

UNIFORM LAW REVIEW

REVUE DE DROIT UNIFORME

NS – Vol. XIV

2009

UNIDROIT Principles of International Commercial Contracts and Draft Common Frame of Reference : a Synoptical Table

Michael Joachim Bonell
Roberta Peleggi

Offprint / Tiré à part

UNIDROIT Principles of International Commercial Contracts and Draft Common Frame of Reference : a Synoptical Table

Michael Joachim Bonell * / Roberta Peleggi **

In 2004, this Review published a Synoptical Table of the *UNIDROIT Principles of International Commercial Contracts 2004* (hereinafter: the UNIDROIT Principles) and the *Principles of European Contract Law* (hereinafter: the European Principles).¹ Early 2009 saw the publication of the *Draft Common Frame of Reference* (hereinafter: the DCFR) prepared by the Study Group on a European Civil Code and the Research Group on Existing EC Private Law, containing Principles, Definitions and Model Rules of European Private Law.² The coverage of the DCFR is much broader than that of the UNIDROIT Principles, including, in addition to general provisions, contracts and contractual obligations in general (Books I–III), specific contracts (sales, service contracts, commercial agency, franchise and distribution, loan agreements, personal security contracts, leasing of movables, insurance contracts, mandate contracts, donation), *negotiorum gestio*, torts, unjustified enrichment, transfer of movables, proprietary security in movable assets and trusts (Books IV–X). However, to the extent that the first three Books of the DCFR address the same topics as those dealt with in the UNIDROIT Principles,³ the question arises whether, with respect to these topics, the two instruments

* Professor of Law, University of Rome I “La Sapienza” (Italy); Editor in Chief, UNILEX (<<http://www.unilex.info>>).

** Assistant Professor, University of Rome I “La Sapienza” (Italy); Co-Editor in Chief, UNILEX.

¹ M.J. BONELL / R. PELEGGI, “UNIDROIT Principles of International Commercial Contracts and Principles of European Contract Law: A Synoptical Table”, *Unif. L. Rev. / Rev. dr. unif.* (2004), 315-396.

² Ch. von Bar / E. Clive / H. Schulte-Nölke et al. (eds.), *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR)*, Outline Edition (2009).

³ Some of the topics so far dealt with only in the DCFR will be covered by the forthcoming third edition of the UNIDROIT Principles which will contain additional chapters or provisions on unwinding of failed contracts, illegality, plurality of obligors and/or obligees, and conditional obligations.

are identical also as to content or whether they provide different solutions and, if so, to what extent the divergences are of a purely technical nature or reflect different policies.

The Synoptical Table reproduced below permits an immediate comparison of the UNIDROIT Principles and of the first three Books of DCFR. Taking the UNIDROIT Principles as the term of reference, the provisions of the UNIDROIT Principles and of the DCFR that address the same issues have been set out side by side, while blanks indicate the absence of such provisions in one or other of the instruments.⁴

Obviously, this is not the place for an in-depth analysis of the extent to which the two instruments converge or diverge. What follows is an attempt to provide a list of those provisions which are substantially identical (I) and of those which, on the contrary, differ in content (II) and, with respect to the latter, to distinguish between differences of a technical nature (II.1) and differences of policy (II.2).

I. – CORRESPONDING PROVISIONS

More than two thirds of the provisions of the UNIDROIT Principles have corresponding provisions in the DCFR. More precisely, provisions of the UNIDROIT Principles which have either a literal counterpart in the DCFR or at any rate adopt basically the same solutions as those provided in the latter are:

- in Chapter 1 (*General provisions*): Article 1.2 (*No form required*), Article 1.5 (*Exclusion or modification by the parties*), paragraph 2 of Article 1.6 (*Interpretation and supplementation of the Principles*), Article 1.8

⁴ Since the first three Books of the DCFR are to a large extent based on the European Principles, it would have been interesting to include also the latter in the Synoptical Table in order to see, with respect to each single issue, whether the DCFR actually adopted the same solutions provided in the European Principles or departed from them. We have not done so not only in order to avoid overburdening the Synoptical Table but also because the European Principles, though remaining a milestone in the development of European contract law, have, if not formally, then at least *de facto*, been supplanted by the DCFR. However, apart from the thirty or so special provisions concerning consumer protection, there are relatively few major innovations in the DCFR with respect to the European Principles: thus, the most important new provisions are those on inconsistent behaviour (*cf.* Art. I-1:103(2) which has been literally taken from Art. 1.8 of the UNIDROIT Principles), non-discrimination (*cf.* Arts. II-2:101 *et seq.*), information duties (*cf.* Arts. II-3:101, II-3:105 to II-3:108) and the right of withdrawal (Arts. II-5:101 *et seq.*), while the only significant departure is to be found in the chapter on agency – *rectius*: representation – and concerns the establishment of a direct link between the principal and the third party with respect to which the DCFR now adopts the same approach as the UNIDROIT Principles (*cf.* Art. II-6:105 as compared to Arts. 3:201(1), 3:202 and 3:301 of the European Principles).

(*Inconsistent behaviour*), paragraph 1 of Article 1.9 (*Usages and practices*), Article 1.10 (*Notice*), Article 1.11 (*Definitions*) and paragraphs 1 and 2 of Article 1.12 (*Computation of time set by parties*);⁵

- in Chapter 2, Section 1 (*Formation*): Article 2.1.1 (*Manner of formation*), Article 2.1.2 (*Definition of offer*), Article 2.1.4 (*Revocation of offer*), Article 2.1.5 (*Rejection of offer*), Article 2.1.6 (*Mode of acceptance*), Article 2.1.7 (*Time of acceptance*), Article 2.1.9 (*Late acceptance. Delay in transmission*), Article 2.1.11 (*Modified acceptance*), Article 2.1.12 (*Writings in confirmation*), Article 2.1.13 (*Conclusion of contract dependent on agreement on specific matters or in a specific form*), Article 2.1.14 (*Contract with terms deliberately left open*), Article 2.1.15 (*Negotiations in bad faith*), Article 2.1.16 (*Duty of confidentiality*), paragraph 2 of Article 2.1.19 (*Contracting under standard terms*), Article 2.1.21 (*Conflict between standard terms and non-standard terms*) and Article 2.1.22 (*Battle of forms*);⁶
- in Chapter 2, Section 2 (*Authority of agents*): paragraphs 1 and 2 of Article 2.2.1 (*Scope of the Section*), Article 2.2.2 (*Establishment and scope of the authority of the agent*), Article 2.2.3 (*Agency disclosed*), paragraph 1 of Article 2.2.4 (*Agency undisclosed*), Article 2.2.5 (*Agent acting without or exceeding its authority*), Article 2.2.6 (*Liability of agent acting without or exceeding its authority*), Article 2.2.7 (*Conflict of interests*), Article 2.2.8 (*Sub-agency*), paragraphs 1 and 2 of Article 2.2.9 (*Ratification*) and Article 2.2.10 (*Termination*);⁷
- in Chapter 3 (*Validity*): Article 3.2 (*Validity of mere agreement*), Article 3.3 (*Initial impossibility*), Article 3.4 (*Definition of mistake*), Article 3.5 (*Relevant mistake*), Article 3.6 (*Error in expression or transmission*), Article 3.8 (*Fraud*), Article 3.9 (*Threat*), Article 3.10 (*Gross disparity*), Article 3.11 (*Third persons*), Article 3.12 (*Confirmation*), Article 3.13 (*Loss of right to avoid*), Article 3.14 (*Notice of avoidance*), paragraph 1 of Article 3.15 (*Time limits*), Article 3.16 (*Partial avoidance*), paragraph 1 of

⁵ Cf. Arts. II.-1:102(1); II.-1:106(1); II.-1:102(2); I.-1:102(4); I.-1:103(2); II.-1:104(1); I.-1:109(2)(3)(4) (a)(b)(c); Annex (*Definitions*): *Tribunal*, and III.-2:101(2)(a); Annex (*Definitions*): *Debtor and Creditor*, and I.-1:106(1); I.-1:110(5)(6) DCFR, respectively.

⁶ Cf. Arts. II.-4:101; II.-4:201(1); II.-4:202(1)(3); II.-4:203; II.-4:204 and II.-4:205; II.-4:206; II.-4:207; II.-4:208; II.-4:210; II.-4:103(2); II.-9:101(4); II.-3:301; II.-3:302; II.-1:109 and Annex (*Definitions*): *Standard Terms*; II.-8:104; II.-4:209 DCFR, respectively.

⁷ Cf. Arts. II.-6:101(1)(3); II.-6:103(2) and II.-6:104(1)(2); II.-6:105; II.-6:106; II.-6:107(1) and II.-6:103(3); II.-6:107(2)(3); II.-6:109(1)(3)(a)(b)(c); II.-6:104(3); II.-6:111; II.-6:112(1)(4) DCFR, respectively.

Article 3.17 (*Retroactive effect of avoidance*) and Article 3.20 (*Unilateral declarations*);⁸

- in Chapter 4 (*Interpretation*): Article 4.1 (*Intention of the parties*), Article 4.2 (*Interpretation of statements and other conduct*), Article 4.3 (*Relevant circumstances*), Article 4.4 (*Reference to contract or statement as a whole*), Article 4.5 (*All terms to be given effect*), Article 4.7 (*Linguistic discrepancies*) and Article 4.8 (*Supplying an omitted term*);⁹
- in Chapter 5, Section 1 (*Content*): Article 5.1.3 (*Cooperation between the parties*), paragraphs 1 and 2 of Article 5.1.7 (*Price determination*) and Article 5.1.8 (*Contract for an indefinite period*);¹⁰
- in Chapter 5, Section 2 (*Third party rights*): Article 5.2.1 (*Contracts in favour of third parties*), Article 5.2.2 (*Third party identifiable*), Article 5.2.3 (*Exclusion and limitation clauses*) and Article 5.2.4 (*Defences*);¹¹
- in Chapter 6, Section 1 (*Performance in general*): Article 6.1.1 (*Time of performance*), paragraph of Article 6.1.4 (*Order of performance*), paragraphs 1 and 2 of Article 6.1.5 (*Earlier performance*), Article 6.1.6 (*Place of performance*), Article 6.1.7 (*Payment by cheque or other instrument*), paragraphs 3 and 4 of Article 6.1.9 (*Currency of payment*), Article 6.1.11 (*Costs of performance*), Article 6.1.12 (*Imputation of payments*) and Article 6.1.13 (*Imputation of non-monetary obligations*);¹²
- in Chapter 6, Section 2 (*Hardship*): Article 6.2.1 (*Contract to be observed*), Article 6.2.2. (*Definition of hardship*) and Article 6.2.3 (*Effects of hardship*);¹³
- in Chapter 7, Section 1 (*Non-performance in general*): Article 7.1.1 (*Non-performance defined*), Article 7.1.2 (*Interference by the other party*),

⁸ Cf. Arts. II.-4:101; II.-7:102; II.-7:201(1); II.-7:201 (except paragraph 1 (b)(iii)); II.-7:202; II.-7:205(1); II.-7:206; II.-7:207; II.-7:208; II.-7:211; II.-7:203(1)(2); II.-7:209; II.-7.210; II.-7:213; II.-7:212(1); II.-7:101(3) DCFR, respectively.

⁹ Cf. Arts. II.-8:101(1)(3)(a); II.-8:101(2); II.-8:102 (except lit. (g)); II.-8:105; II.-8:106; II.-8:107; II.-8:201 and II.-8:202; II.-9:101 DCFR, respectively.

¹⁰ Cf. Arts. II.-1:104; II.-9:104 and II.-9:105; III.-1:109(1)(2), first sentence, DCFR, respectively.

¹¹ Cf. Arts. II.-9:301(1)(2); II.-9:301(1), last sentence; II.-9:301(3); II.-9:302(b) DCFR, respectively.

¹² Cf. Arts. II.-2:102(1)(2); III.-2:104; III.-2:103; III.-2:101(1)(3); III.-2:108; III.-2:109(2), except first sentence, and (3); III.-2:113(1); III.-2:110 DCFR, respectively.

¹³ Cf. Art. III.-1:110 DCFR.

Article 7.1.3 (*Withholding performance*), paragraphs 3, 4 and 5 of Article 7.1.4 (*Cure by non-performing party*), paragraphs 1, 2 and 3 of Article 7.1.5 (*Additional period for performance*) and paragraphs 1 and 3 of Article 7.1.7 (*Force majeure*);¹⁴

- in Chapter 7, Section 2 (*Right to performance*): Article 7.2.1 (*Performance of monetary obligation*), Article 7.2.2 (*Performance of non-monetary obligations*) and Article 7.2.3 (*Repair and replacement of defective performance*);¹⁵
- in Chapter 7, Section 3 (*Termination*): paragraphs 1 and 2, lit. (a) and (c) of Article 7.3.1 (*Right to terminate the contract*), Article 7.3.2 (*Notice of termination*), Article 7.3.3 (*Anticipatory non-performance*), Article 7.3.4 (*Adequate assurance of due performance*) and Article 7.3.5 (*Effects of termination in general*);¹⁶
- in Chapter 7, Section 4 (*Damages*): Article 7.4.1 (*Right to damages*), Article 7.4.2 (*Full compensation*), Article 7.4.3 (*Certainty of harm*), Article 7.4.5 (*Proof of harm in case of replacement transaction*), paragraph 1 of Article 7.4.6 (*Proof of harm by current price*), Article 7.4.7 (*Harm due in part to aggrieved party*), Article 7.4.8 (*Mitigation of harm*), Article 7.4.12 (*Currency in which to assess damages*) and Article 7.4.13 (*Agreed payment for non-performance*);¹⁷
- in Chapter 8 (*Set-off*): paragraph 1, lit. (a) and (b), last sentence, of Article 8.1 (*Conditions of set-off*), Article 8.3 (*Set-off by notice*) and Article 8.5 (*Effect of set-off*);¹⁸
- in Chapter 9, Section 1 (*Assignment of rights*): Article 9.1.1 (*Definitions*), Article 9.1.3 (*Assignability of non-monetary rights*), paragraph 1 of Article 9.1.4 (*Partial assignment*), Article 9.1.5 (*Future rights*), Article 9.1.6 (*Rights assigned without individual specification*), Article 9.1.7 (*Agreement between assignor and assignee sufficient*), Article 9.1.8 (*Obligor's additional costs*), Article 9.1.12 (*Adequate proof of assignment*),

¹⁴ Cf. Arts. III.-1:102(3) and Annex (*Definitions*): *Non-performance*; III.-3:101(3); III.-3:401(1); III.-3:204; III.-3:103, III.-3:503 and III.-3:507(2); III.-3:104(1)(2)(5) DCFR, respectively.

¹⁵ Cf. Arts. III.-3:301(1); III.-3:302(1)(3)(4); III.-3:302(2) DCFR, respectively.

¹⁶ Cf. Arts. III.-3:502; III.-3:507(1) and III.-3:508; III.-3:504; III.-3:505 and III.-3:401(2); III.-3:509(1)(2) and III.-3:102; III.-3:102; III.-3:510 DCFR, respectively.

¹⁷ Cf. Arts. III.-3:701(1) and III.-3:102; III.-3:702 and III.-3:701(3); III.-3:701(2); III.-3:706; III.-3:707; III.-3:704; III.-3:705; III.-3.713; III.-3:712 DCFR, respectively.

¹⁸ Cf. Arts. III.-6:102; III.-6:105; III.-6:107 DCFR, respectively.

paragraph 1 of Art. 9.1.13 (*Defences and rights of set-off*), Article 9.1.14 (*Rights related to the claim assigned*) and Article 9.1.15 (*Assignor's undertakings*);¹⁹

- in Chapter 9, Section 2 (*Transfer of obligations*): Article 9.2.3 (*Requirement of obligee's consent to transfer*), Article 9.2.4 (*Advance consent of obligee*), Article 9.2.5 (*Discharge of original obligor*), Article 9.2.7 (*Defences and rights of set-off*) and Article 9.2.8 (*Rights related to the obligation transferred*);²⁰
- in Chapter 9, Section 3 (*Assignment of contracts*): Article 9.3.1 (*Definitions*), Article 9.3.3 (*Requirement of consent of the other party*), Article 9.3.4 (*Advance consent of the other party*) and Article 9.3.7 (*Rights transferred with the contract*);²¹
- in Chapter 10 (*Limitation periods*): Article 10.1 (*Scope of the chapter*), paragraph 1 of Article 10.2 (*Limitation periods*), Article 10.4 (*New limitation period by acknowledgement*), paragraph 1 of Article 10.5 (*Suspension by judicial proceedings*), Article 10.6 (*Suspension by arbitral proceedings*), Article 10.7 (*Alternative dispute resolution*), paragraph 2 of Article 10.8 (*Suspension in case of force majeure, death or incapacity*) and Article 10.11 (*Restitution*).²²

II. – DIVERGENCES

As concerns the divergences between the two instruments, there are first of all provisions in the UNIDROIT Principles which differ in content from their counterparts in the DCFR. In addition, there are issues addressed in the former which are not dealt with at all in the latter and *vice versa*. While most of these divergences appear to be of a merely technical nature, some others are of a "policy" nature, *i.e.* they reflect the different nature and scope of the two instruments.

¹⁹ Cf. Arts. III.-5:101(1) and III.-5:102(1); III.-5:117(2); III.-5:107(1); III.-5:106(1) and III.-5:114(2); III.-5:106(2); III.-5:104(4); III.-5:109; III.-5:113 and III.-5:114(1); III.-5:117(1), last sentence, and III.-5:107(2); III.-5:120(3)(4); III.-5:116(1); III.-5:115(1); III.-5:112(1)(2)(a)(b)(c)(d) DCFR, respectively.

²⁰ Cf. Arts. III.-5:203(1); III.-5:203(2); III.-5:202; III.-5:204 and III.-5:206; III.-5:205(1)(2) and III.-5:207; III.-5:205(4)(5) DCFR, respectively.

²¹ Cf. Arts. III.-5:301 and III.-5:302(1); III.-5:302(1); III.-5:302(2); III.-5:302(3) DCFR, respectively.

²² Cf. Arts. III.-7:101; III.-7:201; III.-7:401; III.-7:302(1)(2), first sentence; III.-7:302(3)(4); III.-7:305 and III.-7:306; III.-7:501(2) DCFR, respectively.

1. Divergences of a technical nature

The most significant divergences of a technical nature are as follows:

- under the UNIDROIT Principles, a contract containing a clause that requires any modification to be in a particular form may not be otherwise modified (see Article 2.1.18), whereas in the DCFR such a clause establishes only a presumption to this effect (see Article II.-4:105);
- under the UNIDROIT Principles, the party entitled to avoid the contract may recover the same amount of damages irrespective of whether it has or has not avoided the contract (see Article 3.18), while under the DCFR, if the contract has not been avoided, the recoverable damages cannot exceed the loss caused by mistake, fraud, coercions, threats or unfair exploitation (see Article II.-7:214(2));
- although under both the UNIDROIT Principles and the DCFR the third party's rights become irrevocable once the third party has reasonably acted in reliance on them, the UNIDROIT Principles provide that the third party's rights cannot be revoked also once that party has accepted them (see Article 5.2.5), while the DCFR, to the same end, provides that revocation must be done before either of the contracting parties has given the third party notice that the right or benefit has been conferred (Article II.-9:303(2));
- under the UNIDROIT Principles, the non-performing party's liability is restricted to foreseeable losses (see Article 7.4.4), while under the DCFR such a limitation no longer exists if non-performance was intentional, reckless or grossly negligent (see Article III.-3:703);
- within the UNIDROIT Principles, a party may set-off its obligation against the other party's obligation which is not ascertained as to its existence or amount only if both obligations arise from the same contract (see Article 8.1(2)), whereas within the DCFR this is possible whenever the set-off does not prejudice the interests of the other party (see Article III.-6:103);
- the UNIDROIT Principles provisions dealing with assignment of rights do not cover the transfer of negotiable instruments, documents of title and financial instruments (see Article 9.1.2), whereas the corresponding provisions of the DCFR are applicable to the transfer of financial instruments or investment securities unless "such transfer must be by entry in a register maintained by or for the issuer or where there are other requirements for transfer or restrictions on transfer" (see Article III.-5:101(2));

- under the UNIDROIT Principles, the effect of non-assignment clauses may differ depending on whether the assigned right is a right to the payment of a monetary sum or to other performance (see Article 9.1.9), while under the DCFR the different nature of the assigned right is irrelevant (see Article III.-5:108);
- under the UNIDROIT Principles, the obligor is discharged by paying the assignor until it has received a notice of assignment from either the assignor or the assignee (see Article 9.1.10); on the contrary, under the DCFR the payment to the assignor is effective as long as the obligor has not received a notice of the assignment from either the assignor or the assignee, and does not know that the assignor is no longer entitled to receive performance (see Article III.-5:119(1));
- in the event of successive assignments of the same right, the UNIDROIT Principles provide that the obligor has to pay according to the order in which the notices were received (see Article 9.1.11), whereas in the DCFR the assignee who first notified to the debtor has priority over any earlier assignee if, at the time of the later assignment, that assignee neither knew, nor could reasonably be expected to have known, of the earlier assignment (see Article III.-5:121);
- the UNIDROIT Principles contemplate two different ways in which an obligation may be transferred from the original obligor to the new obligor (see Article 9.2.1), while the DCFR provides only the case where the new obligor undertakes with the agreement of the old obligor and the obligee to be substituted as obligor (see Articles III.-5:201, III.-5:204 and III.-5:206);
- within both instruments, performance by a third party is excluded where the obligation has a personal character; yet, under the DCFR, a third party is entitled to perform in place of the obligor either where the obligor has given his consent (as is the case under the UNIDROIT Principles: see Article 9.2.6) or where the third party has a legitimate interest in performing, and the obligor has not performed and it is clear that he will not perform at the time the performance becomes due (see Article III.-2:107 DCFR);
- in the UNIDROIT Principles, the scope of the chapter on limitation periods is restricted to “the right governed by these Principles” (see Article 10.1(1)), while the corresponding chapter of the DCFR covers any “right to performance of an obligation”, thus including also non-contractual obligations (see Article III.-7:101);

- in both instruments, the general limitation period is three years; however, whereas under the UNIDROIT Principles such period begins to run from “the day the obligee knows or ought to know the facts as a result of which its right can be exercised” (see Article 10.2(1)), in the DCFR the same period “begins to run from time when performance must be effected or, in the case of a right to damages, from the facts giving rise to the claim occur” (see Article III.-7:203), yet the running of such a period is suspended until the creditor has actual or constructive knowledge of the identity of the debtor and the facts giving rise to its claim (see Article III.-7:301);
- under the UNIDROIT Principles, parties may not extend the maximum limitation period to more than fifteen years (see Article 10.3(2)(c)), whereas under the DCFR the corresponding limit is thirty years (see Article III.-7:601(2)).

Other divergences of a technical nature, though less important, concern:

- the time from which a period for acceptance begins to run (see Article 2.1.8 UNIDROIT Principles and Article I.-1:110(8) DCFR);
- the possibility to make the conclusion of the contract dependent on the agreement of the parties in a particular form (see Article 2.1.13 UNIDROIT Principles and Article II.-4:103(2) DCFR);
- the relationship between the remedies for mistake and those for non-performance (see Article 3.7 UNIDROIT Principles and Article II.-7:216 DCFR);
- the quality of performance which is neither fixed, nor determinable from, the contract (see Article 5.1.6 UNIDROIT Principles and Article I.-9:108 DCFR);
- the price determination by a third party (see Article 5.1.7(3) UNIDROIT Principles and Article II.-9:106(1) DCFR);
- the determination of price by reference to factors which do not exist or have ceased to exist or to be accessible (see Article 5.1.7(4) and Article II.-9:107 DCFR);
- the renunciation by beneficiary of a right conferred on it (see Article 5.2.6 UNIDROIT Principles and Article II.-9:303(1) DCFR);
- the effects of a temporary impediment (see Article 7.1.7(2) UNIDROIT Principles and Article III.-3:104(3) DCFR);

- the fate of the contract in case of permanent impediment (see Article 7.1.7(4) UNIDROIT Principles and Article III.-3:104(4) DCFR);
- the failure by the party giving notice of set-off to indicate to which of its claims against the other party such notice relates (see Article 8.4(2) UNIDROIT Principles and Article III.-6:106(1) DCFR);
- the circumstances to be taken into account in determining whether non-performance is fundamental (see Article 7.3.1 UNIDROIT Principles and Article III.-3:502 DCFR);
- the conditions on which partial assignment of non-monetary rights is made dependent (see Article 9.1.4(2) UNIDROIT Principles and Article III.-5:107(2)(a) DCFR);
- the requirements for assignment of a right (see Article 9.1.7 UNIDROIT Principles and paragraphs 1, 2 and 3 of Article III.-5:103 DCFR);
- the availability of set-off in case of assignment (see Article 9.1.13 UNIDROIT Principles and Article III.-5:116(3) DCFR);
- the suspension of limitation periods in case of force majeure (see Article 10.8 UNIDROIT Principles and Article III.-7:303 DCFR);
- the set-off with respect to claims whose period of limitation has expired (see Article 10.10 UNIDROIT Principles and Article III.-7:503 DCFR).

Finally, provisions included for no particular “policy” reason in the UNIDROIT Principles but not in the DCFR are:

- in Chapter 2, Section 1 (*Formation*): Article 2.1.3 (*Withdrawal of offer*) and Article 2.1.10 (*Withdrawal of acceptance*);
- in Chapter 2, Section 2 (*Authority of agents*): paragraph 3 of Article 2.2.9, as to the third party’s right to notify its intention not to become bound by ratification;
- in Chapter 3 (*Validity*): Article 3.4 (*Definition of mistake*) and paragraph 2 of Article 3.15 (*Time limits*), as to time from which the period for giving notice of the avoidance of individual terms begins to run;
- in Chapter 5, Section 1 (*Content*): Article 5.1.4 (*Duty to achieve a specific result; Duty of best efforts*), Article 5.1.5 (*Determination of kind of duty involved*) and Article 5.1.9 (*Release by agreement*);
- in Chapter 6, Section 1 (*Performance in general*): Article 6.1.2 (*Performance at one time or in instalments*), Article 6.1.3 (*Partial performance*),

paragraph 3 of Article 6.1.5 (*Earlier performance*); as to the additional expenses caused by earlier performance, paragraph 2 of Article 6.1.6 (*Place of performance*), concerning the expenses incidental to performance caused by a change in one party's place of business, and Article 6.1.10 (*Currency not expressed*);

- in Chapter 7, Section 1 (*Non-performance in general*): paragraph 4 of Article 7.1.15 (*Additional period for performance*), concerning the situation where the obligation which has not been performed is only a minor part of the contractual obligation, and paragraph 4 of Article 7.1.7 (*Force majeure*), as to the remedies available to a party where the other party's non-performance is excused by force majeure.
- in Chapter 7, Section 2 (*Right to performance*): Article 7.2.4 (*Judicial penalty*) and Article 7.2.5 (*Change of remedy*);
- in Chapter 7, Section 4 (*Damages*): paragraph 2 of Article 7.4.6 (*Proof of harm by current price*), providing a definition of "current price", Article 7.4.10 (*Interest on damages*) and Article 7.4.11 (*Manner of monetary redress*);
- in Chapter 9, Section 3 (*Assignment of contracts*): Article 9.3.5 (*Discharge of the assignor*) and Article 9.3.6 (*Defences and rights of set-off*).

Vice versa, provisions included for no particular "policy" reason in the DCFR but not in the UNIDROIT Principles are:

- in Book I (*General provisions*): paragraph 5 of Article I.-1:102 (*Interpretation and development*), on the conflict between general and special rules, Article I.-1:104 (*Reasonableness*), paragraphs 2 and 3 of Article I.-1:106 (*"In writing" and similar expressions*), defining the expressions "textual form" and "durable medium", Article I.-1:107 (*"Signature" and similar expressions*), Article I.-1:108 (*Definitions in Annex*), paragraphs 3, 4(d), 5 and 6 of Article I.-1:109 (*Notice*), and paragraphs 2, 3, 4 and 7 of Article I.-1:110 (*Computation of time*);
- in Book II, Chapter 1 (*General provisions*): Article II.-1:101 (*Meaning of "contract" and "juridical act"*), Article II.-1:105 (*Imputed knowledge etc.*), paragraph 2 of Article II.-1:106 (*Form*), dealing with the case where a contract of other juridical act is invalid only by reason of non-compliance with a particular requirement as to form, Article II.-1:107 (*Mixed contracts*) and paragraphs 1, 2 and 3 of Article II.-1:110 (*Terms "not individually negotiated"*);

- in Book II, Chapter 3 (*Marketing and pre-contractual duties*): paragraph 2 of Article II.-3:302 (*Breach of confidentiality*), defining the expression "confidential information", and Article II-3:501 (*Liability for damages*).
- in Book II, Chapter 4 (*Formation*): Article II.-4:102 (*How intention is determined*), Article II.-4:103 (*Sufficient agreement*) and Article II.-4:211 (*Contracts not concluded through offer and acceptance*);
- in Book II, Chapter 6 (*Representation*): paragraph 2 of Article II.-6:101 (*Scope*), Article II.-6:108 (*Unidentified principal*), paragraphs 2 and 3(d) of Article II.-6:109 (*Conflict of interest*), Article II.-6:110 (*Several representatives*), paragraphs 2 and 3 of Article II.-6:112 (*Effect of ending or restriction of authorisation*);
- in Book II, Chapter 7 (*Grounds of invalidity*): paragraph 3 of Article II.-7:203 (*Adaptation of contract in case of mistake*), as to the mistake common to both parties, and Article II.-7:204 (*Liability for loss caused by reliance on incorrect information*).
- in Book II, Chapter 8 (*Interpretation*): paragraph 3(b) of Article II.-8:101 (*General rules*), on questions of interpretation arising with a person not being a party to the contract or not having, by effect of law, better rights than that party;
- in Book II, Chapter 9 (*Contents and effects of contracts*): Article II.-9:109 (*Language*); Article II.-9:201 (*Effect of simulation*); lit. (a) of Article II.-9:302 (*Rights, remedies and defences*);
- in Book III, Chapter 1 (*General*): Article III.-1:106 (*Conditional rights and obligations*), paragraph 3 of Article III.-1:109 (*Variation or termination by notice*) and Article III.-1:111 (*Tacit prolongation*);
- in Book III, Chapter 2 (*Performance*): Article III.-2:105 (*Alternative obligations or methods of performance*), Article III.-2:106 (*Performance entrusted to another*), Article III.-2:111 (*Property not accepted*), Article III.-2:112 (*Money not accepted*), paragraph 2 of Article III.-2:113 (*Costs and formalities of performance*) and Article III.-2:114 (*Extinctive effect of performance*);
- in Book III, Chapter 3 (*Remedies for non-performance*): Article III.-3:106 (*Notices relating to non-performance*), Article III.-3:107 (*Failure to notify non-conformity*), Article III.-3:205 (*Return of replaced item*), paragraph 2 of Article III.-3:301 (*Enforcement of monetary obligations*), paragraph 5 of Article III.-3:302 (*Enforcement of non-monetary obligations*), Article

III.-3:506 (*Scope of right to terminate*), Article III.-3:511 (*When restitution not required*), Article III.-3:512 (*Payment of value of benefit*), Article III.-3:513 (*Use and improvements*), Article III.-3:514 (*Liabilities arising after time when return due*) and Article III.-3:601 (*Right to reduce price*);

- in Book III, Chapter 5 (*Change of parties*): paragraphs 2 and 3 of Article III.-5:102 (*Definitions*), Article III.-5:103 (*Priority of provisions on proprietary securities and trusts*), paragraphs 2(e) and from 3 to 7 of Article III.-5:12 (*Undertaking by assignor*), Article III.-5:113 (*New creditor*), paragraph 2 of Article III.-5:115 (*Rights transferred to assignee*), Article III.-5:118 (*Effect on initial invalidity, subsequent avoidance, withdrawal, termination and revocation*), paragraphs 1 and 2 of Article III.-5:120 (*Adequate proof of assignment*), Article III.-5:122 (*Competition between assignee and assignor receiving proceeds*), paragraph 3 of Article III.-5:203 (*Consent of creditor*), paragraph 3 of Article III.-5:205 (*Effects of complete substitution on defences, set-off and security rights*), Article III.-5:208 (*Addition of new debtor*), Article III.-5:209 (*Effect of addition of new debtor*), Article III.-5:401 (*Principal's option to take over rights in case of agent's insolvency*) and Article III.-5:402 (*Third party's counter-option*);
- in Book III, Chapter 6 (*Set-off and merger*): Article III.-6:101 (*Definition and scope*), Article III.-6:108 (*Exclusion of right of set-off*), Article III.-6:201 (*Extinction of obligations by merger*);
- in Book III, Chapter 7 (*Prescription*): Article III.-7:202 (*Period for a right established by legal proceedings*), paragraph 2 and 3 of Article III.-7:203 (*Commencement*), Article III.-7:301 (*Suspension in case of ignorance*), paragraph 2, second sentence, of Article III.-7:302 (*Suspension in case of judicial and other proceedings*), Article III.-7:304 (*Postponement of expiry in case of negotiations*), Article III.-7:402 (*Renewal by attempted execution*), Article III.-7:502 (*Effect on ancillary rights*).

