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(English only)



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

Sixth Session  
(Rome, 2 – 6 June 2003)

Decisions taken at the Sixth Session and Revised Text of the Principles

Rome, June 2003

## 1. DECISIONS TAKEN AT THE SIXTH SESSION OF THE WORKING GROUP

ARTICLE No.	TEXT OF THE PROVISION	COMMENTS
<b>PREAMBLE</b>		
	<p>Text modified to delete the section on their use when it proves impossible to establish the relevant rule of the applicable law and to add a section on their use to interpret or supplement domestic law, and one on their use when the parties have not chosen a law to govern their contract. The new text reads:            “These Principles set forth general rules international commercial contracts.            They shall be applied when the parties have agreed that their contract be governed by them.            They may be applied when the parties have agreed that their contract be governed by general principles of law, the <i>lex mercatoria</i> or the like.  <u>They may be applied when the parties have not chosen any law to govern their contract.</u>            They may be used to interpret or supplement international uniform law instruments.  <u>They may be used to interpret or supplement domestic law.</u>            They may serve as a model for national and international legislators”</p>	<p>A new section should be added in the Comments dealing with “Other Uses of the Principles” to cover, <i>inter alia</i>, their use in legal education and to assist in the drafting of contracts.</p>
<b>CHAPTER 1: GENERAL PROVISIONS</b>		
Article 1.2	<p>Text modified to read:            “Nothing in these Principles requires a contract, <u>statement or any other act to be made in or evidenced by a particular form.</u> It may be proved by any means, including witnesses.</p>	<p>Comments should indicate that statements are in particular statements of intention.</p>
Article 1.7		<p>Proposed Article on <b>abuse of rights</b> not accepted. To be dealt with in a new section of the comments to Article 1.7.</p>

<p>Article 1.11 (will be Article 1.12 as a new Article 1.8 has also been adopted)</p>	<p>New article adopted reading:</p> <p style="text-align: center;">“Article 1.11 (<i>Computation of time set by parties</i>)</p> <p>(1) Official holidays or non-business days occurring during a period set by parties for an act to be done are included in calculating the period.</p> <p>(2) However, if the last day of the period is an official holiday or a non-business day at the place of business of the party to do the act, the period is extended until the first business day which follows, unless the circumstances indicate otherwise.</p> <p>(3) The relevant time zone is that of the place of business of the party setting the time, unless the circumstances indicate otherwise.”</p>	
<p><b>CHAPTER 2: FORMATION</b></p>		
<p>It was decided that Chapter 2 would be divided into two Sections. Section 1 would be devoted to the provisions on Formation, Chapter 2 on Authority of Agents. The numbering of the Articles would follow the system adopted in Chapters 5 and 6. The title of Chapter 2 would be “Formation and Authority of Agents”.</p>		
<p>Article 2.4 (new no.: Art. 2.1.4)</p>	<p>Re reasonable reliance: one “reasonable” sufficient. The present formulation stays as is.</p>	
<p>Article 2.8 (new no. : Art. 2.1.8)</p>	<p>Present text modified to read: “Article 2.8 (Acceptance within a fixed period of time) A period of acceptance fixed by the offeror begins to run from the time that the offer is dispatched. A time indicated in the offer is deemed to be the time of dispatch unless the circumstances indicate otherwise.</p>	
<p>Article 2.9 (new no.: Art. 2.1.9)</p>	<p>Replace the opening words of para. (2) (“If a letter or other writing...”) by “If a <u>communication</u> ...”.</p>	
<p>Article 2.15 (new no.: Art. 2.1.15)</p>		<p>Add a sentence indicating that in practice the duty to negotiate in good faith may be the subject of an express agreement between the parties, in which case remedies for breach of contract might be available.</p>

