

New Developments in Freedom of Contract in the Civil Code's Contracts Section

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Abstract: Under the new development pattern, China's economy is facing a new turning point, respecting the autonomy of the parties, which is the inherent requirement of economic development and the endogenous logic of civil law. The freedom of contract is a late start in China, but it has developed extremely rapidly. Civil Code's Contracts section develops freedom of contract in terms of the expansion of contract formation, softening of contract validity, and changes in contract interpretation provisions. By clarifying the new development of freedom of contract in the Civil Code, we can get a glimpse of the path chosen by the Civil Code for the modernization of our economy and its response to the main contradictions of our society,

Keywords: Freedom of contract; Contract interpretation; Green principles

Freedom of contract originated in Roman law, but the essence of personal dependency under a social structure based on the family community left it in name only. With the movement from identity to contract, cracks appeared in the dim medieval period and the light of the Enlightenment shone in. Under the influence of liberal thinkers and natural law schools, Napoleon established the principle of freedom of contract for the first time when he drew up the French Civil Code after the French Revolution. In distant and foreign lands, the spirit of the Enlightenment thrived, and our civil code upheld this ancient law. Times have changed, The context of freedom of contract has changed, complete freedom of contract has come to an end, its restrictions have been fully justified, contradictions have emerged within freedom of contract, and our civil code has made new developments and restrictions on freedom of contract in balancing formal and substantive justice.

1. The history of freedom of contract in the new China

Freedom of contract was established relatively late in the country; when the Economic Contract Law was promulgated in 1981, article 4 required that economic contracts must be entered into in compliance with the laws of the State and in conformity with the requirements of State policies and plans. Article 7 provides that any contract that violates the law and national policies and plans is a null and void contract plan. Freedom of contract is in a state of repression and the idea of state control during the planned economy is still having an impact on legislation. To some extent, this is also a path dependence, after the establishment of our planned economy, the shape of our legislative thinking, a short period of time to get rid of its influence, it requires greater courage and perseverance than the establishment of the planned economy. In rebuilding the bombed Westminster Parliament building during World War II, British Prime Minister Winston Churchill said: We build houses, and then the houses shape us.

As reform and opening up continued, the line between planned economy and market economy was blurred, and both were means of economic development, carrying no ideological problems, and the idea that market economy could also be a means of economic development in a socialist country became increasingly popular. In 1986, the General Principles of the Civil Law were promulgated, replacing the term "economic contract" with "contract", and Article 4 stipulated that civil activities should follow the principles of voluntariness, fairness, equal value and compensation, and honesty and credit. This was a turning point in the development of contract law and laid a solid foundation for freedom of contract. In 1983, when the Economic Contract Law was amended, freedom of contract was established and the private law character of contract law was legislated.

The Contract Law was formally introduced at the Ninth National People's Congress on 15 March 1999, and the introduction of the Contract Law marked the establishment of freedom of contract in China. Its article 4 stipulates that the parties shall enjoy the right to enter into contracts voluntarily in accordance with the law, and that no entity or individual may illegally interfere. Not only is freedom of contract provided for in the General Provisions, but freedom of contract has been internalized in the Contract Law.

With the advent of the new century, the wind of freedom of contract is blowing strongly. the General Principles of the Civil Law, which came into force in 2017, elevates the basic principles in the Contract Law to the basic principles of the Civil Law, which is undoubtedly an affirmation of freedom of contract. Through the development of freedom of contract in the new China, it can be seen that it goes hand in hand with the rise of the Chinese economy.

2. New developments in freedom of contract in the Civil Code's Contracts Section

2.1 New developments in freedom of contract at the stage of contract formation

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At the stage of contract formation, new developments in freedom of contract are reflected in two main areas. First, article 483 of the Civil Code provides that the parties may agree separately on whether the contract is formed when the promise takes effect, fully respecting the autonomy of the parties. Article 494 of the Civil Code restricts the assignment of state orders and directive tasks to “disaster relief, epidemic prevention and control or other needs”. This provision is a further expansion of the freedom of contract compared to the Contract Law, which states that other needs must be of the same importance as disaster relief or epidemic control and cannot be based on insignificant needs.^[1]

2.2 Softening of contractual validity

The Contracts Title of the Civil Code improves the rules on the validity of contracts by limiting their invalidity and ineffectiveness.^[2] The validity of a contract derives from the autonomy of the parties. The limitations on the invalidity and non-validity of contracts are an extension of the freedom of contract, and the softening of the validity of contracts can be seen in the following four aspects. The first is the deletion of Article 51 of the Contract Law. The removal of this provision, which has been the subject of debate among scholars, has now been settled, and the validity of a contract for the disposal of another person’s property by a person without the right to dispose of it has been changed from one whose validity is to be determined to one whose validity is not affected.

2.3 Changes in the rules of contract interpretation

While the Contract Law separates the textual interpretation from the other interpretations by an ellipsis, indicating that the textual interpretation is in juxtaposition with the other interpretations and that there is no order of precedence, the Civil Code separates the textual interpretation from the other interpretations by a comma, thus establishing the initial priority of the textual interpretation. The above shift reflects the importance and priority of the textual interpretation, but it is not completely bound to the textual interpretation without any variation. Contextual interpretation means that the interpretation should start from the meaning of the text, and when there is doubt, the usual usage of the words and phrases shall prevail, and it can be concluded from the latter part of the law that if there exists other ways of interpretation to determine the meaning of the disputed provisions, other ways shall be applied, and the contextual interpretation shall be combined with the relevant provisions, the nature and purpose of the act, custom and the principle of good faith. Based on the above changes, it can be seen that our country has shifted from eclecticism to objectivism in the interpretation of contracts. However, a distinction is made in our empirical law between the presence and absence of a relator’s intention, as the interpretation of the absence of a relator’s intention in article 142, paragraph 2, of the General Provisions of the Civil Code is subjectivist, which is not provided for in the Contracts Division, and the subjectivism of the absence of a relator’s intention in the interpretation of a contract is in question according to the rules of systematic interpretation.

From the expansion of the way of contract formation, the softening of contract validity and the changes in the rules of contract interpretation, it can be seen that the Code fully respects the contractual freedom of the parties and does not impose superfluous obstacles on contracts that can be formed, allowing market players to give full play to their initiative, thus promoting transactions, thus contractual freedom and the new development pattern of “taking the major domestic cycle as the mainstay” form an intertext, and play a positive role in expanding domestic demand and consumption and improving the business environment. The Civil Code, as the basic law of civil society, and the freedom of contract embedded in the Code are the fulcrum for the establishment of a “civil law society” in China.

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