2. Divergences of policy

The first significant divergence of policy between the two instruments relates to their different nature and purpose. In fact, while the UNIDROIT Principles are a non-binding instrument prepared by an independent group of experts under the auspices of an inter-governmental organisation with no intention to become legislation, the DCFR, though for the time being an “academic text”, is intended to serve as a draft for drawing up a “political” Common Frame of Reference, *i.e.* to provide *inter alia* a model for future legislation at both national and Community law levels.

The second divergence between the two sets of rules concerns their territorial scope of application. Indeed, while the UNIDROIT Principles are intended to be used world-wide, the DCFR by its origin and purpose is designed to apply within the European Union.

Finally, the two instruments diverge as to their material scope of application: while the UNIDROIT Principles are confined to “international” and “commercial” contracts, the DCFR applies to all kinds of contracts, including transactions of a purely domestic nature and those between merchants and consumers.

(a) *Soft law v. hard law*

The most significant divergences attributable to the different nature and purpose of the two instruments concern:

- the possible ways in which the two sets of rules can be applied: see paragraphs 2, 3, 4 and 6 of the Preamble of the UNIDROIT Principles and Article I.-1:101 DCFR;
- the effects of mandatory rules on parties’ autonomy: see Article 1.4 UNIDROIT Principles and Article II.-1:102 DCFR;
- the authority of agents conferred by law, which is excluded from the scope of the UNIDROIT Principles but is covered by the DCFR: see paragraph 3 of Article 2.2.1 UNIDROIT Principles and paragraph 2 of Article II.-6:103 DCFR;

(b) *Universal v. regional sphere of application*

Divergences stemming from the universal sphere of application of the UNIDROIT Principles as opposed to the regional vocation of the DCFR are:

- under the UNIDROIT Principles, the possibility to pay also in the currency of the place for payment is excluded not only where the parties have agreed that payment should be made in the currency of account but also where the currency of the place of payment is not freely convertible (see Article 6.1.9(1)); by contrast, in the DCFR such a payment is excluded only where the parties have agreed on a specific currency of payment (see Article III. – 2:109);
- in cases where at the place for payment there is no average bank short-term lending rate to prime borrowers for the currency of payment the UNIDROIT Principles provide for alternative criteria to determine the interest due for delay in payment (see Article 7.4.9(2)); by contrast, the

DCFR is silent in this respect (see Article III-3:708);

- under the UNIDROIT Principles, set-off of obligations in different currencies is admissible provided that both currencies are freely convertible and that the contract does not require the obligor to pay in a specific currency (see Article 8.2); by contrast, the DCFR mentions only the latter condition (see Article III.-6:104).

Likewise, provisions to be found only in the UNIDROIT Principles on account of their universal sphere of application are:

- paragraph 5 of the Preamble, concerning the possible use of the UNIDROIT Principles to interpret or supplement international uniform law instruments;
- paragraph 3 of Article 1.12 (*Computation of time set by parties*), regarding computation of time when the parties are situated in different time zones;
- Article 6.1.14 (*Application for public permission*) et seq., on public permission requirements;
- paragraph 1 of Article 10.9 (*The effects of expiration of limitation period*), where it is stated that such expiration does not extinguish the right.

By contrast, provisions of the DCFR clearly reflecting its specific European vocation and therefore with no counterpart in the UNIDROIT Principles are:

- paragraph 2 of Article I.-1:102 (*Interpretation and development*), where it is stated that the DCFR rules “are to be in the light of any applicable instruments guaranteeing human rights and fundamental freedoms and any applicable constitutional laws”;
- paragraph 9(a) of Article I.-1:110 (*Computation of time*), which defines “public holiday” with reference to a Member State, or part of a Member State, of the European Union, as “any day designated as such for that State or part in a list published in the official journal”;
- paragraph 1(b) of Article II.-9:406 (*Exclusions from unfairness test*), according to which contract terms are not subjected to an unfairness test if “they are based on international conventions to which Member States are parties, or to which the European Union is party”;
- Article III.-3:710 (*Interest in commercial contracts*), according to which, in commercial contracts, the interest rate for delayed payment is the interest rate applied by the European Central Bank to its most recent main

refinancing operation carried out before the first calendar day of the half-year in question ("the reference rate"), plus seven percentage points;²³

- Article III.-5:117 (*Effect on place of performance*), on the place for payment of a monetary obligation situated within the European Union.

(c) *International contracts v. contracts in general, including domestic contracts*

Divergences dependent on the fact that the UNIDROIT Principles specifically address international contracts, whereas the DCFR covers contracts in general, including purely domestic ones, are:

- the UNIDROIT Principles are to be interpreted "having regard to their international character" (see Article 1.6(1)), while the DCFR is to be "interpreted be interpreted and developed autonomously" (see Article I.-1:102(1));
- under the UNIDROIT Principles, parties are required to act in accordance with good faith and fair dealing as intended in international trade (see Article 1.7), whereas in the DCFR the same parties' duty is stated in general terms (see Articles I.-1:103(1) and III.-1:103(1));
- whereas the UNIDROIT Principles restrict the applicable usages to those "widely known to and regularly observed in international trade by parties in the particular trade concerned" (see Article 1.9(2)), within the DCFR the parties are bound by any usage "which would be considered generally applicable by persons in the same situation as the parties, except where the application of such usage would be unreasonable" (see Article II.-1:104(2)).

(d) *Commercial contracts v. contracts in general, including consumer transactions*

Divergences deriving from the fact that the UNIDROIT Principles relate to contracts between merchants or other professionals, whereas the DCFR covers also consumer transactions in which parties typically do not have the same bargaining power and/or negotiating skills are:

- whereas in the UNIDROIT Principles the rule that a contract in writing which contains a merger clause may not be contradicted or supplemented

²³ For the currency of a Member State not participating in the third stage of economic and monetary union, the reference rate is the equivalent rate set by its national central bank.

by evidence of prior statements or agreements is of general application (see Article 2.1.17), in the DCFR the same rule applies only where the merger clause has been individually negotiated (see Article II.-4:104);

- under the UNIDROIT Principles, the incorporation of standard terms is subject to the general rules on formation (see Article 2.1.19), whereas the DCFR requires the party invoking non-individually negotiated contract terms to take appropriate steps to bring them to the other party's attention before or when the contract is concluded, and expressly excludes that a mere reference to such terms in the contract document is sufficient for this purpose, even if that party has signed the document (see Article II.-9:103);
- under the UNIDROIT Principles, one of the conditions on which a contract may be avoided for mistake is that it was contrary to "reasonable commercial standards of fair dealing" to leave the mistaken party in error (see Article 3.5(1)(a)), whereas the DCFR refers for the same purpose to the standards of "good faith and fair dealing" (see Article II.-7:201(1)(b)(iii));
- under the UNIDROIT Principles, a party may avoid the contract for fraudulent non-disclosure of circumstances by the other party which "according to reasonable commercial standards of fair dealing" the latter party should have disclosed (see Article 3.8), whereas the DCFR refers for the same purpose to "reasonable standards of good faith and fair dealing" (see Article II.-7:205(1));
- under the UNIDROIT Principles, in case of gross disparity a court may, upon the request of the party entitled to avoid the contract, adapt the contract to make it accord with "reasonable commercial standards of fair dealing" (see Article 3.10(2)), whereas the DCFR refers for the same purpose to "standards of good faith and fair dealing" (see Article II.-7:207);
- under the UNIDROIT Principles, the parties are free to exclude or modify the provisions on avoidance for mistake (see Article 3.19), whereas under the DCFR any such exclusion or modification is possible only if not contrary to good faith and fair dealing (see Article II.-7:215(2));
- under the UNIDROIT Principles, if contract terms are unclear, there is a preference for the interpretation against one party if that party has supplied those terms (see Article 4.6); in the DCFR, the *contra proferentem* rule applies to the interpretation of both not individually negotiated terms and terms established under the dominant influence of one party (see Article II.-8:103);

- under the UNIDROIT Principles, the non-performing party may cure its non-performance even after the contract has been terminated (see Article 7.1.4), while under the DCFR the right to cure is precluded if failure to perform within the time allowed for performance would amount to a fundamental breach (see Article III.-3:203(a));
- under the UNIDROIT Principles, exemptions clauses may not be invoked if it would be “grossly unfair” to do so (see Article 7.1.6); on the contrary, under the DCFR such clauses are valid unless they are contrary to “good faith and fair dealing” (see Article III.-3:105);
- Within the UNIDROIT Principles, non-economic loss is to be understood as including physical suffering or emotional distress (see Article 7.4.2(2)), whereas within the DCFR such a loss may also include impairment of the quality of life (see Art. III.-3:701(3)).

Likewise, provisions to be found only in the UNIDROIT Principles on account of their scope being restricted to commercial contracts are:

- in Chapter 2, Section 1 (*Formation*): Article 2.1.20 (*Surprising terms*);
- in Chapter 2, Section 2 (*Authority of agents*): paragraph 2 of Article 2.2.4 (*Agency undisclosed*), dealing with the third party’s rights against an agent acting on behalf of a business;
- in Chapter 6, Section 1 (*Performance in general*): Article 6.1.8 (*Payment by funds transfer*);
- in Chapter 9, Section 2 (*Transfer of obligations*): Article 9.2.2 (*Exclusion*);
- in Chapter 9, Section 2 (*Assignment of contracts*): Article 9.3.2 (*Exclusion*).

By contrast, provisions of the DCFR specifically tailored for consumer transactions and therefore having no counterpart in the UNIDROIT Principles are:

- in Book I (*General provisions*): Article I.-1:105 (“*Consumer*” and “*business*”), paragraphs 4(b) and 7 of Article I.-1:109 (*Notice*), concerning the effectiveness of notice in relations between a business and a consumer;
- in Book II, Chapter 1 (*General provisions*): paragraphs 4 and 5 of Article II.-1:110 (*Terms “not individually negotiated”*), relating to contracts between a business and a consumer;
- in Book II, Chapter 2 (*Non-discrimination*): Article II.-2:101 (*Right not to be discriminated against*) et seq.;

- in Book II, Chapter 3 (*Marketing and pre-contractual duties*): Article II.-3:101 (*Duty to disclose information about goods, other assets and services*); Article II.-3:102 (*Specific duties for businesses marketing to consumers*), Article II.-3:103 (*Duty to provide information when concluding contract with a consumer who is at a particular disadvantage*), Article II.-3:104 (*Information duties in real time distance communication*), Article II.-3:105 (*Formation by electronic means*), Article II.-3:106 (*Clarity and form of information*), Article II.-3:107 (*Information about price and additional charges*), Article II.-3:108 (*Information about address and identity of business*), Article II.-3:109 (*Remedies for breach of information duties*), Article II.-3:201 (*Correction of input errors*), Article II.-3:202 (*Acknowledgement of receipt*), Article II.-3:401 (*No obligation arising from failure to respond*);
- in Book II, Chapter 4 (*Formation*), Section 2 (*Offer and acceptance*): paragraphs 2 and 3 of Article II.-4:201 (*Offer*), concerning offers to the public and proposals to supply goods from stock or a service at a stated price, and paragraph 2 of Article II.-4:202 (*Revocation of offer*), dealing with revocation of offers to the public.
- in Book II, Chapter 5 (*Right of withdrawal*): Article II.-5:106 (*Linked contracts*), Article 5:201 (*Contracts negotiated away from business premises*) and Article II.-5:202 (*Timeshare contracts*);
- in Book II, Chapter 7 (*Grounds of invalidity*), Section 2 (*Vitiated consent or intention*): paragraph 1(b)(iii) of Article II.-7:201 (*Mistake*), regarding mistake due to non-compliance with a pre-contractual information duty or a duty to make available a means of correcting input errors;
- in Book II, Chapter 9 (*Contents and effects of contracts*): paragraphs 4, 5 and 6 of Article II.-9:102 (*Certain pre-contractual statements regarded as contract terms*), as to public statements made by or on behalf of a producer or other person in earlier links of the business chain where the other party is a consumer, Article II.-9:403 (*Meaning of "unfair" in contracts between a business and a consumer*), Article II.-9:404 (*Meaning of "unfair" in contracts between non-business parties*), paragraph 2 of Article II.-9:407 (*Factors to be taken into account in assessing fairness*), Article II.-9:409 (*Exclusive jurisdiction clauses*) and Article II.-9:410 (*Terms which are presumed to be unfair in contracts between a business and a consumer*);
- in Book III, Chapter 2 (*Performance*): paragraph 2(b) of Article III.-2:101 (*Place of performance*), dealing with the place of performance in cases

where the obligation is not related to business matters and paragraphs 3 and 4 of Article III.-2:102 (*Time of performance*), concerning obligations incurred by a business towards a consumer in relation to the supply of goods, other assets or services;

- in Book III, Chapter 3 (*Remedies for non-performance*): Article III.-3:108 (*Business unable to fulfill consumer's order by distance communication*);
- in Book III, Chapter 7 (*Prescription*): paragraph 4 of Article III.-7:303 (*Suspension in case of impediment beyond creditor's control*).

五五五

A SYNOPTICAL TABLE

Table of Contents

UNIDROIT Principles (2004)

PREAMBLE (Purpose of the Principles)

CHAPTER 1: GENERAL PROVISIONS

- Art. 1.1 (*Freedom of contract*)
- Art. 1.2 (*No form required*)
- Art. 1.3 (*Binding character of contract*)
- Art. 1.4 (*Mandatory rules*)
- Art. 1.5 (*Exclusion or modification by the parties*)
- Art. 1.6 (*Interpretation and supplementation of the Principles*)
- Art. 1.7 (*Good faith and fair dealing*)
- Art. 1.8 (*Inconsistent behaviour*)
- Art. 1.9 (*Usages and practices*)
- Art. 1.10 (*Notice*)
- Art. 1.11 (*Definitions*)
- Art. 1.12 (*Computation of time set by parties*)

CHAPTER 2: FORMATION AND AUTHORITY OF AGENTS

Section 1: Formation

- Art. 2.1.1 (*Manner of formation*)
- Art. 2.1.2 (*Definition of offer*)
- Art. 2.1.3 (*Withdrawal of offer*)
- Art. 2.1.4 (*Revocation of offer*)
- Art. 2.1.5 (*Rejection of offer*)
- Art. 2.1.6 (*Mode of acceptance*)
- Art. 2.1.7 (*Time of acceptance*)
- Art. 2.1.8 (*Acceptance within a fixed period of time*)
- Art. 2.1.9 (*Late acceptance. Delay in transmission*)
- Art. 2.1.10 (*Withdrawal of acceptance*)
- Art. 2.1.11 (*Modified acceptance*)
- Art. 2.1.12 (*Writings in confirmation*)
- Art. 2.1.13 (*Conclusion of contract dependent on agreement on specific matters or in a particular form*)
- Art. 2.1.14 (*Contract with terms deliberately left open*)
- Art. 2.1.15 (*Negotiations in bad faith*)
- Art. 2.1.16 (*Duty of confidentiality*)
- Art. 2.1.17 (*Merger clauses*)
- Art. 2.1.18 (*Modification in a particular form*)
- Art. 2.1.19 (*Contracting under standard terms*)
- Art. 2.1.20 (*Surprising terms*)
- Art. 2.1.21 (*Conflict between standard terms and non-standard terms*)
- Art. 2.1.22 (*Battle of forms*)

DCFR (Books I, II and III)

BOOK I – GENERAL PROVISIONS

- I. – 1:101: *Intended field of application*
- I. – 1:102: *Interpretation and development*
- I. – 1:103: *Good faith and fair dealing*
- I. – 1:104: *Reasonableness*
- I. – 1:105: *“Consumer” and “business”*
- I. – 1:106: *“In writing” and similar expressions*
- I. – 1:107: *“Signature” and similar expressions*
- I. – 1:108: *Definitions in Annex*
- I. – 1:109: *Notice*
- I. – 1:110: *Computation of time*

BOOK II – CONTRACTS AND OTHER JURIDICAL ACTS

CHAPTER 1: GENERAL PROVISIONS

- II. – 1:101: *Meaning of “contract” and “juridical act”*
- II. – 1:102: *Party autonomy*
- II. – 1:103: *Binding effect*
- II. – 1:104: *Usages and practices*
- II. – 1:105: *Imputed knowledge etc.*
- II. – 1:106: *Form*
- II. – 1:107: *Mixed contracts*
- II. – 1:108: *Partial invalidity or ineffectiveness*
- II. – 1:109: *Standard terms*
- II. – 1:110: *Terms “not individually negotiated”*

CHAPTER 2: NON-DISCRIMINATION

- II. – 2:101: *Right not to be discriminated against*
- II. – 2:102: *Meaning of discrimination*
- II. – 2:103: *Exception*
- II. – 2:104: *Remedies*
- II. – 2:105: *Burden of proof*

CHAPTER 3: MARKETING AND PRE-CONTRACTUAL DUTIES

Section 1: Information duties

- II. – 3:101: *Duty to disclose information about goods, other assets and services*
- II. – 3:102: *Specific duties for businesses marketing to consumers*

Section 2: Authority of agents

- Art. 2.2.1 (Scope of the Section)
- Art. 2.2.2 (Establishment and scope of the authority of the agent)
- Art. 2.2.3 (Agency disclosed)
- Art. 2.2.4 (Agency undisclosed)
- Art. 2.2.5 (Agent acting without or exceeding its authority)
- Art. 2.2.6 (Liability of agent acting without or exceeding its authority)
- Art. 2.2.7 (Conflict of interests)
- Art. 2.2.8 (Sub-agency)
- Art. 2.2.9 (Ratification)
- Art. 2.2.10 (Termination of authority)

CHAPTER 3: VALIDITY

- Art. 3.1 (Matters not covered)
- Art. 3.2 (Validity of mere agreement)
- Art. 3.3 (Initial impossibility)
- Art. 3.4 (Definition of mistake)
- Art. 3.5 (Relevant mistake)
- Art. 3.6 (Error in expression or transmission)
- Art. 3.7 (Remedies for non-performance)
- Art. 3.8 (Fraud)
- Art. 3.9 (Threat)
- Art. 3.10 (Gross disparity)
- Art. 3.11 (Third persons)
- Art. 3.12 (Confirmation)
- Art. 3.13 (Loss of right to avoid)
- Art. 3.14 (Notice of avoidance)
- Art. 3.15 (Time limits)
- Art. 3.16 (Partial avoidance)
- Art. 3.17 (Retroactive effect of avoidance)
- Art. 3.18 (Damages)
- Art. 3.19 (Mandatory character of the provisions)
- Art. 3.20 (Unilateral declarations)

CHAPTER 4: INTERPRETATION

- Art. 4.1 (Intention of the parties)
- Art. 4.2 (Interpretation of statements and other conduct)
- Art. 4.3 (Relevant circumstances)
- Art. 4.4 (Reference to contract or statement as a whole)
- Art. 4.5 (All terms to be given effect)
- Art. 4.6 (Contra proferentem rule)
- Art. 4.7 (Linguistic discrepancies)
- Art. 4.8 (Supplying an omitted term)

CHAPTER 5: CONTENT AND THIRD PARTY RIGHTS

Section 1: Content

- Art. 5.1.1 (Express and implied obligations)
- Art. 5.1.2 (Implied obligations)
- Art. 5.1.3 (Co-operation between the parties)
- Art. 5.1.4 (Duty to achieve a specific result. Duty of best efforts)

- II. – 3:103: Duty to provide information when concluding contract with a consumer who is at a particular disadvantage
- II. – 3:104: Information duties in real time distance communication
- II. – 3:105: Formation by electronic means
- II. – 3:106: Clarity and form of information
- II. – 3:107: Information about price and additional charges
- II. – 3:108: Information about address and identity of business
- II. – 3:109: Remedies for breach of information duties

Section 2: Duty to prevent input errors and acknowledge receipt

- II. – 3:201: Correction of input errors
- II. – 3:202: Acknowledgement of receipt

Section 3: Negotiation and confidentiality duties

- II. – 3:301: Negotiations contrary to good faith and fair dealing
 - II. – 3:302: Breach of confidentiality
- Section 4: Unsolicited goods or services
- II. – 3:401: No obligation arising from failure to respond

CHAPTER 4: FORMATION

Section 1: General provisions

- II. – 4:101: Requirements for the conclusion of a contract
- II. – 4:102: How intention is determined
- II. – 4:103: Sufficient agreement
- II. – 4:104: Merger clause
- II. – 4:105: Modification in certain form only

Section 2: Offer and acceptance

- II. – 4:201: Offer
- II. – 4:202: Revocation of offer
- II. – 4:203: Rejection of offer
- II. – 4:204: Acceptance
- II. – 4:205: Time of conclusion of the contract
- II. – 4:206: Time limit for acceptance
- II. – 4:207: Late acceptance
- II. – 4:208: Modified acceptance
- II. – 4:209: Conflicting standard terms
- II. – 4:210: Formal confirmation of contract between businesses
- II. – 4:211: Contracts not concluded through offer and Acceptance

Section 3: Other juridical acts

- II. – 4:301: Requirements for a unilateral juridical act
- II. – 4:302: How intention is determined
- II. – 4:303: Right or benefit may be rejected

Art. 5.1.5 (*Determination of kind of duty involved*)
Art. 5.1.6 (*Determination of quality of performance*)
Art. 5.1.7 (*Price determination*)
Art. 5.1.8 (*Contract for an indefinite period*) 3
Art. 5.1.9 (*Release by agreement*)

Section 2: Third party rights

Art. 5.2.1 (*Contracts in favour of third parties*)
Art. 5.2.2 (*Third party identifiable*)
Art. 5.2.3 (*Exclusion and limitation clauses*)
Art. 5.2.4 (*Defences*)
Art. 5.2.5 (*Revocation*)
Art. 5.2.6 (*Renunciation*)

CHAPTER 6: PERFORMANCE

Section 1: Performance in general

Art. 6.1.1 (*Time of performance*)
Art. 6.1.2 (*Performance at one time or in instalments*)
Art. 6.1.3 (*Partial performance*)
Art. 6.1.4 (*Order of performance*)
Art. 6.1.5 (*Earlier performance*)
Art. 6.1.6 (*Place of performance*)
Art. 6.1.7 (*Payment by cheque or other instrument*)
Art. 6.1.8 (*Payment by funds transfer*)
Art. 6.1.9 (*Currency of payment*)
Art. 6.1.10 (*Currency not expressed*)
Art. 6.1.11 (*Costs of performance*)
Art. 6.1.12 (*Imputation of payments*)
Art. 6.1.13 (*Imputation of non-monetary obligations*)
Art. 6.1.14 (*Application for public permission*)
Art. 6.1.15 (*Procedure in applying for permission*)
Art. 6.1.16 (*Permission neither granted nor refused*)
Art. 6.1.17 (*Permission refused*)

Section 2: Hardship

Art. 6.2.1 (*Contract to be observed*)
Art. 6.2.2 (*Definition of hardship*)
Art. 6.2.3 (*Effects of hardship*)

CHAPTER 7: NON-PERFORMANCE

Section 1: Non-Performance in General

Art. 7.1.1 (*Non-performance defined*)
Art. 7.1.2 (*Interference by the other party*)
Art. 7.1.3 (*Withholding performance*)
Art. 7.1.4 (*Cure by non-performing party*)
Art. 7.1.5 (*Additional period for performance*)
Art. 7.1.6 (*Exemption clauses*)
Art. 7.1.7 (*Force majeure*)

Section 2: Right to performance

Art. 7.2.1 (*Performance of monetary obligation*)
Art. 7.2.2 (*Performance of non-monetary obligation*)
Art. 7.2.3 (*Repair and replacement of defective performance*)
Art. 7.2.4 (*Judicial penalty*)
Art. 7.2.5 (*Change of remedy*)

CHAPTER 5: RIGHT OF WITHDRAWAL

Section 1: Exercise and effects

II. – 5:101: *Scope and mandatory nature*
II. – 5:102: *Exercise of right to withdraw*
II. – 5:103: *Withdrawal period*
II. – 5:104: *Adequate notification of the right to withdraw*
II. – 5:105: *Effects of withdrawal*
II. – 5:106: *Linked contracts*

Section 2: Particular rights of withdrawal

II. – 5:201: *Contracts negotiated away from business premises*
II. – 5:202: *Timeshare contracts*

CHAPTER 6: REPRESENTATION

II. – 6:101: *Scope*
II. – 6:102: *Definitions*
II. – 6:103: *Authorisation*
II. – 6:104: *Scope of authority*
II. – 6:105: *When representative's act affects principal's legal position*
II. – 6:106: *Representative acting in own name*
II. – 6:107: *Person purporting to act as representative but not having authority*
II. – 6:108: *Unidentified principal*
II. – 6:109: *Conflict of interest*
II. – 6:110: *Several representatives*
II. – 6:111: *Ratification*
II. – 6:112: *Effect of ending or restriction of authorisation*

CHAPTER 7: GROUNDS OF INVALIDITY

Section 1: General provisions

II. – 7:101: *Scope*
II. – 7:102: *Initial impossibility or lack of right or authority to dispose*

Section 2: Vitiating consent or intention

II. – 7:201: *Mistake*
II. – 7:202: *Inaccuracy in communication may be treated as mistake*
II. – 7:203: *Adaptation of contract in case of mistake*
II. – 7:204: *Liability for loss caused by reliance on incorrect information*
II. – 7:205: *Fraud*
II. – 7:206: *Coercion or threats*
II. – 7:207: *Unfair exploitation*
II. – 7:208: *Third persons*
II. – 7:209: *Notice of avoidance*
II. – 7:210: *Time*
II. – 7:211: *Confirmation*
II. – 7:212: *Effects of avoidance*
II. – 7:213: *Partial avoidance*
II. – 7:214: *Damages for loss*
II. – 7:215: *Exclusion or restriction of remedies*
II. – 7:216: *Overlapping remedies*

Section 3: Termination

- Art. 7.3.1 (*Right to terminate the contract*)
- Art. 7.3.2 (*Notice of termination*)
- Art. 7.3.3 (*Anticipatory non-performance*)
- Art. 7.3.4 (*Adequate assurance of due performance*)
- Art. 7.3.5 (*Effects of termination in general*)
- Art. 7.3.6 (*Restitution*)

Section 4: Damages

- Art. 7.4.1 (*Right to damages*)
- Art. 7.4.2 (*Full compensation*)
- Art. 7.4.3 (*Certainty of harm*)
- Art. 7.4.4 (*Foreseeability of harm*)
- Art. 7.4.5 (*Proof of harm in case of replacement transaction*)
- Art. 7.4.6 (*Proof of harm by current price*)
- Art. 7.4.7 (*Harm due in part to aggrieved party*)
- Art. 7.4.8 (*Mitigation of harm*)
- Art. 7.4.9 (*Interest for failure to pay money*)
- Art. 7.4.10 (*Interest on damages*)
- Art. 7.4.11 (*Manner of monetary redress*)
- Art. 7.4.12 (*Currency in which to assess damages*)
- Art. 7.4.13 (*Agreed payment for non-performance*)

CHAPTER 8: SET-OFF

- Art. 8.1 (*Conditions of set-off*)
- Art. 8.2 (*Foreign currency set-off*)
- Art. 8.3 (*Set-off by notice*)
- Art. 8.4 (*Content of notice*)
- Art. 8.5 (*Effect of set-off*)

CHAPTER 9: ASSIGNMENT OF RIGHTS, TRANSFER OF OBLIGATIONS, ASSIGNMENT OF CONTRACTS

Section 1: Assignment of rights

- Art. 9.1.1 (*Definitions*)
- Art. 9.1.2 (*Exclusions*)
- Art. 9.1.3 (*Assignability of non-monetary rights*)
- Art. 9.1.4 (*Partial assignment*)
- Art. 9.1.5 (*Future rights*)
- Art. 9.1.6 (*Rights assigned without individual specification*)
- Art. 9.1.7 (*Agreement between assignor and assignee sufficient*)
- Art. 9.1.8 (*Obligor's additional costs*)
- Art. 9.1.9 (*Non-assignment clauses*)
- Art. 9.1.10 (*Notice to the obligor*)
- Art. 9.1.11 (*Successive assignments*)
- Art. 9.1.12 (*Adequate proof of assignment*)
- Art. 9.1.13 (*Defences and rights of set-off*)
- Art. 9.1.14 (*Rights related to the right assigned*)
- Art. 9.1.15 (*Undertakings of the assignor*)

Section 2: Transfer of obligations

- Art. 9.2.1 (*Modes of transfer*)

Section 3: Infringement of fundamental principles or mandatory rules

- II. – 7:301: *Contracts infringing fundamental principles*
- II. – 7:302: *Contracts infringing mandatory rules*
- II. – 7:303: *Effects of nullity or avoidance*
- II. – 7:304: *Damages for loss*

