mentioned above, if the consumer would like to repay the consumer credit before the maturity date, the agreement shall also include the estimation method of the charge, if the creditor requires.

The consumer shall receive a copy of the written agreement (Article 4 [1]), preventing situations when the consumer did not receive the copy of his/her consumer credit agreement due to lack of his knowledge, or through the fault of the creditor.

The consumer credit agreement must contain:

- business name, seat and identification number of the creditor, if a legal entity is concerned or name, surname, place of business or the address of the permanent residence and identification number of the creditor, in case of a natural person,
- name, surname and address of the residence of the debtor,
- identification of a person whose ownership right to the goods or service does not pass over to the consumer in the moment of handing over and taking over the goods or services, and terms of the acquisition of the ownership title to these goods or services by the consumer,
- address of the seller, where the consumer may claim his right for guarantee or complaint,
- total amount and currency of the provided consumer credit and conditions regulating its drawings,
- in case of deferred payment for the goods or provided service, the description of the goods or service to which the consumer credit agreement relates and the price of the goods or provided service,

- final maturity of the consumer credit,
- annual interest rate; in the case of a flexible annual interest rate the consumer credit agreement must contain the terms of the change of the flexible annual interest rate, as well as an index or reference rate that relate to the original flexible annual interest rate,
- amount, number and schedule for instalments of the principal, the interest and other charges,
- annual percentage extent of the costs and total costs of the consumer connected with the consumer credit that have been calculated on the basis of data valid at the time of the conclusion of the consumer credit agreement,
- average amount of the annual percentage extent for the respective consumer credit valid at the time of the signature of the consumer credit agreement,
- guarantee/suretyship or insurance required by the creditor,
- the calculation of additional costs that have not been included into the calculation of the annual percentage extent of the expenses, the amount of these costs, the method of calculation or the most accurate estimation should be specified,
- right of the consumer to decrease the total expenses on consumer credit when it has been repaid before the maturity date and the estimation method of the charge for repaying the consumer credit before the maturity date,
- warnings relating to the consequences of non-payment of the consumer credit instalments,
- other rights of the consumer pursuant to Article 7 of this Act,
- means of termination of the obligation resulting from the consumer credit agreement,
- information on out-of-court settlement of disputes arising from the consumer credit agreement,
- name and address of the competent control body.

## **C Forms of securing credit**

### **1 General remarks**

The following securities devices are regulated in detail by the Slovak Commercial Code: the (i) bank guarantee, (ii) suretyship and (iii) acknowledgement of debt, where the latter both in (ii) to (iii) mentioned institutes are also contained in the Slovak Civil Code. As a general rule, the respective provisions of the Civil Code do not apply to commercial transactions in this context, i.e. in commercial relationships to security devices only the relevant provisions of the Commercial Code are to be applied.

Apart from the above-mentioned type of security device, there are some securities that are only partially regulated in the Commercial Code, however in general they

are stipulated in the Civil Code. The more specific provisions of the Commercial Code are specifically relevant for business transactions. Such security devices are, for example, the charge or the contractual penalty.

On the other hand, a specific type of credit security that is exclusively regulated by the Civil Code is the security transfer of rights; however, these provisions are also applicable to commercial transactions due to the principle of subsidiary of the Civil Code. This category includes securities such as, for instance, the security transfer of rights, the security assignment of receivables and the retention right<sup>146</sup>.

In addition, as will be outlined in more detail below, there are several other provisions governing credit securities, which are included in other laws, other than in the above-mentioned Commercial Code and Civil 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.

As in many other jurisdictions, Slovak law differentiates between securities *in rem* and personal securities. Under a security *in rem*, the creditor has the right to perform enforcement from specific assets in an agreed way, when the event of default occurs. Under Slovak law, the following institutes are considered as securities *in rem*: the (i) charge, (ii) security transfer of rights, (iii) security assignment of receivables, (iv) pre-emption right and (v) retention right.

On the other hand, personal securities mainly consist of the acquisition of an additional debtor, by which the amount of assets represent additional guarantee funds. Under Slovak law these are: the (i) suretyship, (ii) bank guarantee, (iii) agreements on deductions from wages and other income, (iv) contractual penalties, (v) acknowledgement of debts, (vi) private assumption of debt, (vii) cumulative assumption of debt as well as promissory notes.

## **2 Securities *in rem***

### **a Charges**

Charges are outlined in more detail in Chapter IV below.

### **b Security transfer of rights**

#### **ba General remarks**

The recent broad amendment of the Civil Code, by Amendment 2008, which is in force since 1 January 2008, concerned major changes to the regulation of the security transfer of rights. The prior regulation, consisting only of Articles 554 and 555 of the Civil Code, was very short and experiences from the legal practice showed that it often strengthened the legal position of the creditor in an inappropriate

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146 Other securities belonging into this group of security devices are the agreement on deductions from wages and other income, as well as the obligation to provide security (*kaucia*) pursuant to Article 555 of the Civil Code.

way<sup>147</sup>. Consequently, this legal institute was often misused and caused large disproportions between the rights and obligations of the debtor and the creditor. Among the most frequent misuses was that even at the very beginning of the delay (and without any possibility of restitution), the debtor lost its ownership title to its asset being in an incomparable value compared to the value of secured obligation.

However, the Slovak legislator believes that this legal institute, with historical roots even in Ancient Rome, should still serve as a security device. Therefore, with the aim to minimize misuse of this institute, the new wording includes much complex and detailed regulation.

#### bb Character

In its new Article 553 par. 1, the Civil Code stipulates “*the performance of an obligation can be secured by a temporary security transfer of right of the debtor or a third party for the benefit of the creditor*”. In the case of movable property, the creditor acquires the ownership right by taking over the asset (*traditio*), in the case of real estates, by the registration with the respective cadastre office of the cadastre authority (*intabulatia*). If the subject matter of the security transfer is the ownership title, the general provision on acquisition of ownership rights pursuant to Article 133 of the Civil Code applies.

According to unofficial information from major Slovak banks, after Charges Reform 2003 the institute of the security transfer of rights (title) is not used for the securing of credits/loans for the financing of real estate. This institute, due to its limitations, had its particular importance only before Charges Reform 2003 came into effect. Instead of that, banks are commonly using mortgages registered with the cadastral authority as they consider it as a reliable security instrument. However the future will show, if the new regulation will become more popular for the banks than in the past and therefore, it will also be used as another security instrument in order to secure a loan besides the mortgage.

However, it is – in contrast to the former regulation – explicitly stipulated that the transfer of the ownership right is always temporary and this fact should also be registered in the relevant public registry. According to the Article 553 par. 2 of the Civil Code, “*the creditor shall be bound to announce the temporality of the security transfer of right to the cadastre office or to another public registry*”. The registration with the public registry will be performed by way of priority notice and be visible on the ownership certificate. By this it will constitute a kind of caution for people

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147 The law did not regulate the requirements of this contract in detail and especially did 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 fulfilment of the claim. The cancellation clause is the fulfilment of the secured claim and when this happens, the legal transaction becomes ineffective. To highlight the securing function of the contract, this condition should be stated explicitly in the agreement. 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.

who would possibly want to purchase this object of security transfer and eliminate thus doubts and uncertainties.

To security transfer of rights, related to the securities, the procedure according to the Securities Act applies (Act No. 566/2001 Coll.).

Article 553 par. 1 of the Civil Code clearly gives the possibility for a third person, other than the debtor, to provide the right that shall be transferred for the benefit of the creditor. This however, may in some cases, result in an unjustified enrichment (Article 454 of the Civil Code), when the third person performed instead of the debtor. Therefore, the third person can claim for delivery of the unjustified enrichment.

By satisfaction of the secured claim, the right is automatically transferred back to the transferor. Article 553d explicitly states that “*the creditor shall be bound without undue delay to retransfer the asset, which was in its possession, together with its accessions*”. Accordingly, the creditor is obliged to file an application for the deletion of the record from the relevant register. However, this does not exclude that the debtor will file the application together with the written confirmation on the performance of the secured debt.

bc Content of the agreement on security transfer of rights

Article 553a par. 2 of the Civil Code stipulates the mandatory features of the agreement on security transfer of rights (the agreement):

- specification of the secured obligation
- identification of the right that shall be transferred for the benefit of the creditor
- rights and obligations of the contractual parties to the transferred right during the term of the secured transfer of right
- monetary evaluation of the secured right
- method of the enforcement of the secured transfer of right
- lowest admissible bid in the case of a voluntary out of court auction
- identification of the debtor, if is transferred the right belongs to a person other than the debtor.

The agreement must be concluded in writing; otherwise it is null and void (Article 553a par. 1 of the Civil Code).

A detailed specification in the agreement should bring broad clarity for the institute of the security transfer of right. In particular, the specific regulation for the transfer of the right and its enforcement should help the debtor to monitor the transferred right and also the intentions of the creditor with it. In this regard, Article 553c par. 3 of the Civil Code obliges the creditor to “*announce the commencement of the enforcement of the security transfer of right to the person who provided the security and to the debtor at least 30 days in advance*”.

In summary, the rights and obligations of the contractual parties mainly relate to the following issues:

- (i) protection of the transferred asset by the creditor, if it is the possessor (according to Article 553b par. 2 of the Civil Code “*from damage, loss and destruction*”),
- (ii) restriction for the creditor to neither transfer the transferred right to another person, nor to charge it otherwise for the benefit of another person until the security transfer of right extinguished (Article 553b par. 1 of the Civil Code).
- (iii) reimbursement for the creditor for reasonable costs reasonably used in connection with the enforcement of the security transfer of right (Article 553d par. 2 of the Civil Code),
- (iv) retransfer of the asset, being subject of the security transfer of right, to the debtor without undue delay, and
- (v) notice of the creditor to the debtor and the person, who provided the security, according to Article 553c par. 3 of the Civil Code.

#### bd Enforcement

The entire enforcement process of the security transfer of right, if the debtor does not perform the secured obligation duly and in time, is governed by Article 553c of the Civil Code. Enforcement should be realized by the method stated in the agreement or by way of out of court auction. Where an enforcement method other than by a voluntary out of court auction was agreed on, “*the creditor is obliged to proceed in the enforcement process of its right with due diligence and transfer the right for a price for which the same or a similar right under similar conditions would usually be transferred*” (Article 553c par. 4 of the Civil Code), i.e. the creditor must respect the market price. Any breach of this duty could cause damage and the creditor would be responsible for it.

If the proceeds obtained by the execution of the security transfer of right exceeds the secured claim and its attribution, the creditor shall, without undue delay, be bound to deliver to the person who provided the security the part of proceeds which after deducting necessary and reasonable costs related to the execution of the security transfer of right exceeds the secured claim and its attribution.

Under Article 553c par. 2 of the Civil Code, any agreements concluded before the secured claim has become due, under which the creditor may be entitled to permanently keep the right transferred as a security, are null and void.

As in the case of the security transfer of right, the parties must agree on the lowest admissible bid for the event of a voluntary auction, if they would choose this enforcement method, as it is one of the essential features of the agreement, the debtor could somehow influence the course of such voluntary auction.

### **c Security assignment of receivables**

Assignment of receivables according to Article 554 of the Civil Code is a widely used instrument in Slovak law<sup>148</sup>. The assignment has to be in writing and does not require the approval of the debtor. However, an assignment of receivables in contradiction to an agreement with the debtor is not valid.

It is also possible to assign future receivables effective as of the moment of their acquisition by the assignee or their generation by the assignor. However, it would be necessary to draft the assignment agreement so that it is not construed as a waiver of a future right, which is invalid under Slovak law<sup>149</sup>.

The Civil Code requires the original creditor to notify the assignment of the receivables to the debtor without unreasonable delay. It is also possible for the new creditor to notify the assignment of the receivables to the debtor; however, s/he will also have to prove the assignment (e.g., by submitting the assignment contract to the debtor). Until the assignment of receivables is notified to the debtor, the debtor is entitled to render payments directly to the original creditor. The Civil Code does not contain other special sanctions regarding the failure of the assignor to notify of the assignment. The assignee may enforce the receivables once the obligor has received notification of the assignment.

Rights connected with a receivable, such as security interests or guarantees, follow the receivable. If any of the securities was provided by a person other than the original creditor (such as a pledge by a third party), the assignment must be notified to the third party by the original creditor.

In the case of a mortgage over real estate, the assignment must be registered with the land registry. In case of a pledge over receivables, the assignment must be recorded in the public register of pledges. There are no specific costs related to changing the secured creditor.

Under the new bankruptcy regulations, the solvent party or the bankruptcy trustee will be authorised to assign its receivables against the other party after bankruptcy proceedings are opened in relation to the insolvent party, regardless of the contractual prohibition on assignment.

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148 The general rules on the assignment of receivables included in Articles 524 through 530 of the Civil Code are to be applied.

149 Pursuant to Article 525 of the Civil Code the personal receivables (for instance, alimony payments) 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 through 319 of the Civil Procedure Code. More details regarding the various forms of an assignment of a claim, for instance, factoring and forfeiting, see in *Jakubovič*, Changes of the subject and content in commercial law relationships (1<sup>st</sup> part), *Judicial revue (Justičná revue)*, 10/2005, p. 1259, 1262 and 1265 and on.

### 3 Personal securities

#### a Suretyship under Commercial law

##### aa General remarks

The suretyship (*ručenie*) under the Commercial Code is, apart from charges (i.e. pledges and mortgages), the most commonly used device to secure obligations arising from commercial transactions (business obligations)<sup>150</sup>.

Pursuant to Article 303 of the Commercial Code, the suretyship is created by a written declaration of the guarantor (*ručiteľ*) addressed to the creditor that it will satisfy it, if the debtor fails to fulfil its obligation against the creditor. Furthermore, the secured claim must be specified therein.

Unlike the situation in other jurisdictions, a unilateral letter of commitment of the guarantor creates the suretyship in written form. The consent of the creditor or of the debtor is not required for a suretyship to be created. It is not required that the suretyship is explicitly titled as such.

From Article 304 par. 1 of the Commercial Code<sup>151</sup>, which is mandatory, it follows that only a valid claim may be secured. However, for the creation of the suretyship it is not relevant whether the obligation of the debtor is invalid, if it is for reasons that it lacked the competence to assume debts. This only applies, as long as the guarantor was aware of this fact when signing the letter of commitment. Consequently, if the guarantor was unaware, this invalid claim could not be secured under a suretyship. It is also not possible to secure a statuted barred obligation or a natural obligation<sup>152</sup>.

Additionally, a suretyship may also secure future claims and conditional claims.

From Article 312 of the Commercial Code it follows that the suretyship may not only be created by agreement, but also by operation of the law.

##### ab Scope

Under Article 305 of the Commercial Code it is stipulated that the creditor is obliged to notify the guarantor of the amount of the secured claim, if it requests so, without undue delay. Although, in particular in the case of a future claim it will not always be possible to exactly define the amount. The creditor has the information duty during the entire term of the suretyship, i.e. should a change in the amount of the claim occur, it must be noted to the guarantor immediately. Although the law does not stipulate any sanctions for a potential breach of this duty, the creditor will be liable for any damage caused by this<sup>153</sup>.

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150 As to commercial transactions only the provisions on suretyship included in the Commercial Code are to be applied, the suretyship regulation contained in Articles 546 through 550 of the Civil Code are not of relevance here.

151 Article 304 together with Article 311 par. 2 of the Commercial Code included 2 exemptions to the strict principle of Accessoriness; in this regard see *Ovečková a kolektív*, Commercial Code – Commentary, explanations to Article 303 of the Commercial Code, p. 79.

152 *Ovečková a kolektív*, Commercial Code – Commentary, explanations to Article 304 of the Commercial Code, p. 80.

153 *Ovečková a kolektív*, Commercial Code – Commentary, explanations to Article 305 of the Commercial Code, p. 81.

Generally, the scope of the suretyship covers the principal debt between the creditor and the debtor including any related interest and appurtenances. Therefore, the guarantor is not 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 other expenses. However, the guarantor has the right to enter into such an obligation in the letter of commitment and to accept liability or other costs as guarantor and payer.

#### ac Request of the creditor and objections to the guarantor

The creditor may only seek satisfaction of a claim from the guarantor, if the (principal) debtor fails to meet its obligations within an appropriate period of time after being requested to do so in writing by the creditor (Article 306 par. 1 of the Commercial Code). From this time, the creditor may demand satisfaction from both, i.e. the debtor and the guarantor<sup>154</sup>. If both are requested to satisfy a claim, either of them should pay this amount, with the obligation of one of the two parties being automatically extinguished when the other makes a payment.

According to Article 307 par. 2 of the Commercial Code, if the suretyship secures only a part of the debt, the scope of liability is not reduced in the event of a partial payment as long as the entire secured debt is not repaid.

No such written request of the bank is required in the following cases: (i) where performance, i.e. delivery to the debtor, is not possible or (ii) there is no doubt that the debtor will not be able to satisfy the bank's claim; the law assumes this, mainly, when the debtor is declared bankrupt.

The creditor may request for payment only after the debt falls due. Consequently, a prior request is regarded as invalid.

The guarantor has the right to raise all of the objections that the debtor is entitled to raise against the bank granting the secured loan. The guarantor can also raise the objection that the receivables of the debtor should be netted against the claims of the creditor. Moreover, the guarantor may also set off its own claims with the claims of the creditor (Article 306 par. 2 of the Commercial Code).

Should the guarantor intend to satisfy the creditor, it must inform the debtor of this without undue delay. Thereafter, the debtor must inform the guarantor immediately about any objections that it may have against the creditor. Should the objections that the guarantor has been informed about by the debtor have been exercised unsuccessfully against the creditor, the debtor must reimburse the guarantor expenses occurred by this.

On the other hand, from Article 309 par. 1 of the Commercial Code it follows that should the guarantor have satisfied the creditor without knowledge of the debtor,

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154 By this, the principle of subsidiarity, which generally applies to the suretyship under commercial law, is broken. Slovak legal theory knows this as direct suretyship (*priame ručiteľstvo*) and the debtor is then the primary debtor (*primárny dlžník*). However, the suretyship in the Civil Code does not acknowledge such exemption of this principle. *Ovečková a kolektív*, Commercial Code – Commentary, explanations to Articles 303 and 306 of the Commercial Code, p. 79 and p. 82.

then the debtor has the right to raise all objections that it had against the creditor against the guarantor.

#### ad Extinguishment

According to the principle of accessoriness, which typically governs all security institutes, the suretyship generally extinguishes upon termination of the principal debt (Article 311 par. 1 of the Commercial Code). However, in this context Article 311 par. 2 of the Commercial Code is to be noted, which contains two exceptions where the suretyship will not expire:

- firstly, the suretyship will not extinguish, if the secured debt ceases to exist due to the lack of possibility of being satisfied by the debtor, but if it could still be satisfied by the guarantor;
- secondly, if the debtor – a legal entity ceases to exist.

Pursuant to Article 310 of the Commercial Code, in general, the claim of the creditor against the guarantor shall not become statute barred before its claim against the debtor. However, this shall only apply if the suretyship is not defined as time limited in the guarantor's letter of commitment.

From Article 307 par. 1 and Article 293 par. 1 of the Commercial Code it follows that in the case where several guarantors exist, each of them is liable for the entire obligation. In such a case the guarantors are liable as joint and several debtors.

Where the principal debt is the subject matter of a novation, the suretyship shall also cover the new debt. If, however, the guarantor does not agree with securing the new debt, the security continues, but covers only the original debt and the guarantor has all of the former objections.

When a secured claim will be assigned, pursuant to Article 307 par. 3 of the Commercial Code the rights arising from the suretyship will pass from the assignor (the creditor) to the assignee at the time when the assignment is notified to the guarantor by the assignor or when this is proven to him by the assignee (Article 307 of the Commercial Code)<sup>155</sup>. The assignment will therefore be effective against the guarantor only after it had been informed about it.

#### b Bank guarantee

The bank guarantee (*banková záruka*) is a special form of suretyship and is therefore, similar to it<sup>156</sup>. It is used frequently and effectively as a security device. Moreover, the bank guarantee is used regularly in international commercial transactions<sup>157</sup>. According to Slovak legal theory the Uniform Rules on Contract Guarantees are

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155 The general rule on the assignment of receivables is contained in Articles 524 through 530 of the Civil Code, which is only supported by Article 307 par. 3 of the Commercial Code. From this it follows that all appurtenances connected to a claim, in particular rights arising from any security obligation, will pass over with the assigned receivable.

156 According to Article 322 par. 2 of the Commercial Code, the provisions on suretyship are to be applied accordingly.

157 *Jakubovič, The Slovak normative provisions on bank guarantee under commercial law and its application in practice, Judicial revue (Justičná revue), 3/2007, p. 394; Ovečková a kolektív, Commercial Code – Commentary, explanations to Article 313 of the Commercial Code, p. 90.*

often the basis for a bank guarantee<sup>158</sup>. Slovak law recognizes the following types of bank guarantees by name<sup>159</sup>:

- documentary bank guarantee (Article 319 of the Commercial Code)
- syndicated bank guarantee (Article 315 par. 1 of the Commercial Code)

#### ba General remarks

The bank guarantee as a security instrument is created by a written letter of guarantee (*záručný list*) where the guaranteeing bank (guarantor<sup>160</sup>) declares to satisfy a monetary claim of the beneficiary (i.e. creditor) up to a certain amount if the debtor fails to perform or breaches other conditions set out in the letter of guarantee (Article 313 of the Commercial Code).

Slovak legal theory considers the bank guarantee as a unilateral legal act executed by the bank. In the Slovak banking practice it is common use that banks will require additional security devices prior to the issuance of a letter of credit<sup>161</sup>.

The letter of guarantee contains all details for the event of default of the debtor. The law stipulates the mandatory features of the letter of credit, the lack of which otherwise would cause its invalidity and ineffectiveness<sup>162</sup>.

In general, a mandate contract<sup>163</sup> exists between the guarantor and the person whose debt is being secured. Under this agreement, the bank undertakes the guarantee with the conditions agreed on<sup>164</sup>. With the delivery of the letter of guarantee to the beneficiary, it becomes binding.

The bank guarantee is used mainly to cover monetary claims; however, if the guarantor assumes a non-monetary claim, it has the obligation to pay to the beneficiary the amount that corresponds to the secured amount.

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158 *Dubovec*, Legal aspects of bank guarantees within cross border business transactions, *Judicial revue (Justičná revue)*, 12/2007, p. 1640.

159 Other laws recognize various forms of bank guarantees; in this respect see more in *Jakubovič*, The Slovak normative provisions on bank guarantee under commercial law and its application in practice, *Judicial revue (Justičná revue)*, 3/2007, p. 395.

