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Amendment to the Commercial Code – the possibility to contractually limit damages

On 1 January 2012 a fundamental change of Act No. 513/1991 Coll., the Commercial Code will come into force. This change applies, inter alia, to the ability to contractually limit damages in commercial contractual relations (ie, mainly between businessmen). You may recall that according to existing Supreme Court of the Czech Republic case law the contractual limitation of damages is not possible.

However, the amendment changed Sec. 386 par. 1 of the Commercial Code. The new wording of this provision states that in contractual relationships governed by the Commercial Code, waiving the right to compensation or limiting this right even before the breach of duty out of which the damage arises can now be agreed in the contract. However, limiting damages caused intentionally is not possible.

The issue of contractually limiting damages has therefore taken significant steps toward the usual standard of developed legal systems by removing a problem which often had to be solved by choosing foreign law.

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