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К юридическим и экономическим проблемам малых и средних предприятий в инновационной среде

Аннотация. Статья акцентирует внимание на актуальных стратегических приоритетах реализации в ЧР Концепции «Промышленность 4.0», реагирующей на 4-ю промышленную революцию, и поддержке малых и средних предприятий (МСП), включая инновационные, как основы проводимых трансформационных процессов. Статья указывает на новые подходы к решению юридических вопросов МСП в инновационной среде на основе развития автоматизированной системы юридической информации (ASPI) и Интернета. В статье подчеркнута необходимость создания системы типовых договоров для решения как традиционных юридических вопросов, которые устанавливает закон: договоров о купле-продаже, о проведении работ, о предоставлении кредита и др., так и тех, которые в законе прямо не названы: лизинг, франчайзинг, аутсорсинг и др., для реализации вышеприведенных стратегических целей и повышения обоснованности принимаемых решений.

Данная статья является результатом поэтапного выполнения Международного междисциплинарного научного проекта «Факторы развития конкурентоспособности и эффективности управления малыми и средними предприятиями (МСП) в локальной и глобальной среде», № MGA 04-01, Институт экономических исследований и аналитики, Академия STING, Чешская Республика

Ключевые слова: автоматизированная система юридической информации, система типовых договоров, инновационная среда, малые и средние предприятия.

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Legal and economic problems of small and medium enterprises in the innovation environment

Abstract. The article focuses on the current strategic priorities of the implementation in the Czech Republic the concept of “Industry 4.0” as a response to the 4th industrial revolution and support to small and medium enterprises (SMEs), including innovative ones as the basis for the transformational processes at hand. The article points out the new approaches to solve the legal issues of SMEs in the innovation environment through the development of automated system of legal information (ASPI) and the Internet. The article underlines the necessity of establishing a system of standard contracts to address both the traditional legal issues as provided by law: contracts of purchase and sale, labor contracts, loan contracts, etc., and those not expressly named by law: leasing, franchising, outsourcing, etc., to implement the above strategic goals and to improve the validity of decisions.

The article stems from the phased implementation of International interdisciplinary science project “The factors to Improve competitiveness and managerial effectiveness for small and medium-sized enterprises (SMEs) in local and global environment”, № MGA 04-01 Institute of economic studies and analytics, STING Academy, Czech Republic.

Key words: automatic system of legal information, system of standard contracts, innovation environment, small and medium enterprises.

Globalization and competition for limited resources forced the state to respond flexibly to new challenges and new ways of decision-making that requires the creation of new policies, strategies and management systems to an unstable, permanently changing economic and legal environment. In addition, on the one hand, the problem of creating its own economic and legal foundations, regulations, rules, etc. in the countries-EU members and the strategic management process, on the other hand, the need for governance at the international level, the organization for these purposes, the optimal institutional structure, the concentration of the necessary resources and expertise in new directions come to the fore.

The implementation of the concept "Industry 4.0" in the Czech Republic [9;13], responding to the 4th industrial revolution requires transformation of the industry, scientific research and development as well as implementation of the results thus obtained in practice of SMEs, new approaches to the solution of economic and legal issues of introducing changes in the education system, the safety and security of information, establishing systems of standardization functioning of the labour market and the social sphere in new conditions, with consideration of ethics and morality. On the one hand, this leads to the nomination of the complex of requirements necessary for the transformation of these areas, on the other hand, creates an integrated innovation environment, which gives small and medium-sized enterprises (SMEs), including law firms, exceptional opportunities for the development, improve their capacity, efficiency and competitiveness.

The government of the Czech Republic [7; 11] reached an understanding that the comparative advantages that exist in the industry, are short-term, so one of the priority directions of transformation was chosen: creation of an information and communication infrastructure, the reorientation of the legal system and the system of education, the introduction of new instruments into the labour market, adaptation of social consciousness to the current processes.