Article 2.18 (new no.: Art. 2.1.18)	Use the formulation "... reasonably acted in reliance on ...."	
<b>CHAPTER 3: VALIDITY</b>		
Article 3.5	Paragraph (1)(b): Use the formulation "... reasonably acted in reliance on ...."	
Article 3.10	Paragraph (3): Use the formulation "... reasonably acted in reliance on ...."	
Article 3.11	Paragraph (2): Use the formulation "... reasonably acted in reliance on ...."	
Article 3.13	Paragraph (1): Use the formulation "... reasonably acted in reliance on ...."	
<b>CHAPTER 6, SECTION 2: HARDSHIP</b>		
Article 6.2.2		Third sentence referring to "50% or more" deleted.
<b>AUTHORITY OF AGENTS – WILL BECOME CHAPTER 2, SECTION 2</b>		
<b>ARTICLE</b>	<b>MODIFICATIONS TO TEXT</b>	<b>MODIFICATIONS TO COMMENTS</b>
Article 1 (will become Art. 2.2.1)		<b>Illustration 2:</b> Clearer indication of what contention prevails, now no indication of what outcome should be
Article 5 (will become Art. 2.2.5)	Delete reference to good faith.	
Article 9 (will become Art. 2.2.9)	Proposed new paragraph (3) adopted	<b>Comment 2:</b> proposed addition accepted
Article 10 (will become Art. 2.2.10)		<b>Comment 4:</b> Accepted, but change title to read: "Restriction of authority also covered".
<b>LIMITATION PERIODS - WILL BECOME CHAPTER 10</b>		
Throughout, in black-letter rules and comments, modify "proceeding" (singular) to "proceedings" (plural).		
		Explain relationship of the provisions on the period of limitation with the provision on inconsistent behaviour.
Article 1 (will become Article 10.1)		<b>Comment 1:</b> Delete reference to Article 7.3.1

Article 2 (will become Article 10.2)	Paragraphs (1) and (2): delete “or the obligor’s performance can be required”	<p><b>Comment 1:</b> replace “only” by “in particular”</p> <p><b>Comment 3:</b> replace “owner of a right” by “obligee”</p> <p><b>Comment 4:</b> delete “longer”; Add comment to take care of phrase deleted from the article.</p> <p><b>Comment 7:</b> replace “debt” by “obligation”.</p>
Article 4 (will become Article 10.4)		<p><b>Illustration 5:</b> Replace last sentence by: “When B asks A to cure the defects, A argues that the maximum period of Article 2(2) has elapsed so that no claim to damages can be made by B. A’s argument is incorrect if B abstained from commencing judicial proceedings on account of A’s waiver”.</p>
Article 5 (will become Article 10.5)	Para. (2): “Suspension lasts <u>until the proceedings have been terminated by a final decision of the court or otherwise</u> ”	Add comment explaining that when the proceedings are disposed of will depend on the procedural law of the court – also deal with withdrawal and settlement situations. “Or otherwise” = domestic.
Article 6 (will become Article 10.6)	Para. (2): “Suspension lasts <u>until the proceedings have been terminated by a binding decision of the arbitral tribunal or otherwise</u> ”	State in Comments that the most important/frequent cases of termination will be decision on the merits of the case, but that there may be other cases of termination of proceedings to be determined by the applicable rules of civil procedure.
Article 8 (will become Article 10.8)	Para. (1): add “the <u>general</u> limitation period”	Add sentence to explain “general” and “maximum” limitation periods.
Article 9 (will become Article 10.9)	<p>New text: <u>Article 9</u> <i>(The Effects of Expiration of Limitation Period)</i></p> <p>(1) The expiration of the limitation period does not extinguish the right.</p> <p>(2) For the expiration of the limitation period to have effect, the obligor must assert it as a defence.</p> <p>(3) A right may still be relied on as a defence even though the expiration of the limitation period for that right has been asserted”.</p>	<p><b>Comment 2,</b> Second sentence: “This can be done in any proceeding in accordance with the applicable law and also outside of a proceeding by invoking the expiration of the limitation period”.</p>

