

Provisions of the new Civil Code modifying contractual practice

Legal newsletter



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Szarvas, Falcsik and Partners Law Firm, a member of Deloitte Legal's international network, is providing its clients with a monthly newsletter on the most recent changes and newly adopted regulations in economic law and the most notable legal cases. As the new Civil Code, the first one drafted since the regime change, will enter into force as of 15 March 2014 and will affect nearly all areas of the economy, in the coming months we will devote several editions of our newsletter to the rules of the new Code.

The new Civil Code modifies provisions pertaining to contracts at several points. Please, find below some of the changes which should be taken into account when concluding new contracts, or which may even require the review of existing ones.

The established practice may form part of the contract

An important novelty offered by the new Civil Code is that in the future, handlings and practices applied by the parties in a long established business relationship should be regarded as part of the contract. These may become part of the contract without being put into writing by the parties. If, for example, in the relationship of the parties the performance deadline of a service has always been two weeks from the date of order, it will again be two weeks for future orders, unless provided otherwise, even if the parties do not capture this in writing. Accordingly, the performing party may be in default by missing a deadline that is not even stipulated in the text of the relevant contract, and the consequences of breaching the contract may be applied against him (e.g. damages, default penalty). Therefore, special attention should be paid to defining the content of new contracts concluded with existing business partners and to the clarification of existing contractual terms, if necessary, in the light of the long established practice..

Obligatory rules of tenders

Several companies select their suppliers through a tendering process even if they are not obliged by law to do so. If a company calls for bids in the future, the relevant provisions of the new Civil Code must be observed, which apply to the tender unless otherwise provided. For example, if the party calling for bids wishes to exclude his contracting obligation, he should expressly stipulate this in the announcement, otherwise, according to the new rules, he will be obliged to conclude a contract with the winner of the tender.

Contractual liability may be limited

It was strongly demanded in the market for the possibility to limit contractual liability, as it is common practice in the legal regimes of Western countries. So far, Hungarian civil law failed to accept the limitation or exclusion of liability for breach of contract if it was not in some way compensated by the party excluding or limiting its liability, e.g. by providing a discount in proportion to the limitation. The new Civil Code alleviates the stringent rule and only refuses to accept exclusion or limitation of liability in case of deliberate breach of contract or breach resulting in the loss of human life, bodily injury or harm to health. Accordingly, as agreed by the parties, liability for negligent breach of contract may be excluded or limited without compensation. This means that in the future, indemnification for any negligent breach of contract may be maximised at a fixed amount or a certain percentage of the contractual value, without rendering such provisions invalid.

Not only banks may issue guarantees

Another novelty in the new Civil Code is that guarantee, as an individual security contract, may not only be offered by banks but by any business entity. In practice, parties often wish that the parent company of the recipient of high value supplies should issue a so called *comfort letter* and assume secondary liability for any potential default of the subsidiary. In terms of content, this is a guarantee, which is now legally provided for by the new Civil Code.

In the light of the above described practical changes, master contracts, contracting practice and the execution of contracts may need to be reviewed. Our experts are pleased to assist you with any of the above.

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