

The Key Issues in the Understanding and Application of Book Three Contracts in the Civil Code of the People's Republic of China – An English Translation of the Chinese Article by Professor Wang Yi

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Keywords: Effective contracts, absolutely invalid contracts, contracts invalid with respect to a specific third party, contracts with pending validity, revocable contracts, contracts not yet fully effective.

Abstract: The Book Three Contracts of China's Civil Code implements the legislative purpose of ensuring transaction convenience. The types of contractual acts confirmed include effective contractual acts, absolutely invalid contractual acts, contractual acts that are invalid relative to a specific third party, contractual acts whose validity is pending, revocable contract acts, and contract acts that have not yet fully taken effect, etc. In judicial practice, it is necessary to accurately understand the meaning of the rules for determining the validity of contractual acts in the Civil Code to ensure the validity of the ruling.

1. Introduction

The "Civil Code of the People's Republic of China" (hereinafter referred to as the "Civil Code"), which was voted and passed by the third session of the 13th National People's Congress on May 28, 2021, came into force on January 1, 2021 has a total of 1260 articles. Except for Articles 1259 and 1260 in supplementary Provisions, the remaining 1258 articles are distributed in the respective books of General Provisions, Property Rights, Contracts, Personality Rights, Marriage and Family, Inheritance and Tort Liability of the Civil Code. Among them, Book Three Contracts (hereinafter referred to as "Book Contracts") has the most articles. [1]

2. The Legislative Purpose of the Book Contracts of the Civil Code is to Encourage Transactions

From Article 463 to Article 988 of the Civil Code, a total of 526 articles belong to the Book Contracts of the Civil Code. However, from the perspective of legal application, the legal rules in the Civil Code that substantially adjust the contractual relationship are not limited to these 526 articles. For example, Article 508 of the Civil Code states: "The validity of a contract which is not covered by the provisions in this Book shall be governed by the relevant provisions in Chapter VI of Book One of this Code." The basic provisions on the validity of civil juristic acts in Chapter VI

of the General Provisions of the Civil Code and the provisions on civil juristic acts with conditions and periods shall apply, which are directly related to the adjustment of contractual relations. Another example is the vast majority of usufructuary property rights and security interests' rights in the property rights section of the Civil Code, are established through contractual behavior and includes many legal rules for adjusting contractual relationships. There are also many legal provisions to adjust the contractual relationship in the books of marriage and family, inheritance, and personality rights. For example, Paragraph 1 of Article 1007 of the Personality Rights of the Civil Code stipulates: "Any form of purchase or sale of human cells, tissues, organs, or remains is prohibited." This paragraph is a particularly typical and effective mandatory provision. Paragraph 2 of Article 1007 also stipulates: "Any purchase or sale in violation of the preceding paragraph is void." This type of provision also regulates contractual acts. As far as the Book Contracts of the Civil Code itself is concerned, it is divided into three parts: The first part is the general rule; the second part is the typical contract; the third part is the quasi-contract.

When the Contract Law of the People's Republic of China (hereinafter referred to as the Contract Law) was drafted, the relevant judicial and legislative authorities recognized and adopted the proposal of Professor Wang Liming from the Law School of Renmin University, who mainly set the encouragement of transactions as the legislative purpose of the Contract Law.

Among the rules related to contract formation in the Book Contracts of the Civil Code, any changes and adjustments in the Book Contracts of the Civil Code corresponding to the contract formation rules established by the Contract Law are aimed at facilitating the establishment of contractual relationship; in the Book Contracts of the Civil Code and the entire Civil Code, the legal provisions related to the determination of the validity of contractual acts, any changes and adjustments to the existing civil and commercial legislation are also made to promote the effectiveness of contractual acts as much as possible; the provisions established on the performance of contractual obligations and its corresponding changes and adjustments to the existing civil and commercial legislations is meant to further and improve the legal rules for the performance of contractual obligations, so to promote the full realization of the rights of contractual creditors as much as possible.

