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Credit Contract and Lending Contract in the Context of the New Czech Civil Code - Selected Issues

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Abstract

Credit contract and lending contract represent to two related contract types regulated by the 2012 Czech Civil Code. Nevertheless, the lending contract differs from the credit contract in several aspects. Whereas the subject-matter of the credit contract can be only provision of money, the subject-matter of the lending contract may include – beside lending of money – various other fungible goods. Credits are always interest-bearing, lending can be both interest-bearing or interest-free. The credit contract is a consensual contract which is formed already by its closing, whereas the lending contract is a real contract and is formed only by provision or delivery or of the goods provided to the lender (debtor).

The aim of the paper is to analyse selected issues from the existing legislation, especially the position of the contracting parties within the contractual types given. In the framework of the examination, we provide a comparison of the conceptual features of these closely related contract types from the point of view of the grantor. Also examined will be the space of contractual freedom provided by the legal rules and/or whether there are limits to this freedom, e.g. performance provided to consumers.

Key role in the defined juxtaposition plays the circumstance that among the essentials of the credit contract (as opposed to the lending contract) plays the determination of the amount of the lending, both in quantity and currency. The amount to that the credit provider is obliged to grant funds may be agreed in the contract as a fixed amount or as a defined credit limit, credit framework etc. There is no principal difference between the specification of the credit as a credit limit or as a fixed amount – the beneficiary is in both cases entitled to decide on the amount to that the credit will be taken.

Keywords: Civil Code, credit contract, lending contract, credit provider, borrower

JEL Code: K 14

1. Introduction

Under Financial credit we understand a temporary provision of funds. In this sense is the credit also defined by the section 1 para. 2 (b) of the Banking Act, No. 21/1992 Gazette: „credit shall mean funds in any form provided temporarily". Financial credit is also defined by the section 1 (h) of the Foreign Exchange Act, No. 219/1995 Gazette,: „ financial credit shall mean provision of funds in Czech or foreign currency to that the obligation of its recovery in monetary form is attached. Business credit, also called as supply or commodity credit – that will be out of the scope of the present study - means most often a delay of payment of the price. Business credit is also the sale of goods or services to consumers paid in instalments (instalment sales).

The rules on the credit contract are contained in sections 2395 to 2400 of the New Czech Civil Code, Act. No 89/2012 Gazette (Thereinafter „CivC"). In addition, contracts concluded on consumer credits are moreover covered by the rules of the Act No. 257/2016 Gazette, on consumer credits.

The lending contract differs from the credit contract in several aspects. Whereas the subject- matter of the credit contract can be only lending of financial funds, the subject-matter of the lending contract can include lending not only funds, but also any other fungible goods or assets. Credits are always interest-bearing relationships, lending can be both interest-free or interest-bearing. The credit contract is a contract made by consensus is established already by the contract signature, while lending contract is a real contract and is established only by transferring of the assets provided to the lender.

The aim of the present paper to analyse selected issues from the existing legislation, especially the position of the contracting parties within both contractual types given as closely inter-related according to the CivC. Nevertheless, lending contracts differ from credit contracts in several respects that we want to stress and comment. Further on, we will assess whether there is sufficient contractual autonomy, or whether there are limits to this freedom, e.g.. as regards the performance of consumers. At the same time we will aim at the comparison of these similar, but not identical contracts from the perspective of their providers

The key role in the framework of the above juxtaposition plays the circumstance that to the essentials of the credit contract (unlike that of the lending contract) plays the determination of the amount of the lending, both in quantity and currency. The amount to which the credit provider commits to provide the funds may be agreed as a fixed amount or as a credit limit, the amount of the credit limit, lending framework, etc. There is, however, no fundamental difference between agreement on the credit amount as a limit, or as a fixed amount. In both cases, the beneficiary is entitled to decide on the amount to that the credit will be taken..

2. Methodology

In the context of the paper we will first discuss the current CivC rules on the credit contract which corresponds to the former rules of Czech Commercial Code, (thereinafter „ComC" stays close to the legal arrangement of the latter in the Slovak Republic) (Kubíček, Mamojka, Patakyová, 2007). After that we will focus on the CivC provisions ruling the lending contract.

When we want to compare both contractual types we need first of all to determine the aspects in which are these treaties similar or substitutable. Then we can proceed to

the examination of the differences we may find in both contract types that restrict or even exclude their interchangeability.

