

# Impact of Civil Code reform on energy and natural resource transactions

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## Introduction

### Maximum term of lease agreements extended

### Termination of agreements

### Deemed waiver regime abandoned

## Introduction

In 2017 the Civil Code, which was enacted in 1896, was substantially amended for the first time in more than a century. The amendments came into effect on 1 April 2020.

Although the recent amendments cover a broad range of issues, many were made to reflect existing case law and commonly accepted interpretations of the pre-amended Civil Code. However, there are some changes which may affect current practices in the energy sector.

### Maximum term of lease agreements extended

Under the pre-amended Civil Code, the maximum term of a land lease agreement was 20 years, unless the purpose of the agreement was to grant the lessee ownership of any buildings on the land. This meant that in many renewable energy transactions, parties could not enter into a lease agreement which covered the entire duration of the energy project.

Following the amendments to the Civil Code, the maximum length of a lease agreement has been extended to 50 years. As such, parties can now enter into lease agreements which cover a longer project period.

### Termination of agreements

Under the pre-amended Civil Code, an agreement could be terminated only if a default was attributable to the defaulting party. In other words, an agreement could not be terminated if a default was due to *force majeure*, unless such right of termination was clearly stated in the agreement.

Under the amended Civil Code, an agreement may be terminated in the case of a default, regardless of whether such default is attributable to the defaulting party. This amendment will not apply if the parties agree otherwise; therefore, it is unlikely to have a substantial impact in the energy sector, where parties usually agree to a detailed termination clause.

### Deemed waiver regime abandoned

Under the pre-amended Civil Code, if an obligor consented to the transfer of a claim or right without noting an objection, or referring to its defences, it could no longer raise any defences or claims which it would have been entitled to raise against the transferor (had the transfer not taken place). In other words, under the pre-amended Civil Code, obligors were deemed to have waived all of the defences and claims that they had or would have had against the transferor, on consenting to the transfer, unless the obligor expressly reserved its defences or claims against the transferor.

The amended Civil Code has abandoned the deemed waiver regime and requires obligors to expressly waive their defences and claims in order to lose them. As such, when transferring any claims, rights or agreements (eg, a security assignment of claims under an energy project agreement), it should be confirmed whether the obligor expressly waives its defences or claims as, in the absence of such express waiver, it will be able to assert them.

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