

New Civil Code Changes: What Shall We Pay Attention To When Making and Accepting an Offer of Contract?

The new Civil Code taking effect as of 15 March, 2014 supplements with new rules the already customary process of making of an offer and acceptance thereof in the practice of contracts. The new rules also mean that easily formed may be such contracts which we do not intend unless we pay attention to the contents of the acceptance of the offer, called the expert of Kovács Réti Szegheő Attorneys at Law the attention of origo. Dr. Enikő Vida pointed out, according to the new Civil Code it shall be regarded acceptance if the legal statement expressing agreement with the offer includes such an additional or different condition that is not considered essential or does not affect essential conditions.

Every one is aware of such provision of the currently effective Civil Code that an acceptance different in terms of essential issues from the offer is considered a new offer and a contract is only formed if such new offer is accepted by the party making the original offer, elaborated in advance the expert of Kovács Réti Szegheő Attorneys at Law.

According to the new Civil Code it is also considered acceptance if the declaration expresses agreement with the offer contains such conditions which supplement or differ from the offer in case these conditions are not qualified as essential or do not affect essential conditions.

Procedure Proposed For Each Case

Consequently a condition may be formed even in case of acceptance including a condition differing from the original offer unless the party making the offer expressly limits the possibility of acceptance to the sole conditions included in the offer; or does not protest against the additional or different conditions.

Therefore it is always advisable to scrutinise the reply received to the offer and in case the condition set out in the acceptance should not be acceptable to the party having made the offer for any reason whatsoever, he should protest promptly and in a verifiable manner against the formation of the contract, underlined dr. Enikő Vida.

In Case of Contracts Made Orally

A frequent phenomenon in business life is that contracts made orally include only the essential elements of the agreement. The new Civil Code wishes to regulate the case too when after such an agreement, one party notifies the other party of the contents of their agreement.

In this case too the other party must promptly protest against the written confirmation of modified or additional conditions in order that the condition unsuitable for him should not become part of the contract.

Civil Code Will Be Supplemented With the Rules On the Procedure of Calling For Bids

The Civil Code will be supplemented with the rules of submission of a tender in a tendering procedure. From the 15th day of March, 2014 even the persons not falling within the scope of



the Act on Public Procurement will have the opportunity to select their contractual partners during their own 'procurements' through tendering.

The expert of Kovács Réti Szegheő Attorneys at Law pointed out, in such a case the party inviting tenders – within the limitations of binding rules – may freely determine the rules of tendering. During such a tendering process, the party inviting tenders will be bound by the obligation to conclude a contract if it undertakes in an invitation of tenders addressed to several persons to conclude the contract with the tenderer submitting the most favourable offer.

The party inviting tenders may only be relieved from such an obligation if it sets out the right in the invitation to refuse the conclusion of contract even with the tenderer submitting the most favourable offer that is in line with those set out in the invitation. Of course, the party inviting tenders also has the possibility to withdraw its invitation of tenders until the expiry of the deadline thereof.

In Case of an Agreement to Agree

In accordance with the requirements of market economy, the act also modifies and considerably tightens the conditions for refusal to conclude a contract with the terms and conditions undertaken in the agreement to agree. Following the conclusion of an agreement to agree, conclusion of a contract may only be refused under strict conditions laid down in the act.

In connection with that, dr. Enikő Vida emphasised, in certain cases the burden of proof in terms of the satisfaction of conjunctive conditions rests with the party wishing to refuse the conclusion of the contract. Such is typically the case when, due to a circumstance arisen following the conclusion of an agreement to agree, performance of the agreement to agree under unchanged conditions would cause his material legal interests to be infringed.

Further such case is when the possibility of change of circumstances at the time when the agreement to agree was concluded was not foreseeable; the changing of circumstance was not caused by the party wishing to refuse conclusion of the agreement to agree; and finally, when the changing of circumstances does not fall within the scope of regular business risks.