

Withdrawal from contract in business relations (consequences)

Summary

Withdrawal from a contract is the institute available to parties that find a contract to be unsound or damaging and that seek to be released from their contractual obligations. The conditions under which a party has the right to withdraw from a contract can be set out in the contract itself, but if the contract does not make specific provision for this then a right to withdrawal may be mandated by law. Following a party's withdrawal from a contract, both (or all) parties will find themselves in a new situation with new mutual rights and obligations.

This paper focuses on the regulations governing the consequences of withdrawal from a contract as set out in the Czech Commercial Code. A major aspect of this is an analysis of the theoretical conception of withdrawal *ex nunc* (one of the most important legal concepts distinguishing current commercial regulations from the regulations set out in the General Civil Code). This paper examines the obligations that end with contract withdrawal, the obligations that survive and outlast the termination of a contract, and the new obligations that bind and affect the parties to the contract once the contract has been terminated by withdrawal. In these contexts, the fate of hedging instruments (such as contractual penalties and contractual lien) and rights to compensation for damages are of particular interest and importance.

In addition, this paper analyzes the impacts that withdrawal from a contract may have on the rights to and ownership of assets and explores the differences in regulation set out in the Czech Commercial Code and the General Civil Code respectively.

The final parts of the paper focus on comparing two new regulatory frameworks that are to govern this aspect of Czech contract law. The first of these is the new Czech Civil Code (due to come into force on 1st January 2014), which is aimed at uniting both the commercial and civil regulation of obligations under one law; and the second is the European Union's DFCR (Draft Common Frame of Reference), one of the most important sources of European civil law.

KEY WORDS

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