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## **LAW OF OBLIGATIONS IN THE NEW CIVIL CODE**

**The new Civil Code's third book regulates the law of obligations. The most significant change in the structure of the new Code's third book, as opposed to the old Code, is that the general rules concerning the law of obligations are defined first, then the general provisions of contracts are built upon such rules. It is also an important change that the concept of consumers is limited to natural persons in the new Code.**

**The new Civil Code's third book regulates the law of obligations. The most significant change in the structure of the new Code's third book, as opposed to the old Code, is that the general rules concerning the law of obligations are defined first, then the general provisions of contracts are built upon such rules. Another important change is that the concept of the consumer in the new Civil Code is limited to natural persons. The new Code aims to integrate the past decades of judicial practice and legal developments in Europe.**

Coming into effect on March 15, 2014, the new Civil Code contains various important modifications in addition to its structural changes. Within the scope of representation rules, in conflict of interest cases the Code will now provide a possibility for challenging the representative's declaration if the represented party was unaware of the conflict of interest at the time when the right of representation was established. This is a significant modification when compared to the old Code, since the existing Code does not provide an appropriate framework for the management of so-called "self-contracts".

Also worth emphasizing is that a general power of attorney may now be granted for a maximum of five years. General power of attorneys granted for a longer period, or for an indefinite period, will have no legal effect after five years.

The Code also makes it clear that a deadline will only be considered as preclusive if the law expressly deems so, while in other cases it will be deemed as a deadline with a limitation period. The limitation period will in principle remain five years, but the parties may extend or shorten this time in writing. It is worth noting that the limitation period cannot be interrupted by a written notice for performance under the new Civil Code.

It is a new development in the regulation of interest that – unless an agreement to the contrary exists – every debtor (including individuals) must pay interest equal to the central bank's base rate. Furthermore, when calculating interest, the interest rate due on the first day of that half-year will be applicable for the whole duration of the given half-year. The Civil Code also

regulates the situation where a debt was settled in a foreign currency. In this case, the central bank of the currency specified (*i.e.* in the case of the Euro, the European Central Bank) will determine the base interest rate. In the absence of such a specification, the money market interest rate will prevail.

The general rules of contract in the new Civil Code will bind parties to cooperate and communicate as early as during the preparatory period before entering into contracts and during contract negotiations. If this cooperation and communication requirement is violated – depending on whether the contract is concluded or not – the parties must comply with the general rules regulating damages for breach of contract, or with the general rules regulating tort liability.

Contract creation still requires that the parties agree on the essential issues and on the issues deemed essential and relevant by any of them. An issue will be considered essential by a party if the given party clearly demonstrates that without agreement on that specific issue, a contract will not be concluded. Accordingly, the contract is concluded if the other party accepts the offer in respect of the essential issues and in the issues deemed essential and relevant by the other party, even if there is a discrepancy regarding non-essential issues between the acceptance and the offer. In such cases where only non-essential issues remain in dispute, or where the acceptance includes additional terms, these still become part of the contract. The exception is, of course, if the offer expressly stated that it can only be accepted in full and exclusively on its own terms, or if the offeror objects to the disputed or additional terms in a timely manner.

The Civil Code also sets out the basic rules of contract for tender proceedings. Following an invitation for offers, a contract arises from the best offer unless the invitation specifically includes a stipulation on the right to refuse a contract. An invitation may be revoked during the period specified within the invitation.

The rules on standard contractual terms essentially remain the same between the old and new Civil Code. The new Code does address the "battle of the forms" situation, when both parties are employing standard contractual terms. If the two standard terms are not contradictory, they both become a part of the contract. If the two standard terms only contradict on the non-essential issues, the contract is formed with the exception of the contradictory terms. On the other hand, if the standard terms contradict on essential issues then no contract is formed.

With an eye toward technological developments, the Civil Code establishes special rules for electronic contracting. Contracts between businesses and consumers are void unless they follow these rules. Once again, it is important to note that the concept of the consumer will be changing in the new Code, covering only private individuals.

Finally, with regard to the interpretation of the contractual terms, the new Civil Code emphasizes that individual terms must be analyzed with regard to the whole contract, and that previous statements between parties may also be applied during interpretation.

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