As our research has shown, the solution of these problems must be addressed comprehensively. The problems of development of the existing automated system of legal information (ASPI) [10] come to the fore, which includes:

- an integrated system of legal information;

- system of instructions for orientation in legal matters, taxation and accounting;

- specialist literature: comments, journals, studies and examples of solutions, judicature, translations, applications;

- a comprehensive list of all regulations published in the Czech Republic, including EU normative regulations, regulations cities and settlements;

- all requirements with amendments and additions;

- all the texts in the actual editions and the original to enable comparisons to see the changes.

It should be emphasized that the introduction in the SMEs of innovative products, technologies, means of communication, new algorithms, etc., changes the approach to management and allows to bring it to a new level of development, on the one hand, facilitating work of the owners, managers, lawyers, economists, on the other hand, increases requirements to the level of their analytical thinking, competence, specialization, requiring acceleration and optimization decisions. These processes have led to changes in the work of lawyers. As shown by the discussion held in the framework of the project "Innovative lawyers 2017" [12, p.34-40], currently, enterpreneurs require from the lawyers such solutions to legal issues that meet the commercial needs of enterprises. In contrast to the classic legal approach such decisions require from the lawyers not only high-level knowledge of proper legal regulation, but also the ability to consider its negative impact on the financial system of an enterprise, its taxation and accounting, functioning of the market and internal processes.

As a result, the need to create in electronic system of the typical contracts that serve as the basis for the decision in each individual case, jurisdiction and the decisions of the arbitration court, with the inclusion of literature necessary for decision-making, including foreign sources is felt. Moreover, this system must include system of the typical contracts for the decisions of traditional legal problems provided by law (contracts of purchase and sale, labor contracts, contracts of loan, etc., and those not expressly named by law: contracts of leasing, franchising, outsourcing etc., to improve the validity of decisions.

In the Czech Republic the New Civil Code entered into force on 1.1.2014. It should be emphasized that the legal relationship, which

arose before the entry into force of the New Civil Code, as well as the existing rights and obligations, continue to regulate the subjects as concerns the requirements of the previous period, i.e. Commercial Code. Therefore, it is very important along with the commercial approach to conclusions of the contracts, to have ther knowledge of the methods and procedures of the New Civil Code. Conclusion of contracts according to the Commercial Code, provided for by the provisions of section 269 to 275 under the heading "Some provisions on the conclusion of the Treaty", from which it is clear that in the Commercial Code, we can only find part of the amendments. The basis of legislation is in the provisions of § 43 to 51 of the Civil Code. De lege ferenda, it is appropriate to build on the common reference framework (DFCR), which has already been created in Europe.

As shown by our study, in the framework of the Treaty process some problems and errors may be experienced. Therefore, in our article, at first we conducted an analysis of contractual processes in accordance with the provisions of the Commercial Code (hereinafter "CC"), using commercial knowledge and experience; next we conducted an analysis and comparison with the provisions of the New Civil Code (hereinafter "NCC"). It should be noted, that in the framework of the contractual relationship is important to consider the time of the conclusion and termination of the contract. This fact will be applied to all contractual relationships, i.e. to contracts of sale, construction contracts, or, for example, contracts in the area of "tax consulting".

In addition, it should be emphasized that the contractual relations of the Czech Republic are closely connected with the contractual relations of Slovakia, so in some cases it will be appropriate comparison with the Slovak law stipulated by the commercial code (mostly) and General provisions in accordance with the Civil Code.

Legal rules under commercial legislation

At the beginning of the contractual process the main and the most important feature is to verify commercial character of a contract. Under the provisions of Commercial Code the contracts are as follows: contracts listed under provision of § 261 (3) Commercial Code, or contracts that are subject to provision of § 261 (1) Commercial Code or provision of § 261 (2) Commercial Code (including provisions of § 261 (6) Commercial Code), or contractual parties may agree on application of Commercial Code in writing.

Commercial type of contracts are concluded by enterpreneurs or by non-commercial persons. Unless a contractual party is an enterpreneur, provision of Section 262 (4) of Commercial Code applies. (The relevant provision of Slovak Commercial Code does not include Subdivision 4).

