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INTERNATIONAL INSTITUTE THE UNIFICATION OF PRIVATE LAW

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PRELIMINARY DRAFT

OF THE UNIFORM LAW OF AGENCY IN PRIVATE LAW MATTERS

OF AN INTERNATIONAL CHARACTER  
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Rome, April 1948

Definitions

Article 1

In interpreting this law the following terms shall bear these meanings:

An Agent is he who carries out acts on behalf of another (whether in the Agents own name or in the name of that other) (1);

a Principal is he on whose behalf an Agent acts;

a Third Person is he with whom an Agent carries out acts on behalf of a Principal;

an Authority arises from some act between the Principal and the Agent or from some determinate position between them which qualifies the Agent to act on behalf on the Principal;

a General Authority relates to a number of acts or transactions which are defined only in a general way;

a Special Authority relates to one or more determined acts or transactions;

the Law applicable shall be that settled by the rules of the Conflict of Laws applicable according to the lex fori.

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(1) The words in brackets have been inserted for the time being.

I. - THE SCOPE OF THIS LAW

Article 2

This law deals with agency (arising from the authority of one person to do acts on behalf of another) in private law matters.

This law does not deal with:

- 1) Agency in family relationship;
- 2) Agency in respect of persons under a disability;
- 3) Agency by Barristers, Solicitors and other legal representatives.

The relations between Principal and Agent shall be subject to any agreement made between them, and to the laws regulating those relations (in so far as such relations are not otherwise dealt with by this law) (1).

II. - ESTABLISHMENT OF AGENCY

Article 3 - Form of Authority

The agent's authority may be express or implied, written or oral.

When the law of the place where the act of the agent is to be exercised requires that authority should be given in the same form as prescribed for that act, such authority shall only be valid when it is in such form.

Article 4 - Implied Authority

The Authority of a person to act on behalf of another may arise from some position which that person occupies with the consent

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(1) In the illustrative report it will be necessary to lay down clearly that agency in respect of corporations by their officers, is excluded from this uniform law.

of the other and from which the power to act on behalf of that other arises according to the law and usages applicable.

Article 5 - Capacity

The principal must possess the legal capacity to do the act in respect of which the agent is authorised, but it shall suffice that the agent possess sufficient understanding to accomplish such act even though he may not have the legal capacity to carry out the act on his own account.

Article 6 - Substitution

An agent may only delegate by express authority of his principal.

Nevertheless delegation shall be allowed, even without the principal's express authority :

1) if permission to delegate necessarily arises from the nature of the act to be done by the agent or from the usages in force in the place where the act is to be carried out;

2) if, as a result of some position or fact personal to himself, the agent is no longer in a position to carry out the act for which he was given authority and when the interests of the principal require that no delay should occur in the carrying out of that act.

In cases where delegation is permitted, the person to whom the agent delegates shall become the direct agent of the principal.

III - SCOPE OF AGENCY

Article 7 - Acts which may be carried out by the agent

An agent shall be authorized to carry out all acts necessary to achieve the object of his agency.

If the law of the country in which the agent must act requires that authority for a series of acts or transactions shall be registered or published in some specified form, then that law shall also govern the scope of that authority.

Article 8 - Scope of implied authority

In cases of implied authority the agent shall be authorized to carry out all acts which are normally implied by reason of his position.

If a person is entrusted with the management of a business then such person shall thereby be authorized to conclude all transactions and to carry out all acts of whatsoever kind that the running of the business requires.

Article 9 - Collective authority

If more than one person is empowered to carry out an act on behalf of a principal it shall be presumed that the act is to be carried out jointly.

