

## MAIN CHANGES IN CIVIL LAW EFFECTIVE AS OF 1.1.2014

### 1. Act No. 89/2012 CIVIL CODE

- **unification of commercial and civil law** - eliminates duplicity of private law (entrepreneurs versus common individuals), business relations and non-business relations = equal

- based on **principle of disposition** - parties may conclude contract, which differs from the law, unless:

a) law expressly prohibits such modification; or

b) it is not in accordance with good morals, public order or the rights related to the status of persons.

- act in law is supposed to be **considered rather valid than invalid** - to interpret acts in law in order to preserve their validity, abandons formalistic assessment of the contract validity

New or substantially amended institutes in civil law:

§ 136 – **seat** – if not breaching calm in house, seat may be located also in a flat

§ 498 – **building part of the land** – not ownership to buildings, but right of performance of a building

§ 573 – **delivery via post** – post deemed delivered on the 3rd day upon sending, to foreign countries deemed delivered on the 15th day

§ 629 – **time limitation** – general period of three (3) years, but may be agreed to 1 – 15 years

§ 1084 – **building build on land in the ownership of other person** - belongs to the owner of the land

§ 1138 – **coownership of real estate** – agreement on property management in different form + filing at the collection of deeds at the cadaster

§ 1400 – **management of property of another owner** – manager acting as the representant of the owner

§ 1729 - **pre-contractual liability:** *If a negotiation of a contract reaches so far that the conclusion of the contract seems highly probable, the party which terminates the negotiation beyond the other's party reasonable expectation of the contract conclusion without any justifiable reason, is acting dishonestly.* ⇒ party, which terminates negotiations of the contract has to compensate damage of other party in relation with an expectation of the conclusion of the contract, damage up to loss corresponding to the loss of the uncompleted contract in similar cases

§ 1757/1 - **written form of a contract** only if requested by law or any of the contracting parties

§ 1757/2,3 - **business - confirmation letter** - applies between entrepreneurs or if the letter is sent by a common person to the entrepreneur

- if contract concluded in oral form, either party may subsequently confirm the content of the agreement to the other party
- legal presumption: if the party, who sends the letter is "*in conviction of an intention truly transcribing the content of the agreement, the **contract is considered concluded with the content stated in the confirmation, even if it shows differences from the actually (orally) agreed content of the contract***" under the condition that:
  - a) only not essential changes versus the oral agreement
  - b) reasonable entrepreneur would approve it
  - c) the addressed party does not refuse the variations

§ 1740/3 - **acceptance of an offer** - the offer not substantially changing the conditions of the former offer sent by the party B back to the party A is not considered a new offer, but an acceptance of the former offer, forming valid contract, unless the changed version of the offer is immediately rejected by party A or unless is such option is directly excluded in the first offer of party A

§ 1805, 1806 - **interest, default interest, interest on interest**

- a) limit on past-due interest - if the creditor delays filing a petition at the court without reasonable cause, the interest charged may not exceed the principal, further interest to be charged as of filing petition
- b) interest on interest - if expressly agreed between the parties, orally sufficient

§ 1893 - **taking over of assets** - buyer acquiring assets of a seller (all or portion thereof), becomes jointly and severally debtor with the seller for debts, which are in relation the such assets and about which the buyer knew, up to the value of such assets (without limitation if buyer is "close" person = family)

§ 1921 - **deficient performance** - to be notified within six (6) months upon, otherwise at court to the objection of the other party the court does not grant the right to the plaintiff

§ 1916 - the acquirer entitled to waive its rights from deficient performance in advance (written form)

§ 1915 - performance in middle quality, if not agreed otherwise

§ 1930 - **debt to be paid in full**; if on installments = debtor obliged to reimburse the increased costs

§ 1931 - **payment on installments** - if agreed in the contract, when one (1) installment overdue, creditor may ask for entire debt until the next installment is due

§ 1932 - **rank of debtor's performance** - unless the debtor indicates otherwise, his payments are first credited against costs already determined (costs of debt collection), then default interest, then interest and finally principal.