In the other cases, contracts are governed by Civil Code´s provisions, including contracts concluded under provision of Section 261 (7) of Commercial Code. On the other hand, it is fundamental to state that Slovak Commercial Code does not include relevant provision Subdivision (7).

Regulation of commercial legal relations is stipulated under Chapter III of Commercial Code, in concreto under provisions of Sections 261 to 755 Commercial Code, mostly directory provisions, i. e. with exemption of so-called mandatory provisions listed in provision Section 263 (1) and defined in provision Section 261 (2) Commercial Code, contractual parties may amend or exclude directory provisions if needed.

Under application of Commercial Code situations occured when an individual provision refers to a different provision (similarly or samely applied). In our opinion it should be stated (more) expressly that directory provisions refer to directory provisions and mandatory provisions refer to mandatory ones. There are also examples when directory provisions (non-listed in Section 263) refer to application of mandatory ones. In this case we believe that such "directory" provisions shall not be excluded or modified. Legal theory introduces a term "derivative mandatory provisions".

Generally, conclusion of contract is governed by provisions of Sections 269 to 275 Commercial Code titled „Miscellaneous Provisions on Conclusion of a Contract" which clearly determine the fact that Commercial Code includes several provisions: contractual conclusion and the basic provisions are stated under Sections 43 to 51 Civil Code, and commercial relations are governed also by provisions of Section 269 to 275 that stipulate otherwise.

Contractual parties may:

- choose a type of contract listed and stated under Commercial Code (e.g.: purchase contract on goods, contract on transfer of enterprise or its part, contract on construction);
- choose a type of a contract stated under Civil Code (see also provision of Section 261 (6)

Commercial Code) in case that certain type of a contract is not regulated under Commercial Code provisions (e.g. Mandate Agreement, Contract on Purchase of Immovable Property, generally Contract on Lease etc.);

- enter into an innominate contract (see Section 269 (2) Commercial Code), that means under a principle of contractual freedom contractual parties may conclude contract that is not listed or stated as a type of a contract according to Commercial Code or Civil Code (e. g. cooperation contract, synergy contract on common or contract on provide of services, contract to provide advisory service, contract on support etc.);
- conclude a contract regulated according to the special laws (e. g. Law on Securities).

Contractual parties are legally limited, i. e. if a relevant contractual type is stated under Commercial Code and also under Civil Code, the given contract is governed by commercial law because of provision of Section 1 (2) Commercial Code and contractual parties are not entitled to choose civil type of a contract (typically Agreement on Construction).

Basic rule stipulated by law in order to conclude a contract is to complete an agreement on the whole content of the contract. The only exception is conclusion of a contract provided by expression of consent on proposal of contract expressed by certain conduct.

A special means of conclusion of a commercial contract is included into Commercial Code according to Section 275 (4). The provision contains two groups of conditions. If at least one condition of each group is given, a contract is concluded.

The first group of conditions subject to mandatory provision consist of the conditions as follows:

1. with respect to the content of the offer to conclude a contract,
2. in consequence of the practice established between the parties,
3. with respect to the decisive practices under this Act.

The second group is introduced demonstratively (the party to which the offer is addressed may express their consent to the offer by undertaking a certain act):

1. e. g. by sending the goods;
2. paying the purchase price.

Obviously, Section 275 (4) of Commercial Code is not appllied to the cases when contracts are made in writing, but on contracts concluded by an act.

The act may be made by fulfillment of a condition of the first group and conccurently by fulfillment of a condition of the second group. The content, as the fulfillment of the second group´s condition, is deemed to be each act that directly or indirectly presumes the acceptance of the offer.

While concluding contracts under Civil Code (see Section 261 (6) of Commercial Code), the contract shall consist of essential elements stated by law for each contract individually. Concurrently contractual parties shall be identified.