The agreement on and payment of interest is for the lending contract not an essential requirement - for credit contracts, the opposite applies. The lending contract, as the so called real contract requires- in order to be perfect – not only an agreement of the parties, but it is necessary to hand over the subject –matter of the contract e.g. the agreed sum of money. On comparison to that a credit contract is contract of the so called consensual character which means theta it is the consensus on the granting of funds by itself that makes the contract perfect, not their real provision. The factual provision of funds as pre-condition of the perfection of contract is typical for real contracts only.

A very important legal fact is that the subject-matter of the CivC lending contract may be not only provision of money, but also of other goods specified per type. Even if money is, and probably will continue to be most- often the subject –matter of lending contract, it is surely not the only one. This is in contrast to the credit contract, where the money is always in its centre. (Marek, Medková, 2012)

And, finally, the comparison will focus on the scope of application of both contract types. While the use of the credit contract prevails in the area of business (including a specific subtype –consumer contract ruled by separate statutory rules of The Consumer Credit Act, No. 257/2016 gazette and therefore not subject of the present paper), lending contract, mainly for its informality, finds a wide application in the non-business, civic sphere.

The present research paper is based on the use of the analytical, comparative and inductive methods..

3. Results

3.1. Credit Contract

3.1.1. Notion and types of credits

According to the systematic of the former ComC, the credit contract has been classified among the so-called absolute commercial obligations. The absolute commercial obligations were characterized by the fact that their character of a commercial (business) relationship, was given regardless of the nature of its parties (whether they were or weren´t entrepreneurs and/or acting within their entrepreneurial capacity). This regulation was till 2012 common for both Czech and Slovak contract law (Husár, Suchoža, e. al. 2011).

From the perspective of the bank (financial institution) as one of the parties to the contract it is possible classify the credits as obtained and provided. Among the types of obtained credits belong:

- On-demand deposits, which are deposited on the depositor's current account at the financial institution, and managed on daily basis;
- Saving deposits – as opposed to on-demand deposits, higher interest rates are provided. Deposits are provided on the longer term basis, however, they can be withdrawn at any time;
- term deposits – deposits with fixed term of withdrawal agreed or withdrawal upon notice;
- As a means for obtain funds are used certificates of deposit issued by banks when the "purchasing deposits"; they use to have shorter payment deadline;

- Bank bonds - are used for provision of longer-term resources; they represent security, "sold" by the bank; they use to have longer payment deadline;
- Purchases of deposits and conclusion of credit contracts with other banks are also major source of funding; funds can be obtained by banks from the Central Bank as well.

Within the second category- provided credit - we can distinguish following types:

- short term (e.g. bank overdraft, bill credits, escrow loans, special-purpose loans),
- medium-term and long-term credits (for example, emission, credit bond, mortgage lending) and purchase of receivables (factoring, forfaiting).

The substance of factoring is, as a rule, the purchase of short-term receivables (including passing-over of invoices, expense reports, etc.). Forfaiting means in principle purchase of mid-term and long-term receivables. Bank overdraft is allowed when setting up the account overdraft. In the absence of funds available on the account, the switch to debit (negative values) means provision of credit by the bank. Discount credit through bill of exchange means credit where the bank purchases bills of exchange before their maturity. At the time of buying out the bill, interest (discount) for the time remaining to maturity will be deducted. (Plíva, Liška, Elek, Marek, 2014)

By a bank bond the bank undertakes to pay for their client, if applicable, its obligation towards a third party. So called special-purpose credits may be provided to cover operational demands (for stocks, receivables before due date, etc.), special-purpose investment credits, for example, for the purchase of machinery and technology equipment), bridge-loan credits, if applicable, in the case of temporary shortage of funds, and others. Mortgage credits are granted for a pledge through real estate.

3.1.2. Principles of credit provision

Defining of purpose for a credit is not an essential requirement of the credit contract and is left to contracting parties, whether the purpose of the contract will be agreed or not. Reserved for an agreement by parties is also to which extent the purpose of the credit shall be specifically defined. It may be specified both in general (e.g. for business needs of the beneficiary) or concrete terms (e.g., for the purchase of a specified real property).