IV. - RESULTS OF AN ACT CARRIED OUT FOR A PRINCIPAL

Article 10 - Acts binding on the principal

If one person carries out some act on account of another that act shall directly bind the third party and the principal in the following cases:

- 1) When the act has been carried out in the name of some person other than the agent indicated to or otherwise known to the third party;
- 2) When the person carrying out an act acts as the agent of another person whom he does not indicate but whose identity he reserves the right to disclose; or when it obviously follows from the circumstances that the person carrying out the act is acting as an agent without those circumstances showing who the principal is;
- 3) When the person who does the acts on behalf of another without telling the third party and the third party only learns afterwards that the act was carried out on behalf of another.

Article 11 - Extent of authority

When the agent carries out an act in the name of the principal within the scope of his authority, that act shall directly bind the principal and the third party.

If the agent has gone outside the scope of his authority the principal shall not be bound.

A restriction on the scope of the agent's authority may only be set up as regards a third party if such third party knows or ought to know of it.

If however a third party only learns of the agent's authority as a result of the statement of the agent, the principal shall not be bound by an act carried out by the agent which exceeds the scope of that authority.

Article 12 - Act on behalf of a person to be named

When a person carries out an act as agent of another person who is not named but whose name that person reserves the right to indicate later; or when it obviously follows from the circumstances that a person has acted as an agent, even though the circumstances do not indicate who the principal is, such agent must inform the third party of the name of the person on whose behalf he has acted either within the period agreed, or, failing agreement, in a reasonable time.

If the person whose name has been indicated had authorized the declarant to act on his behalf, or if, in the above mentioned period, he agrees that the act has been carried out on his behalf, then the act shall bind the principal and the third party directly from the date it was carried out.

If no declaration be made in the above mentioned period, or if the conditions laid down in the foregoing paragraph have not been fulfilled, then the act shall bind only the third party and the person who has carried it out.

Article 13 - Undisclosed agency

If the person who has carried out an act has acted on behalf of another without declaring this to be the case, and if the third party has only learned that the act has been done on behalf of another after such act has been carried out, then the third party shall have the right to elect whether the act shall bind him and the person who has carried it out, or shall bind him and the person on whose behalf it has been carried out.

If the third party after learning of the existence and the name of the person on whose behalf the act has been carried out does not state whom he elects to hold bound, then that person may fix a reasonable time during which the third party must make his election.

An election once made by the third party may not be revoked by him.

Article 14 - Defects in consent

An agent, not the principal, shall be the person to be considered in relation to questions of consent, mistake and misrepresentation.

Similarly the person of the agent, not the principal, shall be considered in connection with questions relative to knowledge or ignorance of facts influencing the validity or the results of an act.

Nevertheless both agent and principal shall be considered when a question arises about either the performance of any definite instruction of the principal, or about any facts which the agent knew or ought to have known the knowledge or the ignorance of which influences the validity or results of an act.

Article 15 - Ratification

An act carried out on behalf of another by a person without authority shall, if ratified by the person on whose behalf it has been accomplished, produce the same effects as if it had been carried out by authority.

Ratification shall only be valid if the act can still validly be carried out at the time ratification takes place.

Ratification cannot take place if the principal was not in existence according to the law applicable where the act was carried out.

Ratification must comply with requirements as to the form of authority laid down by article 3 above.

The third party shall have the right to require the principal to ratify in a reasonable time.



The third party may refuse to accept a partial ratification. Ratification cannot be revoked.

These rules shall also apply when the agent, having exceeded the scope of his authority, fails to bind the principal.

Article 16 - Liability of the agent for lack of authority

He who holds himself out to be an agent shall be liable to a third party in respect of any damage caused by his lack of authority, or by his having gone outside the limitations of his authority, or by not having brought those limitations to the attention of the third party.

The agent shall not be liable however if the third party knew or ought to have known that the agent had no authority, or was acting outside his authority.

Article 17<sup>(1)</sup> - Acts carried out on behalf of another  
by a person contracting in his own name

When a person who is acting for another does an act in his own name with the object of binding himself alone by that act (and does not act as agent for the person on whose behalf he acts) the act shall bind the third person and the person who has carried it out, in accordance with the rules laid down by the present law relating to commissions.