Speaking about so-called innominate types of contracts (following Section 269 (2) of Commercial Code), except of identification of contractual parties, precise content of contract/ obligation is required, i.e. contractual rights and duties shall be defined precisely and in appropriate way. Commercial innominate contracts are governed by provisions of Chapter I Division III (i.e. general provisions on obligations) except of (taking into consideration provision of Section 269 (1) Commercial Code) contractual provisions of certain type of a contract. In accordance with the principle of contractual freedom contractual parties may agree on apllication of the provision.

Each commercial contract stated under Commercial Code is defined by essential elements (see Section 269 (1) Commercial Code) included in basic provisions introducing an individual type of a contract. It does not matter if the essential elements are introduced by special title of a contract (e .g. Purchase Contract or Contract on Construction) or not (e. g. Mandate Contract). Basic provisions are recognised at the beginning of each contractual type or also known as the first provisions of given contractual types stated in Chapter II, Division III, Subdivision III of Commercial Code. On the other hand, the importance of essential elements consists of a mutual distintion of contractual types and of the precise legal definitions that prevent mutual interchangeability, especially in the cases when contractual types belong to the same contractual groups (e. g. contracts with the element of direct representation). Basic provision generally defines general requirements on given contractual type e. g. in the case of Purchase Contract essential elements are defined as follows: identification of a purchaser, obligation to supply goods, identification of goods, obligation to transfer of ownership to goods, identification

of a seller, seller´s obligation to pay a purchase price and agreement on a purchase price, i. e. agreement on fixed price or on means of setup of purchase price, unless pre-contractual negotiation indicates conclusion of a contract without agreement on the purchase price; according to Slovak Commercial Code such a situation differs in the way that the agreement on conclusion of the contract without agreement on the purchase price shall be expressed clearly.

Moreover, contractual types are stated also under Chapter I and III, Division III of Commercial Code (e.g. Pactum de Contrahendo, Contract on Exclusive Purchase).

Innominate contract regulation stipulated in Section 51 Civil Code is not applicable in the area of commercial legal relations because special principle is applied i. e. commercial provisons on innominate contract are separately stipulated in Commercial Code and application of Civil Code provisions would mean breach of Section 1 (2) Commercial Code.

Some contracts need to be made in writing, e. g. Contract on Bank Account, according to the Commercial Code provisions or special laws (e.g. Licence Contract, if special law states, performance of rights is preceded by incorporation in special register).

Contracts made in writing may be preferred by both contractual parties in cases even if it is not prescribed by law. If a contract is made in writing, than an amendment is required to be made in writing, too. But the requirement of amendments shall be agreed on (see Section 272 Commercial Code). Contracts made in writing are strongly recommended.

In general, following legal commercial practice, it is strongly recommended to stipulate purpose and meaning of the contract. Consequently such a provision is used during determination of goods properties or, for instance, in case of frustrating the purpose of a contract or during performance of right of moderation regarding contractual fine etc. Nowadays, many elements and institutes of common law are incorporated into „continetal-law“ commercial contracts, usually provisions introducing contracts title as „Preamble“ which contain the meaning and purpose of the contract.

Importance of definition of contractual terms increases in order to avoid interpretation conflicts and discrepancies or at least it is useful to incorporate references on Section 264 (2) Commercial Code that means that a content of used contractual terms is determined by business practice.

It is strongly recommended to incorporate provisions on terms regarding invoice or provisions on interest of late payment in case of default in monetary performance.

On the other hand, parties may agree on different clauses e. g. a monetary clause (see Section 473 Commercial Code) or a currency clause (see Section 744 Commercial Code). In commercial practice tax clauses are often negotiated usually in cases when contractual parties presume that tax authority submits bills or amendments of tax regulations. Such tax clauses may modify other contractual provisions such as a purchase price or a content of a purchase price or its different parts.

In case of litigation, contractual parties are entitled to negotiate the so-called arbitration clause and the litigation may be decided by an arbiter of arbitrory court (for more information about this issue see www.soud.cz).

If a contract includes reference on appendix or appendices considering to be unseparable part of the contract, then the reference shall be placed above signature of the parties or on person acted on behalf of parties and the referred appendix or appendices shall exist at the moment of conclusion.