CHAPTER 8: INTERPRETATION

Section 1: Interpretation of contracts

- II. – 8:101: *General rules*
- II. – 8:102: *Relevant matters*
- II. – 8:103: *Interpretation against party supplying term*
- II. – 8:104: *Preference for negotiated terms*
- II. – 8:105: *Reference to contract as a whole*
- II. – 8:106: *Preference for interpretation which gives terms effect*
- II. – 8:107: *Linguistic discrepancies*

Section 2: Interpretation of other juridical acts

- II. – 8:201: *General rules*
- II. – 8:202: *Application of other rules by analogy*

CHAPTER 9: CONTENTS AND EFFECTS OF CONTRACTS

Section 1: Contents

- II. – 9:101: *Terms of a contract*
- II. – 9:102: *Certain pre-contractual statements regarded as contract terms*
- II. – 9:103: *Terms not individually negotiated*
- II. – 9:104: *Determination of price*
- II. – 9:105: *Unilateral determination by a party*
- II. – 9:106: *Determination by a third person*
- II. – 9:107: *Reference to a non-existent factor*
- II. – 9:108: *Quality*
- II. – 9:109: *Language*

Section 2: Simulation

- II. – 9:201: *Effect of simulation*

Section 3: Effect of stipulation in favour of a third party

- II. – 9:301: *Basic rules*
- II. – 9:302: *Rights, remedies and defences*
- II. – 9:303: *Rejection or revocation of benefit*

Section 4: Unfair terms

- II. – 9:401: *Mandatory nature of following provisions*
- II. – 9:402: *Duty of transparency in terms not individually negotiated*
- II. – 9:403: *Meaning of "not individually negotiated"*
- II. – 9:404: *Meaning of "unfair" in contracts between a business and a consumer*
- II. – 9:405: *Meaning of "unfair" in contracts between non-business parties*
- II. – 9:406: *Meaning of "unfair" in contracts between*

Art. 9.2.2 (Exclusion)
Art. 9.2.3 (Requirement of obligee's consent to transfer)
Art. 9.2.4 (Advance consent of obligee)
Art. 9.2.5 (Discharge of old obligor)
Art. 9.2.6 (Third party performance)
Art. 9.2.7 (Defences and rights of set-off)
Art. 9.2.8 (Rights related to the obligation transferred)

Section 3: Assignment of contracts

Art. 9.3.1 (Definitions)
Art. 9.3.2 (Exclusion)
Art. 9.3.3 (Requirement of consent of the other party)
Art. 9.3.4 (Advance consent of the other party)
Art. 9.3.5 (Discharge of the assignor)
Art. 9.3.6 (Defences and rights of set-off)
Art. 9.3.7 (Rights transferred with the contract)

CHAPTER 10: LIMITATION PERIODS

Art. 10.1 (Scope of the Chapter)
Art. 10.2 (Limitation periods)
Art. 10.3 (Modification of limitation periods by the parties)
Art. 10.4 (New limitation period by acknowledgement)
Art. 10.5 (Suspension by judicial proceedings)
Art. 10.6 (Suspension by arbitral proceedings)
Art. 10.7 (Alternative dispute resolution)
Art. 10.8 (Suspension in case of force majeure, death or incapacity)
Art. 10.9 (Effects of expiration of limitation period)
Art. 10.10 (Right of set-off)
Art. 10.11 (Restitution)

businesses
II. – 9:407: Exclusions from unfairness test
II. – 9:408: Factors to be taken into account in assessing unfairness
II. – 9:409: Effects of unfair terms
II. – 9:410: Exclusive jurisdiction clauses
II. – 9:411: Terms which are presumed to be unfair in contracts between a business and a consumer

BOOK III – OBLIGATIONS AND CORRESPONDING RIGHTS

CHAPTER 1: GENERAL

III. – 1:101: Scope of Book
III. – 1:102: Definitions
III. – 1:103: Good faith and fair dealing
III. – 1:104: Co-operation
III. – 1:105: Non-discrimination
III. – 1:106: Conditional rights and obligations
III. – 1:107: Time-limited rights and obligations
III. – 1:108: Variation or termination by agreement
III. – 1:109: Variation or termination by notice
III. – 1:110: Variation or termination by court on a change of circumstances
III. – 1:111: Tacit prolongation

CHAPTER 2: PERFORMANCE

III. – 2:101: Place of performance
III. – 2:102: Time of performance
III. – 2:103: Early performance
III. – 2:104: Order of performance
III. – 2:105: Alternative obligations or methods of performance
III. – 2:106: Performance entrusted to another
III. – 2:107: Performance by a third person
III. – 2:108: Method of payment
III. – 2:109: Currency of payment
III. – 2:110: Imputation of performance
III. – 2:111: Property not accepted
III. – 2:112: Money not accepted
III. – 2:113: Costs and formalities of performance
III. – 2:114: Extinctive effect of performance

CHAPTER 3: REMEDIES FOR NON-PERFORMANCE

Section 1: General

III. – 3:101: Remedies available
III. – 3:102: Cumulation of remedies
III. – 3:103: Notice fixing additional period for performance
III. – 3:104: Excuse due to an impediment
III. – 3:105: Term excluding or restricting remedies
III. – 3:106: Notices relating to non-performance
III. – 3:107: Failure to notify non-conformity
III. – 3:108: Business unable to fulfil consumer's order by distance communication

Section 2: Cure by debtor of non-conforming performance

- III. – 3:201: *Scope*
- III. – 3:202: *Cure by debtor: general rules*
- III. – 3:203: *When creditor need not allow debtor an opportunity to cure*
- III. – 3:204: *Consequences of allowing debtor opportunity to cure*
- III. – 3:205: *Return of replaced item*

Section 3: Right to enforce performance

- III. – 3:301: *Enforcement of monetary obligations*
- III. – 3:302: *Enforcement of non-monetary obligations*
- III. – 3:303: *Damages not precluded*

Section 4: Withholding performance

- III. – 3:401: *Right to withhold performance of reciprocal obligation*

Section 5: Termination

- III. – 3:501: *Scope and definition*
- III. – 3:502: *Termination for fundamental non-performance*
- III. – 3:503: *Termination after notice fixing additional time for performance*
- III. – 3:504: *Termination for anticipated non-performance*
- III. – 3:505: *Termination for inadequate assurance of performance*

Sub-section 2: Scope, exercise and loss of right to terminate

- III. – 3:506: *Scope of right to terminate*
- III. – 3:507: *Notice of termination*
- III. – 3:508: *Loss of right to terminate*

Sub-section 3: Effects of termination

- III. – 3:509: *Effect on obligations under the contract*

Sub-section 4: Restitution

- III. – 3:510: *Restitution of benefits received by performance*
- III. – 3:511: *When restitution not required*
- III. – 3:512: *Payment of value of benefit*
- III. – 3:513: *Use and improvements*
- III. – 3:514: *Liabilities arising after time when return due*

Section 6: Price reduction

- III. – 3:601: *Right to reduce price*

Section 7: Damages and interest

- III. – 3:701: *Right to damages*
- III. – 3:702: *General measure of damages*
- III. – 3:703: *Foreseeability*
- III. – 3:704: *Loss attributable to creditor*
- III. – 3:705: *Reduction of loss*

- III. – 3:706: *Substitute transaction*
- III. – 3:707: *Current price*
- III. – 3:708: *Interest on late payments*
- III. – 3:709: *When interest to be added to capital*
- III. – 3:710: *Interest in commercial contracts*
- III. – 3:711: *Unfair terms relating to interest*
- III. – 3:712: *Stipulated payment for non-performance*
- III. – 3:713: *Currency by which damages to be measured*

CHAPTER 4: PLURALITY OF DEBTORS AND CREDITORS

Section 1: Plurality of debtors

- III. – 4:101: *Scope of Section*
- III. – 4:102: *Solidary, divided and joint obligations*
- III. – 4:103: *When different types of obligation arise*
- III. – 4:104: *Liability under divided obligations*
- III. – 4:105: *Joint obligations: special rule when money claimed for non-performance*
- III. – 4:106: *Apportionment between solidary debtors*
- III. – 4:107: *Recourse between solidary debtors*
- III. – 4:108: *Performance, set-off and merger in solidary obligations*
- III. – 4:109: *Release or settlement in solidary obligations*
- III. – 4:110: *Effect of judgment in solidary obligations*
- III. – 4:111: *Prescription in solidary obligations*
- III. – 4:112: *Opposability of other defences in solidary obligations*

Section 2: Plurality of creditors

- III. – 4:201: *Scope of section*
- III. – 4:202: *Solidary, divided and joint rights*
- III. – 4:203: *When different types of right arise*
- III. – 4:204: *Apportionment in cases of divided rights*
- III. – 4:205: *Difficulties of performing in cases of joint rights*
- III. – 4:206: *Apportionment in cases of solidary rights*
- III. – 4:207: *Regime of solidary rights*

CHAPTER 5: TRANSFER OF RIGHTS AND OBLIGATIONS

Section 1: Assignment of rights

Sub-section 1: General

- III. – 5:101: *Scope of Section*
- III. – 5:102: *Definitions*
- III. – 5:103: *Priority of provisions on proprietary securities and trusts*

Sub-section 2: Requirements for assignment

- III. – 5:104: *Basic requirements*
- III. – 5:105: *Assignability: general rule*
- III. – 5:106: *Future and unspecified rights*
- III. – 5:107: *Assignability in part*
- III. – 5:108: *Assignability: effect of contractual prohibition*
- III. – 5:109: *Assignability: rights personal to the creditor*

- III. – 5:110: *Act of assignment: formation and validity*
- III. – 5:111: *Right or authority to assign*

Sub-section 3: Undertakings by assignor

- III. – 5:112: *Undertakings by assignor*

Sub-section 4: Effects of assignment

- III. – 5:113: *New creditor*
- III. – 5:114: *When assignment takes place*
- III. – 5:115: *Rights transferred to assignee*
- III. – 5:116: *Effect on defences and rights of set-off*
- III. – 5:117: *Effect on place of performance*
- III. – 5:118: *Effect of initial invalidity, subsequent avoidance, withdrawal, termination and revocation*

Sub-section 5: Protection of debtor

- III. – 5:119: *Performance to person who is not the creditor*
- III. – 5:120: *Adequate proof of assignment*

Sub-section 6: Priority rules

- III. – 5:121: *Competition between successive assignees*
- III. – 5:122: *Competition between assignee and assignor receiving proceeds*

Section 2: Substitution and addition of debtors

- III. – 5:201: *Scope*
- III. – 5:202: *Types of substitution or addition*
- III. – 5:203: *Consent of creditor*
- III. – 5:204: *Complete substitution*
- III. – 5:205: *Effects of complete substitution on defences, set-off and security rights*
- III. – 5:206: *Incomplete substitution*
- III. – 5:207: *Effects of incomplete substitution*
- III. – 5:208: *Addition of new debtor*
- III. – 5:209: *Effects of addition of new debtor*

Section 3: Transfer of contractual position

- III. – 5:301: *Scope*
- III. – 5:302: *Transfer of contractual position*

Section 4: Transfer of rights and obligations on agent's insolvency

- III. – 5:401: *Principal's option to take over rights in case of agent's insolvency*
- III. – 5:402: *Third party's counter-option*

CHAPTER 6: SET-OFF AND MERGER

Section 1: Set-off

- III. – 6:101: *Definitions and scope*
- III. – 6:102: *Requirements for set-off*
- III. – 6:103: *Unascertained rights*
- III. – 6:104: *Foreign currency set-off*
- III. – 6:105: *Set-off by notice*
- III. – 6:106: *Two or more rights and obligations*
- III. – 6:107: *Effect of set-off*
- III. – 6:108: *Exclusion of right of set-off*

Section 2: Merger of debts

III. – 6:201: *Extinction of obligations by merger*

CHAPTER 7: PRESCRIPTION

Section 1: General provision

III. – 7:101: *Rights subject to prescription*

Section 2: Periods of prescription and their commencement

III. – 7:201: *General period*

III. – 7:202: *Period for a right established by legal proceedings*

III. – 7:203: *Commencement*

Section 3: Extension of period

III. – 7:301: *Suspension in case of ignorance*

III. – 7:302: *Suspension in case of judicial and other proceedings*

III. – 7:303: *Suspension in case of impediment beyond creditor's control*

III. – 7:304: *Postponement of expiry in case of negotiations*

III. – 7:305: *Postponement of expiry in case of incapacity*

III. – 7:306: *Postponement of expiry: deceased's estate*

III. – 7:307: *Maximum length of period*

Section 4: Renewal of period

III. – 7:401: *Renewal by acknowledgement*

III. – 7:402: *Renewal by attempted execution*

Section 5: Effects of prescription

III. – 7:501: *General effect*

III. – 7:502: *Effect on ancillary rights*

III. – 7:503: *Effect on set-off*

Section 6: Modification by agreement

III. – 7:601: *Agreements concerning prescription*

Annex – *Definitions*

Black Letter Rules

UNIDROIT Principles (2004)	DRAFT COMMON FRAME OF REFERENCE
<p>PREAMBLE <i>(Purpose of the Principles)</i></p> <p>These Principles set forth general rules for international commercial contracts. They shall be applied when the parties have agreed that their contract be governed by them.(*) They may be applied when the parties have agreed that their contract be governed by general principles of law, the <i>lex mercatoria</i> or the like. They may be applied when the parties have not chosen any law to govern their contract. They may be used to interpret or supplement international uniform law instruments. They may be used to interpret or supplement domestic law. They may serve as a model for national and international legislators.</p> <hr/> <p>(*) Parties wishing to provide that their agreement be governed by the Principles might use the following words, adding any desired exceptions or modifications: "This contract shall be governed by the UNIDROIT Principles (2004) [except as to Articles ...]". Parties wishing to provide in addition for the application of the law of a particular jurisdiction might use the following words: "This contract shall be governed by the UNIDROIT Principles (2004) [except as to Articles...], supplemented when necessary by the law of [jurisdiction X]."</p>	<p>I. – 1:101: Intended field of application</p> <p>(1) These rules are intended to be used primarily in relation to contractual and non-contractual rights and obligations and related property matters. (2) [...] (3) [...]</p>
	<p>II. – 1:101: Definitions – Meaning of “contract” and “judicial act”</p> <p>(1) A contract is an agreement which is intended to give rise to a binding legal relationship or to have some other legal effect. It is a bilateral or multilateral juridical act. (2) A juridical act is any statement or agreement, whether express or implied from conduct, which is intended to have legal effect as such. It may be unilateral, bilateral or multilateral.</p>
<p>CHAPTER 1 – GENERAL PROVISIONS</p> <p>Article 1.1 <i>(Freedom of contract)</i></p> <p>The parties are free to enter into a contract and to determine its content.</p>	<p>II. – 1:102: Party autonomy</p> <p>(1) Parties are free to make a contract or other juridical act and to determine its contents [...]. (2) [...] (3) [...]</p>

<p>Article 1.2 (<i>No form required</i>)</p> <p>Nothing in these Principles requires a contract, statement or any other act to be made in or evidenced by a particular form. It may be proved by any means, including witnesses.</p>	<p>II. – 1:106: Form</p> <p>(1) A contract or other juridical act need not be concluded, made or evidenced in writing nor is it subject to any other requirement as to form. (2) Where a contract or other juridical act is invalid only by reason of non-compliance with a particular requirement as to form, one party (the first party) is liable for any loss suffered by the other (the second party) by acting in the mistaken, but reasonable, belief that it was valid if the first party: (a) knew it was invalid; (b) knew or could reasonably be expected to know that the second party was acting to that party's potential prejudice in the mistaken belief that it was valid; and (c) contrary to good faith and fair dealing, allowed the second party to continue so acting.</p>
<p>Article 1.3 (<i>Binding character of contract</i>)</p> <p>A contract validly entered into is binding upon the parties. It can only be modified or terminated in accordance with its terms or by agreement or as otherwise provided in these Principles.</p>	<p>II. – 1:103: Binding effect</p> <p>(1) A valid contract is binding on the parties. (2) A valid unilateral undertaking is binding on the person giving it if it is intended to be legally binding without acceptance. (3) This Article does not prevent modification or termination of any resulting right or obligation by agreement between the debtor and creditor or as provided by law.</p>
<p>Article 1.4 (<i>Mandatory rules</i>)</p> <p>Nothing in these Principles shall restrict the application of mandatory rules, whether of national, international or supranational origin, which are applicable in accordance with the relevant rules of private international law.</p>	<p>II. – 1:102: Party autonomy</p> <p>(1) Parties are free to make a contract or other juridical act and to determine its contents, subject to any applicable mandatory rules. (2) [...] (3) [...]</p>
<p>Article 1.5 (<i>Exclusion or modification by the parties</i>)</p> <p>The parties may exclude the application of these Principles or derogate from or vary the effect of any of their provisions, except as otherwise provided in the Principles.</p>	<p>II. – 1:102: Party autonomy</p> <p>(1) [...] (2) Parties may exclude the application of any of the following rules relating to contracts or other juridical acts, or the rights and obligations arising from them, or derogate from or vary their effects, except as otherwise provided. (3) [...]</p>
<p>Article 1.6 (<i>Interpretation and supplementation of the Principles</i>)</p> <p>(1) In the interpretation of these Principles, regard is to be had to their international character and to their purposes including the need to promote uniformity in their application. (2) Issues within the scope of these Principles but not expressly settled by them are as far as possible to be</p>	<p>I. – 1:102: Interpretation and development</p> <p>(1) These rules are to be interpreted and developed autonomously and in accordance with their objectives and the principles underlying them. (2) They are to be read in the light of any applicable instruments guaranteeing human rights and fundamental freedoms and any applicable constitutional laws.</p>

<p>settled in accordance with their underlying general principles.</p>	<p>(3) In their interpretation and development regard should be had to the need to promote: (a) uniformity of application; (b) good faith and fair dealing; and (c) legal certainty. (4) Issues within the scope of the rules but not expressly settled by them are so far as possible to be settled in accordance with the principles underlying them. (5) Where there is a general rule and a special rule applying to a particular situation within the scope of the general rule, the special rule prevails in any case of conflict.</p>
<p>Article 1.7 (Good faith and fair dealing)</p> <p>(1) Each party must act in accordance with good faith and fair dealing in international trade.</p> <p>(2) The parties may not exclude or limit this duty.</p>	<p>I. – 1:103: Good faith and fair dealing</p> <p>(1) The expression “good faith and fair dealing” refers to a standard of conduct characterised by honesty, openness and consideration for the interests of the other party to the transaction or relationship in question. (2) [...]</p> <p>III. – 1:103: Good faith and fair dealing</p> <p>(1) A person has a duty to act in accordance with good faith and fair dealing in performing an obligation, in exercising a right to performance, in pursuing or defending a remedy for non-performance, or in exercising a right to terminate an obligation or contractual relationship. (2) The duty may not be excluded or limited by contract. (3) Breach of the duty does not give rise directly to the remedies for non-performance of an obligation but may preclude the person in breach from exercising or relying on a right, remedy or defence which that person would otherwise have.</p>
<p>Article 1.8 (Inconsistent Behaviour)</p> <p>A party cannot act inconsistently with an understanding it has caused the other party to have and upon which that other party reasonably has acted in reliance to its detriment.</p>	<p>I. – 1:103: Good faith and fair dealing</p> <p>(1) [...] (2) It is, in particular, contrary to good faith and fair dealing for a party to act inconsistently with that party’s prior statements or conduct when the other party has reasonably relied on them to that other party’s detriment.</p>
<p>Article 1.9 (Usages and practices)</p> <p>(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves. (2) The parties are bound by a usage that is widely known to and regularly observed in international trade by parties in the particular trade concerned except where the application of such a usage would be unreasonable.</p>	<p>II. – 1:104: Usages and practices</p> <p>(1) The parties to a contract are bound by any usage to which they have agreed and by any practice they have established between themselves. (2) The parties are bound by a usage which would be considered generally applicable by persons in the same situation as the parties, except where the application of such usage would be unreasonable. (3) [...]</p>

<p>Article 1.10 (<i>Notice</i>)</p> <p>(1) Where notice is required it may be given by any means appropriate to the circumstances.</p> <p>(2) A notice is effective when it reaches the person to whom it is given.</p> <p>(3) For the purpose of paragraph (2) a notice “reaches” a person when given to that person orally or delivered at that person’s place of business or mailing address.</p> <p>(4) For the purpose of this Article “notice” includes a declaration, demand, request or any other communication of intention.</p>	<p>I. – 1:109: Notice</p> <p>(1) This Article applies in relation to the giving of notice for any purpose under these rules. “Notice” includes the communication of information or of a juridical act.</p> <p>(2) The notice may be given by any means appropriate to the circumstances.</p> <p>(3) The notice becomes effective when it reaches the addressee, unless it provides for a delayed effect.</p> <p>(4) The notice reaches the addressee:</p> <p>(a) when it is delivered to the addressee;</p> <p>(b) when it is delivered to the addressee’s place of business, or, where there is no such place of business or the notice does not relate to a business matter, to the addressee’s habitual residence;</p> <p>(c) in the case of a notice transmitted by electronic means, when it can be accessed by the addressee; or</p> <p>(d) when it is otherwise made available to the addressee at such a place and in such a way that the addressee could reasonably be expected to obtain access to it without undue delay.</p> <p>(5) The notice has no effect if a revocation of it reaches the addressee before or at the same time as the notice.</p> <p>(6) Any reference in these rules to a notice given by or to a person includes a notice given by or to a representative of that person who has authority to give or receive it.</p> <p>(7) In relations between a business and a consumer the parties may not, to the detriment of the consumer, exclude the rule in paragraph (4)(c) or derogate from or vary its effects.</p>
<p>Article 1.11 (<i>Definitions</i>)</p> <p>In these Principles</p> <p>– “court” includes an arbitral tribunal;</p> <p>– where a party has more than one place of business the relevant “place of business” is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;</p> <p>– “obligor” refers to the party who is to perform an obligation and “obligee” refers to the party who is entitled to performance of that obligation.</p>	<p>Annex – Definitions</p> <p>“Court” includes an arbitral tribunal</p> <p>III. – 2:101: Place of performance</p> <p>(1) [...]</p> <p>(2) For the purposes of the preceding paragraph:</p> <p>(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the obligation; and</p> <p>(b) if a party does not have a place of business, or the obligation does not relate to a business matter, the habitual residence is substituted.</p> <p>Annex – Definitions</p> <p>A “debtor” is a person who has an obligation, whether monetary or non-monetary, to another person, the creditor.</p>

<p>– “writing” means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form.</p>	<p>A “creditor” is a person who has a right to performance of an obligation, whether monetary or non-monetary by another person, the debtor</p> <p>I. – 1:106: Meaning of “in writing” and similar expressions</p> <p>(1) For the purposes of these rules, a statement is “in writing” if it is in textual form and in characters which are directly legible from paper or another tangible durable medium.</p> <p>(2) “Textual form” means a text which is expressed in alphabetical or other intelligible characters by means of any support which permits reading, recording of the information contained in the text and its reproduction in tangible form.</p> <p>(3) “Durable medium” means any material on which information is stored so that it is accessible for future reference for a period of time adequate to the purposes of the information, and which allows the unchanged reproduction of this information.</p>
	<p>I. – 1:104: Reasonableness</p> <p>Reasonableness is to be objectively ascertained, having regard to the nature and purpose of what is being done, to the circumstances of the case and to any relevant usages and practices.</p> <p>Annex – Definitions</p> <p>What is “reasonable” is to be objectively ascertained, having regard to the nature and purpose of what is being done, to the circumstances of the case and to any relevant usages and practices.</p>
	<p>I. – 1:105: “Consumer” and “business”</p> <p>(1) A “consumer” means any natural person who is acting primarily for purposes which are not related to his or her trade, business or profession.</p> <p>(2) A “business” means any natural or legal person, irrespective of whether publicly or privately owned, who is acting for purposes relating to the person’s self-employed trade, work or profession, even if the person does not intend to make a profit in the course of the activity.</p> <p>(3) A person who is within both of the preceding paragraphs is regarded as falling exclusively within paragraph (1) in relation to a rule which would provide protection for that person if that person were a consumer, and otherwise as falling exclusively within paragraph (2).</p>
	<p>I. – 1:107: “Signature” and similar expressions</p> <p>(1) A reference to a person’s signature includes a reference to that person’s handwritten signature,</p>

	<p>electronic signature or advanced electronic signature, and references to anything being signed by a person are to be construed accordingly.</p> <p>(2) A “handwritten signature” means the name of, or sign representing, a person written by that person’s own hand for the purpose of authentication.</p> <p>(3) An “electronic signature” means data in electronic form which are attached to or logically associated with other electronic data, and which serve as a method of authentication.</p> <p>(4) An “advanced electronic signature” means an electronic signature which is:</p> <ul style="list-style-type: none"> (a) uniquely linked to the signatory; (b) capable of identifying the signatory; (c) created using means which can be maintained under the signatory’s sole control; and (d) linked to the data to which it relates in such a manner that any subsequent change of the data is detectable. <p>(5) In this Article, “electronic” means relating to technology with electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.</p>
	<p>II. – 1:105: Imputed knowledge etc.</p> <p>If any person who with a party’s assent was involved in making a contract or other juridical act or in exercising a right or performing an obligation under it:</p> <ul style="list-style-type: none"> (a) knew or foresaw a fact, or is treated as having knowledge or foresight of a fact; or (b) acted intentionally or with any other relevant state of mind this knowledge, foresight or state of mind is imputed to the party.
<p>Article 1.12 (Computation of time set by parties)</p> <p>(1) Official holidays or non-business days occurring during a period set by parties for an act to be performed are included in calculating the period.</p> <p>(2) However, if the last day of the period is an official holiday or a non-business day at the place of business of the party to perform the act, the period is extended until the first business day which follows, unless the circumstances indicate otherwise.</p>	<p>I. – 1:110: Computation of time</p> <p>(1) The provisions of this Article apply in relation to the computation of time for any purpose under these rules.</p> <p>(2) Subject to the following provisions of this Article:</p> <ul style="list-style-type: none"> (a) a period expressed in hours starts at the beginning of the first hour and ends with the expiry of the last hour of the period; (b) a period expressed in days starts at the beginning of the first hour of the first day and ends with the expiry of the last hour of the last day of the period; (c) a period expressed in weeks, months or years starts at the beginning of the first hour of the first day of the period, and ends with the expiry of the last hour of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day from which the period runs; with the qualification that if, in a period expressed in months or in years, the

<p>(3) The relevant time zone is that of the place of business of the party setting the time, unless the circumstances indicate otherwise.</p>	<p>day on which the period should expire does not occur in the last month, it ends with the expiry if the last hour of the last day of that month;</p> <p>(d) if a period includes part of a month, the month is considered to have thirty days for the purpose of calculating the length of the part.</p> <p>(3) Where a period is to be calculated from a specified event or action, then:</p> <p>(a) if the period is expressed in hours, the hour during which the event occurs or the action takes place is not considered to fall within the period in question; and</p> <p>(b) if the period is expressed in days, weeks, months or years, the day during which the event occurs or the action takes place is not considered to fall within the period in question.</p> <p>(4) Where a period is to be calculated from a specified time, then:</p> <p>(a) if the period is expressed in hours, the first hour of the period is considered to begin at the specified time; and</p> <p>(b) if the period is expressed in days, weeks, months or years, the day during which the specified time arrives is not considered to fall within the period in question.</p> <p>(5) The periods concerned include Saturdays, Sundays and public holidays, save where these are expressly excepted or where the periods are expressed in working days.</p> <p>(6) Where the last day of a period expressed otherwise than in hours is a Saturday, Sunday or public holiday at the place where a prescribed act is to be done, the period ends with the expiry of the last hour of the following working day. This provision does not apply to periods calculated retroactively from a given date or event.</p> <p>(7) Any period of two days or more is regarded as including at least two working days.</p> <p>(8) [...]</p> <p>(9) In this Article:</p> <p>(a) “public holiday” with reference to a member state, or part of a member state, of the European Union means any day designated as such for that state or part in a list published in the official journal; and</p> <p>(b) “working days” means all days other than Saturdays, Sundays and public holidays.</p>
<p>[...]</p>	<p>II. – 1:107: Mixed contracts</p> <p>(1) For the purposes of this Article a mixed contract is a contract which contains:</p> <p>(a) parts falling within two or more of the categories</p>

	<p>of contracts regulated specifically in these rules; or (b) a part falling within one such category and another part falling within the category of contracts governed only by the rules applicable to contracts generally.</p> <p>(2) Where a contract is a mixed contract then, unless this is contrary to the nature and purpose of the contract, the rules applicable to each relevant category apply, with any appropriate adaptations, to the corresponding part of the contract and the rights and obligations arising from it.</p> <p>(3) Paragraph (2) does not apply where: (a) a rule provides that a mixed contract is to be regarded as falling primarily within one category; or (b) in a case not covered by the preceding sub-paragraph, one part of a mixed contract is in fact so predominant that it would be unreasonable not to regard the contract as falling primarily within one category.</p> <p>(4) In cases covered by paragraph (3) the rules applicable to the category into which the contract primarily falls (the primary category) apply to the contract and the rights and obligations arising from it. However, rules applicable to any elements of the contract falling within another category apply with any appropriate adaptations so far as is necessary to regulate those elements and provided that they do not conflict with the rules applicable to the primary category.</p> <p>(5) Nothing in this Article prevents the application of any mandatory rules.</p>
<p>V. <i>infra</i>: Article 3.16</p>	<p>II. – 1:108: Partial invalidity or ineffectiveness</p> <p>Where only part of a contract or other juridical act is invalid or ineffective, the remaining part continues in effect if it can reasonably be maintained without the invalid or ineffective part.</p>
	<p>II. – 2:101: Right not to be discriminated against</p> <p>A person has a right not to be discriminated against on the grounds of sex or ethnic or racial origin in relation to a contract or other juridical act the object of which is to provide access to, or supply, goods, other assets or services which are available to the public.</p>
	<p>II. – 2:102: Meaning of discrimination</p> <p>(1) “Discrimination” means any conduct whereby, or situation where, on grounds such as those mentioned in the preceding Article: (a) one person is treated less favourably than another person is, has been or would be treated in a comparable situation; or (b) an apparently neutral provision, criterion or practice would place one group of persons at a particular</p>