If the contract links the use credit only to a specific purpose, the credit provider may limit the granting of money only to the fulfilment of the obligations incurred by the beneficiary in connection with the contract purpose. As a rule, this occurs by providing the credit directly to the relevant creditor of the beneficiary (e.g. on the basis of invoicing). On the basis of other criteria we can distinguish between credits according to the degree to that they are secured, according to the purpose, etc. In banking, the transactions where the bank is the credit provider are called as active and those where the bank is creditor, are called as passive. In this terminology and from this point of view there are also transactions held for "neutral" (e.g., execution of payments, consultancy etc.) (Marek, 2008)

The credit is payable within the time limit laid down in the contract, this goes in line with the principle of time certainty. The credit provider grants credits, as a rule, only for fixed terms, and the beneficiary is obliged to repay the credit funds by the date due. This applies to both the total credit amount and single payments (specified instalments). Under the conditions laid down in the credit contract a bonus can be agreed upon in premature repayment, and, of course, penalty for the delay with credit repayment.

The credit provider usually carefully keeps in sight that credits are secured, implementing the principle of credit securing. The point is to ensure the recovery of the credit and reduce cases of loss of resources. Typical instruments that apply are a pledge by use of material values or a guarantee provided by another person. Especially in the banking

sector, it should be the rule to reduce the risk to a minimum. Frequently the use of security instruments is cumulated.

Also banking (financial) guarantees issued by another bank or an agreement on deductions from salary or other income can serve in order to secure the credit recovery.

If there are bankers on the creditor side, they provide the credit principally only very rarely "*in bianco*" (unsecured), and only to clients with high credit rating. In practice, banks generally grant credits only provided that the securing instruments are available. Their importance is fully reflected in the situation where the beneficiary fails to fulfil repayment obligations arising from the credit contract.

The amount of the security is established in dependence on the type of the security instrument, either by a qualified certified expert (especially for real estate serving as subject-matter of the pledge), or by an employee of the bank, usually according to internal regulations of the bank (e.g., assessment of guarantees according to the issuer) or the value of the securing instrument equals to the carrying amount of the subject-matter of the security (e.g., stocks serving as the subject-matter of a contract on securing transfer of ownership).

Apart from the value of the security, it is necessary to distinguish the safeguarding value which means the price of the guarantee less the ratio which takes into account the degree of the possible price reduction in case of realization of the security instrument by the bank, provided that the beneficiary will not comply with the terms of the credit recovery. This ratio is usually set by the internal regulations of the bank and depends on the type of the security instrument, its quality, the credibility of the client, etc.

3.1.3. Rules for credit contract in the CivC

As mentioned above and stressed by the Explanatory Memorandum to the CivC as well, CivC provisions ruling credit contract were taken from a ComC only with minor modifications. The regulation in the CivC is abbreviated in comparison with the predecessor. It is ruled only by 6 sections, as opposed to ComC, which included 11 sections. This shortening was possible due to more effective arrangement of the CivC General Provisions, which are better linked with the special provisions.

A significant change entails the provision defining the Contracting Parties as the credit provider („úvěrující“ in Czech) and the beneficiary(“úvěrovaný“). This renaming corresponds better with the synallagmatic character of the credit contract. Which of the Contracting Parties bears the role of creditor changes during the various stages of the contractual relationship and the new nomenclature of the contracting parties explicitly helps to keep the overview. Last but not least this change brings better clarity of CivC for non-expert lay person who is the end user of this Code.

CivC has not taken over the former provisions of section 99 ComC, which gave to the creditor who had the providing of credits as subject of business, the possibility to demand consideration for arrangement of the commitment to provide funds to the beneficiary at his request. This change can be considered as a positive one, since the obligation to provide funds to the beneficiary on his request has identical consequences for the lender, whether lending would or wouldn´t be his subject of business. It brings always for the credit provider the burden to keep ring fenced the funds in the amount in that that can be withdrawn in the future regardless on his decision. (Marek, Medková, 2012) Thus, the CivC, unlike previously ComC, does not prevent any credit provider from agreeing on a consideration for his obligation to grant funds to the beneficiary on his request.

The issue of the amount and the currency in which the credit is to be granted remained unchanged. Further on, CivC makes no explicit mention of the necessity to keep

credits in line with foreign exchange regulations. This notwithstanding the fact that the Foreign Exchange Act remain in force as rules of public law public related with the granting of credits - mainly as to the currency in which it is to be granted and, therefore, it will have to be kept in mind by the Parties when concluding credit agreements.

The obligation of the credit provider to grant funds to the beneficiary on his request has undergone in the CivC changes as to the time limit of the obligation. The new rules retains the obligation od the credit provider in force for the entire duration of the contract itself. In this respect a re-formulation of ComC rules with similar content occurred. And finally, the last essential of the credit contract - the obligation of the beneficiary to repay the funds provided and pay interest on them – remained unchanged. (Švestka, Dvořák, Fiala, 2014)

In the credit arrangement the parties may, in accordance with section 1806 CivC, agree that interest will be paid from interest already payable but still unpaid. However, this obligation lasts on the beneficiary only when explicitly provided for by the articles of the credit contract.

