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UNIDROIT

International Institute for the Unification of Private Law

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WORKING GROUP FOR THE PREPARATION OF  
PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS

Meeting of the Drafting Group in Bristol, 7-10 January 2002

REPORT

(Prepared by the Secretariat)

Rome, February 2002

REPORT ON THE MEETING OF THE DRAFTING GROUP HELD IN BRISTOL  
(7-10 JANUARY 2002)

1. The Drafting Group of the Working Group for the preparation of Part II of the UNIDROIT Principles met from 7 to 10 January 2002 in Bristol (U.K.). The session was attended by M.J. BONELL, E.A. FARNSWORTH, M. FONTAINE, M. FURMSTON, C. JAUFFRET-SPINOSI and P. SCHLECHTRIEM.

2. The session focussed mainly on the revised draft Chapter on Limitation Periods prepared by P. Schlechtriem (UNIDROIT 2001 Study L - WP. 6), the revised draft Chapter on Assignment of Rights, Transfer of Obligations and Assignment of Contracts prepared by M. Fontaine (UNIDROIT 2001 Study L – WP. 7), the revised draft Chapter on Third Party Rights prepared by M. Furmston (UNIDROIT 2001 Study L - WP. 8) and the revised draft Chapter on Set-off prepared by C. Jauffret-Spinosi (UNIDROIT 2001 Study L - WP. 9).

3. The Group proceeded to an article-by-article examination of the revised draft chapters.

DRAFT CHAPTER ON LIMITATION PERIODS

Article 1 was adopted with no changes.

Articles 2 and 3 were combined into a single article. The wording “right has become due” was replaced by “the obligee’s right can be exercised or the obligor’s performance can be required” so as to make it clear that what matters is the absence of a valid defence by the other party.

Articles 4 to 7 were adopted with only minor drafting changes.

Article 8 was amended in the light of the definition of “conciliation” contained in Article 2 of the UNCITRAL Model Legislative Provisions on International Commercial Conciliation (A/CN.9/WG.II/WP.115 of 19 September 2001).

Articles 9 to 12 were adopted with minor drafting changes.

DRAFT CHAPTER ON ASSIGNMENT OF RIGHTS, TRANSFER OF OBLIGATIONS AND ASSIGNMENT OF CONTRACTS

*Section 1 on Assignment of Rights*

Articles 1 and 2 were adopted with only minor drafting changes.

In the context of Article 3 (3), it was felt that the problem therein addressed was not restricted to partial assignment alone but to all cases where as a result of the assignment the assignee’s obligation becomes more onerous. After lengthy discussion the it was agreed to delete Article 3 (3) and to include two new articles: one stating in general terms that the obligor has a right to be compensated either by the assignor or the assignee for any additional costs caused by the assignment (see Article 6 *bis*), and the other stating that a right to non-monetary performance may even be not assignable if an

assignment would render the obligation “significantly more burdensome” (see Article 2 *bis*). The Comments should make it clear that such a situation could arise not only on account of a change in the place of performance but also because the obligation as such might change due to the new obligee (e.g. requirements contracts).

Articles 4 to 9 were adopted with no changes.

The changes introduced in Articles 10 to 13 are only of a drafting nature.

### *Section 2 on Transfer and Assumption of Obligations*

It was decided to change the title to “Transfer of Obligations”.

In Articles 1 to 3 only amendments of a drafting nature were made.

In Article 4 (2) the words “the obligee accepts it” were replaced by “the obligee acknowledges it”.

It was decided to invert the order of Articles 5 and 6.

Only a minor drafting change was made to Article 7.

Paragraph 2 of Article 8 was deleted and it was decided to state in the Comments that set-off was a defence which rested with the old obligor, always provided that the old obligor had not been discharged, while the same right could not be exercised by the new obligor.

It was decided to merge Articles 9 and 10 under the title of Article 9 and to include in paragraph 2 (formerly paragraph 1 of Article 10) an express reference to Article 6 (1) (formerly Article 5 (1)).