	<p>disadvantage when compared to a different group of persons.</p> <p>(2) Discrimination also includes harassment on grounds such as those mentioned in the preceding Article. "Harassment" means unwanted conduct (including conduct of a sexual nature) which violates a person's dignity, particularly when such conduct creates an intimidating, hostile, degrading, humiliating or offensive environment, or which aims to do so.</p> <p>(3) Any instruction to discriminate also amounts to discrimination.</p>
	<p>II. – 2:103: Exception</p> <p>Unequal treatment which is justified by a legitimate aim does not amount to discrimination if the means used to achieve that aim are appropriate and necessary.</p>
	<p>II. – 2:104: Remedies</p> <p>(1) If a person is discriminated against contrary to II. – 2:101 (Right not to be discriminated against) then, without prejudice to any remedy which may be available under Book VI (Non-contractual liability for damage caused to another), the remedies for non-performance of an obligation under Book III, Chapter 3 (including damages for economic and non-economic loss) are available.</p> <p>(2) Any remedy granted must be proportionate to the injury or anticipated injury; the dissuasive effect of remedies may be taken into account.</p>
	<p>II. – 2:105: Burden of proof</p> <p>(1) If a person who considers himself or herself discriminated against on one of the grounds mentioned in II. – 2:101 (Right not to be discriminated against) establishes, before a court or another competent authority, facts from which it may be presumed that there has been such discrimination, it falls on the other party to prove that there has been no such discrimination.</p> <p>(2) Paragraph (1) does not apply to proceedings in which it is for the court or another competent authority to investigate the facts of the case.</p>
	<p>II. – 3:101: Duty to disclose information about goods, other assets and services</p> <p>(1) Before the conclusion of a contract for the supply of goods, other assets or services by a business to another person, the business has a duty to disclose to the other person such information concerning the goods or services to be supplied as the other person can reasonably expect, taking into account the standards of quality and performance which would</p>

	<p>be normal under the circumstances. (2) In assessing what information the other party can reasonably expect to be disclosed, the test to be applied, if the other party is also a business, is whether the failure to provide the information would deviate from good commercial practice.</p>
	<p>II. – 3:102: Specific duties for businesses marketing goods or services to consumers</p> <p>(1) Where a business is marketing goods, other assets or services to a consumer, the business has a duty not to give misleading information. Information is misleading if it misrepresents or omits material facts which the average consumer could expect to be given for an informed decision on whether to take steps towards the conclusion of a contract. In assessing what an average consumer could expect to be given, account is to be taken of all the circumstances and of the limitations of the communication medium employed.</p> <p>(2) Where a business uses a commercial communication which gives the impression to consumers that it contains all the relevant information necessary to make a decision about concluding a contract, the business has a duty to ensure that the communication in fact contains all the relevant information. Where it is not already apparent from the context of the commercial communication, the information to be provided comprises:</p> <ul style="list-style-type: none"> (a) the main characteristics of the goods, other assets or services, the identity and address, if relevant, of the business, the price, and any available right of withdrawal; (b) peculiarities related to payment, delivery, performance and complaint handling, if they depart from the requirements of professional diligence; and (c) the language to be used for communications between the parties after the conclusion of the contract, if this differs from the language of the commercial communication. <p>(3) A duty to provide information under this Art. is not fulfilled unless all the information to be provided is provided in the same language.</p>
	<p>II. – 3:103: Duty to provide information when concluding contract with a consumer who is at a particular disadvantage</p> <p>(1) In the case of transactions that place the consumer at a significant informational disadvantage because of the technical medium used for contracting, the physical distance between business and consumer, or the nature of the transaction, the</p>

	<p>business has a duty, as appropriate in the circumstances, to provide clear information about the main characteristics of any goods, other assets or services to be supplied, the price, the address and identity of the business with which the consumer is transacting, the terms of the contract, the rights and obligations of both contracting parties, and any available right of withdrawal or redress procedures. This information must be provided a reasonable time before the conclusion of the contract. The information on the right of withdrawal must, as appropriate in the circumstances, also be adequate in the sense of II. – 5:104 (Adequate information on the right to withdraw).</p> <p>(2) Where more specific information duties are provided for specific situations, these take precedence over the general information duty under paragraph (1).</p> <p>(3) The business bears the burden of proof that it has provided the information required by this Article.</p>
	<p>II. – 3:104: Information duties in direct and immediate distance communication</p> <p>(1) When initiating real time distance communication with a consumer, a business has a duty to provide at the outset explicit information on its name and the commercial purpose of the contact.</p> <p>(2) Real time distance communication means direct and immediate distance communication of such a type that one party can interrupt the other in the course of the communication. It includes telephone and electronic means such as voice over internet protocol and internet related chat, but does not include communication by electronic mail.</p> <p>(3) The business bears the burden of proof that the consumer has received the information required under paragraph (1).</p> <p>(4) If a business has failed to comply with the duty under paragraph (1) and a contract has been concluded as a result of the communication, the other party has a right to withdraw from the contract by giving notice to the business within the period specified in II. – 5:103 (Withdrawal period).</p> <p>(5) A business is liable to the consumer for any loss caused by a breach of the duty under paragraph (1).</p>
	<p>II. – 3:105: Formation by electronic means</p> <p>(1) If a contract is to be concluded by electronic means and without individual communication, a business has a duty to provide information about the following matters before the other party makes or accepts an offer:</p> <p>(a) the technical steps to be taken in order to conclude the contract;</p>

	<p>(b) whether or not a contract document will be filed by the business and whether it will be accessible;</p> <p>(c) the technical means for identifying and correcting input errors before the other party makes or accepts an offer;</p> <p>(d) the languages offered for the conclusion of the contract;</p> <p>(e) any contract terms used.</p> <p>(2) The business has a duty to ensure that the contract terms referred to in paragraph (1)(e) are available in textual form.</p> <p>(3) If a business has failed to comply with the duty under paragraph (1) and a contract has been concluded in the circumstances there stated, the other party has a right to withdraw from the contract by giving notice to the business within the period specified in II. – 5:103 (Withdrawal period).</p> <p>(4) A business is liable to the consumer for any loss caused by a breach of the duty under paragraph (1).</p>
	<p>II. – 3:106: Clarity and form of information</p> <p>(1) A duty to provide information imposed on a business under this Chapter is not fulfilled unless the requirements of this Art. are satisfied.</p> <p>(2) The information must be clear and precise, and expressed in plain and intelligible language.</p> <p>(3) Where rules for specific contracts require information to be provided on a durable medium or in another particular form it must be provided in that way.</p> <p>(4) In the case of contracts between a business and a consumer concluded at a distance, information about the main characteristics of any goods, other assets or services to be supplied, the price, the address and identity of the business with which the consumer is transacting, the terms of the contract, the rights and obligations of both contracting parties, and any available redress procedures, as may be appropriate in the particular case, must be confirmed in textual form on a durable medium at the time of conclusion of the contract. The information on the right of withdrawal must also be adequate in the sense of II. – 5:104 (Adequate information on the right to withdraw).</p>
	<p>II. – 3:107: Information about price and additional charges</p> <p>Where under this Chapter a business has a duty to provide information about price, the duty is not fulfilled unless what is provided:</p> <p>(a) includes information about any deposits payable, delivery charges and any additional taxes and duties where these may be indicated separately;</p>

	<p>(b) if an exact price cannot be indicated, gives such information on the basis for the calculation as will enable the consumer to verify the price; and (c) if the price is not payable in one sum, includes information about the payment schedule.</p>
	<p>II. – 3:108: Information about address and identity of business</p> <p>(1) Where under this Chapter a business has a duty to provide information about its address and identity, the duty is not fulfilled unless the information includes:</p> <ul style="list-style-type: none"> (a) the name of the business; (b) any trading names relevant to the contract in question; (c) the registration number in any official register, and the name of that register; (d) the geographical address of the business; (e) contact details; (f) where the business has a representative in the consumer’s state of residence, the address and identity of that representative; (g) where the activity of the business is subject to an authorisation scheme, the particulars of the relevant supervisory authority; and (h) where the business exercises an activity which is subject to VAT, the relevant VAT identification number. <p>(2) For the purpose of II. – 3:103 (Duty to provide information when concluding a contract with a consumer who is at a particular disadvantage), the address and identity of the business include only the information indicated in paragraph (1)(a), (c), (d) and (e).</p>
	<p>II. – 3:109: Remedies for breach of information duties</p> <p>(1) If a business has a duty under II. – 3:103 (Duty to provide information when concluding contract with a consumer who is at a particular disadvantage) to provide information to a consumer before the conclusion of a contract from which the consumer has the right to withdraw, the withdrawal period does not commence until all this information has been provided. Regardless of this, the right of withdrawal lapses after one year from the time of the conclusion of the contract.</p> <p>(2) If a business has failed to comply with any duty imposed by the preceding Articles of this Section and a contract has been concluded, the business has such obligations under the contract as the other party has reasonably expected as a consequence of the absence or incorrectness of the information. Remedies provided under Book III, Chapter 3 apply to non-performance of these obligations.</p>

	<p>(3) Whether or not a contract is concluded, a business which has failed to comply with any duty imposed by the preceding Articles of this Section is liable for any loss caused to the other party to the transaction by such failure. This paragraph does not apply to the extent that a remedy is available for non-performance of a contractual obligation under the preceding paragraph.</p> <p>(4) The remedies provided under this Art. are without prejudice to any remedy which may be available under II. – 7:201 (Mistake).</p> <p>(5) In relations between a business and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.</p>
	<p>II. – 3:201: Correction of input errors</p> <p>(1) A business which intends to conclude a contract by making available electronic means without individual communication for concluding it has a duty to make available to the other party appropriate, effective and accessible technical means for identifying and correcting input errors before the other party makes or accepts an offer.</p> <p>(2) Where a person concludes a contract in error because of a failure by a business to comply with the duty under paragraph (1) the business is liable for any loss caused to that person by such failure. This is without prejudice to any remedy which may be available under II. – 7:201 (Mistake).</p> <p>(3) In relations between a business and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.</p>
	<p>II. – 3:202: Acknowledgement of receipt</p> <p>(1) A business which offers the facility to conclude a contract by electronic means and without individual communication has a duty to acknowledge by electronic means the receipt of an offer or an acceptance by the other party.</p> <p>(2) If the other party does not receive the acknowledgement without undue delay, that other party may revoke the offer or withdraw from the contract.</p> <p>(3) The business is liable for any loss caused to the other party by a breach of the duty under paragraph (1).</p> <p>(4) In relations between a business and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.</p>

	<p>II. – 3:401 <i>No obligation arising from failure to respond</i></p> <p>(1) If a business delivers unsolicited goods to, or performs unsolicited services for, a consumer: (a) no contract arises from the consumer’s failure to respond or from any other action or inaction by the consumer in relation to the goods and services; and (b) no non-contractual obligation arises from the consumer’s acquisition, retention, rejection or use of the goods or receipt of benefit from the services. (2) Sub-paragraph (b) of the preceding paragraph does not apply if the goods or services were supplied: (a) by way of benevolent intervention in another’s affairs; or (b) in error or in such other circumstances that there is a right to reversal of an unjustified enrichment. (3) This Article is subject to the rules on delivery of excess quantity under a contract for the sale of goods.</p>
<p>CHAPTER 2 – FORMATION AND AUTHORITY OF AGENTS</p> <p>Section 1: Formation</p> <p>Article 2.1.1 <i>(Manner of formation)</i></p> <p>A contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.</p>	<p>II. – 4:101: <i>Requirements for the conclusion of a contract</i></p> <p>A contract is concluded, without any further requirement, if the parties: (a) intend to enter into a binding legal relationship or bring about some other legal effect; and (b) reach a sufficient agreement.</p>
	<p>II. – 4:102: <i>How intention is determined</i></p> <p>The intention of a party to enter into a binding legal relationship or bring about some other legal effect is to be determined from the party’s statements or conduct as they were reasonably understood by the other party.</p>
	<p>II. – 4:103: <i>Sufficient agreement</i></p> <p>(1) Agreement is sufficient if: (a) the terms of the contract have been sufficiently defined by the parties for the contract to be given effect; or (b) the terms of the contract, or the rights and obligations of the parties under it, can be otherwise sufficiently determined for the contract to be given effect. (2) [...]</p>

	<p>II. – 4:211: Contracts not concluded through offer and acceptance</p> <p>The rules in this Section apply with appropriate adaptations even though the process of conclusion of a contract cannot be analysed into offer and acceptance.</p>
	<p>II. – 1:103: Binding effect</p> <p>(1) [...]</p> <p>(2) A valid unilateral promise or undertaking is binding on the person giving it if it is intended to be legally binding without acceptance.</p> <p>(3) [...]</p>
<p>Article 2.1.2 (Definition of offer)</p> <p>A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance.</p>	<p>II. – 4:201: Offer</p> <p>(1) A proposal amounts to an offer if:</p> <p>(a) it is intended to result in a contract if the other party accepts it; and</p> <p>(b) it contains sufficiently definite terms to form a contract.</p> <p>(2) An offer may be made to one or more specific persons or to the public.</p> <p>(3) A proposal to supply goods from stock, or a service, at a stated price made by a business in a public advertisement or a catalogue, or by a display of goods, is treated, unless the circumstances indicate otherwise, as an offer to supply at that price until the stock of goods, or the business's capacity to supply the service, is exhausted.</p>
<p>Article 2.1.3 (Withdrawal of offer)</p> <p>(1) An offer becomes effective when it reaches the offeree.</p> <p>(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.</p>	
<p>Article 2.1.4 (Revocation of offer)</p> <p>(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before it has dispatched an acceptance.</p> <p>(2) However, an offer cannot be revoked</p> <p>(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or</p> <p>(b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.</p>	<p>II. – 4:202: Revocation of offer</p> <p>(1) An offer may be revoked if the revocation reaches the offeree before the offeree has dispatched an acceptance or, in cases of acceptance by conduct, before the contract has been concluded.</p> <p>(2) An offer made to the public can be revoked by the same means as were used to make the offer.</p> <p>(3) However, a revocation of an offer is ineffective if:</p> <p>(a) the offer indicates that it is irrevocable;</p> <p>(b) the offer states a fixed time for its acceptance; or</p> <p>(c) it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.</p>

<p>Article 2.1.5 (<i>Rejection of offer</i>)</p> <p>An offer is terminated when a rejection reaches the offeror.</p>	<p>II. – 4:203: Rejection of offer</p> <p>When a rejection of an offer reaches the offeror, the offer lapses.</p>
<p>Article 2.1.6 (<i>Mode of acceptance</i>)</p> <p>(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.</p> <p>(2) An acceptance of an offer becomes effective when the indication of assent reaches the offeror.</p> <p>(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act without notice to the offeror, the acceptance is effective when the act is performed.</p>	<p>II. – 4:204: Acceptance</p> <p>(1) Any form of statement or conduct by the offeree is an acceptance if it indicates assent to the offer.</p> <p>(2) Silence or inactivity does not in itself amount to acceptance.</p> <p>II. – 4:205: Time of conclusion of the contract</p> <p>(1) If an acceptance has been dispatched by the offeree the contract is concluded when the acceptance reaches the offeror.</p> <p>(2) In the case of acceptance by conduct, the contract is concluded when notice of the conduct reaches the offeror.</p> <p>(3) If by virtue of the offer, of practices which the parties have established between themselves, or of a usage, the offeree may accept the offer by doing an act without notice to the offeror, the contract is concluded when the offeree begins to do the act.</p>
<p>Article 2.1.7 (<i>Time of acceptance</i>)</p> <p>An offer must be accepted within the time the offeror has fixed or, if no time is fixed, within a reasonable time having regard to the circumstances, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.</p>	<p>II. – 4:206: Time limit for acceptance</p> <p>(1) An acceptance of an offer is effective only if it reaches the offeror within the time fixed by the offeror.</p> <p>(2) If no time has been fixed by the offeror the acceptance is effective only if it reaches the offeror within a reasonable time.</p> <p>(3) Where an offer may be accepted by performing an act without notice to the offeror, the acceptance is effective only if the act is performed within the time for acceptance fixed by the offeror or, if no such time is fixed, within a reasonable time.</p>
<p>Article 2.1.8 (<i>Acceptance within a fixed period of time</i>)</p> <p>A period of acceptance fixed by the offeror begins to run from the time that the offer is dispatched. A time indicated in the offer is deemed to be the time of dispatch unless the circumstances indicate otherwise.</p>	<p>I. – 1:110: Computation of time</p> <p>(1) The provisions of this Article apply in relation to the computation of time for any purpose under these rules.</p> <p>(2) [...]</p> <p>(3) [...]</p> <p>(4) [...]</p> <p>(5) [...]</p> <p>(6) [...]</p> <p>(7) [...]</p> <p>(8) Where a person sends another person a document which sets a period of time within which</p>

	<p>the addressee has to reply or take other action but does not state when the period is to begin, then, in the absence of indications to the contrary, the period is calculated from the date stated as the date of the document or, if no date is stated, from the moment the document reaches the addressee.</p> <p>(9) [...]</p>
<p>Article 2.1.9 (<i>Late acceptance. Delay in transmission</i>)</p> <p>(1) A late acceptance is nevertheless effective as an acceptance if without undue delay the offeror so informs the offeree or gives notice to that effect.</p> <p>(2) If a communication containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without undue delay, the offeror informs the offeree that it considers the offer as having lapsed.</p>	<p>II. – 4:207: Late acceptance</p> <p>(1) A late acceptance is nonetheless effective as an acceptance if without undue delay the offeror informs the offeree that it is treated as an effective acceptance.</p> <p>(2) If a letter or other communication containing a late acceptance shows that it has been dispatched in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without undue delay, the offeror informs the offeree that the offer is considered to have lapsed.</p>
<p>Article 2.1.10 (<i>Withdrawal of acceptance</i>)</p> <p>An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.</p>	
<p>Article 2.1.11 (<i>Modified acceptance</i>)</p> <p>(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.</p> <p>(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects to the discrepancy. If the offeror does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.</p>	<p>II. – 4:208: Modified acceptance</p> <p>(1) A reply by the offeree which states or implies additional or different terms which materially alter the terms of the offer is a rejection and a new offer.</p> <p>(2) A reply which gives a definite assent to an offer operates as an acceptance even if it states or implies additional or different terms, provided these do not materially alter the terms of the offer. The additional or different terms then become part of the contract.</p> <p>(3) However, such a reply is treated as a rejection of the offer if:</p> <p>(a) the offer expressly limits acceptance to the terms of the offer;</p> <p>(b) the offeror objects to the additional or different terms without undue delay; or</p> <p>(c) the offeree makes the acceptance conditional upon the offeror's assent to the additional or different terms, and the assent does not reach the offeree within a reasonable time.</p>
<p>Article 2.1.12 (<i>Writings in confirmation</i>)</p> <p>If a writing which is sent within a reasonable time after the conclusion of the contract and which purports to be a confirmation of the contract contains additional or different terms, such terms become part of the contract, unless they materially</p>	<p>II. – 4:210: Formal confirmation of contract between businesses</p> <p>If businesses have concluded a contract but have not embodied it in a final document, and one without undue delay sends the other a notice in textual form on a durable medium which purports to be a confirmation of the contract but which contains</p>

<p>alter the contract or the recipient, without undue delay, objects to the discrepancy.</p>	<p>additional or different terms, such terms become part of the contract unless: (a) the terms materially alter the terms of the contract; or (b) the addressee objects to them without undue delay.</p>
<p>Article 2.1.13 (<i>Conclusion of contract dependent on agreement on specific matters or in a particular form</i>) Where in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a particular form, no contract is concluded before agreement is reached on those matters or in that form.</p>	<p>II. – 4:103: Sufficient agreement (1) [...] (2) If one of the parties refuses to conclude a contract unless the parties have agreed on some specific matter, there is no contract unless agreement on that matter has been reached.</p>
<p>Article 2.1.14 (<i>Contract with terms deliberately left open</i>) (1) If the parties intend to conclude a contract, the fact that they intentionally leave a term to be agreed upon in further negotiations or to be determined by a third person does not prevent a contract from coming into existence. (2) The existence of the contract is not affected by the fact that subsequently (a) the parties reach no agreement on the term; or (b) the third person does not determine the term, provided that there is an alternative means of rendering the term definite that is reasonable in the circumstances, having regard to the intention of the parties.</p>	<p>II. – 9:101: Terms of a contract (1) [...] (2) [...] (3) [...] (4) Paragraph (2) does not apply if the parties have deliberately left a matter unprovided for, accepting the consequences of so doing.</p>
<p>Article 2.1.15 (<i>Negotiations in bad faith</i>) (1) A party is free to negotiate and is not liable for failure to reach an agreement. (2) However, a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party. (3) It is bad faith, in particular, for a party to enter into or continue negotiations when intending not to reach an agreement with the other party.</p>	<p>II. – 3:301: Negotiations contrary to good faith and fair dealing (1) A person is free to negotiate and is not liable for failure to reach an agreement. (2) A person who is engaged in negotiations has a duty to negotiate in accordance with good faith and fair dealing and not to break off negotiations contrary to good faith and fair dealing. This duty may not be excluded or limited by contract. (3) A person who is in breach of the duty is liable for any loss caused to the other party by the breach. (4) It is contrary to good faith and fair dealing, in particular, for a person to enter into or continue negotiations with no real intention of reaching an agreement with the other party.</p>
<p>Article 2.1.16 (<i>Duty of confidentiality</i>) Where information is given as confidential by one party in the course of negotiations, the other party is under a duty not to disclose that information or to use it improperly for its own purposes, whether or not a contract is subsequently concluded. Where appropriate, the remedy for breach of that</p>	<p>II. – 3:302: Breach of confidentiality (1) If confidential information is given by one party in the course of negotiations, the other party is under a duty not to disclose that information or use it for that party's own purposes whether or not a contract is subsequently concluded. (2) In this Article, "confidential information" means</p>

<p>duty may include compensation based on the benefit received by the other party.</p>	<p>information which, either from its nature or the circumstances in which it was obtained, the party receiving the information knows or could reasonably be expected to know is confidential to the other party. (3) A party who reasonably anticipates a breach of the duty may obtain a court order prohibiting it. (4) A party who is in breach of the duty is liable to pay damages to the other party for any loss caused by the breach and may be ordered to pay over to the other party any benefit obtained by the breach.</p>
	<p>II. – 3:501: Liability for damages</p> <p>(1) Where any rule in this Chapter makes a person liable for loss caused to another person by a breach of a duty, the other person has a right to damages for that loss. (2) The rules on III. – 3:704 (Loss attributable to creditor) and III. – 3:705 (Reduction of loss) apply with the adaptation that the reference to non-performance of the obligation is to be taken as a reference to breach of the duty.</p>
<p>Article 2.1.17 (Merger clauses)</p> <p>A contract in writing which contains a clause indicating that the writing completely embodies the terms on which the parties have agreed cannot be contradicted or supplemented by evidence of prior statements or agreements. However, such statements or agreements may be used to interpret the writing.</p>	<p>II. – 4:104: Merger clause</p> <p>(1) If a contract document contains an individually negotiated clause stating that the document embodies all the terms of the contract (a merger clause), any prior statements, undertakings or agreements which are not embodied in the document do not form part of the contract. (2) If the merger clause is not individually negotiated it establishes only a presumption that the parties intended that their prior statements, undertakings or agreements were not to form part of the contract. This rule may not be excluded or restricted. (3) The parties' prior statements may be used to interpret the contract. This rule may not be excluded or restricted except by an individually negotiated clause. (4) A party may by statements or conduct be precluded from asserting a merger clause to the extent that the other party has reasonably relied on such statements or conduct.</p>
<p>Article 2.1.18 (Modification in a particular form)</p> <p>A contract in writing which contains a clause requiring any modification or termination by agreement to be in a particular form may not be otherwise modified or terminated. However, a party may be precluded by its conduct from asserting such a clause to the extent that the other party has reasonably acted in reliance on that conduct.</p>	<p>II. – 4:105: Modification in certain form only</p> <p>(1) A term in a contract requiring any agreement to modify its terms, or to terminate the relationship resulting from it, to be in a certain form establishes only a presumption that any such agreement is not intended to be legally binding unless it is in that form. (2) A party may by statements or conduct be precluded from asserting such a term to the extent that the other party has reasonably relied on such statements or conduct.</p>

<p>Article 2.1.19 (<i>Contracting under standard terms</i>)</p> <p>(1) Where one party or both parties use standard terms in concluding a contract, the general rules on formation apply, subject to Articles 2.1.20 – 2.1.22.</p> <p>(2) Standard terms are provisions which are prepared in advance for general and repeated use by one party and which are actually used without negotiation with the other party.</p>	<p>II. – 1:109: Standard terms</p> <p>A “standard term” is a term which has been formulated in advance for several transactions involving different parties and which has not been individually negotiated by the parties.</p> <p>Annex – Definitions: “Standard terms”</p> <p>“Standard terms” are terms which have been formulated in advance for several transactions involving different parties, and which have not been individually negotiated by the parties.</p> <p>II. – 1:110: Terms “not individually negotiated”</p> <p>(1) A term supplied by one party is not individually negotiated if the other party has not been able to influence its content, in particular because it has been drafted in advance, whether or not as part of standard terms.</p> <p>(2) If one party supplies a selection of terms to the other party, a term will not be regarded as individually negotiated merely because the other party chooses that term from that selection.</p> <p>(3) If it is disputed whether a term supplied by one party as part of standard terms has since been individually negotiated, that party bears the burden of proving that it has been.</p> <p>(4) In a contract between a business and a consumer, the business bears the burden of proving that a term supplied by the business has been individually negotiated.</p> <p>(5) In contracts between a business and a consumer, terms drafted by a third person are considered to have been supplied by the business, unless the consumer introduced them to the contract.</p> <p>II. – 9:103: Terms not individually negotiated</p> <p>(1) Terms supplied by one party and not individually negotiated may be invoked against the other party only if the other party was aware of them, or if the party supplying the terms took reasonable steps to draw the other party’s attention to them, before or when the contract was concluded.</p> <p>(2) If a contract is to be concluded by electronic means, the party supplying any terms which have not been individually negotiated may invoke them against the other party only if they are made available to the other party in textual form.</p> <p>(3) For the purposes of this Article:</p> <p>(a) “not individually negotiated” has the meaning given by II. – 1:110 (Meaning of “not individually negotiated”); and</p>
--	--

	(b) terms are not sufficiently brought to the other party's attention by a mere reference to them in a contract document, even if that party signs the document.
<p>Article 2.1.20 (<i>Surprising terms</i>)</p> <p>(1) No term contained in standard terms which is of such a character that the other party could not reasonably have expected it, is effective unless it has been expressly accepted by that party.</p> <p>(2) In determining whether a term is of such a character regard shall be had to its content, language and presentation.</p>	
<p>Article 2.1.21 (<i>Conflict between standard terms and non-standard terms</i>)</p> <p>In case of conflict between a standard term and a term which is not a standard term the latter prevails.</p>	<p>II. – 8:104: Preference for negotiated terms</p> <p>Terms which have been individually negotiated take preference over those which have not.</p>
<p>Article 2.1.22 (<i>Battle of forms</i>)</p> <p>Where both parties use standard terms and reach agreement except on those terms, a contract is concluded on the basis of the agreed terms and of any standard terms which are common in substance unless one party clearly indicates in advance, or later and without undue delay informs the other party, that it does not intend to be bound by such a contract.</p>	<p>II. – 4:209: Conflicting standard terms</p> <p>(1) If the parties have reached agreement except that the offer and acceptance refer to conflicting standard terms, a contract is nonetheless formed. The standard terms form part of the contract to the extent that they are common in substance.</p> <p>(2) However, no contract is formed if one party:</p> <p>(a) has indicated in advance, explicitly, and not by way of standard terms, an intention not to be bound by a contract on the basis of paragraph (1); or</p> <p>(b) without undue delay, informs the other party of such an intention.</p>
	<p>[Right of withdrawal: Exercise and effect]</p> <p>II. – 5:101: Scope and mandatory nature</p> <p>(1) The provisions in this Section apply where under any rule in Books II to IV a party has a right to withdraw from a contract within a certain period.</p> <p>(2) The parties may not, to the detriment of the entitled party, exclude the application of the rules in this Chapter or derogate from or vary their effects.</p>
	<p>II. – 5:102: Exercise of right to withdraw</p> <p>(1) A right to withdraw is exercised by notice to the other party. No reasons need to be given.</p> <p>(2) Returning the subject matter of the contract is considered a notice of withdrawal unless the circumstances indicate otherwise.</p>
	<p>II. – 5:103: Withdrawal period</p> <p>(1) A right to withdraw may be exercised at any time after the conclusion of the contract and before the end of the withdrawal period.</p>

	<p>(2) The withdrawal period ends fourteen days after the latest of the following times; (a) the time of conclusion of the contract; (b) the time when the entitled party receives from the other party adequate information on the right to withdraw; or (c) if the subject matter of the contract is the delivery of goods, the time when the goods are received. (3) The withdrawal period ends no later than one year after the time of conclusion of the contract. (4) A notice of withdrawal is timely if dispatched before the end of the withdrawal period.</p>
	<p>II. – 5:104: Adequate information on the right to withdraw</p> <p>Adequate information on the right to withdraw requires that the right is appropriately brought to the entitled party's attention, and that the information provides, in textual form on a durable medium and in clear and comprehensible language, information about how the right may be exercised, the withdrawal period, and the name and address of the person to whom the withdrawal is to be communicated.</p>
	<p>II. – 5:105: Effects of withdrawal</p> <p>(1) Withdrawal terminates the contractual relationship and the obligations of both parties under the contract. (2) The restitutionary effects of such termination are governed by the rules in Book III, Chapter 3, Section 5, Sub-section 4 (Restitution) as modified by this Article, unless the contract provides otherwise in favour of the withdrawing party. (3) Where the withdrawing party has made a payment under the contract, the business has an obligation to return the payment without undue delay, and in any case not later than thirty days after the withdrawal becomes effective. (4) The withdrawing party is not liable to pay: (a) for any diminution in the value of anything received under the contract caused by inspection and testing; (b) for any destruction or loss of, or damage to, anything received under the contract, provided the withdrawing party used reasonable care to prevent such destruction, loss or damage. (5) The withdrawing party is liable for any diminution in value caused by normal use, unless that party had not received adequate notice of the right of withdrawal. (6) Except as provided in this Article, the withdrawing party does not incur any liability through the exercise of the right of withdrawal.</p>

	<p>(7) If a consumer exercises a right to withdraw from a contract after a business has made use of a contractual right to supply something of equivalent quality and price in case what was ordered is unavailable, the business must bear the cost of returning what the consumer has received under the contract.</p>
	<p>II. – 5:106: <i>Linked contracts</i></p> <p>(1) If a consumer exercises a right of withdrawal from a contract for the supply of goods, other assets or services by a business, the effects of withdrawal extend to any linked contract.</p> <p>(2) Where a contract is partially or exclusively financed by a credit contract, they form linked contracts, in particular:</p> <p>(a) if the business supplying goods, other assets or services finances the consumer's performance;</p> <p>(b) if a third party which finances the consumer's performance uses the services of the business for preparing or concluding the credit contract;</p> <p>(c) if the credit contract refers to specific goods, assets or services to be financed with this credit, and if this link between both contracts was suggested by the supplier of the goods, other assets or services, or by the supplier of credit; or</p> <p>(d) if there is a similar economic link.</p> <p>(3) The provisions of II. – 5:105 (Effects of withdrawal) apply accordingly to the linked contract.</p> <p>(4) Paragraph (1) does not apply to credit contracts financing the contracts mentioned in paragraph (2)(f) of the following Article.</p>
	<p>[Particular rights of withdrawal]</p> <p>II. – 5:201: <i>Contracts negotiated away from business premises</i></p> <p>(1) A consumer is entitled to withdraw from a contract under which a business supplies goods, other assets or services, including financial services, to the consumer, or is granted a personal security by the consumer, if the consumer's offer or acceptance was expressed away from the business premises.</p> <p>(2) Paragraph (1) does not apply to:</p> <p>(a) a contract concluded by means of an automatic vending machine or automated commercial premises;</p> <p>(b) a contract concluded with telecommunications operators through the use of public payphones;</p> <p>(c) a contract for the construction and sale of immovable property or relating to other immovable property rights, except for rental;</p> <p>(d) a contract for the supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home, residence or workplace of the consumer by regular roundsmen;</p>

