Title:
Czechoslovak International Trade Code

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Czechoslovak International Trade Code

The Act No. 101 of the 4th December 1963

Section 23

(1) A manifestation of will shall be construed in accordance with the real intentions of the acting person and the nature of the action, with a view to the circumstances under which it is made and to the principles of fair trade. In case of doubt, it shall be presumed that the parties intended to make a valid manifestation of will.

(2) A manifestation of will containing words of ambiguous meaning shall be construed against the party who used such words.

Section 24

(1) Insofar as this Act, or an agreement between the parties provides for a written, or another special form of legal act, the legal act shall be valid only if the agreed form is observed. Otherwise, no special form shall be required for legal acts.

(2) A legal act, which, under the legal regulations or the agreement of the parties is to be made in written form, shall become valid upon being signed by the acting person; if the legal act is made by more persons, their signatures need not appear on the same document. A signature of a person who does not or cannot write shall be substituted on the very document by an attestation of two witnesses that, such person had expressed his approval.

(3) Notifications sent by cables or teletypes, or appearing in commercial documents obtained in a mechanical way, shall by considered to have been made in written form.

(4) The substitute or imitation of a signature by mechanical means shall be acceptable only where it is customary in commercial intercourse.

Section 33

(1) An error shall make a legal act void, if it relates to its essentials, and the person to whom manifestation of will is addressed knew, or must have known, of the error of the other party. An error shall be considered essential if

a) it relates to the subject or the quality of the performance to the extent that the acting person, in view of the nature of the legal act, would not have made if it had known of the error;

b) it relates to a person and the legal act would not have been made, were it not for this error.

(2) If the error relates to other circumstances, the legal act shall be valid, unless the said circumstance is essential according to the expressed will.

Part VI - Extinctive and acquisitive prescription
Division 1- Extinctive prescription

Section 76

(1) Save for cases of an absolute extinction of a right through failure to exercise it [Section 273], a right shall be prescribed through the expiration of the term set forth in this Act.

(2) Prescription shall not extinguish a right; however, the right may not be adjudged by a Court, if the debtor pleads prescription.

Part II - Conclusions of contracts and their contents

Section 108

(1) An offer to conclude a contract regulated in Chapter IV of this Act shall specify at least the essential parts of such contract; an offer to conclude other contracts shall specify the whole contents. Otherwise, it shall be considered as a mere invitation to make an offer.

(2) An offer to conclude a contract shall be binding upon the offeror unless the offeror expressly excludes the binding effects of the offer or unless it is apparent from the previous commercial intercourse between the Parties that offers are not binding.

Section 117

If the parties make use in their contract of some of the terms regulated in internationally used interpretation rules, they shall be presumed to intend to attain such legal effects as are provided in the said interpretation rules to which they expressly refer or which are most probably in their mind.

Section 118

Rights and obligations not expressly regulated in the contract shall be governed by this Act or by the commercial customs generally observed in international trade in the respective field of business, provided they are not contrary to the contract or to this Act.

Section 119

An obligation to conclude a future contract within a fixed term may by undertaken in a contract, provided that at least the object of performance by both parties has been agreed upon. An agreement to conclude a future contract shall be made in writing.

Section 120

(1) If a person bound under Section 119 unfoundedly refuses to conclude a future contract, the entitled person may claim damages or, if the contract so provides, may apply to a court or to the person designated in the contract, to determine the unspecified contents of the future contract.

(2) The motion to determine the unspecified contents of the contract may be filed with a court within one year from the day on which the future contract should have been concluded; otherwise the claim shall be extinguished. The same shall apply, if the person designated in the agreement has failed to determine within the said term the contents of the future contract.

Section 121

The unspecified contents of a contract which the liable party is bound to conclude shall be determined within the scope of Section 118 in accordance with the purpose which, in view of the circumstances under which the preliminary contract was concluded, the parties had followed by concluding the future contract, and by taking into consideration the principle of fair trading.

Section 122
An obligation to conclude a future contract shall be extinguished, if the circumstances which the parties had taken into consideration when establishing the obligation have changed to such extent that the liable party cannot be reasonably expected to conclude the contract.

Section 123

(1) The provisions concerning the assumption of the obligation to conclude a future contract shall apply mutatis mutandis to contracts in which the parties have agreed to amend the contents of an existing contract, provided that the parties have manifested their unambiguous intention that the contract is to be valid even if no agreement as to its remaining contents is reached.

(2) In the cases set forth in paragraph 1, the entitled person may apply to a court to supplement the contract even if the contract does not expressly provide for such contingency.

Part III - Parties in obligations

Division 3 - Changes in the person of the parties in obligations

Section 138

A creditor may assign his debt to another person (assignee) even without the debtor's consent.

Part IV

Division 3 - Conventional fine

Section 191

(1) If the parties agree that in case of a breach of a contractual obligation a conventional fine is to be paid, or if such fine is otherwise provided for such case and the debtor fails to perform his obligation, the creditor may claim the conventional fine regardless of whether he has suffered a loss as result of the breach of the contractual obligation or not.

