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WORKING GROUP FOR THE PREPARATION OF  
PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS

Meeting of the Drafting Group in Louvain-la-Neuve, 7-10 January 2003

Draft Chapters (black letter rules only) on

AUTHORITY OF AGENTS  
THIRD PARTY RIGHTS  
ASSIGNMENT OF RIGHTS, TRANSFER OF OBLIGATIONS,  
ASSIGNMENT OF CONTRACTS  
SET-OFF  
LIMITATION PERIODS

Rome, November 2002

## Draft Chapter on Authority of Agents

### Article 1

*(Scope of the chapter)*

**(1) This chapter governs the authority of a person, the agent, to affect the legal relations of another person, the principal, by or with respect to a contract with a third party, whether the agent acts in its own name or in that of the principal.**

**(2) It governs only the relations between the principal or the agent on the one hand, and the third party on the other.**

**(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.**

### Article 2

*(Establishment and scope of the authority of the agent)*

**(1) The principal's grant of authority to an agent may be express or implied.**

**(2) The agent has authority to perform all acts necessary in the circumstances to achieve the purposes for which the authority was granted.**

### Article 3

*(Agency disclosed)*

**(1) 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 acts of the agent 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.**

**(2) However, the acts of the agent shall affect only the relations between the agent and the third party, where the agent with the consent of the principal undertakes to become the party to the contract.**

Article 4

*(Agency undisclosed)*

**(1) Where an agent acts within the scope of its authority and the third party neither knew nor ought to have known that the agent was acting as an agent, the acts of the agent shall affect only the relations between the agent and the third party.**

**(2) However, where such an agent, when contracting with the third party on behalf of a business, represents itself to be the owner of that business, the third party, upon discovery of the real owner of the business, may exercise also against the latter the rights it has against the agent.**

Article 5

*(Agent acting without or exceeding its authority)*

**(1) Where an agent acts without authority or exceeds its authority, its acts do not affect the legal relations between the principal and the third party.**

**(2) However, 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.**

Article 6

*(Liability of agent acting without or exceeding its authority)*

**(1) An agent that acts without authority or exceeds its authority is, failing ratification by the principal, liable for damages that will put the third party in the same position as if the agent had acted with authority and not exceeded its authority.**

**(2) However, the agent is not liable if the third party knew or ought to have known that the agent had no authority or was exceeding its authority.**

Article 7

*(Conflict of interests)*

**(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 ought to have known, the principal may avoid the contract. The right to avoid is subject to Articles 3.12 and 3.14 to 3.17.**

- (2) However, the principal may not avoid the contract**
- (a) if the principal had consented to, or knew or ought to have known, the agent's involvement in the conflict of interests;**
- or**
- (b) if the agent had disclosed the conflict of interests to the principal and it had not objected within a reasonable time.**

Article 8  
*(Subagency)*

**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.**

Article 9  
*(Ratification)*

- (1) An act by an agent that acts without authority or exceeds 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.**
- (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.**

Article 10  
*(Termination of authority)*

- (1) Termination of authority is not effective in relation to the third party unless the third party knew or ought to have known of it.**
- (2) Notwithstanding the termination of its authority, an agent remains authorized to perform the acts that are necessary to prevent harm to the principal's interests.**

## Draft Chapter on Third Party Rights

### Article 1

*(Contracts in favour of third parties)*

**(1) Parties (the “promisor” and the “promisee”) may confer by express or implied agreement a right on a third party (the “beneficiary”).**

**(2) The existence and content of the beneficiary’s right against the promisor are determined by the agreement of the parties and are subject to any conditions or other limitations under the agreement.**

### Article 2

*(Third Party Identifiable)*

**The beneficiary must be identifiable with adequate certainty by the contract but need not be in existence at the time the contract is made.**

### Article 3

*(Exclusion and Limitation Clauses)*

**For the purposes of this chapter, the conferment of rights in the beneficiary includes the right to invoke a clause in the contract which excludes or limits the liability of the beneficiary.**

### Article 4

*(Defences)*

**The promisor may assert against the beneficiary all defences which the promisor could assert against the promisee.**

### Article 5

*(Revocation)*

**The contracting parties may modify or revoke the rights conferred by the contract on the beneficiary until the beneficiary has accepted them or acted in reliance on them**

### Article 6

*(Renunciation)*

**The beneficiary may renounce a right conferred on it.**

Draft Chapter on Assignment of Rights, Transfer of  
Obligations, Assignment of Contracts