	<p>(e) a contract concluded by means of distance communication, but outside of an organised distance sales or service-provision scheme run by the supplier;</p> <p>(f) a contract for the supply of goods, other assets or services whose price depends on fluctuations in the financial market outside the supplier's control, which may occur during the withdrawal period;</p> <p>(g) a contract concluded at an auction;</p> <p>(h) travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration.</p> <p>(3) If the business has exclusively used means of distance communication for concluding the contract, paragraph (1) also does not apply if the contract is for:</p> <p>(a) the supply of accommodation, transport, catering or leisure services, where the business undertakes, when the contract is concluded, to supply these services on a specific date or within a specific period;</p> <p>(b) the supply of services other than financial services if performance has begun, at the consumer's express and informed request, before the end of the withdrawal period referred to in II. – 5:103 (Withdrawal period) paragraph (1);</p> <p>(c) the supply of goods made to the consumer's specifications or clearly personalised or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly;</p> <p>(d) the supply of audio or video recordings or computer software</p> <p>(i) which were unsealed by the consumer, or</p> <p>(ii) which can be downloaded or reproduced for permanent use, in case of supply by electronic means;</p> <p>(e) the supply of newspapers, periodicals and magazines;</p> <p>(f) gaming and lottery services.</p> <p>(4) With regard to financial services, paragraph (1) also does not apply to contracts that have been fully performed by both parties, at the consumer's express request, before the consumer exercises his or her right of withdrawal.</p>
	<p>II. – 5:202: Timeshare contracts</p> <p>(1) A consumer who acquires a right to use immovable property under a timeshare contract with a business is entitled to withdraw from the contract.</p> <p>(2) Where a consumer exercises the right of withdrawal under paragraph (1), the contract may require the consumer to reimburse those expenses which:</p> <p>(a) have been incurred as a result of the conclusion of and withdrawal from the contract;</p>

	<p>(b) correspond to legal formalities which must be completed before the end of the period referred to in II. – 5:103 (Withdrawal period) paragraph (1);</p> <p>(c) are reasonable and appropriate;</p> <p>(d) are expressly mentioned in the contract; and</p> <p>(e) are in conformity with any applicable rules on such expenses.</p> <p>The consumer is not obliged to reimburse any expenses when exercising the right of withdrawal in the situation covered by paragraph (1) of II. – 3:109 (Remedies for breach of information duties).</p> <p>(3) The business must not demand or accept any advance payment by the consumer during the period in which the latter may exercise the right of withdrawal. The business is obliged to return any such payment received.</p>
<p>Section 2: Authority of agents</p> <p>Article 2.2.1 (<i>Scope of the Section</i>)</p> <p>(1) This Section 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.</p> <p>(2) It governs only 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>[Representation]</p> <p>II. – 6:101: Scope</p> <p>(1) This Chapter applies to the external relationships created by acts of representation – that is to say, the relationships between:</p> <p>(a) the principal and the third party; and</p> <p>(b) the representative and the third party.</p> <p>(2) It applies also to situations where a person purports to be a representative without actually being a representative.</p> <p>(3) It does not apply to the internal relationship between the representative and the principal.</p>
<p>Article 2.2.2 (<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>II. – 6:103: Authorisation</p> <p>1) The authority of a representative may be granted by the principal or by the law.</p> <p>(2) The principal’s authorisation may be express or implied.</p> <p>(3) [...]</p> <p>II. – 6:104: Scope of authority</p> <p>(1) The scope of the representative’s authority is determined by the grant.</p> <p>(2) The representative has authority to perform all incidental acts necessary to achieve the purposes for which the authority was granted.</p> <p>(3) [...]</p>
<p>Article 2.2.3 (<i>Agency disclosed</i>)</p> <p>(1) Where an agent acts within the scope of its authority and the third party knew or ought to have</p>	<p>II. – 6:105: When representative’s act affects principal’s legal position</p> <p>When the representative acts:</p> <p>(a) in the name of a principal or otherwise in such a</p>

<p>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.</p>	<p>way as to indicate to the third party an intention to affect the legal position of a principal; and (b) within the scope of the representative's authority, the act affects the legal position of the principal in relation to the third party as if it had been done by the principal. It does not as such give rise to any legal relation between the representative and the third party.</p>
	<p>II. – 6:108: Unidentified principal If a representative acts for a principal whose identity is to be revealed later, but fails to reveal that identity within a reasonable time after a request by the third party, the representative is treated as having acted in a personal capacity.</p>
<p>Article 2.2.4 (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.</p>	<p>II. – 6:106: Representative acting in own name When the representative, despite having authority, does an act in the representative's own name or otherwise in such a way as not to indicate to the third party an intention to affect the legal position of a principal, the act affects the legal position of the representative in relation to the third party as if done by the representative in a personal capacity. It does not as such affect the legal position of the principal in relation to the third party unless this is specifically provided for by any rule of law.</p>
	<p>III. – 5:401: Principal's option to take over rights in case of agent's insolvency (1) This Article applies where an agent has concluded a contract with a third party on the instructions of and on behalf of a principal but has done so in such a way that the agent, and not the principal, is a party to the contract. (2) If the agent becomes insolvent the principal may by notice to the third party and to the agent take over the rights of the agent under the contract in relation to the third party. (3) The third party may invoke against the principal any defence which the third party could have invoked against the agent and has all the other protections which would be available if the rights had been voluntarily assigned by the agent to the principal.</p>
	<p>III. – 5:402: Third party's counter-option Where the principal has taken over the rights of the agent under the preceding Article, the third party may by notice to the principal and the agent opt to exercise against the principal the rights which the</p>

	third party has against the agent, subject to any defences which the agent has against the third party.
<p>Article 2.2.5 (<i>Agent acting without or exceeding its authority</i>)</p> <p>(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.</p> <p>(2) However, where the principal causes the third party reasonably 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>II. – 6:107: <i>Person purporting to act as representative but not having authority</i></p> <p>(1) When a person acts in the name of a principal or otherwise in such a way as to indicate to the third party an intention to affect the legal position of a principal but acts without authority, the act does not affect the legal position of the purported principal or, save as provided in paragraph (2), give rise to legal relations between the unauthorised person and the third party.</p> <p>(2) [...]</p> <p>(3) [...]</p> <p>II. – 6:103: <i>Authorisation</i></p> <p>(1) [...]</p> <p>(2) [...]</p> <p>(3) If a person causes a third party reasonably and in good faith to believe that the person has authorised a representative to perform certain acts, the person is treated as a principal who has so authorised the apparent representative.</p>
<p>Article 2.2.6 (<i>Liability of agent acting without or exceeding its authority</i>)</p> <p>(1) An agent that acts without authority or exceeds its authority is, failing ratification by the principal, liable for damages that will place the third party in the same position as if the agent had acted with authority and not exceeded its authority.</p> <p>(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.</p>	<p>II. – 6:107: <i>Person purporting to act as representative but not having authority</i></p> <p>(1) [...]</p> <p>(2) Failing ratification by the purported principal, the person is liable to pay the third party such damages as will place the third party in the same position as if the person had acted with authority.</p> <p>(3) Paragraph (2) does not apply if the third party knew or could reasonably be expected to have known of the lack of authority.</p>
<p>Article 2.2.7 (<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 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.</p> <p>(2) However, the principal may not avoid the contract</p> <p>(a) if the principal had consented to, or knew or ought to have known of, the agent's involvement in the conflict of interests; or</p>	<p>II. – 6:109: <i>Conflict of interest</i></p> <p>(1) If an act done by a representative involves the representative in a conflict of interest of which the third party knew or could reasonably be expected to have known, the principal may avoid the act according to the provisions of II. – 7:209 (Notice of avoidance) to II. – 7:213 (Partial avoidance).</p> <p>(2) There is presumed to be a conflict of interest where:</p> <p>(a) the representative also acted as representative for the third party; or</p> <p>(b) the transaction was with the representative in a personal capacity.</p> <p>(3) However, the principal may not avoid the act:</p> <p>(a) if the representative acted with the principal's prior consent;</p> <p>(b) if the representative had disclosed the conflict of interest to the principal and the principal did not</p>

<p>(b) if the agent had disclosed the conflict of interests to the principal and the latter had not objected within a reasonable time.</p>	<p>object within a reasonable time; or (c) if the principal otherwise knew, or could reasonably be expected to have known, of the representative's involvement in the conflict of interest and did not object within a reasonable time. (d) if, for any other reason, the representative was entitled as against the principal to do the act by virtue of IV. D. – 5:101 (Self-contracting) or IV. D. – 5:102 (Double mandate).</p>
<p>Article 2.2.8 (<i>Sub-agency</i>)</p> <p>An agent has implied authority to appoint a sub-agent to perform acts which it is not reasonable to expect the agent to perform itself. The rules of this Section apply to the sub-agency.</p>	<p>II. – 6:104: Scope of authority</p> <p>(1) [...] (2) [...] (3) A representative has authority to delegate authority to another person (the delegate) to do acts on behalf of the principal which it is not reasonable to expect the representative to do personally. The rules of this Chapter apply to acts done by the delegate.</p>
<p>Article 2.2.9 (<i>Ratification</i>)</p> <p>(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 of time it can no longer do so. (3) If, at the time of the agent's act, the third party neither knew nor ought to have known of the lack of authority, it may, at any time before ratification, by notice to the principal indicate its refusal to become bound by a ratification.</p>	<p>II. – 6:111: Ratification</p> <p>(1) Where a person purports to act as a representative but acts without authority, the purported principal may ratify the act. (2) Upon ratification, the act is considered as having been done with authority, without prejudice to the rights of other persons. (3) The third party who knows that an act was done without authority may by notice to the purported principal specify a reasonable period of time for ratification. If the act is not ratified within that period ratification is no longer possible.</p>
<p>Article 2.2.10 (<i>Termination of authority</i>)</p> <p>(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.</p>	<p>II. – 6:112: Effect of ending or restriction of authorisation</p> <p>(1) The authority of a representative continues in relation to a third party who knew of the authority notwithstanding the ending or restriction of the representative's authorisation until the third party knows or can reasonably be expected to know of the ending or restriction. (2) Where the principal is under an obligation to the third party not to end or restrict the representative's authorisation, the authority of a representative continues notwithstanding an ending or restriction of the authorisation even if the third party knows of the ending or restriction. (3) The third party can reasonably be expected to know of the ending or restriction if, in particular, it has been communicated or publicised in the same way as the granting of the authority was originally communicated or publicised.</p>

<p>(2) Notwithstanding the termination of its authority, an agent remains authorised to perform the acts that are necessary to prevent harm to the principal's interests.</p>	<p>(4) Notwithstanding the ending of authorisation, the representative continues to have authority for a reasonable time to perform those acts which are necessary to protect the interests of the principal or the principal's successors.</p>
	<p>II. – 6:110: Several representatives Where several representatives have authority to act for the same principal, each of them may act separately.</p>
<p>CHAPTER 3 – VALIDITY Article 3.1 (Matters not covered) These Principles do not deal with invalidity arising from (a) lack of capacity; (b) immorality or illegality.</p>	<p>[Grounds of invalidity] II. – 7:101: Scope (1) This Chapter deals with the effects of: (a) mistake, fraud, threats, or unfair exploitation; and (b) infringement of fundamental principles or mandatory rules. (2) It does not deal with lack of capacity. (3) [...]</p>
<p>Article 3.2 (Validity of mere agreement) A contract is concluded, modified or terminated by the mere agreement of the parties, without any further requirement.</p>	<p>II. – 4:101: Requirements for the conclusion of a contract A contract is concluded, without any further requirement, if the parties: (a) intend to enter into a binding legal relationship or bring about some other legal effect; and (b) reach a sufficient agreement.</p>
<p>Article 3.3 (Initial impossibility) (1) The mere fact that at the time of the conclusion of the contract the performance of the obligation assumed was impossible does not affect the validity of the contract. (2) The mere fact that at the time of the conclusion of the contract a party was not entitled to dispose of the assets to which the contract relates does not affect the validity of the contract.</p>	<p>II. – 7:102: Initial impossibility or lack of right or authority to dispose A contract is not invalid, in whole or in part, merely because at the time it is concluded performance of any obligation assumed is impossible, or because a party is not entitled to dispose of any assets to which the contract relates.</p>
<p>Article 3.4 (Definition of mistake) Mistake is an erroneous assumption relating to facts or to law existing when the contract was concluded.</p>	<p>II. – 7:201: Mistake (1) A party may avoid a contract for mistake of fact or law existing when the contract was concluded [...].</p>
<p>Article 3.5 (Relevant mistake) (1) A party may only avoid the contract for mistake if, when the contract was concluded, the mistake was of such importance that a reasonable person in the same situation as the party in error would only have concluded the contract on materially different terms or would not have concluded it at all if the true state of affairs had been known, and (a) the other party made the same mistake, or caused the mistake, or knew or ought to have known of the</p>	<p>II. – 7:201: Mistake (1) A party may avoid a contract for mistake of fact or law existing when the contract was concluded if: (a) the party, but for the mistake, would not have concluded the contract or would have done so only on fundamentally different terms and the other party knew or could reasonably be expected to have known this; and (b) the other party; (i) caused the mistake;</p>

<p>mistake and it was contrary to reasonable commercial standards of fair dealing to leave the mistaken party in error; or (b) the other party had not at the time of avoidance reasonably acted in reliance on the contract. (2) However, a party may not avoid the contract if (a) it was grossly negligent in committing the mistake; or (b) the mistake relates to a matter in regard to which the risk of mistake was assumed or, having regard to the circumstances, should be borne by the mistaken party.</p>	<p>(ii) caused the contract to be concluded in mistake by leaving the mistaken party in error, contrary to good faith and fair dealing, when the other party knew or could reasonably be expected to have known of the mistake; (iii) caused the contract to be concluded in mistake by failing to comply with a pre-contractual information duty or a duty to make available a means of correcting input errors; or (iv) made the same mistake. (2) However a party may not avoid the contract for mistake if: (a) the mistake was inexcusable in the circumstances; or (b) the risk of the mistake was assumed, or in the circumstances should be borne, by that party.</p>
<p>Article 3.6 (<i>Error in expression or transmission</i>) An error occurring in the expression or transmission of a declaration is considered to be a mistake of the person from whom the declaration emanated.</p>	<p>II. – 7:202: <i>Inaccuracy in communication may be treated as mistake</i> An inaccuracy in the expression or transmission of a statement is treated as a mistake of the person who made or sent the statement.</p>
<p>Article 3.7 (<i>Remedies for non-performance</i>) A party is not entitled to avoid the contract on the ground of mistake if the circumstances on which that party relies afford, or could have afforded, a remedy for non-performance.</p>	<p>II. – 7:216: <i>Overlapping remedies</i> A party who is entitled to a remedy under this Section in circumstances which afford that party a remedy for non-performance may pursue either remedy.</p>
<p>Article 3.8 (<i>Fraud</i>) A party may avoid the contract when it has been led to conclude the contract by the other party's fraudulent representation, including language or practices, or fraudulent non-disclosure of circumstances which, according to reasonable commercial standards of fair dealing, the latter party should have disclosed.</p>	<p>II. – 7:205: <i>Fraud</i> (1) A party may avoid a contract when the other party has induced the conclusion of the contract by fraudulent misrepresentation, whether by words or conduct, or fraudulent non-disclosure of any information which good faith and fair dealing, or any pre-contractual information duty, required that party to disclose. (2) A misrepresentation is fraudulent if it is made with knowledge or belief that the representation is false and is intended to induce the recipient to make a mistake. A non-disclosure is fraudulent if it is intended to induce the person from whom the information is withheld to make a mistake. (3) In determining whether good faith and fair dealing required a party to disclose particular information, regard should be had to all the circumstances, including: (a) whether the party had special expertise; (b) the cost to the party of acquiring the relevant information; (c) whether the other party could reasonably acquire the information by other means; and (d) the apparent importance of the information to the other party.</p>

<p>Article 3.9 (Threat)</p> <p>A party may avoid the contract when it has been led to conclude the contract by the other party's unjustified threat which, having regard to the circumstances, is so imminent and serious as to leave the first party no reasonable alternative. In particular, a threat is unjustified if the act or omission with which a party has been threatened is wrongful in itself, or it is wrongful to use it as a means to obtain the conclusion of the contract.</p>	<p>II. – 7:206: Coercion or threats</p> <p>(1) A party may avoid a contract when the other party has induced the conclusion of the contract by coercion or by the threat of an imminent and serious harm which it is wrongful to inflict, or wrongful to use as a means to obtain the conclusion of the contract.</p> <p>(2) A threat is not regarded as inducing the contract if in the circumstances the threatened party had a reasonable alternative.</p>
<p>Article 3.10 (Gross disparity)</p> <p>(1) A party may avoid the contract or an individual term of it if, at the time of the conclusion of the contract, the contract or term unjustifiably gave the other party an excessive advantage. Regard is to be had, among other factors, to</p> <p>(a) the fact that the other party has taken unfair advantage of the first party's dependence, economic distress or urgent needs, or of its improvidence, ignorance, inexperience or lack of bargaining skill, and</p> <p>(b) the nature and purpose of the contract.</p> <p>(2) Upon the request of the party entitled to avoidance, a court may adapt the contract or term in order to make it accord with reasonable commercial standards of fair dealing.</p> <p>(3) A court may also adapt the contract or term upon the request of the party receiving notice of avoidance, provided that that party informs the other party of its request promptly after receiving such notice and before the other party has reasonably acted in reliance on it. The provisions of Article 3.13(2) apply accordingly.</p>	<p>II. – 7:207: Unfair exploitation</p> <p>(1) A party may avoid a contract if, at the time of the conclusion of the contract:</p> <p>(a) the party was dependent on or had a relationship of trust with the other party, was in economic distress or had urgent needs, was improvident, ignorant, inexperienced or lacking in bargaining skill; and</p> <p>(b) the other party knew or could reasonably be expected to have known this and, given the circumstances and purpose of the contract, exploited the first party's situation by taking an excessive benefit or grossly unfair advantage.</p> <p>(2) Upon the request of the party entitled to avoidance, a court may if it is appropriate adapt the contract in order to bring it into accordance with what might have been agreed had the requirements of good faith and fair dealing been observed.</p> <p>(3) A court may similarly adapt the contract upon the request of a party receiving notice of avoidance for unfair exploitation, provided that this party informs the party who gave the notice without undue delay after receiving it and before that party has acted in reliance on it.</p>
	<p>II. – 9:403: Meaning of "unfair" in contracts between a business and a consumer</p> <p>In a contract between a business and a consumer, a term [which has not been individually negotiated] is unfair for the purposes of this Section if it is supplied by the business and if it significantly disadvantages the consumer, contrary to good faith and fair dealing.</p> <p>II. – 9:404: Meaning of "unfair" in contracts between non-business parties</p> <p>In a contract between parties neither of whom is a business, a term is unfair for the purposes of this Section only if it is a term forming part of standard terms supplied by one party and significantly disadvantages the other party, contrary to good faith and fair dealing.</p>

	<p>II. – 9:405: Meaning of “unfair” in contracts between businesses</p> <p>A term in a contract between businesses is unfair for the purposes of this Section only if it is a term forming part of standard terms supplied by one party and of such a nature that its use grossly deviates from good commercial practice, contrary to good faith and fair dealing.</p>
	<p>II. – 9:406: Exclusions from unfairness test</p> <p>(1) Contract terms are not subjected to an unfairness test under this Section if they are based on: (a) provisions of the applicable law; (b) international conventions to which Member States are parties, or to which European Union is party; or (c) these rules. (2) For contract terms which are drafted in plain and intelligible language, the unfairness test extends neither to the definition of the main subject matter of the contract, nor to the adequacy of the price to be paid.</p>
	<p>II. – 9:407: Factors to be taken into account in assessing unfairness</p> <p>(1) When assessing the unfairness of a contractual term for the purposes of this Section, regard is to be had to the duty of transparency under II. – 9:402 (Duty of transparency in terms not individually negotiated), to the nature of the goods or services to be provided under the contract, to the circumstances prevailing during the conclusion of the contract, to the other terms of the contract and to the terms of any other contract on which the contract depends. (2) For the purposes of II. – 9:403 (Meaning of “unfair” in contracts between a business and a consumer) the circumstances prevailing during the conclusion of the contract include the extent to which the consumer was given a real opportunity to become acquainted with the term before the conclusion of the contract.</p>
	<p>II. – 9:408: Effects of unfair terms</p> <p>(1) A term which is unfair under this Section is not binding on the party who did not supply it. (2) If the contract can reasonably be maintained without the unfair term, the other terms remain binding on the parties.</p>
	<p>II. – 9:409: Exclusive jurisdiction clauses</p> <p>(1) A term in a contract between a business and a consumer is unfair for the purposes of this Section if</p>

	<p>it is supplied by the business and if it confers exclusive jurisdiction for all disputes arising under the contract on the court for the place where the business is domiciled.</p> <p>(2) Paragraph (1) does not apply if the chosen court is also the court for the place where the consumer is domiciled.</p>
	<p>II. – 9:410: Terms which are presumed to be unfair in contracts between a business and a consumer</p> <p>(1) A term in a contract between a business and a consumer is presumed to be unfair for the purposes of this Section if it is supplied by the business and if it:</p> <p>(a) excludes or limits the liability of a business for death or personal injury caused to a consumer through an act or omission of that business;</p> <p>(b) inappropriately excludes or limits the remedies, including any right to set-off, available to the consumer against the business or a third party for non-performance by the business of obligations under the contract;</p> <p>(c) makes binding on a consumer an obligation which is subject to a condition the fulfilment of which depends solely on the intention of the business;</p> <p>(d) permits a business to keep money paid by a consumer if the latter decides not to conclude the contract, or perform obligations under it, without providing for the consumer to receive compensation of an equivalent amount from the business in the reverse situation;</p> <p>(e) requires a consumer who fails to perform his or her obligations to pay a disproportionately high amount of damages;</p> <p>(f) entitles a business to withdraw from or terminate the contractual relationship on a discretionary basis without giving the same right to the consumer, or entitles a business to keep money paid for services not yet supplied in the case where the business withdraws from or terminates the contractual relationship;</p> <p>(g) enables a business to terminate a contractual relationship of indeterminate duration without reasonable notice, except where there are serious grounds for doing so; this does not affect terms in financial services contracts where there is a valid reason, provided that the supplier is required to inform the other contracting party thereof immediately;</p> <p>(h) automatically extends a contract of fixed duration unless the consumer indicates otherwise, in cases where such terms provide for an unreasonably early deadline;</p> <p>(i) enables a business to alter the terms of the contract unilaterally without a valid reason which is specified in the contract; this does not affect terms under which a supplier of financial services reserves</p>

	<p>the right to change the rate of interest to be paid by, or to, the consumer, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the consumer at the earliest opportunity and that the consumer is free to terminate the contractual relationship with immediate effect; neither does it affect terms under which a business reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that the business is required to inform the consumer with reasonable notice, and that the consumer is free to terminate the contractual relationship;</p> <p>(j) enables a business to alter unilaterally without a valid reason any characteristics of the goods, other assets or services to be provided;</p> <p>(k) provides that the price of goods or other assets is to be determined at the time of delivery or supply, or allows a business to increase the price without giving the consumer the right to withdraw if the increased price is too high in relation to the price agreed at the conclusion of the contract; this does not affect price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described;</p> <p>(l) gives a business the right to determine whether the goods, other assets or services supplied are in conformity with the contract, or gives the business the exclusive right to interpret any term of the contract;</p> <p>(m) limits the obligation of a business to respect commitments undertaken by its agents, or makes its commitments subject to compliance with a particular formality;</p> <p>(n) obliges a consumer to fulfil all his or her obligations where the business fails to fulfil its own;</p> <p>(o) allows a business to transfer its rights and obligations under the contract without the consumer's consent, if this could reduce the guarantees available to the consumer;</p> <p>(p) excludes or restricts a consumer's right to take legal action or to exercise any other remedy, in particular by referring the consumer to arbitration proceedings which are not covered by legal provisions, by unduly restricting the evidence available to the consumer, or by shifting a burden of proof on to the consumer;</p> <p>(q) allows a business, where what has been ordered is unavailable, to supply an equivalent without having expressly informed the consumer of this possibility and of the fact that the business must bear the cost of returning what the consumer has received under the contract if the consumer exercises a right to withdraw.</p> <p>(2) Subparagraphs (g), (i) and (k) do not apply to:</p> <p>(a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange</p>
--	--

	<p>quotation or index or a financial market rate beyond the control of the business;</p> <p>(b) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.</p>
<p>Article 3.11 (<i>Third persons</i>)</p> <p>(1) Where fraud, threat, gross disparity or a party's mistake is imputable to, or is known or ought to be known by, a third person for whose acts the other party is responsible, the contract may be avoided under the same conditions as if the behaviour or knowledge had been that of the party itself.</p> <p>(2) Where fraud, threat or gross disparity is imputable to a third person for whose acts the other party is not responsible, the contract may be avoided if that party knew or ought to have known of the fraud, threat or disparity, or has not at the time of avoidance reasonably acted in reliance on the contract.</p>	<p>II. – 7:208: Third persons</p> <p>(1) Where a third person for whose acts a party is responsible or who with a party's assent is involved in the making of a contract:</p> <p>(a) causes a mistake, or knows of or could reasonably be expected to know of a mistake; or</p> <p>(b) is guilty of fraud, coercion, threats or unfair exploitation, remedies under this Section are available as if the behaviour or knowledge had been that of the party.</p> <p>(2) Where a third person for whose acts a party is not responsible and who does not have the party's assent to be involved in the making of a contract is guilty of fraud, coercion, threats or unfair exploitation, remedies under this Section are available if the party knew or could reasonably be expected to have known of the relevant facts, or at the time of avoidance has not acted in reliance on the contract.</p>
<p>Article 3.12 (<i>Confirmation</i>)</p> <p>If the party entitled to avoid the contract expressly or impliedly confirms the contract after the period of time for giving notice of avoidance has begun to run, avoidance of the contract is excluded.</p>	<p>II. – 7:211: Confirmation</p> <p>If a party who is entitled to avoid a contract under this Section confirms it, expressly or impliedly, after the period of time for giving notice of avoidance has begun to run, avoidance is excluded.</p>
<p>Article 3.13 (<i>Loss of right to avoid</i>)</p> <p>(1) If a party is entitled to avoid the contract for mistake but the other party declares itself willing to perform or performs the contract as it was understood by the party entitled to avoidance, the contract is considered to have been concluded as the latter party understood it. The other party must make such a declaration or render such performance promptly after having been informed of the manner in which the party entitled to avoidance had understood the contract and before that party has reasonably acted in reliance on a notice of avoidance.</p> <p>(2) After such a declaration or performance the right to avoidance is lost and any earlier notice of avoidance is ineffective.</p>	<p>II. – 7:203: Adaptation of contract in case of mistake</p> <p>(1) If a party is entitled to avoid the contract for mistake but the other party performs, or indicates a willingness to perform, the obligations under the contract as it was understood by the party entitled to avoid it, the contract is treated as having been concluded as that party understood it. This applies only if the other party performs, or indicates a willingness to perform, without undue delay after being informed of the manner in which the party entitled to avoid it understood the contract and before that party acts in reliance on any notice of avoidance.</p> <p>(2) After such performance or indication the right to avoid is lost and any earlier notice of avoidance is ineffective.</p> <p>(3) Where both parties have made the same mistake, the court may at the request of either party bring the contract into accordance with what might reasonably have been agreed had the mistake not occurred.</p>

<p>Article 3.14 (<i>Notice of avoidance</i>)</p> <p>The right of a party to avoid the contract is exercised by notice to the other party.</p>	<p>II. – 7:209: Notice of avoidance</p> <p>Avoidance under this Section is effected by notice to the other party.</p>
<p>Article 3.15 (<i>Time limits</i>)</p> <p>(1) Notice of avoidance shall be given within a reasonable time, having regard to the circumstances, after the avoiding party knew or could not have been unaware of the relevant facts or became capable of acting freely.</p> <p>(2) Where an individual term of the contract may be avoided by a party under Article 3.10, the period of time for giving notice of avoidance begins to run when that term is asserted by the other party.</p>	<p>II. – 7:210: Time</p> <p>A notice of avoidance under this Section is ineffective unless given within a reasonable time, with due regard to the circumstances, after the avoiding party knew or could reasonably be expected to have known of the relevant facts or became capable of acting freely.</p>
<p>Article 3.16 (<i>Partial avoidance</i>)</p> <p>Where a ground of avoidance affects only individual terms of the contract, the effect of avoidance is limited to those terms unless, having regard to the circumstances, it is unreasonable to uphold the remaining contract.</p>	<p>II. – 7:213: Partial avoidance</p> <p>If a ground of avoidance under this Section affects only particular terms of a contract, the effect of an avoidance is limited to those terms unless, giving due consideration to all the circumstances of the case, it is unreasonable to uphold the remaining contract.</p>
<p>Article 3.17 (<i>Retroactive effect of avoidance</i>)</p> <p>(1) Avoidance takes effect retroactively.</p> <p>(2) On avoidance either party may claim restitution of whatever it has supplied under the contract or the part of it avoided, provided that it concurrently makes restitution of whatever it has received under the contract or the part of it avoided or, if it cannot make restitution in kind, it makes an allowance for what it has received.</p>	<p>II. – 7:212: Effects of avoidance</p> <p>(1) A contract which may be avoided under this Section is valid until avoided but, once avoided, is retrospectively invalid from the beginning.</p> <p>(2) The question whether either party has a right to the return of whatever has been transferred or supplied under a contract which has been avoided under this Section, or a monetary equivalent, is regulated by the rules on unjustified enrichment.</p> <p>(3) The effect of avoidance under this Section on the ownership of property which has been transferred under the avoided contract is governed by the rules on the transfer of property.</p>
<p>Article 3.18 (<i>Damages</i>)</p> <p>Irrespective of whether or not the contract has been avoided, the party who knew or ought to have known of the ground for avoidance is liable for damages so as to put the other party in the same position in which it would have been if it had not concluded the contract.</p>	<p>II. – 7:214: Damages for loss</p> <p>(1) A party who has the right to avoid a contract under this Section (or who had such a right before it was lost by the effect of time limits or confirmation) is entitled, whether or not the contract is avoided, to damages from the other party for any loss suffered as a result of the mistake, fraud, coercion, threats or unfair exploitation, provided that the other party knew or could reasonably be expected to have known of the ground for avoidance.</p> <p>(2) The damages recoverable are such as to place the aggrieved party as nearly as possible in the position in which that party would have been if the contract had not been concluded, with the further limitation that, if the party does not avoid the contract, the damages are</p>

