

VK&t

NEWSLETTER NO. 1 – RECODIFICATION

Dear clients,

In relation to the recodification of the Czech civil law, our law firm is preparing for you a series of Newsletters, which are aimed at providing you with better guidance in the framework of new legislation. The content of each of these Newsletters will be the summary of the fundamental and most important changes arising out of the major acts of the recodifications that are effective as of 1.1.2014 and which are:

- I. New Civil Code (Act No. 89/2012 Coll., the “NCC”)
- II. Business Corporation Act (Act No. 90/2012 Coll., the “BCA”)
- III. International Private Law Act (Act No. 91/2012 Coll., the “IPLA”)

The content of the first two recodification Newsletters will be the summary of the fundamental changes introduced by the NCC and the BCA. The following Newsletters will then address specific legal areas and questions effected by the recodification.

The NCC comprises of 3080 Sections and is divided into 5 specific areas:

- General Provisions (§ 1 – 654)
- Family Law (§ 655 – 975)
- Absolute Proprietary Laws (§ 976 – 1720)
- Relative Proprietary Laws (§ 1721 – 3014)
- Joint, Transitional and Closing Provisions (§ 3015 – 3081)

The NCC replaces 238 existing statutory acts (or parts thereof), including the existing Commercial Code and the Family Act.

Disposition Principle

The NCC is built on the disposition principle – where the law does not provide expressly otherwise, the parties may agree differently from the statutory provisions, subject to not breaching of:

- good morals,
- public order, or
- individual rights, including privacy rights.

The Statutory ban is formulated explicitly by the NCC by using the words “*it is prohibited*” or by explicit specification of consequence of the breach of the mandatory provision of law by the reference to the invalidity or discount of the defective provisions agreed between the parties; Examples of mandatory provisions of the NCC:

- Whole of part three of NCC – Absolute Proprietary Laws (Section 978 NCC),
- Consumer protection (Section 1812(2) NCC),
- Lease of apartments and lease of residential buildings (Section 2235(1) NCC, Section 2239 NCC),
- and other such as Section 630(2), Section 1753, Section 1801 NCC *et seq.*

Changes in legal terminology

NCC aims at keeping uniformity in its terminology, exact differentiation and changes some of the existing legal terms and definitions, such as: **“individual”** (*osoba*) instead of “participant” (*účastník*); **“právní osobnost”** instead of “capability to have legal rights and obligations” (*způsobilost mít práva a povinnosti*); **“svéprávnost”** instead of “capability to execute legal acts” (*způsobilost k právním úkonům*); **“právní jednání”** instead of “legal act” (*právní úkon*); **“offer”** (*nabídka*) instead of “proposal to enter into contract” (*návrh na uzavření smlouvy*); **“contractual representation”** (*smluvní zastoupení*) instead of “representation under power of attorney” (*zastoupení na základě plné moci*); **“deed of associations”** (*společenská smlouva*) instead of “association contract” (*smlouva o sdružení*) etc.

New legal definition of the term “thing”

The NCC sees the definition of “thing” in higher sense—as thing the NCC defines everything which is not individual and serves the purposes of human kind. Next to material things, it will be also possible to owe or have other rights in-rem to non-material assets or rights of feasible nature (rights, which can be enforced repeatedly). In the case of real estate assets, the principle *Superficies solo cedit* (the surface yields to the ground) will be applicable (save for underground constructions with individual purpose of utilization or engineering network). As real estate assets

will be newly defined in principle land, rights in-rem to the land and rights defined by the statutory provisions. The impact of the new legislation on existing buildings and constructions is governed by the transitional provisions of the NCC (§ 3054 *et seq.*).

Legal Acts

The New Civil Code (“NCC”) places the free will of the individual and its actions in the middle of the attention – the legal acts of an individual should be considered as valid rather than invalid. NCC emphasizes the form. Absolute invalidity of any legal acts will be applied only in case of obvious breach of good morals and obvious breach of statutory laws and public order and when there is an initial impossibility of performance. In other case, legal acts may be considered as relatively invalid, with a chance to obtain a remedy and also the need to actually challenge the validity.

Standing of individuals

The NCC abandons the full deprivation of the capability to execute legal acts and introduces only its limitation, supported by numbers of other measures (preliminary proclamation, assistance, proxy by member of family). The NCC aggravates the conditions under which an individual may be declared as deceased and introduces the legal institute of missing individual. The NCC also newly regulates the change of sex with respect to the legal status of the individual. The legal regulation of legal entities had been newly included in the NCC.

Rights in-rem

The NCC provides for exact classification of rights in-rem, the structure of which is as follows:

- **Possession** (§ 987 – 1010)
- **Ownership** (§ 1011 – 1114)
 - Joint ownership (§ 1115 – 1157)
 - Apartment co-ownership (§ 1158 – 1222)
 - Adjunct co-ownership (§ 1223 – 1235)
- **Rights In-Rem**
 - Right of construction (*Právo stavby*) (§ 1240 – 1256)
 - Easement rights (§ 1257 – 1308)
 - Common rights (*služebnosti*)
 - Real easement rights (*reálná věcná břemena*)
 - Mortgage rights (§ 1309 – 1394)
 - Retention rights (§ 1395 – 1399)
- **Administration of Assets** (§ 1400 – 1474)
 - Trust fund (§ 1448 – 1474)
- Subordinate provisions of in-rem nature (§ 2128)

The NCC newly introduces right to construction, institute of adjunct co-ownership and detailed regulation of administration of assets (trust fund). With respect to the easement rights, the NCC differentiates between common rights and real easement rights. The emphasis is given to the protection of good faith, when acquiring assets from an unrightful owner. Another important change is the incorporation of the regulation of Apartment co-ownership from the Act No. 72/1994 Coll., on apartment ownership, directly into the NCC.