3. Types of Validity of Contractual Actions

Based on the methodology of categorization and systematic thinking, the article analyzes and introduces the issue of validity of contractual acts in combination with the relevant legal provisions of the Civil Code. The article identifies that the "Civil Code" roughly makes the following six distinctions between the types of validity of contract acts:

The first is the effective contractual acts. The effective contractual acts is covered both in the provisions of Article 502, paragraph 1, of the Book Contracts of the Civil Code, and in the provisions of Article 143 of the Book General Provisions of the Civil Code. It mainly refers to a contractual act that is established in accordance with the law or that satisfies the statutory or agreed special effective conditions of the contract.

The second is absolutely invalid contract acts. Absolutely invalid contract acts are regulated in Article 146, paragraph 1 and Article 153 of the General Provisions of the Civil Code. In addition, such legal provisions can also be found in Part II Typical Contracts of the Book Contracts of the Civil Code, such as paragraph 1 of Article 705 which stipulates: "The term of a lease may not exceed twenty years. If a lease exceeds twenty years, the part beyond twenty years is invalid. Upon expiration of the lease term, the parties may renew the lease contract, provided that the agreed term of lease may not exceed twenty years from the date of renewal." that is, some of the contract terms are invalid.

The third is contractual acts that are invalid relative to a specific third party. A contractual act that is invalid relative to a specific third party cannot claim the validity of the contractual act only in relation to the specific third party, but the effectiveness of contractual act can still be asserted between the parties to the contractual relationship. A party other than the specific third party cannot deny the validity of the contractual act. The provision regulating such circumstances is Article 154 of the General Provisions of the Civil Code on the validity of civil juristic acts of malicious collusion.

The fourth is contractual acts whose validity is pending. An innovative legislative achievement by Chinese judicial members, the second paragraph of Article 502 of the Book Contracts of the Civil Code stipulates: "Where there are laws or administrative regulations providing that a contract shall be subject to the approval and other procedures, such provisions shall be followed. Where failure to complete the approval or other procedures is to affect the validity of the contract, the validity of the clauses concerning the performance of an obligation of filing for approval, and the like, and the other relevant clauses in the contract shall not be affected. Where the party obligated to complete application for approval or other procedures fails to do so, the other party may request the former party to bear the liability for breach of such obligation." The Article identifies and categorizes in particular the effect of a contractual act related to the second sentence of Article 502, paragraph 2 as "contractual acts whose validity is pending". This clause is the judicial achievement established by the first batch of judicial interpretations for foreign-invested enterprise disputes, during the tenure of Judge Liu Guixiang, a full-time member of the Judicial Committee of the Supreme Court, as the president of the Fourth Civil Court. This outcome eventually became a legal rule recognized in the Civil Code. The value determination reflected in this provision is advanced in comparative law.

The fifth is the revocable contract acts. Revocable contractual acts are stipulated in Articles 147 to 151 of the General Provisions of the Civil Code.

Sixth is the contractual acts not yet fully effective. In order to facilitate transactions and implement the legislative purpose of encouraging transactions, the Civil Code has deleted the provisions of Article 51 of the Contract Law. However, it can be seen from Articles 503 to 505 of Book III Contracts General Provisions of Civil Code concerning the validity of contracts, that the provisions still regulate contractual acts not yet fully effective.

(1) Effective contractual acts

The effective contract acts are mainly regulated by the provisions of Article 502, Paragraph 1, of Book III Contracts, and Article 143 of the General Provisions of the Civil Code. Paragraph 1 of Article 502 originates from Paragraph 1 of Article 44 of the Contract Law with additional changes and adjustments. Similar to its corresponding article in Contract Law, Article 502, paragraph 1, also compels a legally established contract to take effect from the time of its establishment, while emphasizing "unless otherwise provided by law or agreed by the parties.", which means if the law has special provisions or the parties have a special agreement, the judgment on the effectiveness of the contract should be made in accordance with the special provisions of the law or the special agreement of the parties.