This brings us to the form of the credit contract. The CivC does not prescribe any form, so that the contract can be made in writing, orally, or by implication. In the banking practice, credit contracts are generally concluded only in written form. These contracts are in the banking sector often concluded in an adhesive way. Contracts on Consumer credits have, under the Consumer Credit Act, No. 257/2016 Gazette, prescribed written form as obligatory

CivC has not included to the regulation of credit contract special provisions for securing of this type of obligation ruled previously by the ComC (Štenglová, Plíva, Tomsa, 2009). Thus, for the entire regulation of securities we have to employ the general rules on securing of obligations in CivC with no exemptions applicable to credit contracts. CivC distinguish between instruments for securing of debt (pledge, security, bank guarantee, transfer of title to secure obligation and payroll deduction agreement) and those for affirmation of debt (acknowledgement of debt and contractual fine). Both acknowledgement of debt and contractual fine namely bring no economic guarantee for the creditor, even if they provide other advantages to him. In terms of the influence of the General rules on securing on the credit contract, it should be noted that the obligation of the beneficiary to replenish the material deposit continues to exist, this in case it should lose its price so that the deposit becomes insufficient. The beneficiary has to do so without undue delay; if he doesn't, the not sufficiently secured part of the credit will become due for payment. The CivC does not allow to the beneficiary to withdraw from the credit contract due to not completing the deposit to the price originally agreed.

In order to accelerate the contract negotiation, the parties may in the credit contract make reference to the general business terms and conditions. In this respect, the CivC distinguishes between contracts concluded in mutual intercourse of two entrepreneurs within their business and other cases. The latter requires that such conditions shall be attached to the offer or shall be well known to the parties at the conclusion of the contract, unless the acceptant declares he is aware of their content. (Patakyová, 2008)

Worth mentioning is also the rule of section 1753 CivC stipulating that the rules of general business terms and conditions, which could not be reasonably expected by the other party, are ineffective, should they not be accepted explicitly by the latter. Whether a specific rule of the general conditions could be expected or not to shall be assessed not according to its content, but also according to the way of its expression. (Marek, 2007)

As regards the rules on honouring of the obligation no significant or conceptual changes have occurred. The honouring of obligations is – in comparison to the former

ComC - ruled in more details and more provisions. More detailed rules are provided also with respect to the question of compensation of performance in case of debtor burdened by more debts towards the one and the same creditor. The former may by his expression of will change the statutory procedure for set-off of the performance, i.e. to begin with the interest on late payment, proceed with the ordinary interest and end up with the principal sum of the credit. If the debtor specifies that he will satisfy first the principal sum, both costs and interest will accrue.

The CivC rule also in more details on situations where a third person provides performance on behalf of the debtor and the former shall qualify for the assignment of the claim of the creditor. According to the section 1936, the person who provides performance on behalf of a debtor enters automatically into the rights of the creditor. The debtor has the obligation to settle the performance provided for him by a third party. The claim of the creditor including accessories, securing of the debt and other rights connected to the claim shall thereby pass to the third person. The obligation towards a third person shall arise for the creditor who shall provide to this person making the performance on behalf of the debtor the necessary documents and all that is needed to the presentation of claims. (Švestka, Dvořák, Fiala, 2014)

Only one reason for withdrawal from the credit contract has remained in special provisions of the CivC, ruling the credit contract. This derogation from the General Provisions on the obligations provides for the right to withdraw from the contract for the lender, should the beneficiary use the funds received to other purpose than agreed and in the case should the use of the funds for the agreed purpose become impossible. According to CivC, the non-replenishment of the deposit whose value has fallen by the beneficiary gives no reason to withdraw from the credit contract. This circumstance will only make payable that part of the credit, which is not secured by the deposit.

In practical terms, the legislature integrated into general provisions on withdrawal the rule that if the debt is secured, the withdrawal does not affect the securing (section 2005 (2) CivC).