Hereditary Law

NCC leaves the conception pursuant to which hereditary right is established upon the death of the deceased. NCC on the other hand provides for greater freedom of the will of the individual how to dispose with assets upon his death and introduces number of new legal institutes in this area of law. As a result of the above, we will newly have the possibility for hereditary agreement, donation, conditional and order testament, less strict conditions for disinheritance, etc. NCC provides for lesser protection of first class heirs and the possibility to refuse inheritance. The concept of debts assignment is changed and the creditors are provided for greater protection – the heirs will inherit the debts of the deceased in full extent, i.e. not only up to the active sum of the inheritance, the heir may achieve the limitation of his obligation to debt repayment by so called inventory of the left estate (*soupis pozůstalosti*). Also any claim will have statutory limitation of 6 months after the termination of the inheritance proceeding.

Contractual (Obligational) Law

The main change introduced by the NCC in the area of civil law, is the unification of the regulation of the general principles of contractual (obligational) law and the individual contractual types into one single code – the NCC (instead of the Civil Code and the Commercial Code). The law applies mainly the principle disposition and minimum-formality principles. The NCC explicitly defines pre-contractual liability and also introduces new types of contracts, such as:

- precarium (*výprosa*) (§ 2189 – 2192 NCC)
- ground-rent (*pacht*) (§ 2332 – 2357 NCC)

- health care agreement (*smlouva o péči o zdraví*) (§ 2636 – 2651 NCC)
- jointure agreement (*smlouva o výměnku*) (§ 2707 – 2715 NCC)

Other contractual types are based on the existing regulation and are often inspired by the regulation of the existing Commercial Code. The empowerment of contractual freedom is balanced out by the protection of weaker parties represented in particular by:

- ban on misuse of business standing of an entrepreneur against the standing of an individual acting outside the scope of his business activities,
- consumers protection,
- regulation of adhesion contract and the standing of individual parties,
- regulation of unjustified profiteering and usury.

In the relations between the entrepreneurs the above regulations will not apply or the parties will be able to opt these out. The consumer protection provisions include list of provisions, which are automatically thought as inappropriate. Certain problems recognised today are solved for example by the institute of global cession (i. e. the assignment of group of receivables, whole contract assignment or more detailed regulation of security law assignment).

Family Law

The NCC does not bring any major changes to the existing framework of the Czech family law. One area that we would like to bring to your attention is the regulation of the joint ownership of spouses. In case of any contractual diversion from the legal framework (which in principle copies today's legal framework), the NCC presumes that a public registry of such contracts will be established (registration of a contract in the public registry will be executed only under agree terms, otherwise upon application of the spouses). By its publication in the public registry, the contract will become legally effective *vis-à-vis* third parties. The NCC newly defines the regime of the joint ownership of spouses in terms of liabilities (debts), by excluding from the joint ownership of spouses any liabilities assumed by one of the spouses without the consent of the other spouse, provided these liabilities are not related to "maintenance of general and common family affairs" (according to the existing legislation, the joint ownership of spouses does not include liabilities, which exceed the level correspondent to the level of assets of the spouses, which were assumed by one spouse without the consent of the other spouse) and furthermore if such liability had been assumed against the will of the other spouse, the other spouse may express his disagreement with the liability to the creditor without any undue delay after he becomes familiar with such liability. In such case the creditor will not be able to address the whole assets of the joint ownership of spouses that corresponds to the settlement share of the relevant spouse in case of the division of the joint ownership of spouses.

Compensation of Damages

In case of material damage, the NCC clearly differentiates between the terms for the compensation of damages based on the nature of the obligation breached by the harming party – i.e. whether the damage is caused by breach of statutory or contractual obligation or breach of good morals (§ 2909 – 2913). As opposed to the existing legal regulations, the NCC prefers compensation of damages by restoring the original condition. Statutory liability is based on the principle of wrongful act and contractual liability is based on the objective principle. The compensation of non-material damages will be provided in the form of so-called satisfaction (*zadostiučinění*). The NCC keeps the duty of prevention of damages. Specific provisions govern the liability for lack of actions, for example failure to provide help. The NCC abandons the concept of rating the damage to health by points and leaves it up to evaluation and consideration of all relevant aspects of the matter. The new law limits the obligations to compensate damages caused by the circumstances originated in the nature of the machinery and extends the liability caused by particularly dangerous operations. The NCC also newly introduces the institute of so-called damages for disruption of holidays.

Unjustified Enrichment

The NCC abandons the exact specification of the individual factual grounds classified as unjustified enrichment and lays down a rule under which unjustified enrichment is a property benefit without any justified cause. A greater protection of good faith is provided for when acquiring unjustified enrichment.

We believe that the above summary will allow you better orientation in the new law. We are available for all your requests for any additional information.