Part of the contract´s content shall be stipulated by reference to the commercial terms (Section 273 Commercial Code) and also by a clause used in business practise as an interpretation rule (Section 274 Commercial Code).

Legal commercial practice

Favourable course of commercial practice/ cases (without any negative consequences) and application of legal provisions, in our opinion, are limited by laws, contract and by quality of evidence of performance and length and quality of dispute settlement.

Resulting from abovementioned presumptions precise application of law is contributed by well-drafted contracts (clear, understanadable, certain) and evidence of performance, that are /influenced by person subjected to Commercial Law.

The essential importance consists of selection of a contractual partner and appropriate

application of secured legal instruments. Regarding conclusion of contracts contractual parties should avoid to make typical and repeatable mistakes and faults.

Agreements between contractual parties are often not in accordance with law and the most frequent impediments are recognised in an identification of a person/legal subject. Entepreneurs label themselves with different title in breach of law. But proper title according to Section 8 et seq. and especially Section 13a Commercial Code needs to be followed.

Interpretation dicrepancies are caused by the absence of contractual definitions (as stated above) or conversely, by incorporation of unknown terms and abbreviations. It is strongly recommended to incoporate legal definitions, references on legal definitions or to incorporate contractual definitions (of terms that are not legally defined) mostly in introductory parts of contracts. The same is recommended for abbreviations. The previously mentioned does not include cases when terms and abbreviations are known and used by contractual parties as daily practice (and contractual parties are aware of their rights and obligations resulting from such terms and abbreviations) and conform with business practice according to Section 264 (2) Commercial Code.

On the other hand contractual content sometimes includes references on unvalid provisions of previous regulation that were cancelled. In such cases to avoid uncertainty contractual parties should explicitly state that cancelled provisions will be aplied or, in better, to transport the concrete content of cancelled provision and include it in the contract.

Our commercial legal practice shows that an object of performance is stipulated vaguely by mistake. The object used to be broadly defined, i.e. there is an absence of precise performance´s extent, and used to referr on different materials, not existing in time of conclusion, or not precisely determined. Usually ad hoc identification or precision is presumed by parties through appendices.

An „unlimited“ object of performance, whilst the contract is concluded, leads to conflicts or litigation. Incorporation of precise and correct references on documentation (projects) is strongly recommended, or in cases where such documentation is not related, precise description is needed.

With regard to a certain business partner, incorporation of legal or commercial secured instruments is appropriate e.g. contractual fine, pledge, guarantee, agreement for retention of title, partial performance related to pre-payment invoices or prepayments.

Eventual future bankruptcy or recovery of a contractual partner is an essential event . Then, following the legal principle „vigilantibus iura scripta sunt“ it is necessary to receive legal protection and instruments granted by relevant laws (e.g. withdrawal, voidability, separate settlement, denial of receivables etc.)

Finally, we are convinced that if fundamental (above mentioned) rules are unrespected by contractual parties or contractual content details are stipulating or precising during phase of performance, the final result can to have more adverse effects than expected.

Legal rules under New Civil Code (NCC)

Following provisions of New Civil Code (hereinafter referred as to „NCC“) not each person is subject to the same rules and the rules are not aplied in the same way.

Interpretation of legal conduct (term “legal conduct” was replaced by the term “legal act” used so far) differs in cases of conduct in legal interaction among enterpreneurs.

Regarding the legal interaction of enterpreneurs (except from intepretation according to Sections 555 to 558 (1) NCC that results from commercial regulation) according to a intrerpreting rule stated under Section 558 (2) NCC business practice, general or used in given commercial field, are taken into consideration, unless application of business practice is excluded by an agreement or law. Unless another contractual agreement is made, then business practice is prior to legal provisions, that are not mandatory (directory provisions), otherwise enterpreneurs may invoke business practice if they prove that:

- the given business practice was known by the other party and
- abidance of the given business practice was taken into account.

Concerning the form of legal conduct, everyone is entitled to choose any form of legal conduct, unless there is a legal or contractual limitation.