(2) The obligation to pay a conventional fine may be assumed only in writing.

(3) A conventional fine may consist of another performance than payment of money.

Section 194

A disproportionately high conventional fine may be reduced by a court to the amount of the loss actually incurred with a view to the value and the importance of the obligation.

Part V - Discharge of obligations by performance

Division 1 - Mode of performance

Section 212

If both parties are bound to a reciprocal and simultaneous performance, only the party who has already performed his obligation or is willing and able to perform it, may claim performance.

Division 3 - Repudiation of the Contract

Section 244

(1) If only one Party has performed under a contract which is subsequently discharged by repudiation, such Party shall be entitled to claim restoration of his performance.

(2) If both Parties have performed, either of them shall be entitled to claim restoration of his Performance only if he
simultaneously restores what he has received.

Division 5 - Damages recoverable under a breach of contractual obligation

Section 251

A person who fails to perform a duty arising out of his obligation shall be liable to compensate losses inflicted on the injured party, unless the failure to perform is due to circumstances excluding liability.

Part VII - Other modes of extinction of obligations

Division 3 - Set-off

Section 265

If the parties owe one to another debts involving the same performance and either of them, even against the will of the other, manifests his intention to set-off his debt, both debts shall be extinguished to the extent to which they cover each other. These effects shall take place as of the moment on which both debts become susceptible of being set-off.

Section 266

Debts that may be claimed in court shall be susceptible of being set-off. However, it shall be no bar to a set-off, if the debt cannot thus be claimed for reasons of prescription which came into effect only after the two debts had become susceptible of being set-off.

Section 267

(1) A debt which is not yet mature may not be set-off against a mature debt, unless it is owed by a debtor who has been found insolvent.

(2) Where a creditor gratuitously and upon the debtor's request extends the term for performing the obligation, such extension shall not prevent the possibility of a set-off.

Section 268

Set-off shall not be admissible against claims for the restitution of things wrongfully or fraudulently divested, lent, deposited or leased, or claims for pecuniary compensation in lieu of such restitution.

Section 269

If a claim has been assigned successively to several persons, the debtor may set-off only the claim which he had at the time of the first assignment against the first creditor, as well as the last creditor.

Section 270

If the parties so agree, any reciprocal debts may be discharged by set-off.

Division 3 - Duties of the buyer

Section 340

(1) The buyer shall pay the agreed purchasing price.

(2) If the purchasing price is not fixed in the contract or the method of its ascertainment is not provided for, and if the contract is nevertheless valid under Section 276, par. 2, the buyer shall pay such purchasing price, which the seller usually obtains for the same goods at the time of the conclusion of the contract; otherwise, he shall pay such purchasing price, which is paid for similar goods and under similar contractual terms at the time of the conclusion of the contract. In case of repeated deliveries of the same goods, it shall be presumed that the goods are to be delivered for the same price and under the same terms as the preceding delivery, unless the import prices in the country of the buyer have
considerably changed since the time of the conclusion of the preceding contract.

PART XX - Some contracts relating to banking transactions

Division 1 - Letters of credit

Section 653

Basic provisions

(1) By opening a letter of credit, the bank (banking institution) shall assume the duty to furnish a certain performance to a third party (the beneficiary) upon the customer's request, provided the conditions specified in the letter of credit are met within a certain period of time.

(2) A letter of credit shall be established in writing.

Section 654

The duties of the bank towards the beneficiary shall arise on the day the beneficiary has been notified of the opening of the letter of credit. The customer shall be bound towards the bank as of the day on which he has instructed it to open the letter of credit.

Section 655

A letter of credit shall not be dependent on the legal agreement between the customer and the beneficiary which initiated its opening.

Documentary letter of credit

Section 656

(1) Under a documentary letter of credit, the bank shall assume the duty to furnish a performance to the beneficiary, provided the documents specified in the letter of credit are presented to it.

(2) The bank that opens a documentary letter of credit shall be bound to furnish performance to the beneficiary to the extent of its obligation under the letter of credit, provided the beneficiary presents in due course and in time all documents in accordance with the terms set forth in the letter of credit.

Section 657

(1) Unless otherwise indicated therein, a documentary letter of credit shall be revocable.

(2) The bank may change or revoke a documentary letter of credit at any time.

(3) An irrevocable documentary letter of credit may be changed or revoked only if the beneficiary, the bank and the customer so agree.

Section 658

Confirmation of a documentary letter of credit

(1) If an irrevocable documentary letter of credit was confirmed by another bank in accordance with the bank's directives, the confirming bank shall be separately and directly bound towards the beneficiary; the beneficiary may claim performance from any of these banks. The provision of Section 654, first sentence, shall apply mutatis mutandis.

(2) If the confirming bank has performed under the letter of credit, it shall have the right to claim performance from the bank which had requested the confirmation of the documentary letter of credit.