### *Section 3 on Assignment of Contracts*

Only minor drafting changes were made to Articles 1 to 3.

With respect to the remaining articles, the three variants proposed by the Rapporteur were discussed at length and it was ultimately decided to opt for Variant 1.

Article 4 was redrafted to read as follows “(1) The other party may give its consent in advance. (2) The assignment of the contract becomes effective when notice of the assignment is given to the other party or when the other party acknowledges it.”

In Article 5 some minor drafting changes were made.

In Article 6 the reference in paragraph 1 to Article 12 of Section 1 was deleted as was the reference to Articles 9 and 10 of Section 2 in paragraph 2. It was also questioned whether in the two paragraphs of Article 6 the word “accordingly” could be deleted. The Rapporteur agreed to consider the matter.

The Rapporteur also agreed to consider the possibility of merging Articles 7 and 8.

The question was raised as to whether the numbering of the articles of the whole chapter should be changed so as to avoid confusion in citing by number individual provisions of the different sections. A possibility was to adopt a double numbering system whereby the first number refers to the section and the second to the provision.

## DRAFT CHAPTER ON THIRD PARTY RIGHTS

Article 1 was split into two separate paragraphs. It was decided to add in paragraph 1 the words “the promisor and the promisee” after the word “parties” and to add in paragraph 2 the words “against the promisor” after the word “right”.

It was agreed that throughout the draft the terms “promisor”, “promisee” and “beneficiary” would be used wherever appropriate.

As to Articles 2 to 4, the only novelties of substance are the titles.

In Article 5 the wording between brackets was deleted on the understanding that the Rapporteur would indicate in the Comments that the agreement between the promisor and the promisee conferring a right on the beneficiary may provide that the right of modification or revocation may be exercised by either the promisor or the promisee alone. It was further decided to mention expressly the possibility of modifying the beneficiary’s right. The Comments should make it clear that Article 5 is to be read in conjunction with the general principle laid down in Article 1 paragraph 2.

Article 6 was redrafted with no substantial change and the Rapporteur was asked to include in the Comments an illustration of renunciation.

#### DRAFT CHAPTER ON SET-OFF

With respect to Article 1, apart from some minor drafting changes, sub. (b) was amended to read as follows “the other party’s obligation is ascertained as to its existence and to its amount, and performance is due”.

In Article 2 the title was changed to “Unascertained Obligations” and it was agreed to delete “however” and to insert “also” in the first line and to replace “legal relationship” by “contract”.

Article 3 paragraph 1 was amended so as to read “Where the obligations are to pay money in different currencies, the right of set-off may be exercised, provided that both currencies are freely convertible and the first party shall not pay only in a specified currency”. The new wording better expressed the idea that in the case at hand the right of set-off is excluded whenever at least one of the two currencies is not freely convertible or the first party has to pay in a specified currency. It was agreed to delete paragraph 2.

Article 4 was not amended.

Substantial changes were made to Article 5 to the effect that the article no longer dealt solely with the case where the first party had two or more claims against the other party or had to perform two or more obligations but addressed the question of the content of the notice of set-off in general specifying that in all cases such notice must sufficiently identify the obligation to which it relates, including the amount being set off.

Also Article 6 was substantially amended. It was decided to split it into three separate paragraphs, the first laying down the principle that “set-off discharges the obligation”, the second addressing the special case where the obligations differ in amount and stating that in such a case “set-off discharges the obligations up to the amount of the lesser obligation”, and the third addressing the question of the time set-off takes effect.

4. The revised black letter rules of the four draft Chapters discussed are attached hereto as APPENDICES I-IV. Amendments and additions are underlined; deletions are struck out.

5. The Group discussed at length the Comments and Illustrations of each draft Chapter and made numerous suggestions of both an editorial and substantial nature in

addition to those already mentioned above, which the Rapporteurs would take into consideration in their final drafts for discussion by the Working Group at its next session in Rome.