As for the criterion for "A contract formed in accordance with law" in Article 502, paragraph 1, Article 55 of the General Principles of the Civil Law of the People's Republic of China (hereinafter referred to as the General Principles of the Civil Law) and Article 143 of the Civil Code provides answers. These two articles stipulate three conditions for valid civil juristic acts: the first condition is related to capacity, the second condition is related to the true expression of intent, and the third condition is related to legal intention, which means that the intention must be legal and cannot violate public order or good morals.

As early as September 16th to 25th, 2002, when the Legal Affairs Committee of the Standing

Committee of the National People's Congress held the fourth expert seminar on the drafting of the Civil Code, there were already disputes between academic and legal practical circles as to whether Article 143 of the Civil Code should be stipulated. During the discussion, some academics hope not to directly stipulate the conditions of effective civil juristic acts. The main arguments are two-fold: first is that positive regulations cannot make comprehensive regulations from a legislative technicality standpoint; second is that the positive regulations may mislead the judges. That is, no matter how enumerated the effective conditions of civil juristic acts are in terms of legislative technicality, it cannot be exhaustive. As only natural persons have the distinction between those with full capacity for civil conduct, those with limited capacity for civil conduct, and those without capacity for civil conduct in both Civil Code and in comparative laws, and no such distinction exist in legal and unincorporated organizations, as the result, strictly speaking, the conditions serve only as a requirement for natural persons.

Therefore, the effective condition of civil juristic acts is only applicable to natural persons, not to legal persons and unincorporated organizations, this requirement however, is expressed as a general provision in Article 143. As for the second condition of "true expression of intent", in the case of unilateral false representation, the untrue expression of intent does not necessarily affect the validity of the civil juristic act. As for the third condition stipulated that "the act does not violate any mandatory provisions of laws or administrative regulations, nor offend public order or good morals." is somewhat inexhaustive, as even if such condition is met does not necessarily guarantee an effective civil juristic act. This is illustrated in cases where a civil juristic act, despite not violating any mandatory provisions of laws or administrative regulations, nor offend public order or good morals, could still be ruled as ineffective by damaging the lawful rights and interests of a specific third party that should be protected by law. This comes to show that, a positive enumeration cannot become comprehensive regardless of the effort. Some jurists in legal practice may tend to utilize Article 143 to determine the effectiveness of civil juristic acts and determine acts unconforming to Article 143 to be void and ineffective, which leads some scholars to argue that the article may mislead the judges. As the result, the interpretation of Article 143 should not be limited only to the textual meaning of the article, but must also be combined with the methods of systematic interpretation, historical interpretation and purpose interpretation to determine the meaning of Article 143.

Contractual acts that become effective also include circumstances in which a contract only becomes effective only if the conditions stipulated by the law and the special conditions for agreed upon by the parties are both met. In practice, some clauses or partial clauses of the contractual act are attached with conditions for entry into force. Under such conditions, all other clauses of the contractual act will become effective when they are legally established; in some cases, the entire contractual act is attached to clause which must be met before effectiveness. In such circumstances, the validity status of the contractual act is more similar to that of contractual acts whose validity is pending.

(2) Absolutely void contractual acts

The articles that mainly regulate absolutely void contractual acts in the Civil Code are Articles 144, 146 and 153. Article 144 stipulates: "A civil juristic act performed by a person who has no capacity for performing civil juristic acts is void." The proposal of this provision is controversial, due to the fact that if the contractual acts carried out by persons without civil capacity are purely for their benefit, then what is the purpose to deny the validity of that persons' contractual acts. In the process of compiling the Civil Code, most scholars maintain the argument that there should be exceptions to the clause on invalidity of contractual acts by persons without civil capacity. The fact that there came no exception is because some scholars claim that, firstly the Civil Code has lowered the age standard for persons without civil capacity from 10 years old to 8 years old thereby limiting

the scope of exceptions, secondly the acts of a person without civil capacity for pure gain can also be interpreted as contractual acts between him and his guardian through existing law, so even if there is no provision of exception, there will not be too many adverse consequences.

