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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

PROGRESSIVE CODIFICATION OF INTERNATIONAL TRADE LAW

UNIFORM RULES ON INTERNATIONAL CONTRACTS IN GENERAL

Chapter 4 : THE PERFORMANCE OF INTERNATIONAL CONTRACTS

(Texts proposed by Professor J. Rajski of Warsaw University
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P E R F O R M A N C E O F O B L I G A T I O N S

1. a) The debtor must fulfil the obligation in accordance with its content and in a manner corresponding to its economic purpose and consistent with the international customs established in a given branch of international trade.
b) The creditor must cooperate in the same manner in the fulfilment of the obligation.
2. The debtor is obliged to display the diligence generally required in relations of a given type (due diligence).
3. The creditor may demand a debtor's personal performance only if this appears from the content of the contract, a law or the character of the performance.
4. If a pecuniary claim is enforceable the creditor cannot refuse to accept payment from a third person, even if that person were to act without the debtor's knowledge.
5. If the debtor is obliged to give things defined only generically and the quality of the things is not defined by the contract or does not appear from the international customs established in the given branch of international trade, the debtor should give things of marketable quality as established in the state of his domicile or seat (place of business).
6. Fulfilment of a duty to pay takes place by the payment of the nominal sums due in the agreed currency and in the lack of such agreement, in the currency admitted in the economic intercourse between the states in which the parties have their domiciles or seats (places of business).
7. The parties may stipulate that the sum of money as agreed in the contract is to be modified according to the changes in the parity of the currency agreed to other defined currency or currencies.
8. The parties may also subject the amount of the sum to be paid to the value of gold or other merchandises (goods).
9. Interest on a sum of money is only due where this results from the contract or law.

10. If the interest rate is not otherwise defined it is due in the amount of the discount rate as established in the state where the debtor has his domicile or seat (place of business), at the moment of the enforceability of the obligation. If this discount rate cannot be established the interest rate of ... % is due.
11. Whenever the law envisages a duty to give security, the form of that security must be agreed by the parties. Failing such agreement, the security must take the form of placing money in a court deposit according to the law of the state, where the debtor has his domicile or seat (place of business).
12. The party obliged to notify the other party the circumstances of an essential importance for the performance should do it immediately after having received the appropriate information.
13. The creditor cannot refuse to accept a partial performance even though the entire claim has already become exigible unless the acceptance of such a performance violates his justified (established) interest.
14. The debtor owing several debts of the same type to the same creditor may indicate, at the time of payment, which debt he intends to discharge.
15. However, when the term operates in favour of the creditor, the debtor may not, without the consent of the creditor, impute payment to a debt not due.
16. The debtor who owes a debt bearing interest may not, without the consent of the creditor, impute the payment which he makes to the capital in preference to the interest. Payment made on the capital and interest which is not a full payment is imputed first upon the interest.
17. When the debtor who owes several debts has accepted a discharge whereby the creditor has imputed what he has received to one of those debts, the debtor may no longer require imputation to a different debt.
18. In the absence of imputation by the parties, payment is first imputed to whichever debt is due. If several debts are due, payment is imputed to that which the debtor has the greatest interest in paying. When the interest is equally divided, payment is imputed to the debt which became due first. All things being equal, imputation is effected proportionally.

19. Performance made to a person non authorized to receive it for the creditor is valid if the creditor ratifies it ; if he does not ratify it, the performance is only valid insofar as the creditor has benefited from it.
20. If the place of performance is not specified, or does not appear from the nature of the obligation, the obligation is to be performed at the place, where at the moment when the obligation arose the debtor had his domicile or seat (place of business). However a pecuniary payment is to be made at the place of domicile or seat (place of business) of the creditor at the moment of such payment ; if the creditor has changed his place of domicile or seat (place of business) after the obligation was contracted, he bears the surplus cost of remittance caused by that change.
21. If the creditor has indicated to the debtor the bank through which the payment should be made the debtor has to make the payment to that bank. The debtor bears the ordinary costs incurred in making such payment.
22. If the time for performance is not defined by the contract or determinable from the nature of the obligation, the obligation must be performed in time fixed by the creditor. The debtor is entitled however to perform his obligation before the creditor has fixed that time, after delivering him a notice to that effect in due time.
23. Time limit for performance specified by the contract is considered to be stipulated for the benefit of the debtor. The creditor may refuse to accept an earlier performance if such acceptance would violate his justified (established) interest .
24. The party which accepted the earlier performance is bound to the earlier mutual performance (performance under mutual contract).
25. If the parties stipulated in the contract, that performance of an obligation is to take place in parts over a certain period, but did not specify the size of particular performances, those performances are to be made in equal parts in time as established by splitting the period of performance into the fixed number of parts. If the number of parts has not been established, the performance is to be made in equal parts : monthly, if the time of performance is shorter the one year and quaterly if it is one year or longer.

26. If the debtor is in a situation endangering his solvency or if the security of the claim has been considerably reduced the creditor may demand an appropriate security. If the debtor does not give this security, the creditor may demand performance, regardless of the stipulated time limit. If the creditor is obliged to perform a mutual obligation he may withhold its fulfilment until the debtor offers his performance or gives security.
27. The debtor performing an obligation may demand a receipt from the creditor in a form consistent with the established customs in the given domain of international trade.
28. The debtor may demand at his expense a receipt in a particular form.
29. If the creditor refuses to give a receipt, the debtor may withhold performance or place the object of performance in deposit.
30. Performance to a person, who shows a receipt made out by the creditor releases the debtor, unless it was stipulated that the performance was to be made to the creditor in person, or unless the debtor acted in bad faith.
31.
 - a) The debtor on performance may demand the return of the document embodying the obligation. If however the creditor has an interest in retaining the document, the debtor may demand that an appropriate mention be made on the document.
 - b) In the event of the loss of the document the debtor may, regardless of the receipt, demand a written declaration from the creditor that the document was lost.
 - c) If the creditor refuses the fulfilment of the above mentioned obligation the debtor may withhold performance or place the object in the deposit.
32. A presumption of payment of incidentals dues results from a receipt for payment of the capital sum due. From a receipt concerning a periodical performance a presumption is raised that periodical performances enforceable earlier had also been fulfilled.
33. If a permission of a state organ is required for the performance of the obligation, each party has to get such permission in the state of his domicile or seat (place of business). The debtor is furthermore under the duty to get the necessary permissions in other states.

34. Each party has to pay taxes and public duties connected with the contract due in the state of his domicile or seat (place of business). The taxes and public duties in other states lie on the party, whose obligations they are connected with.
35. Each party has to obtain documents required to the execution of the contract which are drawn up in the state of his domicile or seat (place of business). The documents drawn up in a third country are to be obtained by the party, to the execution of whose obligations they are required.