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REFORM OF FRENCH CONTRACT LAW ISSUED
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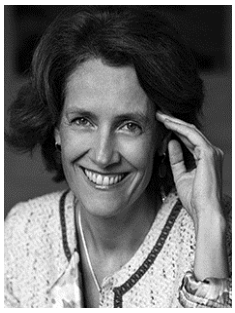

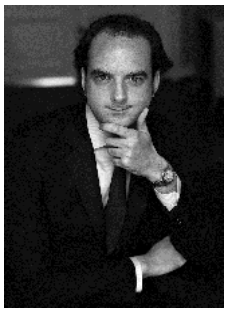

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Watch out! By decree of 10 February 2016, the French Ministry of Justice issued the long expected deep reform of the French law of contracts and obligations. The amendment enters into force on 1 October 2016, subject to its endorsement by the French parliament. It shall only apply on agreements entered into from that date on.

The respective part of the French Civil Code has not been amended since 1804. Following the Reform, it will be entirely reshaped. The future section shall simplify several provisions of the French law of contracts, and will thus offer interesting opportunities. On the other hand, new rights and actions shall be introduced, not yet known under French law.

The echo to the Reform is all in all positive. However, some of the new provisions are criticized, in particular due to unprecise drafting and the use of not defined terms. **Considering the deep impact of the Reform, market players shall prepare for the new law now, and check contract models or business practices for possible need of amendment**.

The Reform pursues essentially three main objectives:

1. **The new law of contracts shall be more coherent and readable**. This means in particular that new definitions are introduced and case law which developed over the time is integrated in the Civil Code. However, the codification of case law may slightly modify the solutions developed by the courts, which decide often on a case by case basis. Nuances in the new text may entail – at times even intended – differences to the current status and require a careful analysis.

2. **The new law of contracts shall grant more legal certainty and be more efficient**. Contractual parties shall be in the position to enforce their position in a simpler way and with less intervention of the judge, e.g. for non-performance by one party of a mutual contract. Formalities shall be reduced such as the assignment of a claim, which may now be effected by simple agreement between the former and the new creditor, without the current requirement of formal notification by a bailiff (or written acceptance by the debtor).

This is an important simplification of the civil law assignment of claims.

3. **The new law of contracts shall better protect the "weaker party"**. We would like to present three of the provisions aiming at protecting the weaker party – heavily debated in the consultation process of the Reform.

- Misuse of the dependency of one of the parties from the other party may be a reason to void the contract.

- "Significant misbalance" of clauses in "non-negotiated agreements" may be sanctioned and could be void. This new provision has been strongly criticized, because it creates a new – civil law – provision in addition to similar provisions for B2B contracts in the French Commercial Code, and for consumer contracts in the Consumer Code, which both sanction clauses creating a "significant misbalance". The question of legal hierarchy between the different texts arises. Furthermore, the provision is problematical due to the use of non-defined legal terms. The "misbalance" shall nevertheless not relate to the pricing, neither to the main object of the contract. Contract models shall be assessed as to whether certain clauses could possibly be void according to this new provision.

- There will be a new "*clausula rebus sic stantibus*" or rule regarding the frustration of contract. A party may request re-negotiation of an agreement if the implicit basis of the contract changed or falls away. Parties may only appeal to the judge by mutual agreement. This provision evoked also strong reactions. However, its application may be limited by contract.

Several new provisions find similar rules in the German Civil Code which could help measuring the possible impact of these new provisions. The following article analyses some of these provisions (in French language).