

CHAPTER 3

VALIDITY OF CONTRACTS

1. INTRODUCTION

[3-1] A contract may be duly formed based on the rules that we examined in the previous chapter. However, a concluded contract may not necessarily be valid and enforceable. This is because the effectiveness (*xiaoli*) of a concluded contract does not arise from the mutual assent of the parties but from the operation of the law. Article 502 of the Civil Code sets out the default rule for a contract that has been concluded without any defects: a contract formed according to the law becomes effective upon its formation, except as otherwise provided by the law or agreed by the parties. Article 502 further stipulates that a contract may be subject to mandatory approval or other procedures under relevant laws or administrative regulations before the contract can come into effect.

[3-2] While Part 3 of the Civil Code contains a handful of rules governing the validity of contracts, Section 3 of Chapter VI in Part 1 (General Provisions) contains most of the relevant rules in this area of contract law.¹ As Article 143 of the Civil Code sets out, a civil juristic act, which includes a contract, shall be valid if the act satisfies all of the following conditions:

- (1) The actor has corresponding capacity for civil conduct;
- (2) The declaration of intent is genuine; and
- (3) The act itself does not violate mandatory provisions of laws and administrative regulations or public order and good morals.

[3-3] In other words, a contract will be valid if the contracting parties^② possess the requisite legal capacity to engage in civil activities, that is, to hold rights and participate in civil transactions. Moreover, the agreement must be the genuine declaration of the parties' intent. Finally, the contract must not violate mandatory provisions of laws or administrative regulations or harm public order and good social morals. Defects in any of these conditions will affect the validity of the contract in different

¹ According to Article 508 of the Civil Code, if there are no provisions in Part 3 regulating the validity of contracts, the relevant provisions in Chapter VI of Part 1 (General Rules) of the Civil Code shall apply.

ways. Depending on the nature of the defect, the main types of contractual invalidity can be broadly categorised into:

- (1) Contracts of pending validity;
- (2) Voidable contracts;
- (3) Void contracts.

[3-4] In general, the legal effect of a contract of pending validity, upon its formation, cannot be ascertained until subsequent actions have been taken. In most cases, it requires the ratification (*zhui ren*) of the contract by a person with appropriate capacity or authority. As for a voidable contract, a party must request the court or arbitral institution to rescind the said contract. It is only upon its rescission that a voidable contract is treated as having no legal effect from the outset (*void ab initio*). In comparison, a void contract is null and void and has no legally binding force from the outset, irrespective of the parties' intent.

[3-5] As analysed in² Chapter 1 of this book, the 1999 Contract Law placed considerable emphasis on protecting party autonomy in respect of the rules governing contract validity. Compared to its predecessors, the 1999 Contract Law curtailed the possibility for judicial and administrative intervention in rendering contracts void. By expanding the scope of voidable contracts, it allowed the injured or aggrieved party to decide whether a contract with certain defects affecting its validity should remain on foot or be rescinded or modified. Moreover, other rules regarding contracts of pending validity offered the parties to a contract the opportunity to remedy the defect in question through subsequent ratification.

[3-6] In contrast with the 1999 Contract Law, the three previous contract laws (ECL, FECL, and TCL) and the 1986 General Principles of Civil Law treated many contracts as void per se.² Furthermore, Professor Wang Liming has criticised the judicial practice under the pre-1999 regime, in which the rules that deemed numerous contracts void provided the courts with

2 For example, Article 58 of the General Principles of Civil Law listed seven kinds of void contracts: (1) those performed by a person without capacity for civil conduct; (2) those that according to law may not be independently performed by a person with limited capacity for civil conduct; (3) those performed by a person against his true intentions as a result of fraud, coercion or exploitation of his unfavourable position by the other party; (4) those performed through malicious collusion that are detrimental to the interest of the State, a collective, or a third party; (5) those that violate the law or the public interest; (6) economic contracts that violate the State's mandatory plans; and (7) those performed under the guise of legitimate acts that actually conceal illegitimate purposes.

undue discretion to expand ‘the range of void contracts inappropriately’.³ In his view, courts’ excessive declaration of void contracts resulted in unnecessary wastage of resources and undermined the ‘respect for the will and interests of the parties’.⁴ The 1999 Contract Law has rectified this major weakness of its predecessors and has embodied the principle of fostering transactions between different entities and individuals.⁵

[3-7] The Civil Code has also followed the aforesaid approach of the 1999 Contract Law to facilitate transactions and promote party autonomy. Only a small handful of civil juristic acts are deemed null and void in the Civil Code.⁶ As for civil juristic acts with some defects in their validity (that is, voidable contracts), a party has the right to request the court or arbitral institution to rescind the act in question.⁷ In this chapter, we will examine in detail how the Civil Code addresses the three categories of contractual invalidity.

