



September 2013

Transition to the new Civil Code and the Act on Business Corporations as of 1 January 2014

On 1 January 2014, act No. 89/2012 Coll, the new Civil Code (*NCC*) and act No. 90/2012 Coll., on Business Corporations (*AoBC*) become effective. By these acts, in particular the hitherto Civil Code and Commercial Code shall be replaced in the full scope. By the recodification, hundreds of other related acts and other legal regulations shall be affected (repealed, amended or newly enacted) whereby significant changes in virtually all areas of the private law are introduced, including changes in the legal terminology used in legal regulations and in legal documents. The process of the adjustment of this related legislation is still pending, even if (not only due to the current political situation in the Czech Republic) significantly behind the schedule.

The new legislation in the area of the private law introduces many significant changes not only in the lives of the ordinary people but also for the business companies and other persons doing business in the Czech Republic.

As both the NCC and the AoBC contain number of legal institutes which differ from the current Civil Code and Commercial Code, in the course of the preparation it is necessary to concentrate on the transition to the new rules first, respectively to find the manner in which the existing legal relationships will be regulated following the repeal of the existing Civil Code and Commercial Code. This is in particular the task of the transitory provisions of the NCC and AoBC (provisions stipulating for transition from the existing to the new legislation). In this way we would therefore like to make you briefly aware of some of these transitory provisions which are of importance for the entrepreneurs most.

Transitory provisions in the new Civil Code (NCC)

In principal, the NCC shall be applied only on the right and obligations established only after the NCC becomes effective, i.e. as of 1 January 2014. This in particular holds true in respect of the law of obligations (e.g., the contracts concluded after the day on which the NCC becomes effective).

The **contracts** concluded pursuant to the current Civil or Commercial Code, including the rights and obligations arising from breach of such contracts, shall be governed by such (old)

legislation for the entire term of their duration, i.e. even after 1 January 2014. Parties to such contracts may agree that their rights and obligations shall be governed by the NCC as of 1 January 2014 or from a later date (“*opt in*”).

An exception to the above mentioned rule represent the **lease contract** and the **bank account contract**; these contracts shall be governed by the new regulation contained in the NCC as of 1 January 2014, even if such lease contract or bank account contract was concluded prior to 1 January 2014. However, the establishment of the lease and of the bank account contracts as well as the rights and obligations of the parties arising from them prior to 1 January 2014 shall be considered under the hitherto legal regulation (old Civil Code and Commercial Code). The said exception for the lease contracts does not apply on lease of movable things (e.g., a car or a machine) and on lease contracts concluded prior to 1 January 2014 which (as to their content) correspond to “*pacht*” under the NCC, i.e. in particular on the contract on **lease of agricultural land**; these lease contracts (conclude prior to 1 January 2014) and the rights and obligations arising out of such contracts after 1 January 2014 shall be governed by the hitherto (old) Civil Code, respectively Commercial Code.

In principal, the **rights related to things** (ownership and co-ownership rights, easements, pre-emptive rights) shall be governed by the new Civil Code as of 1st January 2014, even if such rights related to things were created prior to 1st January 2014.

As at 1st January 2014, **structure** (building) owned by the same person as the land underneath such building shall (with some exceptions) cease to be a separate thing and shall become a part of the land; i.e. the “*superficies solo cedit*” principle shall be introduced in Czech law. If there is a structure (building) built on a land owned by a person different from the owner of the structure, the structure will remain a separate immovable thing (real estate), however, by virtue of law an pre-emptive right to the land will be established in favour of the owner of the structure (and vice versa) on 1st January 2014.

The mutual **pre-emptive rights of co-owners** of a thing (including real estate) shall cease to exist on 31st December 2014.

The right to damages shall be considered under the hitherto legal regulations if the obligation set out by legal regulations was breached prior to 1 January 2014. If, however, the case has not been resolved yet, the court may, on top of the mere damages, adjudicate also compensation of nonmaterial detriment under the NCC, if there are exceptional reasons which warrant special consideration.

Transitory provisions in the Act on Business Corporations (AoBC)

The AoBC shall in particular govern the rights and obligations created from 1 January 2014 onwards.

After 1 January 2014, in particular the mandatory provisions of the AoBC, e.g., the rules regarding business groups (holdings), shall have direct impact of the already existing business companies.

The **provisions of the Memorandum of Association** (Founder's Deed) or **Articles of Association** of a company which do not comply with the mandatory provisions of the AoBC are **repealed** (i.e. cancelled) by virtue of law **as at 1st January 2014**.

As of 1 January 2014, the provisions of the Commercial Code setting out the rights and obligations of the shareholders of the AS (except for the provisions which do not comply with the mandatory provisions of the AoBC and except for the provisions which the shareholders themselves have departed from in the Memorandum of Association or in the Articles of Association) are deemed to form a part of the Articles of Association of a company established prior to 1 January 2014. This means that the part of the internal provisions of the above mentioned documents shall remain valid whereby a part of these documents shall also form the rules which ensued for the company directly from the hitherto Commercial Code.

The business corporation (business company or a cooperative) shall **adjust** its Memorandum of Association (Founder's Deed) or Articles of Association to the new legal regulation set out in the AoBC **by 30 June 2014** at the latest. By the same date, the AS is obliged to **submit** the **adjusted wording** of the Articles of Association **to** the Collection of Deeds of the Commercial Register.

The provisions of the **contracts on performance of function** and on remuneration (i.e., provisions of the contracts and agreements between the AS and members of its Board of Directors, Supervisory Board or Executive Director) shall be **adjusted** to the AoBC **by 30 June 2014** at the latest; the members of the Board of Directors and of the Supervisory Board, respectively the Executive Director shall be otherwise deemed to perform their functions for free.

By 31st December 2015 at the latest, the business corporation (business company or a cooperative) may decide (in the form of an amendment of the Memorandum of Association or of the Articles of Association) that the business corporation AS will be entirely subordinated to the AoBC ("*opt in*"). Such amendment to the Memorandum of Association

or the Articles of Association becomes effective only upon publication of entry of such subordination in the Commercial Register.

The business corporation (business company or a cooperative) thus have two options: either to **subordinate** its Memorandum of Association or Articles of Association **entirely to the AoBC** or to **only adjust** this document to the mandatory provisions of the AoBC; in the latter case, the Memorandum of Association (Articles of Association) will be governed by the rules set out in the Memorandum of Association (Articles of Association) which are not in breach of the mandatory provisions of the AoBC and by the non-mandatory provisions regarding the right and obligation the shareholders which ensued for the company from the old Commercial Code and which the company has not departed from in its Memorandum of Association (Articles of Association).

If the company decides to entirely subordinate itself to the AoBC, it is necessary to revise the Memorandum of Association (Articles of Association) as the new legal regulation may substantially differ from hitherto corporate rules governing such company. If the company prefers the old (hitherto) legal regulation, it will be necessary to review the Memorandum of Association, respectively the Articles of Association from the perspective of their compliance with the mandatory provisions of the AoBC.