Article 10 (will become Art. 10.10)	Old para. (2) abbreviated: <u>Article 10</u> <i>(Exercise of Set-Off after Expiration of the Limitation Period)</i> The obligee may exercise the right of set-off <u>until</u> the obligor has asserted the expiration of the limitation period”.	
Article 11 (will become Art. 10.11)	Modify tense of verb to: “Where there <u>has been</u> ....”	
<b>ASSIGNMENT OF RIGHTS, TRANSFER OF OBLIGATIONS, ASSIGNMENT OF CONTRACTS – WILL BECOME CHAPTER 9</b>		
Article 1.1 (will become Art. 9.1.1)		<b>Comment 2</b> , line 4: “Claims deriving from <u>non-contractual claims</u> ....”
Article 1.2 (will become Art. 9.1.2)	New text for (a): “(a) of instruments such as negotiable instruments, documents of title and financial instruments”.	Elaborate new text of (a) in Comments.
Article 1.5 (will become Art. 9.1.5)	Delete text in square brackets (“between parties”)	
Article 1.7 (will become Art. 9.1.7)		<b>Comment 3</b> : “Personal character” – Modify comment along the lines of the PECL
Article 1.13 (will become Art. 9.1.13)	Modify title to read “Defences and rights of set-off”.	
	Paragraph (2): Replace “assert” by “exercise”	
Article 1.15 (will become Art. 9.1.15)	Modify chapeau to read: “The assignor undertakes towards the assignee, <u>except as otherwise disclosed to the assignee</u> , that:”	Comment 3, First sentence: Should be more explicit, mention possibility that may previously have assigned right for security purposes only and may still be in a position to assign.
Article 2.1 (will become Art. 9.2.1)	Para. (2)(a): Add “subject to Article 2.3” to read: “(a) by an agreement between the original obligor and the new obligor <u>subject to Article 2.3</u> ”	

Article 2.4 (will become Art. 9.2.4)	Para. (2): Delete the words in square brackets and start with “The transfer ...”.	
Article 2.5 (will become Art. 9.2.5)		Illustration 4 should be redrafted, finding a synonym for “happy”.
Article 2.7 (will become Art. 9.2.7)	Modify title to read “Defences and rights of set-off” The existing article becomes para. (1) with the words “except set-off” deleted. A new para (2) is added reading: “The new obligor may not exercise against the obligee any right of set-off available to the original obligor against the obligee”.	
Article 2.8 (will become Art. 9.2.8)	Para. (2): The reference to Article 2.6(1) should read 2.5(1). Para. (3): The last word should read “obligor” in the singular.	
Article 3.1 (will become Art. 9.3.1)		Second paragraph of the Comment: “ <i>ipso iure</i> ” is deleted and replaced by “the transfer of contract <u>by operation of law</u> ...”
Article 3.4 (will become Art. 9.3.4)	Para. (2): Delete all words in square brackets and start with “The assignment ...”.	
Article 3.6 (will become Art. 9.3.6)	Modify title to read: “Defences and rights of set-off”	
<b>SET-OFF – WILL BECOME CHAPTER 8</b>		
Article 1 (will become Art. 8.1)	The chapeau of para. (1) is modified to read: (1) Where two parties owe each other money or other performances of the same kind, either of them (“the first party”) may set off its obligation against that of its obligee (“the other party”) if at the time of set-off ....”	The two opening paragraphs of the Comments are deleted.