6. More in general it was reiterated that the Comments of the new Chapters should conform to the style and format of the Comments of the current version of the UNIDROIT Principles. It was stressed that the purpose of the Comments was to explain the content of the black letter rules and not to provide comparative law notes. They should not be too lengthy nor too succinct and the language should be neutral, i.e. avoiding terms of art peculiar to a particular legal system. Each main question addressed in the Comments should be dealt with in a separate section preceded by a short title and composed of one or two short paragraphs and include illustrations wherever appropriate. There should be no bibliographical references nor any references to a particular domestic law either in the text or in footnotes. As a rule the solution adopted in the black letter rules should never be explained in terms of similarities to or departures from existing legal systems. At most a very generic reference may be made such as “while some legal systems ... others ...”. With respect to international instruments, it was agreed that no reference to corresponding provisions in the Principles of European Contract Law would be made: the reciprocally beneficial influence of the UNIDROIT Principles and PECL would be acknowledged in the Foreword in general terms. The only references admissible were those to existing “universal” uniform law instruments (CISG, the U.N. Limitation Convention or more recent instruments prepared by international organisations such as UNCITRAL, UNIDROIT, ICC, etc.).

7. The Rapporteurs agreed to submit their revised draft Chapters to the UNIDROIT Secretariat by 31 March 2002 in electronic form, preferably in WORD format.

**Draft Chapter on Limitation Periods**

Article 1

*(Scope of the chapter)*

(1) Rights governed by these Principles cannot be exercised after expiration of a period of time, referred to as “limitation period”.

(2) This chapter does not govern the time within which one party is required under these Principles, as a condition for the acquisition or exercise of its right, to give notice to the other party or perform any act other than the institution of legal proceedings.

Article 2

*(~~General~~ Limitation Period)*

**(1) The general limitation period is three years beginning on the day after the day the obligee knows or ought to know the facts as a result of which the obligee’s right has become due. can be exercised or the obligor’s performance can be required.**

~~Article 3~~

*(~~Maximum~~ Limitation Period)*

**(2) In any event, the maximum limitation period is ten years beginning on the day after the day the obligee’s right became due. can be exercised or the obligor’s performance can be required.**

Article 3 (ex 4)

*(Modification of Periods of Limitations by the Parties)*

**The parties may modify the limitation periods. However they may not:**

- (a) ~~They may not~~ shorten the general limitation period to less than one year; ~~and~~  
(b) shorten the maximum limitation period to less than 4 years;  
(c) ~~they can~~ extend the maximum limitation period to ~~not~~ more than 15 years.

Article 4 (ex 5)

*(New Limitation Period by Acknowledgement)*

Where the obligor, before the expiration of the limitation period, acknowledges the right of the obligee, a new general limitation period begins on the day after the day of the acknowledgement. The maximum limitation period does not begin to run again, but may be exceeded by the beginning of a new general limitation period under Art. 2.

Article 5 (ex 6)

*(Suspension by Judicial Proceedings)*

- (1) The running of the limitation period shall be suspended  
~~(1.1)~~ (a) when the obligee performs any act, by commencing judicial proceedings or in judicial proceedings already instituted, that is recognised by the law of the court as asserting the obligee's right against the obligor;  
~~(1.2)~~ (b) in the case of the obligor's insolvency when the obligee has asserted its rights in the insolvency proceedings; or  
~~(1.3)~~ (c) in the case of proceedings for dissolution of the entity which is the obligor when the obligee has asserted its rights in the dissolution proceedings.
- (2) Suspension lasts until a final decision has been issued or until the case has been otherwise disposed of.

Article 6 (ex 7)

*(Suspension by Arbitral Proceedings)*

- (1) The running of the limitation period shall be suspended when the obligee performs any act, by commencing

arbitral proceedings or in arbitral proceedings already instituted, that is recognised by the law of the arbitral tribunal as asserting the obligee's right against the obligor. In the absence of regulations for an arbitral proceeding or provisions determining the exact date of the commencement of an arbitral proceeding, proceeding shall be deemed to commence on the date on which a request that the right in dispute should be adjudicated reaches the obligor.