160 In general, the guarantor is a bank. However, from Article 762 of the Commercial Code stipulates for international commercial transactions that also other entities than banks may provide a guarantee.

161 A bank may therefore require additional security by the following means as for instance, a security assignment of a receivable or by deposit of an amount on the debtor's bank account. *Dubovec*, Legal aspects of bank guarantees within cross border business transactions, *Judicial revue (Justičná revue)*, 12/2007, p. 1638.

162 *Ovečková a kolektív*, Commercial Code – Commentary, explanations to Article 313 of the Commercial Code, p. 91.

163 According to Articles 566 through 576 of the Commercial Code; see Article 322 of the Commercial Code.

164 In Slovak banking practice, the parties conclude a framework agreement on the issuance of bank guarantee, which are often governed by the bank's General Business Terms and Conditions. *Dubovec*, Legal aspects of bank guarantees within cross border business transactions, *Judicial revue (Justičná revue)*, 12/2007, p. 1638.

If, the bank guarantee stipulates that the bank is obligated to render fulfilment to another bank for the favour of the beneficiary, it shall do so by crediting the account of the entitled person at the other bank (Article 321 of the Commercial Code)<sup>165</sup>.

#### bb Guarantee by several banks

If the bank confirms a guarantee by a second bank, the two banks providing security are jointly and severally liable<sup>166</sup>. If the second bank pays an amount to the beneficiary, it has the right of recourse against the guaranteeing bank. When a bank only informs the creditor that another bank is granting a guarantee in the creditor's favour, 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 (Article 315 par. 2 of the Commercial Code).

#### bc Abstractness

The guarantee agreement exists irrespective of the secured debt and therefore its nature is abstract; the guarantor can not simply take action to objections raised by the debtor against the creditor that arise from the debtor's legal relationship with the creditor. The lacking principle of accessoriness and subsidiary is therefore the major difference to the suretyship<sup>167</sup>.

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 (Article 317 of the Commercial Code). However, the letter of guarantee may contain a deviating clause stating that the beneficiary must first request the debtor to pay.

Furthermore, it may state that apart from the written request for payment, additional documents must be presented (Article 319 of the Commercial Code). In Slovak business practice the term documentary guarantee is used for this special kind of guarantee.

Pursuant to Article 316 par. 2 of the Commercial Code, if a debtor only pays part of the debt, but the secured claim is equal or higher, this shall not have any influence on the scope of the guarantee.

#### bd Assignment of a guarantee

The beneficiary has the right to assign the claim under the bank guarantee to a third party, i.e. no change to the persons committed is necessary, if the bank

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165 For the performance of the banking transfer of monetary claims Article 339 par. 2 of the Commercial Code applies according to which a monetary obligation paid through a bank is settled when the paid amount is credited to the creditor's bank account. If money is sent by post, a monetary obligation is considered settled when the amount involved is paid to the creditor.

166 This legal institute is commonly used in international business transactions; *Suchoža a kolektív*, Commercial Code – Commentary, explanations to Article 315 of the Commercial Code, p. 620. Slovak banking environment knows the term of syndicated bank guarantee (*syndikovaná banková záruka*); see *Dubovec*, Legal aspects of bank guarantees within cross border business transactions, Judicial revue (Justičná revue), 12/2007, p. 1639.

167 *Ovečková a kolektív*, Commercial Code – Commentary, explanations to Article 313 of the Commercial Code, p. 90; *Suchoža a kolektív*, Commercial Code – Commentary, explanations to Article 313 of the Commercial Code, p. 619.

guarantee is unconditioned (*banková záruka na prvú výzvu a bez námietok*). This is another major difference to the suretyship that the beneficiary may assign its claim against the guarantor to a third person without necessarily having to also assign the main (i.e. the secured) claim.

However, according to Article 318 of the Commercial Code, if it follows from the contract that the creditor is entitled to enforce its rights under the bank guarantee only when the debtor fails to perform, then the creditor can only assign the rights under the bank guarantee together with the secured claim.

#### be Refunding payments

Should a creditor receive a payment under the bank guarantee without justification, the creditor must refund the payment considered as unjustified enrichment. However, before the debtor can collect the amount it must reimburse the paid amount to the bank. The bank itself does not have any claims under the title of unjustified enrichment against the creditor, and any contractual provisions stating otherwise are invalid.

#### bf Extinguishment

If a bank guarantee of limited time is agreed upon (*terminovaná banková záruka*<sup>168</sup>), it shall expire if the creditor does not request payment in writing within the agreed time or does not present the required documents (Article 321 of the Commercial Code).

Should the guarantor meet its obligations under the bank guarantee, the guarantor has the right to object *vis-à-vis* the debtor as in the case of a suretyship.

### 3 Assumption of a debt

The assumption of debt (*prevzatie dlhu*) is regulated in Articles 531 and 532 of the Civil Code<sup>169</sup>.

According to Article 531 par. 1 of the Commercial Code, a person who agrees on with the debtor an assumption of its debt shall become the debtor instead of it, if the creditor gives its consent. The consent of the creditor can be given either to the original debtor or to the person who assumed the debt.

Furthermore, based on a written agreement with the creditor, a new debtor may join the existing debtor without requiring a new contract with the existing debtor. The two debtors are then jointly and severally liable<sup>170</sup>.

The new debtor can raise all objections the existing debtor is entitled to against the bank; however, the initial debtor has no right to object. The content of the contractual relationship does not change.

168 *Jakubovič*, The Slovak normative provisions on bank guarantee under commercial law and its application in practice, *Judicial revue (Justičná revue)*, 3/2007, p. 398.

169 *Fekete*, Civil Code – Commentary, explanations to Article 531 through 534 of the Civil Code, p. 531 and on.

170 More details see in *Jakubovič*, Changes of the entity and content of commercial law relationships (2<sup>nd</sup> part), *Judicial revue (Justičná revue)*, 11/2005, p. 1402.

## 4 Accession to a debt

The accession to a debt (*pristúpenie k záväzku?*) is regulated in Articles 533 and 534 of the Civil Code. The new debtor declares to the creditor in a written agreement that it will cover the monetary 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<sup>171</sup>.

The existing debtor is not discharged from the debt and the two debtors are jointly and severally liable. The new debtor has the right to raise all objections against the creditor the existing debtor is entitled to.

In contrast to the assumption of a debt, the accession to a debt is only possible for monetary debts. The right of recourse between the new debtor and the existing debtor exists.

## D Other country specific contractual securities

### 1 Obligation to provide security

Under Article 555 of the Civil Code, the obligation to provide a security is created by an agreement between the parties concerned. The obligation to provide security may also arise by law.

Slovak law stipulates mainly two methods of how the security may be provided: by establishment of a charge or a suretyship. From this it follows that a security may be granted also by other methods.

In general, the creditor is obliged to accept a security, which is considered as eligible security<sup>172</sup>. However, from Article 556 of the Civil Code it follows that generally no one is obliged to accept an asset or a right as security to a higher value than two-thirds of its estimated market value. The only exceptions to this value limitation are deposits in banks and savings institutions as well as government securities; these are considered as eligible security in their full amount.

### 2 Letter of credit

#### a General

The letter of credit (*Zmluva o otvorení akreditívu*) is included in Articles 682 through 690 of the Commercial Code. A significant feature of this legal institute is that one party to a contract on the opening of a letter of credit is always a bank<sup>173</sup>. Typically, in context with a letter of credit, the documentation will be governed

171 *Jakubovič*, Changes of the entity and content of commercial law relationships (2<sup>nd</sup> part), Judicial revue (Justičná revue), 11/2005, p. 1401.

172 *Fekete*, Civil Code – Commentary, explanations to Article 556 of the Civil Code, p. 611.

173 As already mentioned, beside a (domestic) bank it is also possible that a foreign bank (upon passport) or a Slovak branch of such foreign bank will enter into such commitment. Moreover, also credit and other financial institutions could be party of such agreement. However, Slovak Banking Act requires all these entities to include in their license the opening and confirming of a letter of credit as banking activity. *Suchoža a kolektív*, Commercial Code – Commentary, explanations to Article 682 of the Commercial Code, p. 883.

by the Rules on Uniform Customs and Practice for Documentary Credits<sup>174</sup> (for instance, the actual UCP 600 Rules).

Fulfilment of the bank to the beneficiary will usually consist of payment of a certain sum (from the committer's account), provided that the beneficiary meets the conditions stipulated in the letter of credit within the specified period of time.

The committer pays a fee to the bank for its service. Under a "contract on the opening of a letter of credit" (*zmluva o otvorení akreditívu*), the bank assumes an obligation in respect of its committer (*prikazca*) to make a payment on demand to a certain person (the beneficiary; *oprávnený*) from the committer's account, provided that the beneficiary meets the conditions stipulated in the letter of credit within a specified time. The contract must be in writing.

In summary, the essential features of a contract on the opening of a letter of credit are the following<sup>175</sup>:

- determination of the contracting parties
- obligation of the bank to provide its obligation on the account of the committer
- specification of the beneficiary
- specification of the obligation, the conditions and terms, under which the bank will perform its obligation
- committer's duty to pay the bank's fee.

If the advisory note on a letter of credit does not specify that the letter of credit is revocable, the bank can modify it **or** revoke it only with the consent of the beneficiary and the committer. If the advisory note on a letter of credit specifies that the letter of credit is revocable, the bank can modify it or revoke it until the beneficiary meets the conditions stipulated in the letter of credit. A letter of credit may only be modified or revoked in writing. In Slovak banking practice, it is common that a letter of credit is irrevocable<sup>176</sup>.

If an irrevocable letter of credit is confirmed (i.e. guaranteed) by another bank<sup>177</sup>, on the initiative of the bank bound to render performance in respect of such irrevocable letter of credit, the beneficiary is entitled to demand performance from the other bank as soon as this bank notifies him/her that it has confirmed the letter of credit. The bank, which asked for confirmation of the letter of credit, and the bank which confirms it, are liable to the beneficiary jointly and severally. In order

174 Reference to the former UCP 500 Rules is made in *Suchoža a kolektív*, Commercial Code – Commentary, explanations to Article 683 of the Commercial Code, p. 886.

175 *Suchoža a kolektív*, Commercial Code – Commentary, explanations to Article 682 of the Commercial Code, p. 883.

176 *Suchoža a kolektív*, Commercial Code – Commentary, explanations to Article 686 of the Commercial Code, p. 891.

177 Under the Commercial Code, only an irrevocable letter of credit might be confirmed. *Suchoža a kolektív*, Commercial Code – Commentary, explanations to Article 687 of the Commercial Code, p. 892.

to modify or revoke a letter of credit confirmed by another bank, the consent of the confirming bank is also required.

If the bank, which confirmed a letter of credit, rendered performance to the beneficiary in accordance with the contents of the letter of credit, it shall be entitled to claim this performance from the bank, which asked for confirmation of the letter of credit.

A bank, which merely advises the beneficiary that another bank has issued a letter of credit in his/her favour, is **liable** for any damage arising from the incorrectness of such information, but it does not assume any obligation arising from the letter of credit.

#### **b Document letter of credit**

Under a documentary letter of credit, the bank is bound to provide fulfilment (i.e. make payment) to the beneficiary, provided that the documents specified in the advisory note on the letter of credit are duly presented within the period of validity of the letter of credit (Article 690 of the Commercial Code). The documentary letter of credit is special form of the letter of credit. Therefore, provisions on the letter of credit, included in Articles 682 through 689 of the Commercial Code, apply to this legal institute as well<sup>178</sup>.

The bank is bound to examine, with due diligence, the relevance of documents presented to it and the consistency of their contents with the conditions specified in the advisory note on the letter of credit. The bank is liable for any damage caused to the committer due to loss, destruction or damage of documents taken over from the beneficiary, unless it was unable to avert such damage even when exercising due care.

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178 *Suchoža a kolektív*, Commercial Code – Commentary, explanations to Article 690 of the Commercial Code, p. 894.

## IV Mortgage law

For the following chapters a **charge** is understood as a right in rem in an immovable (**mortgage**) or movable (**pledge**) asset to secure payment of a claim.

### A General remarks

#### 1 Charge Reform effective as of 1 January 2003

On 1 January 2003, a broad amendment to the Civil Code entered into force, which together with a number of other relevant regulations resulted in an extensive reform of the Slovak security law and in particular Slovak law regarding charges (all together herein referred to as “*Charge Reform 2003*”)<sup>179</sup>.

For the first time, the new legal framework introduces into Slovak law the system of a so-called “**registry charge**” for movables, rights and other valuable property. By this, in relation to movables, the principle of the collateral being bound to its actual possession was no longer the only mode of acquisition. Apart from the physical delivery of an item, which is still regarded as a valid transfer mechanism, registration in a Central Register of Pledges maintained by the Slovak Chamber of Notaries (herein referred to as “*Pledge Register*”) was introduced as a new mode for the perfection of the charge.

Until the Charge Reform 2003, charges (in particular pledges over movable assets, but also mortgages over immovable assets) had no serious practical relevance<sup>180</sup>. In Slovakia, due to the lack of an effective legal environment at the time, both domestic and foreign financial institutions had to consider more risks connected with credit provision than in other market economies. The former Slovak security law was regarded as rather debtor friendly than creditor friendly. On the other hand, the fact that a debtor – company which gave a charge over some specific asset or a group of its assets to secure payment of its debt, had to transfer the charged assets to the creditor and therefore could no longer use them, made this type of security a dead legal institute. Consequently, the Slovak legislator mainly reacted to pressure from the Slovak business community, which were calling for a more effective security system, in particular, of charges on movables.

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179 Act No. 526/2002 Coll. on the Amendment to the Civil Code and Act No. 527/2002 Coll. on Voluntary Public Auctions. In this context, a central register of auctions maintained by the notaries public was established as well. See Article 73j of the Act on Notaries; for more details see *Kovács*, in *Čierna/Farkašovský/Kovács/Kováč/Pavlovč*, Notarial Code – Commentary, remark to Article 73j, p. 234 and on.

180 Until the end of 2002, it had only been possible to establish a contractual pledge on movable assets effectively, if the assets were handed over to the chargeholder or to a third party in accordance with the contract or the creation of the pledge was established in a deed, which declared the chargor’s ownership of the collateral and was required to be able to effectively dispose of the collateral. Due to the fact that the chargor could not continue to use the collateral for his or her business activities, such pledge was a “lifeless” institution for all practical purposes. See also *Svoboda a kolektiv*, Civil Code – Commentary and related provisions, 5. Edition, EUROUNION spol. s.r.o., Bratislava 2004, remark to Article 151a, p. 257.

Regarding mortgages, the Charge Reform 2003 introduced only some minor changes; the major bulk of changes referred to charges over other assets (pledges).

Furthermore, the Charge Reform 2003 significantly improved the creditor's position in a number of important aspects. In particular, more creditor friendly rules regarding the enforcement of charges and mortgages were introduced. In addition, the recent reform of the Real Estate Register also resulted in shorter periods for registration proceedings before the relevant cadastral authorities.

Together with the Charge Reform 2003, an amendment to the Act on Notaries<sup>181</sup> was also passed as well as a Decree on the details of the Pledge Register<sup>182</sup> was introduced. As already indicated, new provisions on the enforcement of charges have entered into force, namely the Act on Voluntary Auctions<sup>183</sup>, which plays an important role together with the Civil Procedure Code and the Enforcement Code.

Since the Charge Reform 2003, the creditor is now explicitly entitled to request satisfaction from the charged asset (collateral) by execution proceedings, but may also satisfy its claims directly from the charged asset by either directly selling it or through a voluntary auction of the charged asset (i.e. both latter cases do not require the involvement of a court).

The creditor may empower under a power of attorney a third party for the enforcement of the charged asset. This third person (the empowered person) can either conduct the sale or auction in the name of and for the account of the creditor or in his/her own name and for the account of the creditor<sup>184</sup>. Such an empowered person must be entered into the Pledge Register instead of the creditor pursuant to Article 73d. par. 1 lit. f) Act on Notaries.

Overall, since the Charge Reform 2003, Slovak security legislation is regarded as one of the most advanced within Europe.

Summarily, the Charge Reform 2003 introduced the following significant innovations:

- registration in the Pledge Register for the establishment of a valid charge as the general rule, unless the law requires registration with one of the Special Registers,
- the debtor can continue to use the charged asset for its business activities, as it is no longer obliged to hand over these assets,
- precise definition of what assets may be used as collateral (i.e. property over which a charge is given) practically allowing any type of asset to be charged

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181 Act of the National Council of the Slovak Republic No. 323/1992 Coll. on notaries and notary activities (Act on Notaries).

182 Decree of the Slovak Ministry of Justice No. 607/2002 Coll. on details regarding the Charges Register and Decree of the Slovak Ministry of Justice No. 607/2002 Coll. on reimbursement and award of notaries.

183 Act No. 527/2002 Coll. in its last wording of amendment Act No. 568/2007 Coll.

184 *Svoboda a kolektiv*, Civil Code – Commentary and related provisions, 5. Edition, EUROUNION spol. s.r.o., Bratislava 2004, remark to Article 151a, p. 259.

- strengthening of the principle of the freedom of contract, allowing the debtor and the creditor to properly establish their mutual rights and duties in the charge agreement, in particular, regarding the details of how the chargeholder can gain satisfaction,
- stricter priority principle; consequently,
- abolition of the preferred charge rights of fiscal authorities (preferred charges) and
- less time consuming and, generally, more creditor friendly regulations on the enforcement of the charges and mortgages.

## 2 Co-existence of the Pledge Register and Special Registers since 2003

### a Character and function of the Pledge Register

As already mentioned, the Charge Reform 2003 introduced the registration with the Pledge Register as the modus for a charge to be perfect.

Regarding **charges over movable assets (pledges)**, since the Charge Reform 2003, it is not mandatorily required to physically deliver the moveable asset, but the charge can be registered with the Pledge Register. In the Slovak business environment the registration with the Pledge Register is preferred rather than the physical delivery of the asset as it is safer for the secured creditor.

The Pledge Register is a centralized database operated by the Slovak Chamber of Notaries and has only information character<sup>185</sup>. It is an online, publicly accessible register, which can also be inspected at any notary's office. The applicant for registration of a charge is always the chargor or its empowered representative. It is of course possible that the chargor may authorize the secured creditor (i.e. the bank or its authorized representative) to register the charge as well.

Registration in the Pledge Register is generally required for a charge over an asset, residential or non-residential premises, a right or other valuable property which will be acquired by the chargor in the future or the creation of which depends on fulfilling a condition (hereinafter referred only as "future asset" or "future real estate"). Regarding a pledge over a future asset or mortgage over a future real estate the principle applies that **an asset should be registered with the Pledge Register, unless it does not have to be registered with a special register**. Additionally, the law requires that the chargor acquires ownership or another right to the collateral. The following registration in the Real Estate Register will, however, also be necessary. Regarding the concerns of Slovak business practise and legal environment to also register future real estate with the Pledge Register, see more details in IV.F.2.b.bb below.

<sup>185</sup> *Svoboda a kolektív*, Civil Code – Commentary and related provisions, 5. Edition, EUROUNION spol. s.r.o., Bratislava 2004, remark to Article 151e, p. 273. Compare also Articles 2 and 6 of the Decree No. 607/2002 Coll. as well as Article 73e of the Notaries Act. Article 73d of the Notaries Act stipulates the content of the Charges Register. See also *Lazar a kolektív*, Civil material law, IURA EDITION, 3. Edition, 2003, p. 510 and on.

The notary will require the respective documentation in order to establish the identity and authority to act. For instance, if the general director of the debtor – company applies for registration with the Pledge Register, his/her authority should correspond to an original extract from the Commercial Register (see Exhibit ./A) or a verified copy thereof or an extract of the respective foreign register. On the other hand, an authorized representative must prove his or her power by showing the respective power of attorney.

The notary does not authenticate information regarding the secured asset or debt. Concretely, the notary does not check the title to the secured real estate. Therefore, third parties cannot fully rely on the correctness of the entered facts. On the other hand, if a charge is not registered, it can be assumed that no charge exists.

In the case the information in the charge agreement would differ from the data entered into the Pledge Register, the information included in the charge agreement is assumed to be the correct version. Consequently, defects regarding the charge cannot be corrected by registration with the Pledge Register. Therefore, if the chargor would not have a valid title to the asset, such registered charge would not be effective although it is registered in the Pledge Register.

In the case the chargor and the debtor are different persons, information on the debtor is also to be recorded in the Pledge Register. If the chargeholder authorizes another person to act as chargeholder or to enforce the mortgage on behalf of the chargeholder, data regarding such person must also be entered into the Pledge Register.

The application form (see Exhibit ./B) needs to be completed by the notary with information obtained from the applicant. The application process takes only several minutes. It is recommendable to send all relevant information to the respective notary in advance (for instance the charge agreement together with an application for registration with the Pledge Register). The notary then will have sufficient time to have the application prepared by his office and the applicant only has to check the data contained therein.

Once the notary submits the application to the Pledge Register, the applicant will almost immediately receive a confirmation together with a specific transaction number. In general, the registration in the Pledge Register is valid until the charge ceases to exist. However, besides the initial registration of the charge with the Pledge Register, any amendments related to the original information or new facts (for instance, commencement of the enforcement of the charge or other enforcement proceedings or if an agreement on the change of priority was entered into) must be registered in the Pledge Register by the person who is concerned by such change.

In this context, particular diligence must be given to whether the amendments are regarded as a new charge or are regarded as an amendment to the initial registration. For instance, according to representatives of the Slovak legal doctrine, it is not entirely clear whether any increase of the principal amount of the credit agreement by way of amendment qualifies as a new charge in the extent of the new amount

or whether this constitutes only changes to be registered<sup>186</sup>. If, for example, the charge agreement would stipulate that the charge covers not only the initial principal amount of the loan, but also any other amount as a result of the increase thereof exercised by any amendment to the credit agreement, it could be argued that such change would only have to be registered as a change of the initial information registered in the Pledge Register.

The fee for registration of a charge in the Pledge Register is to be calculated from the price of the secured claim as follows<sup>187</sup>:

- |   |           |
|---|-----------|
| • price not exceeding 100,000 SKK               | 1,000 SKK |
| • price from 100,001 SKK up to 500,000 SKK      | 1,500 SKK |
| • price from 500,001 SKK up to 1,000,000 SKK    | 2,500 SKK |
| • price from 1,000,001 SKK up to 10,000,000 SKK | 3,500 SKK |
| • price exceeding 10,000,000 SKK                | 5,500 SKK |
| • if it is not possible to determine the price  | 1,000 SKK |

The fees for entry of an annotation, erasure or other facts (laid down by law), for instance, a change regarding the charge, in the Charges Register are 500 SKK. Fees for inspections and for issuance of confirmations from the Pledge Register are 100 SKK.

