

ABSTRACT

A CHARGE AS A SECURITY

Act No. 89/2012 Coll., the New Civil Code (the "New Civil Code") has been in effect since 1 January 2014. The New Civil Code has substantially changed Czech civil law in many respects, including the rules governing the grant and enforcement of asset security. The following paper analyzes, *inter alia*, the changes to these rules brought about by the New Civil Code, and in particular seeks to evaluate them from a practical perspective, utilizing standard interpretative methodologies, as well as interpretation *e ratione legis*, and comparative law.

Prior to adoption of the Act, rules governing security were unsatisfactorily derived from a number of legislative sources (Act No. 40/1964 Coll., the Civil Code, Act No. 513/1991 Coll., the Commercial Code and Act No. 591/1992 Coll., the Securities Act), and were relatively underdeveloped, such that some quite basic issues were left for the courts to decide. Both of these deficiencies have been addressed by the New Civil Code. The New Civil Code replaces the old Civil Code, the Commercial Code and the Securities Act, thus unifying the divergent rules on asset security, and develops these rules in greater detail.

The New Civil Code has introduced new legal concepts and instruments to the asset security framework under Czech law. These include: (1) Changes to basic principles of law concerning asset security; (2) The alteration of rules governing contracts; (3) A new definition of thing, with the result that new pledges are possible; (4) Changes in terminology; (5) The introduction of a concept of future security (i.e. security over assets that are not yet owned by the pledgor); (6) Negative pledge arrangements effective against all third persons if properly registered; (7) Less restrictive rules regarding pledge agreements; (8) New possibilities to change the ranking of security; (9) The possibility to agree on the private enforcement of a pledge (i.e., the right of the pledgee to sell, in accordance with a procedure agreed between the pledgee and the pledgor, the secured asset in a private sale, without having to resort to a licenced broker (in relation to listed shares), court or court bailiff); and (10) The possibility to register security over movables in the register of pledges.