Paragraph 1 of Article 146 stipulates: "A civil juristic act performed by a person and another person based on a false expression of intent is void." That is, the civil juristic act performed by both parties with a false representation is invalid. It should be noted that the provisions of this article are different from Article 154 of the Civil Code, which stipulates that "A civil juristic act is void if it is conducted through malicious collusion between a person who performs the act and a counterparty thereof and thus harms the lawful rights and interests of another person.". The false representation of intention by both parties does not imply that the parties colluded maliciously. The reason why the provisions are made in paragraph 1 of Article 146 and Article 154 respectively is that the characteristics of malicious collusion between the two parties are the intentional expression of malicious collusion, with the purpose of harming the legitimate rights and interests of others that should be protected by law. Such circumstances are completely different from the false representation of intention by both parties.

Most notable in regard to absolutely void contractual acts is Article 153 of the Civil Code. Article 153 of the Civil Code covers two aspects. Paragraph 1 of Article 153 stipulates: "A civil juristic act in violation of the mandatory provisions of laws or administrative regulations is void, unless such mandatory provisions do not lead to invalidity of such a civil juristic act." When it comes to mandatory provisions, whether it is traditional jurisprudence textbooks or civil law textbooks, without exception, they all agree that mandatory provisions correspond to arbitrary provisions. Arbitrary provisions refer to those provisions that can be excluded through the agreement of the parties. Mandatory provisions are legal provisions that must be enforced, and cannot be excluded from their application by agreement of the parties.

However, two different situations and problems arise when determining the validity of contractual acts and civil juristic acts: The first problem of validity comes from the situation when the purpose of the parties to carry out a civil juristic act or a contractual act is to exclude the application of or circumvent certain provision of the law or administrative regulations. The second problem of validity comes from the situation when the civil juristic act, especially contractual act committed by the parties is not to exclude the application of a law or a certain stipulation of the administrative regulation, but the civil juristic act or the contractual act itself violates a certain stipulation of the law or administrative regulation.

Regarding the determination of the meaning of mandatory provisions, the first thing to determine which of the above two situation does the mandatory provisions mentioned in Paragraph 1, Article 153(1) of the Civil Code fall under. The Article stipulates "A civil juristic act in violation of the mandatory provisions of laws or administrative regulations is void, unless such mandatory provisions do not lead to invalidity of such a civil juristic act.". From the contextual point of view, the mandatory provision must occur in the second situation. At this point, the first thing to look at is whether the provisions of the laws and administrative regulations violated by the contract behavior are mandatory provisions, and if such mandatory provisions will lead to absolute invalidity of contractual acts.

Concerning the first situation, when the parties perform a civil juristic act or contractual act and agree to exclude the application of a law or a certain provision of an administrative regulation, the validity status of the agreement is either: 1. the agreement is valid, if the relevant provision of laws and administrative regulations is an arbitrary provision that can be agreed to exclude its application; 2. the agreement is invalid, if the provisions of laws and administrative regulations cannot be agreed to exclude application, in other words a mandatory norms; 3. sometimes valid, sometimes invalid. This is what German and Japanese scholars would call semi-mandatory norms, otherwise known as

mixed norms, that is, the provisions of the same law and administrative regulations can sometimes be agreed to be excluded of application, and sometimes they cannot be agreed to be excluded of application. One such example is Article 180 of the General Provisions of the Civil Code which regulates force majeure. Force majeure is an objective situation that cannot be foreseen, avoided or overcome. Regarding the question whether force majeure clauses could be agreed to be excluded of application, Paragraph 1 of Article 180 stipulates: "A person who is unable to perform his civil-law obligations due to force majeure bears no civil liability, unless otherwise provided by law." If an objective situation that cannot be foreseen, is unavoidable, or insurmountable circumstances occurs, the force majeure has the functionality to exempt a party from liability.

