Taking a charge is one of the most common and important forms of security well known since roman times in most national laws. Charge is indispensable legal institute in commercial practise. As with other types of security, its most important purpose from the creditor's point of view is to reduce credit risk and to gain priority over other creditors in the event that the debtor is declared insolvent or goes into liquidation. Charge provides the creditor with a proprietary interest in the asset, such as a charge, and hence is right *in rem* (i.e. *iura in re aliena,* relating to the property of others). A charge secures receivables and their accessories through the right of the chargee to satisfy itself by means of the charge in the event of the debtor's default. Right arising from *iura in re aliena* is proprietary right by way of security effective against third parties which attach to the asset, travelling with it into the hands of subsequent owners. These must be distinguished from pure contractual rights such as, for example, a guarantee which generally binds only the contracting parties.

This thesis describes both the current legal regulation of charge in the Czech law and the legal regulation of charge as it is proposed in the new Civil Code Bill bringing real revolution to the whole area of Czech private law. Moreover, this thesis includes comparison study of charge under the English law. Hence, there is a comparison of the legal systems of 2 very different jurisdictions: England and the Czech Republic. Firstly, it should of course be stated that the law in both countries belongs to 2 distinct legal traditions. Czech law, a civilian continental legal system belongs to the Roman-Germanic group in contrast with England, whose law falls to the common law system. Secondly, English law has a very long history compared with Czech law which is relatively young. However, neither English nor Czech charges are perfect. Attempts have been made lately to reform the English law of security as a consequence of recent problems and, in the Czech Republic, the new Civil Code Bill has been raised

in Parliament after 15 years of preparation. The English law has been chosen for comparison especially because of the fact that English law of secured credit is so favoured among the creditors for its wide contractual freedom and pro-creditor attitude. Therefore, English law is very often chosen by the parties to govern their contractual relationship.

This thesis describes both the current legal regulation of the charge under Czech law, as well as the prospective legal regulation of the charge proposed under the new Civil Code Bill, which is aimed at revolutionising the whole area of Czech private law. Furthermore, this thesis includes a comparative analysis of the charge, as regulated under English law; engaging thus in a comparison of two very different legal systems; those of England and the Czech Republic. Firstly, it should of course be stated, that the law in both countries is derived from two distinct legal traditions. Czech law, a civilian continental legal system, belongs to the Roman-Germanic legal tradition; in contrast to that of England, which forms part of the common law system. Secondly, English law has developed over the course of a very long period of time; something which is in complete contrast with Czech law. However, neither the regulation of charges under English, nor Czech law, is perfect. Attempts have recently been made to reform the English law of security interests as a consequence of recent problems; while in the Czech Republic, the new Civil Code Bill has been raised in Parliament after 15 years of preparation. English law has been chosen for this comparative analysis, as the English law of secured credit is favoured by creditors on account of the wide contractual freedoms it provides, and the pro-creditor ethos it embodies. It is for this reason that English law is also often chosen by parties to govern their contractual relationships.

An obvious question therefore arises: which of the described concepts is better? As secured finance is the essence of economic growth; the effective legal regulation of

charges is extremely important. At the same time, the unsustainable or inefficient regulation of charges impedes the ability of entrepreneurs to attain bank finance; or results in an increase in the cost of such finance; due to the transfer, to the chargee, of any increased risk incurred by the chargor.

When drawing up the legal framework regulating the charge, it is crucial that the chargee is provided with the ability to quickly and effectively enforce their security without being subject to excessive formal requirements. On the other hand, the chargor must be properly protected against any exploitative behaviour on the part of the chargee. Finding a balanced solution is therefore rather difficult, with different jurisdictions choosing various solutions in accordance with their policy preferences of the protection of debtors or the protection of creditors. The current regulation of charges in the Czech Republic is admittedly out-dated, extremely rigid, and detrimental to the interests of creditors. The most problematic aspect relates to the inability of the parties to agree on a manner of enforcement. Despite its aim of protecting debtor's interests, this procedure often fails to enable the best possible price to be achieved on enforcement, something which is detrimental to the interests of both parties. Furthermore, the assessed risk incurred by such inefficiencies is transferred to the debtor in the form of an increased cost of finance. A further issue relates to the inability of the current framework to regulate floating and future charges which are extremely important in corporate finance. The regulation of the encumbering of a single asset by multiple charges is furthermore insufficient.

All these problems are to be resolved by the new Civil Code. Furthermore, it introduces into Czech law, other advances in the form of negative pledges characterized as rights *in rem,* or the possibility of exchanging charges. The new legislation consists of up-to-date laws fully capable of competing with modern laws and must be warmly welcomed.

It is to further examine whether the charge is better under the current English law, or under the proposed Czech law. Reading through the legal academic literature, one might conclude that adherents to both the common law and civil law systems have each to some extent mythologised the other. There are many stereotypes and inaccuracies about civil law in English legal literature and visa versa; for instance, that civil law does not recognise a charge over future assets, or a floating charge in any event. It may be said that, after comparing major aspects of charges under both legal systems, one can reach a very surprising conclusion. Charges under Czech law, a typical civilian jurisdiction, and charges under English law, the flag ship of the common law system, are not considerably similar only as to the nature and main characteristic but even as to most of particular features of its regulation! This conclusion is of course subject to reservation as to registration and some aspects of the floating charge. But it deserves to be pointed out that it is precisely the areas of registration and floating charges which are in English law most under pressure for reform. If such reform is made as proposed, the similarities to the system of charges under both legal systems will be even more pronounced.

One may be curious as to the reasons for this unexpected similarity. In the first place, it may be the influence of globalisation which enables closer contact of various legal systems effectively allowing the copying of the most efficient legal devices from successful jurisdictions. Secondly, harmonisation of law in the EU countries reduces the differences between national laws within Europe. Finally and most importantly, both jurisdictions have been seeking to regulate charges in the most efficient way possible trying to find a balance between the opposing interests of the creditor and the debtor. However, both jurisdictions started their journey from totally opposite points. English law, on the one hand, without any formal requirements nor

requirements for registration, fully respecting contractual freedom and focusing on the interests of creditors; and Czech law, with extensive formal requirements, rigid regulation and focusing on protection of the debtor on the other. English law accepted the registration for security interests and Czech law is leaving behind rigid regulation and formal requirements. We can conclude that the regulation of charges in the jurisprudence of both jurisdictions has met somewhere in the middle. This is perhaps not surprising as I would venture to suggest that the commercial needs for charges are more or less the same in every country.