SECTION 1: ASSIGNMENT OF RIGHTS

Article 1.1  
*(Definitions)*

**In these Principles, “assignment of a right” means the transfer by agreement from one person (“the assignor”) to another person (“the assignee”), including transfer by way of security, of the assignor’s right to payment of a monetary sum or other performance from a third person (“the obligor”).**

Article 1.2  
*(Exclusions)*

**This Section does not apply to transfers made under the special rules governing the transfer :**

- (a) of instruments, or**
- (b) of rights in the course of transferring a business.**

Article 1.3  
*(Assignability of non-monetary rights)*

**A right to non-monetary performance may be assigned only if the assignment does not render the obligation significantly more burdensome.**

Article 1.4  
*(Partial assignment)*

- (1) A right to payment of a monetary sum may be assigned partially.**
- (2) A right to other performance may be assigned partially only if it is divisible, and the assignment does not render the obligation significantly more burdensome.**

Article 1.5  
*(Future rights)*

**A future right is deemed to be transferred *[between parties]* at the time of the agreement, provided the right, when it comes into existence, can be identified as the right to which the assignment relates.**

Article 1.6  
*(Rights assigned without individual specification)*

**A number of rights may be assigned without individual specification provided such rights can be identified as rights to which the assignment relates at the time of the assignment or when they come into existence.**

Article 1.7  
*(Agreement between assignor and assignee sufficient)*

- (1) A right is assigned by mere agreement between assignor and assignee, without notice to the obligor.**
- (2) The consent of the obligor is not required, unless the obligation, in the circumstances, is of an essentially personal character.**

Article 1.8  
*(Obligor's additional costs)*

**The obligor has a right to be compensated by the assignor or the assignee for any additional costs caused by the assignment.**

Article 1.9  
*(Non-assignment clauses)*

**(1) Assignment of a right to payment of a monetary sum is effective notwithstanding an agreement between the assignor and the obligor limiting or prohibiting such assignment. However, the assignor may be liable to the obligor for breach of contract.**

**(2) Assignment of a right to other performance is ineffective, if it is contrary to an agreement between the assignor and the obligor limiting or prohibiting the assignment. Nevertheless, the assignment is effective if the**

**assignee, at the time of assignment, neither knew nor ought to have known of the agreement; the assignor may then be liable to the obligor for breach of contract.**

Article 1.10  
*(Notice to the obligor)*

**(1) Until receiving a notice of the assignment, from either the assignor or the assignee, the obligor is discharged by paying the assignor.**

**(2) After receiving such a notice, the obligor is discharged only by paying the assignee.**

Article 1.11  
*(Successive assignments)*

**If the same right has been assigned by the same assignor to two or more successive assignees, the obligor is discharged by paying according to the order in which the notices were received.**

Article 1.12  
*(Adequate proof of assignment)*

**(1) If notice of the assignment is given by the assignee, the obligor may request the assignee to provide within a reasonable time adequate proof that the assignment has been made.**

**(2) Until adequate proof is provided, the obligor may withhold payment.**

**(3) Unless adequate proof is provided, notice is not effective.**

**(3) Adequate proof includes, but is not limited to, any writing emanating from the assignor and indicating that the assignment has taken place.**

Article 1.13  
*(Defences)*

**(1) The obligor may assert against the assignee all defences which the obligor could assert if the claim was made by the assignor.**



**(2) The obligor may assert against the assignee any right of set-off available to the obligor against the assignor up to the time notice of assignment was received.**

Article 1.14

*(Rights related to the claim assigned)*

**Assignment of a right transfers to the assignee :**

- (a) all the assignor's rights to payment or other performance under the contract in respect of the claims assigned, and**
- (b) all rights securing such performance.**

Article 1.15

*(Assignor's undertakings)*

**The assignor undertakes towards the assignee that :**

- (a) the assigned right exists at the time of the assignment, unless the right is a future right;**
- (b) the assignor is entitled to assign the right;**
- (c) the right has not been previously assigned to another assignee, and it is free from any right or claim from a third party;**
- (d) the obligor does not have any defences;**
- (e) the obligor has not given notice of set-off concerning the assigned right and the assignor has not given any such notice;**
- (f) the assignor will reimburse the assignee for any payment received from the obligor before notice of the assignment was given.**

SECTION 2 : TRANSFER OF OBLIGATIONS

Article 2.1

*(Modes of transfer)*

**For the purposes of this Section, an obligation to pay money or render other performance may be transferred from one person ("the original obligor") to another person ("the new obligor") either**