2. CONTRACTS OF PENDING VALIDITY

[3-8] The legal effect of these contracts is not determined at the time of the contract’s formation. Further actions are to be taken before the validity of the contract can be confirmed. Scholars have referred to this category of contracts as *effect-to-be-determined contracts*,⁸ *contracts of undetermined effect*,⁹ or contracts with legal effect *in suspense*.¹⁰ Usually, for such a contract to take effect, a person with the appropriate capacity, authority or right to conclude the contract must first ratify the contract. When the required ratification is given, the contract becomes effective *and legally binding from* the very beginning. On the other hand, the contract is void *ab initio* if ratification is refused. In cases where the legal effect of a contract

3 Liming Wang, ‘An Inquiry into Several Difficult Problems in Enacting China’s Uniform Contract Law’ (1999) 8 Pacific Rim Law and Policy Journal 351.

4 *ibid*, 370–371.

5 Liming Wang and Chuanxi Xu, ‘Fundamental Principles of China’s Contract Law’ (1999) 13 Columbia Journal of Asian Law 1, 23–29.

6 Civil Code, Arts 144, 153, and 154 concerning lack of capacity, violation of mandatory provisions and public order, and malicious collusion.

7 *ibid*, Arts 147–151 concerning misunderstanding, fraud, fraud by third parties, coercion, and unfairness.

8 Mo Zhang, *Chinese Contract Law- Theory & Practice* (Brill 2019) 185.

9 Bing Ling, *Contract Law in China* (Sweet & Maxwell Asia 2002) 213.

10 Yi Wang, ‘Prospect of Validity in Chinese Contract Law’ in Larry A. DiMatteo and Lei Chen, *Chinese Contract Law: Civil and Common Law Perspectives* (Cambridge University Press 2017) 215–238, 228.

is pending further determination, it is important to have a clear set of rules that can reduce the risk of uncertainty for all parties concerned.

[3-9] Various types of contracts could fall into this category, such as a contract made by a party with limited capacity for civil conduct and a contract concluded on behalf of a principal by a person without the requisite authority. These types of contracts will be examined in this section, along with contracts that are subject to approval and other formal procedures as required by laws and administrative regulations and contracts with conditions affecting their validity. Finally, the validity of contracts involving unauthorised disposal of property will be briefly discussed.

2.1 Where a contracting party has limited capacity

2.1.1 Categories of capacity for civil conduct

[3-10] The capacity of a natural person to undertake civil acts is categorised under Part 1 (General Provisions) of the Civil Code as:

- (1) full capacity,¹¹
- (2) limited capacity¹² and
- (3) no capacity.¹³

[3-11] An adult, defined as a natural person aged 18 or over,¹⁴ has full capacity for civil conduct and is entitled to perform civil acts independently.¹⁵ A minor between 16 and 18 years of age whose main source of income is her job is also deemed a person of full capacity for civil conduct.¹⁶ Specific types of civil acts, such as marriage, may have a different minimum age requirement.¹⁷

[3-12] Limited capacity specifically applies to two categories of natural persons, namely a minor between 8 and 18 years of age¹⁸ and an adult who is unable to discern his own conduct *fully*.¹⁹ Persons with limited capacity for civil conduct shall be represented by their legal representative in the performance of civil acts.²⁰ In the case of minors between 8 and 18 years

11 Civil Code, Art 18.

12 *ibid*, Art 19.

13 *ibid*, Arts 20, 21.

14 *ibid*, Art 17.

15 *ibid*, Art 18.

16 *ibid*.

17 For example, Article 1047 of the Civil Code stipulates the minimum age for marriage for men and women are 22 years old and 20 years old respectively.

18 Civil Code, Art 19.

19 *ibid*, Art 22.

20 *ibid*, Arts 19, 22, 23.