

The new Civil Code has
entered into force –
When do the new rules
become applicable?
Legal newsletter



The new Civil Code has entered into force – When do the new rules become applicable?

Deloitte Legal Szarvas, Erdős 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, entered into force on 15 March 2014 and affects nearly all areas of the economy, in the past and coming months we devote several editions of our newsletter to the rules of the new Code.

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As of 15 March 2014 a new Civil Code ("New Civil Code") entered into force. On this occasion, we would like to draw your attention to the regulations pertaining to the entry into force of the New Civil Code, i.e. when the provisions of the former Act IV of 1959 ("Old Civil Code") and when those of the New Civil Code should be applied.

A separate act, with a wide scope, provides for cases where the 2014 provisions are mandatory in everyday business life and private relations. Rather than explaining all the provisions, this newsletter only allows us to focus on the questions that will be most frequently raised in practice. Former provisions will still be applicable for years, or even decades. Accordingly, in many cases, the parties will have to carefully consider which rules to apply to their legal relationships.

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General rules

Basically, the provisions of the New Civil Code will be applicable to facts and legal representations, such as contracts, that were made after its effective date; i.e. legal relationships existing before 15 March 2014 are still governed by the Old Civil Code. In some cases, however, it would not be reasonable to apply the Old Civil Code. Therefore, the Act on the New Civil Code's entry into force offers a large number of exceptions from the general rule.

Provisions pertaining to legal entities

Legal entities registered before 15 March 2014, including all companies, are required to ensure that their Articles of Association complies with the provisions of the New Civil Code on occasion of the first amendment of such document after the entry into force of the New Civil Code, but by 15 March 2015 the latest. The final deadline for limited liability companies and companies limited by shares is 15 March 2016. This means that if a registered

company modifies the Articles of Association for any reason in the future, at the same time it is required to adopt the rules of the New Civil Code.

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A special rule, different from the above, **applies to limited liability companies with registered capital below HUF 3 million**. The New Civil Code has increased the minimal capital requirements of limited liability companies from HUF 500 thousand to HUF 3 million. Limited liability companies with registered capital below the new minimum as per the New Civil Code **shall increase their capital by 15 March 2016**. Please note, however, that **without the capital increase, the activities of these companies will be subject to the Companies Act effective on 14 March 2014**. If the companies concerned would like to apply the permissive provisions of the New Civil Code on companies, e.g. they would like to set up a board of directors, it is worth considering the capital increase before 15 March 2016 and thus switching to the provisions of the New Civil Code.

Property law

The property law provisions of the New Civil Code (especially those pertaining to ownership rights) **are fundamentally applicable to relationships under property law existing on 15 March 2014 if any fact or representation was made after this date** (e.g. a real estate sale and purchase contract was concluded after this date). The law provides for **several exceptions** from the general rule, **including lien**. The provisions of the New Civil Code on lien are only applicable to lien established under a contract concluded after 15 March 2014 or which is qualified as a statutory lien after the effective date of the New Civil Code (e.g. the lessor's lien on the lessee's chattels in the leased property up to the amount of the outstanding rental fee).

Contract law

“In certain cases the New Civil Code is more permissive, therefore, our clients are advised to review their contracts and decide where a transfer to the New Civil Code could be more favourable.”

Existing contracts are subject to the former regulations even if the parties make legal representations or undertake new obligations under such contracts after the effective date of the New Civil Code. Accordingly, the parties may amend a contract which was concluded on 14 March 2014 according to the Old Civil Code in the future, and also the Old Civil Code is applicable in cases where a preliminary contract was formerly signed but the actual contract is only finalised after 15 March 2014. **However, the contracting parties may agree to place their former contract under the New Civil Code, but this may only be done for the entire contract**. It may not happen that certain parts of a contract are governed by the old, while other parts are governed by the new law. **In certain cases the New Civil Code is more permissive** than the old provisions, e.g. liability for the breach of contract through gross negligence may now be limited or excluded by the parties. Therefore, **our**

clients are advised to review their contracts and decide where a transfer to the New Civil Code could be more favourable.

Tort liability and violations of inherent rights

The provisions of the New Civil Code on tort liability and the violation of inherent rights are applicable to unlawful behaviour conducted after 15 March 2014. Here the rule is clear as there is no contract or other legal relationship between the parties binding them to the Old Civil Code. **It may happen, however, that the unlawful behaviour is ongoing**, e.g. an activity polluting the environment has been commenced before and is continued after 15 March 2014. **In this case the old provisions are to be applied** when assessing the liability for damages, as well as to civil law claims related to the breach of inherent rights.

This Newsletter has only highlighted the most important provisions pertaining to the entry into force of the New Civil Code. Based on the above, it clearly requires close attention to decide which rules to apply to legal relationships established before 15 March 2014. In addition to legal compliance, it is in your best business interest to be familiar with the applicable rules since in certain cases you may greatly benefit from switching to the New Civil Code if allowed by law.

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