	<p>not to exceed the loss caused by the mistake, fraud, coercion, threats or unfair exploitation. (3) In other respects the rules on damages for non-performance of a contractual obligation apply with any appropriate adaptation.</p> <p>II. – 7:204: Liability for loss caused by reliance on incorrect information</p> <p>(1) A party who has concluded a contract in reasonable reliance on incorrect information given by the other party in the course of negotiations has a right to damages for loss suffered as a result if the provider of the information: (a) believed the information to be incorrect or had no reasonable grounds for believing it to be correct; and (b) knew or could reasonably be expected to have known that the recipient would rely on the information in deciding whether or not to conclude the contract on the agreed terms. (2) This Article applies even if there is no right to avoid the contract.</p>
<p>Article 3.19 (<i>Mandatory character of the provisions</i>)</p> <p>The provisions of this Chapter are mandatory, except insofar as they relate to the binding force of mere agreement, initial impossibility or mistake.</p>	<p>II. – 7:215: Exclusion or restriction of remedies</p> <p>(1) Remedies for fraud, coercion, threats and unfair exploitation cannot be excluded or restricted. (2) Remedies for mistake may be excluded or restricted unless the exclusion or restriction is contrary to good faith and fair dealing.</p>
<p>Article 3.20 (<i>Unilateral declarations</i>)</p> <p>The provisions of this Chapter apply with appropriate adaptations to any communication of intention addressed by one party to the other.</p>	<p>[Grounds of invalidity – General provisions]</p> <p>II. – 7:101: Scope</p> <p>(1) [...] (2) [...] (3) It applies in relation to contracts and, with necessary adaptations, other juridical acts.</p>
<p>CHAPTER 4 – INTERPRETATION</p> <p>Article 4.1 (<i>Intention of the parties</i>)</p> <p>(1) A contract shall be interpreted according to the common intention of the parties. (2) If such an intention cannot be established, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.</p>	<p>II. – 8:101: General rules</p> <p>(1) A contract is to be interpreted according to the common intention of the parties even if this differs from the literal meaning of the words. (2) [...] (3) The contract is, however, to be interpreted according to the meaning which a reasonable person would give to it: (a) if an intention cannot be established under the preceding paragraphs; or (b) if the question arises with a person, not being a party to the contract or a person who by law has no better rights than such a party, who has reasonably and in good faith relied on the contract's apparent meaning.</p>

<p>Article 4.2 (<i>Interpretation of statements and other conduct</i>)</p> <p>(1) The statements and other conduct of a party shall be interpreted according to that party's intention if the other party knew or could not have been unaware of that intention.</p> <p>(2) If the preceding paragraph is not applicable, such statements and other conduct shall be interpreted according to the meaning that a reasonable person of the same kind as the other party would give to it in the same circumstances.</p>	<p>II. – 8:101: General rules</p> <p>(1) [...]</p> <p>(2) If one party intended the contract, or a term or expression used in it, to have a particular meaning, and at the time of the conclusion of the contract the other party was aware, or could reasonably be expected to have been aware, of the first party's intention, the contract is to be interpreted in the way intended by the first party.</p> <p>(3) [...]</p>
<p>Article 4.3 (<i>Relevant circumstances</i>)</p> <p>In applying Articles 4.1 and 4.2, regard shall be had to all the circumstances, including</p> <p>(a) preliminary negotiations between the parties;</p> <p>(b) practices which the parties have established between themselves;</p> <p>(c) the conduct of the parties subsequent to the conclusion of the contract;</p> <p>(d) the nature and purpose of the contract;</p> <p>(e) the meaning commonly given to terms and expressions in the trade concerned;</p> <p>(f) usages.</p>	<p>II. – 8:102: Relevant matters</p> <p>(1) In interpreting the contract, regard may be had, in particular, to:</p> <p>(a) the circumstances in which it was concluded, including the preliminary negotiations;</p> <p>(b) the conduct of the parties, even subsequent to the conclusion of the contract;</p> <p>(c) the interpretation which has already been given by the parties to terms or expressions which are the same as, or similar to, those used in the contract and the practices they have established between themselves;</p> <p>(d) the meaning commonly given to such terms or expressions in the branch of activity concerned and the interpretation such terms or expressions may already have received;</p> <p>(e) the nature and purpose of the contract;</p> <p>(f) usages; and</p> <p>(g) good faith and fair dealing.</p>
<p>Article 4.4 (<i>Reference to contract or statement as a whole</i>)</p> <p>Terms and expressions shall be interpreted in the light of the whole contract or statement in which they appear.</p>	<p>II. – 8:105: Reference to contract as a whole</p> <p>Terms and expressions are to be interpreted in the light of the whole contract in which they appear.</p>
<p>Article 4.5 (<i>All terms to be given effect</i>)</p> <p>Contract terms shall be interpreted so as to give effect to all the terms rather than to deprive some of them of effect.</p>	<p>II. – 8:106: Preference for interpretation which gives terms effect</p> <p>An interpretation which renders the terms of the contract lawful, or effective, is to be preferred to one which would not.</p>
<p>Article 4.6 (<i>Contra proferentem rule</i>)</p> <p>If contract terms supplied by one party are unclear, an interpretation against that party is preferred.</p>	<p>II. – 8:103: Interpretation against supplier of term or dominant party</p> <p>(1) Where there is doubt about the meaning of a term not individually negotiated, an interpretation of the term against the party who supplied it is to be preferred.</p> <p>(2) Where there is doubt about the meaning of any other term, and that term has been established under</p>

	the dominant influence of one party, an interpretation of the term against that party is to be preferred.
<p>Article 4.7 (<i>Linguistic discrepancies</i>)</p> <p>Where a contract is drawn up in two or more language versions which are equally authoritative there is, in case of discrepancy between the versions, a preference for the interpretation according to a version in which the contract was originally drawn up.</p>	<p>II. – 8:107: Linguistic discrepancies</p> <p>Where a contract document is in two or more language versions none of which is stated to be authoritative, there is, in case of discrepancy between the versions, a preference for the interpretation according to the version in which the contract was originally drawn up.</p> <p>[Section 2: Interpretation of other juridical acts]</p> <p>II. – 8:201: General rules</p> <p>(1) A unilateral juridical act is to be interpreted in the way in which it could reasonably be expected to be understood by the person to whom it is addressed.</p> <p>(2) If the person making the juridical act intended the act, or a term or expression used in it, to have a particular meaning, and at the time of the act the person to whom it was addressed was aware, or could reasonably be expected to have been aware, of the first person's intention, the act is to be interpreted in the way intended by the first person.</p> <p>(3) The act is, however, to be interpreted according to the meaning which a reasonable person would give to it:</p> <p>(a) if neither paragraph (1) nor paragraph (2) applies; or</p> <p>(b) if the question arises with a person, not being the addressee or a person who by law has no better rights than the addressee, who has reasonably and in good faith relied on the contract's apparent meaning.</p> <p>II. – 8:202: Application of other rules by analogy</p> <p>The provisions of Section 1, apart from its first Article, apply with appropriate adaptations to the interpretation of a juridical act other than a contract.</p>
<p>Article 4.8 (<i>Supplying an omitted term</i>)</p> <p>(1) Where the parties to a contract have not agreed with respect to a term which is important for a determination of their rights and duties, a term which is appropriate in the circumstances shall be supplied.</p> <p>(2) In determining what is an appropriate term regard shall be had, among other factors, to</p> <p>(a) the intention of the parties;</p> <p>(b) the nature and purpose of the contract;</p> <p>(c) good faith and fair dealing;</p> <p>(d) reasonableness.</p>	<p>II. – 9:101: Terms of a contract</p> <p>(1) [...].</p> <p>(2) Where it is necessary to provide for a matter which the parties have not foreseen or provided for, a court may imply an additional term, having regard in particular to:</p> <p>(a) the nature and purpose of the contract;</p> <p>(b) the circumstances in which the contract was concluded; and</p> <p>(c) the requirements of good faith and fair dealing.</p> <p>(3) Any term implied under paragraph (2) should, where possible, be such as to give effect to what the parties, had they provided for the matter, would probably have agreed.</p> <p>(4) [...].</p>

<p>CHAPTER 5 — CONTENT AND THIRD PARTY RIGHTS</p> <p>Section 1: Content</p> <p>Article 5.1.1 (<i>Express and implied obligations</i>)</p> <p>The contractual obligations of the parties may be express or implied.</p> <hr/> <p>Article 5.1.2 (<i>Implied obligations</i>)</p> <p>Implied obligations stem from:</p> <p>(a) the nature and purpose of the contract;</p> <p>(b) practices established between the parties and usages;</p> <p>(c) good faith and fair dealing;</p> <p>(d) reasonableness.</p>	<p>II. – 9:101: Terms of a contract</p> <p>(1) The terms of a contract may be derived from the express or tacit agreement of the parties, from rules of law or from practices established between the parties or usages.</p> <p>(2) [...]</p> <p>(3) [...]</p> <p>(4) [...]</p>
<p>Article 5.1.3 (<i>Co-operation between the parties</i>)</p> <p>Each party shall cooperate with the other party when such co-operation may reasonably be expected for the performance of that party's obligations.</p>	<p>III. – 1:104: Co-operation</p> <p>The debtor and creditor are obliged to co-operate with each other when and to the extent that this can reasonably be expected for the performance of the debtor's obligation.</p>
<p>Article 5.1.4 (<i>Duty to achieve a specific result. Duty of best efforts</i>)</p> <p>(1) To the extent that an obligation of a party involves a duty to achieve a specific result, that party is bound to achieve that result.</p> <p>(2) To the extent that an obligation of a party involves a duty of best efforts in the performance of an activity, that party is bound to make such efforts as would be made by a reasonable person of the same kind in the same circumstances.</p>	
<p>Article 5.1.5 (<i>Determination of kind of duty involved</i>)</p> <p>In determining the extent to which an obligation of a party involves a duty of best efforts in the performance of an activity or a duty to achieve a specific result, regard shall be had, among other factors, to</p> <p>(a) the way in which the obligation is expressed in the contract;</p> <p>(b) the contractual price and other terms of the contract;</p> <p>(c) the degree of risk normally involved in achieving the expected result;</p> <p>(d) the ability of the other party to influence the performance of the obligation.</p>	
<p>Article 5.1.6 (<i>Determination of quality of performance</i>)</p> <p>Where the quality of performance is neither fixed by, nor determinable from, the contract a party is bound</p>	<p>II. – 9:108: Quality</p> <p>Where the quality of anything to be supplied or provided under the contract cannot be determined</p>

<p>to render a performance of a quality that is reasonable and not less than average in the circumstances.</p>	<p>from the terms agreed by the parties, from any other applicable rule of law or from usages or practices, the quality required is the quality which the recipient could reasonably expect in the circumstances.</p>
<p>Article 5.1.7 (Price determination)</p> <p>(1) Where a contract does not fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have made reference to the price generally charged at the time of the conclusion of the contract for such performance in comparable circumstances in the trade concerned or, if no such price is available, to a reasonable price.</p> <p>(2) Where the price is to be determined by one party and that determination is manifestly unreasonable, a reasonable price shall be substituted notwithstanding any contract term to the contrary.</p> <p>(3) Where the price is to be fixed by a third person, and that person cannot or will not do so, the price shall be a reasonable price.</p> <p>(4) Where the price is to be fixed by reference to factors which do not exist or have ceased to exist or to be accessible, the nearest equivalent factor shall be treated as a substitute.</p>	<p>II. – 9:104: Determination of price</p> <p>Where the amount of the price payable under a contract cannot be determined from the terms agreed by the parties, from any other applicable rule of law or from usages or practices, the price payable is the price normally charged in comparable circumstances at the time of the conclusion of the contract or, if no such price is available, a reasonable price.</p> <p>II. – 9:105: Unilateral determination by a party</p> <p>Where the price or any other contractual term is to be determined by one party and that party's determination is grossly unreasonable then, notwithstanding any provision in the contract to the contrary, a reasonable price or other term is substituted</p> <p>II. – 9:106: Determination by a third person</p> <p>(1) Where a third person is to determine the price or any other contractual term and cannot or will not do so, a court may, unless this is inconsistent with the terms of the contract, appoint another person to determine it.</p> <p>(2) If a price or other term determined by a third person is grossly unreasonable, a reasonable price or term is substituted.</p> <p>II. – 9:107: Reference to a non-existent factor</p> <p>Where the price or any other contractual term is to be determined by reference to a factor which does not exist or has ceased to exist or to be accessible, the nearest equivalent factor is substituted unless this would be unreasonable in the circumstances, in which case a reasonable price or other term is substituted.</p>
	<p>II. – 9:109: Language</p> <p>Where the language to be used for communications relating to the contract or the rights or obligations arising from it cannot be determined from the terms agreed by the parties, from any other applicable rule of law or from usages or practices, the language to be used is that used for the conclusion of the contract.</p>
<p>Article 5.1.8 (Contract for an indefinite period)</p> <p>A contract for an indefinite period may be ended by either party by giving notice a reasonable time in advance.</p>	<p>III. – 1:109: Variation or termination by notice</p> <p>(1) A right, obligation or contractual relationship may be varied or terminated by notice by either party where this is provided for by the terms regulating it.</p>

	<p>(2) Where, in a case involving continuous or periodic performance of a contractual obligation, the terms of the contract do not say when the contractual relationship is to end or say that it will never end, it may be terminated by either party by giving a reasonable period of notice. If the performance or counter-performance is to be made at regular intervals the reasonable period of notice is not less than the interval between performances or, if longer, between counter-performances.</p> <p>(3) Where the parties do not regulate the effects of termination, then:</p> <p>(a) it has prospective effect only and does not affect any right to damages, or a stipulated payment, for non-performance of any obligation performance of which was due before termination;</p> <p>(b) it does not affect any provision for the settlement of disputes or any other provision which is to operate even after termination; and</p> <p>(c) in the case of a contractual obligation or relationship any restitutionary effects are regulated by the rules in Chapter 3, Section 5, Sub-section 4 (Restitution) with appropriate adaptations.</p>
	<p>III. – 1:111: Tacit prolongation</p> <p>Where a contract provides for continuous or repeated performance of obligations for a definite period and the obligations continue to be performed by both parties after that period has expired, the contract becomes a contract for an indefinite period, unless the circumstances are inconsistent with the tacit consent of the parties to such prolongation.</p>
<p>Article 5.1.9 (Release by agreement)</p> <p>(1) An obligee may release its right by agreement with the obligor.</p> <p>(2) An offer to release a right gratuitously shall be deemed accepted if the obligor does not reject the offer without delay after having become aware of it.</p>	
	<p>II. – 9:102: Certain pre-contractual statements regarded as contract terms</p> <p>(1) A statement made by one party before a contract is concluded is regarded as a term of the contract if the other party reasonably understood it as being made on the basis that it would form part of the contract terms if a contract were concluded. In assessing whether the other party was reasonable in understanding the statement in that way account may be taken of:</p> <p>(a) the apparent importance of the statement to the other party;</p>

	<p>(b) whether the party was making the statement in the course of business; and (c) the relative expertise of the parties. (2) If one of the parties to a contract is a business and before the contract is concluded makes a statement, either to the other party or publicly, about the specific characteristics of what is to be supplied by that business under the contract, the statement is regarded as a term of the contract unless: (a) the other party was aware when the contract was concluded, or could reasonably be expected to have been so aware, that the statement was incorrect or could not otherwise be relied on as such a term; or (b) the other party's decision to conclude the contract was not influenced by the statement. (3) For the purposes of paragraph (2), a statement made by a person engaged in advertising or marketing on behalf of the business is treated as being made by the business. (4) Where the other party is a consumer then, for the purposes of paragraph (2), a public statement made by or on behalf of a producer or other person in earlier links of the business chain between the producer and the consumer is treated as being made by the business unless the business, at the time of conclusion of the contract, did not know and could not reasonably be expected to have known of it. (5) In the circumstances covered by paragraph (4) a business which at the time of conclusion of the contract did not know and could not reasonably be expected to have known that the statement was incorrect has a right to be indemnified by the person making the statement for any liability incurred as a result of that paragraph. (6) In relations between a business and a consumer the parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.</p>
	<p>II. – 9:201: Effect of simulation (1) When the parties have concluded a contract or an apparent contract and have deliberately done so in such a way that it has an apparent effect different from the effect which the parties intend it to have, the parties' true intention prevails. (2) However, the apparent effect prevails in relation to a person, not being a party to the contract or apparent contract or a person who by law has no better rights than such a party, who has reasonably and in good faith relied on the apparent effect.</p>

<p>Section 2: Third party rights</p> <p>Article 5.2.1 (<i>Contracts in favour of third parties</i>)</p> <p>(1) The parties (the “promisor” and the “promisee”) may confer by express or implied agreement a right on a third party (the “beneficiary”).</p> <p>(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.</p>	<p>II. – 9:301: Basic rules [Chapter 9 – Contents and effects of contracts – Section 3 – Effect of a stipulation in favour of a third party]</p> <p>(1) The parties to a contract may, by the contract, confer a right or other benefit on a third party. [...]</p> <p>(2) The nature and content of the third party’s right or benefit are determined by the contract and are subject to any conditions or other limitations under the contract.</p> <p>(3) [...]</p>
<p>Article 5.2.2 (<i>Third party identifiable</i>)</p> <p>The beneficiary must be identifiable with adequate certainty by the contract but need not be in existence at the time the contract is made.</p>	<p>II. – 9:301: Basic rules [Chapter 9 – Contents and effects of contracts – Section 3 – Effect of a stipulation in favour of a third party]</p> <p>(1) [...] The third party need not be in existence or identified at the time the contract is concluded.</p> <p>(2) [...]</p> <p>(3) [...]</p>
<p>Article 5.2.3 (<i>Exclusion and limitation clauses</i>)</p> <p>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.</p>	<p>II. – 9:301: Basic rules [Chapter 9 – Contents and effects of contracts – Section 3 – Effect of a stipulation in favour of a third party]</p> <p>(1) [...]</p> <p>(2) [...]</p> <p>(3) The benefit conferred may take the form of an exclusion or limitation of the third party’s liability to one of the contracting parties.</p>
<p>Article 5.2.4 (<i>Defences</i>)</p> <p>The promisor may assert against the beneficiary all defences which the promisor could assert against the promisee.</p>	<p>II. – 9:302: Rights, remedies and defences</p> <p>Where one of the contracting parties is bound to render a performance to the third party under the contract, then, in the absence of provision to the contrary in the contract:</p> <p>(a) the third party has the same rights to performance and remedies for non-performance as if the contracting party was bound to render the performance under a binding unilateral undertaking in favour of the third party; and</p> <p>(b) the contracting party may assert against the third party all defences which the contracting party could assert against the other party to the contract.</p>
<p>Article 5.2.5 (<i>Revocation</i>)</p> <p>The parties may modify or revoke the rights conferred by the contract on the beneficiary until the beneficiary has accepted them or reasonably acted in reliance on them.</p>	<p>II. – 9:303: Rejection or revocation of benefit</p> <p>(1) [...]</p> <p>(2) The contracting parties may remove or modify the contractual term conferring the right or benefit if this is done before either of them has given the third party notice that the right or benefit has been conferred.</p>

	<p>The contract determines whether and by whom and in what circumstances the right or benefit can be revoked or modified after that time.</p> <p>(3) Even if the right or benefit conferred is by virtue of the contract revocable or subject to modification, the right to revoke or modify is lost if the parties have, or the party having the right to revoke or modify has, led the third party to believe that it is not revocable or subject to modification and if the third party has reasonably acted in reliance on it.</p>
<p>Article 5.2.6 (Renunciation)</p> <p>The beneficiary may renounce a right conferred on it.</p>	<p>II. – 9:303: Rejection or revocation of benefit</p> <p>(1) The third party may reject the right or benefit by notice to either of the contracting parties, if that is done without undue delay after being notified of the right or benefit and before it has been expressly or impliedly accepted. On such rejection, the right or benefit is treated as never having accrued to the third party.</p> <p>(2) [...]</p> <p>(3) [...]</p>
<p>CHAPTER 6 – PERFORMANCE</p> <p>Section 1: Performance in general</p> <p>Article 6.1.1 (Time of performance)</p> <p>A party must perform its obligations:</p> <p>(a) if a time is fixed by or determinable from the contract, at that time;</p> <p>(b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the other party is to choose a time;</p> <p>(c) in any other case, within a reasonable time after the conclusion of the contract.</p>	<p>III. – 2:102: Time of performance</p> <p>(1) If the time at which, or a period of time within which, an obligation is to be performed cannot otherwise be determined from the terms regulating the obligation it must be performed within a reasonable time after it arises.</p> <p>(2) If a period of time within which the obligation is to be performed can be determined from the terms regulating the obligation, the obligation may be performed at any time within that period chosen by the debtor unless the circumstances of the case indicate that the creditor is to choose the time.</p> <p>(4) If a business has an obligation to reimburse money received from a consumer for goods, other assets or services supplied, the reimbursement must be made as soon as possible and in any case no later than 30 days after the obligation arose.</p>
	<p>III. – 2:102: Time of performance</p> <p>(1) [...]</p> <p>(2) [...]</p> <p>(3) Unless the parties have agreed otherwise, a business must perform the obligations incurred under a contract concluded at a distance for the supply of goods, other assets or services to a consumer no later than 30 days after the contract was concluded.</p> <p>(4) If a business has an obligation to reimburse</p>

	money received from a consumer for goods, other assets or services supplied, the reimbursement must be made as soon as possible and in any case no later than 30 days after the obligation arose.
	III. – 2:114: Extinctive effect of performance Full performance extinguishes the obligation if it is: (a) in accordance with the terms regulating the obligation; or (b) of such a type as by law to afford the debtor a good discharge.
Article 6.1.2 (Performance at one time or in instalments) In cases under Article 6.1.1(b) or (c), a party must perform its obligations at one time if that performance can be rendered at one time and the circumstances do not indicate otherwise.	
Article 6.1.3 (Partial performance) (1) The obligee may reject an offer to perform in part at the time performance is due, whether or not such offer is coupled with an assurance as to the balance of the performance, unless the obligee has no legitimate interest in so doing. (2) Additional expenses caused to the obligee by partial performance are to be borne by the obligor without prejudice to any other remedy.	
Article 6.1.4 (Order of performance) (1) To the extent that the performances of the parties can be rendered simultaneously, the parties are bound to render them simultaneously unless the circumstances indicate otherwise. (2) To the extent that the performance of only one party requires a period of time, that party is bound to render its performance first, unless the circumstances indicate otherwise.	III. – 2:104: Order of performance If the order of performance of reciprocal obligations cannot be otherwise determined from the terms regulating the obligations then, to the extent that the obligations can be performed simultaneously, the parties are bound to perform simultaneously unless the circumstances indicate otherwise.
Article 6.1.5 (Earlier performance) (1) The obligee may reject an earlier performance unless it has no legitimate interest in so doing. (2) Acceptance by a party of an earlier performance does not affect the time for the performance of its own obligations if that time has been fixed irrespective of the performance of the other party's obligations. (3) Additional expenses caused to the obligee by earlier performance are to be borne by the obligor, without prejudice to any other remedy.	III. – 2:103: Early performance (1) A creditor may reject an offer to perform before performance is due unless the early performance would not cause the creditor unreasonable prejudice. (2) A creditor's acceptance of early performance does not affect the time fixed for the performance by the creditor of any reciprocal obligation.
Article 6.1.6 (Place of performance) (1) If the place of performance is neither fixed by, nor determinable from, the contract, a party is to	III. – 2:101: Place of performance (1) If the place of performance of an obligation cannot be otherwise determined from the terms

<p>perform:</p> <p>(a) a monetary obligation, at the obligee's place of business;</p> <p>(b) any other obligation, at its own place of business.</p> <p>(2) A party must bear any increase in the expenses incidental to performance which is caused by a change in its place of business subsequent to the conclusion of the contract.</p>	<p>regulating the obligation it is:</p> <p>(a) in the case of a monetary obligation, the creditor's place of business;</p> <p>(b) in the case of any other obligation, the debtor's place of business.</p> <p>(2) [...]</p> <p>(3) If, in a case to which paragraph (1) applies, a party causes any increase in the expenses incidental to performance by a change in place of business or habitual residence subsequent to the time when the obligation was incurred, that party is obliged to bear the increase.</p>
	<p>III. – 2:101: Place of performance</p> <p>(1) [...]</p> <p>(2) For the purposes of the preceding paragraph:</p> <p>(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the obligation; and</p> <p>(b) if a party does not have a place of business, or the obligation does not relate to a business matter, the habitual residence is substituted.</p>
<p>Article 6.1.7 (Payment by cheque or other instrument)</p> <p>(1) Payment may be made in any form used in the ordinary course of business at the place for payment.</p> <p>(2) However, an obligee who accepts, either by virtue of paragraph (1) or voluntarily, a cheque, any other order to pay or a promise to pay, is presumed to do so only on condition that it will be honoured.</p>	<p>III. – 2:108: Method of payment</p> <p>(1) Payment of money due may be made by any method used in the ordinary course of business.</p> <p>(2) A creditor who accepts a cheque or other order to pay or a promise to pay is presumed to do so only on condition that it will be honoured.</p> <p>The creditor may not enforce the original obligation to pay unless the order or promise is not honoured.</p>
<p>Article 6.1.8 (Payment by funds transfer)</p> <p>(1) Unless the obligee has indicated a particular account, payment may be made by a transfer to any of the financial institutions in which the obligee has made it known that it has an account.</p> <p>(2) In case of payment by a transfer the obligation of the obligor is discharged when the transfer to the obligee's financial institution becomes effective.</p>	
<p>Article 6.1.9 (Currency of payment)</p> <p>(1) If a monetary obligation is expressed in a currency other than that of the place for payment, it may be paid by the obligor in the currency of the place for payment unless</p> <p>(a) that currency is not freely convertible; or</p> <p>(b) the parties have agreed that payment should be made only in the currency in which the monetary obligation is expressed.</p> <p>(2) If it is impossible for the obligor to make payment in the currency in which the monetary obligation is expressed, the obligee may require payment in the currency of the place for payment, even in the case referred to in paragraph (1)(b).</p>	<p>III. – 2:109: Currency of payment</p> <p>(1) The debtor and the creditor may agree that payment is to be made only in a specified currency.</p>

<p>(3) Payment in the currency of the place for payment is to be made according to the applicable rate of exchange prevailing there when payment is due. (4) However, if the obligor has not paid at the time when payment is due, the obligee may require payment according to the applicable rate of exchange prevailing either when payment is due or at the time of actual payment.</p>	<p>(2) In the absence of such agreement, a sum of money expressed in a currency other than that of the place where payment is due may be paid in the currency of that place according to the rate of exchange prevailing there at the time when payment is due. (3) If, in a case falling within the preceding paragraph, the debtor has not paid at the time when payment is due, the creditor may require payment in the currency of the place where payment is due according to the rate of exchange prevailing there either at the time when payment is due or at the time of actual payment.</p>
<p>Article 6.1.10 (<i>Currency not expressed</i>) Where a monetary obligation is not expressed in a particular currency, payment must be made in the currency of the place where payment is to be made.</p>	
<p>Article 6.1.11 (<i>Costs of performance</i>) Each party shall bear the costs of performance of its obligations.</p>	<p>III. – 2:113: Costs and formalities of performance (1) The costs of performing an obligation are borne by the debtor. (2) In the case of a monetary obligation the debtor's obligation to pay includes taking such steps and complying with such formalities as may be necessary to enable payment to be made.</p>
<p>Article 6.1.12 (<i>Imputation of payments</i>) (1) An obligor owing several monetary obligations to the same obligee may specify at the time of payment the debt to which it intends the payment to be applied. However, the payment discharges first any expenses, then interest due and finally the principal. (2) If the obligor makes no such specification, the obligee may, within a reasonable time after payment, declare to the obligor the obligation to which it imputes the payment, provided that the obligation is due and undisputed. (3) In the absence of imputation under paragraphs (1) or (2), payment is imputed to that obligation which satisfies one of the following criteria in the order indicated: (a) an obligation which is due or which is the first to fall due; (b) the obligation for which the obligee has least security; (c) the obligation which is the most burdensome for the obligor; (d) the obligation which has arisen first. If none of the preceding criteria applies, payment is imputed to all the obligations proportionally.</p>	<p>III. – 2:110: Imputation of performance (1) Where a debtor has to perform several obligations of the same nature and makes a performance which does not suffice to extinguish all of the obligations, then subject to paragraph (5), the debtor may at the time of performance notify the creditor of the obligation to which the performance is to be imputed. (2) If the debtor does not make such a notification the creditor may, within a reasonable time and by notifying the debtor, impute the performance to one of the obligations. (3) An imputation under paragraph (2) is not effective if it is to an obligation which is not yet due, or is illegal, or is disputed. (4) In the absence of an effective imputation by either party, and subject to the following paragraph, the performance is imputed to that obligation which satisfies one of the following criteria in the sequence indicated: (a) the obligation which is due or is the first to fall due; (b) the obligation for which the creditor has the least security; (c) the obligation which is the most burdensome for the debtor; (d) the obligation which has arisen first. If none of the preceding criteria applies, the performance is imputed proportionately to all the obligations.</p>

	(5) In the case of a monetary obligation, a payment by the debtor is to be imputed, first, to expenses, secondly, to interest, and thirdly, to principal, unless the creditor makes a different imputation.
<p>Article 6.1.13 (<i>Imputation of non-monetary obligations</i>)</p> <p>Article 6.1.12 applies with appropriate adaptations to the imputation of performance of non-monetary obligations.</p>	
	<p>III. – 2:105: Alternative obligations or methods of performance</p> <p>(1) Where a debtor is bound to perform one of two or more obligations, or to perform an obligation in one of two or more ways, the choice belongs to the debtor, unless the terms regulating the obligations or obligation provide otherwise.</p> <p>(2) If the party who is to make the choice fails to choose by the time when performance is due, then:</p> <p>(a) if the delay amounts to a fundamental non-performance, the right to choose passes to the other party;</p> <p>(b) if the delay does not amount to a fundamental non-performance, the other party may give a notice fixing an additional period of reasonable length in which the party to choose must do so. If the latter still fails to do so, the right to choose passes to the other party.</p>
	<p>III. – 2:111: Property not accepted</p> <p>(1) A person who has an obligation to deliver or return corporeal property other than money and who is left in possession of the property because of the creditor's failure to accept or retake the property, has an ancillary obligation to take reasonable steps to protect and preserve it.</p> <p>(2) The debtor may obtain discharge from the obligation to deliver or return and from the ancillary obligation mentioned in the preceding paragraph:</p> <p>(a) by depositing the property on reasonable terms with a third person to be held to the order of the creditor, and notifying the creditor of this; or</p> <p>(b) by selling the property on reasonable terms after notice to the creditor, and paying the net proceeds to the creditor.</p> <p>(3) Where, however, the property is liable to rapid deterioration or its preservation is unreasonably expensive, the debtor must take reasonable steps to dispose of it. The debtor may obtain discharge from the obligation to deliver or return by paying the net proceeds to the creditor.</p> <p>(4) The debtor left in possession is entitled to be reimbursed or to retain out of the proceeds of sale any costs reasonably incurred.</p>