However, in cases where both parties agree that even if force majeure occurs, they will not be exempted from the responsibility; or in cases where both parties have agreed that, even, if the prevention and control measures taken due to the COVID-19 epidemic or emergency response measures lead to a breach of contract, the force majeure exemption clause will not apply, and as long as there is a breach of contract, they will be liable for breach of contract, the validity of such agreements comes into question. According to the consensus formed by academic today, if two commercial entities make such an agreement, they can agree to exclude the application of the legal rule of force majeure as an exemption clause, and such an agreement is generally considered valid. However, if the contractual parties instead of two commercial party were instead one is a commercial party and the other is a consumer, then the situation changes and Article 128 and relevant provisions in "Consumer Protection Law" comes into play. As consumers are considered a vulnerable party relative to commercial party, the agreement to exclude the application of force majeure exemption clauses reduces the rights of consumers and is considered harmful to society and public interest in accordance with the provisions of the Consumer Rights and Interests Protection Law to protect consumer rights and interests. As such, in addition to Article 180 of Civil Code, the provisions of paragraph 2 of Article 153 of the Civil Code can still be invoked to invalidate civil juristic acts that violate public order and good morals. Such mixed provisions are sometimes arbitrary and sometimes mandatory. As illustrated, when discussing whether a law could be agreed to be excluded of application, three types of legal norms exist: arbitrary norms, mandatory norms, and mixed norms. They are, however, not to answer the question of how to determine the validity of an act when the provisions of laws and administrative regulations are violated.

Concerning the second situation, in which to determine the distinction of types of legal norms when the provisions of laws and administrative regulations are violated by contractual acts or civil juristic acts, the result can be categorized as: 1. Valid upon violation, typically ensues after violation of advocacy provisions, but may also apply on violation of mandatory administrative regulations – the contractual acts may be subjected to administrative penalties, fines, or in criminal case be investigated, but the contractual acts should be valid; 2. Validity Pending upon violation, or invalid with respect to a specific third party. That is, if a contractual act or a civil juristic act violates the provisions of laws and administrative regulations, the act is either of pending validity or invalid relative to a specific third party. This is known as authorized third party norms; 3. Absolute invalid upon violation, that is, if the contractual acts or civil juristic acts violates mandatory validity norms; 4. Validity have not yet fully taken effect upon violation, that is, if the contractual act or civil juristic act violates the provisions of laws and administrative regulations, then the act which has violated mandatory provisions that requires parties to adopt specific actions is invalid, but it does not affect the effectiveness of other clauses such as performing the obligation to submit for approval and related clauses. Legal norms can thus be divided into three categories, including advocacy norms, third-party authorization norms, and mandatory norms. It should be noted that the mandatory norm mentioned here must be a mandatory norm whose application cannot be excluded by agreement. Whether it is an administrative mandatory provision or an effective mandatory

provision, the parties are required to adopt a specific mode of behavior, and the parties are prohibited from agreeing to exclude their application of the law.

For example, Paragraph 1 of Article 1007 of the Personality Rights of the Civil Code is a typical effective mandatory provision. If both parties agree to exclude its application and agree to buy and sell human cells, human tissues, human organs or remains at will, the agreement is invalid. This mandatory stipulation of validity is a mandatory stipulation in all circumstances and must not be excluded from its application by agreement.

Another example is the equity transfer contract of a Sino-foreign joint venture. If law requires administrative approval to take effect, yet both parties to the transfer contract agree that the contract will take effect before its approval, then the agreement is valid. Therefore, the mandatory norm of the first situation is also mandatory in the second situation, yet it cannot be said of mandatory norm of second situation is the same in first situation, as there are numerous provisions in laws that are object of which the parties can agree to exclude its application, and it will not become the object of violation of civil juristic acts or contractual acts.