(2) Suspension lasts until a binding decision has been issued or until the case has been otherwise disposed of.

Article 7 (ex 8)  
(*Alternative Dispute Resolution*)

The provisions of Arts. ~~8~~ 7 and ~~9~~ 8 apply with appropriate modifications to other proceedings ~~to which the whereby parties have agreed and which are initiated based on an agreement by the parties with the aim of resolving request a third person to assist them in their attempt to reach an amicable settlement of their dispute.~~

Article 8 (ex 9)  
(*Suspension in case of force majeure, death or incapacity*)

(1) Where the obligee has been prevented by an impediment that is beyond its control and that it could neither avoid nor overcome, from causing a limitation period to cease to run under the preceding articles, the limitation period is suspended so as not to expire before one year after the relevant impediment has ceased to exist.

(2) Where the impediment consists of the incapacity or death of the obligee or obligor, suspension ceases when a representative for the incapacitated or deceased party or its estate has been appointed or a successor inherited the respective party's position; the additional one-year period under para 1 applies respectively.



Article 9 (ex 10)  
(*Effect of Expiration of a Limitation Period*)

**Expiration of the limitation period entitles the obligor to invoke this expiration in any judicial, arbitral or administrative proceeding as a defence.**

Article 10 (ex 11)  
(*Set Off After Expiration of the Limitation Period*)

**[Notwithstanding the expiration of the limitation period for a right, a party may rely on this right as a defence or for the purpose of set off against a claim asserted by the other party.]**

Article 11 (ex 12)  
(*Restitution*)

**Where there was performance in order to discharge an obligation, there ~~will be~~ is no ~~claim right to~~ for restitution merely because the period of limitation had expired.**

Draft Chapter on Assignment of Rights, Transfer of Obligations, Assignment of  
Contracts

SECTION 1: ASSIGNMENT OF RIGHTS

Article 1  
(Definitions)

In these Principles, “assignment of a right” means the transfer by agreement from one person (the "assignor") to another person (the "assignee"), including ~~assignment~~ transfer by way of security, of the assignor's right to payment of a monetary sum or other performance from a third person ("the obligor").

Article 2  
(Exclusions)

This Section does not apply to transfers :  
(a) of instruments, or  
(b) of rights in the course of transferring a business, made under the special rules governing such transfers.

Article 2 bis  
(Assignability of non-monetary rights)

A right to non-monetary performance may be assigned only if it does not render the obligation significantly more burdensome.

Article 3  
(Partial assignment)

(1) A right to payment of a monetary sum may be assigned partially.

**(2) A right to other performance may be assigned partially only if :**

- it is divisible, and
- it does not render the obligation significantly more burdensome.

**~~(3) The assignor must compensate the obligor for any increase in the expenses incidental to performing in several parts.~~**

Article 4  
*(Future rights)*

**A future right is deemed to be transferred at the time of the agreement, provided the right, when it comes into existence, can be identified as the right to which the assignment relates.**

Article 5  
*(Rights assigned without individual specification)*

**A number of rights may be assigned without individual specification provided such rights can be identified as rights to which the assignment relates at the time of the assignment or when they come into existence.**

Article 6  
*(Agreement between assignor and assignee sufficient)*

**(1) The right is assigned by mere agreement between assignor and assignee, without notice to the obligor.**

**(2) The consent of the obligor is not required, unless the right is of an essentially personal character.**

Article 6 bis  
(Obligor's additional cost)

**The obligor has a right to be compensated by the assignor or the assignee for any additional costs caused by the assignment.**

Article 7  
(Non-assignment clauses)

(1) Assignment of a right to payment of a monetary sum is effective notwithstanding an agreement between the assignor and the obligor limiting or prohibiting such assignment. However, the assignor may be liable to the obligor for breach of contract.

