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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

Preliminary draft uniform rules on certain aspects of
international factoring contracts

(prepared by the Secretariat)

Rome, March 1979

Introduction

At the closure of the first session of the Study Group for the preparation of uniform rules on the contract of factoring the Chairman, on behalf of the other members of the Group, requested the Secretariat to prepare the first version of a set of preliminary draft uniform rules on international factoring contracts. In accordance with the decision of the Group not to attempt to unify at international level all aspects of the contract in question, the draft contains only a limited number of rules dealing with certain specific questions.

In submitting this preliminary draft, the Secretariat would draw attention to the fact that it should be read in conjunction with the conclusions reached by the above-mentioned Study Group at its first session, which are contained in the paper UNIDROIT 1979, Study LVIII - Doc. 7. It goes without saying, moreover, that this preliminary draft constitutes nothing more than a basis for discussion, so that not only may its present drafting be modified but it may also be amplified by rules governing aspects of the contract not initially dealt with in it.

Article 1

For the purpose of the present rules, "factoring contract" means a contract whereby one party (the supplier) undertakes to assign on a regular basis to the other (the factor) his trade debts arising from a contract of sale or for the provision of services, the latter party assuming responsibility for the collection of the debts.

Article 2

1. The present rules shall only apply to international factoring contracts.

2. "International factoring contract" means a factoring contract relating to debts arising from a contract of sale or for the provision of services between parties whose places of business are situated in different States.

Article 3

1. It is sufficient for the validity of the assignment of the debts between the supplier and the factor that there be an express agreement whereby the parties undertake respectively to assign and to purchase the existing and future debts, even though the agreement does not specify them individually.

2. The provisions of paragraph 1 of the present article shall also apply to subsequent assignments of the debts between the first assignee (the export factor) and another factor carrying out operations in a different State (the import factor).

Article 4

1. In order for the assignment to be effective against the debtor, it must be notified to him in writing and indicate sufficiently clearly the debts which have been assigned and the person entitled to proceed to their collection.

2. The assignment shall be effective against third parties other than the debtor only if the supplier has made reference to the conclusion of the factoring contract in his commercial papers./

Article 5

A retention of ownership clause contained either in the contract between the supplier and the debtor or in the contract between the supplier and the export factor shall be automatically incorporated in the contract between the supplier and the factor or in the contract between the export factor and the import factor, as the case may be, provided that the law of the place where the debt is to be collected recognises the validity of such a clause.

Article 6

1. The debtor may only set up against the factor those defences which he could have raised against the supplier at the time he was notified of the assignment.

2. In order for the debtor to set off his debt against a claim which he has against the supplier, such a claim must not only have existed but also have been enforceable at the time of the notification referred to in paragraph 1 of the present article.

Article 7

A debtor who has for any reason paid the factor a sum which he ought not to have paid, is entitled to claim reimbursement thereof.