Art. 1 cont.d		Insert special explanation in comments devoted to an explanation of Para. (2)
		<b>Comment 1:</b> The last sentence of the first paragraph is modified to read: “Set-off avoids the need for each party to perform its obligation separately”
		<b>Comment 2,</b> line 2: the word “qualify” is replaced by “capacity”
		<b>Comment 7:</b> The title is replaced by “Set-Off of Obligations arising out of Same Contract”. In line 3 of the first paragraph the word “monetary” is deleted.
Article 2 (will become Art. 8.2)		<b>Comment 1:</b> Replace the first sentence by “Payments in different currencies are not performances of the same kind according to Article 1”.
		Comments should refer to Article 6.1.9(3) and say that the relevant place of payment is the place of payment of the obligation of the first party.
Article 3 (will become Art. 8.3)		<b>Comment:</b> In first paragraph replace “judge” by “court”. In second paragraph insert “see” before the reference to Article 1.9 in brackets and end the Comment to this Article there, delete from “The first party” on.
Article 4 (will become Art. 8.4)	In para. (1) “obligation” should be in the plural. (2) New formulation reading: “If the notice does not sufficiently specify the obligation against which set-off is exercised, then the other party may, within a reasonable time, declare to the first party the obligation to which the set-off relates, or, if no such declaration is made, the set-off will relate to all the obligations proportionally”. Para. (3) is deleted.	
<b>THIRD PARTY RIGHTS - WILL BECOME CHAPTER 5, SECTION 2</b>		
		General point on illustrations: Should be modified to refer more to international commercial situations; consumer contract illustrations should be avoided

Article 1 (will become Art. 5.2.1)		<b>Illustration 9:</b> Add “against A” at the very end. Add an explanation along the lines that the right of a third party beneficiary is the same as every other contractual right.
		Modify the sentence after the illustrations referring to tort claims to read: “The application of this Article will often come up in the context of an associated claim in tort”.
Article 3 (will become Art. 5.2.3)	Delete the words “For the purposes of this Chapter” at the beginning of the Article.	
Article 4(will become Art. 5.2.4)		Add an Illustration on credit insurance
Article 5 (will become Art. 5.2.5)	Use the formulation “... reasonably acted in reliance on ....”	Indicate in Comments that modification / revocation is a special case of acting in reliance.
<b>INCONSISTENT BEHAVIOUR – INCLUDED IN CHAPTER 1</b>		
Article X to become <u>Article 1.8</u>	Shorter version preferred reading: <u>“Article 1.8</u> <i>(Inconsistent Behaviour)</i> A party cannot act inconsistently with an understanding it has caused the other party to have and upon which that other party reasonably has acted in reliance to its detriment”	<b>Comment 1:</b> Enlarge paragraph 2. <b>Comment 3:</b> the reference to Illustration 3 should be to Illustration 4. Explain the relationship of this provision with provisions on period of limitation. Add an illustration amending <b>Illustration 5</b> to say that A could be required to add that amount. In <b>Illustration 6</b> the parties have been inverted, so in line 4 it should be “A”, in line 5 first “A” then “B” and in line 6 “B”.
<b>RELEASE BY AGREEMENT – INCLUDED IN CHAPTER 5, SECTION 1</b>		
Article X to become <u>Article 5.1.9</u>	The text adopted reads: <u>“Article 5.1.9</u> <i>(Release by Agreement)</i> (1) An obligee may release its rights 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”.	The order of the Illustrations should be inverted.
<b>ABUSE OF RIGHTS</b>		
	Proposed Article not accepted. To be dealt with in a new section of the comments to Article 1.7.	

## 2. REVISED TEXT

### PREAMBLE

These Principles set forth general rules international commercial contracts.

They shall be applied when the parties have agreed that their contract be governed by them.

They may be applied when the parties have agreed that their contract be governed by general principles of law, the *lex mercatoria* or the like.

They may be applied when the parties have not chosen any law to govern their contract.

They may be used to interpret or supplement international uniform law instruments.

They may be used to interpret or supplement domestic law.

They may serve as a model for national and international legislators”

### CHAPTER 1: GENERAL PROVISIONS

#### Article 1.2

*(No form required)*

Nothing in these Principles requires a contract, statement or any other act to be made in or evidenced by a particular form. It may be proved by any means, including witnesses.

#### Article 1.8 (new)

*(Inconsistent Behaviour)*

A party cannot act inconsistently with an understanding it has caused the other party to have and upon which that other party reasonably has acted in reliance to its detriment.