3.2. Lending contract

3.2.1. Rules in the CivC

Lending contract is regulated by sections 2390 to 2394 CivC (before the adoption of the new CivC, the credit contract was regulated in Sections 657 to 658 of the 1964 CivC (Act No. 40/1964 Gazette). The new rules changed the previous terminology as regards the names of the Parties, replacing the term „loan“ by „lending“(„zápůjčka“ in Czech), which was used by the General Civil Code of 1811. This corresponds also to the new designation of the Contracting Parties – „borrower“ a „lender“ instead the former general names „creditor“ and "debtor", which should have remained in the new CivC only for general indication of the commitments of the parties. (Hurdík, Fiala, Lavický, Ronovská, 2004)

The CivC does not provide for obligatory written form of the lending contract law. Only for lending contracts, provided as consumer credit, the 2016 Consumer Credit Act specifies the written form as obligatory.

3.2.2. Subject-matter of lending

As subject-matter of lending only fungible goods can serve, including the monetary funds. In banking stand for subject-matter of the lending exclusively the funds. Attention of the present paper will be thus paid only to the lending of funds. Lending of fund is, in

fact, credit in the sense of section 1(2)(b) of the Banking Act, No. 21/1992 Gaz,: „…credit shall mean funds in any form provided temporarily".(Štenglová, Plíva, Tomsa, 2009)

In order to be effective, contracts on lending of funds request not only agreement on the amount of lending, but also on the currency in that the funds will be provided. However, due to the fact that the conclusion of a contract for lending of funds occurs when only when the funds are transferred to the lender, in practice the currency of lending will be never questioned. The lending of money can occur not only in Czech currency but also in any other foreign currency.

Lending, whether in cash or in-kind is statute-based free of charge. In order to be considered with pecuniary interest the latter must be agreed in the contract. Thus, the lending of funds shall be charged with interest only if the Partiers agree on its amount. This is the difference from the credit contract that is always bearing interest. With respect to the interest from lending of funds we may refer to the treatise on interest form credits.

3.2.3. Handing over of the subject-matter of lending

Without the funds being handed over to the lender there will be no contract on lending of funds. The handing over of the subject-matter of the lending is not to be construed only as physical transfer (passing over) of the lending subject-matter to the lender but as any act as a result of which the subject-matter of the lending becomes to the sphere of disposing by the lender. Thus, the handing over of the subject-matter of the lending may have even the form of a bank transfer of the cash to the account of the lender.

The borrower needs not to hand over the subject-matter of the lending directly to the lender, he may do it also indirectly, by advising his debtor to grant the amount owed as the lending to the lender. This occurs e.g. by inter-bank transfer of funds from the account of the borrower´s debtor to that of the lender. The lending contract is therefore concluded not only if the subject-matter of the lending shall be received from the borrower (or a person authorised by him), but even when the lender receives the subject- matter of the lending from a third person who acts on the instructions (or by a power of attorney) of the borrower.

The borrower hands over the subject-matter of lending to the lender for his use which means that the lender may use the subject-matter of the lending for a purpose that he determines for himself, i.e. to personal preferences. For the funds borrowed the lender may buy goods or services, the funds borrowed may be provided to a third person as a loan or it may be used to repayment of his debt or of that of a third person; he may also invest the funds or simply keep for himself (e.g. as an emergency aid reserve). The right of the lender to use the subject-matter of the lending in any way and for any purpose whatever is given by the fact that by the takeover of the funds lender becomes owner of the lending and shall poses all the entitlements constituting the right of ownership.

3.2.4. Obligation of the lender to return the goods, repayment and premature repayment

The lender shall be obliged to return to the borrower the goods of the same type. If returning the funds borrowed the lender is obliged to return funds as well. As to the currency of the funds to be returned the CivC provides in section 2391 para. 1 a different rule that that applicable to credits. Whereas for credit contracts applies that the beneficiary shall return to the credit provider the funds in the currency in which they were provided, the CivC rules on lending contract provide that the lending funds shall be paid in the currency of the place of performance. For the event that the funds should be returned in other currency that those it was provided, the section 2391(1) CivC rules that the lender shall

repay the lending so that the value equals to what he has received. (Švestka, Dvořák, Fiala, 2014)

As a rule, the term of lending repayment is agreed by the Parties in the lending contract. For the event. It is not the case, i.e. the contract provides for lending on indefinite period of time, the CivC rules that the lending becomes payable upon its termination either by the borrower or by the lender. The statutory period of notice shall be six weeks, however, the Parties may agree on a different notice period. The Parties may also agree that the lender will repay the lending gradually, in instalments. Regarding the instalments as well as the interest see also the treatise on the credit contract above.

