

Book 5 Civil Law Code ‘Contracts’

What is it about

After more than 200 years, the legislator decided to modernise and update the Civil Law Code ‘Contracts’. Although various legal figures were commonly known by existing legal doctrine and case law, these have now been codified in the new book 5 Civil Law Code ‘Contracts’.

With the introduction of book 5 Civil Law Code ‘Contracts’, the legislator has tried to come up with a new balance between parties' autonomy of will and judges' role as guardians of the weaker party's interests and the public interest.

Entry into force

Since **1 January 2023**

Scope

Legal acts (e.g. conclusion/cancellation of contracts) and legal facts (e.g. assertion of tort) from 1 January 2023 → thus NOT on:

- Future effects of legal acts and legal facts dating from before 1 January 2023
- Legal acts and legal facts after 1 January 2023 relating to obligations arising from legal acts and legal facts prior to its entry into force

UNLESS parties agree otherwise (= **supplementary law**)

Book 5 Civil Law Code ‘Contracts’ (cont’d)

What is it about

Hardship	Anticipatory breach	Unlawful clauses
<p>Protects contracting parties against unforeseen circumstances.</p> <p>5 cumulative conditions:</p> <ol style="list-style-type: none">1. A change in circumstances makes it excessively onerous to carry out the contract to such an extent that the fulfilment of the contract cannot reasonably be expected <=> force majeure where carrying out the contract is impossible;2. The change was unforeseeable when the contract was concluded;3. The change cannot be attributed to the debtor;4. The debtor did not contractually assume such risk;5. The right to renegotiate is not excluded by law or contract. <p>Supplementary law →</p> <ul style="list-style-type: none">• Parties can exclude hardship in their contract (but watch out for abuse of law)• Parties can modulate the conditions to renegotiate in their contract	<p>A new termination method introduced in Book 5 of the Civil Law Code: The contract party can terminate a contract when it is clear that the other party will not fulfil its obligation(s) in a timely/proper manner and the consequences are sufficiently serious for the creditor. Similar to unilateral termination for breach, however, in that case the breach has already taken place.</p> <p>Condition: the debtor must be notified and given the chance to demonstrate that he can fulfil his obligation(s). If he does not offer sufficient guarantees, only then can the contract be terminated via notification letter.</p> <p>→ Potential risk for conflict: the creditor will have to prove the aforementioned extraordinary circumstances in court.</p>	<p>Book 5 Civil Law Code</p> <ul style="list-style-type: none">• Abuse of circumstances: manifest imbalance between the rights and obligations of the parties• E.g. accession agreements imposed by large player• Covers both B2B and B2C contexts• Applies to contracts entered into force or renewed after 1 January 2023 <p>Book 5, title 3/1 Economic Law Code</p> <ul style="list-style-type: none">• Black and grey list of unlawful clauses, in addition to a catch-all definition• Applies to all clauses in an agreement, with the exception of financial services / government contracts• Only covers the B2B context• Transparency rule• Applies to contracts entered into, renewed or amended after 1 December 2020

Book 5 Civil Law Code 'Contracts' (cont'd)

How can PwC Legal help you?

Review of your general terms and conditions

- Analyzing your general terms and conditions to see whether they are in line with book 5 Civil Law Code 'Contracts' and provide recommendations.
- Holding a workshop with you on to the battle of the forms theory, which has been introduced by the book 5 Civil Law Code 'Contracts' and how key account managers need to deal with the general terms and conditions of clients and suppliers (in combination with the company's general terms and conditions).

Contract assessment

- Analyzing your top client / supplier contracts to see whether any adjustments are needed / recommended following the introduction of the book 5 Civil Law Code 'Contracts'
- Assisting you with the drafting/reviewing of new contracts in line with book 5 Civil Law Code 'Contracts'
- Assisting you with how to react in the event of a breach of contract by yourself or the counterparty
- Holding a workshop to educate you on the tools in a B2C and B2B context that book 5 Civil Law Code 'Contracts' has introduced.