- if debtor wants to pay the principal first, then both the costs and the interest are subject to interest (i.e. interest on interest)

§ 1949 - **acknowledgement of receipt (kvittance)** - confirmation that debt was fulfilled (who, subject, place, time) issued upon request of the debtor

- 1st legal assumption - if kvittance issued for principal, assumed that accesories (interest, cost) have been also paid

- 2nd legal assumption - payments for repeated performance (e.g. rent), kvittance issued for younger debts = assumed that older debts are paid

- if debt not paid, but kvittance issued = mitigation of debt

§ 1959 - **deadlines** - immediately = five (5) days

§ 1970 - **default interest** - upon governmental order or agreed in the contract (reasonable, court may decrease)

§ 1977, 1978 - **late performance**

- substantial breach = right to withdraw from the contract straight on
- not substantial breach = right to withdraw from the contract after remedy period was granted
- if in the remedy notice creditor's statement that the remedy period will not be prolonged, after vain expiry of the period deemed that the creditor withdrew from the contract (no additional notice needed)

§ 1982 - **set off** - one sided set off excluded for uncertain and indefinite receivables (such not defined)

§ 2048 - **contractual penalty** - does not need to be agreed in writing

- applicable even if by breach of obligation not caused damage (objective liability)
- if penalty agreed, creditor may not ask for damages for the same reason
- court may modify/decrease unreasonable penalty

§ 2056 - **promise for donation** - if gift promised, does not need to be actually given to the other party, but the "fake" donator to pay the spent cost of the gift expectation

§ 2128 - **purchase of immovable property** -

- ancillary Clauses: Title Transfer Reservation, Re-purchase, No Disposal and No Lien clauses, Right of First Refusal, Better Buyer Clause and Trial Purchase Arrangement to have effect as right in rem need to be registered in cadaster, otherwise effect only between parties of the contract
- claiming hidden defect within five (5) years, unless the seller knew about them = no limit (x movables - hidden defects, period of two (2) years)
- ownership transfer reservation - effective against the creditors of the buyer only if signed in the form of notarial deed or signatures verified

§ 2158 - **purchase of goods in shop** - 2 years guarantee

§ 2628 – **performance contract** – not possible to refuse taking over of the building for tiny snags, which do not hinder use

- if performance taken over without objections, no further right to claim damages for visible defects
- price – guaranteed = no change, not guaranteed = may be increased by the supplier for increased cost or additional works

§ 3028/2 – **family, persons and rights in rem** – according to new law, but their origin and occurring rights and obligations according to old law

§ 3036 – **periods** – originated until 2013 = according to old law

§ 3041/2 – **shareholders agreements** – provision in breach with mandatory provisions of new law = not effective as of 2014 + until end of 2016 to be put in line with new law

§ 3056 – **building x land** – if different owners of building and land, right of first refusal vice versa

**LEASE - § 2201 ff**

- general provisions and separate institutes - leases of apartments/flats and houses, leases of business space, leases of movable assets for business purposes, vehicle leases. - according to actual use, not how koloaudated

§ 2202/2 - lease of future thing (also real estate)

§ 2203 - lease agreement may be registered in cadaster, if proposed by owner or with its approval the tenant (real estate = registered in cadaster)

§ 2204/2 - lease for definite period over fifty (50) years = deemed concluded for indefinite, whereby the first 50 years may be terminated based on reasons agreed in the Lease

§ 2207, 2208 - usual maintenance made by tenant, unless agreed that by landlord

- other maintenance and repairs by landlord, unless agreed that by tenant

- defect notified to landlord - if not remedied and tenant may use with troubles = discount on rent and also repair by tenant on the cost of landlord

- if substantial defect limiting or blocking tenant from use = no rent or terminate without notification period + right to set off by tenant up to one (1) month rent