### **b Character and function of the Special Registers**

Special registers, which exist beside the Pledge Register, are for instance:

- Real Estate Register being the register for charges over immovable assets (real estate)
- Patent Register for charges over intellectual property rights such as patents, designs and trademarks
- Commercial Register for charges over participation interests in a limited liability company
- Central Depository for charges over book entry securities
- Aircraft Register for charges over aircraft
- Ship Register for charges over ships

186 For more details see *Žitňanská*, Some reflections on the registration of changes to the charge, *Ars Notaria* 1/2007, p. 24 and on. The author argues that the any increase of the principal amount of the loan executed by amendment to the loan agreement cannot be regarded as change regarding the charge, but with regard to the difference as a new charge has been established which needs for its valid creation to be registered with the Charges Register. On the other hand, see *Vojčík*, The charge and the Charges Register, *Ars Notaria* 1/2007, p. 33 and 34, who has the opposite opinion. Finally, in this context also see *Kovács*, Some thoughts on the registration of changes in the Charges Register, *Ars Notaria* 1/2007, p. 21 and 22.

187 See Regulation of the Slovak Ministry of Justice No. 31/1993 Coll. on remuneration and reimbursement of notaries public, which contains the following administrative fees:

### 3 Amendment No. 568/2007 Coll. effective as of 1 January 2008

Only recently, Slovak security legislation again was broadly amended. On 1 January 2008, Act No. 568/2007 Coll. came into effect, by which, among others, the following Acts were amended and/or supplemented (collectively referred to as “Amendment 2008”):

- Act No. 527/2002 Coll. on Voluntary Auctions;
- Civil Code;
- Execution Code;
- Act on Consumer Credits<sup>188</sup>;
- Land Cadastre Act.

According to the general explanations of the Slovak legislator in his explanatory report<sup>189</sup>, the main purpose of the new security regulation is to:

- increase the transparency of the voluntary auction process;
- generally increase the efficiency of certain civil law security institutes; in particular to:
  - regulate the institute of security transfer of rights in more detail;
  - clarify the institute of the contractual penalty;
  - generally prevent misuse on the financial market; and
  - strengthen the legal position of the consumer, including the introduction of new provisions regarding consumer agreements as well as consumer loans.

Overall, the majority of changes concern the Act on Voluntary Auctions<sup>190</sup>. This Act, which is only in force since 1 January 2003, suffered several problems in the past<sup>191</sup>. In particular, it “enabled” certain manipulations in the process of the acquisition of the asset being sold by public auction. Therefore, the main aim of the introduced changes is to make public auctions more transparent. Consequently, under the new rules the rights and obligations of the participants of voluntary auctions are stipulated in more detail and more clearly.

Following this, the main goal is to minimize the number of invalid voluntary auctions, which have increased in the past, with the aim of minimizing judicial disputes. In addition, Amendment 2008 established the Slovak Ministry of Justice as the supervising body to supervise the rules and course of auction proceedings.<sup>192</sup>

188 Act No. 258/2001 Coll.

189 Dôvodová sprava – všeobecná časť.

190 Act No. 527/2002 Coll. in its last wording of amendment Act No. 568/2007 Coll.

191 More details see here *Dulaková Jakubová*, Possibility to enforce the charge through sale of the collateral in an out of court auction according to Act No. 527/2002 Coll., Bulletin Slovenskej Advokácie, 7-8/2007, 19 and on.

192 Pursuant to Article 36a of the Voluntary Auction Act, auction proceedings, where the auction agreement was entered into before 1 January 2008, and also the relationships connected with them, should be finished under the regulations valid prior to the date of effectiveness of the Amendment.

On the other hand, Amendment 2008 does not only intend to make the process of voluntary auction more transparent and more effective, but it also protects the owner or the debtor – for instance, its new Article 3 (2) includes a general ban on certain assets being auctioned. I.e. the auctioneer or the auction initiator is not allowed to dispose of such assets.

Furthermore, Article II of Amendment 2008 changed certain legal institutes of the Civil Code, including the consumer agreement, the contractual penalty and the security transfer of rights. The major change of this Act is a new and more detailed regulation of the security transfer of rights – one of the security instruments under Slovak law, which constitutes rights *in rem*. The new regulation is outlined in detail in III.C.2.b above. The future will show whether the new regulation will, as anticipated by the Slovak legislator, make this security instrument more attractive than in the past. However, recent experiences have already shown that the security transfer of rights is almost unused with regard to real estate. The prior regulation was very short and based on the principle of the freedom of choice, the rights and obligations to such security in the respective agreement were often to the benefit of the creditor. In its explanatory material the Slovak legislator stated “*experiences from the legal business practice showed that the security transfer of rights in its current wording could not only unreasonably strengthen the legal position of the creditor, but also be misused and cause large disproportion between the rights and obligations of the debtor and the creditor*”.

Finally, with the aim of increasing consumer protection, Amendment 2008 changed the Act on Consumer Credits. This Act is already harmonized with EU legislation, for example:

- Council Directive 93/13/EEC on unfair terms in consumer contracts,
- Council Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, or
- Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market.

The new rules stipulate the mandatory content of an agreement on consumer credit and in addition, introduced a new form on specifying contractual conditions regarding such agreements. Its content should be determined by a generally binding regulation to be issued by the Slovak Ministry of Finance. Furthermore, it stipulates that a Government Regulation shall state the maximum amount for any payments from the consumer for the provision of the consumer credit. This should prevent excessively high payments and thus prohibit any abuse of the financial market and provide proper protection for its participants.

With regard to further minor changes in the above-mentioned Acts as well as, changes in the Enforcement Code and Act on Land Cadastre, the relevant changes will be described in the respective chapter being marked as a new regulation being introduced under Amendment 2008.

## B Definition and function

The Civil Code does not generally and strictly differentiate between several kinds of charges as, for instance, between charges over movable assets (pledges) and charges over immovable assets (herein further referred only as “*mortgages*”) like other legal systems. But it rather defines the fundamental principles that apply to all types of charges. Therefore, the general rules on charges under the Civil Code<sup>193</sup> apply unless a reference is made to special provisions for charges on immovable assets (mortgages). In addition, the term *hypothéka* is not used in Slovak legal terminology, but it is rather often used in Slovak legal doctrine<sup>194</sup>.

The Charge Reform 2003 introduced a uniform charge law, i.e. the dual system of rules regarding charges in the Civil Code and the Commercial Code (in particular, in context with the enforcement of charges) was abolished on 1 January 2003<sup>195</sup>. Therefore, the charge law included in the Civil Code also fully applies to business law relationships governed by the Commercial Code<sup>196</sup>. On the other hand, there are several special Acts providing for special rules on charges as for example the Act on Securities<sup>197</sup>, the Act on Designs<sup>198</sup>, the Act on Patents<sup>199</sup> or the Act on Trademarks<sup>200</sup>.

In general, the mortgage under Slovak law can be easily compared to the mortgage under Austrian law, as under Austrian law the mortgage also depends on the existence of the claim (principle of accessoriness). Consequently, Slovak law generally does not recognize a non-accessory land charge (*Grundschuld*) like in Germany. However, even Slovak mortgage law allows for certain exceptions from the Principle of Accessoriness (see IV.C.1 below).

Charges are regulated in Part Two Chapter Three of the Civil Code named “The Right to the Property of Another Person”, concretely in its Articles 151a through 151me and Article 552 thereof. Article 151a par. 1 of the Civil Code defines the charge as follows: “*The charge serves to secure a claim and its appurtenances in such a manner that in the event that the claim is not fulfilled properly or in time, the chargeholder has the right to obtain satisfaction of the claim or petition for satisfaction of the claim from the charged asset*” (hereinafter “collateral”). A charge has the following functions<sup>201</sup>:

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193 See Articles 151a through 151me as well as Articles 552 through 553 of the Civil Code.

194 *Fekete*, Civil Code – Commentary, explanations to Article 151d of the Civil Code, p. 356; *Svoboda a kolektiv*, Civil Code – Commentary and related provisions, 5. Edition, EUROUNION spol. s.r.o., Bratislava 2004, remark to Article 151b, p. 264.

195 The former provisions concerned were Articles 297 through 299 of the Commercial Code.

196 *Svoboda a kolektiv*, Civil Code – Commentary and related provisions, 5. Edition, EUROUNION spol. s.r.o., Bratislava 2004, remark to Article 151b, p. 264 and 264.

197 Act No. 566/2001 Coll. on security papers as amended.

198 Act No. 444/2002 Coll. as amended,

199 Act No. 435/2001 Coll. as amended.

200 Act No. 55/1997 Coll. as amended.

201 For more details see *Svoboda a kolektiv*, Civil Code – Commentary and related provisions, 5. Edition, EUROUNION spol. s.r.o., Bratislava 2004, remark to Article 151a, p. 259. Furthermore see Civil Code Act No. 40/1964 Coll. – Commentary, IURA EDITION (updated version), remark to Article 151b, 266b.

- to secure the creditor's claim towards the debtor to fulfil its duty properly or in time, as otherwise the debtor would risk losing its property;
- in the event the debt is not satisfied, the creditor may obtain satisfaction from certain assets or otherwise dispose of these assets in accordance with the law.

## C Principles of mortgage law

### 1 Principle of accessoriness

In general, the legal survival of a mortgage depends on the establishment and further existence of the secured claim<sup>202</sup>. According to Article 151md par. 1 a) of the Civil Code, the charge ceases to exist upon termination of the secured claim. It is to be noted, that several exemptions from this principle exist<sup>203</sup>.

In general, the collateral secures the appurtenances<sup>204</sup> of the claim in addition to the amount owed (*istina*). However, the parties may also agree that the mortgage will secure the creditor's claim to the maximum amount stated in their charge agreement. Consequently, in this case the mortgage will secure the creditor's claim including the accessories listed above only to the maximum amount. For more details regarding this kind of mortgage see IV.F.6.b below.

Furthermore, the right to enforce the charge continues even if the statute of limitations for the secured claim has expired (Article 151j par. 2 of the Civil Code). Finally, even assets, which will emerge in the future, or if their emergence depends upon fulfilment of a condition, can serve as collateral (Article 151c par. 2 of the Civil Code).

In the case the secured claim will be assigned or legally passed over to another person, all rights connected with such a receivable, such as charge rights, transfer with the receivable (Article 151c of the Civil Code). In the case of a mortgage over real estate, the assignment must be registered with the Real Estate Register, i.e. in order to reflect the assignment and that the transferee has become the "new" secured creditor, the respective entry in the Real Estate Register must be changed, otherwise this could result in a damages claim by the affected person. In the case of a charge over receivables, the assignment must be recorded in the Pledge Register<sup>205</sup>. However, in both cases the record has only declaratory effects.

### 2 Right to property of another person

Mortgages relate to real estate in its broad sense, not being in the ownership of the secured creditor. In the case of a mortgage, the debtor remains the owner of the property who is allowed to exercise his ownership rights.

202 *Fekete*, Civil Code – Commentary, explanations to Article 151a of the Civil Code, p. 347.

203 Regarding the exemptions applying to this principle, see *Lazar a kolektív*, Civil material law, IURA EDITION, 3. Edition, 2003, p. 492 and on.

204 Including, without limitations, receivables for the repayment of the principal, payment of interest, any fees, damages, indemnification of costs, expenses and losses, and accessories of such receivables, if stipulated so in the agreement.

205 The specific costs related to changing the secured creditor are 500 SKK (see also IV.A.2.a above).

### 3 Principle of speciality

From Article 151 par. 1 of the Civil Code it follows that the claims secured by a charge must be sufficiently specified in the charge agreement or at least be capable of being specified.

On the other hand, Article 151d par. 1 of the Civil Code provides for the possibility of a charge being taken over by a group of assets, rights and other valuable property, including a business or part thereof. It is furthermore explicitly stated that the above items can serve as collateral even if they are to emerge in the future or if their emergence depends upon fulfilment of a condition.

### 4 Principle of priority

As already stated, mortgages on immoveable property are perfected by means of registration in the Real Estate Register (*modus*). Where several mortgages exist on the same piece of immoveable property, priority is determined (with certain exceptions) by the chronological order of registration by the competent Slovak Real Estate Register.

Charge Reform 2008 abolished priority charges by the tax authorities.

### 5 Principle of registration

As already mentioned, since the Charge Reform 2003, the general rule is that the existence of a charge must be publicised in the Pledge Register in order to be perfect.

Furthermore, in some cases the existence of a charge (i.e. its perfection) continues to be dependent upon registration in a special registry: For example and as already mentioned, **charges over immoveable property (i.e. land, residential and non-residential premises) emerge upon their registration in the Real Estate Register**, while charges over trademarks or patents require an entry in the Trademark or Patent Registry. In such cases, dual registration in the Pledge Register is not necessary.

Where the collateral is a group of assets, rights, other valuable property or a business or part thereof, the registration in the Pledge Register is explicitly required, even if the group of assets contains individual items requiring registration in a special registry.

Even after the Charge Reform 2003 it is possible to take a possessory charge created by physical delivery of the collateral to the chargeholder or to a third party deposit-taker. In this case, a written agreement is not required, but the charge can be voluntarily registered in the Pledge Register at any time. However, a written confirmation of the content of the agreement must be executed and signed by both the charger and chargeholder. Such registration is recommended, because Slovak law gives preference to a registered charge:

If charges over movables have been created partially by their registration in the Pledge Register and partially by their physical delivery (as described above), the charges registered in the registry take priority according to the order of their registration (article 151k par. 2 of the Civil Code).

## **6 Principle of joint liability of the collateral**

The mortgage encumbers the real estate including its components, appurtenances and any growing crop (for instance, fruits).

## **7 Principle of chronological order of the registration**

According to Article 151k par. 3 of the Civil Code, if a collateral is subject to multiple charges, the chargeholders can agree amongst themselves upon a different order of priority. Such an agreement becomes effective only by registration in the Pledge Register (or in the relevant special registry, if such registration is required), filed by all chargeholders taking part in the agreement.

The rights of chargeholders who do not participate in such an agreement remain intact if such an agreement has a negative impact on the enforcement of their claims.

# **D The secured claim**

## **1 Features of a secured claim**

As already mentioned, a charge is an accessory right, i.e. its existence and scope of liability depend on the secured claim.

Pursuant to Article 151c par. 1 of the Civil Code, the charge secures both pecuniary claims and non-pecuniary claims whose value is determined or whose value can be determined at any time during the life of the charge (determinable value). The charge agreement must contain at least the maximum value of the pecuniary claim, if the exact value of the pecuniary claim cannot be determined (for example, the secured claim could be a variable amount as in the case of a bank overdraft or a revolving loan)<sup>206</sup>. A charge agreement, which would not include an amount of the secured claim in the above-described manner, will be considered invalid.

The charge also secures future claims and claims that arise under certain conditions (Article 151c par 2 of the Civil Code). Claims which will arise in the future must also be specified in the charge agreement as to their legal grounds and at least as to their maximum principal amount. In this context, it is recommendable to precisely define when the charge will cease to exist, i.e. what will happen when a claim does not arise or when a certain condition is not met in the future.

The secured claim can be a claim of a bank (arising from a loan facility) or of any other person (for instance, a legal person such as a company or natural person such as consumers), regardless of whether these persons are foreign or domestic persons. As already mentioned, the chargeholder is also entitled to empower another person to exercise the enforcement of the charge. This will be relevant in case of syndicated lending.

The claim secured by a charge can also be expressed in foreign currency. In this context, please note that, as the Slovak Republic meets the Maastricht criteria, the Euro will be the official currency as from 1 January 2009.

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<sup>206</sup> See also IV.F.6.b below.

## 2 Scope of a secured claim

The charge covers primarily the principal claim (receivable) as well as all appurtenances relating to the claim. Therefore, in addition to the principal claim, the charge secures interest on the claim as well as any default interests or other late charges including the costs of the proceedings arising in connection with the enforcement (Article 151a par. 1 of the Civil Code).

## E The assets secured by the mortgage (scope and liability)

### 1 General

Article 151d par. 1 of the Civil Code explicitly regulates what assets can be charged. Practically, all movable (sometimes referred to as tangible) and immovable assets, rights and other intangible assets (such as intellectual property rights including trademarks or patents), residential premises such as apartments (flats) and non-residential premises, if these are freely transferable and thus sellable, may be charged.

The Charge Reform 2003 has eased the strict application of the principle of speciality according to which property rights can only be established on individually specified assets by allowing, for example, a group of assets or collected assets or a pool of assets (for instance, stock in a warehouse or an entire business or part thereof) to be charged. Therefore, not only individual tangible movable assets can be charged, but also a generic class of assets as well. Such collateral must, however, at any time be identifiable. Regarding receivables, it is common bank practice, to charge a pool of receivables (for instance, receivables of the debtor being the lessor of a Shopping Centre arising from its lease agreements).

Furthermore, it is also explicitly regulated that assets may be charged, even if they will be created only in the future or under certain conditions (Article 151d par. 1 and par. 4 of the Civil Code). Besides future assets, the assets, which the chargor does not own at the time of the charge agreement, but will acquire in the future, can be charged. As in both cases the debtor will acquire the assets only in the future, it is therefore important to include in the charge agreement a proper definition of these future assets. In addition, either future buildings under construction or future premises may also be charged for the benefit of the creditor (collectively referred only as “future assets”).

It is to be noted that certain assets may not be subject to a charge. Typically state owned assets cannot be charged, as they are not freely transferable<sup>207</sup>. In addition,

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207 For instance, forests being in the ownership of the state under Act No. 326/2005 Coll. on Forests. Other limitations, for instance, arise from Act No. 278/1993 Coll. on the administration of state property or Act No. 138/1991 Coll. on property of municipalities. For more details see *Fekete*, Civil Code – Commentary, explanations to Article 151d of the Civil Code, p. 357; Civil Code Act No. 40/1964 Coll. – Commentary, IURA EDITION (updated version), remark to Article 151d, 268.

under the Securities Act<sup>208</sup>, it is forbidden to give a charge over securities, which are already charged<sup>209</sup>.

The charge automatically covers the asset itself, its components, fruits, additions and attachments (hereinafter only referred to as “appurtenances”) unless otherwise regulated in the charge agreement or by law. Furthermore, unless otherwise agreed, the charge covers the fruits only as long as these have not been separated from the principal asset (Article 151d par. 2 of the Civil Code). For example, if the debtor gives a charge over shares, then the charge will typically include the right to dividends unless these are not paid. In general, any payments arising out of insurance contracts triggered by an insurance event are covered by the charge as well, unless provided otherwise.

The charge includes the proceeds of sale only, if the parties expressly agree so.

A charge may be created over several assets for the benefit of a claim of one creditor. The problems involved in such “simultaneous charges” are discussed in more detail in the section on the enforcement of simultaneous mortgages (see IV.J.4.d below).

Under Slovak law, it is also possible to subsequently charge an asset, which has already been charged, even if the charge agreement would exclude it. Such a ban clause in the charge agreement has only effect between the parties and therefore, could trigger contractual liabilities. However, it does not prevent the chargor from creating subsequent charges, unless a special law provides otherwise. The priority principle applies to the ranking of several creditors.

As mentioned above, the **object of a mortgage** is primarily real estate including its appurtenances, growing crops and fruits not yet harvested or separated. Apartments (residential premises, flats) or business (non-residential) premises may also be the objects of a mortgage.

If the secured real estate is in the sole ownership of the debtor, no significant issues may arise, as the ownership right typically grants the owner to fully dispose of its property. As already mentioned, even a ban to sub-charge the secured real estate will not be binding for the debtor.

In this regard it is to be noted that Slovak law recognizes exclusive ownership and other forms of co-ownership to land and buildings. The mortgage over a co-ownership interest or of an ideal share is also possible as of the time it is identified in concrete terms from the total assets of the sole owner.

Co-ownership refers typically to apartments (flats) in a residential building (apartment house). The co-owner is on the one hand the owner of a single real estate unit in a building, but has on the other hand, co-ownership to the common areas of the building as well. In general, the size of the ownership share to the

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208 Act No. 566/2001 Coll. on Securities as amended.

209 Furthermore, under Article 4 par. 4 of Act No. 530/1990 Coll. on bonds as amended, bonds are not regarded as transferable. Civil Code Act No. 40/1964 Coll. – Commentary, IURA EDITION (updated version), remark to Article 151d, 268b.

common areas depends on the size of the ownership share to the single real estate unit.<sup>210</sup>

Furthermore, it is possible that more than one person is the owner of the entire real estate and each co-owner has an ideal share to the entire real estate or to the common parts thereof. The size of the ideal share in the meaning of Article 137 par. 2 of the Civil Code is determined primarily by legal acts (especially agreements reached by the contractual parties), the law or court rulings. It is possible to establish a charge over a co-ownership share. The question is not explicitly answered in Slovak law, whether it is possible or not to establish a mortgage over a co-ownership share without the consent or the application of the right of first refusal of the other co-owner(s). More details see also in IV.E.2.f below.

## **2 Real estate that may be charged by mortgage**

### **a General remarks**

**Immovable assets** (*nehnutelnosti*), i.e. *real estate* are plots of land (hereinafter only referred to as “plots”) and buildings, which are connected to the ground by a solid foundation. Premises such as apartments (residential premises or flats), commercial property and office space (collectively referred to as “non-residential premises”) are also considered real estate. Vice versa, it may be derived that all other types of property are movable property.

As already mentioned and different to Germany and Austria, the principle of *superficies solo cedit* does not apply in Slovakia. According to Article 120 par. 2 of the Civil Code buildings are not regarded as part of the land (i.e. the plot below the building). Therefore, the owner of the land can be different from the owner of the building on it, as these objects can have separate legal regimes. If the owner of the building is different from the owner of the land under the building, each of the owners has to apply separately for the registration of the mortgage over their relevant immovable asset. Finally, the two owners will have a separate ownership certificate. On the other hand, the owner of the building being at the same time the owner of the land under the building may apply for the registration of the incorporation of the mortgage to the land as well as to the building by one application. As this will be regarded as one legal act, the stamp duty has to be paid only for one entry. The ownership certificate will then include in its Section C both, the entry of the mortgage regarding the land as well as regarding the building. Thus, the ownership right to the land or the building can be transferred independently from the other ownership right. In the case, the ownership right to a building will be transferred to a new owner, special care should be taken to the fact that the new owner must have a proper right to own the building when is on land owned by a third party (see more in Part I).