Written form of legal conduct is required when rights in rem of immovable property is

established, transfered, amended or cancelled. Legal conduct form is stipulated in Sections 561 to 563 NCC.

Follow-up provisions of Section 564 NCC state that if there is a legal requirement relating to a certain form of legal conduct, content of such a legal conduct may be amended by expression of will in the same form or in more rigorous form; if the certain form of legal conduct is required according to the parties´ agreement, the content of a legal conduct may be amended in another form, only if it is not excluded by parties´ agreement (provision similar to Section 272 Commercial Code).

Legal rules on contracts are included in provisions of Sections 1724 to 1784 NCC. In this paper authors focus on some special rules considered to be essential and fundamental for the purpose of the paper.

General rule on conclusion of a contract is stipulated under Section 1725 NCC. A contract is duly concluded in time, when parties agree on its content. As a consequence of a free act and deed contractual parties may agree on a contract and determine its content. There is a link with previous regulation.

There are also special legal provisions needed to be taken into consideration. Contracts agreed under legal provisions on special contractual types, shall contain so-called essential elements.

Following provision of Section 1726 NCC, if contractual parties deem a cotract to be concluded, even if requirement, that had to be agreed on, have not been agreed on, with regards to their following conduct, expression of their will is considered as to be a concluded contract, if it can be reasonably foreseen that the contract had been concluded without agreement on essential elements.

The issue, however, is whether it can be any element, including essential one. Legal text does not especially define „elements“, so the response on the abovementioned question sounds positively. Given contract shall be governed by provision of a given contractual type that could be challenging for aplication of the provision.

Section 1726 NCC futher mentions that if during pre-contractual negotiations some of a contractual party declares that an achievement of consensus on a certain element is presumption to conlude a contract, then it is considered that the contract has not been concluded. Consequently, the agreement on other element is not binding even if the agreement has been made in writing.

Section 1727 NCC adjusts in standard way the so-called interdependent contracts. Each contract is examined on its own, unless conclusion of one contract is conditional on conclusion of other. Cancellation of one of them without performance causes cancellation of the other interdependent contracts.

While concluding a contract contractual parties should conduct fairly. Section 1729 (2) NCC, taking into consideration fulfillment of conditions stated under Section 1729 (1) NCC, stipulates that a party, which conducts unfairly, shall be liable to damages. Compensation will be estimated / evaluated at most in the extent of loss equal to the loss of non-concluded contracts in the same or similar cases.

New Civil Code introduces the concept of “misuse or dissemination of condifential information”, in concreto under Section 1730 NCC. With the absence of legal reason confidential information shall not be misused, dissemined or disclosed. If a party breaks a duty of confidetiality and enriches itrself, they shall surrender such enrichment.

An offer to enter into a contract is under NCC abbreviated as a “bid”. A term “bid” is well-known and used in contents of other laws (see Law on Public Procurement etc.). It is strongly recommended to be prudent while using such a term in context.

A bid to enter into contract shall be certain with clear intent to enter into contract with the person to whom the bid is addressed.

Section 1732 NCC appoints that a bid is deemed to be a legal conduct if it contains essential contractual elements leading, after a simple and unconditional acceptance of the bid, towards conclusion. Bidder´s will to be bound by a contract made in case when the bid is accepted.

New legal concept reflecting on commercial practice is introduced by Section 1732 (2) NCC. In the meaning of this Section a rebuttable presumption (text includes terms “to be considered”) states that the bid for supply of goods or services for a certain purchase price promoted by commercials or advertisement in a catalogue or through display of goods, is the bid with reservation “until stocks are exhausted” or “inability to perform”.

Previous provisions correspond with Section 1734 NCC. An oral bid shall be accepted immediately or with no delay, only if its content

or circumstances do not indicate otherwise. This shall also apply when a written bid was submitted to present person.

A standard concept was involved in follow-up provision of Section 1735 NCC. A written bid addressed to an absent person shall be accepted within period stated in the bid.