- to be notified by tenant within six (6) months, otherwise no further rights at court

§ 2212/3 - if tenant disturbed in use by third person, to notify landlord and right to reasonable discount on rent

§ 2220 - alteration of the subject of lease - with approval of landlord

- if made by tenant on its cost, right for indemnification for higher value

- if alteration made by tenant without landlord's approval, right of landlord to ask for remedy already during the lease term, no later than upon termination

- if not, landlord's right to terminate without termination period

§ 2215 - **sublease** - (generally) with approval of landlord

§ 2221 - **change of real estate ownership** - transfer of lease to the new owner

- for new owner not binding landlord's obligations over the law limit, unless new owner knew about such obligations

- no right to terminate the Lease, unless agreed in the contract (still not applicable for flats)

§ 2222/2 - owner buying thing assuming that not leased, if leased, new owner may terminate lease

§ 2230 - if lease for definite period and holding over by tenant and the landlord has not notified the tenant, renewal of lease for the same period, max one (1) year and under same conditions

§ 2234 - landlord may withhold movable asset of tenant located in the subject of lease for its receivable against tenant

§ 3074 - as of 2014 all Leases will be governed by new law!

## **leases of apartments/flats and houses:**

§ 2235 - for housing needs (not holiday or short lease)  
- provisions shortening rights of tenant are invalid

§ 2236 - according to actual use, not how koloaudated (e.g. garage)

§ 2239 - **forbidden provisions** - contractual penalty and not reasonable obligations towards tenant

§ 2246 - if rent not agreed, usual rent in that location

§ 2249 - landlord's right to propose rent increase up to usual rent in that location, if not accepted, court decides

§ 2254 - **security deposit** - up to six (6) months rent (no OC), tenant to receive interest

§ 2255/2 - if not increased load for flat, right to work or carry business in the flat or house

§ 2258 - tenant's right to have animal, unless causing unreasonable troubles

§ 2272 - **other persons in flat** - unless excluded by contract, tenant may accept additional persons to the flat, must notify landlord within two (2) months, otherwise substantial breach  
- even if excluded in contract, family members without landlord's approval  
- not more persons than ok under hygienic norms

§ 2269 - **temporary leaving** - if tenant more than two (2) months out the flat, has to notify landlord, if not and serious damage = right of landlord to terminate without termination period

§ 2274 - **sublease** - if flat for permanent living, part of flat to be subleased without approval  
- if flat not for permanent living, sublease of part or full only with landlord's approval

§ 2282 - **tenant's death** - inheritor or persons living in the flat, jointly and severable liable for tenant's debts

§ 2285 - if holding over by tenant for no less than three (3) months and the landlord has not notified the tenant, renewal of lease for the same period, max two (2) years and under same conditions, unless this provision excluded by contract

§ 2286 - **termination notice** - always in writing, if notice by landlord, to instruct tenant about its right to file objections and get the rightfulness of the notice to verified by court, otherwise invalid

§ 2287 - **tenant may terminate Lease** - 3 months notice  
- indefinite period - always and for any reason  
- definite period - under conditions of contract or in case of substantial change of circumstances

§ 2288 - **landlord may terminate Lease** - 3 months notice, both definite and indefinite, must state reason  
- both definite and indefinite - gross breach of obligations, criminal act against landlord, public interest that flat can not be used, other similiary serious reason,  
- indefinite - building alteration of flat, landlord needs flat for its relatives

§ 2290 - tenant's right to get the termination notice verified by court within two (2) months upon delivery

§ 2291 - serious breach by tenant (e.g. debt on rent and OC over 3 months, damaging flat or house, annoying persons in house, using flat in breach with contract = right of landlord to terminate without termination period provided that tenant notified to remedy such breach

### **leases of premises serving carrying out of business:**

- not any more non-residential premises, but premises serving carrying out of business (aim of use, not kolaudace)

- subject to agreement of parties, if no agreement = Civil code applicable

§ 3074 - as of 2014 all Leases will be governed by new law!