In 1951, the Building Right (*právo stavby*) was introduced together with the new Civil Code of that time. This legal institution made it legally possible to erect buildings on land owned by third parties. Through this, for instance, a large number

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<sup>210</sup> Specific restrictions regarding the establishment of a charge over a condominium ownership arise from Article 25 of the Premises Act. See more in *Svoboda a kolektiv*; Civil Code – Commentary and related provisions, 5. Edition, EUROUNION spol. s.r.o., Bratislava 2004, remark to Article 151b, p. 261.

of agricultural cooperatives were founded. However, problems exist to this day on the separation of the legal relationship created in this way.

Some issues were partially solved by Act No. 199/1995 Coll., which amended the Building Act especially for buildings owned by municipalities and the state. Article 58 par. 2 of the Building Act stipulates in this regard “*the constructor must prove that it is the owner of the land, or it has another right to the land or building pursuant to Article 139 par. 1 of the Building Act that entitles it to construct a building on that parcel of land.*”

It is to be noted that a Building Right has only effect between the contracting parties and is therefore only a contractual right. Such other right to the land or building, which entitles the constructor to build a building on a third party’s land, are pursuant to Article 139 par. 1 lit. a) through c) of the Building Act the following rights:

- (i) right to use a third party’s land or building arising from a lease agreement or a future purchase agreement including the right to construct or to convert a building;
- (ii) right arising from an easement connected to the land or building; or
- (iii) right arising from other laws.

In this context, it is also worthwhile to mention the newly introduced Article 151o par. 3 of the Civil Code which is effective as of 1 January 2008. According to this provision, if the owner of a building construction is not the owner of the adjoining land (back lands) and the access of such owner cannot be secured otherwise, upon the motion of the owner of the construction, a court may create an easement for the benefit of this owner granting him the right of way through the adjoining land.

## **b Plots**

A plot is always an immovable property regardless of the size or zoning. In civil law practice, land is divided into plots and each plot has a number assigned. The Real Estate Register contains the individual plots of land and their borders.

The law defines a plot of land as part of the earth’s surface that is separated from the neighbouring part of the earth’s surface by a border.

A land can have the status of construction land or it can be designated for another purpose as, for instance, agricultural (*orná pôda*). Only on construction land are constructions permitted. It is therefore important for real estate developers and buyers of land to carefully consider whether to buy agricultural land or construction land; only in the second case construction activities would be allowed. In the first case, it would be necessary to change the designation of the land prior to any construction activities.

## **c Buildings (constructions)**

### **ca General remarks**

Under Article 43 par. 1 of the Building Act, buildings are only considered real estate if they are firmly connected to the earth by a solid foundation (i.e., permanently). Thus, building constructions that can be transported such as market stands and

garden huts, which are not firmly connected to the earth, are not real estate. It makes no difference whether or not an approval has been issued for the erection of such a building.

Furthermore, buildings could have a residential or non-residential character. Therefore, either residential houses, family houses or other residential buildings such as, for instance, hostels, or commercial buildings such as hotels, industrial buildings, warehouses, shops or parking areas are regarded as building constructions under Articles 43b and 43c of the Building Act.

The buildings do not always need to be buildings in the conventional sense. The term building may also include specific technical installations, such as transformer 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 Real Estate Register with a conscription number. If the owner of a plot of land is simultaneously the owner of the building, part C of the ownership shall contain the following: "Mortgage on building with prescription number XXX. Mortgage on the land plot with the parcel number YYY/Z."

Because the principle of *superficies solo cedit* does not exist, a building is not automatically part of a plot of land on which it stands. Plots of land and buildings are two independent possible charge objects, and the charge a land plot does therefore not automatically mean that the building on it has also been charged. This is a consequence as buildings under Slovak law are regarded as independent objects of legal transactions, which, therefore, can be charged by a mortgage as well.

#### cb Underground constructions

According to Article 6 par. 1 lit. c) of Act No. 162/1995 Coll. on the Cadastral Registry, only a construction firmly connected to the ground can be recorded in the Real Estate Register. In the case of an underground construction, the decisive factor is therefore the intersection of the underground construction with the surface.

In the case of a cellar, such underground construction can be registered only to the extent of its intersection with the surface. In this case, it must be possible to create a separate plot from the intended intersection. Consequently, all underground parts of such cellar not connected to the surface are not registered in the Real Estate Register. However, where the owner of the cellar would be a different person from the owner of the land above, the rights to such underground parts of the construction are generally secured for the benefit of the owner of the cellar by establishing an easement right to the land above which shall be created in accordance with a geometrical plan. Consequently, such easement right will be recorded in the ownership certificate of the respective owner of the land above.

A construction that is regarded as a complete underground construction (and has therefore no intersection with the surface) will not be registered in the Real Estate Register. Moreover, according to Article 58 par. 4 of the Building Act, in the case of an underground construction that is neither functionally or constructionally connected to the construction or the operation (i.e. the performed business) on the surface, nor has any other influence on the use of this surface, the constructor of

such underground construction does not have to prove its ownership right or other rights to the land or construction on it. This is an exemption to the general principle that the constructor of a building always has to prove its right to the land under the planned construction. The above-mentioned exemption mainly applies to underground constructions such as supply networks created by tunnelling or digging.

In the case of a construction, which has underground parts such as underground floors or garages (typically in the case of a shopping centre), these are regarded as part of the construction and therefore only the construction is registered in the Real Estate Register (and consequently not the underground parts as they are considered as parts of the aboveground construction).

#### **d Premises**

Under Slovak law, premises inside a building are not regarded as real estate. On the other hand, Article 118 par. 1 of the Civil Code stipulates that residential and non-residential premises can be the subjects of legal transactions. Furthermore, according to Article 3 par. 2 of the Condominium Act, this means that these premises are subject to the same legal provisions as real estate. Thus, rights to premises are recorded in the Real Estate Register or other register as they are treated as real estate.

Consequently, a mortgage can also be established on apartments (flats, residential premises) and business premises. However, it is possible to create a mortgage only if these premises are separated accordingly and have been entered as such separated entity into the Real Estate Register of the relevant cadastral authority. In the Real Estate Register, a separate number therefore identifies apartments and business premises in Real Estate Register.

#### **e Buildings and premises under construction**

Newly erected buildings may also be registered in the Real Estate Register as of a certain construction phase and consequently, serve as an asset for securing a loan.

The registration of a building under construction in the Real Estate Register is possible even if no acceptance of construction work (*kolaudačné rozhodnutie*) has been issued yet 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 floor.

In addition, parts of a building under construction are eligible for registration with the Real Estate Register and thus may serve as a mortgage object as well under the following conditions, if the premises:

- (i) are for residential or non-residential purposes according to the construction permit, and
- (ii) are in a building that already has external walls and a roof.

In this context, it must be mentioned that an expert's opinion must be submitted to the relevant cadastre office, which proves the above-mentioned construction

phase. However, although the Cadastre Act<sup>211</sup> defines the building under construction, in practice, the cadastre offices may have a different approach and therefore require different proof of the construction progress (for more details see also II.C.1).

#### **f Future real estate (future buildings and future premises)**

Future real estate is real estate, which is not eligible for registration with the Real Estate Register yet. It is on the one hand that the real estate does not exist at all or does not meet the legal requirements to be registered with the Real Estate Register yet (see e. above). On the other hand, such future real estate can also be, for instance, land, which the debtor intends to acquire in the future or constructions, which it intends to build on the acquired land.

As a general rule, the following applies: Prior to being eligible for registration with the Real Estate Register, such future real estate, for instance, the building not yet qualifying as building under construction being, for instance, a house which does not meet the above mentioned construction phase, is governed by the property right relating to the land on which it will be constructed. This follows from Article 542 of the Commercial Code, which is one of the provisions regulating the contract on works and which stipulates the following: If the constructor creates a building for a client, on his land or on a land provided by the client, the client bears the risk of damage to the building being constructed and shall be its owner, unless the contract stipulates otherwise.<sup>212</sup> Where a residential building is concerned, the property right relating to the land under the planned construction will be settled in the respective contract on construction of a building (*zmluva o výstavbe domu*). Consequently, future real estate as outlined in this paragraph does not necessarily belong to the ownership of the owner of the land beyond of it. On the other hand, the owner of this real estate may as well be the owner of the land below.

Regardless of this, mortgages over future real estate can already be created under a mortgage agreement and this needs to be registered with the Pledge Register. However, the mortgage over future real estate will be perfected only at the moment the chargor will acquire the ownership right to the future real estate. According to Slovak law, the acquisition of ownership rights requires its registration with the Real Estate Register. At the date of the acquisition of the ownership right, the mortgage over the acquired real estate becomes validly existent.

Since at that time the future real estate does not exist or is not in the ownership of the chargor, according to some academics in Slovak legal theory, it shall only be possible to charge the “rights” to such future real estate (but not the future real estate itself) or some even believe that in no case it shall be possible to create a charge over future real estate<sup>213</sup>. However, this view is not correct and will be analysed in detail in IV.F.2.b.bb below<sup>214</sup>.

211 See Article 3 par. 15 and 6 par. 1 lit. c) of the Cadastre Act.

212 As in this case the ownership title to the building under construction as well as the finished construction is acquired by operation of law, the registration of the ownership with the Real Estate Register has to be carried out by priority notice.

213 For example, according to *Vojčík*, Charges and the Charges Register, *Ars Notaria* 1/2007, p. 31, a charge over any future real estate should be possible in no case.

214 In particular, see *Kovács*, in *Čierna/Farkašovský/Kovács/Kováč/Pavlovč*, Notarial Code – Commentary, remark to Article 73d through 73i, p. 229 and 230.

### 3 Scope of the mortgage

The mortgage encumbers the real estate including its components, accessories and any crops (Article 151d par. 2 of the Civil Code). Fruits are included only if they are not separated or harvested and only if it is not regulated otherwise in the charge agreement. The law excludes that so-called civil law fruits, such as leases or rents, are covered by the mortgage as well. However, it is possible to charge such receivables separately under a charge agreement, following the rules for the pledging of future receivables.

In general, a component of an asset is everything that belongs to it and cannot be separated from it without devaluating the asset itself (Article 120 par. 1 of the Civil Code).

As already mentioned, buildings are not regarded as components of land. In addition, neither water flows nor underground water are considered as components of a plot. Components of a land and, therefore, its integral part are only, for instance, plants permanently growing on it such as trees or bushes unless regulated otherwise by special provisions.

The components of a building usually include added-on structures, additional floors, and extensions, and conversions of already existing structures. Pursuant to Article 2 par. 4 and 5 of the Premises 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.

Accessories serve the permanent use of the principal asset and belong to the owner of said asset. Regarding apartments, all ancillary rooms and premises dedicated to be used together with the apartment are considered accessories (Article 121 par. 1 and 2 of the Civil Code).

From this it follows that several co-owners may own one asset, whereby each of them typically owns an ideal share. The co-ownership pursuant to the Articles 136 and on has been outlined in more detail in IV.E.1 above. The law does not provide for any express restrictions for a co-owner with regard to a contemplated security transaction. It is, therefore, possible to create a mortgage over the ideal share of such co-owner, without any further approval from other co-owners. According to Article 166 par. 1 of the Execution Code, the enforcement of a co-ownership share is governed by the same provisions of the Execution Code, which govern the execution of real estates. The co-owner of a co-owned real estate may prevent the sale of the asset, if he makes a deposit either in cash or into the account of the executor in the amount of the share to be auctioned. The acquisition of the co-ownership share requires the approval of the court (Article 166 par. 3 of the Execution Code).

However, pursuant to Article 140 of the Civil Code, in the case a co-owner wants to transfer its ideal share to a third person, all other co-owners have a legal pre-emption right with respect to this co-ownership interest. For a bank being the secured creditor, the following situation may arise:

The debtor gave a mortgage over his or her co-ownership interest to the secured creditor. After failure to pay from the debtor's side, the bank wants to enforce its mortgage by private sale or otherwise as agreed under the charge agreement. As such enforcement will always mean a transfer of the co-ownership interest, the secured creditor will have to respect the pre-emption rights of all other co-owners granted under Article 140 of the Civil Code (For more details see Part I.).

Special rules apply to the joint community property of spouses as set out under Articles 143 through 151 of the Civil Code. Such specific joint community property is not separated into interests, but each of the spouses is the owner of the entire asset (For more details see Part I.).

## **F Establishment and types of mortgages**

### **1 General remarks on the establishment of charges**

The conditions for the valid perfection of a charge are (i) existence of a claim eligible to be secured by a charge; (ii) suitable subject of the charge (collateral); (iii) legal title through which the charge is created; and (iv) specific method of acquiring the charge.

In particular, it depends on the legal title, whether charges are contractual or statutory charges.

The title establishing the formal right for the acquisition of a charge pursuant to Article 151c par. 1 Civil Code may be:

- an agreement on the establishment of a charge,
- an agreement among heirs,
- a court ruling or a decision of an administrative body, or
- by law.

In Slovak business practice, the establishment of a charge by written contract is the most common way to establish a charge. The written charge agreement must specify the precise value of the claim to be secured as well as the secured asset, as otherwise the charge agreement would be invalid. If it is not possible to clearly fix the concrete value of the claim, at least it must state its maximum value (maximum amount of the claim).

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

The secured asset must be specified (i) individually, as a (ii) quantity or category or (iii) in such a manner to allow it to be ascertained precisely at any time during the life of the charge.

It is often stipulated in the mortgage agreement that it is not permitted that the chargor will create further charges either over the already charged asset or over any other of its property. However, such clause according to Article 151d par. 6 of the Civil Code is invalid and has no effects toward third parties. On the other

hand, the creation of a further charge could mean a breach of the contractual obligations of the chargor, which may lead to the liability of the chargor. In practice, however, it is common practice for the banks to put this clause in their contracts (see also 2.a below).

The charge agreement between the chargor and the chargeholder must be executed in writing, unless in the case of possessory charges; otherwise, it would constitute an absolutely void legal transaction.

## **2 The contractual mortgage**

### **a The mortgage agreement**

The above mentioned general remarks also fully apply to a mortgage agreement. In line with the spirit of the Charge Reform 2003, the principle of contractual choice prevails and it is therefore mainly up to the parties to decide what will be the content of their mortgage agreement on the establishment of charges (see Exhibit ./D).

As mentioned above, the amount of the secured claim and the legal ground for the mortgage agreement are mandatory to be included in the written mortgage agreement. Furthermore, the charged real estate must be identified individually, i.e. a plot or building must be specified as required by the law. The precise drafting of the description of the secured claim and the real estate in the mortgage agreement is of utmost importance as it must be clear what will be, for instance, the concrete subject of any enforcement proceedings. This is mainly to avoid any uncertainties.

Furthermore, the mortgage agreement presented to the cadastre office of the relevant cadastral authority must bear the signature of both contractual parties, one being the owner of the real estate. Although the law does not stipulate that a notary must certify the signature of the parties, it is, however, still common practice to certify the signature at least of the chargor.

For foreign banks it is worthwhile to note that the mortgage agreement may also be signed in a language other than Slovak language. However, a certified Slovak translation (i.e. a translation issued by a court sworn translator) of the mortgage agreement must be prepared for registration purposes.

As stated above the mortgage agreement may need to be notarised or the notarial authority legalized. The legalisation requirements differ as follows:

- no further formalities are required for public documents from countries that have a bilateral treaty with Slovakia (for instance, Austria);
- an apostille is required for public documents from countries that are parties to the Hague convention on legalisation of foreign public documents (for instance, Germany); or
- a full legalisation process is required for public documents from other countries.

A foreign verification executed by a foreign authority or notary public must be officially translated into Slovak language as well, in order for the cadastral authority to accept it.

A specification in a mortgage agreement, which does not fully comply with the legal requirements, or other non-fulfilment of legal requirements, bears the risk that the relevant cadastral authority will reject its registration with the Real Estate Register.

Furthermore, if the mortgage agreement would include a clause, according to which the secured creditor would be entitled to acquire the ownership to the real estate without enforcement (for example, the sale of the charged asset by public sale or in a voluntary public auction), such clause is null and void, unless the law provides otherwise. However, Article 151j par. 3 of the Civil Code stipulates that such agreement is invalid only if the parties agreed on this prior to the maturity of the secured claim. As a consequence, such agreement would be permitted, if it will be entered into after the secured claim is due<sup>215</sup>. Certain exemptions apply in the case of a charge over receivables (see IV.M. below). For instance, where insurance receivables are charged the secured creditor may retain payments upon an insurance event, until the claim will be paid duly and in time.

As mentioned above, the mortgage agreement must not necessarily be executed in Slovak language. However, the registration proceedings in the Real Estate Register require at least an official Slovak translation of the agreement. Nevertheless, it is common practice that the parties agree among themselves that this other version (for instance, the German version) should be the prevailing one. However, it is to be noted that a Slovak court will always consider the Slovak version as the relevant version. Due care should therefore also be given to the Slovak translation of the mortgage agreement, which should be double-checked in any case; this despite of the fact that the sworn translator will always have to take the responsibility for the translation.

Finally, mortgage agreements must be governed by Slovak law. This applies, regardless of the fact that a law other than Slovak law governs the credit agreement. In the mortgage agreement the parties can also choose their preferred method of dispute resolution such as court proceedings or arbitration proceedings. Although it is often the case in Slovak banking practice that the parties choose arbitration proceedings, Article 37d of the International Private and Process Act<sup>216</sup> must be noted.

According to this, Slovak courts have exclusive competence in all questions related to the acquisition or transfer of ownership title or other rights *in rem*. Therefore, there is a certain risk that a Slovak judge would consider such arbitration clause as invalid as regards the rights *in rem* to the real estate. However, as far as no rights *in rem* to real estate are concerned, the arbitration clause should remain valid however. If the parties do not expressly provide for any choice of dispute resolution, then the relevant Slovak court will be competent.

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215 Civil Code Act No. 40/1964 Coll. – Commentary, IURA EDITION (updated version), remark to Article 151j, 270h.

216 Act No. 97/1963 Coll. as amended.

## **b The valid creation of the mortgage (perfection)**

In general, the creation of contractual mortgages is completed upon their incorporation with the Real Estate Register, which is a constitutive registration. Thus, it is not the date of signing the mortgage agreement being relevant for the valid creation of the mortgage, but its incorporation with the Real Estate Register (as to the concrete meaning of the term “incorporation” see aa below).

The process of incorporation is substantially similar to the constitutive registration of the change of ownership title to a real estate. An incorporated mortgage over real estate will be apparent from the ownership certificate, which will also identify the charge holder and the Identification number of the mortgage agreement. However, the ownership certificate will not include the amount of the secured claim/debt.

According to Article 151k par. 1 of the Civil Code, the ranking of several charges over an asset and thus the priority for the enforcement of its secured creditors is determined according to the earliest time of entry in the Pledge Register or to the time of entry in a special register. Neither the law, nor Slovak legal doctrine gives answer to the question, in cases where a dual system of charge registration is required, whether the priority to an asset is established by the very first registration regarding this concrete asset.

For instance, in the case of a future real estate where in the first stage the registration with the Pledge Register is required and, after the debtor acquires a title to the real estate, in the second stage the mortgage must be registered with the Real Estate Register. In order to increase the practical importance of registrations of future assets in the Pledge Register, it should be undoubtedly clarified that always the first registration regarding an asset (in the case at hand, the prior registration in the Pledge Register) grants the secured creditor first rank to this asset. I.e. the priority in relation to other charges is given from the time of the first registration.

### **ba Registration of the mortgage over existing real estate with the Real Estate Register**

Although the Charge Reform 2003 introduced as the basic method of acquiring a charge (mode of acquisition) the registration in the Pledge Register, it is still possible for special laws to stipulate the entry into a special register for a charge to be established.

If registration with one of these special registers is necessary, an **additional entry in the Pledge Register is not required** in this case. The valid creation of a mortgage over land, building constructions, residential premises and non-residential premises as well as buildings or premises under construction (unfinished buildings or premises) as required by law is generally still dependant on the **incorporation of the mortgage (*vklad*) in the Real Estate Register**.

Pursuant to Article 28 par. 3 of the Cadastre Act<sup>217</sup>, the incorporation of mortgages over real estate becomes legally effective as of the time of the approval of incorporation of the mortgage over the real estate by the respective cadastral

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217 Act No. 162/1995 Coll. on the Register of Properties and Registration of Ownership and Other Rights in Real Estate as amended.

administration. In practice, although this is not entirely correct from the legal perspective, it is common to use for the valid creation of the mortgage “incorporation or registration of the mortgage with the Real Estate Register”, rather than “the time of approval of such incorporation”.

In general, the approval of the incorporation of the mortgage has **constitutive effects**, i.e. the mortgage is effective as of the date of the valid approval of the cadastral authority on the incorporation in the Real Estate Register (and therefore not by the conclusion of the mortgage agreement). However, the following exemptions should be mentioned:

- In contrast, the legal effects of the incorporation of the mortgage under a contract on transfer of ownership right to residential or non-residential premises to the present lessee of the real estate in question are already effective as of the day of the delivery of the application for incorporation at the respective cadastral authority (Article 28 par. 5 of the Cadastre Act).
- Finally, in the case a real estate will be transferred under the Privatisation Act<sup>218</sup>, the establishment of the mortgage will be effective as of the date indicated in the application for incorporation delivered to the respective cadastral authority.

bb Registration of the mortgage over future real estate with the Pledge Register and Real Estate Register

Unless the law requires that a charge over an asset must be registered with one of the existing specific registers, the charge should be registered in the Pledge Register. Article 151f par. 1 of the Civil Code explicitly requires registration in the Pledge Register for a charge over a group of assets, rights or other assets or over an enterprise (or part thereof) to be created validly. However, if such group of assets is comprised of 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 charge to be validly established on such an individual asset as well.

According to Article 151f par. 2 of the Civil Code, mortgages over future real estate (i.e. real estate not existing yet, real estate to be acquired by the chargor later or real estate, the existence of which shall depend on a certain condition), must be registered in the Pledge Register. The law stipulates that the mortgage will arise only after the chargor has acquired the ownership right or another proper right to the real estate in question (for instance, as the ownership right to a future real estate will be validly created after it is registered with the Real Estate Register, from that time). As a real estate is a specific asset, the mortgage must also be “registered” with the Real Estate Register as of the date of the acquisition of the real estate by the chargor.