#### Article 1.12 (new)

*(Computation of time set by parties)*

- (1) Official holidays or non-business days occurring during a period set by parties for an act to be done are included in calculating the period.
- (2) However, if the last day of the period is an official holiday or a non-business day at the place of business of the party to do the act, the period is extended until the first business day which follows, unless the circumstances indicate otherwise.
- (3) The relevant time zone is that of the place of business of the party setting the time, unless the circumstances indicate otherwise.

## CHAPTER 2: FORMATION AND AUTHORITY OF AGENTS

### Section 1: Formation

#### Article 2.1.8

*(Acceptance within a fixed period of time)*

A period of acceptance fixed by the offeror begins to run from the time that the offer is dispatched. A time indicated in the offer is deemed to be the time of dispatch unless the circumstances indicate otherwise.

#### Article 2.1.9

*(Late acceptance. Delay in acceptance)*

(2) If a communication containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without undue delay, the offeror informs the offeree that it considers the offer as having lapsed.

#### Article 2.1.18

*(Modification in particular form)*

A contract in writing which contains a clause requiring any modification or termination by agreement to be in a particular form may not be otherwise modified or terminated. However, a party may be precluded by its conduct from asserting such a clause to the extent that the other party has reasonably acted in reliance on that conduct.

### Section 2: Authority of Agents

#### Article 2.2.1

*(Scope of the Section)*

(1) This Section governs the authority of a person, the agent, to affect the legal relations of another person, the principal, by or with respect to a contract with a third party, whether the agent acts in its own name or in that of the principal.

(2) It governs only the relations between the principal or the agent on the one hand, and the third party on the other.

(3) It does not govern an agent's authority conferred by law or the authority of an agent appointed by a public or judicial authority.

Article 2.2.2

*(Establishment and scope of the authority of the agent)*

- (1) The principal's grant of authority to an agent may be express or implied.
- (2) The agent has authority to perform all acts necessary in the circumstances to achieve the purposes for which the authority was granted.

Article 2.2.3

*(Agency disclosed)*

- (1) Where an agent acts within the scope of its authority and the third party knew or ought to have known that the agent was acting as an agent, the acts of the agent shall directly affect the legal relations between the principal and the third party and no legal relation is created between the agent and the third party.
- (2) However, the acts of the agent shall affect only the relations between the agent and the third party, where the agent with the consent of the principal undertakes to become the party to the contract.

Article 2.2.4

*(Agency undisclosed)*

- (1) Where an agent acts within the scope of its authority and the third party neither knew nor ought to have known that the agent was acting as an agent, the acts of the agent shall affect only the relations between the agent and the third party.
- (2) However, where such an agent, when contracting with the third party on behalf of a business, represents itself to be the owner of that business, the third party, upon discovery of the real owner of the business, may exercise also against the latter the rights it has against the agent.

Article 2.2.5

*(Agent acting without or exceeding its authority)*

- (1) Where an agent acts without authority or exceeds its authority, its acts do not affect the legal relations between the principal and the third party.
- (2) However, where the principal causes the third party reasonably to believe that the agent has authority to act on behalf of the principal and that the agent is acting within the scope of that authority, the principal may not invoke against the third party the lack of authority of the agent.

Article 2.2.6

*(Liability of agent acting without or exceeding its authority)*

- (1) An agent that acts without authority or exceeds its authority is, failing ratification by the principal, liable for damages that will put the third party in the same position as if the agent had acted with authority and not exceeded its authority.
- (2) However, the agent is not liable if the third party knew or ought to have known that the agent had no authority or was exceeding its authority.

Article 2.2.7

*(Conflict of interests)*

- (1) If a contract concluded by an agent involves the agent in a conflict of interests with the principal of which the third party knew or ought to have known, the principal may avoid the contract. The right to avoid is subject to Articles 3.12 and 3.14 to 3.17.
- (2) However, the principal may not avoid the contract
  - (a) if the principal had consented to, or knew or ought to have known, the agent's involvement in the conflict of interests; or
  - (b) if the agent had disclosed the conflict of interests to the principal and it had not objected within a reasonable time.

