Czech Republic

Civil Code
(as amended on 1 January, 2002)

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(Extracts)

Chapter IIIA

Division 1 Lien

Section 152
A lien is used to secure a receivable in case a debt of the equivalent value is not paid (performed) in
time, whereupon satisfaction can be obtained from the proceeds from the realisation of the thing
encumbered by the lien (pledge).

Section 153
1. A thing encumbered by a lien may be a movable or immovable thing, an enterprise or another
   collective asset, a set of things, a receivable, or some other property right if its nature so admits, a
   flat (an apartment) or non-residential premises in ownership under a specific Act, a shareholding in
   a business (an ownership interest), securities or the subject of a specific industrial (i.e. intellectual)
   property right.
2. A lien shall also apply to the appurtenances, accretion and inseparable fruits of the thing, which is
   subject to the lien (pledge).
3. A receivable can be secured by a lien on several separate things (joint lien).

Section 154
The provisions of this Code shall apply to a lien on a business shareholding (i.e. an ownership interest
in a business), a lien on securities, or a lien based on securities (such as a mortgage bond) or a lien on
specific intellectual industrial property, unless special Acts regulating these liens provide otherwise.

Section 155
1. A lien may secure both a pecuniary and a non-pecuniary receivable. A lien shall also encompass the
   appurtenances of such receivable.
2. A non-pecuniary receivable shall be secured up to the amount of its market (usual) price at the time
when the lien is established.

3. A lien may also secure a receivable, which will only arise in the future, or one arising only if a specified condition is met.

4. A lien may secure, up to an agreed amount, also receivables of a specific kind which will arise between a lien creditor and his debtor during a certain period.

5. A lien may secure a lien creditor's claims (entitlements) which relate to withdrawal from the contract under which such secured receivable arose, unless otherwise provided in the pledge agreement.

Establishment of a Lien

Section 156

1. A lien is established either on the basis of a written contract (section 552) or of an agreement on the settlement of inheritance, which has been approved by the court. Subject to conditions provided under law, a lien may be established on the basis of a decision made by a court or an administrative authority. A lien may also arise by operation of law.

2. A contract on a lien must contain the designation of the thing encumbered by such lien and the receivable, which is thereby secured.

3. If the thing encumbered by a lien is an immovable thing not registered in the Real Estate Cadastre, collective asset, sets of things or movable things to which a lien is to be established without the delivery thereof to the pledgee or a third person (Section 157(2) and (3), the pledge agreement shall be in the form of a notarial deed.

Section 157

1. A lien on an immovable thing as well as to flats (apartments) or non-residential premises in ownership under a specific Act (a mortgage) is established on their registration in the Real Estate Cadastre, unless otherwise provided by law.

2. Unless otherwise provided by law, a lien on a movable thing (movable things) is established when such thing is (things are) passed on to the lien creditor.

3. The delivery of a movable thing to the pledgee or a third person pursuant to subsection 2 may be
substituted by such movable thing being handed over into the custody or storage of a third party on behalf of the lien creditor or his debtor, if so agreed in the pledge agreement.

Section 158
1. A lien to immovable things that are not subject to registration in the Real Estate Cadastre, a lien to collective asset, a lien to a set of things and a lien to movable things to which a lien is to be established under the pledge agreement without the delivery thereof to the pledgee or a third person (Section 157(2) and (3), shall be established upon the registration in the Collateral Registry maintained by the Chamber of Notaries of the Czech Republic; the foregoing shall not apply if the lien is established upon a decision made by a court or an administrative authority.
2. The registration of the lien in the Collateral Registry, shall be performed, immediately following the conclusion of the pledge agreement, by the Notary who made out the pledge agreement in the form of a notarial deed.

Section 159
1. A lien, which encumbers a receivable, is established when the contract is concluded, unless it is agreed otherwise in the contract.
2. A lien on a receivable shall be effective in relation to the debtor (payer) of such receivable (subdebtor) as of the date when he receives the lienee's written notification thereof, or when the lien creditor proves to the subdebtor that such lien was established.