In this context it is worth to mention that in Slovak legal practice there is some discussion about which type of registration in the Real Estate Register is required here – in concrete the question arises, whether the mortgage over the already

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218 Act No. 92/1991 Coll. on the transfer of property in the ownership of the state to other persons as amended.

acquired real estate shall be incorporated (i.e. registered with constitutive effect, *vkklad*) or publicly noted only (*záznam*).

As regards the creation of the charge, the Real Estate Register will only take note of the projected time of the acquisition of ownership or other right. However, only the time of entry in the Real Estate Register shall always be decisive for ranking.

Overall, although the law provides this opportunity, it can be stated that, in Slovak banking practice the charge over a future asset is not so frequently used yet, the reason for this mainly being the lack of confirmed practice. In particular, it is the cadastre authorities, which have not yet recognized the new instrument to mortgage future real estate with the argument that real estate has always been and therefore must always be also in the future only registered with the Real Estate Register and not with the Pledge Register. Although banks, in contrast to the cadastral authorities, recognize this instrument, due to the given uncertainty they generally do not require from the mortgagor to also establish the mortgage over the future real estate. On the other hand, it should be noted that the registration of the future real estate in the Pledge Register without doubts has publicity effects and therefore is of a certain practical relevance as well.

#### bc Application process for the registration of a mortgage with the Real Estate Register

The application for incorporation of the mortgage with the Real Estate Register is addressed to the cadastre office of the cadastral authority where the real estate is located. The process of incorporation is legally valid upon the decision of the cadastral administration office on its approval of the incorporation. Such decision will be recorded on the first page of the mortgage agreement and will be afterwards delivered to the parties of the mortgage agreement.

Applications for registration with the Real Estate Register are processed in the order in which they are received. The year, the month, the date, the hour and the minute of the submission and the ordinal number shall be marked on the application for registration.

In order to file an application to incorporate the mortgage with the Real Estate Register, it is necessary to submit the mortgage agreement with a duly signed copy for each party, plus two additional ones. However, in the past, three additional duly signed copies were required – one for the each party and one for the respective tax authority. As the real estate transfer tax was abolished in January 2005, although the respective law has not yet been amended accordingly, in practice it is sufficient to submit only two additional copies of the mortgage agreement. Therefore, four duly signed copies of the mortgage agreement must be submitted to the relevant cadastre office.

According to the Cadastre Act, the chargor is obliged to apply for the incorporation of the mortgage with the Real Estate Register, unless it is stipulated in the mortgage agreement that the secured creditor shall file the application. The signature on the application for incorporation of the mortgage to the cadastral administrative office does not need to be signed before a notary public.

The natural person who is entitled to act on behalf of the applicant signs the application for incorporation. In the case of a company, this will be, in general, the managing director(s). Furthermore, it is possible that either the secured creditor or the chargor authorizes a third person to sign and submit the application under a power of attorney. However, such power of attorney should then be signed by the grantor of the power of attorney before a notary public in order to achieve signature authenticity of the grantor.

In general, it is not necessary to execute the above-mentioned signatures in the Slovak Republic. Therefore, the application or the power of attorney, if such is required, can also be signed abroad. However, public documents such as being, for instance, documents authenticated by a notary public, require certain legalization process, depending on the relevant country. For instance, public documents from Germany in addition, always need to be apostilled.

The application for incorporation of the mortgage with the Real Estate Register should include the following enclosures:

- four duly signed copies of the mortgage agreement<sup>219</sup>;
- current official extract of the Commercial Register or similar evidence (or a verified copy thereof) for each of the parties, i.e. the charger and of the secured debtor, each of them not being older than three months;
- power of attorney, if required;
- duty stamp (administrative fee) in the amount of 8,000 SKK (for faster proceedings within a fifteen days period) or 2,000 SKK (within a thirty days period). The registration fee can be paid by duty stamps, in cash, by transfer from a bank account, or via postal order. A statement on the price of the real estate is not needed anymore.

All documents filed to the cadastral administrative office must be executed in Slovak language or, as indicated above, need to be officially translated by a sworn translator who is registered in the list of sworn translators maintained by the Slovak Ministry of Justice. Where signatures will be certified by a notary public in Slovakia, the notary fee is 60 SKK per signature.

Payments of administrative fees for extracts and registrations with respect to real estate can be found in Act No. 145/1995 Coll. on administrative fees. According to this Act, the following fees may arise:

A fee in the amount of 250 SKK must be paid for the issuance of the following:

- (i) extracts from the Real Estate Register;
- (ii) data on valuated land-ecological units;
- (iii) any identification of plots;

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<sup>219</sup> It is common to keep at least one copy of the mortgage agreement for each party to have on file.

- (iv) a copy from the cadastral map or former land map (for each copy in A4, A3 format);
- (v) copy of the original of a document of title (for every 20 plots or 20 flats and non-residential premises) that is a public deed.

For the issuance of: (a) a second or any further original of public deeds mentioned in (i) above a fee of 100 SKK is to be paid; (b) an extract from the Real Estate Register, which is not a public deed, a fee of 100 SKK should be paid; (c) a second or further original of public deeds mentioned in (iii) above a fee of 50 SKK needs to be paid.

For information provided from the cadastre documentation (*katastrálny operát*) for purposes of finding data being relevant for execution proceedings, bankruptcy procedure, dissolution of a company, auctions, bank entity within one cadastral territory a fee in the amount of 200 Slovak crowns is to be paid.

### 3 The statutory mortgage

In accordance with Article 151b of the Civil Code, a charge may also be established by a judicial decision or a decision of an administrative body (see IV.F.4. below). In certain circumstances a charge may be created directly by a special law (rather than on the basis of a specific decision of a state authority), if the legal facts determining its creation are given<sup>220</sup>. In the Slovak legal practice and science it is not entirely clarified yet, whether these types of mortgages need to be registered in every case.

- According to Article 672 of the Civil Code, a statutory charge over movable assets of the lessee in order to secure the lessor's claim arising from a lease of a real estate
- Article 28b of the Act No. 42/1992 Coll. on regulation of property relationship and other property claims in cooperatives as amended, constitutes the possibility for the creation of a statutory charge of a bank in order to secure its loan granted to a housing cooperative for the purposes of construction of residential and non-residential premises and larger repairs and construction works
- Pursuant to Article 15 par. 1 of the Act of the National Council of the Slovak Republic No. 182/1993 Coll. on the ownership to flats and non-residential premises as amended<sup>221</sup>, a statutory mortgage in favour of the ownership community is created in order to secure a claim arising from legal actions related to a house or parts thereof, or to a flat or non-residential premise in a house, which were performed by the owner of a flat or non-residential premises. In the case, no ownership community will be established; the statutory mortgage is created to the benefit of each owner of premises. It is explicitly stated that such mortgage is to be registered with the Real Estate Register, regardless of the fact that the mortgage was created by operation of law.

220 In 2003, several statutory charges included in the Commercial Code until this time, were changed into retention rights by Act No. 526/2002 Coll. For more details see *Lazar a kolektív*, Civil material law, IURA EDITION, 3. Edition, 2003, p. 494 and on.

221 Please note that this Act has been amended only recently with effect as of 1 October 2007. See more comments to the recent changes of this Act and other comments in: *Zimmermann/Zimmermannová*, Commentary to the Act.

- Another statutory charge is created in accordance with Article 23 par. 6 lit. a) of the Act of the National Council of the Slovak Republic No. 180/1995 Coll. on certain measures taken for the settlement of ownership rights to land as amended, which deals with specific claims of heirs of agricultural and forest land. Such statutory mortgage will be registered in the Real Estate Register only by a priority note.

#### **4 Mortgages established by judicial decision or by decision of administrative authorities**

##### **a The executive mortgage**

Another type of enforcement, which performs solely a security function, is the registration of an execution charge over immovable property (executive mortgage). The claims secured by an executive mortgage may be enforced by enforcement of the real estate. The rank of priority of the execution mortgage is determined by the time of its entry in the Real Estate Register. Where several executive mortgages exist, the rank of each of them will depend on the fact when the executor received a proposal to establish the executive mortgage.

The executive mortgage is regulated in Articles 167 through 178 of the Execution Code. The law differentiates between real estate registered with the Real Estate Register and unregistered real estate. In the first case, the establishment of the executive mortgage is to be registered with the Real Estate Register as well. In the latter case, the executor has to write a protocol informing that the real estate has been “executed” in favour of an enforced claim.

A precondition for the establishment of an executive mortgage in both above-mentioned cases is proof of the fact that the obliged person is the owner of the real estate (see Article 170 and Article 175 of the Execution Code).

##### **b Mortgages created by administrative authorities**

A mortgage established by a decision of an administrative body is, for instance, the tax mortgage:

Following Act of the National Council No. 511/1992 Coll. on tax administration and fees and on the system of territorial financial bodies as amended, a tax mortgage is established by decision of the tax administrator in order to secure outstanding tax payment. It is possible to establish a tax mortgage over an asset owned by the tax debtor (including real estate) or another right of the tax debtor, for instance its receivables.

In general, the valid creation of a tax charge requires its registration in the Charges Register (Article 151e of the Civil Code). In the case of real estate, an entry in the Real Estate Register is required by way of priority notice pursuant to Article 34 subsequent of the Cadastre Act, which only has a declarative effect, as the tax charge has already been created by the effective decision of the tax administrator on the establishment of the charge.

Where tax arrears are charged in the Real Estate Register, the tax administrator has the right to enforce such claim for 20 years.

## 5 Mortgages securing specific mortgage loans of mortgage banks under the Banking Act (mortgage banking transactions)

This type of mortgage (hereinafter referred to as “*mortgage under the Banking Act*”) is a specific mortgage over real estate, with the purpose to secure a mortgage loan granted by a special mortgage bank as defined under the Banking Act. Only banks meeting the requirements stated in the Banking Act are entitled to grant these specific mortgage loans – the mortgage loan banks. This type of mortgage is regulated in Articles 67 through 88 of the Banking Act<sup>222</sup>. For more details see III.B.3 above.

As already stated, the mortgage loan will be secured by a mortgage over real estate. Such mortgage has to be registered with the Real Estate Register upon the filing by the mortgage bank (being the secured creditor) and by the chargor (being the owner of the real estate) and will be perfected by way of incorporation, which has constitutive effects. Therefore, the mortgage will exist upon the valid approval of the relevant cadastre office on the incorporation. This specific mortgage generally may not be established over real estate, which has already been charged to the favour of another creditor<sup>223</sup> (Article 74 of the Banking Act).

If the chargor is in default with payment, the mortgage bank is empowered to enforce its claims by way of sale of the real estate through an executor. However, this requires an agreement between the bank, the debtor and, where the person is not identical, the chargor (Article 74 par. 5 of the Banking Act). From this it follows that in the specific case of a mortgage loan, enforcement of the mortgage, other than under the Execution Code, shall not be possible<sup>224</sup>. However, the GBTC of several banks indicate that enforcement of this specific mortgage by means other than those stipulated under the Execution Code is permitted as well.

## 6 Special types of mortgage

### a Simultaneous Mortgage

Although the law does not provide rules on simultaneous mortgages, they are often used in practice. A simultaneous mortgage is created when one claim is secured by a charge over several real properties. The secured creditor has a choice of which charged real estate it will use to enforce its claim in the event the debtor is in default.

222 The same rules apply where a municipal loan is granted, which is always secured by mortgage over real estate owned by the municipality (Article 69 of the Banking Act).

223 Article 74 par. 2 of the Banking Act stipulates some exemptions from this ban, for instance, where a statutory mortgage according to Article 15 par. 1 of the Premises Act was already established over the real estate concerned or where the mortgage over a real estate will again be for the benefit of the same mortgagee (i.e. the same mortgage loan bank).

224 If a debtor fails to meet his obligations towards the bank, according to Article 74 (5) of the Banking Act, a mortgage bank is empowered to enforce its claims by way of sale of the real estate through an executor, on the basis of an agreement made in the form of a notarial deed between the mortgage bank, its debtor, and the mortgagor, where not identical with the debtor, if the parties agree on an execution in accordance with the Execution Code. Such agreement shall establish a legal obligation, and specify the beneficiary and the person subject to this obligation, a legal ground, subject and time limits for its performance.

If the secured creditor does not indicate any preference, it will be satisfied from the proceeds of the enforcement of all concerned real estate proportionally. The proportion of satisfaction from the proceeds of the realization is determined by the proportion of the remainder of the realization proceeds of each of the real properties charged after the first-ranking mortgage creditors have been satisfied.

A simultaneous mortgage is specified in the Real Estate Register by an entry in Section C of the ownership certificate indicating the real estate to which the simultaneous mortgage relates.

### **b Maximum Amount Mortgage**

Slovak law does not explicitly stipulate the maximum amount mortgage (*Höchstbetragshypothek*) as it is the case, for instance, in Germany or Austria. However, from the wording of Article 151b par. 3 of the Civil Code it follows that a maximum amount mortgage shall also be possible under Slovak law. Accordingly, if the precise value of the secured claim is not clearly defined, it is possible to define a maximum amount for the claim and to secure this claim by a maximum amount mortgage.

Due to the fact that neither the Slovak legal environment nor in Slovak banking practice a uniform interpretation rule exists as to how the mentioned Article shall be interpreted correctly, the following shall represent the current status. According to Article 151b par. 3 of the Civil Code, *“the mortgage agreement must define the amount of the secured receivable or the highest amount of the principal, up to which the receivable shall be secured”*.

a) The amount of the secured receivable shall be stated in the mortgage agreement, if the amount of the mortgage is stated and permanent at the time of the establishment of the mortgage. The **amount of a monetary receivable**, which is defined and permanent at the time of the establishment of the mortgage, is generally specified by its face value (*nominálna hodnota*; Nennwert), the **amount of a non-monetary receivable** is specified by the contractual parties by way of agreement on its amount or on the method for specifying its amount<sup>225</sup>.

b) The highest amount of the principal, up to which the receivable shall be secured, shall be stated in the mortgage agreement, if the amount of the secured receivable is not stable in time. However, it must be possible to specify the amount at any time. In Slovak literature, the following example is given, where the secured receivable is a receivable for the delivery of technologies. The amount of the receivable depends on the value of performance, i.e. the technology, which can be unstable (it can decline). Therefore, the pledge agreement shall stipulate the method for specifying the value of technologies, and thereby, the amount of the receivable at any time in the pledge duration.

c) In addition, according to some academics, the following situation may occur<sup>226</sup>:

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225 If the legal regulations do not stipulate the method for specifying the amount of the receivable in the pledge amount; the contractual parties shall specify the amount.

226 *Žitňanská*, ARS Notaria 3/2002, 12 and 13; *Žitňanská*, ARS Notaria 3/2002, 12 and 13; 1/2007, 25.

Although the secured obligation is defined as to its amount (for instance, the amount of the receivable is defined and it is possible to specify its amount at any time), however, the mortgage agreement may only specify the legal grounds of the receivable and lays down the **highest amount of the principal, up to which the receivable shall be secured**.

Thus the principle of the accessoriness is weakened in the case of maximum amount mortgages. Where, for instance, the amount of a secured claim is expressed by a certain amount which represents 130% of the principal, one may argue that regarding the 30%, which exceed the amount of the principal, a mortgage has not been validly created as at that time the claim existed only in the amount of the principle (i.e. 100%).

Overall, and also for the above reasons, in the recent past, it is rather common practice for Slovak banks to stipulate in the mortgage agreements that the claim arising from a loan agreement and thereto related claims shall be secured to the maximum amount of the principle together with the thereto related accessories.

As with a charge, a maximum amount mortgage may be established in order to secure more than one claim.

For more details see IV.C.1 and IV.D.1 above.

## **G Transfer of the charged asset**

In the case a charged asset is transferred (under an agreement) or passed (by law) to a third person, then, as a general rule, pursuant to Article 151h par. 1 of the Civil Code, the charge will be effective toward the acquirer of the charged asset including all contractually agreed rights and obligations in their full extent. The acquirer is therefore, although not being the initial chargor, under the obligation to allow the secured creditor the enforcement of its charge.

The charge is an absolute right, i.e. a right, which can generally be enforced against any person. Therefore, in practice, the acquirer shall always check the Pledge Register or, in the case of a mortgage, the Real Estate Register in advance, in order to find out whether the acquired asset is free of a charge or not. In the case the secured creditor exercises its charge against the acquired asset, should its secured claim not be duly paid, it will depend on the contractual terms whether the acquirer will have any rights for reimbursement from the original chargor or not.

However, a mortgage will not be effective *vis-à-vis* the acquirer pursuant to Article 151h par. 3 of the Civil Code, if:

- the charge agreement stipulates that the chargor may transfer the charged asset or a part of it free of the charge
- the Civil Code or a special law contains special provisions stipulating that the acquire shall acquire the asset free from any charge

Where secured assets need to be registered in a special register, the acquisition of the assets in good faith without charge is excluded. Consequently, a charged real

estate cannot be acquired without the mortgage over it as it is registered in the Real Estate Register (Article 151h par. 4 of the Civil Code).

The chargor and the acquirer are obliged to register the change of the identity of the chargor in the Real Estate Register, if the registration was required for the valid creation of the charge. 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 (Article 151h par. 5 of the Civil Code).

Unless agreed otherwise, the charge will also be transferred if the secured claim will be assigned to a third party, which will become the new secured creditor (transferee) upon such assignment<sup>227</sup>. In general, such change in the person of the chargeholder must be recorded in the Real Estate Register, where required. Exceptions apply only, where the transferee would already be registered as person authorized to act on behalf of the chargeholder.

Should the chargeholder assign its secured claim without the underlying charge, such act could be interpreted as a waiver of the charge and therefore, following the principle of Accessoriness, as the charge cannot exist without a claim, the charge ceases to exist. However, the chargeholder must express its will in writing (Article 151md par. 2 of the Civil Code).

## H Protection of the mortgage

Unless the charge agreement provides otherwise, the chargor who remains in the possession of the charged asset can use it in a usual way. However, it must refrain from any actions that would be detrimental to the value of the asset, except for ordinary wear and tear (Article 151i par. 1 of the Civil Code).

In general, failure by the chargor to maintain the charged assets does not automatically give the right to enforcement. However, in the charge agreement the parties may agree that such failure creates an event of default, which entitles the secured creditor to claim immediate payment.

It is also possible that the chargor sells the charged asset, unless the charge agreement prohibits this.

Pursuant to Article 151mc par. 1 of the Civil Code, the chargor is only obliged to insure the charged asset, if the charge agreement provides so<sup>228</sup>.

In the case a charged movable asset was handed over to (and therefore is in the possession of) the chargeholder, it may use the collateral only upon approval given by the chargor. In addition, the chargeholder is obliged to duly protect the collateral. Any out of pocket expenses for the chargeholder from such due care of the collateral must be reimbursed by the chargor (Article 151i par. 2 and 3 of the Civil Code).

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227 See also *Dulaková*, The charge and its assignment, *Justičná revue*, 2007, 537 and on.

228 More details see in *Fekete*, Civil Code – Commentary, explanations to Article 151i of the Civil Code, p. 367.

## **I Priority of the mortgage in case of several creditors**

It is possible to charge a secured asset several times, i.e. to several secured creditors. In Slovak credit securing practice, the multiple charging of secured assets is very common. In such a case, the distribution of the proceeds is governed strictly by the priority principle. The Charge Reform 2003 introduced new rules regarding the legal relationship between several secured creditors. In concrete, the ranking of the charges and thus the priority of the respective charges are determined according to the first entry in the relevant register.

With regard to movable assets, this special rule applies: If several charges over movable assets have been acquired in part by entry in the Pledge Register and in part by physical delivery, then the charge entered in the Pledge Register shall have priority according to the time of its registration pursuant to Article 151k par. 2 of the Civil Code.

The Charge Reform 2003 abolished the preferred status of tax authorities or other public sector entities based on special laws (for instance, tax charges). Under the new rules, such public entities are treated like other creditors; their rank is determined by the principle of priority as well. This was a very important step, as in the past the tax charge over existing or future tax debts of the debtor had certain priority over other charges and was therefore regarded as a certain risk in the Slovak credit securities practice of that time.

If several charges exist over the same asset, the secured creditors may, pursuant to Article 151k par. 3 of the Civil Code, enter into an agreement where they agree on the priority of satisfaction for their charges (ranking agreement). However, such ranking agreement will have effect only upon its registration in the Pledge Register or in the respective special register. All secured creditors involved must request the registration of such ranking agreement jointly. The rights of secured creditors, who are not party to the ranking agreement, are not affected by such agreement.

The secured creditor ranked ahead of the enforcing creditor is entitled to enforce its secured claim prior to the other (already) enforcing creditor, unless its claim is due and payable. On the other hand, a secured creditor ranked after the first creditor may enforce its secured claim, provided its claim is due and payable. It is therefore recommendable to stipulate in the mortgage agreement that in the case the lower ranked creditor will enforce its claim prior to the first creditor; this shall mean that the first ranked creditors claim shall become due and payable. Moreover, a secured creditor may pay off the secured claim of the already enforcing creditor and in this way obtain the rank of this creditor (see IV.J.1.d below). Furthermore, a secured creditor will be satisfied prior to other unsecured creditors. Therefore, no other enforcement proceedings (for instance, execution proceedings) will affect the secured assets, unless the:

- (i) secured creditor gives its approval to such enforcement proceedings, or the
- (ii) secured creditor itself has commenced such proceedings (Article 151h par. 6 of the Civil Code).

It is to be noted that some creditors may have, however, legal retention rights, which grant them a preferred right corresponding to their claim related to the charged asset.

## **J Enforcement of the mortgage**

### **1 General**

#### **a Type of enforcement**

According to Article 151j par. 1 of the Civil Code the following enforcement options are generally available:

- (i) enforcement in accordance with the terms agreed in the mortgage agreement by way of a free sale (subject to the restriction that the proceeds of enforcement must reflect the object's fair market value at the relevant time and location)
  - (ii) out of court voluntary public auction
- and
- (iii) enforcement through the executor in accordance with provisions of the Execution Act (in the case of mortgages, by public auction).

Enforcement according to the terms of the mortgage agreement and voluntary public auction sale are considered forms of out of court realization. In the two cases, the chargeholder acts on behalf of the chargor by a statutory mandate and no enforceable titles is required. Enforceable title is required only for enforcement through an executor.

Proceedings under the regime described in (iii) are court-supervised and provide the highest level of legal security. However, the alternative routes in (i) and (ii) are less time-consuming, offer the benefit of minimum involvement by the authorities and are therefore cheaper.

