



NEWSLETTER 2/2017

Novelization of the Czech Civil Law

I. Novelization of the Civil Code

- **So-called technical novelization of the New Civil Code**, i.e. the Act No. 460/2016 Coll., by which the Act No. 89/2012 Coll., the Civil Code (“the **NCC**”), is amended, was published in the Collection of Laws (*Sbírka zákonů*) on the 30th December 2016 and most of its provisions will become effective as of **28th February 2017**.
- **The aim of the novelization** is to eliminate the most problematic provisions of the NCC, which shortly after the date of their effectiveness, appeared to be capable to: *restrict, make more difficult or unreturnably affect the legal position of the individual entities, their property or personal sphere* and for which it is not possible due to their urgency or seriousness to wait until the law is interpreted by judicature.
- The novelization addresses especially the following **issues**:
 - (i) **Employment of juveniles** (Section 35 NCC): the novelization enables the juveniles older than 15-years to enter into an employment contract according to the Labour Code subject to one condition: the employment commencement day cannot precede the last day of their mandatory education. The right of a statutory representative of a minor younger than 16-years to terminate his employment is cancelled;

- (ii) a new regulation of the **restriction of legal capacity** (Section 59 NCC, Sec. 3033 (1) NCC);
- (iii) **the protection of a human body after death** (Section 115 – 117 NCC): a number of provisions regulating this issue are cancelled;
- (iv) **acting on behalf of legal entities** (Section 164 (3) NCC): the provision by which one member of a statutory body of a legal entity was obliged to act in relation to the employees in case that the legal entity had a collective statutory body, is cancelled;
- (v) newly specified requirements regarding the **form of a power of attorney** (Section 441(2) NCC): for legal acts, for which the form of a notarial deed is required, a power of attorney in a simple written form with officially verified signature of the principal party will be now officially sufficient;
- (vi) change in legal terminology (Section 509 NCC): the new term "**line constructions** (*liniové stavby*)" replaces the existing term "underground utilities (*inženýrské sítě*)";
- (vii) **matrimonial property right** (Section 709 (3) NCC): the acquisition of a share in a corporation entity by one of the spouses does not automatically establish the participation of the other spouse to the company or cooperative, except for a housing co-operative;

- (viii) change in legal terminology (Section 901 (1) and (2) NCC): the term „*bankruptcy (úpadek)*” is replaced by the term „**insolvency (konkurz)**“;
- (ix) **maintenance obligation** (Sec. 921 (2) NCC): a new right to require **default interests** in case of late payments for maintenance;
- (x) renewal of the statutory **pre-emptive right in joint ownership** of a **real estate** property (Section 1124 (1) NCC); at the same time the co-owners will have a statutory right to waive this pre-emptive right (Section 1125 NCC). If the real estate property is registered in the land registry the waiver of the pre-emptive right will be also subject to registration. This new regulation will become effective as of 1st January 2018;
- (xi) new regulation of the **establishment of the trusts** (Section 1451 NCC): a register of trusts and a mandatory incorporation of trusts into the register is introduced by the new law. The new trust will be newly established on the day of its registration. Other changes concern the establishment of the abovementioned register of trusts (Sections 1452, 1457 and 1474 NCC). Also this part of the new regulation will become effective as of 1st January 2018;
- (xii) **termination of a contractual obligation by set-off** (Section 1988 (2) NCC): the statutory ban on set-off of any debts against wage, salary or remuneration arising from an employment con-

tract or against any compensation thereof, exceeding half of the amount of the wage, salary, remuneration or a compensation, is abandoned by the new law;

- (xiii) **agreement on wage deductions or other incomes deductions** (Section 2045 (1) NCC): the novelization cancels the restriction that a debt cannot be secured by an agreement on wage (or other incomes) deductions for an amount exceeding half of the amount of the wage or another income. It will newly be possible to secure debts in this way without any restriction;
- (xiv) decrease of the maximum limit for the amount of the **deposit payments in lease relations** - maximum amount will be the three times rent as opposed to the six times rent (Section 2254 (1) NCC);
- (xv) changes in the regulation of the lease of an **apartment to handicapped persons** (*byt zvláštního určení*) (Section 2301NCC).

II. Novelization of the Business Corporation Act

- **Novelization of the Business Corporation Act**, i.e. the Act No. 458/2016 Coll. by which the Act No. 90/2012 Coll., the Business Corporation Act (“the **BCA**”) is amended, became effective as of **14th January 2017**.
- The novelization concerns only minor **changes in the representation of employees in supervisory boards** of business companies. Other provisions of the Business Corporation Act remain untouched by this novelization.
- The new rules apply only to **business corporation with 500 or more employees** (i.e. only few numbers of joint stock companies) and are following:
 - (i) **the number** of the supervisory board members should be always **dividable by three** (Section 448 (1) BCA) and
 - (ii) **2/3** of the supervisory board members are to be elected by general meeting, while **1/3 of the supervisory board members must be elected by the employees of the corporation**. The Articles of Association may lay down a higher number of supervisory board members which should be elected by the employees of the corporation (but not higher than a number of supervisory board members elected by the general meeting). The Article of Association may also vol-

untarily opt in for the possibility that certain number of supervisory board members will be elected by the employees even if the company has less than 500 employees (Section 448 (2) BCA).

- The affected companies have to put their Articles of Association and the structure of supervisory boards in compliance with new regulation **within 2 years** from the date of its effectiveness, i.e. by **14th January 2019**.

We hope the above summary will ease your orientation in the new legislation. We are available for any of your additional requests or information.

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