- (a) by an agreement between the original obligor and the new obligor, or**
- (b) by an agreement between the obligee and the new obligor, by which the new obligor assumes the obligation.**

Article 2.2  
*(Exclusion)*

**This Section does not apply to transfers of obligations made under the special rules governing transfers of obligations in the course of transferring a business.**

Article 2.3  
*(Requirement of obligee's consent to transfer)*

**Transfer of an obligation by an agreement between an original obligor and a new obligor requires the consent of the obligee.**

Article 2.4  
*(Advance consent of obligee)*

- (1) The obligee may give its consent in advance.**
- (2) The transfer of the obligation becomes then effective when notice of the transfer is given to the obligee or when the obligee acknowledges it.**

Article 2.5  
*(Discharge of old obligor)*

- (1) The obligee may discharge the original obligor.**
- (2) The obligee may also retain the original obligor as an obligor in case the new obligor does not perform properly.**
- (3) Otherwise the original obligor remains as an obligor, jointly and severally with the new obligor.**

Article 2.6  
*(Third party performance)*

- (1) Without the obligee's consent, the obligor may contract with another person that this person will perform the obligation in place of the obligor, unless the obligation, in the circumstances, has an essentially personal character.**
- (2) The obligee retains its claim against the obligor.**

Article 2.7  
*(Defences)*

**(1) The new obligor may assert against the obligee all defences, except set-off, which the old obligor could assert against the obligee.**

Article 2.8  
*(Rights related to the obligation transferred)*

**(1) The obligee may assert against the new obligor all its rights to payment or other performance under the contract in respect of the obligation transferred.**

**(2) If the original obligor is discharged under Article 2.5 (1), a security granted by any person other than the new obligor for the performance of the obligation is discharged, unless that other person agrees that it should continue to be available to the obligee.**

**(3) Discharge of the original obligor also extends to any security of the old obligor given to the obligee for the performance of the obligation, unless the security is over an asset which is transferred as part of a transaction between the old and the new obligors.**

SECTION 3 : ASSIGNMENT OF CONTRACTS

Article 3.1  
*(Definitions)*

**In these Principles, “assignment of a contract” means the transfer by agreement from one person (“the assignor”) to another person (“the assignee”) of the assignor’s rights and obligations arising out a contract with another person (“the other party”).**

Article 3.2  
*(Exclusion)*

**This Section does not apply to assignment of contracts made under the special rules governing transfers of contracts in the course of transferring a business.**

Article 3.3

*(Request of consent of the other party)*

**Assignment of a contract requires the consent of the other party.**

Article 3.4

*(Advance consent of the other party)*

- (1) The other party may give its consent in advance.**
- (2) The assignment of the contract becomes effective when notice of the assignment is given to the other party or when the other party acknowledges it.**

Article 3.5

*(Discharge of the assignor)*

- (1) The other party may discharge the assignor.**
- (2) The other party may also retain the assignor as an obligor in case the assignee does not perform properly.**
- (3) Otherwise the assignor remains as the other party's obligor, jointly and severally with the assignee.**

Article 3.6

*(Defences)*

- (1) To the extent that assignment of a contract involves an assignment of rights, article 1.13 applies accordingly.**
- (2) To the extent that assignment of a contract involves a transfer of obligations, article 2.7 applies accordingly.**

Article 3.7

*(Rights transferred with the contract)*

- (1) To the extent that assignment of a contract involves an assignment of rights, article 1.14 applies accordingly.**
- (2) To the extent that assignment of a contract involves a transfer of obligations, article 2.8 applies accordingly.**

## Draft Chapter on Set-off

### Article 1

#### *(Conditions of set-off)*

**(1) Where two parties owe each other obligations to pay money or to render other performance of the same kind, either of them (“the first party”) may set off its obligation against its obligee (“the other party”) if at the time of set-off**

**(a) the first party is entitled to perform its obligation,**

**(b) the other party’s obligation is ascertained as to its existence and amount and performance is due.**

**(2) If the obligations of both parties arise from the same contract, the first party may also set off its obligation against an obligation of the other party which is not ascertained as to its existence or to its amount.**

### Article 2

#### *(Foreign currency set-off)*

**Where the obligations are to pay money in different currencies, the right of set-off may be exercised, provided that both currencies are freely convertible and the parties have not agreed the first party shall pay only in a specified currency.**

### Article 3

#### *(Set-off by notice)*

**The right of set-off is exercised by notice to the other party.**

### Article 4

#### *(Content of Notice)*

**(1) The notice must sufficiently specify the obligation to which it relates.**

**(2) If notice does not specify the obligation of the other party which must be set off, the notice is ineffective.**

**(3) If notice does not specify the obligation the first party wants to set off, the rules in Art. 6.1.12 will apply with appropriate modifications.**

