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UNIDROIT

International Institute for the Unification of Private Law

WORKING GROUP FOR THE PREPARATION OF
PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS

Chapter [...]

THIRD PARTY RIGHTS

(Draft prepared by Professor M. Furmston)

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CHAPTER 99

THIRD PARTY RIGHTS

- 99.1 Subject to the provisions of this chapter, a contract creates rights and duties only between the parties to the contract.
- 99.2 If the parties to a contract expressly state that the contract, or some obligation under it, is intended to benefit a third party that third party shall be entitled to enforce the contract or obligation.
- 99.3 If one of the commercial purposes of a contract is to benefit a third party, the third party shall be entitled to enforce the contract [unless the contract expressly provides to the contrary].
- 99.4 For the purposes of this chapter, enforcement by the third party shall be treated as including reliance on a clause in the contract which excludes or limits the liability of the third party.
- 99.5 The promisor may rely against the third party on any defence that could have been validly raised against the promisee.
- 99.6 The contracting parties may revoke the rights granted by the contract to the third party until the third party has accepted them.
- 99.7 The third party must be ascertained with adequate certainty by the contract but need not be in existence at the time the contract is made.

NOTES

At the meeting in Bolzano it was agreed that some of the problems discussed in the first position paper should be dealt with only in the comments. It seems, however, premature to try to draft the comments until the text has been agreed. In order to give flesh to 99.3, it will I think be necessary to draft examples with some care. However, again it seems premature to do this at this stage. It should be noted that in drafting 99.3 I have now abandoned any reliance on the intention of the parties.

Is it necessary to define what we mean by parties to the contract or is this obvious?

Should there be any discussion of joint obligations?