If the period is not given, the bid is acceptable within the period reasonable to proposed contract and speed of communication means used for delivery of the bid.

Finally, Section 1736 NCC deals with the so-called irrevocable bids even if in legal practice they are used rarely.

Concerning next provisions a bid may be terminated/revoked (even if irrevocable) or cancelled. Expression of cancellation shall be delivered to the other person before or at the same time as the delivery of the bid. If the bid states a clause of cancellation, within certain period equal to a period stated for the acceptance, the bid may be cancelled. Otherwise, the irrevocable bid may be revoked only if the revocation is delivered to the other party earlier than the other party sends acceptance of the bid.

Explanatory memorandum concerned Section 1740 NCC introduces that Subsections 1 and 2 follow up previous legal provisions. Person, to whom bid is addressed, accepts the bid, when they express consent towards bidder in due time. Silence or failure to act shall not mean the acceptance of a bid. An acceptance of a bid that contains amendments, reservations, limitations or other modifications is a rejection of the bid and constitues a new bid.

An acceptance that is a response that states the contents of the offered contract in other words is an acceptance of the bid provided that no modifications to the content of the offered contracts results from the response. The same rules on expression of will and legal acts are stipulated according to the effective provisions of Slovak Civil Code (Section 44).

According to Explanatory memorandum regarding Section 1740 (3) NCC provisions on “quantitive units” were inspired by foreign laws and have taken over the concept that it is irrational to deny conclusion of a contract or to “sanction” contractual parties through unvalidity of a contract in cases when an acceptance declares marginal or insignificant modifications in comparison to an offer. Explanatory memorandum gives a simple example: “Bidder declares – I offer 100 pieces for 1.000, - CZC per piece – and an offeree responds – I accept, but it will be in a packet of 10 pieces in each – or – I accept, pay by cash.”.

Response with amendment or derogation that essentially does not modify bidder´s conditions is considered to be acceptance of the bid, only if the bidder immediately rejects. This shall apply when the acceptance with amendments or derogation has been previously excluded by the bidder in the bid or in the other no doubt mean.

When a bid is addressed to more persons and it follows from its content that the bidder´s intent is for all the persons to whom the bid is addressed to become a party to the contract, the contract is concluded if all such persons accept the bid. The same rule is valid under Slovak Civil Code (Section 44 (3)).

Provision of Section 1742 NCC reproduces general rules on a legal conduct. Acceptance of a bid may be revoked by an offeree if the notice of revocation is delivered to the bidder not later than the same time as the acceptance.

Late acceptance has according Section § 1743 NCC the effects of a timely acceptance if the offeror notifies without undue delay the offeree that acceptance is considered to be due or starts to conduct in accordance with coonditions of the bid.

If it follows from a letter or another document expressing the acceptance of the bid that they were sent under such circumstances that they have would have been delivered to the bidder in time if their transport had been duly carried out, the late acceptance shall have the same effect as timely acceptance, unless the bidder informs the offeree orally and without undue delay that the bidder deems the bid to have expired or sends him notification of such. The same rules are stipulated under Section 43c Slovak Civil Code.

Section § 1744 NCC allows to enter into contract impliedly and results from original provision of Setion 275 (4) Commercial Code. There are stipulated 2 groups of conditions which satisfaction presumes conclusion of contarct impliedly.

The first group includes exhaustive conditions:

1. with respect to the content of the bid to conclude a contract,
2. in consequence of the practice established between parties,
3. with respect to the decisive practices.

The Second group of conditions is expressed demonstratively/alternatively (an offeree may accept a bid by conduct):

1. conduct in accordance with the conditions, or
2. express their consent to the bid by undertaking a certain act without notifying the bidder.

Short Section 1745 declares that a contract is concluded when the acceptance of a bid to conclude a contract becomes effective.

It is also envisaged that persons will conclude contracts accroding to contractual types and legal provisions of each contractual type will be applied on contracts whose content contains essential elements stipulated in basic provisions of each of contracts.