Article 2.2.8

*(Subagency)*

An agent has implied authority to appoint a subagent to perform acts which it is not reasonable to expect the agent to perform itself. The rules of this chapter apply to the subagency.

Article 2.2.9

*(Ratification)*

- (1) An act by an agent that acts without authority or exceeds its authority may be ratified by the principal. On ratification the act produces the same effects as if it had initially been carried out with authority.
- (2) The third party may by notice to the principal specify a reasonable period of time for ratification. If the principal does not ratify within that period it can no longer do so.
- (3) Where, at the time of the agent's act, the third party neither knew nor ought to have known of the lack of authority, it may, at any time before ratification, by notice to the principal indicate its refusal to become bound by a ratification.

Article 2.2.10

*(Termination of authority)*

- (1) Termination of authority is not effective in relation to the third party unless the third party knew or ought to have known of it.
- (2) Notwithstanding the termination of its authority, an agent remains authorised to perform the acts that are necessary to prevent harm to the principal's interests.

**CHAPTER 3: VALIDITY**

Article 3.5

*(Relevant mistake)*

- (1) [...]
- (b) the other party had not at the time of avoidance reasonably acted in reliance on the contract.

Article 3.10

*(Gross disparity)*

- (3) A court may also adapt the contract or term upon the request of the party receiving notice of avoidance, provided that that party informs the other party of its request promptly after receiving such notice and before the other party has reasonably acted in reliance on it. The provisions of Article 3.13(2) apply accordingly.

Article 3.11

*(Third persons)*

- (2) Where fraud, threat or gross disparity is imputable to a third person for whose acts the other party is not responsible, the contract may be avoided if that party knew or ought to have known of the fraud, threat or gross disparity, or has not at the time of avoidance reasonably acted in reliance on the contract.

Article 3.13

*(Loss of right to avoid)*

- (1) If a party is entitled to avoid the contract for mistake but the other party declares itself willing to perform or performs the contract as it was understood by the party entitled to avoidance, the contract is considered to have been concluded as the latter party understood it. The other party must make such a declaration or render such performance promptly after having been informed of the manner in which the party entitled to avoidance had understood the contract and

before that party has reasonably acted in reliance on a notice of avoidance.

## **CHAPTER 5: CONTENT AND THIRD PARTY RIGHTS**

### **Section 1: Content**

#### Article 5.1.9 (new) *(Release by Agreement)*

- (1) An obligee may release its rights 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.

### **Section 2: Third Party Rights**

#### Article 5.2.1 *(Contracts in favour of third parties)*

- (1) Parties (the “promisor” and the “promisee”) may confer by express or implied agreement a right on a third party (the “beneficiary”).
- (2) The existence and content of the beneficiary’s right against the promisor are determined by the agreement of the parties and are subject to any conditions or other limitations under the agreement.

#### Article 5.2.2 *(Third Party Identifiable)*

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

#### Article 5.2.3 *(Exclusion and Limitation Clauses)*

The conferment of rights in the beneficiary includes the right to invoke a clause in the contract which excludes or limits the liability of the beneficiary.

#### Article 5.2.4 *(Defences)*

The promisor may assert against the beneficiary all defences which the promisor could assert against the promisee.

Article 5.2.5  
(Revocation)

The contracting parties may modify or revoke the rights conferred by the contract on the beneficiary until the beneficiary has accepted them or reasonably acted in reliance on them.

Article 5.2.6  
(Renunciation)

The beneficiary may renounce a right conferred on it.

**CHAPTER 8: SET-OFF**

Article 8.1  
(Conditions of set-off)

(1) Where two parties owe each other money or other performances of the same kind, either of them (“the first party”) may set off its obligation against that of its obligee (“the other party”) if at the time of set-off

(a) the first party is entitled to perform its obligation,

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

(2) If the obligations of both parties arise from the same contract, the first party may also set off its obligation against an obligation of the other party which is not ascertained as to its existence or to its amount.

Article 8.2  
(Foreign currency set-off)

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 parties have not agreed that the first party shall pay only in a specified currency.

