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**Principles of International Commercial Contracts
Working Group on Long-Term Contracts**

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Co-operation between the parties ^(*)

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(*) Cf. Study L – Doc. 127, Issue (f).

ARTICLE 5.1.3

(Co-operation between the parties)

Each party shall cooperate with the other party when such co-operation may reasonably be expected for the performance of that party's obligations.

COMMENT

1. Duty of co-operation as an application of the general principle of good faith and fair dealing

A contract is not merely a meeting point for conflicting interests but must also, to a certain extent, be viewed as a common project in which each party must cooperate. This view is clearly related to the principle of good faith and fair dealing (see Article 1.7) which permeates the law of contract, as well as to the obligation to mitigate harm in the event of non-performance (see Article 7.4.8).

This Article states the parties' duty to cooperate with each other to the extent that such co-operation may reasonably be expected for the performance of their respective obligations. Instances of such duty are expressly or implicitly provided for in the Principles either in the black letter rules (see Article 5.3.3, Article 7.1.2, and Article 7.4.8) or in the comments (see e.g. Comment 3 to Article 6.1.6, Comment 3(a) to Article 6.1.14, and Comment 10 to Article 7.1.4). However, there are many other instances in which the parties may be requested to cooperate with each other in the course of contract formation or contract performance.

The duty of co-operation must of course be confined within certain limits ~~(the provision refers to reasonable expectations), so as not to upset~~, i.e. it only exists to the extent that co-operation may reasonably be expected to enable the other party to perform, without upsetting the allocation of duties in the ~~performance of the contract. Although the principal concern of the provision is the duty not to hinder~~ contract. Within these limits each party may be under a duty not only to refrain from hindering the other party from performing its obligation(s), but also to take affirmative steps to enable the other party's performance, ~~there may also be circumstances which call for more active co-operation.~~

Illustrations

~~1. A, after contracting with B for the immediate delivery of a certain quantity of oil, buys all the available oil on the spot market from another source. Such conduct, which will hinder B in performing its obligation, is contrary to the duty of co-operation.~~

21. A, an art gallery in country X, buys a sixteenth century painting from B, a private collector in country Y. The painting may not be exported without a special authorisation and the contract requires B to apply for that permission. B, who has no experience of such formalities, encounters serious difficulties with the application whereas A is familiar with such procedures. In these circumstances, and notwithstanding the contractual provision, A can be expected to give at least some assistance to B.

2. Company A and Company B enter into a contract for the sale of electricity by A to B. The contract is not performed by B, prompting A to sue B for breach of contract and damages. B objects that the contract is null and void for lack of registration in the Public Registry. According to the applicable law the registration of the contract is a joint task of the parties; since B has not done what it was required to do in order to obtain the registration, such registration could not be

accomplished. B is not entitled to rely on the lack of registration of the contract, as a defence to A's claim.

3. Seller A, situated in country X, concludes with Buyer B, situated in country Y, a contract for the sale of goods to be delivered in installments. After the discovery by B of alleged defects in part of the goods delivered, A agrees to a price reduction and an extension of payment dates, but in turn asks B promptly to submit a formal notice of the defects together with other documents A needs to explain to the export and exchange control authorities of its country the reasons for the reduced price and the extended dates of payment, so as to avoid severe penalties. Since B only gradually and partially meets A's requests, A informs B that it will make the remaining deliveries conditional upon B's submission of the requested documents and the prompt payment of the goods already delivered. B may not object that in so doing A was breaching the contract (and the subsequent agreement on the extension of payment), since it was B who with its obstructionist behaviour had failed to observe its general duty of co-operation under the contract.

2. Co-operation between parties in the context of long-term contracts

Although this Article states the duty of co-operation in general terms for all types of contract, in practice co-operation may be particularly important in the context of long-term contracts. Indeed a long-term contract, particularly one involving performance of a complex nature or an ongoing relationship between the parties, may especially need co-operation throughout the life of the contract in order for the transaction to work, although always within the limit of reasonable expectations. Thus, by way of example, in a contract for the construction of industrial works the employer may be required to prevent interferences in the contractor's work by other contractors it employs to carry out other works at the site. Likewise, in a distributorship agreement the supplier is under a duty to abstain from any conduct that might hinder the distributor from achieving the contractually-agreed minimum of orders, or in a franchising agreement the franchisor may be prevented from setting up a competing business in the immediate neighbourhood of the franchisee's business even if the franchise is not exclusive.

Obviously also in the context of long-term contracts the parties' duty to cooperate exists only within the limit of reasonable expectations.

Illustrations

4. Contractor A is awarded by B, a Governmental Agency in country X, a contract to build a 3000 house complex in country X. Since it is a greenfield project, also electricity and water have to be brought in, and the respective works have to be executed in a certain sequence so as not to conflict with each other. B awards the electrical contracts to local contractors, but then completely fails to coordinate their work with A's work with the result that A repeatedly has to interrupt its work thereby causing A considerable loss. B is liable for this loss since, in the circumstances, it should have actively coordinated the work of the local contractors so that A's work would not be interrupted in such manner.

5. Company A, situated in country X, and Company B, situated in country Y, enter into a joint venture agreement for participation in a public bidding procedure in country X. The contract is finally awarded to a third party. The procedure was manifestly improper, but B refuses to join A in appealing against the award before the competent authority, thereby hindering A from pursuing the appeal. By its refusal to join A in the proceedings B has breached its general duty of co-operation under the joint venture agreement.