(2) Assignment of a right to other performance is ineffective, if it is contrary to an agreement between the assignor and the obligor limiting or prohibiting the assignment. Nevertheless, the assignment is effective if the assignee, at the time of assignment, neither knew nor ought to have known of the agreement; the assignor may then be liable to the obligor for breach of contract.

Article 8  
(Notice to the obligor)

(1) Until receiving a notice of the assignment, from either the assignor or the assignee, the obligor is discharged by paying the assignor.

(2) After receiving such a notice, the obligor is discharged only by paying the assignee.

Article 9  
(Successive assignments)

**If the same right has been assigned by the same assignor to two or more successive assignees, the obligor is discharged**

by paying according to the order in which the notices were received.

Article 10

*(Adequate proof of assignment)*

(1) If notice of the assignment is given by the assignee, the obligor may request the assignee to provide within a reasonable ~~period of time~~ adequate proof that the assignment has been made.

(2) ~~In the meantime,~~ Until adequate proof is provided, notice is not effective and the obligor may withhold payment.

~~(3) Unless adequate proof is provided, notice is not effective.~~

~~(3)~~ (4) Adequate proof includes, but is not limited to, any writing emanating from the assignor and indicating that the assignment has taken place.

Article 11

*(Defences)*

(1) The obligor may assert against the assignee all defences which the obligor could assert if the claim was made by the assignor.

(2) The obligor may assert against the assignee any right of set-off already exercised by notice between ~~assignor~~ obligor and ~~obligor~~ assignor at the time notice of assignment was received.

Article 12

*(Rights related to the claim assigned)*

An assignment of rights transfers to the assignee :

(a) all the assignor's rights to payment or other performance under the contract in respect of the claims assigned, and

(b) all rights securing such performance.

Article 13  
*(Assignor's undertakings)*

**The assignor undertakes towards the assignee that :**

**(a) the assigned right exists at the time of the assignment, unless the right is a future right;**

**(b) the assignor is entitled to assign the right;**

**(c) the right has not been previously assigned to another assignee, and it is free from any right or claim from a third party;**

**(d) the obligor does not have any defences ;**

**(e) the obligor has not given notice of set-off concerning the assigned right and the assignor ~~will~~ has not given any such notice;**

**(f) the assignor will reimburse the assignee for any payment received from the obligor before notice of the assignment was given.**

SECTION 2 : TRANSFER AND ASSUMPTION OF OBLIGATIONS

Article 1  
(Definitions)

In these Principles, “transfer of an obligation” means the transfer by agreement from one person (the “old obligor”) to another person (the “new obligor”) of an obligation to pay a ~~monetary sum~~ money or render other performance.

Article 2  
(Exclusion)

This Section does not apply to transfers of obligations in the course of transferring a business, made under the special rules governing such transfers.

Article 3  
(Agreement between old and new obligors, only with obligee’s consent)

An obligation ~~can~~ may be transferred by an agreement between an old and a new obligors, only with the consent of the obligee.

Article 4  
(Advance consent of ~~the~~ obligee)

- (1) The obligee may give its consent in advance.
- (2) In such a case, the transfer of the obligation becomes effective when ~~it is notified~~ notice of the transfer is given to the obligee or when the obligee ~~accepts it~~ acknowledges it.