Section 160
1. A lien is established by decision of a court or an administrative authority as of the day when such decision (ruling, judgement) comes into legal effect (i.e. becomes final).
2. A lien to immovable things that are not subject to registration in the Real Estate Cadastre, a lien to collective asset, a lien to a set of things and a lien to movable things to which a lien has been established without the delivery thereof to the pledgee or a third person (Section 157(2) and (3), established upon a decision of a court or an administrative authority, shall be registered in the Collateral Registry maintained by the Chamber of Notaries of the Czech Republic.
Section 161

1. If someone pledged another person's movable thing without the owner's consent or the consent of a person who has another material right to such thing, and his right is incompatible with the lien, lien shall only be established if the movable thing is handed over to a lien creditor who takes it over in good faith, believing that the licensee is entitled to pledge the thing.

2. Another person's immovable thing, collective asset, set of things, flat (apartment) or non-residential premises in ownership under a specific Act may only be pledged with the consent of their owner and of each person who has another right in rem thereto which is incompatible with the lien. The same shall apply to another person's receivable or some other property right, shareholding in a business (ownership interest), securities and subject of an industrial (i.e. intellectual) property right.

Rights and Duties during a Lien

Section 162

1. The lien creditor to whom a pledge has been passed over is entitled to hold it for the entire duration of the period to which the lien applies. He is obliged to take a proper care of the pledge, in particular to protect it from damage, loss or destruction. The lien creditor is entitled to require the licensee to reimburse him for any expenses, which he effectively incurred when taking care of the pledged thing.

2. The lien creditor may use the pledged thing and acquire its accretions, fruits and benefits only with the lienee's consent.

3. If during the period of time when the lien creditor holds a pledged thing, such thing is lost, destroyed or damaged, the lien creditor shall be liable for such damage under the general provisions on liability for damage.

4. If a pledged thing is handed over to a third party, such party may not pass the thing over to another party, or use it, or allow someone else to use it; otherwise this third party shall have the same rights and duties as a depository (section 747 et seq), unless it is agreed otherwise.

Section 163

1. A (lien) debtor shall refrain from any act, which impairs a pledged thing to the detriment of the lien
creditor.

2. If the price (value) of a pledged thing is reduced to such an extent that a receivable is insufficiently secured, the lien creditor is entitled to ask the debtor to replenish the security to the necessary extent without undue delay. If the latter fails to do so, the part of the receivable, which is not secured, shall become immediately due.

Section 164

1. Unless otherwise provided by law, a lien shall be effective against any subsequent owner of the pledged thing, set of things, flat (apartment) or non-residential premises in ownership under a specific Act. The same shall apply to each subsequent creditor under a pledged receivable, to each subsequent entitled person under some other pledged property right or subject of an industrial (i.e. intellectual) property right and to each subsequent owner of a pledged shareholding in a business (ownership interest) or securities.

2. Any person against whom a lien is effective pursuant to subsection 1 shall have the status of a licensee.

Satisfaction from a Pledged Thing

Section 165

1. If a receivable secured by a lien is not fulfilled (paid) on time, the lien creditor is entitled to satisfy his receivable from the proceeds of realisation (liquidation) of the pledged thing. The lien creditor is also entitled to realise (liquidate) the pledged thing if his receivable was only settled in part and the unpaid amount is overdue, or if the receivables appurtenances were not settled.

2. In the event that several liens have been established on collateral, the secured receivables shall be satisfied in the order of the dates of establishment of the liens.

3. Section 165a

4. On the proposal of the lien creditor, a pledged thing can be realised either by public auction or by judicial sale. Ordering a judicial sale of collateral and the sale of the collateral by a court shall follow the provisions of the Civil Procedure Code.

5. If a receivable is secured by two or more pledges (pledged things), the lien creditor may propose
that any of them be realised or, if it is necessary for satisfaction of his receivable, that two, or more, or all of the pledged things be sold.

6. A lien creditor's right to seek at a court satisfaction by the licensee of a receivable encumbered by a lien is not affected by the provisions of subsections (1) to (2).

Section 166

1. Anyone who claims that the sale of a pledged thing by public auction or by a court is inadmissible shall claim his right by filing an action in court for determination of the inadmissibility of the sale of such pledged thing.

2. A complaint under subsection (1) can be filed no later than within one month after the day when notification of a public auction is delivered to the persons (parties) determined by law, but such complaint can be filed no later than the day before the day when the public auction is scheduled to start.