Article 8.3  
(Set-off by notice)

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

Article 8.4  
(Content of Notice)

(1) The notice must sufficiently specify the obligations to which it relates.

(2) If the notice does not sufficiently specify the obligation against which set-off is exercised, then the other party may, within a reasonable time, declare to the first party the obligation to which the set-off relates, or, if no such declaration is made, the set-off will relate to all the obligations proportionally.

Article 8.5  
*(Effect of set-off)*

- (1) Set-off discharges the obligations.
- (2) If obligations differ in amount, set-off discharges the obligations up to the amount of the lesser obligation.
- (3) Set-off takes effect as from the time of notice.

**CHAPTER 9: ASSIGNMENT OF RIGHTS, TRANSFER OF OBLIGATIONS,  
ASSIGNMENT OF CONTRACTS**

**Section 1: Assignment of rights**

Article 9.1.1  
*(Definitions)*

“Assignment of a right” means the transfer by agreement from one person (“the assignor”) to another person (“the assignee”), including 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 9.1.2  
*(Exclusions)*

This Section does not apply to transfers made under the special rules governing the transfer :

- (a) of instruments such as negotiable instruments, documents of title and financial instruments, or
- (b) of rights in the course of transferring a business.

Article 9.1.3  
*(Assignability of non-monetary rights)*

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

Article 9.1.4  
*(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 the assignment does not render the obligation significantly more burdensome.

Article 9.1.5  
*(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 9.1.6  
*(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 9.1.7  
*(Agreement between assignor and assignee sufficient)*

- (1) A 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 obligation, in the circumstances, is of an essentially personal character.

Article 9.1.8  
*(Obligor's additional costs)*

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

Article 9.1.9  
*(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 9.1.10  
*(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 9.1.11  
*(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 9.1.12  
*(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 time adequate proof that the assignment has been made.
- (2) Until adequate proof is provided, the obligor may withhold payment.
- (3) Unless adequate proof is provided, notice is not effective.
- (4) Adequate proof includes, but is not limited to, any writing emanating from the assignor and indicating that the assignment has taken place.

Article 9.1.13  
*(Defences and rights of set-off)*

- (1) The obligor may assert against the assignee all defences which the obligor could assert against the assignor.
- (2) The obligor may exercise against the assignee any right of set-off available to the obligor against the assignor up to the time notice of assignment was received.

Article 9.1.14  
*(Rights related to the right assigned)*

Assignment of a right transfers to the assignee :

- (a) all the assignor's rights to payment or other performance under the contract in respect of the right assigned, and
- (b) all rights securing performance of the right assigned.

Article 9.1.15  
*(Assignor's undertakings)*

The assignor undertakes towards the assignee, except as otherwise disclosed to 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) neither the obligor nor the assignor has given notice of set-off concerning the assigned right and will not give 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 of obligations**

Article 9.2.1  
*(Modes of transfer)*

An obligation to pay money or render other performance may be transferred from one person ("the original obligor") to another person ("the new obligor") either

- (a) by an agreement between the original obligor and the new obligor subject to Article 9.2.3, or
- (b) by an agreement between the obligee and the new obligor, by which the new obligor assumes the obligation.

Article 9.2.2  
*(Exclusion)*

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

Article 9.2.3

*(Requirement of obligee's consent to transfer)*

Transfer of an obligation by an agreement between the original and the new obligor requires the consent of the obligee.

Article 9.2.4

*(Advance consent of obligee)*

- (1) The obligee may give its consent in advance.
- (2) The transfer of the obligation becomes effective when notice of the transfer is given to the obligee or when the obligee acknowledges it.

Article 9.2.5

*(Discharge of original obligor)*

- (1) The obligee may discharge the original obligor.
- (2) The obligee may also retain the original obligor as an obligor in case the new obligor does not perform properly.
- (3) Otherwise the original obligor remains as an obligor, jointly and severally with the new obligor.

Article 9.2.6

*(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, in the circumstances, has an essentially personal character.
- (2) The obligee retains its claim against the obligor.