Article 5 (ex 6)

*(Agreement between obligee and new obligor)*

**An obligation may be assumed by an agreement between the obligee and a new obligor. [The old obligor may refuse to be discharged by this agreement].**

Article 6~~5~~ (ex 5)

*(Discharge of ~~the~~ old obligor)*

**(1) When ~~giving its~~ consenting, the obligee may discharge the old obligor.**

**(2) The obligee may also retain the old obligor as an obligor in case the new obligor does not perform properly.**

**(3) Otherwise the old obligor remains as an obligor, jointly and severally with the new obligor.**

Article 6

*(Agreement between obligee and new obligor)*

**An obligation may be assumed by an agreement between the obligee and a new obligor. [The old obligor may refuse to be discharged by this agreement].**

Article 7

*(Third party performance)*

**(1) Without the obligee's consent, the obligor may contract with another person that this person will perform the obligation in place of the obligor, unless the obligation has an essentially personal character.**

**(2) ~~In such a case, t~~The obligee retains its claim against the obligor.**



Article 8  
(Defences)

**(1) The new obligor may assert against the obligee all defences which the old obligor could assert against the obligee.**

~~**(2) However, the new obligor may not assert any right of set-off based on a claim which the old obligor could exercise against the obligee after the transfer of the obligation.**~~

Article 9  
(Rights related to the obligation transferred)

**(1) The obligee may assert against the new obligor all its rights to payment or other performance under the contract in respect of the obligation transferred.**

~~Article 10~~  
(Securities)

~~**(2) If the old obligor is discharged under Article 6 (1), a security granted by any person other than the new obligor for the performance of the obligation is discharged, unless that other person agrees that it should continue to be available to the obligee.**~~

~~**(3) Discharge of the old obligor also extends to any security of the old obligor given to the obligee for the performance of the obligation, unless the security is over an asset which is transferred as part of a transaction between the old and the new obligors.**~~

SECTION 3 : ASSIGNMENT OF CONTRACTS

Article 1  
(Definitions)

In these Principles, “assignment<sup>22</sup> of a contract” means the transfer by agreement from one person (the “assignor”) to another person (the “assignee”) of the assignor’s rights and obligations arising out a contract with another person (the “other party”).

Article 2  
(Exclusion)

This Section does not apply to assignment of contracts in the course of transferring a business, made under the special rules governing such transfers.

Article 3  
(Agreement between assignor, assignee and other party)

A contract ~~can~~ may be assigned by an agreement between an assignor and an assignee, with the consent of the other party.

~~• Variant 1 : articles 4 to 8 (see note by the Rapporteur opening this Section)~~

Article 4  
(Advance consent of the other party)

- (1) The other party ~~can~~ may give its consent in advance.
- (2) ~~In such a case, the~~ assignment of the contract becomes effective when ~~it is notified~~ notice of the assignment is given to the other party or when the other party ~~accepts~~ acknowledges it.

Article 5  
*(Discharge of the assignor)*

- (1) When ~~giving its~~ consenting, the other party may discharge the assignor~~;~~.
- (2) The other party may also retain the assignor as an obligor in case the assignee does not perform properly~~;~~.
- (3) Otherwise the assignor remains as the other party's obligor, jointly and severally with the assignee.

Article 6  
*(Defences)*

- (1) To the extent that assignment of a contract involves an assignment of rights, ~~articles 11 and 12 of Section 1 apply~~ applies accordingly.
- (1) To the extent that assignment of a contract involves a transfer of obligations, ~~articles 8, 9 and 10 of Section 2 apply~~ applies accordingly.

Article 7  
*(Rights transferred with the contract)*

- (1) The assignee may assert against the other party all rights to payment or other performance under the contract assigned in respect to the rights transferred.
- (2) The other party may assert against the assignee all rights to payment or other performance under the contract assigned in respect to the rights transferred.

Article 8  
*(Securities)*

- (1) If the assignor is discharged, a security granted by any person other than the assignee for the performance of an

obligation is discharged, unless that other person agrees that it should continue to be available to the other party.

(2) Discharge of the assignor also extends to any security of the assignor given to the other party for the performance of an obligation, unless the security is over an asset which is transferred as part of a transaction between the assignor and the assignee.