As an exemption to the principle of accessoriness, it should be emphasized that the charge shall also be subject to any enforcement, if the secured claim has already exceeded the period of limitation. Furthermore, according to Article 151j par. 3 of the Civil Code, any agreements, which state that charged assets automatically become the property of the chargeholder after a debt falls due as satisfaction for its claim, are invalid. However, such agreement is permitted, after the secured claim has become due.

If the charge is created over several charged assets, the secured creditor may demand satisfaction from one or from all of the assets.

No special rules apply on the enforcement of mortgages by a foreign lender, as compared to a domestic lender. Also, the type of the foreign lender (for instance, bank or off-shore special purpose vehicle) is not relevant.

The following principles apply as a general rule regardless of the concrete mode of enforcement selected.

**b Notification of commencement of enforcement**

The secured debtor is obliged to inform the chargor in writing of the commencement of the enforcement, and if it is another person than the chargor, the debtor as well. If the charge is registered with the Real Estate Register, the Real Estate Register must be informed as well.

In the written notification of the commencement of the enforcement proceeding, the chargeholder must indicate the enforcement type it selected. After such notification, the chargor no longer has the right to transfer the charged asset without the consent of the chargeholder. However, any breach of this ban shall not have any effect *vis-à-vis* persons who have acquired the charged asset from the chargor in the course of regular business transactions within the scope of its entrepreneurial activities. However, this rule does not apply where the acquirer knew of the commencement of the charge, or, considering the overall circumstances where he should have known about it.

The chargeholder has the right *vis-à-vis* the chargor to demand reimbursement for the necessary and actually incurred costs related to the enforcement of the charge.

**c Commencement of the enforcement of the charge**

The mutual rights and obligations of chargeholders and chargors within the enforcement of the charge are defined in detail by the law (Article 151m par. 1 through 10 of the Civil Code).

The contractually defined enforcement of a charge and the auction may be carried out generally only 30 days after the notification of commencement of enforcement proceedings to the chargor (or debtor, if different persons) by the chargeholder or after the date of registration of this fact in the Real Estate Register. After the notification of the commencement of enforcement proceedings, the chargeholder and the chargor may reach an agreement that the chargeholder will commence enforcement earlier (i.e. before the expiry of the 30 days period).

The secured creditor may at any time-also during the enforcement of the charged asset change the originally agreed on type of enforcement, but must inform the chargor of this change.

The chargor is bound to accept the enforcement of the charge and is under the obligation to provide the secured creditor with the required assistance. The chargor must hand over the charged asset and any documents required for the acceptance, transfer and use of the charged asset, and provide any cooperation agreed on in the charge agreement. The same shall apply to any third party in possession of the charged asset. If the chargor (or any third person) would not fulfil these duties, it would breach its contractual obligations. If the chargor would not voluntarily hand over the asset to the chargeholder, in order to take possession of the assets, the right of possession would have to be enforced before court on the basis of an execution title.

When selling and enforcing the charged asset, the chargeholder acts in the name of the chargor<sup>229</sup>. Furthermore, the chargeholder shall inform the chargor of the process of the enforcement especially of all facts that could be of relevance for the selling price. In the event the charge agreement specifies a type of enforcement other than the public auction, the chargeholder shall be under the obligation to exercise the appropriate due diligence when conducting the sale. In concrete, the chargeholder shall sell the charged 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.

Immediately after the sale of the charged asset, the chargeholder must hand over a written report to the chargor, containing all information stated by law (in particular, it should include details on the costs and the distribution). The chargeholder must account for the costs, incurred in connection with the enforcement of the charged assets, and prove them to the chargor.

Should the proceeds of the sale exceed the secured amount, after deduction of the necessary and actually incurred costs, the chargeholder must hand over the surplus to the chargor without undue delay.

#### **d Enforcement of charges by several chargeholders**

Articles 151ma par. 1 through par. 10 of the Civil Code stipulate certain rules where several secured creditors enforce their charges over the same charged asset.

In such a case, the chargeholder, not being the first ranking creditor (the initiating chargeholder), must inform all higher ranked creditors in writing of the commencement of the enforcement. In this case, a 30 days period runs as of the date of the notification of all creditors. Before the expiry of this period, the initiating chargeholder may not sell the charged asset. Also here, the surplus proceeds of sale must be handed over to the chargor after all necessary and effectively incurred costs of the enforcement are deducted.

If the first ranking chargeholder is the initiating creditor, the charged asset is transferred to the acquirer free from any charges of the lower ranked chargeholders. Any surplus proceeds of sale must be deposited with a notary. Again, if the surplus proceeds of the enforcement exceed the amount of the secured claim of the first ranking creditor (after deducting the necessary and actually incurred costs of the enforcement), all other chargeholders have the right for satisfaction of their claim from the remaining proceeds in accordance with their ranking.

If a lower ranking chargeholder initiates enforcement, the transferred asset is sold to the acquirer together with the charges of all prior chargeholders. The enforcing chargeholder must inform the acquirer of the fact that the transferred asset is encumbered by a charge (Article 151ma par. 6 and 7 of the Civil Code).

Furthermore, the chargeholder and the acquirer are obliged to ensure the required registration of the change of the person of the chargor in the Real Estate Register.

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229 Please note that Article 151m par. 6 of the Civil Code was amended only recently by the last Amendment to the Civil Code by Act No. 568/2007 Coll.

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 lower ranking secured creditor may satisfy the claim of the enforcing creditor after enforcement has been started. By this the lower ranked creditor can “buy” the position and related rights of this creditor (including priority of this creditor). The enforcing chargeholder cannot refuse such an offer for satisfaction of its claim by another creditor.

## **2 Enforcement as agreed in the mortgage agreement (free sale)**

The procedure to be followed is determined by the parties in the charge agreement<sup>230</sup>.

Typically, this type of enforcement occurs through an out of court sale by the mortgagee (i.e. the concrete method of sale). For the protection of the contractual parties, detailed specifications are to be included in the mortgage agreement. This will also depend on how fast and how expensive this type of enforcement is in practice. Recent practical experience in Slovakia shows that this type of enforcement is more widely used. However, there is no jurisprudence on how a mortgage agreement must be formulated in order to be effective – this is rather a result of good legal advice and bank practice.

In the case of the out of court sale, Article 151m par. 8 of the Civil Code only defines that the chargeholder must act with due diligence when executing the enforcement. In particular this means that the chargeholder must sell the charged asset for a price for which the same or a similar asset could have been sold for at the same time and at the same place.

## **3 Enforcement by voluntary auction (out of court auction)**

### **a General**

The out of court auction of the charged real estate is carried out under the Act on voluntary auctions, which is in force since January 2003. As already mentioned, with effect of 1 January 2008 Amendment 2008 amended the provisions of this Act more extensively. In Slovak practise, voluntary public auctions are regarded as a quick and effective method to sale a charged asset.

As to the question of what can be the object of an auction, the following applies<sup>231</sup>: In general, any property that can be charged as collateral may become the object of an auction. An object, which is encumbered by a pre-emption right registered with the Real Estate Register, cannot be auctioned – the only exception being situations where the secured creditor initiates the auction. Also a joint ownership interest may be auctioned only if the secured creditor initiates the auction. The objects whose transferability has been restricted under contract or based on an enforceable decision issued by a court or regulator cannot be sold in auction. Thus, contractual or other restrictions based on enforceable decisions on the transferability

<sup>230</sup> See *Lazar a kolektív*, Civil material law, IURA EDITION, 3. Edition, 2003, p. 514 and on.

<sup>231</sup> For more details see Civil Code Act No. 40/1964 Coll. – Commentary, IURA EDITION (updated version), remark to Article 151m, 272c, 272d. For instance, it is not possible to sale assets through an auction which are secured under a pre-emption right under Act No. 49/2002 Coll. on protection of historical funds as amended.

of an asset, must be carefully checked. In particular, the initiator is obliged to announce co-owners or persons being in the possession of pre-emption rights to the designated asset.

### **b Auction agreement**

The legal basis on which an auction is carried out is a written agreement on auction signed between the auction initiator and auctioneer (the auction agreement). By Amendment 2008, stricter requirements as to the mandatory content of the agreement were introduced. For instance, new rules apply where a statutory mortgage is created over the designated real estate being a flat or house, where the debtor has its permanent address. In this case, the lowest admissible bid cannot be under three fourths of the value stated in the expert's appraisal. In all other cases, the lowest admissible bid cannot be lower than one half of the stated value.

The auction initiator is either the owner of the real estate designated for auction or a person authorised to act on behalf of the owner, in particular the secured creditor. If the auction is initiated by the chargeholder, the auction agreement must also identify the owner of the auctioned real estate and the reason for which auction is being sought. The secured creditor does not need an enforceable title, but will have to present a written declaration on the existence, amount and due date of the claim. Such declaration is attached to the auction agreement.

The auction agreement must contain the identification of the auction initiator, auctioneer, object of auction, the lowest admissible bid, anticipated cost of auction and the amount (or method for the calculation) of the auctioneer's commission. In the absence of any of these essentials, the auction agreement will be null and void.

### **c Notification of the commencement of the auction**

If the object of auction is an apartment, a house or other real estate, the private auctioneer must publish the notice of announcement of the auction (or the notice on repeated voluntary auction) not later than 15 days prior to the commencement of auction on the office board of the municipality, where the object of auction is located. At the same time, the auctioneer shall be bound to publish the notice in a periodical press with power in the municipality, where the object located, basic information about time, place, object and lowest admissible bid of the voluntary auction or the repeated voluntary auction. The municipality must publish such notice without undue delay and without remuneration.

### **d Auction proceedings**

If the auction property is a real estate, a company, or part of a company, or if the lowest admissible bit exceeds 500,000 SKK the notice of auction must be published in the Register of Auctions no later than 30 days prior to the commencement of the auction (otherwise not later than 15 days). The auctioneer shall also without undue delay send the notice of the auction sale to the Ministry of Justice for publishing in the Commercial Bulletin.

The auctioneer also sends the notice to those secured creditors who were named by the initiating chargeholder. The number of people to be notified by the auctioneer has significantly been increased.

The Act on Voluntary Auctions does not define a *minimum bid*. Therefore, the auction agreement may authorise the auctioneer to decrease the lowest admissible bid, including the limits of such authorisation. However, no bid lower than the statutory bid may be agreed to regarding the enforcement of a charge. As follows from Article 16 par. 7 of the Act on Voluntary Auctions, the Auction Agreement may stipulate the right of the auctioneer to lower the lowest admissible bid. The exact amount must be stated in the agreement. However, the same Article stipulates that the lowest admissible bid cannot be lower than what Article 16 par. 6 of the Act stipulates (see b above).

Unless already commenced, the auctioneer must cancel the auction if, among other things, the auction initiator so requests in writing or if bankruptcy has been declared in respect of the owner of the designated real estate (since in bankruptcy, all powers regarding the bankrupt's estate are performed by the bankruptcy receiver). A court expert must appraise real estate. The auctioneer has to send the secured debtor the expert's appraisal not later than 30 days before commencement of the auction.

#### **e Acquisition of ownership title**

The ownership title or other legal title passes onto the winning bidder upon the "award of sale" (*prieklep*) and subject to the payment of the auction price: The maximum bid must generally be paid immediately after the close of the auction; if the purchase price exceeds 200,000 SKK (approx. 5,880 EUR), it can be paid within fifteen days. A notarial deed of auction, a copy of which must be served to the winning bidder, confirms the acquisition of ownership. In the case of a real estate (premises or house), the auctioneer will, without undue delay following the payment of the auction price, send one authenticated copy of the notarial deed to the relevant Real Estate Register. By day of payment of the auctioned price by the winning bidder, the claim of the creditor ceases to exist in extent to the satisfaction of the creditor from the auction proceeds.

If the auction fails, it is repeated. If the legal provisions have been violated, the aggrieved person may file a petition with the court in order to have the auction declared null and void. Unless exercised within three months of the auction date, this right becomes void.

#### **f Summary**

Experience has shown that the settlement of a claim in an out of court auction sale can take up to two to three months.

Generally, the charges attached to a property do not expire with the acquisition by the purchaser, unless there are special provisions that stipulate otherwise. I.e., through transfer of ownership or transfer of any other right connected with the subject under auction, the charges/mortgages are not ceasing to exist, and they have effects on the declarer (i.e. auction winner). I.e. upon the auction award the realized mortgage ceases to exist; however, mortgages being prior to the enforced mortgage remain existing. This is also valid and applicable with respect to rights following from agreements on limitations of real estate transfer. Therefore, claims secured by such rights, in case they are not due, do not become due on the day when the ownership to the subject of auction is being transferred.

As to the costs of such proceedings, since 1 January 2008 the following applies: If the auction initiator is the secured creditor, the owner of the auction object bears the commission of the auctioneer at a maximum amount of 10% from the auction proceeds, however, not more than 20% from the amount of the claim. If the auction was abandoned upon debt payment, the owner of the auction object bears the commission of the auctioneer at a maximum amount of 3% from the enforced claim and after the delivery of the notice on auction to the owner of the auction at a maximum amount of 10% from the enforced claim. The commission of the auctioneer is a maximum of 1.000.000 SKK increased by 1% from the auctioned price, exceeding 10.000.000 SKK.

The auction proceeds, after (i) reimbursement of the auction costs, (ii) having satisfied the claim of the secured creditor and (iii) payment of the auctioned price, shall the auctioneer without undue delay deliver to the previous owner of the object of auction, unless a special law provides otherwise.

## **4 Enforcement according to the Execution Code**

### **a General**

The executor is an individual with official authority to organise the enforcement of an enforceable legal title. Consequently, enforcement of a mortgage by an executor requires an enforceable title. Such enforceable title would be constituted by, among others,

- (i) an enforceable court decision, or by
- (ii) decisions approved as a European enforceable title,
- (iii) enforceable notarial deeds (*notárska zápisnica*<sup>232</sup>) or
- (iv) enforceable arbitral awards<sup>233</sup>.

Since Slovak courts are still widely perceived as unreliable, creditors, in particular banks, however less so today, may require their borrowers to execute an enforceable notarial deed, which replaces the enforceable court decision. The debtor together with the loan agreement and/or the charge agreement can sign the notarial deed. Following unofficial information obtained from a notary public, in the prevailing cases, a notarial deed is no longer required. However, recent experiences have shown that banks do not require a notarial deed in any case, but rather depending on the financial standing of the relevant debtor. Previously, but also after the Charge Reform 2003, it was still recommended to obtain an enforceable notarial deed as a fall-back.

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232 Articles 46 subsequent of the Act on Notaries regulate the mandatory minimum content of the notarial deed. The notarial deed 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 execution. In practice, the notarial deed is established together with the charge 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 deed, neither the execution according to the provisions of the Civil Procedure Code nor that according to the Execution Code can be conducted. For more details regarding the function and importance of the notarial deed in the past, *Kovács*, Notarial deed as enforceable title, *Ars Notaria* 1/1999, p. 19 and on.

233 See Article 44 and on of the Execution Code.

The cost of the notarial deed follows a standard tariff, based on the amount of the secured claim. This follows a sliding scale, for instance, for the principal amount of a loan being over 20 Million SKK, it is 0,05%.

The executor may charge enforcement costs in the amount of 20% of the secured claim, subject to a cap of 1 Million SKK. Generally, the costs of successful enforcement are borne by the debtor. The executor can however charge the creditor an advance payment, which is calculated on a progressive basis from the amount of the claim. The advance payment may not exceed 500,000 SKK. Given significant competition amongst executors it is possible that an executor could be convinced to waive the advance. If the debtor is unable to pay the enforcement costs, the executor may charge the creditor for its services based on an hourly rate.

### **b Commencement of execution proceedings**

Enforcement starts by the secured creditor filing an enforcement request with an executor of the creditor's choice<sup>234</sup>. The enforcement request is attached to the enforceable title, which must contain a clause on the legal validity and enforceable nature of the title (enforcement clause).

According to Articles 44 and on of the Execution Code, in the process of enforcement, the executor generally has to:

- (i) obtain formal approval of the enforcement by the locally competent district court
- (ii) announce the enforcement to the debtor<sup>235</sup>,
- (iii) issue the enforcement order,
- (iv) publish an announcement of the enforcement and
- (v) organise a sale by public auction (however, the public auction must be announced 30 days in advance).

The debtor may file an objection against the enforcement within 14 days of receipt of the announcement. The objection may be based on the fact that, after the enforcement title came into existence, circumstances occurred which resulted in the enforceable claim being extinguished or becoming unenforceable, or for other reasons for which execution is inadmissible. However, the objection may not be based on a lack of merits of the underlying claim. The local district court is the competent court to deal with the objection. The court is obliged to decide on the submitted objections within 60 days after their delivery to the court. The decision is subject to appeal only if the court has granted the objection.

<sup>234</sup> This principle of free choice has created some competition between executors, which has to a certain extent benefited creditors.

<sup>235</sup> Pursuant to Article 47 par. 1 of the Execution Act, the executor notifies to the parties, for instance, the preliminary costs of the execution proceeding and requests the debtor to pay voluntarily or to raise defences against the execution. At the same time, the general ban on any disposal of the assets subject to the execution applies to the debtor. After the expiry of the period to raise defences or after the decision of the court to reject the defences takes legal effect, the bailiff issues an execution order (Article 52 of the Execution Code, *exekucny prikaz*).

## **c Execution of real estate – sale through public auction**

### **ca Requirements**

A mandatory requirement for the execution through the sale of real estate is, *inter alia*, that the (i) enforcing chargeholder gives its consent to the sale and that the (ii) debtor has ownership title to the real estate. The latter is usually proven by an excerpt from the Real Estate Register (Article 134 par. 1 of the Execution Code). However, the law does not specify in detail by when the chargeholder must grant its consent.

The debtor is prohibited from selling the charged real estate 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.

After the issuance of the enforcement order to perform execution by selling the real estate and serving the notice to all persons and bodies named, the actual execution proceedings begin (Articles 134 through 178 Execution Code).

### **cb Description of the valuation**

Prior to the public auction a court expert, who determines the real estate's market value, evaluates the real property. In the court expert's opinion ("*znalecký posudok*") the price of the real estate including all of its components and accessories (that are covered by the mortgage as well) must be stated at fair market value.

### **cc Public auction**

The execution through sale of the real estate is conducted in a public auction according to Articles 140 and on of the Execution Code. After the executor prepared the auction and all securities have been deposited, the executor requests the interested parties to make their bids. After this time, it is no longer possible to hand over a security deposit and demand to participate in the auction.

Upon the first auction attempt, the fair market value as was determined by the expert constitutes the minimum auction price. If the first auction is unsuccessful, a new auction may be organised after (at least) two months where the lowest bid is 75% of the minimum auction price. If even the lowest bid was not made, another auction may be organized after (at least) one month, where the lowest bid, which is subject to approval by court, represents no lower than one half of the original minimum auction price. There is no limit on the number of auctions but no further price reduction is allowed.

The executor may, with the approval of the enforcing creditor, arrange for another court expert's appraisal, if the auction was not successful within a period of one year after the first auction. Importantly, the court may stop enforcement upon the request of either the enforcing creditor, the debtor or the executor, if the real property subject to enforcement has not been sold within one year following the issuance of the enforcement order (for instance, because there are no interested buyers).

If a bid is made that is higher than the market price and no further bids are made, the executor awards the property and declares the auction as finished. Where several bids are made in the same amount, the executor awards the property by drawing

lots (Article 146 Execution Code). In all cases, the executor will issue a deed. However, objections may be raised against the award. The award is subject to the approval of the court, however such court decision may be appealed (Article 148 par. 1 of the Execution Code). The court's approval on the award has a constitutive effect, thus establishing a new ownership status of the auctioned real estate. The record in the Real Estate Register by way of a priority notice (*záznam*) has only declaratory effect.

Should the court reject the award, pursuant to Article 149 of the Execution Code, the executor continues the auction with the penultimate bid.

#### cd Acquiring ownership

The successful bidder will become the owner of the awarded real estate only after:

- (i) it paid the highest bid and
- (ii) approval of the award by the court.

In this case, the ownership will have retroactive effect as of the day of the award. After the award, the successful bidder may already take possession of the auctioned real estate.

#### ce Distribution of proceeds

Articles 157 and on of the Execution Code include provisions relating to the hearing for the distribution of proceeds ("*rozvrhové pojednávanie*"). The executor, subject to approval by the court, will distribute the auction proceeds. First ranking mortgage creditors will have priority over second ranking creditors etc. This rule applies not only to mortgages established by contract, but also to mortgages established by decision of an administrative authority, such as tax mortgages. In principle, only the costs of the enforcement proceedings rank above the mortgage creditors.

Pursuant to Article 157 of the Execution Code, following the results from the hearing for the distribution of proceeds, claims will be satisfied in the following order:

1. Rank: court fees and execution costs
2. Rank: claims (including their proceeds) arising from mortgage and municipal loans that serve to cover the nominal value of mortgage bonds and municipal obligations which were issued by banks within mortgage banking
3. Rank: claims secured by statutory, contractual, judicial, or executive charges, by security transfer of rights, assignment of claims or, secured by a ban to sell the real estate as a whole; the priority ranking of a claim is determined by the time of the valid creation of the charge or after the prohibition to sell becomes effective
4. Rank: claims of other entitled creditors, from taxes, fees, custom duties and state guarantees realized, from contributions to the health and social as well as claims from contribution in the pension system

5. Rank: unpaid alimony 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.

Interest for the last three years prior to the award, 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 Article 157 of the Execution Code, the executor must payout the surplus after satisfying all claims.

The executor records the minutes of the hearing for the distribution of the proceeds. The court approves the distribution of the proceeds by issuing a ruling within 60 days at the latest. The decision on distribution will be delivered to all persons and authorities that were called to the hearing for distribution (Article 164 of the Execution Code).

After delivery of the distribution ruling and full payment of the highest bid, the executor will transfer the relevant amounts to the entitled persons within 7 days.

#### **d Enforcement of a simultaneous mortgage**

According to Article 151j par. 4 of the Civil Code, if several independent real estates are charged in order to secure one claim, the chargeholder is entitled to demand satisfaction of the entire claim or part of the claim from any one of the charged assets.

The multiple mortgage or simultaneous charge on several real estate (simultaneous mortgage), in particular the enforcement of the mortgage by way of auction sale, could potentially lead to a breach of the principle of equal treatment of creditors. Thus, Article 158 of the Execution Code contains special provisions for the distribution of the proceeds from real estate encumbered by a simultaneous mortgage.

It is not relevant, whether all real estate is auctioned at the same time, or if this is done by one or several executors. 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 therefore that:

- (i) the same claim must be secured by mortgages over several real properties, and
- (ii) by the date of the hearing for the distribution of the proceeds at least one of the charged real estate has been sold.

