



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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WORKING GROUP FOR THE PREPARATION OF
PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS

Article 5.1.9

RELEASE BY AGREEMENT

(Revised draft prepared by Professor A. Hartkamp in the light
of the discussions of the Working Group at its 6th session held in
Rome, 2 - 6 June 2003)

ARTICLE 5.1.9
(Release by agreement)

(1) An obligee may release its right by agreement with the obligor.

(2) An offer to release a right gratuitously shall be deemed accepted if the obligor does not reject the offer without delay after having become aware of it.

COMMENT

An obligee may wish to release the obligor from its obligation (or, in case the obligor owes more than one obligation, from more than one or from all its obligations) The release may be either a separate act or constitute a part of a more complex transaction between the parties, e.g. a compromise which settles a dispute between them.

Article 5.9 provides that such renunciation of the obligee's right (rights) requires an agreement between the parties, irrespective of whether the obligee renounces its right for value or gratuitously.

In the latter case, while the obligor should not be compelled to accept a benefit against its will, it will normally consent to accepting the benefit. For this reason Paragraph (2) provides that a gratuitous offer shall be deemed accepted if the obligor does not reject the offer without delay after having become aware of it.

Illustrations

1. Company A is in financial difficulties and needs the co-operation of its creditors in order to survive. Bank B is prepared to renounce 50% of its claim against A and the interest that has fallen due on condition that A is prepared to pay an interest of 9% (instead of 5% paid previously) on the remaining debt. B sends a notice to this effect on January 15. By January 22 A has not reacted to the notice. B's renunciation will only be effective after A has accepted B's offer according to Article 2.6 ff.

2. Company A is in financial difficulties and needs the co-operation of its creditors in order to survive. Bank B is prepared to renounce 50% of its claim against A and the interest that has fallen due and sends A a notice to this effect on January 15. By January 22 A has not reacted to the notice. B's offer is deemed to be accepted by A.