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U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STUDY GROUP FOR THE PREPARATION OF UNIFORM RULES

ON THE CONTRACT OF FACTORING

Questions which might be considered by the Study Group

at its 1st session

(prepared by the Secretariat of UNIDROIT)

Rome, January 1979

INTRODUCTION

With a view to facilitating the work of the Study Group at its first session, the Secretariat has prepared the following list of questions which, while not claiming to be exhaustive, seeks to indicate the principal problems calling for solution in the context of the preparation of uniform rules governing factoring operations.

The questions have been divided under a series of headings in an attempt to follow, as closely as possible, the logical sequence of factoring operations although it is evident that in view of the complexity of the transactions concerned there is inevitably a certain amount of overlapping.

Indications have been given, under each general heading, of the passages in the various documents so far produced by UNIDROIT on the factoring contract dealing with the aspect in question.

II. LIST OF QUESTIONS

A. Relations between the supplier and the factor

(Doc. 1, pages 3 to 7 and 10 to 13; Doc. 3, pages 7, 8 and 10).

1. To what extent should the future uniform rules define, or describe the essential elements of, factoring agreements concluded between the supplier and the factor ?
2. To what extent should the rules regulate the rights and duties of the supplier and the factor under the factoring agreement and, in particular :
 - (a) should provision be made to the effect that the factor is not liable for actions or omissions of the supplier ?
 - (b) should the rules deal with the question of the circumstances in which the factor may bring a recourse action against the supplier ?
 - (c) should the rules deal with the question of the issue of credit notes by the supplier ?
3. Should the rules contain any provisions regarding the formalities to be complied with when the debt is transferred by the supplier to the factor ?

B. Contracts underlying the factoring agreement

(Doc. 1, pages 21 to 23; Doc. 3, pages 4 and 5; Doc. 4, pages 2 and 3)

4. Should the scope of application of the rules be limited :
 - (a) to factoring contracts relating to the transfer of debts arising out of certain types of contract (e.g. contracts of sale or contracts for the provision of services) ?
 - (b) to factoring contracts relating to the transfer of debts arising out of contracts of an international character and, if so, how should the international element be defined ?
 - (c) to the transfer of future debts and, if so, in which circumstances ?

C. Relations between the export factor and the import factor

(Doc. 1, pages 21 to 23; Doc. 3, pages 4 and 11 to 14)

5. To what extent should the rules regulate the rights and duties of the export factor and the import factor and, in particular :

(a) the validity of the transfer of the debt from the export factor to the import factor ?

(b) letters of indemnity agreements ?

(c) the effects of a retention of ownership clause inserted by the supplier in the original contract with the debtor, the benefit of which is taken over by the export factor, or inserted by the export factor himself in the factoring agreement ?

D. Relations between the factor and the debtor

(Doc. 1, pages 8 and 10 to 16; Doc. 3, pages 4 and 7 to 9; Doc. 4, page 3)

6. To what extent should the rules regulate the rights and duties of the factor and the debtor and, in particular:

(a) the duty of the factor to give notice to the debtor of the transfer of the debt and/or to register the assignment ?

(b) the duty of the debtor to pay the factor ?

(c) the availability against the factor of defences and rights of set off which the debtor may have against the supplier ?

E. Relations between the factor and third parties other than the debtor

(Doc. 1, pages 8, 9, 11 to 13 and 17 to 23; Doc. 3, pages 2, 3 and 7 to 10; Doc. 4, page 3)

7. To what extent should the rules regulate the validity and effects of the transfer of the debt vis-a-vis third parties and, in particular :

(a) successive assignments of the same debt ?

(b) the effects of a retention of ownership clause contained in the contract between the supplier who has transferred the debt and his original supplier ?

- (c) the consequences of the bankruptcy of the supplier ?
- (d) the consequences of the bankruptcy of the debtor ?
- (e) conflicts of priority between the factor and creditors of the debtor ?

F. Conflicts of law questions to be resolved

(Doc. 3, pages 3, 4 and 7; Doc. 4, page 3)

8. To the extent that it may prove necessary or desirable to leave certain questions to be regulated by national law, should not provision nevertheless be made for the selection of a choice of law rule, either on a mandatory basis or in the absence of the stipulation of any such rule in the various contracts concluded within the framework of the factoring operations creating the relations between :
- (a) the supplier and the (export) factor ?
 - (b) the export factor and the import factor ?
 - (c) the (import) factor and the debtor ?
 - (d) the import factor and a rival claimant in the exporter's country ?
 - (e) the export factor and a rival claimant in the importer's country ?

G. Other questions

9. Are there any other aspects of factoring operations not covered by the preceding questions which should be regulated by the rules ?