The law recognizes the following two situations:

**Situation 1:** If in the process of auction all charged real estates are sold that served as simultaneous mortgage to secure the same claim under a mortgage agreement, the claim may be satisfied as follows (Article 158 par. 1 of the Execution Code):

- First, the claims mentioned above pursuant to Article 157 par. 1 lit. a and b of the Execution Code (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. Such approach is possible for the simultaneous mortgage creditor with respect to each of the remaining distribution assets. However, the chargeholder may request satisfaction of its claim in another order.

**Situation 2:** Where the simultaneous mortgage creditor did not sell all but only some or one real estate (Article 158 par. 2 of the Execution Code), the basis for the calculation of the ratio of the satisfaction of claims is the value of all real estate (both auctioned and not auctioned), according to general rules.

In the case the simultaneous mortgage creditor would receive satisfaction in a disproportioned extent, the lower ranking creditors can demand their claims to be secured by mortgage over the real estate, which was not auctioned yet. The creditor's rank is determined by the rank of the satisfied simultaneous mortgage creditor.

## **5 Comparison of out of court auction sale and auctions organized by executors**

Finally, in order to give banks a clear picture which method of enforcement will be the most appropriate for them, the following views from the Slovak business environment might be helpful. For instance, as disadvantages of enforcement through an executor the following is regarded:

- in order to gain an execution title for the enforcement of a judgment it is necessary to go through litigation regarding the claim (with the only exception being the notarial deed);
- prior to a judgment, there is an obligation to pay the court fee for its rendition, currently in the amount of the 6% from the sum being claimed;
- the rendition of judgment is time consuming and may last a few months;
- after acquiring the execution title it is required to submit a petition for commencement of the execution and fee stamp of 500 SKK;
- in practice the issuance of the court's authorization for the court executor lasts 3 or more months;
- the debtor is entitled to submit objections against the notification of commencement of the execution; the court decides upon these objections in the course of a few months;

- if the debtor is acquainted with this field of law or if he is well advised, he will submit the petition for the stay of execution, upon which the court will decide;
- (the debtor) may also submit the petition for the termination of the execution, upon which the court will decide;
- if the court executor starts the sale of the charged assets in the auction and finally sells these in the auction sale, it is possible to submit an objection against the award; the court will decide upon this objection;
- if there are more creditors, it is possible to submit objections against the distribution of the proceeds of the auction sale; the court will decide upon these objections;
- the biggest disadvantage may be the preferential satisfaction of the remuneration and purposely incurred costs of the executor from the proceeds of the auction sale; the satisfaction of the entitled creditor will be covered from the rest. This sum may be of lesser value than the costs of the executor.

On the other hand, we found many arguments being mentioned as advantages of the out of court auction sale where no enforceable title is required (please note that both the out of court auction, together with the free sale, are considered as out of court enforcement methods, see also IV.J.1.a above):

- it is not necessary to render neither the payment order nor the judgment – the lien on movable or immovable asset is the only requirement;
- there are no court fees on the rendition of the execution title – payment order or the judgment to be covered;
- we have seen offers of auctioneers according to which a secured claim can be enforced within 2-3 months from the date of the signature of the contract on performance of the voluntary auction sale.

## **K Realization in insolvency proceedings**

### **1 General**

Slovak bankruptcy law was largely overhauled as of 1 January 2006, when the new Slovak Bankruptcy and Restructuring Act (BRA) came into effect. In general, the BRA provides for equal treatment of all creditors with equal rights. The BRA strengthens the position of the creditors but also increases their duties. Thus, creditors are liable for damages, which the debtor or third parties may incur due to the cessation of the bankruptcy proceedings upon proof of sufficient liquidity. In addition, they are liable for incorrect petitions to file a bankruptcy claim.

The BRA applies to bankruptcies and restructurings of commercial entities (companies or individual entrepreneurs) as well as civil entities (which do not carry on a business). In addition, forced administration proceedings are applicable to some special types of entities (such as banks, insurance companies, investment firms and collective undertakings), which may have a negative impact on creditors.

These proceedings support the restructuring of a debtor's business that is still solvent under the BRA.

It is important to note that the Slovak Ministry of Justice has only recently published the draft of the amendment to the BRA, which clarifies and defines, among others, the term of over-indebtedness similar to German, Austrian and Czech law. Moreover, the draft enables the submission of a bankruptcy application after confirmation by the creditor's auditor regarding the existence of a claim as well as a late submission of the application even until the schedule of proceeds is completed. The draft does not stipulate any particular date when it should come into force. As the legislative process is only just beginning, it may take at least several months to come into force (probably not before the end of 2008).

## **2 Commencement of bankruptcy proceedings**

Under the BRA, a company is obliged to file for bankruptcy when it is illiquid or over-indebted. Furthermore, the BRA stipulates that, if the debtor is in danger of insolvency, it is obliged without delay to take appropriate and adequate measures to avert insolvency. Whereas a creditor may file a bankruptcy petition, the debtor is obliged to file for bankruptcy within 30 days upon knowledge (or if he should have known) of impending financial collapse.

Upon filing of a duly bankruptcy petition and provision of an advance payment, the bankruptcy court may open the bankruptcy proceedings or dismiss the petition within 15 days. If the petition is filed by the debtor, the bankruptcy court may

- (i) issue a bankruptcy declaration and appoint a bankruptcy trustee
- (ii) appoint an interim bankruptcy trustee in case of doubts of sufficient funds
- (iii) cease the bankruptcy proceedings in case of lack of cost-covering funds,  
or
- (iv) issue a bankruptcy declaration

Effects connected with commencement of the proceeding are, among others, that the right to start or to continue with the enforcement of a secured claim towards the property of the debtor ceases to exist due to the commencement of bankruptcy proceedings. However, there are the following two exceptions:

- enforcement of a secured claim through a voluntary auction sale under the Voluntary Auction Code and
- enforcement of the following secured rights (i) related to financial means, specifically claims from an account in a domestic bank or in a branch of a foreign bank pursuant to the Banking Act, and (ii) related to government bonds and transferable security papers pursuant to the Act on Collective Investment.

## **3 Declaration of bankruptcy proceedings**

As a result of the formal opening of bankruptcy or restructuring proceedings by the court (i.e. bankruptcy declaration), the bankruptcy trustee automatically assumes the administration of the debtor's estate. Such creditors who have duly filed their bankruptcy claims participate in the bankruptcy proceedings. Furthermore, the declaration of bankruptcy has the following effects: Court and other proceedings with

regard to the bankrupt's assets are automatically suspended. Such proceedings may be commenced upon petition of the trustee, by filing a petition against the trustee or ex officio by the relevant authority<sup>236</sup>. In addition, with regard to debts against the debtor, no enforcement of judgment may be ordered, no judgment may be enforced and no compulsory execution concerning the bankrupt's assets may be carried out, nor may rights to separate satisfaction be acquired over such assets (regarding the latter, there is only one exemption: a charge (mortgage/pledge) over future assets may arise under the conditions set out in the BRA). If, during the proceedings concerning enforcement of the judgment or compulsory execution as mentioned above, the property of the debtor has already been disposed of and the proceeds have not yet been released to the entitled party, such proceeds become part of the bankruptcy estate. Finally, with the declaration of bankruptcy the debtor becomes a bankrupt debtor.

In general, after the bankruptcy declaration, the necessary written documents issued by the court are served by publishing them in the Commercial Bulletin of the Slovak Republic (*Obchodný Vestník*). During bankruptcy proceedings, the following notices may be given to the creditors by the court:

- decision on commencement of bankruptcy proceedings;
- proof of debtor's solvency measures;
- resolution of the commencement of the procedure or
- call of the creditors' assembly and the creditors' committee.

In the decision on the declaration of bankruptcy proceedings, the creditors are requested by the court to submit a notification of their claims within 45 days specifying the amount of their claim, the legal grounds for their claim and whether their claim is secured. The notice must include a warning that no consideration will be given to those claims that are not proven by the creditors. The creditor is responsible for any inaccuracy in his or her claims. Furthermore, the creditors claiming debts that are disputed as to their existence, amount or priority may demand acknowledgment of their rights within the time period specified by the court. If the trustee finds out that a claim is, for example, to its existence, enforcement or an amount disputable, the trustee is obliged to disallow such claim.

Under the BRA, it is allowed to assign duly registered bankruptcy claims to a third party after the bankruptcy order has been obtained. However, the third party only becomes a party to the bankruptcy proceeding after the court is notified of the assignment and has approved it.

## **4 Position of secured creditors**

### **a General remarks**

The BRA recognizes secured and unsecured claims, but generally does not recognize preferred, privileged or other priority claims. The fixed fee of the trustee and reimbursement of his or her expenses can be regarded as the only to some extent recognized "privileged" claim, as it is settled before all other claims against the bankruptcy asset.

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<sup>236</sup> However, this does not concern tax administration proceedings, customs proceedings, criminal proceedings as well as alimony trials are not suspended by bankruptcy proceedings.

Secured claims are all claims, which are secured by collateral rights and are settled prior to the claims of unsecured creditors. Secured creditors have a preferential right with respect to proceeds from the sale of the assets on which they are secured. These proceeds will be reduced by the costs of the administration and enforcement of the security. The bankruptcy trustee is in charge of selling assets of the bankrupt entity, which have been posted as security. The bankruptcy trustee must prepare distribution of the proceeds without delay once one quarter of the secured assets have been sold and once all legal proceedings with respect to the secured assets have been terminated (scheme of distribution of the proceeds). The secured creditor must approve the distribution scheme within 30 days. If the secured creditor approves the scheme, the trustee, without delay, reimburses the secured creditor. If the secured creditor objects to the scheme, the trustee may either adopt the scheme according to the objections or request the court to decide.

Unsecured claims are claims, which are not protected by any collateral rights.

Claims against the bankruptcy estate are, *inter alia*, claims, which were raised after the bankruptcy order was issued in connection with administration of the liquidation of the bankruptcy estate, alimony for infants, reimbursement of the trustee, taxes, fees, customs duties and further claims as defined in the BRA.

Under the BRA, the former rule, that mortgages and charges over the property belonging to the bankruptcy estate that were established within two months prior to the date the petition for bankruptcy was filed will cease to exist, is no longer valid. Unlike in the old bankruptcy regime, enforcement of an execution title against the property that is the subject of the bankruptcy proceedings becomes impossible.

#### **b Order for satisfaction**

According to the BRA, creditors may apply their claims through a bankruptcy application. Such application shall be, according to Article 28 (5) of the BRA, filed within 45 days from the declaration of bankruptcy. Please note that according to Article 32 (1) of the BRA, bankruptcy is considered as declared (opened) once the court's decision on declaration is published in the Commercial Bulletin issued by the Ministry of Justice of the Slovak Republic (see also IV.K.3 above).

In connection with the application of claims in bankruptcy proceedings, it is important to distinguish between the:

- (i) creditors that filed the bankruptcy petition against debtor; and
- (ii) creditors that did not file the petition and applied their claim in bankruptcy proceedings.

In particular, creditors that filed the bankruptcy petition against the debtor and their filings were accepted by the court are notified directly by the court once the court formally opens (declares) bankruptcy proceedings against the debtor. Consequently, the court shall, according to Article 22 (2) of the BRA, publish the bankruptcy declaration in the Commercial Bulletin without delay. Therefore, these creditors are well and timeously informed on the bankruptcy declaration and have

enough time to file their applications within the prescribed period of 45 days as defined above.

On the other hand, creditors that did not file the petition and therefore are not participants in bankruptcy proceedings yet, may learn of the bankruptcy declaration only according to its publication in the Commercial Bulletin. Thus, such creditors have to regularly check any potential bankruptcy declarations in the Commercial Bulletin in order to meet the 45-day period for the submission of their applications. Otherwise, missing this period disqualifies such creditors under Article 28 (1) of the BRA to apply their claims later in bankruptcy proceedings and even to be settled within bankruptcy proceedings.

Assuming that the creditor has its claim secured by collateral rights registered with the official registers such as the Real estate Register (i.e. mortgage to real estate) or the Charges Registry (i.e. pledge to moveable assets), then the creditor is considered under Article 28 (2) and Article 50 of the BRA as a secured creditor. In accordance with the Bankruptcy Act the mortgage (Article 8) is one of the secured rights. Therefore the claims of a secured creditor will be settled directly from the proceeds from the sale of the assets, which is subject to the aforementioned collateral rights (i.e. separate estate).

If there are more creditors registered as pledgees/mortgagees with the respective register in relation to the specific separate estate and they have applied their claims via bankruptcy application, under Article 69 of the BRA it follows that the decisive point for the rank of their settlement is the order of their registration with such registers. Therefore, secured creditors whose claims are registered first in such registers are treated preferentially within the settlement from the sales proceeds of the separate estate.

After settlement of the preferred secured creditor's claim there may still be, under Article 70 of the BRA, (i) some unsold separate estate; (ii) some undistributed proceeds from the sold separate estate; or (iii) both unsold separate estate as well as undistributed proceeds that exceed the claim of the settled creditor (i.e. preferred creditor remaining). In these cases, claims of secured creditors lower in the order are settled from these remaining undistributed proceeds/unsold separate estate. Otherwise such unsold assets/undistributed proceeds will be transferred to the general estate from which the claims of unsecured creditors will be settled.

Finally, if it was not possible to settle the claim of the secured creditor in its full extent, the rest of its claim shall be settled as an unsecured claim from the general estate.

## **5 Challengeable legal transactions**

The bankruptcy trustee (or, exceptionally, a creditor who has filed its claim in the bankruptcy proceedings) may challenge certain legal acts of the debtor within 6 months from the bankruptcy declaration, if these legal acts put the creditors at a disadvantage, or occurred without adequate consideration, or favoured a creditor unduly, or were disadvantageous for the creditors. "Suspect periods" are between one and five years. Furthermore, there is a potential risk resulting from the bankruptcy trustee's statutory power to rescind onerous agreements under which none of the

parties has fulfilled all its obligations, as well as to terminate certain continuing obligations.

Finally, in the case of actions made after the termination of bankruptcy proceedings, if within 6 months of such termination, other bankruptcy proceedings are opened, all legal actions of the debtor may be challenged.

If the action was annulled regarding an asset, a right or another tangible value transferred from the debtor's assets, either this asset, right or other tangible value must be returned to the bankruptcy estate or the opposed entities are obliged to provide indemnity in cash on a joint and several basis.

## **L Extinguishment of the mortgage**

The extinguishment of a mortgage is regulated in Article 151md par. 1 lit. a) through i) of the Civil Code. As this is only an exemplary list, there are also other methods how a charge could cease to exist. Furthermore, the mortgage must be formally deleted from the Real Estate Register based on a decision by the competent cadastral administrative office of the cadastral authority of the relevant locality.

Pursuant to Article 151md par. 1 lit. a) through i) of the Civil Code, a mortgage extinguishes, if:

- the secured claim extinguishes
- the chargeholder waives the charge
- the charge was established only for a limited period of time, and the period has expired
- the chargor has sold the charged asset and the charge agreement permitted a transfer free of the charge
- the enforcement of the charge is exercised in accordance with the charge agreement or other special provisions (for instance, if parties require certain conditions to be fulfilled for the enforcement of the mortgage and these are laid down in the mortgage agreement or a special law stipulates so)
- the charge has been exercised, regardless of the satisfaction of the secured creditor<sup>237</sup> (the following applies in the case the first ranked creditor performs enforcement of the mortgage and the proceeds will not be sufficient in order to satisfy all of the lower ranked creditors. Regardless of this, the mortgage will be considered as extinguished).

Finally, the Charge Reform 2003 introduced an exemption to Article 584 of the Civil Code, according to which the obligation and the claim cease to exist when the debt and the claim merge within one entity<sup>238</sup>. Consequently, where a charge over receivables is created, such charge will not extinguish in the case the claim

<sup>237</sup> Please note that Article 151md par. 6 lit. i) of the Civil Code has been introduced only recently by Amendment 2008 Coll. which is effective as of 1 January 2008.

<sup>238</sup> *Fekete*, Civil Code – Commentary, explanations to Article 151mc of the Civil Code, p. 379.

and the debt merge. This is of great importance in the case the bank creates a charge over receivables to its bank account.

As an accessory right, the charge shall generally become extinguished at the time the claim is extinguished, specifically, when it is satisfied. In certain cases, the law stipulates that in the case the original secured claim extinguishes, the charge automatically secures the new claim. This will be the case in the event of a novation or where the debtor or the creditor changes (Articles 516 and following of the Civil Code).

Unless otherwise provided, should the collateral (all assets or rights charged to a secured claim) cease to exist, the charge established to secure the claim also extinguishes by law. For example, if a mortgage is given over a building, the mortgage extinguishes once the building is destroyed (for instance, by fire). It is to be noted that even if the mortgaged asset is destroyed, regardless of this the mortgage will cover the claim for insurance, unless agreed in the mortgage agreement. Consequently, in practice the bank in the mortgage agreement requires from a mortgagor to keep the real estate insured by renowned insurance companies and to have this approved in writing by the mortgagee against damage and destruction of the asset, losses and damage caused by insured events (at least by fire, floods, earthquake and other natural disasters), or generally by means and in the scope common for assets similar to the immovable assets. Furthermore, according to the mortgage agreement the mortgagor is obliged to notify the insurance company of the fact that a mortgage has been established over the real estate and also about the mortgagee as well as to make sure that the insurance company will sign such a notification expressing their consent with its content and deliver it without undue delay to the mortgagee. The Real Estate Register takes note of this fact by entering an annotation (*záznam*). The annotation only has a declaratory effect.

The charge agreement should therefore provide a clear statement on what should happen in the case the collateral would be damaged or destroyed. In addition, special care in the drafting of the charge agreement is required in the case the charged asset may be processed into or merged with another asset. As in such case, the original asset ceases and a new asset arises, the charge over the asset will cease to exist as well.

By paying the value of the charged real estate to the secured creditor, who is obliged to accept this payment, the mortgage is also extinguished<sup>239</sup>. Subsequently, the cadastre office deletes the mortgage based on the confirmation of the chargeholder on the payment of the value of the real estate ("*kvitancia*"). 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. As the mortgage is already extinguished by operation of law, the deletion in the Real Estate 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. A confirmation on the deposit of an amount to the

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239 *Fekete*, Civil Code – Commentary, explanations to Article 151ma of the Civil Code, p. 378.

value of the real estate with the court must be attached to the application for deletion of the mortgage in the Real Estate Register.

A possible reason for deletion of the mortgage can be the creditor's waiver of the mortgage. However, such waiver requires the form of a notarial deed, which serves as the basis for the deletion.

If the mortgage was limited in time in the charge agreement, it extinguishes when the time expires. In this case, as well, the substantively deleted mortgage must be deleted formally in the Real Estate Register.

Finally, a charge can also be terminated by agreement of the chargeholder and the chargor.

After the charge has ceased to exist, the chargeholder must apply for its deletion in the Pledge Register with undue delay. The deletion in the Pledge Register requires a fee of 500 SKK.

## **M Object of a charge other than immovable assets**

### **1 Charge over movable assets**

Movable assets can be charged by handing the asset over to the secured creditor or by registration in the Pledge Register. Due to the possibility of the debtor using the asset commercially, the entry into the Pledge Register is the most popular form.

The following forms of delivery are possible for possessory charges:

- The asset is physically handed over to the chargeholder (possessory charge). The chargor is not permitted to possess the asset (not even as warehouse keeper or custodian); however, a contractual agreement on the use of the charged asset by the chargeholder is considered permissible.
- An alternative is to create the charge by defining it in a deed, which certifies the chargor's ownership of the asset. This deed is a requirement for being able to effectively dispose of the asset.
- The chargeholder and the chargor can also agree to hand over the asset to a third party, for instance, a trustee, who is to hold it in safekeeping.

This type of possessory charge does not require a written charge agreement. However, it can be entered into the Pledge Register voluntarily at any time. However, according to Article 151e par. 5 of the Civil Code in such case, a written confirmation on the content of the agreement must be drawn up and signed by both parties.

Finally, it is to be noted that this type of registration is recommended, because the Slovak legislator always "prefers" the registered charges. This is illustrated particularly well in the case, where satisfaction of several charges over one charged object takes place according to their order or ranking in the Pledge Register.

## **2 Charge over receivables (including the charge over bank accounts)**

### **a General**

A charge over receivables has to be established by written agreement between the secured creditor and the chargor having another claim. The agreement specifies the secured debt and the charged receivables, and must for its perfection, be recorded in the Pledge Register. The charge over receivables covers interest and any other accessories (Article 151mb par. 1 of the Civil Code).

Until (i) either the chargor announces the establishment of the charge to the debtor (*poddlžník*) or (ii) the secured creditor proves the establishment of the charge to the debtor (by the way of a submission of the charge establishment certificate, which is issued by a notary public; see Article 151mb par. 2 of the Civil Code), the debtor may discharge the debt through payment to the original creditor.

After the debtor has been notified of the charge, the debtor is obliged to make all payments to the secured creditor only. The secured creditor may retain the respective amounts until the secured claim is overdue. At such time, if the secured claim is not paid, the secured creditor is entitled to acquire ownership of the received amounts, up to the amount of the overdue secured claim.

If the third party is identical to the chargor, the secured debtor may satisfy its claim for repayment of, for instance, a loan granted from the account maintained by the debtor with the bank.<sup>240</sup>

### **b Charge over receivables from a bank account**

Article 151me of the Civil Code has been amended by Act No. 336/2005 Coll. and is effective from 1 August 2005. It regulates a charge over receivables from an account, deposit or other form of deposit between persons listed in its paragraph 8. From that time, the Civil Code has its autonomous regulation and does not need to refer to subsidiary application of Act No. 566/2001 Coll. on Securities<sup>241</sup>.

There are a few differences between the general regulation of the creation of charges and the creation of charges over receivables from a bank account. These are, for instance<sup>242</sup>:

The charge related to the claim is created by the conclusion of an agreement on the establishment of a charge over receivables from an account or other form of deposit. It is not necessary to register this right in the Pledge Register (Article 151e par. 1 of the Civil Code). On the other hand, if this right is registered, it has priority in the case of enforcement of the charge (see Article 151me par. 2 of the Civil Code).

<sup>240</sup> *Svoboda a kol.*, Občiansky Zákonník – komentár, Article 151a.

<sup>241</sup> Article 151me of the Civil Code was introduced together with the new provisions Articles 53a through 53d of the Securities Act, by which the Directive 2002/47/EC on Financial Collateral Arrangements was introduced into Slovak law.

