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WORKING GROUP FOR THE PREPARATION OF  
PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS

Chapter [...]

AUTHORITY OF AGENTS

(Revised draft prepared by Professor M.J. Bonell  
in the light of the discussions of the Working Group at its second session)

Rome, March 1999

## REPORTER'S NOTE

The Working Group, at its second session held in Bolzano/Bozen on 22-26 February 1999, was seized of a first draft Chapter on Authority of Agents (UNIDROIT 1998 Study L – Doc. 56). After an extensive discussion on the individual provisions (cf. Summary Records of the Meeting held in Bolzano/Bozen from 22 to 26 February 1999 UNIDROIT 1999 Study L – Misc. 21, paras. 12-225), the Working Group set up a Drafting Committee composed of Professors Bonell, Crépeau, Farnsworth and Schlechtriem with the task of revising the draft in the light of the observations made. The Drafting Committee submitted a revised draft which was given a second reading by the Working Group (cf. Study L – Misc. 21, paras. 256-288). On that occasion the Working Group agreed on a number of additional amendments and asked the Rapporteur to prepare a new draft taking them into account. The new revised draft has been set out below in bold typeface under the heading “Draft No. 2” and the changes made with respect to the draft prepared by the Drafting Committee (“Draft No. 1”) have been underlined. References to the relevant paragraphs in the Summary Records appear in the margin below.



DRAFT No.1	DRAFT No.2	Comments
<p style="text-align: center;">Article 1 <i>(Scope of the chapter)</i></p> <p>(1) This chapter governs the authority of a person, the agent, to affect the legal relations of another person, the principal, with respect to a contract with a third party, whether the agent acts in its own name or in that of the principal.</p> <p>(2) It is concerned only with the relations between the principal or the agent on the one hand, and the third party on the other.</p> <p>(3) It does not govern an agent's authority conferred by law or the authority of an agent appointed by a public or judicial authority.</p>	<p style="text-align: center;">Article 1 <i>(Scope of the chapter)</i></p> <p><b>(1) This chapter governs the authority of a person, the agent, to affect the legal relations of another person, the principal, <u>by or</u> with respect to a contract with a third party, whether the agent acts in its own name or in that of the principal.</b></p> <p><b>(2) It is concerned only with the relations between the principal or the agent on the one hand, and the third party on the other.</b></p> <p><b>(3) It does not govern an agent's authority conferred by law or the authority of an agent appointed by a public or judicial authority.</b></p>	<p><i>Cf. Study L – Misc. 21, para. 261.</i></p>
<p style="text-align: center;">Article 2 <i>(Establishment and scope of the authority of the agent)</i></p> <p>(1) The principal's grant of authority to an agent may be express or implied.</p> <p>(2) The agent has authority to perform all acts necessary in the circumstances to achieve the purposes for which the authority was granted.</p>	<p style="text-align: center;">Article 2 <i>(Establishment and scope of the authority of the agent)</i></p> <p><b>(1) The principal's grant of authority to an agent may be express or implied.</b></p> <p><b>(2) The agent has authority to perform all acts necessary in the circumstances to achieve the purposes for which the authority was granted.</b></p>	
<p style="text-align: center;">Article 3 <i>(Agent's act directly affecting legal relations between principal and third party)</i></p> <p>Subject to Article 4(1)(a), where an agent acts within the scope of its authority and the third party knew or ought to have known that the agent was acting as an agent, the act of the agent shall directly affect the legal</p>	<p style="text-align: center;">Article 3 <i>(Agent's act directly affecting legal relations between principal and third party)</i></p> <p><b>(1) [Subject to Article 4(1)(a),] [W]here an agent acts within the scope of its authority and the third party knew or ought to have known that the agent was acting as an agent, the act of the agent</b></p>	<p><i>Cf. Study L – Misc. 21, paras. 267-274.</i></p>