In judging the validity of contractual acts or civil juristic acts, this article divides the provisions of laws and administrative regulations into simple norms and complex norms. The simple norm is a norm that will not become an object of violation of civil juristic acts, especially contractual acts. Only when the parties want to agree to exclude its application, it is necessary to judge whether it is an arbitrary provision, a mandatory provision, or a mixed provision, not needing to consider advocacy norms, authorized third-party norms, or mandatory norms. Firstly, it should be noted that the mandatory provisions mentioned in Article 153 of the Civil Code are mandatory provisions based on the provisions of laws and administrative regulations that can be violated by civil juristic acts or contractual acts. Secondly, it is necessary to consider whether the mandatory provisions are effective mandatory provisions when the mandatory provisions of laws and administrative regulations can be violated by contractual acts. If the answer is positive, the contractual act may be held to be invalid.

Regarding the interpretation of paragraph 1, Article 153 "unless such mandatory provisions do not lead to invalidity of such a civil juristic act.", "mandatory provisions do not lead to invalidity of such a civil juristic act" mainly include two types of provisions: the first is the mandatory provisions that require the parties to adopt a specific mode of behavior, such as the first sentence of Article 502, paragraph 2 of the Civil Code: "Where there are laws or administrative regulations providing that a contract shall be subject to the approval and other procedures, such provisions shall be followed.". That is, the laws and administrative regulations stipulate that the contract must go through the approval and other procedures before it can take effect. This mandatory provision can not only become the object of violation of civil juristic acts or contractual acts, but also requires the parties to adopt specific behaviour patterns. In case of violation of this provision, the validity of the civil juristic act shall be judged in accordance with the provisions of Article 502, paragraph 2, that is, "Where failure to complete the approval or other procedures is to affect the validity of the contract, the validity of the clauses concerning the performance of an obligation of filing for approval, and the like, and the other relevant clauses in the contract shall not be affected." In other words, a civil juristic act violating the first sentence of paragraph 2 of Article 502 is not absolutely invalid, and the clauses in the contract to perform obligations such as approval and other relevant clauses are still valid. The second is administrative mandatory provisions that prohibit the parties from adopting a certain behaviour pattern.

Therefore, when understanding and applying paragraph 1 of Article 153 of the Civil Code, attention should be paid to the following three categories when judging what kind of mandatory provisions are different types of administrative licenses in laws and administrative regulations: 1. If the administrative license requires the parties to adopt a specific behaviour pattern, the

administrative license must be valid only after the approval and other procedures stipulated in Article 502, Paragraph 2 of the Civil Code. Administrative license in connection with transfer of mining rights falls into this category. 2. Most of the administrative licenses that allow the parties to carry out a certain type of contractual behavior are related to market access qualifications. They are in other words mandatory regulations that prohibit specific parties to engage certain type of transaction. 3. In situation where the purpose of an administrative license is to permit the parties to carry out a factual act, such administrative license must be a simple norm as categorized above. As that administrative license cannot become the object of violation by civil juristic act or contractual act, it will have no influence on the validity of the contract.

(3) Contractual acts that are invalid with respect to specific third parties

Regulations on contractual acts that are invalid with respect to third parties are not limited to Article 154 of the Civil Code, but Article 154 can be regarded as a model provision. Article 154 stipulates: "A civil juristic act is void if it is conducted through malicious collusion between a person who performs the act and a counterparty thereof and thus harms the lawful rights and interests of another person." The lawful rights and interests of another person means private interests that falls under the protection of law other than national interest and public interest. However, in accordance with the principle of proportionality, not all civil juristic acts or contracts that maliciously collude to damage the private interests of a specific person should be considered invalid, as it also depends on the action of the specific person whose legitimate rights and interests are violated – inaction from the specific person will result in the civil juristic act taking effect despite its malicious intent, whereas only when the specific person actively protects his rights would it have an effect on the validity of civil juristic act.

For example, Article 69 of the Judicial Interpretation of the Guarantee Law of the Supreme People's Court stipulates: "If the debtor has multiple ordinary creditors, when paying off the debt, the debtor who maliciously colluded with one of the creditors to mortgage all or part of his property to that creditor, and if the ability to repay other debts is lost, and the legitimate rights and interests of other creditors are damaged, the other creditors whose rights and interests are damaged may request the people's court to revoke the mortgage."