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(1) This article has only been drafted provisionally, the final draft is reserved for the time when the contract of commission shall have been defined.

V - END OF AGENCY

Article 18 - Death of Principal

The death of the principal puts an end to the right to act as agent.

Nevertheless the estate of the principal shall be bound if the third party did not know of the death at the time an act was carried out.

If the principal was a corporation then its extinction shall put an end to its authority.

Article 19 - Incapacity of the Principal

The total loss of legal capacity by the principal shall put an end to his authority.

If the principal becomes partially incapable then the authority shall only bind to the extent that the principal remains capable of acting.

Article 20 - Bankruptcy of Principal

The bankruptcy of the principal shall put an end to the agent's authority.

Nevertheless acts carried out by the agent after the principal's bankruptcy shall be valid even as regards the bankrupts' estate in so far as they would have been valid if accomplished directly by the principal.

Article 21 - Continuance of Authority

Notwithstanding the death, incapacity or bankruptcy of the principal, the agent shall remain available on behalf of the principal, or his representatives, or his estate, in order to wind

up any transaction undertaken if the interruption thereof might cause damage to the principal, or his representatives, or his estate.

Article 22 - Death, incapacity or bankruptcy of agent

Authority shall cease to operate:

- 1) on the death of the agent or, in the case of a corporation, on its extinction;
- 2) when the agent is no longer capable according to article 5 of this law;
- 3) when the agent is made bankrupt.

Article 23 - Revocation of authority

The principal may at any time revoke or restrict the agent's authority.

Nevertheless in the case of a special authority any revocation or restriction shall be without effect as regards a third person, if that person could see from the authority itself that the object thereof was to secure to the agent the exercise of some right of guarantee or of some other right recognized in him by the principal.

When an authority is irrevocable it does not cease on the death, incapacity or bankruptcy of the principal.

Article 24 - Effects of revocation

A revocation shall only bind third parties if they have notice of it.

Nevertheless a revocation shall always be valid without it being necessary to prove that the third party had notice thereof:

- 1) When the document containing the authority to act has been redelivered to the principal, or has been invalidated by an

action for cancellation if such an action be effective in the country where the agent conducts his business;

2) When the authority arises from some position of the agent which has been withdrawn from him;

3) When the authority, having been registered, or published by advertisement or any other manner, has been revoked by a like registration or publication.

Article 25 - Revocation of oral authority

The revocation of an authority orally conferred and of which a third party only knows by the statement of the agent, shall operate from the date of the notification to the agent without it being necessary that the third party have notice thereof, unless the principal has, by his conduct, confirmed the continued existence of the authority.

The agent shall be liable to a third party in respect of any damage caused by his failure to notify such party of the revocation of his authority.

Article 26 - Renunciation

An agent may always renounce his authority. Such renunciation shall only affect third parties from the moment they have notice of it.

Nevertheless renunciation shall always operate without the need to prove that a third party had notice thereof in the case set out in article 22 (2).

Article 27 - Sphere of application of this law <sup>(1)</sup>

This law shall apply to acts carried out by one person on

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(1) This article could be a last paragraph of article 2.

behalf of another, when the act has been carried out in the territory of a State other than that in which is situated the habitual residence or the principal registered office of the person on whose behalf it has been carried out, or the branch which it is related with.

OPTIONAL CLAUSE TO BE INSERTED IN THE PROTOCOL

FOR THE ADOPTION OF THE UNIFORM LAW

The High Contracting parties, in adopting the Convention relating to "the uniform law on agency in private law matters of an international character", reserve the right to limit the application of this Convention solely to the cases of persons who carry out acts in respect of sales regulated by the "Uniform Law concerning international sales of goods".

Nevertheless, if a sale provides for or is combined with a c.i.f. or f.o.b. clause, or with any other clause which implies the conclusion of a contract of carriage, insurance or deposit, the provisions of this law shall also be applied to the contracts of carriage, insurance or of deposit to which those clauses relate.

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