§ 2305 - **signs, marks** - upon approval of landlord, if landlord fails to reply within one (1) month, deemed granted

§ 2307 - **transfer of lease** - with landlord's approval

§ 2308 - **tenant's right to terminate (unless otherwise agreed in the contract) - definite period** - three (3) months notice, reason stated, otherwise invalid

- no longer having licence for business, for which premises leased
- premises no longer suitable for activity for objective reasons, and landlord does not relocate
- gross breach of landlord's obligations

§ 2309 - **landlord's right to terminate (unless otherwise agreed in the contract) - definite period** - three (3) months notice, reason stated, otherwise invalid

- premises to be removed or remodelled so as it would block further use
- gross breach of tenant's obligations despite landlord's notice or more than one (1) month in delay with payment of rent and OC

§ 2312 - **indefinite period** - either party to terminate with six (6) months notice, for serious reasons three (3) months notice; if lease for more than five (5) years = always six (6) months

§ 2311 - if holding over by tenant for no less than three (3) months and the landlord has not notified the tenant, renewal of lease for the same period, max two (2) years and under same conditions, unless this provision excluded by contract

§ 2314 - **objections** - the terminated party upon termination notice delivery to file objections against the other party within one (1) month = if after that termination notice not waived, the terminated party may ask court for verifying validity of the notice

§ 2315 - **taking over of customers** - if Lease terminated by landlord, tenant right to damages against landlord or new tenant, who took over customers of the original tenant

## **2. Act No. 256/2013 REAL ESTATE CADASTER**

- **principal of material publicity** – if the status registered in the cadaster is not in accordance with reality, the registered status is in favour of the person, who gained its right for remuneration in good faith from the person, who was registered (§ 984 of the Civil Code)

- **entry to the cadaster** – base deed to be delivered in one (1) piece in hard copy or in electronical version (in such version stored at the collection of deeds)

- **performance of the entry**

- § 16, 18 - when proposal for entry filed, cadaster will in writing address the involved party about such proposal and such entry will not be allowed before expiry of twenty (20) days following sending such notification by cadaster

- if entry allowed, no decision will be issued and legal force to be marked in the file held by cadaster

- the base deed will not be sent with cadaster stamp, but only the involved parties will receive notification of the entry (usually via data box)

- if party with ceasing rights represented through Power of Attorney, notification to be delivered not only to the authorized person, but also to the person itself

- if entry not allowed, written decision delivered to the involved parties

- **register of purchase prices** - held separately from collection of deeds, only datas after 1.1.2014, to be received by anybody with identity card, evidence of such persons held

### **3. Act No. 304/2013 PUBLIC REGISTERS**

- concentrates registers and manner of entries thereto in one (1) Act

- contains registers: associations, foundations, institutions, associations of the units' owners, commercial, public benefit companies

Main changes:

- **proposal for entry to the register** – in hard copy or in electronical form (certified signature or sent via databox)

- **deadlines for decision** – no later than within five (5) working days, unless stipulated otherwise  
+ § 98 – if entry not registered within this period, it is deemed registered

- **entries to registers (also) via notary** – upon request notary may register directly (on line) into the *commercial* register in cases, where the registered information is stated in an (own) notarial deed  
+ deeds attached

### **4. TAX ON PURCHASE OF REAL ESTATE**

- not effective yet

- 4% - payable by the seller, whereby the buyer remains the guarantor

- parties may agree in contract, that tax to be paid by the buyer

### **5. Act No. 262/2006 – LABOUR CODE**

§ 20 – **lack of prescribed form** – if legal acts not made in the prescribed form (written x oral) and it has been started with its fulfilment, it is not possible to make such act invalid, when the employment relationship originates or is amended

§ 34 / 2,3 – **employment contract** – must be in written form (+ also all forms of its termination, incl. immediate termination in the trial period)

