

Law firm KAŇKA & ŠAFKA, advokáti s.r.o. wishes to inform you about select changes in legal regulations concerning conclusion of contracts effective from 1.1.2014.

## A SINGLE ACT

The new Civil Code which replaces (among other things) the current Civil Code and contractual rules contained in the current Commercial Code will come into effect on 1.1.2014. It will therefore apply that all new contracts will be governed by one statutory act (the new Civil Code), regardless of whether it will be a contractual relationship between entrepreneurs during their business activities or not. The current so-called double regulation, where the contracts between entrepreneurs during their business activities (and some other contracts) were concluded under the Commercial Code and other contracts were concluded under the Civil Code, will therefore cease to be.

## CONTRACTS CONCLUDED BEFORE 31.12.2013

In connection with the transition to the new legal framework contained in the new Civil Code, all contracts concluded before the end of 2013, including the rights and obligations arising from them, as well as the rights and obligations arising from the breach of such contracts (even if such breach happened after 1.1.2014) will be governed by existing legislation (i.e. the existing Civil or Commercial Code). There will be some exceptions to this rule, we would like to draw particular attention to the lease agreement (except for the lease of movable assets), which will be governed by the new legislation even when concluded prior to 1.1.2014.

## CONCLUSION OF CONTRACT

Modified Acceptance: Newly it will be possible to accept the draft of a

contract with modifications. This means that it is possible to change the draft of a contract to a minor extent by the acceptance. If the proposer does not reject (or exclude) such modified acceptance without delay or in advance, the contract will be concluded with the amended content rather than what the applicant originally intended.

Acceptance by providing fulfilment. It will be possible to accept a draft of a contract even by directly providing the fulfilment, which should be the subject of the contract. This will however only be possible if its considered normal or if the parties established such practice among themselves or if it results from the draft of the contract.

## TERMS AND CONDITIONS

- A part of the contract may be determined by a reference to the terms and conditions of a party (or both parties), as is also the case currently. It will however apply, that the terms and conditions shall be agreed upon only if they are attached to the draft of the contract, which is to be accepted, or the terms and conditions are known to the parties.
- It will also apply, that if the terms and conditions of contracting parties contradict each other, the contract is concluded anyway (unless either Party immediately excludes it). In this case only those provisions of the terms and conditions that do not contradict each other will be applicable.

If the terms and conditions contain provisions which the other party could not reasonably expect, such provisions are ineffective (unless the other party expressly accepted them).

## CHANGE OF CIRCUMSTANCES

If a change of circumstances happens after the conclusion of the contract, it will not (as today) affect the obligation to provide the agreed upon fulfillment. However, if the change of circumstances is substantial, the affected party will have the right to seek the resumption of negotiations on the contract; if an agreement cannot be reached with the other party, the concerned party may appeal to a court, which can arrange the mutual relations between the parties as deemed fair, while not bound by the parties motions. It is therefore possible to conceive a situation, where the court will arrange relationships between the parties in a way not proposed by any of the parties.

## DISPROPORTIONATE REDUCTION

A new legal institution - disproportionate reduction - is introduced. In a situation where the performance of one of the parties is grossly disproportionate to what the other party provided, the harmed party may demand termination of the contract and return of everything to its original state, unless the other party shall supply, what was truncated. It will be necessary to assess on a case by case basis what can be understood as a gross disproportion it will also be necessary to wait for relevant case law to appear. If we used the case law of the First Republic, a disproportionate reduction will be when the performance of one of the parties will be roughly half the size (value) than the performance of the other party. Right to demand termination of the contract due to a disproportionate reduction may be surrendered. This right will also wear off, if it is not exercised in one year since the conclusion of contract.