PINTÓ RUIZ & DEL VALLE
Lawyers & Economists

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CIVIL

BOOK SIX OF THE CIVIL CODE OF CATALONIA, REGARDING OBLIGATIONS AND CONTRACTS, HAS BEEN PASSED

On 22 February, the DOGC (Official Gazette of the Catalan Government) published Law 3/2017, of 15 February 2017, of Book Six of the Civil Code of Catalonia, regarding obligations and contracts, which in turn includes the amendments to Books One, Two, Three, Four and Five, and which will come into effect on 1 January 2018. Chapter One of this law regulates contracts of transfer, which include contracts concerning the sale, swap and assignment of land or urban use in exchange for future construction. A sale is defined as the ultimate contract and in turn acts as a model in the regulation of other ownership transfer or assignment contracts. It could be said that parliament's intention in this Book Six of the Civil Code is to implement a supposedly more modern regulation, including innovations such as the one mentioned in the following article in this Newsletter (of special relevance in terms of the break from the traditional vein to date), also highlighting with regard to the innovations, increased consumer protection in relation to this matter.

To such effect, the new law includes new aspects such as the power of abandonment of the buyer of a home and of recovery of the deposit if a credit institution refuses the necessary financing to complete the transaction. Also introduced is a duty of information to the buyer's benefit, which increases contractual transparency, which constitutes one of the basic guidelines of modern European contract law. As always, the application of such new features will have to be studied case by case.

Also included is a fairer regulation of the condition subsequent, established for the case of non-payment of all or part of the deferred price, which enables the seller to terminate the contract and this way be able to recover the property covered by the contract.

In the remaining chapters, different types of contracts are now regulated. **Chapter Two** includes the mandate, which is located in the sphere of services and, specifically, management contracts, understanding it as something that goes beyond a pure relationship of amicability or trust. As regards **Chapter Three**, this covers urban farming contracts, detailing the regulation of crop contracts, which includes rural lease contracts, share-cropping and other contracts of sale of the farming, livestock or forestry use of a rural property. Notable are **Chapter Four** and the regulation of the annuity (lifetime pension) and the maintenance contract (transfer of goods or rights in exchange for maintenance); **Chapter Five** with its regulation of cooperation contracts; and **Chapter Six**, which covers financing and guarantee contracts.

The approval of this Book culminates the civil coding of the regional law of the autonomous community of Catalonia, which should apply to the private relations that occur in the specific area, and that are expressly regulated in its six books.

THE AGREED SUM CERTAIN REQUIREMENT IN THE SALE RADICALLY DELETED IN THE CATALAN CIVIL CODE (BOOK SIX)

The new Article 621-5 Section 1 of the Catalan Civil Code, drawn up in accordance with the Law 3/2017 of the Catalan Government [compared with traditional law, with age-old practice and with the right of the now current Spanish Civil Code (Article 1445) which requires the existence of an agreed operational price in money or token representing it] states: "if the agreed *(concluded*) contract does not determine the price, or establish the means to determine it, it is understood that the price is as generally charged in comparable circumstances at the time of conclusion [this means completion or constitution] of the contract and in relation to goods of a similar nature."

This means that the essential requisite of sum certain has been removed, such that in practice if a future lawsuit is to be avoided, when contracting, the agreed price has to be recorded clearly and precisely (or the practical, simple, certain, automatic and effective means of determination).

THE FAMILY GUARANTOR, PROTECTED BY THE EUROPEAN DIRECTIVE ON ABUSIVE CLAUSES

The Court of Justice of the European Union (CJEU) has decided that the guarantees that a private individual grants a company in which there is no economic interest on the part of the private individual whom they oblige are protected by European Directive 93/13/CEE on abusive clauses in contracts entered into with consumers. This opens up the possibility of annulling this type of guarantee, and their strictest conditions, if these disproportionately favour the financial institutions taking part.

All of this completely changes the perception that exists throughout Europe regarding the role of guarantors of a company, who it was assumed responded (all without exception) to a professional relationship, a circumstance that kept them outside the protection offered by the rules on consumer protection, and specifically the ones set out in Directive 93/13/CEE.