	<p>III. – 2:112: Money not accepted</p> <p>(1) Where a creditor fails to accept money properly tendered by the debtor, the debtor may after notice to the creditor obtain discharge from the obligation to pay by depositing the money to the order of the creditor in accordance with the law of the place where payment is due.</p> <p>(2) Paragraph (1) applies, with appropriate adaptations, to money properly tendered by a third party in circumstances where the creditor is not entitled to refuse such performance.</p>
<p>Article 6.1.14 (Application for public permission)</p> <p>Where the law of a State requires a public permission affecting the validity of the contract or its performance and neither that law nor the circumstances indicate otherwise</p> <p>(a) if only one party has its place of business in that State, that party shall take the measures necessary to obtain the permission;</p> <p>(b) in any other case the party whose performance requires permission shall take the necessary measures.</p>	
<p>Article 6.1.15 (Procedure in applying for permission)</p> <p>(1) The party required to take the measures necessary to obtain the permission shall do so without undue delay and shall bear any expenses incurred.</p> <p>(2) That party shall whenever appropriate give the other party notice of the grant or refusal of such permission without undue delay.</p>	
<p>Article 6.1.16 (Permission neither granted nor refused)</p> <p>(1) If, notwithstanding the fact that the party responsible has taken all measures required, permission is neither granted nor refused within an agreed period or, where no period has been agreed, within a reasonable time from the conclusion of the contract, either party is entitled to terminate the contract.</p> <p>(2) Where the permission affects some terms only, paragraph (1) does not apply if, having regard to the circumstances, it is reasonable to uphold the remaining contract even if the permission is refused.</p>	
<p>Article 6.1.17 (Permission refused)</p> <p>(1) The refusal of a permission affecting the validity of the contract renders the contract void. If the refusal affects the validity of some terms only, only such terms are void if, having regard to the circumstances, it is reasonable to uphold the remaining contract.</p> <p>(2) Where the refusal of a permission renders the performance of the contract impossible in whole or in part, the rules on non-performance apply.</p>	

<p>Section 2: Hardship</p> <p>Article 6.2.1 (<i>Contract to be observed</i>)</p> <p>Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship.</p> <hr/> <p>Article 6.2.2 (<i>Definition of hardship</i>)</p> <p>There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished, and</p> <p>(a) the events occur or become known to the disadvantaged party after the conclusion of the contract;</p> <p>(b) the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract;</p> <p>(c) the events are beyond the control of the disadvantaged party; and</p> <p>(d) the risk of the events was not assumed by the disadvantaged party</p> <hr/> <p>Article 6.2.3 (<i>Effects of hardship</i>)</p> <p>(1) In case of hardship the disadvantaged party is entitled to request renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based.</p> <p>(2) The request for renegotiation does not in itself entitle the disadvantaged party to withhold performance.</p> <p>(3) Upon failure to reach agreement within a reasonable time either party may resort to the court.</p> <p>(4) If the court finds hardship it may, if reasonable,</p> <p>(a) terminate the contract at a date and on terms to be fixed, or</p> <p>(b) adapt the contract with a view to restoring its equilibrium.</p>	<p>III. – 1:110: Variation or termination by court on a change of circumstances</p> <p>(1) An obligation must be performed even if performance has become more onerous, whether because the cost of performance has increased or because the value of what is to be received in return has diminished.</p> <p>(2) If, however, performance of a contractual obligation or of an obligation arising from a unilateral juridical act becomes so onerous because of an exceptional change of circumstances that it would be manifestly unjust to hold the debtor to the obligation a court may:</p> <p>(a) vary the obligation in order to make it reasonable and equitable in the new circumstances; or</p> <p>(b) terminate the obligation at a date and on terms to be determined by the court.</p> <p>(3) Paragraph (2) applies only if:</p> <p>(a) the change of circumstances occurred after the time when the obligation was incurred,</p> <p>(b) the debtor did not at that time take into account, and could not reasonably be expected to have taken into account, the possibility or scale of that change of circumstances;</p> <p>(c) the debtor did not assume, and cannot reasonably be regarded as having assumed, the risk of that change of circumstances; and</p> <p>(d) the debtor has attempted, reasonably and in good faith, to achieve by negotiation a reasonable and equitable adjustment of the terms regulating the obligation.</p>
<p>CHAPTER 7 — NON-PERFORMANCE</p> <p>Section 1: Non-performance in general</p> <p>Article 7.1.1 (<i>Non-performance defined</i>)</p> <p>Non-performance is failure by a party to perform any of its obligations under the contract, including defective performance or late performance.</p>	<p>III. – 1:102: Definitions</p> <p>(1) [...]</p> <p>(2) [...]</p> <p>(3) Non-performance of an obligation is any failure to perform the obligation, whether or not excused, and includes delayed performance and any other performance which is not in accordance with the terms regulating the obligation.</p>

	<p>(4) [...] (5) [...]</p> <p>Annex Non-performance:</p> <p>“Non-performance”, in relation to an obligation, means any failure to perform the obligation, whether or not excused. It includes delayed performance and defective performance.</p>
<p>Article 7.1.2 (Interference by the other party)</p> <p>A party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party’s act or omission or by another event as to which the first party bears the risk.</p>	<p>III. – 3:101: Remedies available</p> <p>(1) [...] (2) [...] (3) The creditor may not resort to any of those remedies to the extent that the creditor caused the debtor’s non-performance.</p>
<p>Article 7.1.3 (Withholding performance)</p> <p>(1) Where the parties are to perform simultaneously, either party may withhold performance until the other party tenders its performance. (2) Where the parties are to perform consecutively, the party that is to perform later may withhold its performance until the first party has performed.</p>	<p>III. – 3:401: Right to withhold performance of reciprocal obligation</p> <p>(1) A creditor who is to perform a reciprocal obligation at the same time as, or after, the debtor performs has a right to withhold performance of the reciprocal obligation until the debtor has tendered performance or has performed. (2) A creditor who is to perform a reciprocal obligation before the debtor performs and who reasonably believes that there will be non-performance by the debtor when the debtor’s performance becomes due may withhold performance of the reciprocal obligation for as long as the reasonable belief continues. However, the right to withhold performance is lost if the debtor gives an adequate assurance of due performance. (4) The performance which may be withheld under this Article is the whole or part of the performance as may be reasonable in the circumstances.</p>
<p>Article 7.1.4 (Cure by non-performing party)</p> <p>(1) The non-performing party may, at its own expense, cure any non-performance, provided that (a) without undue delay, it gives notice indicating the proposed manner and timing of the cure; (b) cure is appropriate in the circumstances; (c) the aggrieved party has no legitimate interest in refusing cure; and (d) cure is effected promptly. (2) The right to cure is not precluded by notice of termination.</p>	<p>III. – 3:202: Cure by debtor: general rules</p> <p>(1) The debtor may make a new and conforming tender if that can be done within the time allowed for performance. (2) If the debtor cannot make a new and conforming tender within the time allowed for performance but, promptly after being notified of the lack of conformity, offers to cure it within a reasonable time and at the debtor’s own expense, the creditor may not pursue any remedy for non-performance, other than withholding performance, before allowing the debtor a reasonable period in which to attempt to cure the non-conformity. (3) Paragraph (2) is subject to the provisions of the following Article.</p>

<p>(3) Upon effective notice of cure, rights of the aggrieved party that are inconsistent with the non-performing party's performance are suspended until the time for cure has expired.</p> <p>(4) The aggrieved party may withhold performance pending cure.</p> <p>(5) Notwithstanding cure, the aggrieved party retains the right to claim damages for delay as well as for any harm caused or not prevented by the cure.</p>	<p>III. – 3:203: <i>When creditor need not allow debtor an opportunity to cure</i></p> <p>The creditor need not, under paragraph (2) of the preceding Article, allow the debtor a period in which to attempt cure if:</p> <p>(a) failure to perform a contractual obligation within the time allowed for performance amounts to a fundamental non-performance;</p> <p>(b) the creditor has reason to believe that the debtor's performance was made with knowledge of the non-conformity and was not in accordance with good faith and fair dealing;</p> <p>(c) the creditor has reason to believe that the debtor will be unable to effect the cure within a reasonable time and without significant inconvenience to the creditor or other prejudice to the creditor's legitimate interests; or</p> <p>(d) cure would be inappropriate in the circumstances.</p> <p>III. – 3:204: <i>Consequences of allowing debtor opportunity to cure</i></p> <p>(1) During the period allowed for cure the creditor may withhold performance of the creditor's reciprocal obligations, but may not resort to any other remedy.</p> <p>(2) If the debtor fails to effect cure within the time allowed, the creditor may resort to any available remedy.</p> <p>(3) Notwithstanding cure, the creditor retains the right to damages for any loss caused by the debtor's initial or subsequent non-performance or by the process of effecting cure.</p>
	<p>III. – 3:205: <i>Return of replaced item</i></p> <p>(1) Where the debtor has, whether voluntarily or in compliance with an order under III. – 3:302 (Enforcement of non-monetary obligations), remedied a non-conforming performance by replacement, the debtor has a right and an obligation to take back the replaced item at the debtor's expense.</p> <p>(2) The creditor is not liable to pay for any use made of the replaced item in the period prior to the replacement.</p>
<p>Article 7.1.5 <i>(Additional period for performance)</i></p> <p>(1) In a case of non-performance the aggrieved party may by notice to the other party allow an additional period of time for performance.</p> <p>(2) During the additional period the aggrieved party may withhold performance of its own reciprocal</p>	<p>III. – 3:103: <i>Notice fixing additional period for performance</i></p> <p>(1) In any case of non-performance of an obligation the creditor may by notice to the debtor allow an additional period of time for performance.</p> <p>(2) During the additional period the creditor may withhold performance of the creditor's reciprocal</p>

<p>obligations and may claim damages but may not resort to any other remedy. If it receives notice from the other party that the latter will not perform within that period, or if upon expiry of that period due performance has not been made, the aggrieved party may resort to any of the remedies that may be available under this Chapter.</p> <p>(3) Where in a case of delay in performance which is not fundamental the aggrieved party has given notice allowing an additional period of time of reasonable length, it may terminate the contract at the end of that period. If the additional period allowed is not of reasonable length it shall be extended to a reasonable length. The aggrieved party may in its notice provide that if the other party fails to perform within the period allowed by the notice the contract shall automatically terminate.</p> <p>(4) Paragraph (3) does not apply where the obligation which has not been performed is only a minor part of the contractual obligation of the non-performing party.</p>	<p>obligations and may claim damages, but may not resort to any other remedy.</p> <p>(3) If the creditor receives notice from the debtor that the debtor will not perform within that period, or if upon expiry of that period due performance has not been made, the creditor may resort to any available remedy.</p> <p>III. – 3:503: Termination after notice fixing additional time for performance</p> <p>(1) A creditor may terminate in a case of delay in performance of a contractual obligation which is not in itself fundamental if the creditor gives a notice fixing an additional period of time of reasonable length for performance and the debtor does not perform within that period.</p> <p>(2) If the period fixed is unreasonably short, the creditor may terminate only after a reasonable period from the time of the notice</p> <p>III. – 3:507: Notice of termination</p> <p>(1) [...]</p> <p>(2) Where a notice under III. – 3:503 (Termination after notice fixing additional time for performance) provides for automatic termination if the debtor does not perform within the period fixed by the notice, termination takes effect after that period or a reasonable length of time from the giving of notice (whichever is longer) without further notice.</p>
	<p>III. – 3:105: Term excluding or restricting remedies</p> <p>(1) A term of a contract or other juridical act which purports to exclude or restrict liability to pay damages for personal injury (including fatal injury) caused intentionally or by gross negligence is void.</p> <p>(2) [...]</p>
<p>Article 7.1.6 (Exemption clauses)</p> <p>A clause which limits or excludes one party's liability for non-performance or which permits one party to render performance substantially different from what the other party reasonably expected may not be invoked if it would be grossly unfair to do so, having regard to the purpose of the contract.</p>	<p>III. – 3:105: Term excluding or restricting remedies</p> <p>(1) [...]</p> <p>(2) A term excluding or restricting a remedy for non-performance of an obligation, even if valid and otherwise effective, having regard in particular to the rules on unfair contract terms in Book II, Chapter 9, Section 4, may nevertheless not be invoked if it would be contrary to good faith and fair dealing to do so.</p>
	<p>III. – 3:106: Notices relating to non-performance</p> <p>(1) If the creditor gives notice to the debtor because of the debtor's non-performance of an obligation or because such non-performance is anticipated, and the notice is properly dispatched or given, a delay or inaccuracy in the transmission of the notice or its failure to arrive does not prevent it from having effect.</p>

	(2) The notice has effect from the time at which it would have arrived in normal circumstances.
	<p>III. – 3:107: Failure to notify non-conformity</p> <p>(1) If, in the case of an obligation to supply goods, other assets or services, the debtor supplies goods, other assets or services which are not in conformity with the terms regulating the obligation, the creditor may not rely on the lack of conformity unless the creditor gives notice to the debtor within a reasonable time specifying the nature of the lack of conformity.</p> <p>(2) The reasonable time runs from the time when the goods or other assets are supplied or the service is completed or from the time, if it is later, when the creditor discovered or could reasonably be expected to have discovered the non-conformity.</p> <p>(3) The debtor is not entitled to rely on paragraph (1) if the failure relates to facts which the debtor knew or could reasonably be expected to have known and which the debtor did not disclose to the creditor.</p> <p>(4) This Article does not apply where the creditor is a consumer.</p>
	<p>III. – 3:108: Business unable to fulfil consumer's order by distance communication</p> <p>(1) Where a business is unable to perform its obligations under a contract concluded with a consumer by means of distance communication, it is obliged to inform the consumer immediately and refund any sums paid by the consumer without undue delay and in any case within 30 days. The consumer's remedies for non-performance remain unaffected.</p> <p>(2) The parties may not, to the detriment of the consumer, exclude the application of this Article or derogate from or vary its effects.</p>
<p>Article 7.1.7 (Force majeure)</p> <p>(1) Non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.</p> <p>(2) When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on the performance of the contract.</p> <p>(3) The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the party</p>	<p>III. – 3:104: Excuse due to an impediment</p> <p>(1) A debtor's non-performance of an obligation is excused if it is due to an impediment beyond the debtor's control and if the debtor could not reasonably be expected to have avoided or overcome the impediment or its consequences.</p> <p>(2) Where the obligation arose out of a contract or other juridical act, non-performance is not excused if the debtor could reasonably be expected to have taken the impediment into account at the time when the obligation was incurred.</p> <p>(3) Where the excusing impediment is only temporary the excuse has effect for the period during which the impediment exists. However, if the delay amounts to a fundamental non-performance, the creditor may treat it as such.</p>

<p>who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.</p> <p>(4) Nothing in this Article prevents a party from exercising a right to terminate the contract or to withhold performance or request interest on money due.</p>	<p>(4) Where the excusing impediment is permanent the obligation is extinguished.</p> <p>Any reciprocal obligation is also extinguished. In the case of contractual obligations any restitutionary effects of extinction are regulated by the rules in Chapter 3, Section 5, Sub-section 4 (Restitution) with appropriate adaptations.</p> <p>(5) The debtor must ensure that notice of the impediment and of its effect on the ability to perform reaches the creditor within a reasonable time after the debtor knew or could reasonably be expected to have known of these circumstances. The creditor is entitled to damages for any loss resulting from the non-receipt of such notice.</p>
	<p>III. – 2:106: Performance entrusted to another</p> <p>A debtor who entrusts performance of an obligation to another person remains responsible for performance.</p>
<p>Section 2: Right to performance</p> <p>Article 7.2.1 (Performance of monetary obligation)</p> <p>Where a party who is obliged to pay money does not do so, the other party may require payment.</p>	<p>III. – 3:301: Enforcement of monetary obligations</p> <p>(1) The creditor is entitled to recover money the payment of which is due.</p> <p>(2) [...]</p>
<p>Article 7.2.2 (Performance of non-monetary obligation)</p> <p>Where a party who owes an obligation other than one to pay money does not perform, the other party may require performance, unless</p> <p>(a) performance is impossible in law or in fact;</p> <p>(b) performance or, where relevant, enforcement is unreasonably burdensome or expensive;</p> <p>(c) the party entitled to performance may reasonably obtain performance from another source;</p> <p>(d) performance is of an exclusively personal character; or</p> <p>(e) the party entitled to performance does not require performance within a reasonable time after it has, or ought to have, become aware of the non-performance.</p>	<p>III. – 3:302: Enforcement of non-monetary obligations</p> <p>(1) The creditor is entitled to enforce specific performance of an obligation other than one to pay money.</p> <p>(2) [...]</p> <p>(3) Specific performance cannot, however, be enforced where:</p> <p>(a) performance would be unlawful or impossible;</p> <p>(b) performance would be unreasonably burdensome or expensive; or</p> <p>(c) performance would be of such a personal character that it would be unreasonable to enforce it.</p> <p>(4) The creditor loses the right to enforce specific performance if performance is not requested within a reasonable time after the creditor has become, or could reasonably be expected to have become, aware of the non-performance.</p> <p>(5) [...]</p>
	<p>III. – 3:302: Enforcement of non-monetary obligations</p> <p>(1) [...]</p> <p>(2) [...]</p> <p>(3) [...]</p> <p>(4) [...]</p> <p>(5) The creditor cannot recover damages for loss or a stipulated payment for non-performance to the</p>

	<p>extent that the creditor has increased the loss or the amount of the payment by insisting unreasonably on specific performance in circumstances where the creditor could have made a reasonable substitute transaction without significant effort or expense.</p>
<p>Article 7.2.3 (<i>Repair and replacement of defective performance</i>)</p> <p>The right to performance includes in appropriate cases the right to require repair, replacement, or other cure of defective performance. The provisions of Articles 7.2.1 and 7.2.2 apply accordingly.</p>	<p>III. – 3:302: Enforcement of non-monetary obligations</p> <p>(1) [...]</p> <p>(2) Specific performance includes the remedying free of charge of a performance which is not in conformity with the terms regulating the obligation.</p> <p>(3) [...]</p> <p>(4) [...]</p> <p>(5) [...]</p>
<p>Article 7.2.4 (<i>Judicial penalty</i>)</p> <p>(1) Where the court orders a party to perform, it may also direct that this party pay a penalty if it does not comply with the order.</p> <p>(2) The penalty shall be paid to the aggrieved party unless mandatory provisions of the law of the forum provide otherwise. Payment of the penalty to the aggrieved party does not exclude any claim for damages.</p>	
<p>Article 7.2.5 (<i>Change of remedy</i>)</p> <p>(1) An aggrieved party who has required performance of a non-monetary obligation and who has not received performance within a period fixed or otherwise within a reasonable period of time may invoke any other remedy.</p> <p>(2) Where the decision of a court for performance of a non-monetary obligation cannot be enforced, the aggrieved party may invoke any other remedy.</p>	
	<p>III. – 3:301: Enforcement of monetary obligations</p> <p>(1) [...]</p> <p>(2) Where the creditor has not yet performed the reciprocal obligation for which payment will be due and it is clear that the debtor in the monetary obligation will be unwilling to receive performance, the creditor may nonetheless proceed with performance and may recover payment unless:</p> <p>(a) the creditor could have made a reasonable substitute transaction without significant effort or expense; or</p> <p>(b) performance would be unreasonable in the circumstances.</p>

	<p>III. – 3:303: Damages not precluded</p> <p>The fact that a right to enforce specific performance is excluded under the preceding Article does not preclude a claim for damages.</p>
<p>Section 3: Termination</p> <p>Article 7.3.1 (<i>Right to terminate the contract</i>)</p> <p>(1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.</p> <p>(2) In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether</p> <p>(a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract unless the other party did not foresee and could not reasonably have foreseen such result;</p> <p>(b) strict compliance with the obligation which has not been performed is of essence under the contract;</p> <p>(c) the non-performance is intentional or reckless;</p> <p>(d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance;</p> <p>(e) the non-performing party will suffer disproportionate loss as a result of the preparation or performance if the contract is terminated.</p> <p>(3) In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed it under Article 7.1.5 has expired.</p>	<p>III. – 3:502: Termination for fundamental non-performance</p> <p>(1) A creditor may terminate if the debtor's non-performance of a contractual obligation is fundamental.</p> <p>(2) A non-performance of a contractual obligation is fundamental if:</p> <p>(a) it substantially deprives the creditor of what the creditor was entitled to expect under the contract, as applied to the whole or relevant part of the performance, unless at the time of conclusion of the contract the debtor did not foresee and could not reasonably be expected to have foreseen that result; or</p> <p>(b) it is intentional or reckless and gives the creditor reason to believe that the debtor's future performance cannot be relied on.</p>
<p>Article 7.3.2 (<i>Notice of termination</i>)</p> <p>(1) The right of a party to terminate the contract is exercised by notice to the other party.</p> <p>(2) If performance has been offered late or otherwise does not conform to the contract the aggrieved party will lose its right to terminate the contract unless it gives notice to the other party within a reasonable time after it has or ought to have become aware of the offer or of the non-conforming performance.</p>	<p>III. – 3:507: Notice of termination</p> <p>(1) A right to terminate under this Section is exercised by notice to the debtor.</p> <p>(2) [...]</p> <p>III. – 3:508: Loss of right to terminate</p> <p>(1) If performance has been tendered late or a tendered performance otherwise does not conform to the contract the creditor loses the right to terminate under this Section unless notice of termination is given within a reasonable time.</p> <p>(2) Where the creditor has given the debtor a period of time to cure the non-performance under III. – 3:202 (Cure by debtor: general rules) the time mentioned in paragraph (1) begins to run from the expiry of that period. In other cases that time begins to run from the time when the creditor has become, or could reasonably be expected to have become, aware of the tender or the non-conformity.</p>

	<p>(3) A creditor loses a right to terminate by notice under III. – 3:503 (Termination after notice fixing additional time for performance), III. – 3:504 (Termination for anticipated non-performance) or III. – 3:505 (Termination for inadequate assurance of performance) unless the creditor gives notice of termination within a reasonable time after the right has arisen.</p>
<p>Article 7.3.3 (<i>Anticipatory non-performance</i>)</p> <p>Where prior to the date for performance by one of the parties it is clear that there will be a fundamental non-performance by that party, the other party may terminate the contract.</p>	<p>III. – 3:504: Termination for anticipated non-performance</p> <p>A creditor may terminate before performance of a contractual obligation is due if the debtor has declared that there will be a non-performance of the obligation, or it is otherwise clear that there will be such a non-performance, and if the non-performance would have been fundamental.</p>
<p>Article 7.3.4 (<i>Adequate assurance of due performance</i>)</p> <p>A party who reasonably believes that there will be a fundamental non-performance by the other party may demand adequate assurance of due performance and may meanwhile withhold its own performance. Where this assurance is not provided within a reasonable time the party demanding it may terminate the contract.</p>	<p>III. – 3:505: Termination for inadequate assurance of performance</p> <p>A creditor who reasonably believes that there will be a fundamental non-performance of a contractual obligation by the debtor may terminate if the creditor demands an adequate assurance of due performance and no such assurance is provided within a reasonable time.</p> <p>III. – 3:401: Right to withhold performance of reciprocal obligation</p> <p>(1) [...]</p> <p>(2) A creditor who is to perform a reciprocal obligation before the debtor performs and who reasonably believes that there will be non-performance by the debtor when the debtor's performance becomes due may withhold performance of the reciprocal obligation for as long as the reasonable belief continues. However, the right to withhold performance is lost if the debtor gives an adequate assurance of due performance.</p> <p>(3) [...]</p> <p>(4) [...]</p>
<p>Article 7.3.5 (<i>Effects of termination in general</i>)</p> <p>(1) Termination of the contract releases both parties from their obligation to effect and to receive future performance.</p>	<p>III. – 3:509: Effect on obligations under the contract</p> <p>(1) On termination under this Section, the outstanding obligations or relevant part of the outstanding obligations of the parties under the contract come to an end.</p> <p>(2) [...]</p> <p>(3) A creditor who terminates under this Section retains existing rights to damages or a stipulated sum for non-performance and in addition has the same right to damages or a stipulated payment for non-performance as the creditor would have had if there had been non-performance of the now extinguished obligations of the debtor. In relation to such</p>

<p>(2) Termination does not preclude a claim for damages for non-performance.</p> <p>(3) Termination does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination.</p>	<p>extinguished obligations the creditor is not regarded as having caused or contributed to the loss merely by exercising the right to terminate.</p> <p>III. – 3:102: Cumulation of remedies</p> <p>Remedies which are not incompatible may be cumulated. In particular, a creditor is not deprived of the right to damages by resorting to any other remedy.</p> <p>III. – 3:509: Effect on obligations under the contract</p> <p>(1) [...]</p> <p>(2) Termination does not, however, affect any provision of the contract for the settlement of disputes or other provision which is to operate even after termination.</p> <p>(3) [...]</p>
	<p>III. – 3:506: Scope of right when obligations divisible</p> <p>(1) Where the debtor's obligations under the contract are not divisible the creditor may only terminate the contractual relationship as a whole.</p> <p>(2) Where the debtor's obligations under the contract are to be performed in separate parts or are otherwise divisible, then:</p> <p>(a) if there is a ground for termination under this Section of a part to which a counter-performance can be apportioned, the creditor may terminate the contractual relationship so far as it relates to that part;</p> <p>(b) the creditor may terminate the contractual relationship as a whole only if the creditor cannot reasonably be expected to accept performance of the other parts or there is a ground for termination in relation to the contractual relationship as a whole.</p>
<p>Article 7.3.6 (Restitution)</p> <p>(1) On termination of the contract either party may claim restitution of whatever it has supplied, provided that such party concurrently makes restitution of whatever it has received. If restitution in kind is not possible or appropriate allowance should be made in money whenever reasonable.</p> <p>(2) However, if performance of the contract has extended over a period of time and the contract is divisible, such restitution can only be claimed for the period after termination has taken effect.</p>	<p>III. – 3:510: Restitution of benefits received by performance</p> <p>(1) On termination under this Section a party (the recipient) who has received any benefit by the other's performance of obligations under the contract is obliged to return it. Where both parties have obligations to return, the obligations are reciprocal.</p> <p>(2) If the performance was a payment of money, the amount received is to be repaid.</p> <p>(3) To the extent that the benefit (not being money) is transferable, it is to be returned by transferring it. However, if a transfer would cause unreasonable effort or expense, the benefit may be returned by paying its value.</p> <p>(4) To the extent that the benefit is not transferable it is to be returned by paying its value in accordance</p>

	<p>with III. – 3:512 (Payment of value of benefit). (5) The obligation to return a benefit extends to any natural or legal fruits received from the benefit.</p>
	<p>III. – 3:511: When restitution not required</p> <p>(1) There is no obligation to make restitution under this Sub-section to the extent that conforming performance by one party has been met by conforming performance by the other. (2) The terminating party may elect to treat performance as non-conforming if what was received by that party is of no, or fundamentally reduced, value to that party because of the other party's non-performance. (3) Restitution under this Sub-section is not required where the contract was gratuitous.</p>
	<p>III. – 3:512: Payment of value of benefit</p> <p>(1) The recipient is obliged to: (a) pay the value (at the time of performance) of a benefit which is not transferable or which ceases to be transferable before the time when it is to be returned; and (b) pay recompense for any reduction in the value of a returnable benefit as a result of a change in the condition of the benefit between the time of receipt and the time when it is to be returned. (2) Where there was an agreed price the value of the benefit is that proportion of the price which the value of the actual performance bears to the value of the promised performance. Where no price was agreed the value of the benefit is the sum of money which a willing and capable provider and a willing and capable recipient, knowing of any non-conformity, would lawfully have agreed. (3) The recipient's liability to pay the value of a benefit is reduced to the extent that as a result of a non-performance of an obligation owed by the other party to the recipient: (a) the benefit cannot be returned in essentially the same condition as when it was received; or (b) the recipient is compelled without compensation either to dispose of it or to sustain a disadvantage in order to preserve it. (4) The recipient's liability to pay the value of a benefit is likewise reduced to the extent that it cannot be returned in the same condition as when it was received as a result of conduct of the recipient in the reasonable, but mistaken, belief that there was no non-conformity.</p>

	<p>III. – 3:513: Use and improvements</p> <p>(1) The recipient is obliged to pay a reasonable amount for any use which the recipient makes of the benefit except in so far as the recipient is liable under III. – 3:512 (Payment of value of benefit) paragraph (1) in respect of that use.</p> <p>(2) A recipient who has improved a benefit which the recipient is obliged under this Section to return has a right to payment of the value of improvements if the other party can readily obtain that value by dealing with the benefit unless:</p> <p>(a) the improvement was a non-performance of an obligation owed by the recipient to the other party; or</p> <p>(b) the recipient made the improvement when the recipient knew or could reasonably be expected to know that the benefit would have to be returned.</p>
	<p>III. – 3:514: Liabilities arising after time when return due</p> <p>(1) The recipient is obliged to:</p> <p>(a) pay the value (at the time of performance) of a benefit which ceases to be transferable after the time when its return was due; and</p> <p>(b) pay recompense for any reduction in the value of a returnable benefit as a result of a change in the condition of the benefit after the time when its return was due.</p> <p>(2) If the benefit is disposed of after the time when return was due, the value to be paid is the value of any proceeds, if this is greater.</p> <p>(3) Other liabilities arising from non-performance of an obligation to return a benefit are unaffected.</p>
	<p>III. – 3:601: Right to reduce price</p> <p>(1) A creditor who accepts a performance not conforming to the terms regulating the obligation may reduce the price. The reduction is to be proportionate to the decrease in the value of what was received by virtue of the performance at the time it was made compared to the value of what would have been received by virtue of a conforming performance.</p> <p>(2) A creditor who is entitled to reduce the price under the preceding paragraph and who has already paid a sum exceeding the reduced price may recover the excess from the debtor.</p> <p>(3) A creditor who reduces the price cannot also recover damages for the loss thereby compensated but remains entitled to damages for any further loss suffered.</p>