Article 5  
( *Effect of set-off* )

- (1) Set-off discharges the obligations.**
- (2) If obligations differ in amount, set-off discharges the obligations up to the amount of the lesser obligation.**
- (3) Set-off takes effect as from the time of notice.**

## Draft Chapter on Limitation Periods

### Article 1

#### *(Scope of the chapter)*

**(1) The exercise of rights governed by these Principles is barred by expiration of a period of time, referred to as “limitation period”, according to the rules of this chapter.**

**(2) This chapter does not govern the time within which one party is required under these Principles, as a condition for the acquisition or exercise of its right, to give notice to the other party or perform any act other than the institution of legal proceedings.**

### Article 2

#### *(Limitation periods)*

**(1) The general limitation period is three years beginning on the day after the day the obligee knows or ought to know the facts as a result of which the obligee’s right can be exercised or the obligor’s performance can be required.**

**(2) In any event, the maximum limitation period is ten years beginning on the day after the day the right can be exercised or the obligor’s performance can be required.**

### Article 3

#### *(Modification of Limitation Periods by the Parties)*

**(1) The parties may modify the limitation periods.**

**(2) However they may not**

**(a) shorten the general limitation period to less than one year;**

**(b) shorten the maximum limitation period to less than 4 years;**

**(c) extend the maximum limitation period to more than 15 years.**

### Article 4

#### *(New Limitation Period by Acknowledgement)*

**(1) Where the obligor, before the expiration of the general limitation period, acknowledges the right of the obligee, a new general limitation period begins on the day after the day of the acknowledgement.**

**(2) The maximum limitation period does not begin to run again, but may be exceeded by the beginning of a new general limitation period under Art. 2 (1).**

Article 5

*(Suspension by Judicial Proceedings)*

**(1) The running of the limitation period shall be suspended**

**a) when the obligee performs any act, by commencing judicial proceedings or in judicial proceedings already instituted, that is recognised by the law of the court as asserting the obligee's right against the obligor;**

**b) in the case of the obligor's insolvency when the obligee has asserted its rights in the insolvency proceedings; or**

**c) in the case of proceedings for dissolution of the entity which is the obligor when the obligee has asserted its rights in the dissolution proceedings.**

**(2) Suspension lasts until a final decision has been issued or until the case has been otherwise disposed of.**

Article 6

*(Suspension by Arbitral Proceedings)*

**(1) The running of the limitation period shall be suspended when the obligee performs any act, by commencing arbitral proceedings or in arbitral proceedings already instituted, that is recognised by the law of the arbitral tribunal as asserting the obligee's right against the obligor. In the absence of regulations for an arbitral proceeding or provisions determining the exact date of the commencement of an arbitral proceeding, proceeding shall be deemed to commence on the date on which a request that the right in dispute should be adjudicated reaches the obligor.**

**(2) Suspension lasts until a binding decision has been issued or until the case has been otherwise disposed of.**

Article 7

*(Alternative Dispute Resolution)*

**The provisions of Arts. 5 and 6 apply with appropriate modifications to other proceedings whereby parties request**



**a third person to assist them in their attempt to reach an amicable settlement of their dispute.**

Article 8

*(Suspension in case of force majeure, death or incapacity)*

**(1) Where the obligee has been prevented by an impediment that is beyond its control and that it could neither avoid nor overcome, from causing a limitation period to cease to run under the preceding articles, the limitation period is suspended so as not to expire before one year after the relevant impediment has ceased to exist.**

**(2) Where the impediment consists of the incapacity or death of the obligee or obligor, suspension ceases when a representative for the incapacitated or deceased party or its estate has been appointed or a successor inherited the respective party's position; the additional one-year period under para. 1 applies respectively.**

Article 9

*(Effect of Expiration of a Limitation Period)*

**(1) For the expiration of the limitation period to have effect, the obligor must invoke it as a defence.**

**(2) The obligor may do so in any judicial, arbitral or administrative proceeding.**

Article 10

*(Set Off After Expiration of the Limitation Period)*

**Notwithstanding the expiration of the limitation period for a right, the obligee may rely on its right as a defence [or for the purpose of set off against a claim asserted by the obligor].**

Article 11

*(Restitution)*

**Where there was performance in order to discharge an obligation, there is no right to restitution merely because the period of limitation had expired.**