(3) A bank which merely notifies the beneficiary that another bank opened an irrevocable documentary letter of credit
shall be liable for errors made in such notification, but shall not become subject to the obligation arising under par. 1.

Section 659

Other types of letters of credit

The provisions relating to documentary letters of credit (Sections 656 to 658) shall govern mutatis mutandis other types of credits.

Section 660

Unless otherwise provided in Sections 653 to 659, the usage commonly observed in international banking relations shall be applicable.

Part XXIV - Unjust enrichment

Section 703

Fundamental provisions

(1) Whoever acquires a property benefit without a legal title, shall be bound to restore all by which he is enriched to the person from whose property he acquired such benefit

(2) The same shall apply to cases where the legal title under which such property benefit is acquired subsequently becomes void.

Section 704

Whoever, acting in good faith, processes a thing belonging to another person, which he acquired either without a legal title or under a valid legal title which subsequently void, shall acquire title to the new thing created by his work; however, he shall give compensation for such thing to its former owner.

Section 705

The provision of Section 704 shall also apply to cases where a person acting in good faith combines or mixes things therein indicated with his own things, and it is impossible to separate such things at all, or only at disproportionate cost.

Section 706

(1) If a person processes a thing belonging to another person, or combines or mixes such a thing with his own things, cases of a contract of performance excepted, although he knew that he had no title to such things, the title to the newly created thing shall belong to the original owner. If such things belong to different owners, the title to the newly created things shall pass onto the person who has the largest share in the newly created thing. If the shares are equal, the new owner shall be determined by court: A person who acquires title to the newly created thing shall compensate the persons whose title is extinguished for everything by which he has been enriched.

(2) However, the person who acquires the title under paragraph 1 may claim from the person who knowingly processes, combines or mixes his things, indemnity for such things; upon payment of the indemnity, the person who processed, combined or mixed the things shall acquire title to them.

Section 707

Any profit acquired by a debtor because of prescription or extinction of his debt by lapse of time, shall not be deemed to constitute unjust enrichment.

Section 708

A person who gives knowingly something in order, to achieve an impossible or illicit result shall have no right to claim restitution of what he had thus given.
Section 709

Nobody shall be allowed to claim restitution of what was performed under an obligation not yet mature or judicially unenforceable because of lapse of time or for other reasons. The same shall apply if a legal title is created subsequently, after a property benefit has been acquired.

Section 710

The duty to restitute the acquired property benefit shall also include the duty to restitute yields as from the day of the acquisition of the property benefit.

Section 711

If an acquired property benefit cannot be restituted wholly or partially, or where the yields cannot be restituted, particularly because of their collection being neglected the enriched person shall pay indemnity corresponding to the value of the property benefit as assessed on the day of its acquisition or on the day when the yields should have been collected; the duty to pay interest shall arise as of the same day. If the enriched person ignores his unjust enrichment, the provision 428 shall apply when fixing the rate of interest; otherwise, the provision of Section 231 shall be applicable.

Section 712

If a legal title becomes subsequently void, the enriched person shall only be liable to restitution of, or to pay indemnity for, what he has been thus enriched on the day when the legal title becomes void. The due indemnity shall be determined as of the same day; however, the amount of indemnity shall not exceed the value of the property benefit at the time of its acquisition. The enriched person shall become liable to restitution, or to the payment of indemnity, and to pay interest as of the same day.

Section 713

If a legitimate possessor is liable to restore or to surrender a thing, the owner shall compensate him for all costs which he reasonably spent on the thing, taking into consideration the increase in value of the thing at the time of its restitution, but not more than the actual costs. However, current maintenance costs shall not be compensated. A legitimate possessor shall be entitled to the yields of the thing.

Section 714

An unauthorized possessor shall surrender all yields together with the thing. Only such part of the costs spent by an unauthorized possessor on the thing shall be compensated, which was necessary to safeguard the thing; otherwise, he shall be entitled to compensation for costs in the same way as an unauthorized agent.

Section 715

When settling mutual claims, care shall be taken that neither party is unjustly enriched to the detriment of the other party.

[Translation adopted from the Bulletin of Czechoslovak Law 1964, 189 et seq.]

Referring Principles:

- III.1 - Set-off
- III.2 - Assignment of claim
- IV.2.1 - Contractual consent
- IV.4.1 - Freedom of form
- IV.5.1 - Intentions of the parties
- IV.5.3 - Interpretation in favor of effectiveness of contract
- IV.5.4 - Interpretation against the party that supplied the term
IV.6.2 - Subsequent fixing of contract price
IV.7.3 - Right to avoid the contract for mistake in fact or law
IV.9.1 - Limitation periods
V.1.4 - Principle of simultaneous performance; right to withhold performance
VI.1 - Termination of contract in case of fundamental non-performance
VI.4 - Promise to pay in case of non-performance
VII.1 - Damages in case of non-performance
V.2.5 - Payment of contract price through documentary credit
IX.1 - Basic rule
XII.2 - Proof of written contract