

## **Resume**

Contract on current account and certain related issues according to the Czech and European legislation

The main attention of the Dissertation is focused on analysis of the legal regulation of the contract on current account. The rules of law in force regulate the contract on current account in the Commercial Code. Besides the Commercial Code the contract on current account is also regulated by the provisions of the Act No. 284/2009 Coll., on the Payment System, as subsequently amended. In this act there is regulated mainly a contract on payment services, system of payment and rights and obligations of the payment services providers and of the payment services users.

The Dissertation comprehends research on substance of the current account principle. In connection with the current account principle it has been examined also relation of this legal term to a definition of a bank deposit. Aside from that it has been disserted on questions related to ownership title to funds on current account within the present regulation contained mainly in the Commercial Code, the Act on the Payment System and the Act No. 21/1992 Coll., on Banks, as subsequently amended.

The contract on current account is by the theory subsumed under the banking contracts (transactions) or under the contracts on banking services. As banking contracts are identified contractual types regulated by the Commercial Code where one of the parties obligatory has to be a bank. With respect to this the Dissertation specifies status of the bank arising from the Act on Banks and contains determination of another potential parties to the contract on current account.

The contract on current account may be under certain conditions considered as a consumer contract. The Dissertation compiles provisions of the laws affecting a consumer as the party to the contract on current account.

It concerns mainly regulation covered by the Act on Payment System which protects consumers as well as certain enterprisers, and it also concerns legal regulation in the Commercial Code which refers to inter alia regulation of the consumer contracts in the Civil Code.

The European as well as the Czech legislation protect consumers in contractual relationships. A legal regulation of the consumer protection also applies to conclusions of contracts on current accounts. Within this area of interest the Dissertation is mainly focused on legal regulation of the consumer protection arising from the Commercial Code and the Civil Code and from the Act on Payment System and all of that in a context of the respective European laws.

In order to determine what domestic rules of law apply to the contract on current account it is crucial, whether the contract on the current account is a contract on payment services. Part Three Chapter XXIII Contract on current account is contained in provisions of the Sec. 708 to 715a of the Commercial Code. However, from Sec. 708 Par. 3 of the Commercial Code follows that certain provisions of this Chapter do not apply to contract on current account being a contract on payment services according to the law regulating payment system. As a consequence of the legal rules comprised in Sec. 708 Par. 3 of the Commercial Code there is a division of the current account regulation. The Sec. 708 Par. 3 of the Commercial Code is not applicable to the contract on current account which is not contract on payment services and therefore the regulation in Sec. 708 Par. 1 and 2 to Sec. 715a Commercial Code is to be applied. The regulation contained in Sec. 708 Par. 3 of the Commercial Code admits that regarding definition of the contract on current account stipulated in Sec. 708 Par. 1 of the Commercial Code it may occur situations when a contract on current account is not a contract on payment services.

The Dissertation studies implications of division of the legal regulation of the contract on current account in the Commercial Code.

Due to the importance of legal regulation contained in the Act on the Payment System the Dissertation carries out analysis mainly of provisions

related to payment services in general and provisions related to framework contract on payment services with focus on relation to the legal regulation of the contract on current account.

The Dissertation is also engaged in obligations of the provider of the payment services before the conclusion and during the existence of obligations from the contract on current account.

The European law aims mainly to creation of the internal single market. It is essential for the establishment of the internal market that all internal frontiers in the Community be dismantled so as to enable the free movement of goods, persons, services and capital. The proper operation of the single market in payment services is therefore vital. A current account and its legal regulation is being considered part of the payment services. In this connection the Dissertation contains study of respective European law regulating the area of payment services.

In this part of the Dissertation there are sorted out the European rules of law regarding the contract on current account and connected issues. The Dissertation includes analysis of the relevant provisions of the key regulation with regard to Euro-compliant interpretation of the domestic legislation.

Until the adoption of the Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC the payment services markets of the Member States are organised separately, along national lines and the legal framework for payment services is fragmented into 27 national legal systems.

The intention of the Directive on payment services in the internal market is to establish at Community level a modern and coherent legal framework for payment services, which is neutral so as to ensure a level playing field for all payment systems, in order to maintain consumer choice, which should mean a considerable step forward in terms of consumer cost, safety and efficiency, as compared with the present national systems.

The fundamental effect for the current account regulation comes mainly from the regulation of the following issues in the Directive on payment services in the internal market:

- a) provision of information to payment services users,
- b) mobility facilitation of the payment services users,
- c) liability for unauthorised payment transactions,
- d) stipulation of the execution time for the payment transaction execution and the method how the charges for payment transaction execution are established,
- e) out-of-court conflicts resolution.

The European as well as domestic legal regulation of the consumer rights protection requires also for the area of the resolutions of the conflicts flowing from the contract on current account and from the provision of the payment services establishment of inexpensive and fast method of how to resolve conflicts or how to handle complaints. The Czech Republic on this account established a financial arbiter. In the Dissertation there is also included an analysis of the legal regulation of the status, competency and powers of the financial arbiter and legal regulation of proceedings before the financial arbiter according to the Act No. 229/2002 Coll., on the Financial Arbiter, as subsequently amended.

This Dissertation contains also a brief analysis of the legal regulation of obligations arising under the contract on account according to the adopted legal rules in the new Civil Code.

The Dissertation gathers and orders rules of law regulating contract on current account and certain related issues of the Czech and European law, and with the help of accessible jurisprudential literature and court decisions carries out its critical analysis and at the end there have been proposed possible solutions of the imperfections.