

REVOLUTION IN CIVIL LAW 2014: PART 6 GENERAL TERMS AND CONDITIONS, ADHESION CONTRACTS AND CONSUMER PROTECTION



The new civil code (“**NCC**”) will continue to allow contractual parties to simplify the process of concluding agreements by making the contract obligations subject to standard terms and conditions (“**STC**”). However, it will expand the legislation regarding STC and introducing some important rules, which also applies to adhesion and consumer contracts. The new rules will influence the practice of most Czech companies. Even in this case, however, a certain legal uncertainty will prevail in the given areas of law unless there is some consistent decision-making practice from the higher courts.

1. Changes in the area of general sales terms and conditions

1.1 References to STC

It will still be possible to determine at least part of the content of a contract by reference to STC, which the person preparing a contract will attach to the bid or which will be known to the parties. Divergent provisions in the contract will have priority over STC. In contracts between entrepreneurs part of the contents of the contract also can be determined by means of a simple reference to STC drafted by expert or amateur organisations. **If both parties refer to STC, which contradict each other, the contract will nevertheless be concluded with content that does not contain contradictory STC**, even if the STC excludes this. However, if either of the parties excludes this without unnecessary delay, the contract shall not be concluded.

1.2 Unilateral changes to STC

STC are used mainly by businesses that enter into long-term obligations with a large number of parties under similar conditions. According to the current legal regulations it was impossible to amend STC without the agreement of both parties. **The NCC permits unilateral changes to be made to the STC** if a reasonable need for their later change follows from the nature of the obligations already during the contractual negotiations. A further condition will be a provision on the manner of notification of any changes to the other party and the right to reject the change or changes and the obligation to withdraw from the contract for this reason in the stipulated period. If the parties do not agree otherwise, **changes of STC caused by circumstances that should have been expected by the party referring to STC when entering into the contract will not be taken into consideration** or changes as a result of changes of personal or property relationships.

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1.3 Ineffectiveness of “Surprise” Provisions

Provisions of STC that the other party could not reasonably have expected (e.g. exclusion of the possibility to request compensation of damage upon breach of contract) **will be ineffective if not expressly accepted by the other party.** Contrary provisions shall not be valid. The admissibility of a particular provision of STC shall be considered not only with regard to its content, but also with regard to the manner in which it is expressed (e.g. size of letters or position in the text).

1.4 No More Prorogation Agreements with Consumers

Another change comes from the **new version of the civil procedure code** (also in effect on January 1, 2014). This **allows** prorogation conditions (**changing the local competence of the first-instance court**) **only between entrepreneurs and only in connection with their business activities, not in relation to consumers.** In the event that the jurisdiction of the courts of European Union member states is stipulated pursuant to Council Regulation (EC) No. 44/2001 of 22 December 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the “Brussels I” regulation), this change will not take effect.

2. Adhesion contracts

2.1 **The NCC expressly contains several principles** in connection **with the acceptance of adhesion contracts** (i.e. contracts whose basic terms and conditions are determined by one of the contracting parties or according to their instructions without the weaker party having the opportunity to influence the content of these basic provisions, typically a form contract). **If the adhesion contract contains a clause that refers to terms and conditions presented outside the actual text of the contract, it will be valid only if the weaker party was made familiar with them and their contents or should have known the significance of the clauses.**

2.2 In addition, **clauses that are complex and can be read only with some difficulty or that are incomprehensible for a person of average intelligence will be valid only in cases where they do not cause any damage to the weaker party or if the meaning of the clause was sufficiently explained to this party. Clauses that are especially disadvantageous for the weaker contracting party** without a justified reason (e.g. needless divergence from usual terms and conditions in similar cases) will be invalid. Adhesion contracts **cannot diverge from these rules, although** in principle it **does not apply to entrepreneurs.**

3. Changes in the area of consumer contracts

3.1 **For contracts entered into between entrepreneurs and consumers** the entrepreneur has a **duty to provide extensive information** sufficiently in advance of the signing of the contract. **The NCC also contains** a list of **forbidden provisions**, which in contradiction with the requirement of proportionality constitute

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a significant imbalance of rights or obligations to the detriment of the consumer and **which will not be taken into account, unless the consumer so requests.**

3.2 **In case of withdrawal from a contract entered into remotely or outside any sales premises the consumer will no longer have to state a reason for withdrawal**, while the period for withdrawal will be retained, if during this period the consumer sends the entrepreneur a notice of withdrawal (which does not have to be delivered within the period). **If the consumer is not properly informed** of the right to withdraw from the contract, **the consumer will be able to withdraw for up to one year**, and in the event of retroactive performance of the duty to inform, then within 14 days of being so informed. We would recommend publishing a sample information form regarding the consumer's right to withdraw from the contract before the end of the year.

3.3 Consumer protection is also provided by the provisions on unordered fulfilment. **If an entrepreneur supplies to the consumer something that was not ordered and the consumer takes possession**, the consumer shall be regarded as the rightful holder (he shall be entitled to handle the goods imposed upon him as the owner), **will not have to return anything at his own cost, pay, or notify the entrepreneur in any way.** The same will apply for the provision of financial services.

We hope that you have found our brief overview useful. Please direct any questions to the contact address indicated below and we will be happy to answer them.

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