<sup>242</sup> More details you can find in *Fekete*, Civil Code – Commentary, explanations to Article 151j and Article 151me of the Civil Code, p. 369 and on as well as 385 and on.

The written form of the charge agreement over receivables from an account or other form of deposit is not required (compared to general regulation in Article 151b par. 1 of the Civil Code).

In case of concurrence of charges related to claims from an account, the date of their creation (i.e., the date of the conclusion of the contract on the establishment of the charge) is relevant for the determination of their order of satisfaction (Article 151k of the Civil Code).

In paragraph 3 of Article 151me of the Civil Code, the specific regime of the enforcement of such charge over claims from the account is defined. With respect to the concrete method, the content of the charge agreement will be decisive. If there is no special agreement, the reference to the provisions of the Civil Code regarding enforcement of charges applies (see Article 151j and on of the Civil Code). Under the law, application of the provisions of the second sentence of Article 151me par. 3 of the Civil Code is excluded. This means that:

- the secured creditor is not obliged to notify the chargor or the debtor of the commencement of the execution of the charge (Article 151l par. 1 of the Civil Code),
- Article 151m par. 1 and 2 of the Civil Code regarding the sale of the charged asset in an auction does not apply,
- provisions on informing the chargor about change of the method of the enforcement of the charge do not apply (Article 151m par. 3, last sentence of the Civil Code),
- provisions on the process of the execution of the charge do not apply (Article 151m par. 9 of the Civil Code).

The enforcement of a charge over a claim from the account is also the settlement against the secured claim or using the security for the satisfaction of the secured claim, but only if this has been agreed upon in the charge agreement. For the settlement, the subsidiary application of set-off provisions of Article 580 and on of the Civil Code is to be used.

In paragraphs 6 and 7 of Article 151me of the Civil Code, a specific regime of the enforcement of the charge over a claim is defined. This applies if the secured creditor has disposed of the security before the execution of the charge. In this case, the secured creditor is obliged at the latest by the last day of maturity of the secured claim to provide in the name of the chargor and at its own cost an equivalent security. For the satisfaction of the charge related to the equivalent security, the same provisions as concerning the original security are to be applied. The secured creditor can, under the provision of Article 151 me par. 4 of the Civil Code, also settle the equivalent security against the secured claim or use the equivalent security for the settlement of the secured claim.

It shall not be forgotten that Article 151 me of the Civil Code applies only to the subjects enumerated in its paragraph 8. Therefore, this special regime only applies, if the following parties concluded the charge agreement:

- public authority bodies of a member state of the European Union or other states being parties to the Agreement on the European Economic Area,
- the National Bank of the Slovak Republic or central bank of another state, European Central Bank, International Monetary Fund, European Investment Bank, international development bank and Bank for International Settlements,
- bank, foreign bank, securities trader, foreign securities trader, insurance company, foreign insurance company, insurance company from another member state, administration company, foreign administration company, electronic money institution, collective investment institution and foreign collective investment institution,
- persons other than persons pursuant to lit. c) being a subject to circumspect monitoring, that within the frame of its business activities performs as one of the main subjects of business some of the activities, which pursuant to specific provisions may be carried out by a bank, as well as a person having his/her domicile abroad with similar subjects of business activities,
- other person than person pursuant to lit. c) being a subject to circumspect monitoring, the main business activities' subject of which is acquisition of property shares pursuant to specific provision, as well as a person with its domicile abroad with a similar subject of business activities,
- central securities depository, provider of the system of payment, business agent, clearing institution, joint representative of debentures or other debit security papers, as well as a person with his/her domicile abroad with a similar subject of business activities including a person having as its subject of business activities accounting and the settlement of market with investment items or performance of the activities of the central adverse party, even if it is not a foreign central depository.

### **3 Establishment and enforcement of charges over shares**

Charges over shares (i.e. securities in a joint stock company under the Securities Act and business shares in a limited liability company – s.r.o.) are created by written agreement, which again has to specify (i) the secured claim and (ii) the shares, which are to be charged. The charge over shares is perfected through registration, either with the Commercial Register (in case of a s.r.o.) or at the Central Securities Depository (if the shares in an a.s. are charged).

Registration at the Commercial Register can normally be effected within 5 business days whereby a fee of 2,000 SKK has to be paid. The application for registration of the charge over a business share can be filed either by the secured creditor or by the chargor.

Registration with the Securities Depository can be done within 1 business day, triggering a fee in the amount of 0.1% of the secured debt (capped at 15,000 SKK).

**a Charge over securities**

The charge over securities is stipulated in Articles 44 through 52 of the Securities Act, with the provisions of the Civil Code and the Commercial Code applying accordingly. A security is a specific asset. A security has either the form of a security certificate, and in those cases defined by law; these security certificates may be registered (de-materialized securities) in the securities register maintained by the Central Securities Depository (this is a legal entity empowered to keep the register of securities). A prerequisite for charging of securities is that their transferability to third persons is not restricted.

Since under Slovak law, securities may not be sold by public auction, a charge of shares in a joint stock company may not be enforced through sale in an out of court voluntary auction. Therefore, enforcement in accordance with the terms agreed in the charge agreement is admissible, as well as enforcement through the executor. In the latter case, the executor has to use a securities dealer to sell the shares.

**b Charge of participant interests in limited liability companies**

The charge over a business share in a limited liability company is regulated in Article 117a par. 1 through par. 5 of the Commercial Code.<sup>243</sup> As already mentioned, the charge over a business share is established by a written charge agreement, with the requirement that a notary public must authenticate the signatures of both contractual parties.

Generally, the charge can be enforced through any of the proceedings outlined in J. above. Importantly, the establishment of a charge over the company's shares may be subject to limitations contained in the company's memorandum of association<sup>244</sup>. If for example the transfer of shares is prohibited or made subject to the company's consent, the establishment of the charge would likewise be prohibited or accordingly restricted. Such limitations, however, do not apply where an executive charge has been created.

These requirements must be complied with at the time the shares are charged. Otherwise such charge would lack validity. On the other hand, the later transfer of such a charged business share within the process of enforcement does not require any further conditions to be fulfilled.

During the life of the charge, the shareholder having charged its business share continues to exercise all rights relating to its share held in the company.

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243 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.

244 Civil Code Act No. 40/1964 Coll. – Commentary, IURA EDITION (updated version), remark to Article 151b, 266e.

## V Explanation of terms

Amendment 2008	Act No. 568/2007 Coll. which came into effect on 1 January 2008
Annotation	An entry in the Real Estate Register indicating that the power of disposal of the owner of the real estate either is restricted or otherwise serves as information on the rights to the real estate
Cadastre Act	Act No. 162/1995 Coll. on the Real Estate Register and Registration of Ownership Titles and Other Rights to Real Estate as amended
Cadastral authority	The authority responsible for maintaining and updating the Real Estate Register
Cadastral documentation	All documents necessary for the administration of the Real Estate Register and for the renewal of cadastral documentation
Cadastre office	The relevant authority on the territory of which the real estate is situated and which is competent for the cadastral procedure regarding this real estate
Cadastre portal	A database including data regarding real estate which serves only informative purposes
Caution	An entry indicating that certain changes regarding the legal status of a real estate are taking place
Charge	Right <i>in rem</i> in an immovable (mortgage) or movable (pledge) asset to secure payment of a claim
Charge Reform 2003	New security law regulation in force since 1 January 2003
Charge agreement	An agreement by which a charge is established
Charged assets (or Collateral)	Assets over which a charge is established
Chargeholder (or creditor)	A person to whose benefit a charge is established to secure payment of his claim
Pledge Register	The central register of charges maintained by the Slovak Chamber of Notaries
Chargor	A person who provides a charge to secure payment of another person's claim
Collateral (or charged asset)	Assets over which a charge is established
Enforcement	Proceedings by which the rights of the chargeholder are enforced
GBTC	General Business Terms and Conditions of a bank

Land books	Historical documentation which serves as a source of data on the cadastral districts, on parcels, on owners and on rights to the real estates
Mortgage	A right in an immovable asset to secure payment of a claim or right in an asset other than immovable asset (real estate)
Specific mortgage loan	A loan governed by the Banking Act with a maturity of at least four years and a maximum of thirty years, secured by the mortgage established upon a domestic real estate (provided within a mortgage banking transaction of a specific mortgage bank)
Non-possessory charge	A charge to movable assets of which the charger still holds possession
Ownership certificate	A public document including information on the owner of a real estate, on the real estate itself as well as on liens connected to the real estate concerned
Possessor charge	A charge to movable assets of which the chargeholder will take possession
Priority notice	An entry in the Real Estate Register that serves to register rights to real estate that have been created, changed or deleted by certain legal grounds
Railway books	Historical documentation which serves as a source of data on the cadastral districts, on parcels, on owners and on rights to the real estates
Registry charge	A right in movable assets, rights and other valuable property being recorded in the Pledge Register
Real estate	Certain immovable assets as, for instance, land, buildings, residential or non-residential premises
Real Estate Register	A register where real estate are recorded
Secured claim	The chargeholder's claim which is secured by a charge
Special Register	A register where certain types of assets are recorded

## VI Annexes

### Exhibit ./A: Extract from the Commercial Register

List of excerpts No. B – 1111/07
<b>EXTRACT FROM THE COMMERCIAL REGISTER of the District Court Bratislava I</b>
Section: <b>Sro</b> File No.: 1111/B
<b>I. BUSINESS NAME:</b>  xxxx SLOVAKIA, s.r.o.
<b>II. SEAT:</b>  <b>Name of the street (other public space) and number:</b> Xxxx/xxxx <b>Name of the town:</b> Senec <b>ZIP Code:</b> 903 01
<b>III. IDENTIFICATION NUMBER:</b>
<b>IV. INCORPORATION DATE:</b> 1 October 2000
<b>V. LEGAL FORM:</b> Limited Liability Company
<b>VI. SCOPE OF BUSINESS ACTIVITIES:</b> 1. Production and sale of polyurethane foam products, 2. Purchase of goods for the purposes of resale to other operators of trade (wholesale), 3. Purchase of goods for the purposes of resale to end users (retail), 4. Business consulting in the scope of free trade, 5. Agency activities in the scope of free trade
<b>VII. STATUTORY BODY: DIRECTORS</b>
<b>Name and Surname:</b> <b>Residing:</b> <b>Name of the street (other public space) and number:</b> <b>Town:</b> <b>Post Code:</b> <b>State:</b> <b>Date of birth:</b> 1 January 1971
<b>Position commenced on:</b> 10 July 2005
<b>Name and Surname:</b> <b>Residing:</b> <b>Name of the street (other public space) and number:</b> <b>Town:</b> <b>Post Code</b> <b>State:</b> <b>Date of birth:</b> 3 June 1935

**Position Commenced on:** 13 July 2005

**Acting of the statutory body on behalf of the Limited Liability Company:**

In relation to third persons, each of the directors is authorised to act on behalf of the company individually. The signing of documents on behalf of the company is made by attaching the authentic signature of the director under the written or printed business name of the company.

**VIII. SHAREHOLDERS**

**Business name:**

Xxx INTERNATIONAL LIMITED

**Seat:**

**Name of the street (other public space) and number:**

**Town:**

**Post Code:**

**State:**

**Amount of contribution:** SKK 100,000,000

**Extent of paid-up contribution:** SKK 100,000,000

**IX. AMOUNT OF BASE CAPITAL:**

SKK 100,000,000

**X. EXTENT OF PAID-UP BASIC CAPITAL:**

SKK 100,000,000

**FURTHER LEGAL FACTS:**

**XI. OTHER FURTHER LEGAL FACTS:**

1. The limited liability company was founded by the Foundation Deed dated 20 August 2000 according to Articles 105-153 of the Commercial Code.
2. Increase of the basic capital by SKK 1,000,000 following the decision of the single shareholder on 1 January 2005.
3. Resolution on the increase of the basic capital from SKK to SKK on.
4. Decision of the single shareholder on 8 June 2006 on the increase of the basic capital.
5. Decision of the single shareholder on 1 September 2007.

Bratislava I, 30 September 2007

The accuracy of this excerpt is confirmed

For the accuracy of this excerpt: XXX

*unreadable signature*

*Seal of the District Court Bratislava I*

.....  
(signature of the authorised person)

.....  
(official seal)

## Exhibit ./B: Application for Registration with the Pledge Register

<b>Application for Registration with the Pledge Register</b>	
The Mortgagor:	
Name:	<b>XXX SLOVAKIA, s.r.o.</b>
Address:	XXX, Bratislava, Slovak republic
Identification No.:	
The Mortgagee:	
Name:	<b>XXX Bank AG</b>
Address:	Vienna, Austria
Identification No.:	
SECURED CLAIMS:	
Type:	monetary claims
Description:	<p>any monetary claims of the Mortgagee along with the accessories against XXX SLOVAKIA, s.r.o., which have arisen or will arise, including, without limitation, the claim resulting from the Credit Contract along with accessories, the claim along with accessories that shall be created as a consequence or in connection with the termination of the Credit Contract by means other than fulfilment, revocation or notice, the claim along with accessories for the recovery of unjust enrichment that will be created or has been created by the Mortgagee's performance to the Mortgagor without legal title, by void legal act or upon a seceded legal act, and claims for payment of the expenses in accordance with this Contract and other monetary performances of the Mortgagor upon the Credit Contract, this Contract and all other contracts that have been or will be concluded between the Mortgagee and the Mortgagor, as well as the claim, that will be created upon change of the legal relationship from the Credit Contract or by replacement of the original obligation from the Credit Contract by a new obligation, i.e. by novation of the legal relationship from the Credit Contract</p> <p>up to the maximum amount of the principal pledged of EUR [●] (in words [●] euro) (all of these above mentioned cases or each of these cases shall hereinafter be referred to as "<b>Secured Claims</b>").</p>
Maximum amount of the secured principal:	EUR [●] (in words[●] euro)
Currency:	Euro
Final maturity:	31.12.2015
Security	
Category:	claims and rights
Description:	Future Secured Real Estates in terms of the definition stated in Article III par. 2 of the Mortgage Contract
Share in the security:	100% of the amount

## Exhibit ./C: Extract from the Real Estate Register

[Stamp: Cadastre Administration of the Capital of the Slovak Republic Bratislava, office Vajanskeho nabr. 10, 811 02 Bratislava 1]

Cadastre Office in Bratislava  
Cadastre Administration for the Capital of the SR Bratislava I

### EXTRACT FROM THE CADASTRE

District:	Bratislava I	Date of issue:	October 11, 2004
Municipality:	BA – city district STARE MESTO	Time of issue:	14:18:10
Cadastre area:	STARE MESTO		

### EXTRACT from the Ownership DEED No. 6382 – partial

#### SECTION A: ASSETS

#### PLOTS of the register “C” registered on the cadastral map

Plot No.	Area in m <sup>2</sup>	Type of land	Characteristics	Part of UDA	Legal Relationship	RD No.
10160/4	852	Built-up areas and courtyards	704	1		85

Legend:

Part of the UDA – part of the urban development area  
1 – the land is part of the urban development area

#### Buildings

Conscription No.	Other data	Plot No.	Type of building	Description of building	Other data
4106		10160/4	500	HOUSE	

Legend:

Characteristics 500 – Residence (except for family houses) – Building with a conscription number

#### Apartments and Non-residential Premises

#### SECTION B : OWNERS

Serial No.	Surname and given name (name) and residence (seat) of the owner
Entrance:	Apartment No.: 10 Ratio of the surface over the surface of common parts and common facilities of the house and co-ownership share to the land: 499/10000 16 P. M. Ing., Karadzicova 35 Date of birth: October 10, 1950 Co-ownership share: 1/1

Title of acquisition:  
16, V-3111/99 dated May 1, 2000

\* \* \* Other PREMISES Not Requested \* \* \*

## SECTION C: BURDENS

Incr. No.: 16

Mortgage over the apartment 10/1 under 16 in favour of the Capital of SR Bratislava for the outstanding portion of the price of the apartment and land until September 1, 2018, according to V-3111/99 dated May 1, 2000

---

**\* \* \* Other Burdens Not Requested \* \* \***

---

Other data:

---

No entry.

---

This deed is an unofficial deed  
and may not be used for legal purposes.

[*stamp of 100,- SKK*]

[Stamp: Cadastre Administration for the Capital of the Slovak Republic Bratislava, office  
Vajanskeho nabr. 10,  
811 02 Bratislava 1]

Order: 8956/04  
Issued by: xxxx  
(*illegible signature*)

## Exhibit ./D: Application for incorporation of a mortgage with the Real Estate Register

<b>Application for Incorporation of a Mortgage with the Real Estate Register</b>	
<b>APPLICANT:</b>	
Name:	<b>xxx SLOVAKIA, s.r.o.</b>
Address	xxxx, Bratislava, Slovak republic
Identification number:	xx xxx xxx
Name:	<b>xxxx Bank xxxx AG</b>
Address:	xxx, Vienna, Austria
Identification number:	xxxxx
<b>ADDRESSEE:</b>	
Cadastral Office in Trnava	
Cadastral Administration in Piešťany	
Cadastral Area Piešťany	
Krajinská 13, 921 01 Piešťany	
In	on DD.MM.YYYY
<b>SUBJECT: APPLICATION FOR APPROVAL FOR THE INCORPORATION OF A MORTGAGE WITH THE REAL ESTATE REGISTER</b>	
1. The following contractual parties:	
(a) xxx Slovakia, s.r.o., a limited liability company duly established and existing pursuant to Slovak law, seated at xxx, Bratislava, Slovak republic, Identification number: XX XXX XXX, registered in the Companies Register of the District Court Bratislava I., Section: Sro, Insertion: 31111/B, hereinafter referred to as <b>“the Mortgagor”</b> , and	
(b) xxx Bank xxx AG, joint stock company duly established and existing pursuant to Austrian law, seated at xxx, Vienna, Austria, registered in the Companies Register of the Commercial Court Vienna under the No. xxxxx, hereinafter referred to as <b>“the Mortgagee”</b> ;	
have on DD.MM.YYYY concluded the Mortgage Contract (hereinafter referred to as <b>“the Mortgage Contract”</b> ).	
2. The Mortgage Contract was inter alia concluded in order to establish a mortgage to real estates stated in subsection 5 (hereinafter referred to as <b>“the Real Estates”</b> ) in favour of the Mortgagee (hereinafter referred to as <b>“the Mortgage”</b> ) for securing all the claims of the Mortgagee with accessories, that are being established or will be established, including, without limitation, the claim resulting from the Credit Contract along with accessories, the claim along with accessories that shall be created as a consequence or in connection with the termination of the Credit Contract by means other than fulfilment, revocation or notice, the claim along with accessories for the recovery of unjust enrichment that will be created or has been created by the Mortgagee’s performance to the Mortgagor without legal title, by void legal act or upon a seceded legal act, and claims for payment of the expenses in accordance with this Contract and other monetary performances of the Mortgagor upon the Credit Contract, this Contract and all other contracts that have been or will be concluded between the Mortgagee and the Mortgagor, as well as the claim, that will be created upon change of the legal relationship from the Credit Contract or by replacement of the original	

obligation from the Credit Contract by a new obligation, i.e. by novation of the legal relationship from the Credit Contract up to the maximum amount of the principal pledged of EUR [●] (in words [●] euro) (all of these above mentioned cases or each of these cases shall hereinafter be referred to as “Secured Claims”).

3. The Mortgagor proclaims that (i) it is the sole and exclusive owner of the Real Estates, (ii) it has acquired these upon valid and due legal title, and (iii) it is capable and entitled to establish the Mortgage. The Mortgagor further proclaims that (iv) the secured Real Estates are not encumbered by the rights of third persons.
4. The Mortgagor and the Mortgagee proclaim that their contractual freedom is not restricted.
5. The Mortgagor and the Mortgagee suggest that the Cadastral Office in Trnava, Cadastral Administration Piešťany, Cadastral Area Piešťany decides upon the Mortgage Contract and permits the incorporation of the Mortgage and enters in section C of the ownership certificate No. 1111 (except for the encumbrance entered in the section C in the following way: Encumbrances: V 111/99 – Obligation of the owner of the parcel No. 41111/1 to bear the placement of the underground cable of low current flow, cable guide (telephone cable) in favour of TRADE s.r.o. 1 (Identification No.: 1) in the extent marked in the geometric plan G.P. executed by the Cadastral Office in Trnava, Cadastral Administration Piešťany the following information:  
For securing of a due, complete and timely payment of the claims from the Credit Contract up to the maximum amount of the principal pledged of EUR [●] (in words [●] euro) and accessories towards xxx SLOVAKIA, s.r.o., seated at xxx, Bratislava, Slovak Republic, Identification No.: xx xxx xx, which have arisen or will arise in connection with the Credit Contract, the Mortgage Contract or any other financial documents, a Mortgage in favour of xxx Bank AG, seated at xxx, Vienna, Austria to the following real estates is being established:
  - plot with parcel No. 1234/1, plot type: built-up areas and courtyards, size 10.000 m<sup>2</sup>;
  - plot with parcel No. 2345/2, plot type: built-up areas and courtyards, size 150 m<sup>2</sup>; and
  - plot with parcel No. 3456/3, plot type: built-up areas and courtyards, size 100 m<sup>2</sup>.

#### **XXX SLOVAKIA, s.r.o. as the Mortgagor**

\_\_\_\_\_  
Name:

Position: Managing Director

#### **XXX Bank AG as the Mortgagee**

\_\_\_\_\_  
Name:

Position: upon power of attorney

Annexes: 5 x the Mortgage Contract;

Extract from the Commercial Register of the Mortgagor from;

Extract from the Commercial Register of the Mortgagee from;

Power of attorney dated [●]

Administrative fee in the amount of 8,000 SKK paid in fee stamps

## VII Abbreviations

<i>BCA</i>	Bankruptcy and Restructuring Act
<i>EIA</i>	Environmental Impact Assessment
<i>EU</i>	European Union
<i>EUR</i>	Euro
<i>GBTC</i>	General business terms and conditions
<i>i.e.</i>	id est
<i>lit.</i>	litera
<i>NBS</i>	National Bank of Slovakia
<i>No.</i>	number
<i>p.</i>	page
<i>par.</i>	paragraph
<i>ROEP</i>	Register obnovenia evidencie pozemkov
<i>SKK</i>	Slovak Crown (per 1 January 2009: 1 EUR corresponds to 30,126 SKK)
<i>SLF</i>	Slovak Land Fund
<i>SR</i>	Slovak Republic
<i>UCP</i>	Uniform Customs and Practice for Documentary Credits
<i>VAT</i>	Value added tax

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