Unlike the credit contract (section 2399 para. 2) for the lending contract the CivC does not provide for a possibility of early repayment of the lending. Therefore an early repayment of the lending, shall be possible only if explicitly agreed in the lending contract.(Patakyová, 2008)

3.2.5. Withdrawal from the lending contract

In addition to the general statutory reasons for withdrawal from the contract (section 1978 e.a. as well as 2001 e.a.) the CivC rules in section 2394 for a special reason for the withdrawal from the lending contract. According to this rule if the repayment of the lending was agreed in instalments, the borrower may withdraw from the contract and demand the repayment of the debt with interest should the lender be in default with repayment of more than two instalments or with one instalment for more than three months. The withdrawal from the contract does not apply to securities (section 2005(2) CivC).

In practice, unfortunately, frequently situations occur where both the beneficiary form the credit contract and the lender from lending contract have not fulfilled their obligations to recover the credit/lending and to pay the interest. Concern of the borrower and lender is, in addition to the statutory rules, to have appropriate contractual solutions available. (Štenglová, Plíva, Tomsa, 2009) The content of such arrangements is the specification of the current amount owed and determination of subsequent procedural steps for the credit provider and/or borrower.

The position of a creditor in these contractual relationship can be reinforced by certain solutions which are ranked among the statutory provisions on securities, however, they do strengthen their position (e.g. taking out the insurance).

4. Discussion and Conclusions

The credit contract relates only to the provision (granting) of monetary funds. One of its essential obligation is interest agreed. It represents the consensual contract. First, the contract is formed and only then the monetary funds will be granted. Only an entitled person can grant credits, save in the case of a one-time granting.

In general, the credit contracts may not necessarily be concluded in written form. However, in the case of consumer credits, the written form is required. Credit contract may use also certain specific types of credits, as overdraft credits, discount credit through bill of exchange, and/or bank bonds. For these credits, special arrangements for the withdrawal from the contract and therefore for the credit maturity apply.

Lending contracts allows the provision of goods by type of the good. This contract is a real one which means it can be concluded contracts shall be concluded at the same time with providing of the goods. It must be added, that the lending contract can be concluded

for provision of monetary funds as well and also with specification of the interest, even if not as essential provision of the contract itself. The nature of the contract as a real on remains, however, unchanged. If monetary funds are the subject-matter, they may be provided only by an entitled person, save in the case of a one-time provision. For provision of funds as consumer contract, the written form shall be obligatory. Reasons and procedure for the withdrawal from the contract should be ruled explicitly by the contract.

As a concluding recommendation it may be pointed out that the monetary funds may be granted even by a lending contract, given the specifics of the statutory provisions (which, of course, may be modified by the contract), for granting of money it is preferable to use the type of credit contract and by the lending contract implement the provision of goods as fungible items.

When assessing the shift of the statutory constraints by the new CivC we may stress that for the proper functioning of the market with free funds, it is correct that the Code has not fixed the maximum permitted amount of interest as it was in the case of the (today no longer in force) ComC. The non-provision of the maximum permitted amount of interest allows for the possibility of the implementation of risk business plans and entrepreneurial ideas, as well as it allows for funds to be received by persons who - if there would be maximum permitted amount of interest – were not capable to obtain them. The abuse of the absence of a ceiling for the amount of interest, in addition, is monitored by the new CivC rules regulating usury and compliance with moral standards.

A positive change represents also the CivC rules for securing, where, in the general rules, there affirmation of debt and securing of obligations are separated from each other. Another positive feature is the implementation of the rule that the withdrawal from the contract shall not affect the securing of the obligation.

As regards the lending contract, we may conclude by the summarisation that, notwithstanding the new designation of the parties as the borrower and the lender, the very nature of the contractual relationship remains unchanged. By the lending contract the borrower leaves to the lender goods specified by the type of the good. The latter is entitled to use the goods and after agreed time shall return them to the borrower. The subject-matter of the lending – next to monetary funds – may be any material thing, for which it is possible to specify the quantity, amount, volume or weight. For lending, it is not necessary to agree on remuneration, it may be provided also for free. This is fundamentally different from the credit. We may add, however, that as a rule also the lending is tied up with remuneration. The latter may be either an interest or increase of the quantity of the goods returned in the case of non-cash lending.

Another specific feature of the lending is, that the contract may not necessarily be in written although the business practice keeps the written form as a rule. In the non-written, i.e. oral form of contract complications may arise when it is necessary to prove the amount of lending and/or the interest agreed. Non-written form is thus suitable only rather for minor lending – e.g. non-monetary, between two individuals, non-entrepreneurs. Such lending may namely be provided by anybody, not only as object of business activities.

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