<p>relations between the principal and the third party and no legal relation is created between the agent and the third party.</p>	<p>shall directly affect the legal relations between the principal and the third party and no legal relation is created between the agent and the third party.</p> <p>(2) Notwithstanding paragraph 1, the act of the agent shall affect only the relations between the agent and the third party, where it follows from the circumstances of the case that the agent intended to do so.</p>	
<p style="text-align: center;">Article 4 <i>(Agent's act not directly affecting legal relations between principal and third party)</i></p> <p>(1) Where the agent acts within the scope of its authority, its acts shall affect only the relations between the agent and the third party if:</p> <p>(a) it follows from the circumstances of the case that the agent intended to do so, or</p> <p>(b) the third party neither knew nor ought to have known that the agent was acting as an agent.</p> <p>(2) Nevertheless</p> <p>(a) where the agent commits a fundamental non-performance or it is clear that there will be a fundamental non-performance of its obligations towards the principal, the principal may exercise against the third party the rights acquired on the principal's behalf by the agent, subject to any defences which the third party has against the agent;</p> <p>(b) where the agent commits a fundamental non-performance or it is clear that there will be a fundamental non-performance of its obligations towards the third party, the third party may exercise against the principal the rights which the third party has against the agent, subject to any defences which the</p>	<p style="text-align: center;">[Article 4] <i>(Agent's act not directly affecting legal relations between principal and third party)</i></p> <p><b>[(1) Where the agent acts within the scope of its authority, its acts shall affect only the relations between the agent and the third party if:</b></p> <p><b>(a) it follows from the circumstances of the case that the agent intended to do so, or</b></p> <p><b>(b) the third party neither knew nor ought to have known that the agent was acting as an agent.</b></p> <p><b>(2) Nevertheless</b></p> <p><b>(a) where the agent commits a fundamental non-performance or it is clear that there will be a fundamental non-performance of its obligations towards the principal, the principal may exercise against the third party the rights acquired on the principal's behalf by the agent, subject to any defences which the third party has against the agent;</b></p> <p><b>(b) where the agent commits a fundamental non-performance or it is clear that there will be a fundamental non-performance of its obligations towards the third party, the third party may exercise against the principal the</b></p>	<p><i>Cf. Study L – Misc. 21, paras. 267-274.</i></p>

<p>agent has against the third party and which the principal has against the agent.</p> <p>(3) In the cases referred to in paragraph 2, the agent shall on demand communicate the name of the principal to the third party, or the name of the third party to the principal, as the case may be.</p> <p>(4) The rights under paragraph 2 may be exercised only if within reasonable time notice of intention to exercise them is given to the agent and the third party or the principal, as the case may be. As soon as the third party or principal has received such notice, it may no longer free itself from its obligations by dealing with the agent.</p>	<p><b>rights which the third party has against the agent, subject to any defences which the agent has against the third party and which the principal has against the agent.</b></p> <p><b>(3) In the cases referred to in paragraph 2, the agent shall on demand communicate the name of the principal to the third party, or the name of the third party to the principal, as the case may be.</b></p> <p><b>(4) The rights under paragraph 2 may be exercised only if within reasonable time notice of intention to exercise them is given to the agent and the third party or principal, as the case may be. As soon as the third party or principal has received such notice, it may no longer free itself from its obligations by dealing with the agent.]</b></p>	
<p style="text-align: center;">Article 5 <i>(Agent acting without or outside its authority)</i></p> <p>(1) Where an agent acts without authority or outside the scope of its authority, its acts do not affect the legal relations between the principal and the third party.</p> <p>(2) Nevertheless, where the principal causes the third party reasonably and in good faith to believe that the agent has authority to act on behalf of the principal and that the agent is acting within the scope of that authority, the principal may not invoke against the third party the lack of authority of the agent.</p>	<p style="text-align: center;">Article 5 <i>(Agent acting without or outside its authority)</i></p> <p><b>(1) Where an agent acts without authority or outside the scope of its authority, its acts do not affect the legal relations between the principal and the third party.</b></p> <p><b>(2) Nevertheless, where the principal causes the third party reasonably and in good faith to believe that the agent has authority to act on behalf of the principal and that the agent is acting within the scope of that authority, the principal may not invoke against the third party the lack of authority of the agent.</b></p>	
<p style="text-align: center;">Article 6 <i>(Liability of agent acting without or outside its authority)</i></p>	<p style="text-align: center;">Article 6 <i>(Liability of agent acting without or outside its authority)</i></p>	