Article 69 recognizes the mortgage agreement between the debtor and a specific creditor with malicious collusion to damage the legitimate rights and interests of other creditors as revocable rather than absolutely invalid. Therefore, the determination of the validity of a civil juristic act of malicious collusion to damage the legitimate rights and interests of others should be determined by the third party whose legitimate rights and interests have been damaged, in order to comply with the principle of voluntariness and the principle of proportionality between ends and means in the Civil Code.

(4) Contracts whose validity is pending

In the process of compiling the Civil Code, Article 51 of the Contract Law, which stipulates that a contract without the right to dispose of a contract is a contract whose validity is pending, has been deleted. The reason is that the act of disposing without authority affects the performance of contractual obligations, but does not affect the occurrence of contract validity. If the disposing person fails to deliver the subject matter, he must bear the corresponding liability for breach of contract. Therefore, Paragraph 1 of Article 132 of the Contract Law has become Paragraph 1 of Article 597 of the Book III Contracts of the Civil Code: "If the ownership of a subject matter is unable to be transferred owing to the fact that the seller fails to obtain the right of disposal, the buyer may rescind the contract and request the seller to bear default liability." The legislative purpose is to facilitate and encourage transactions.

Of course, this does not mean that contracts whose validity is to be determined do not exist in the Civil Code. As mentioned above, if the act of unauthorized agency does not constitute an apparent

agency as stipulated in Article 172 of the Civil Code, the act of agency is usually pending. In this case, the validity of the act of unauthorized agency shall be judged in accordance with the provisions of Article 171 and Article 503 of the Civil Code. In addition, if the legal representative of a legal person or the person in charge of an unincorporated organization fails to meet the constitutive requirements for apparent representation in Article 504 when entering into a contract beyond authority, the validity is still pending.

(5) Cancellable contracts

The Civil Code contains provisions on several types of revokable contracts, which are specified in Articles 147 to 151, including: serious misunderstanding, fraud, fraud by a third party, coercion and coercion by a third party, and taking advantage of the distressed state or a desperate situation of the other party, or taking advantage of the other party's lack of ability of making judgment, resulting in unfairness.

(6) Contracts that are not yet fully effective

Contractual acts that have not yet fully taken effect is a typical manifestation of China's judicial wisdom, which is concentrated in Paragraph 2 of Article 502 of the Civil Code, which stipulates: "Where there are laws or administrative regulations providing that a contract shall be subject to the approval and other procedures, such provisions shall be followed. Where failure to complete the approval or other procedures is to affect the validity of the contract, the validity of the clauses concerning the performance of an obligation of filing for approval, and the like, and the other relevant clauses in the contract shall not be affected. Where the party obligated to complete application for approval or other procedures fails to do so, the other party may request the former party to bear the liability for breach of such obligation." The paragraph consists of three sentences and establishes three rules.

The first sentence stipulates that according to the provisions of laws and administrative regulations, some contracts should go through procedures such as approval, thus approval procedure prescribed by law is a special condition for the validity of the contract. This sentence originates with adjustments from the second paragraph of Article 44 of the "Contract Law": "If the laws and administrative regulations stipulate that the approval, registration and other procedures shall be carried out to take effect, the provisions shall be followed."

The second sentence originates from Paragraph 2 of Article 1 of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Dispute Cases of Foreign-invested Enterprises (I) (hereinafter referred to as the Judicial Interpretation of Foreign-invested Enterprises (I)): "The people's court shall determine that unapproved contract has not become effective. If the parties request confirmation of the invalidity of the contract, the people's court shall not support it." That is, even if the contract is not approved, it will not affect the validity of the clauses and relevant clauses of the obligation to submit for approval. This means that the clauses and related clauses for fulfilling the obligation to apply for approval will take effect as long as they are established in accordance with the first paragraph of Article 502, but the effect of the entire contractual act cannot fully take place before the approval and other procedures are completed, therefore contract not yet fully effective. The effective clause of the contract is to ensure the entire contractual acts to become fully effective. This is a new type of validity of contractual act created by the Civil Code.