Article 9.2.7

*(Defences and rights of set-off)*

- (1) The new obligor may assert against the obligee all defences which the original obligor could assert against the obligee.
- (2) The new obligor may not exercise against the obligee any right of set-off available to the original obligor against the obligee

Article 9.2.8

*(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.
- (2) If the original obligor is discharged under Article 2.5 (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 original obligor also extends to any security of the original 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 original and the new obligor.

### **Section 3 : Assignment of contracts**

#### Article 9.3.1 *(Definitions)*

“Assignment 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 of a contract with another person (“the other party”).

#### Article 9.3.2 *(Exclusion)*

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

#### Article 9.3.3 *(Request of consent of the other party)*

Assignment of a contract requires the consent of the other party.

#### Article 9.3.4 *(Advance consent of the other party)*

- (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.

#### Article 9.3.5 *(Discharge of the assignor)*

- (1) 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 9.3.6

*(Defences and rights of set-off)*

- (1) To the extent that assignment of a contract involves an assignment of rights, Article 9.1.13 applies accordingly.
- (2) To the extent that assignment of a contract involves a transfer of obligations, Article 9.2.7 applies accordingly.

Article 9.3.7

*(Rights transferred with the contract)*

- (1) To the extent that assignment of a contract involves an assignment of rights, Article 9.1.14 applies accordingly.
- (2) To the extent that assignment of a contract involves a transfer of obligations, Article 9.2.8 applies accordingly.

**CHAPTER 10: LIMITATION PERIODS**

Article 10.1

*(Scope of the chapter)*

- (1) The exercise of rights governed by these Principles is barred by expiration of a period of time, referred to as “limitation period”, according to the rules of this chapter.
- (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 10.2

*(Limitation periods)*

- (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 can be exercised.
- (2) In any event, the maximum limitation period is ten years beginning on the day after the day the right can be exercised.

Article 10.3

*(Modification of Limitation Periods by the Parties)*

- (1) The parties may modify the limitation periods.
- (2) However they may not
  - (a) shorten the general limitation period to less than one year;
  - (b) shorten the maximum limitation period to less than 4 years;

- (c) extend the maximum limitation period to more than 15 years.

Article 10.4

*(New Limitation Period by Acknowledgement)*

- (1) Where the obligor, before the expiration of the general limitation period, acknowledges the right of the obligee, a new general limitation period begins on the day after the day of the acknowledgement.
- (2) 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 (1).

Article 10.5

*(Suspension by Judicial Proceedings)*

- (1) The running of the limitation period is suspended
  - (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;
  - (b) in the case of the obligor's insolvency when the obligee has asserted its rights in the insolvency proceedings; or
  - (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 the proceedings have been terminated by a final decision of the court or otherwise.

Article 10.6

*(Suspension by Arbitral Proceedings)*

- (1) The running of the limitation period is 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 arbitral proceedings or provisions determining the exact date of the commencement of arbitral proceedings, the proceedings are 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 the proceedings have been terminated by a binding decision of the arbitral tribunal or otherwise.

Article 10.7  
*(Alternative Dispute Resolution)*

The provisions of Arts. 5 and 6 apply with appropriate modifications to other proceedings whereby parties request a third person to assist them in their attempt to reach an amicable settlement of their dispute.

Article 10.8  
*(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 general 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 10.9  
*(The Effects of Expiration of Limitation Period)*

- (1) The expiration of the limitation period does not extinguish the right.
- (2) For the expiration of the limitation period to have effect, the obligor must assert it as a defence.
- (3) A right may still be relied on as a defence even though the expiration of the limitation period for that right has been asserted.

Article 10.10  
*(Exercise of Set-Off after Expiration of the Limitation Period)*

The obligee may exercise the right of set-off until the obligor has asserted the expiration of the limitation period.

Article 10.11  
*(Restitution)*

Where there has been performance in order to discharge an obligation, there is no right to restitution merely because the period of limitation had expired.