3. A public auction of a pledged thing (a pledge) can only be executed after expiry of the time-limit under subsection (2), and if a complaint is filed within the time-limit under subsection (1), then the public auction can only be executed after the court's decision on the matter becomes legally effective.

4. A complainant (plaintiff) who has filed a complaint under subsection (1) without good reason shall compensate the lien creditor, upon the pledgee having claimed his right to be reimbursed for such damages during the proceedings in the matter before the court of first instance, for damage caused to him by postponement of the pledge's sale in the period from the filing of the complaint to the day of the ruling by the court of first instance in the matter; upon the pledgee's petition, the court may order, as early as during the proceedings, the complainant to deposit with it in advance an amount of up to the potential sum of damages.

Section 167

1. If there is a lien on a specific receivable, the subdebtor is obliged to settle (perform) his debt to the lien creditor upon the maturity of the receivable encumbered by a lien.

2. If the object of performance of a specific receivable which is encumbered by a lien is a thing, the lien creditor acquires a lien on the thing in question upon such a thing is passed to him; while his
lien on the receivable extinguishes (is discharged).

**Section 168**
If a pledge is another property right, the procedure under Section 165a or Section 167 shall be followed as appropriate in realising same, with account taken of the nature of such property right, unless a specific Act provides otherwise.

**Invalid Arrangements (Clauses)**

**Section 169**
Arrangements (clauses) in contracts (agreements) on lien, agreements on the settlement of inheritance and separately made arrangements shall be invalid (void) if they stipulate that:

- the pledgee or licensee may not redeem the pledge (pledged thing);
- the pledgee or licensee (mortgagee) may not encumber specific immovable thing or a flat (an apartment) or non-residential premises in ownership under a specific Act with an additional lien (mortgage) in favour of another creditor;
- the lien creditor may claim satisfaction from sale of the pledge in a manner other than that stipulated by law;
- the lien creditor may not demand satisfaction from sale of the pledge after maturity of his receivable;
- when there is a delay in the fulfilment of a secured receivable, the pledge concerned will be forfeited to the lien creditor, or that the lien creditor can retain it for a predetermined price, unless another (special) Act provides otherwise.

**Extinguishment of a Lien**

**Section 170**
1. A lien shall extinguish
   - upon the secured receivable ceasing to exist,
   - upon the pledged thing ceasing to exist,
• upon the lien creditor waiving his lien in a unilateral written statement,
• upon expiry of the time for which the lien was established,
• upon an amount of money equal to the customary price of the pledge (pledged thing) being deposited by the pledgor in favour of the lien creditor (pledgee),
• on the basis of a written agreement to that effect between the pledgee and the pledgor,
  • in cases stipulated by specific laws.

2. A lien shall not extinguish if the secured receivable becomes statute-barred.

Section 171
1. If a lien (mortgage) encumbering an immovable thing, established upon registration in the Real Estate Cadastre, is extinguished, the registration of such lien (mortgage) shall be deleted from the Real Estate Cadastre at the same day.
2. If a lien registered in the Collateral Registry maintained by the Chamber of Notaries of the Czech Republic is extinguished, any Notary shall delete such lien upon the pledgee's request or upon proof brought to him that the lien is extinguished.

Section 172
A lien shall not extinguish (by itself) if it also covers the pledgee's claims upon withdrawal from the contract under which the secured receivable has been established (Section 155(5).

Sublien

Section 173
1. A sublien arises on the pledging of a receivable encumbered by a lien if the pledge is a thing.
2. Establishment of a sublien does not require the consent of the owner of the pledged thing. However, a sublien shall only be effective in relation to the owner of the pledged thing if its establishment was notified to him in writing. If a pledged receivable is encumbered by a lien (mortgage) on an immovable thing, a flat (an apartment) or non-residential premises in ownership under a specific Act, a sublien (submortgage) shall be established on the registration of such sublien (submortgage) in the Real Estate Cadastre.
Section 174

1. If a lien creditor (sublienee) passes a pledged movable thing, which he holds on to a sublien creditor, he shall not relieve himself of the liability to carry out his duties towards the licensee.

2. If a mature receivable, which is secured by a sublien (subpledge), is not settled on time, the sublien creditor may claim satisfaction from the pledge instead of the lien creditor (sublienee).

3. The provisions on lien shall apply as appropriate to sublien.