In the third sentence, when the terms of fulfilling the obligation to submit for approval and other relevant provisions are in effect, the obligor shall be liable if he fails to perform the obligation to submit for approval. Regarding the issue of the validity of a contract that has not been approved, it was initially supposed that as long as the approval formalities were not completed, the contract is invalid; since then, the first half of paragraph 1 of Article 9 of the "Contract Law Judicial Interpretation (1)" issued by the Supreme People's Court appeared the wording "not yet effective". As for the rights and obligations between the parties in a not yet effective contract, and the

consequences for the obligor fails to perform his obligations, Article 8 of the Judicial Interpretation (II) of the Contract Law stipulates that “after the establishment of a contract that can only take effect after approval or registration in accordance with the provisions of laws and administrative regulations, the party who is obliged to go through the formalities for approval or registration without Applying for approval or failing to apply for registration in accordance with legal provisions or contractual stipulations falls into the category of "other acts that violate the principle of good faith" as stipulated in Article 42(3) of the Contract Law. At the request of the other party, the court shall consider the situation and can determine the other party to go through the relevant procedures by himself; the party shall be liable for damages for the expenses incurred and the actual losses caused to the other party.” In practice, some approval procedures in accordance with the agreement and legal provisions can only be performed by a specific party, the situation which Article 8 of the Judicial Interpretation of the Contract Law (II) did not provide a solution. In the end it was the Judicial Interpretation of Foreign-Invested Enterprises (I) that has solved this problem satisfactorily.

4. Force Majeure and Change of Situation

Article 533 of the Civil Code regulates the principles for handling force majeure and change of circumstances, the article stipulates: "After a contract is formed, where a fundamental condition upon which the contract is concluded is significantly changed which are unforeseeable by the parties upon conclusion of the contract and which is not one of the commercial risks, if continuing performance of the contract is obviously unfair to one of the parties, the party that is adversely affected may re-negotiate with the other party; where such an agreement cannot be reached within a reasonable period of time, the parties may request the people’s court or an arbitration institution to rectify or rescind the contract. The people’s court or an arbitration institution shall rectify or rescind the contract in compliance with the principle of fairness, taking into account the actual circumstances of the case."

Articles 180 and 181 of the Civil Code address the issue of whether a party should be liable for breach of contract due to force majeure. Article 563, paragraph 1, item 1 of the Civil Code addresses the issue of whether the contract can be rescinded when a party breaches the contract due to the occurrence of force majeure and the purpose of the contract cannot be achieved. That is, if the purpose of the contract cannot be achieved due to force majeure, the statutory right of rescission comes into effect. However, for situation where change of interest relationship is caused by civil juristic facts which in turn is caused by force majeure, and for situation where continued performance of the contract is obviously unfair to one party and the unfair party would claim change of circumstances, force majeure is a civil juristic fact that enables the application of the change of circumstances system. Article 533 of the Civil Code does not exclude force majeure, which means that if the continued performance of the contract is unfair to one party caused by force majeure, the party could request negotiation with the other party, and if the negotiation fails, the party may request the court or arbitration institution to modify or rescind the contract. As demonstrated, force majeure is the cause, and the change of circumstances system is the legal consequence.

For the issue of whether to apply the suspension and extension of the statute of limitations when the party's right of claim cannot be exercised in time due to force majeure, the statute of limitations system of general provisions shall be applied. If the occurrence of force majeure causes the parties to suffer losses for which no one should be held responsible, it shall be solved by the rule of risk-burden. Since force majeure as a civil juristic fact may cause multiple legal consequences, it is necessary to use the exemption clause system, the statutory exemption system, the statutory contract

termination system, the change of circumstances system, the limitation of action system, and the risk-burden system to deal with and resolve the situations separately.

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[1] *The Article is originally published in Chinese as Wang Yi. (2020). The key issues in the understanding and application of Book Three Contracts in the Civil Code of the People's Republic of China. Journal of Law Application.*