~~• Variant 2 : article 4 (see note by the Rapporteur opening this Section)~~

~~➤ Variant 2 A :~~

~~Article 4~~

~~(Rules applicable to the rights assigned and the obligations transferred)~~

~~(1) To the extent that assignment of a contract involves an assignment of rights, articles 3, 4, 5, 7, 11, 12 and 13 (a) through (d) of Section 1 apply accordingly.~~

~~(1) To the extent that assignment of a contract involves a transfer of obligations, articles 4, 5, 8, 9 and 10 of Section 2 apply accordingly.~~

~~➤ Variant 2 B :~~

~~Article 4~~

~~(Rules applicable to the rights assigned and the obligations transferred)~~

~~(1) To the extent that assignment of a contract involves an assignment of rights, the relevant provisions of Section 1 apply accordingly.~~

~~(1) To the extent that assignment of a contract involves a transfer of obligations, the relevant provisions of Section 2 apply accordingly.~~

**Draft Chapter on Third Party Rights**

Article 1

*(Contracts in favour of third parties)*

**(1) Parties (the “promisor” and the “promisee”) may by express or implied agreement confer a right ~~in favour of~~ on a third party (the “beneficiary”).**

**(2) The existence and content of the beneficiary’s right against the promisor ~~is~~ are determined by the contract of the parties and ~~is~~ are subject to any conditions or other limitations under the contract.**

Article 2

*(Beneficiary identifiable)*

**The third party must be identifiable with adequate certainty by the contract but need not be in existence at the time the contract is made.**

Article 3

*(Exclusion or limitation clauses)*

**~~For the purposes of this chapter, (The~~ conferment of rights in the ~~third party~~ beneficiary includes the right to rely on a clause in the contract which excludes or limits the liability of the ~~third party~~ beneficiary.**

Article 4

*(Defences)*

**The promisors may assert against the ~~third party~~ beneficiary all defences which the promisors could assert if the claim was made by the promisee.**

Article 5  
(Revocation)

The contracting parties (~~or one of them if the contract so provides~~) may modify or revoke ~~the a rights granted~~ conferred by the contract ~~to~~ on the third party beneficiary until the ~~third party~~ beneficiary has accepted ~~them~~ or relied on them

Article 6  
(Renunciation)

~~It is open to~~ The third party beneficiary may to renounce a right conferred on it. ~~the benefit which the contracting parties have purported to confer upon him.~~

Draft Chapter on Set-off

Article 1  
(Conditions of Set-off)

Where two parties owe each other obligations to pay money or to render other performance of the same kind, either ~~of or~~ them may set off its obligation against the other party's obligation if, at the time of set-off,

(a) ~~he~~ it is entitled to perform its obligation,

(b) ~~the other party's performance obligation is due and ascertained, as to its existence and to its amount, and performance is due.~~

Article 2  
(Unascertained ~~Claims~~ Obligations)

~~However a~~ An obligor may also set off an obligation which is not ascertained as to its existence or to its amount, provided obligations of both parties arise from the same legal relationship contract.

Article 3  
(Foreign Currency Set-off)

Where the obligations are to pay money in different currencies, the right of set-off may be exercised, ~~unless the currency of the other party's obligation is not provided that both currencies are~~ freely convertible or unless and the first party parties have agreed that the party declaring set-off shall not pay only in a specified currency.

~~(If the obligations are not payable in the same place, the party declaring set-off shall bear the expenses of delivery).~~

Article 4  
( *Set-off by notice* )

**The right of set-off is exercised by notice to the other party.**

Article 5  
(~~Plurality of claims and obligations~~ Content of notice)

~~(1) Where a party giving~~ **The notice of set-off must sufficiently has two or more claims against the other party, he has to identify the obligation to which the notice of set-off it relates.**

~~(2) Where the party giving notice of set off has to perform two or more obligations toward the other party, the rule in article 6.1.12 applies with appropriate modifications.~~

Article 6  
(*Effect of set-off*)

**(1) Set-off discharges the obligations.**

**(2) If the obligations differ in amount, set-off discharges the obligations up to the amount of the lesser obligation.**

**(3) Set-off takes effect at, from the time that the right of set-off could have been exercised.**