

Contract Law reform: the main changes brought about by the Ratification Act (*loi de ratification*)

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The Ordinance (*ordonnance*) of February 10, 2016, reforming Contract Law, the General Rules and Proof of Obligations, was ratified by Act No. 2018-287 of April 20, 2018. The Ratification Act clarifies the implementation of certain rules resulting from the Ordinance, but also makes several substantial amendments. Among the various changes made, some deserve special attention for our practice.

New definition of adhesion contract (*contrat d'adhésion*)

The adhesion contract was one of the updates resulting from the Contract Law reform. Its original definition created difficulties in interpreting and identifying its scope. The Ratification Act proposes a new definition under which: "an adhesion contract is a contract which contains a set of non-negotiable clauses (*clauses non négociables*), determined in advance by one of the parties". Under the new article 1171 of the Civil Code (Code civil), only non-negotiable clauses determined in advance by one of the parties and that create a significant imbalance may be deemed void by a judge. These new provisions enter into force on October 1, 2018. Adhesion contracts concluded between October 1, 2016 and September 30, 2018 remain subject to the initial provisions of the Ordinance reforming Contract Law and will therefore not eliminate the difficulties of interpretation of these provisions.

Wrongful breakdown of talks

The initial drafting of article 1112 of the Civil Code could suggest that in the event of wrongful termination of pre-contractual negotiations, the victim could obtain compensation for the loss of opportunity to conclude the proposed contract. This compensation is explicitly excluded in the new article 1112 of the Civil Code. This amendment is retroactive to October 1, 2016.

Limitation of the scope of abuse of dependence

Abuse of dependence is restricted to the sole assumptions of dependence of one party on the other. This new limitation is retroactive to October 1, 2016.

Abolition of the new rules of common law (*droit commun*) relating to the capacity and representation of legal persons

The common law rules created by the Ordinance concerning the capacity and representation of legal persons are abolished by the Ratification Act due to the difficulties of articulation regarding the special rules applicable to each legal person. As from October 1, 2018 the new rules introduced by the Ordinance will only apply to the representation of physical persons.

Written requirement for assignment of debt

The assignment of debt (*cession de dette*) introduced into the Civil Code by the Ordinance has been structured as a consensual contract (*contrat consensuel*). This lack of formalism gave rise to discussions since the validity of a transfer of contract (*cession de contrat*) or an assignment of receivables (*cession de créances*) is subject to a written document. The Ratification Act harmonizes the different regimes by making the validity of the assignment of debt subject to a written document. This condition of validity comes into force on October 1, 2018.

Adjustment limitation for unpredictability (*imprévision*)

The new Article L. 211-40-1 of the Monetary and Financial Code (*Code monétaire et financier*) sets aside this mechanism under common law for all obligations arising from transactions in securities and financial contracts. This new text enters into force on October 1, 2018.

New assumptions regarding payment in foreign currency

The Ratification Act institutes some changes with regard to payments. The most significant for our practice results from the rewriting of article 1343-3 of the Civil Code. It now provides that payment in foreign currency is possible when the parties, as professionals, have agreed to it and when it is commonly accepted for the operation in question. This new provision enters into force on October 1, 2018.

Clarification of the transitional provisions of the Ordinance

The Ratification Act amends Article 9 of the Ordinance reforming Contract Law by stating the provisions of the former law that will remain applicable for contracts concluded before October 1, 2016. Contracts concluded before this date remain subject to the applicable law (before the Ordinance) including, according to the new language of the Ratification Act, for their legal effects as well as for public policy provisions.

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