According to Section 1746 NCC contractual parties may conclude also a contract that is not regulated as a type of contract, so-called innominate contracts (Contract on Cooperation, Contract on Supply of Services etc.)

To Section 1747 NCC explanatory memorandum states that contracts under which person provides performance without charge, are not subject to general interpretation rules stipulated that an expression that permits various interpretations shall, in case of doubt, be interpreted to the detriment of the party that first used this expression in their conduct, or conversely if such expression is used by the person who shall perform without charge, the expression, in case of doubt, shall be interpreted that the person should perform less rather than more.

A rebuttable presumption under Section 1748 NCC determines that if a part of the content of the contract is agreed addionally, then it is the condition to conclusion of the contract.

The effetiveness of the contract may depend on satisfaction of condition agreed between parties that the content of the contract or any requirement will be determined by the third party or by court. If such determination is not proposed within one (1) year from the conlusion of the contract, than another rebuttable condition is activated that means such a contract is deemed to not be concluded and is cancelled from the beginning.

Explanatory memorandum comments Sections 1751 to 1754 NCC as follows: Given provisions allow that parties may determine that their rights and duties will be governed by business terms determined by reference. Application of this Section is necessary to distinguish from cases of mutual relations and the other cases. If the business relations are not given, it is required that such terms shall be attached to a bid or shall be known by an offeree, only if an offeror declares that terms are known for him. Fulfillment of previous condition is not required in cases when reference on general business terms drawn up by expert or by public interest organisations because of presumption that parties know terms well.

Parties may make reference on general business terms, commercial practice and interpreting rules. The above mentioned provisions are in accordance with Sections 264, 273 and 274 of previous Czech Commercial Code and recent Slovak Commercial Code.

Comparing to the previous law there are legal presumptions that parties may agree on modification of business terms in individual types of contract and within the appropriate extent. Provision of Section 1755 NCC states that if a party waives general objections against validity of the contract those not taken into consideration.

Contractual parties may confirm the content of a contract in cases when the contract is not made in writing.

Provision of Section 1764 NCC stipulates the so-called change of circumstances. If after conclusion of a contract, circumstances change fundamentally and party may perform with difficulties, the party shall perform. Legal exceptions are stated under Sections 1765 and 1766 NCC and may be aplied under certain conditions, e. g. negotiations may be re-established. If parties are not able to agree on new conditions then upon the party´s petition the court shall decide, but the court is not bound by the petition or other proposals. The right of re-establishment shall be performed within a reasonable period.

Following provisions introduced by Sections 1767 and 1768 NCC are concerning the contract in favour of the third person and Section 1769 NCC is concerning on contract on performance of the third person; Section 1770 et seq. NCC stipulate special means of conclusion (including auctions, public procurement and public offer). Then individual types of contracts are provided. Most of them are reproduced from previous Commercial Code´s regulation. We may declare that such provisions are well-known for enterpreneurs and there should be an appropriate application. Also abovementioned decscription of process of conclusion may be smooth because provisions of Commercial Code were aplied effectivity before.

On the other hand, impediments may arise from provisions (mentioned in the text above) when parties do not agree on any essential elements or part of the contract.

We applied the approach of NCC states when parties agree on essential parts of a contract and an offered changes of the unessential part/ parts, than if the bidder accepts such changes, changed parts becomes valid part of the agreement.

Conclusions

Thus, as shown by our study, the implementation of the Concept "Industry 4.0" and support for SMEs creates an innovative environment and requires new approaches to solving legal issues for SMEs. This greatly enhances the need for an automated system of legal information (ASPI) and the Internet. The next stage of development of these processes is connected with the creation of the ystem of standard contracts to address both the traditional legal issues as provided by law: contract for sale, labor contract, loan contract, etc.), and those not named expressly by law: leasing, franchising, outsourcing etc. To solve the above problems, we recommend conducting an analysis of contractual processes in accordance with the provisions of the Commercial Code, then, using the knowledge and experience of commercial legal practice rationally to analyze and compare with the provisions of the New Civil Code. This approach increases the validity of legal decisions.

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