Effectively in particular, this consideration of "professional relationship" removed the concept of consumer from guarantors whose relationship with the company was simply a family relationship, or even a friendly relationship with one or more of the managers, with no commercial interest. This vulnerable or disinterested position is the issue solved by the ruling of Court 10 of the CJEU, of 14 September 2016, by opening up the possibility of classing these guarantors as consumers "depending on whether they are acting or not as part of their professional activity" and providing "they are in a situation of inferiority with regard to the professional", a situation of inferiority that may affect "both the level of information of the consumer and their power of negotiation". In these cases of inequality, it is established that the guarantor will be considered to be a consumer to all effects and will, therefore, be especially protected by means of the application of Directive 93/13/CEE.

EU judges have focused on the specific case of the guarantors of a credit of a company of which they are neither managers nor principal shareholders, stating that they are within the scope of protection offered by European Directive 93/13/CEE, considering in these cases that the guarantor is acting as a consumer and that, consequently, they could annul the guarantee in the event that they had not been adequately informed of the risks arising from this or if such a contract granted an advantageous imbalance to the financial institution.

This way, CJEU jurisprudence grants a radical solution to those cases where the spouse, family member or friend of an entrepreneur guarantees an asset of theirs altruistically so that a credit will be granted to the latter's company, without any economic interest on the part of these guarantors, who could lose their own homes without hoping to obtain any benefit in exchange, yielding, in a great many cases, to the pressure brought to bear by some financial institutions.

Taking into account that the Spanish courts have already declared a great many guarantees null and void, as they consider that they include abusive clauses, the above CJEU rulings may, in the very short term, lead to the end of evictions of family guarantors.

PLG INTERNATIONAL LAWYERS

On 4 March, the Hotel Ellington in Berlin (Germany) hosted a new session of the Board of Directors of the PLG International Lawyers group, of which our firm is a founding member and which is present in 27 countries. Attending the Board meeting in representation of Pintó Ruiz & Del Valle were Mª del Mar Martín and Alfonso Abadía Jordana, with the German SKW SCHWARTZ firm hosting the event on this occasion.

Also held, at the same venue on 3 March, were the various work meetings organised by speciality, on the basis of comparative law, which were attended by Alfonso Abadía Jordana as President of the Comparative Commercial Law, Mergers and Acquisitions and Tax Law group, in which Cristina Moga Onandia also participated; for his part, Yago Vázquez Moraga participated as representative of Pintó Ruiz & del Valle in the Dispute Resolution (Procedural and Arbitration) Group.

Also, on the same day, Cristina Moga Onandia participated in the YPLG session, an internal association to which lawyers under 35 from the member firms belong and which is responsible for creating and implementing development, interrelationship and innovation proposals within PLG International Lawyers. Ms Moga acted in her capacity as member of the YPLG Executive Committee.

During these meetings, the existing bond between members was reinforced with the consolidation of various initiatives for the development of associative activity in the international market. All these decisions, and again the productive participation of lawyers from our firm, showed once more the important role Pintó Ruiz & del Valle plays in the group and the strategic importance of this alliance in the continuous development of our firm's ongoing international vocation.

SPORTS

AMENDMENTS TO THE CAS CODE

The final amendments to the CAS Code came into effect on 1 January. From a purely procedural point of view, the reform has only introduced one significant change relating to the new wording of Article R32 regarding the calculation of procedural periods. Whereas the previous version of the article stated that the periods established in the CAS Code would be respected if communications from the parties were sent by midnight in the country where the notification was made, the new wording states that the periods established in the Code will be respected if the communications from the parties are sent by midnight, local time at their home address, or, if they are legally represented, at the professional address of their legal representative on the last day when these periods expire. Also, if the last day of the period is an official holiday or not a working day at the place of origin of the document, the period will expire at the end of the next working day.

However, added to Article R52, relating to the initial stages of the arbitration proceedings, is the possibility that the CAS Official Secretary may publicly announce the start of any arbitration proceedings and, where appropriate, the composition of the arbitration panel as well as the date of the hearing, unless the parties have agreed otherwise.

We should also stress that the CAS has also added to Article R59, regarding the content of arbitration rulings, the possibility that a copy of the official rulings, or, where appropriate, the operational part of these rulings be delivered to the institution that issued the decision which was appealed against in first instance, providing that this institution is not part of the proceedings.

Finally, we should warn that amendments have been made to Article R64.4 regarding arbitration costs in that the CAS establishes that the provision of funds paid for by the parties cannot be reimbursed, except for the portion that exceeds the total sum of the arbitration costs. Despite being a measure carried out in practice, the CAS had not included it in its Code until this amendment was made.

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