<p>(1) An agent that acts without authority or outside the scope of its authority shall, failing ratification by the principal according to Article 9, be liable for damages so as to put the third party in the same position as it would have been if the agent had not so acted.</p> <p>(2) 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 the scope of its authority.</p>	<p><b>(1) An agent that acts without authority or outside the scope of its authority shall, failing ratification by the principal according to Article 9, be liable for damages so as to put the third party in the same position as it would have been <u>in had the agent not acted at all.</u></b></p> <p><b>(2) 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 the scope of its authority.</b></p>	<p><i>Cf.</i> Study L – Misc. 21, para. 277.</p>
<p style="text-align: center;">Article 7 (<i>Conflict of interests</i>)</p> <p>(1) If a contract concluded by an agent involves the agent in a conflict of interests with the principal of which the third party knew or could not have been unaware, the principal may avoid the contract according to the provisions of Articles 3.12 and 3.14 to 3.16.</p> <p>(2) However, the principal may not avoid the contract</p> <p style="padding-left: 20px;">(a) if it had consented to, or knew or could not have been unaware of, the agent’s so acting; or</p> <p style="padding-left: 20px;">(b) if the agent had disclosed the conflict of interest(s) to it and it had not objected within a reasonable time.</p>	<p style="text-align: center;">Article 7 (<i>Conflict of interests</i>)</p> <p><b>(1) If a contract concluded by an agent involves the agent in a conflict of interests with the principal of which the third party knew or could not have been unaware, the principal may avoid the contract. <u>The right to avoid is subject to</u> Articles 3.12 and 3.14 to 3.16.</b></p> <p><b>(2) However, the principal may not avoid the contract</b></p> <p style="padding-left: 20px;"><b>(a) if it had consented to, or knew or could not have been unaware of, the agent’s so acting; or</b></p> <p style="padding-left: 20px;"><b>(b) if the agent had disclosed the conflict of interest to it and it had not objected within a reasonable time.</b></p>	<p><i>Cf.</i> Study L – Misc. 21, paras. 280-282.</p>
<p style="text-align: center;">Article 8 (<i>Subagency</i>)</p> <p>An agent has implied authority to appoint a subagent to perform acts which it is not reasonable to expect the agent to perform itself. The rules of this chapter apply to the subagency.</p>	<p style="text-align: center;">Article 8 (<i>Subagency</i>)</p> <p><b>An agent has implied authority to appoint a subagent to perform acts which it is not reasonable to expect the agent to perform itself. The rules of this chapter apply to the subagency.</b></p>	

<p style="text-align: center;">Article 9 (<i>Ratification</i>)</p> <p>(1) An act by an agent that acts without authority or outside the scope of its authority may be ratified by the principal. On ratification the act produces the same effects as if it had initially been carried out with authority.</p> <p>(2) The third party may by notice to the principal specify a reasonable period of time for ratification. If the principal does not ratify within that period it can no longer do so.</p>	<p style="text-align: center;">Article 9 (<i>Ratification</i>)</p> <p><b>(1) An act by an agent that acts without authority or outside the scope of its authority may be ratified by the principal. On ratification the act produces the same effects as if it had initially been carried out with authority.</b></p> <p><b>(2) The third party may by notice to the principal specify a reasonable period of time for ratification. If the principal does not ratify within that period it can no longer do so.</b></p>	
<p style="text-align: center;">Article 10 (<i>Termination of authority</i>)</p> <p>(1) Termination of authority shall not be effective in relation to the third party unless it knew or ought to have known of the termination.</p> <p>(2) Notwithstanding the termination of its authority, an agent remains authorised to perform on behalf of the principal the acts which are necessary to prevent harm to its interests.</p>	<p style="text-align: center;">Article 10 (<i>Termination of authority</i>)</p> <p><b>(1) Termination of authority shall not be effective in relation to the third party unless it knew or ought to have known of the termination.</b></p> <p><b>(2) Notwithstanding the termination of its authority, an agent remains authorized to perform the acts which are necessary to prevent harm to <u>the principal's</u> interests.</b></p>	<p><i>Cf.</i> Study L – Misc. 21, para. 288.</p>