- if the employee fails to come to work on the (1st) agreed date, unless there is an obstacle at work on his side, or if the employer is not made aware about such obstacle within seven (7) days, the employer may withdraw from the contract by written notice

§ 90 – **rest between shifts** – no less than 11 hours (age less than 18 = 12 hours)

§ 144a) – **no assignment and no securing of debt** (unless by the agreement on deduction of wages) right for wages – banned

- set off on wages only according to agreement on deduction of wages (pursuant to execution rules in the Civil Procedure Act)

§ 346d) – no future mortgage right, no right of both parties to withhold movable item for debt, no right to assign receivables, no right to take over debt, contractual penalty only in cases, where the law states so

## 6. Act No. 90/2012 **COMMERCIAL CORPORATIONS**

§ 6 – acts of origin, change and cease of corporation – written form with verified signatures (not applicable to shareholders meeting)

§ 7/2 – if web pages = the same datas as in business letters (IČ etc.)

§ 40 – **payment of profit or out of its sources** – may not be paid (incl. advance payments), if this bring the company to insolvency

§ 51 – **business judgment rule** (pravidlo podnikatelského úsudku) - if statutory body acting with faithfulness, informed and in sustainable interest of the company, will **not** be liable for negative impact of its decisions

§ 59 – **agreement on performance of function of the statutory body** – in written form, approved by shareholders meeting

- remuneration – all kinds must be agreed (incl. retirement contribution, share on profit)

- if remuneration not agreed in the agreement = deemed being free of charge

§ 777/3 - current agreements on performance of function to be adapted until 30.6.2014, otherwise deemed being free of charge

§ 61/3 – if statutory body also employee of that company, employment contract may be agreed

§ 62 – **insolvency – remuneration of statutory body** – if company by court found insolvent based on proposal of creditor and the statutory body not acted with due care applying for insolvency by debtor's proposal for insolvency, the remuneration paid to st. body over past two (2) years to be passed to insolvency pot + § 63 court may ban acting as statutory body for next three (3) years + § 68 guarantee of st. body for obligations of the company

§ 71 – **interference** – either person in company substantially affecting the operation of the company = guarantor for debts of the company, unless acting in sustainable interest of the company

§ 132 ff – **s.r.o.**



§ 135 – **share** – various kinds of shares with various rights, shereholder may own more than one (1) share, if agreed in the shareholders agreement

§ 137 – **tribal deed** (kmenový list) – bond (cenný papír) – if agreed in the shareholders agreement, share may be presented by tribal deed, tribal deed to be issued to a share, the transferability of which is not limited or subjective (e.g. by shareholders meeting decision)

§ 142 – s.r.o. may be founded with basic capital of 1,- CZK (the lowest value of contribution)

§ 207 ff – **sale of share** – shareholder may keep the share in the form, as purchased (does not need to be unified into 1 share)

- in case of tribal deed – sale also by endorsement (rubopis)

<b>as of 1.1.2014</b>	<b>until 31.12.2013 (being replaced)</b>
Act No. 89/2012 CIVIL CODE	Act 40/1964 Civil Code Act 116/1990 on non-residential premises Act 72/1994 on Flat Ownership Act 513/1991 Commercial Code Act 94/1963 on Family law and others
Act No. 90/2012 COMMERCIAL CORPORATIONS	Act 513/1991 Commercial Code
Act No. 91/2012 INTERNATIONAL CIVIL LAW	Act 97/1963 International Civil Law
Act No. 256/2013 REAL ESTATE CADASTER	Act 344/1992 on real estate cadaster and Act 265/1992 on registration of ownership and other rights in rem
Act 304/2013 PUBLIC REGISTERS	separate acts or separate sections in other laws on particular registers
TAX ON PURCHASE OF REAL ESTATE <i>* not effective yet</i>	Act 357/1992 HERITAGE, PRESENT AND REAL ESTATE TRANSFER TAX (partially)
Act 262/2006 LABOUR CODE - amended	Act 262/2006 LABOUR CODE