	(4) This Article applies with appropriate adaptations to a reciprocal obligation of the creditor other than an obligation to pay a price.
<p>Section 4: Damages</p> <p>Article 7.4.1 (<i>Right to damages</i>)</p> <p>Any non-performance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except where the non-performance is excused under these Principles.</p>	<p>III. – 3:701: Right to damages</p> <p>(1) The creditor is entitled to damages for loss caused by the debtor's non-performance of an obligation, unless the non-performance is excused.</p> <p>(2) [...]</p> <p>(3) [...]</p> <p>III. – 3:102: Cumulation of remedies</p> <p>Remedies which are not incompatible may be cumulated. In particular, a creditor is not deprived of the right to damages by resorting to any other remedy.</p>
<p>Article 7.4.2 (<i>Full compensation</i>)</p> <p>(1) The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss which it suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm.</p> <p>(2) Such harm may be non-pecuniary and includes, for instance, physical suffering or emotional distress.</p>	<p>III. – 3:702: General measure of damages</p> <p>The general measure of damages for loss caused by non-performance of an obligation is such sum as will put the creditor as nearly as possible into the position in which the creditor would have been if the obligation had been duly performed. Such damages cover loss which the creditor has suffered and gain of which the creditor has been deprived.</p> <p>III. – 3:701: Right to damages</p> <p>(1) [...]</p> <p>(2) [...]</p> <p>(3) "Loss" includes economic and non-economic loss. "Economic loss" includes loss of income or profit, burdens incurred and a reduction in the value of property. "Non-economic loss" includes pain and suffering and impairment of the quality of life.</p>
<p>Article 7.4.3 (<i>Certainty of harm</i>)</p> <p>(1) Compensation is due only for harm, including future harm, that is established with a reasonable degree of certainty.</p> <p>(2) Compensation may be due for the loss of a chance in proportion to the probability of its occurrence.</p> <p>(3) Where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the court.</p>	<p>III. – 3:701: Right to damages</p> <p>(1) [...]</p> <p>(2) The loss for which damages are recoverable includes future loss which is reasonably likely to occur.</p> <p>(3) [...]</p>
<p>Article 7.4.4 (<i>Foreseeability of harm</i>)</p> <p>The non-performing party is liable only for harm which it foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non-performance.</p>	<p>III. – 3:703: Foreseeability</p> <p>The debtor in an obligation which arises from a contract or other juridical act is liable only for loss which the debtor foresaw or could reasonably be expected to have foreseen at the time when the obligation was incurred as a likely result of the non-performance, unless the non-performance was intentional, reckless or grossly negligent.</p>

<p>Article 7.4.5 (<i>Proof of harm in case of replacement transaction</i>)</p> <p>Where the aggrieved party has terminated the contract and has made a replacement transaction within a reasonable time and in a reasonable manner it may recover the difference between the contract price and the price of the replacement transaction as well as damages for any further harm.</p>	<p>III. – 3:706: <i>Substitute transaction</i></p> <p>A creditor who has terminated a contractual relationship in whole or in part under Section 5 and has made a substitute transaction within a reasonable time and in a reasonable manner may, in so far as entitled to damages, recover the difference between the price and the substitute transaction price as well as damages for any further loss.</p>
<p>Article 7.4.6 (<i>Proof of harm by current price</i>)</p> <p>(1) Where the aggrieved party has terminated the contract and has not made a replacement transaction but there is a current price for the performance contracted for, it may recover the difference between the contract price and the price current at the time the contract is terminated as well as damages for any further harm.</p> <p>(2) Current price is the price generally charged for goods delivered or services rendered in comparable circumstances at the place where the contract should have been performed or, if there is no current price at that place, the current price at such other place that appears reasonable to take as a reference.</p>	<p>III. – 3:707: <i>Current price</i></p> <p>Where the creditor has terminated a contractual relationship in whole or in part under Section 5 and has not made a substitute transaction but there is a current price for the performance, the creditor may, in so far as entitled to damages, recover the difference between the contract price and the price current at the time of termination as well as damages for any further loss.</p>
<p>Article 7.4.7 (<i>Harm due in part to aggrieved party</i>)</p> <p>Where the harm is due in part to an act or omission of the aggrieved party or to another event as to which that party bears the risk, the amount of damages shall be reduced to the extent that these factors have contributed to the harm, having regard to the conduct of each of the parties.</p>	<p>III. – 3:704: <i>Loss attributable to creditor</i></p> <p>The debtor is not liable for loss suffered by the creditor to the extent that the creditor contributed to the non-performance or its effects.</p>
<p>Article 7.4.8 (<i>Mitigation of harm</i>)</p> <p>(1) The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps.</p> <p>(2) The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.</p>	<p>III. – 3:705: <i>Reduction of loss</i></p> <p>(1) The debtor is not liable for loss suffered by the creditor to the extent that the creditor could have reduced the loss by taking reasonable steps.</p> <p>(2) The creditor is entitled to recover any expenses reasonably incurred in attempting to reduce the loss.</p>
<p>Article 7.4.9 (<i>Interest for failure to pay money</i>)</p> <p>(1) If a party does not pay a sum of money when it falls due the aggrieved party is entitled to interest upon that sum from the time when payment is due to the time of payment whether or not the non-payment is excused.</p> <p>(2) The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or where no such rate exists at that place, then</p>	<p>III. – 3:708: <i>Interest on late payments</i></p> <p>(1) If payment of a sum of money is delayed, whether or not the non-performance is excused, the creditor is entitled to interest on that sum from the time when payment is due to the time of payment at the average commercial bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place where payment is due.</p>

<p>the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment. (3) The aggrieved party is entitled to additional damages if the non-payment caused it a greater harm.</p>	<p>(2) The creditor may in addition recover damages for any further loss.</p>
<p>Article 7.4.10 (<i>Interest on damages</i>) Unless otherwise agreed, interest on damages for non-performance of non-monetary obligations accrues as from the time of non-performance.</p>	
<p>Article 7.4.11 (<i>Manner of monetary redress</i>) (1) Damages are to be paid in a lump sum. However, they may be payable in instalments where the nature of the harm makes this appropriate. (2) Damages to be paid in instalments may be indexed.</p>	
	<p>III. – 3:710: Interest in commercial contracts (1) If a business delays the payment of a price due under a contract for the supply of goods, other assets or services without being excused under III. – 3:104 (Excuse due to an impediment), interest is due at the rate specified in paragraph (4), unless a higher interest rate is applicable. (2) Interest at the rate specified in paragraph (4) starts to run on the day which follows the date or the end of the period for payment provided in the contract. If there is no such date or period, interest at that rate starts to run: (a) 30 days after the date when the debtor receives the invoice or an equivalent request for payment; or (b) 30 days after the date of receipt of the goods or services, if the date under (a) is earlier or uncertain, or if it is uncertain whether the debtor has received an invoice or equivalent request for payment. (3) If conformity of goods or services to the contract is to be ascertained by way of acceptance or verification, the 30 day period under paragraph (2)(b) starts to run on the date of acceptance or verification. (4) The interest rate for delayed payment is the interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question (“the reference rate”), plus seven percentage points. For the currency of a Member State which is not participating in the third stage of economic and monetary union, the reference rate is the equivalent rate set by its national central bank. (5) The creditor may in addition recover damages for any further loss.</p>

	<p>III. – 3:711: Unfair terms relating to interest</p> <p>(1) A term whereby a business pays interest from a date later than that specified in the preceding Article paragraph (2) (a) and (b) and paragraph (3), or at a rate lower than that specified in paragraph (4), is not binding to the extent that this would be unfair.</p> <p>(2) A term whereby a debtor is allowed to pay the price for goods, other assets or services later than the time when interest starts to run under the preceding Article paragraph (2)(a) and (b) and paragraph (3) does not deprive the creditor of interest to the extent that this would be unfair.</p> <p>(3) Something is unfair for the purposes of this Article if it grossly deviates from good commercial practice, contrary to good faith and fair dealing.</p>
<p>Article 7.4.12 (Currency in which to assess damages)</p> <p>Damages are to be assessed either in the currency in which the monetary obligation was expressed or in the currency in which the harm was suffered, whichever is more appropriate.</p>	<p>III. – 3:713: Currency by which damages to be measured</p> <p>Damages are to be measured by the currency which most appropriately reflects the creditor's loss.</p>
<p>Article 7.4.13 (Agreed payment for non-performance)</p> <p>(1) Where the contract provides that a party who does not perform is to pay a specified sum to the aggrieved party for such non-performance, the aggrieved party is entitled to that sum irrespective of its actual harm.</p> <p>(2) However, notwithstanding any agreement to the contrary the specified sum may be reduced to a reasonable amount where it is grossly excessive in relation to the harm resulting from the non-performance and to the other circumstances.</p>	<p>III. – 3:712: Stipulated payment for non-performance</p> <p>(1) Where the terms regulating an obligation provide that a debtor who fails to perform the obligation is to pay a specified sum to the creditor for such non-performance, the creditor is entitled to that sum irrespective of the actual loss.</p> <p>(2) However, despite any provision to the contrary, the sum so specified in a contract or other juridical act may be reduced to a reasonable amount where it is grossly excessive in relation to the loss resulting from the non-performance and the other circumstances.</p>
<p>CHAPTER 8 — SET-OFF</p> <p>Article 8.1 (Conditions of set-off)</p> <p>(1) Where two parties owe each other money or other performances of the same kind, either of them ("the first party") may set off its obligation against that of its obligee ("the other party") if at the time of set-off,</p> <p>(a) the first party is entitled to perform its obligation;</p> <p>(b) the other party's obligation is ascertained as to its existence and amount and performance is due.</p>	<p>III. – 6:101: Definitions and scope</p> <p>(1) "Set-off" is the process by which a person may use a right to performance held against another person to extinguish in whole or in part an obligation owed to that person.</p> <p>(2) This Chapter does not apply to set-off in insolvency.</p> <p>III. – 6:102: Requirements for set-off</p> <p>If two parties owe each other obligations of the same kind, either party may set off that party's right against the other party's right, if and to the extent that, at the time of set-off:</p> <p>(a) the performance of the first party is due or, even if it is not due, the first party can oblige the other party</p>

<p>(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.</p>	<p>to accept performance; (b) the performance of the other party is due; and (c) each party has authority to dispose of that party's right for the purpose of the set-off.</p> <p>III. – 6:103: Unascertained rights</p> <p>(1) A debtor may not set off a right which is unascertained as to its existence or value unless the set-off will not prejudice the interests of the creditor. (2) Where the rights of both parties arise from the same legal relationship it is presumed that the creditor's interests will not be prejudiced.</p>
<p>Article 8.2 (Foreign currency set-off)</p> <p>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 that the first party shall pay only in a specified currency</p>	<p>III. – 6:104: Foreign currency set-off</p> <p>Where parties owe each other money in different currencies, each party may set off that party's right against the other party's right, unless the parties have agreed that the party declaring set-off is to pay exclusively in a specified currency.</p>
<p>Article 8.3 (Set-off by notice)</p> <p>The right of set-off is exercised by notice to the other party.</p>	<p>III. – 6:105: Set-off by notice</p> <p>The right of set-off is exercised by notice to the other party.</p>
<p>Article 8.4 (Content of notice)</p> <p>(1) The notice must specify the obligations to which it relates. (2) If the notice does not specify the obligation against which set-off is exercised, the other party may, within a reasonable time, declare to the first party the obligation to which set-off relates. If no such declaration is made, the set-off will relate to all the obligations proportionally.</p>	<p>III. – 6:106: Two or more rights and obligations</p> <p>(1) Where the party giving notice of set-off has two or more rights against the other party, the notice is effective only if it identifies the right to which it relates. (2) Where the party giving notice of set-off has to perform two or more obligations towards the other party, the rules on imputation of performance apply with appropriate adaptations.</p>
<p>Article 8.5 (Effect of set-off)</p> <p>(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.</p>	<p>III. – 6:107: Effect of set-off</p> <p>Set-off extinguishes the obligations, as far as they are coextensive, as from the time of notice.</p>
	<p>III. – 6:108: Exclusion of right of set-off</p> <p>Set-off cannot be effected:</p> <p>(a) where it is excluded by agreement; (b) against a right to the extent that that right is not capable of attachment; and (c) against a right arising from an intentional wrongful act.</p>

<p>CHAPTER 9 — ASSIGNMENT OF RIGHTS, TRANSFER OF OBLIGATIONS, ASSIGNMENT OF CONTRACTS</p> <p>Section 1: Assignment of rights</p> <p>Article 9.1.1 (Definitions)</p> <p>“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”).</p>	<p>[Chapter 5: Change of parties Section 1: Assignments of rights]</p> <p>III. – 5:101: Scope of Section</p> <p>(1) This Section applies to the assignment, by a contract or other juridical act, of a right to performance of an obligation. (2) [...]</p> <p>III. – 5:102: Definitions</p> <p>(1) An “assignment” of a right is the transfer of the right from one person (the “assignor”) to another person (the “assignee”). (2) An “act of assignment” is a contract or other juridical act which is intended to effect a transfer of the right. (3) Where part of a right is assigned, any reference in this Section to a right includes a reference to the assigned part of the right.</p>
<p>Article 9.1.2 (Exclusions)</p> <p>This Section does not apply to transfers made under the special rules governing the transfers: (a) of instruments such as negotiable instruments, documents of title or financial instruments, or (b) of rights in the course of transferring a business.</p>	<p>[Chapter 5: Change of parties Section 1: Assignments of rights]</p> <p>III. – 5:101: Scope of Section</p> <p>(1) [...] (2) It does not apply to the transfer of a financial instrument or investment security where such transfer must be by entry in a register maintained by or for the issuer or where there are other requirements for transfer or restrictions on transfer.</p>
<p>Article 9.1.3 (Assignability of non-monetary rights)</p> <p>A right to non-monetary performance may be assigned only if the assignment does not render the obligation significantly more burdensome.</p>	<p>III. – 5:117: Effect on place of performance</p> <p>(1) [...] (2) Where the assigned right relates to a non-monetary obligation to be performed at a particular place, the assignee may not require performance at any other place.</p>
<p>Article 9.1.4 (Partial assignment)</p> <p>(1) A right to the 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.</p>	<p>III. – 5:107: Assignability in part</p> <p>(1) A right to performance of a monetary obligation may be assigned in part. (2) A right to performance of a non-monetary obligation may be assigned in part only if (a) the debtor consents to the assignment; or (b) the right is divisible and the assignment does not render the obligation significantly more burdensome. (3) Where a right is assigned in part the assignor is liable to the debtor for any increased costs which the debtor thereby incurs.</p>

	<p>III. – 5:105: Assignability: general rule</p> <p>(1) All rights to performance are assignable except where otherwise provided by law. (2) A right to performance which is by law accessory to another right is not assignable separately from that right.</p>
<p>Article 9.1.5 (Future rights)</p> <p>A future right is deemed to be transferred 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.</p>	<p>III. – 5:106: Future and unspecified rights</p> <p>(1) A future right to performance may be the subject of an act of assignment but the transfer of the right depends on its coming into existence and being identifiable as the right to which the act of assignment relates. (2) [...]</p> <p>III. – 5:114: When assignment takes place</p> <p>(1) [...] (2) However, an assignment of a right which was a future right at the time of the act of assignment is regarded as having taken place when all requirements other than those dependent on the existence of the right were satisfied. (3) [...]</p>
<p>Article 9.1.6 (Rights assigned without individual specification)</p> <p>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.</p>	<p>III. – 5:106: Future and unspecified rights</p> <p>(1) [...] (2) A number of rights to performance may be assigned without individual specification if, at the time when the assignment is to take place in relation to them, they are identifiable as rights to which the act of assignment relates.</p>
<p>Article 9.1.7 (Agreement between assignor and assignee sufficient)</p> <p>(1) A right is assigned by mere agreement between the assignor and the 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.</p>	<p>III. – 5:110: Act of assignment: formation and validity</p> <p>(1) Subject to paragraphs (2) and (3), the rules of Book II on the formation and validity of contracts and other juridical acts apply to acts of assignment. (2) [...] (3) [...]</p> <p>III. – 5:104: Basic requirements</p> <p>(1) The requirements for an assignment of a right to performance are that: (a) the right exists; (b) the right is assignable; (c) the person purporting to assign the right has the right or authority to transfer it; (d) the assignee is entitled as against the assignor to the transfer by virtue of a contract or other juridical act, a court order or a rule of law; and (e) there is a valid act of assignment of the right.</p>

	<p>(2) The entitlement referred to in paragraph (1)(d) need not precede the act of assignment. (3) The same contract or other juridical act may operate as the conferment of an entitlement and as the act of assignment. (4) Neither notice to the debtor nor the consent of the debtor to the assignment is required.</p> <p>III. – 5:111: Right or authority to assign</p> <p>The requirement of right or authority in III. – 5:104 (Basic requirements) paragraph (1)(c) need not be satisfied at the time of the act of assignment but has to be satisfied at the time the assignment is to take place.</p> <p>III. – 5:113: New creditor</p> <p>As soon as the assignment takes place the assignor ceases to be the creditor and the assignee becomes the creditor in relation to the right assigned.</p> <p>III. – 5:114: When assignment takes place</p> <p>(1) An assignment takes place when the requirements of III. – 5:104 (Basic requirements) are satisfied, or at such later time as the act of assignment may provide. (2) [...]</p> <p>III. – 5:109: Assignability: rights personal to the creditor</p> <p>(1) A right is not assignable if it is a right to a performance which the debtor, by reason of the nature of the performance or the relationship between the debtor and the creditor, could not reasonably be required to render to anyone except that creditor. (2) Paragraph (1) does not apply if the debtor has consented to the assignment.</p>
<p>Article 9.1.8 (Obligor's additional costs)</p> <p>The obligor has a right to be compensated by the assignor or the assignee for any additional costs caused by the assignment.</p>	<p>[Effects of assignment]</p> <p>III. – 5:117: Effect on place of performance</p> <p>(1) Where the assigned right relates to an obligation to pay money at a particular place, the assignee may require payment at any place within the same country or, if that country is a Member State of the European Union, at any place within the European Union, but the assignor is liable to the debtor for any increased costs which the debtor incurs by reason of any change in the place of performance. (2) [...].</p> <p>III. – 5:107: Assignability in part</p> <p>(1) [...] (3) [...]</p>

<p>Article 9.1.9 (<i>Non-assignment clauses</i>)</p> <p>(1) The assignment of a right to the payment of a monetary sum is effective notwithstanding an agreement between the assignor and the obligor limiting or prohibiting such an assignment. However, the assignor may be liable to the obligor for breach of contract.</p> <p>(2) The 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.</p> <p>Nevertheless, the assignment is effective if the assignee, at the time of the assignment, neither knew nor ought to have known of the agreement. The assignor may then be liable to the obligor for breach of contract.</p>	<p>III. – 5:108: <i>Assignability: effect of contractual prohibition</i></p> <p>(1) A contractual prohibition of, or restriction on, the assignment of a right does not affect the assignability of the right.</p> <p>(2) However, where a right is assigned in breach of such a prohibition or restriction:</p> <p>(a) the debtor may perform in favour of the assignor and is discharged by so doing; and</p> <p>(b) the debtor retains all rights of set-off against the assignor as if the right had not been assigned.</p> <p>(3) Paragraph (2) does not apply if:</p> <p>(a) the debtor has consented to the assignment;</p> <p>(b) the debtor has caused the assignee to believe on reasonable grounds that there was no such prohibition or restriction; or</p> <p>(c) the assigned right is a right to payment for the provision of goods or services.</p> <p>(4) The fact that a right is assignable notwithstanding a contractual prohibition or restriction does not affect the assignor's liability to the debtor for any breach of the prohibition or restriction.</p>
<p>Article 9.1.10 (<i>Notice to the obligor</i>)</p> <p>(1) Until the obligor receives a notice of the assignment from either the assignor or the assignee, it is discharged by paying the assignor.</p> <p>(2) After the obligor receives such a notice, it is discharged only by paying the assignee.</p>	<p>III. – 5:119: <i>Performance to person who is not the creditor</i></p> <p>(1) The debtor is discharged by performing to the assignor so long as the debtor has not received a notice of assignment from either the assignor or the assignee and does not know that the assignor is no longer entitled to receive performance.</p> <p>(2) Notwithstanding that the person identified as the assignee in a notice of assignment is not the creditor, the debtor is discharged by performing in good faith to that person.</p> <p>(3) Notwithstanding that the person identified as the assignee in a notice of assignment received from a person claiming to be the assignee is not the creditor, the debtor is discharged by performing to that person if the creditor has caused the debtor reasonably and in good faith to believe that the right has been assigned to that person.</p>
<p>Article 9.1.11 (<i>Successive assignments</i>)</p> <p>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.</p>	<p>III. – 5:121: <i>Competition between successive assignees</i></p> <p>(1) Where there are successive purported assignments by the same person of the same right to performance the purported assignee whose assignment is first notified to the debtor has priority over any earlier assignee if at the time of the later assignment the assignee under that assignment neither knew nor could reasonably be expected to have known of the earlier assignment.</p>

	(2) The debtor is discharged by paying the first to notify even if aware of competing demands.
	<p>III. – 5:122: Competition between assignee and assignor receiving proceeds</p> <p>Where the debtor is discharged under III. – 5:108 (Assignability: effect of contractual prohibition) paragraph (2)(a) or III. – 5:119 (Performance to person who is not the creditor) paragraph (1), the assignee's right against the assignor to the proceeds has priority over the right of a competing claimant so long as the proceeds are held by the assignor and are reasonably identifiable from the other assets of the assignor.</p>
<p>Article 9.1.12 (Adequate proof of assignment)</p> <p>(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.</p> <p>(2) Until adequate proof is provided, the obligor may withhold payment.</p> <p>(3) Unless adequate proof is provided, notice is not effective.</p> <p>(4) Adequate proof includes, but is not limited to, any writing emanating from the assignor and indicating that the assignment has taken place.</p>	<p>III. – 5:120: Adequate proof of assignment</p> <p>(1) A debtor who believes on reasonable grounds that the right has been assigned but who has not received a notice of assignment, may request the person who is believed to have assigned the right to provide a notice of assignment or a confirmation that the right has not been assigned or that the assignor is still entitled to receive payment.</p> <p>(2) A debtor who has received a notice of assignment which is not in textual form on a durable medium or which does not give adequate information about the assigned right or the name and address of the assignee may request the person giving the notice to provide a new notice which satisfies these requirements.</p> <p>(3) A debtor who has received a notice of assignment from the assignee but not from the assignor may request the assignee to provide reliable evidence of the assignment. Reliable evidence includes, but is not limited to, any statement in textual form on a durable medium emanating from the assignor indicating that the right has been assigned.</p> <p>(4) A debtor who has made a request under this Article may withhold performance until the request is met.</p>
<p>Article 9.1.13 (Defences and rights of set-off)</p> <p>(1) The obligor may assert against the assignee all defences that the obligor could assert against the assignor.</p> <p>(2) The obligor may exercise against the assignee any right of set-off available to the obligor against the assignor up to the time notice of assignment was received.</p>	<p>III. – 5:116: Effect on defences and rights of set-off</p> <p>(1) The debtor may invoke against the assignee all substantive and procedural defences to a claim based on the assigned right which the debtor could have invoked against the assignor.</p> <p>(2) The debtor may not, however, invoke a defence against the assignee:</p> <p>(a) if the debtor has caused the assignee to believe that there was no such defence; or</p> <p>(b) if the defence is based on breach by the assignor of a prohibition or restriction on assignment.</p> <p>(3) The debtor may invoke against the assignee all rights of set-off which would have been available against the assignor in respect of rights against the assignor:</p>

	<p>(a) existing at the time when the debtor could no longer obtain a discharge by performing to the assignor; or</p> <p>(b) closely connected with the assigned right.</p>
<p>Article 9.1.14 (<i>Rights related to the right assigned</i>)</p> <p>The assignment of a right transfers to the assignee:</p> <p>(a) all the assignor’s rights to payment or other performance under the contract in respect of the right assigned, and</p> <p>(b) all rights securing performance of the right assigned.</p>	<p>III. – 5:115: Rights transferred to assignee</p> <p>(1) The assignment of a right to performance transfers to the assignee not only the primary right but also all accessory rights and transferable supporting security rights.</p> <p>(2) Where the assignment of a right to performance of a contractual obligation is associated with the substitution of the assignee as debtor in respect of any obligation owed by the assignor under the same contract, this Article takes effect subject to III. – 5:302 (Transfer of contractual position).</p>
<p>Article 9.1.15 (<i>Undertakings of the assignor</i>)</p> <p>The assignor undertakes towards the assignee, except as otherwise disclosed to the assignee, that:</p> <p>(a) the assigned right exists at the time of the assignment, unless the right is a future right;</p> <p>(b) the assignor is entitled to assign the right;</p> <p>(c) the right has not been previously assigned to another assignee, and it is free from any right or claim from a third party;</p> <p>(d) the obligor does not have any defences;</p> <p>(e) neither the obligor nor the assignor has given notice of set-off concerning the assigned right and will not give any such notice;</p> <p>(f) the assignor will reimburse the assignee for any payment received from the obligor before notice of the assignment was given.</p>	<p>III. – 5:112: Undertakings by assignor</p> <p>(1) The undertakings in paragraphs (2) to (6) are included in the act of assignment unless the act of assignment or the circumstances indicate otherwise.</p> <p>(2) The assignor undertakes that:</p> <p>(a) the assigned right exists or will exist at the time when the assignment is to take effect;</p> <p>(b) the assignor is entitled to assign the right or will be so entitled at the time when the assignment is to take effect.</p> <p>(c) the debtor has no defences against an assertion of the right;</p> <p>(d) the right will not be affected by any right of set-off available as between the assignor and the debtor; and</p> <p>(e) the right has not been the subject of a prior assignment to another assignee and is not subject to any right in security in favour of any other person or to any other encumbrance.</p> <p>(3) The assignor undertakes that any terms of a contract or other juridical act which have been disclosed to the assignee as terms regulating the right have not been modified and are not affected by any undisclosed agreement as to their meaning or effect which would be prejudicial to the assignee.</p> <p>(4) The assignor undertakes that the terms of any contract or other juridical act from which the right arises will not be modified without the consent of the assignee unless the modification is provided for in the act of assignment or is one which is made in good faith and is of a nature to which the assignee could not reasonably object.</p> <p>(5) The assignor undertakes not to conclude or grant any subsequent act of assignment of the same right which could lead to another person obtaining priority over the assignee.</p>

	<p>(6) The assignor undertakes to transfer to the assignee, or to take such steps as are necessary to complete the transfer of, all transferable rights intended to secure the performance which are not already transferred by the assignment, and to transfer the proceeds of any non-transferable rights intended to secure the performance.</p> <p>(7) The assignor does not represent that the debtor has, or will have, the ability to pay.</p>
	<p>III. – 5:118: Effect of initial invalidity, subsequent avoidance, withdrawal, termination and revocation</p> <p>(1) This Article applies where the assignee’s entitlement for the purposes of III. – 5:104 (Basic requirements) paragraph (1)(d) arises from a contract or other juridical act (the underlying contract or other juridical act) whether or not it is followed by a separate act of assignment for the purposes of paragraph (1)(e) of that Article.</p> <p>(2) Where the underlying contract or other juridical act is void from the beginning, no assignment takes place.</p> <p>(3) Where, after an assignment has taken place, the underlying contract or other juridical act is avoided under Book II, Chapter 7, the right is treated as never having passed to the assignee (retroactive effect on assignment).</p> <p>(4) Where, after an assignment has taken place, the underlying contract or other juridical act is withdrawn in the sense of Book II, Chapter 5, or the contractual relationship is terminated under any rule of Book III, or a donation is revoked in the sense of Book IV. H Chapter 4, there is no retroactive effect on the assignment.</p> <p>(5) This Article does not affect any right to recover based on other provisions of these model rules.</p>
<p>Section 2: Transfer of obligations</p> <p>Article 9.2.1 (Modes of transfer)</p> <p>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</p> <p>(a) by an agreement between the original obligor and the new obligor subject to Article 9.2.3, or</p> <p>(b) by an agreement between the obligee and the new obligor, by which the new obligor assumes the obligation.</p>	<p>[Substitution and addition of debtors]</p> <p>III. – 5:201: Scope</p> <p>This Section applies only to the substitution or addition of a new debtor by agreement.</p> <p>III. – 5:202: Types of substitution or addition</p> <p>(1) A new debtor may be substituted or added:</p> <p>(a) in such a way that the original debtor is discharged (complete substitution of new debtor);</p> <p>(b) [...]</p> <p>(c) [...]</p> <p>(2) [...]</p>

<p>Article 9.2.2 (Exclusion)</p> <p>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.</p>	
<p>Article 9.2.3 (Requirement of obligee's consent to transfer)</p> <p>The transfer of an obligation by an agreement between the original obligor and the new obligor requires the consent of the obligee.</p>	<p>III. – 5:203: Consent of creditor</p> <p>(1) The consent of the creditor is required for the substitution of a new debtor, whether complete or incomplete. (2) [...]</p>
<p>Article 9.2.4 (Advance consent of obligee)</p> <p>(1) The obligee may give its consent in advance. (2) If the obligee has given its consent in advance, the transfer of the obligation becomes effective when a notice of the transfer is given to the obligee or when the obligee acknowledges it.</p>	<p>III. – 5:203: Consent of creditor</p> <p>(1) [...] (2) The consent of the creditor to the substitution of a new debtor may be given in advance. In such a case the substitution takes effect only when the creditor is given notice by the new debtor of the agreement between the new and the original debtor. (3) [...]</p>
<p>Article 9.2.5 (Discharge of original obligor)</p> <p>(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 and the new obligor are jointly and severally liable.</p>	<p>III. – 5:202: Types of substitution or addition</p> <p>(1) A new debtor may be substituted or added: (a) in such a way that the original debtor is discharged (complete substitution of new debtor); (b) in such a way that the original debtor is retained as a debtor in case the new debtor does not perform properly (incomplete substitution of new debtor); or (c) in such a way that the original debtor and the new debtor have solidary liability (addition of new debtor). (2) If it is clear that there is a new debtor but not clear what type of substitution or addition was intended, the original debtor and the new debtor have solidary liability.</p> <p>III. – 5:204: Complete substitution</p> <p>A third person may undertake with the agreement of the creditor and the original debtor to be completely substituted as debtor, with the effect that the original debtor is discharged.</p> <p>III. – 5:206: Incomplete substitution</p> <p>A third person may agree with the creditor and with the original debtor to be incompletely substituted as debtor, with the effect that the original debtor is retained as a debtor in case the original debtor does not perform properly.</p>

<p>Article 9.2.6 (<i>Third party performance</i>)</p> <p>(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.</p> <p>(2) The obligee retains its claim against the obligor.</p>	<p>III. – 2:107: Performance by a third person</p> <p>(1) Where personal performance by the debtor is not required by the terms regulating the obligation, the creditor cannot refuse performance by a third person if:</p> <p>(a) the third person acts with the assent of the debtor; or</p> <p>(b) the third person has a legitimate interest in performing and the debtor has failed to perform or c</p> <p>(2) Performance by a third person in accordance with paragraph (1) discharges the debtor except to the extent that the third person takes over the creditor's right by assignment or subrogation.</p>
<p>Article 9.2.7 (<i>Defences and rights of set-off</i>)</p> <p>(1) The new obligor may assert against the obligee all defences which the original obligor could assert against the obligee.</p> <p>(2) The new obligor may not exercise against the obligee any right of set-off available to the original obligor against the obligee.</p>	<p>III. – 5:205: Effects of complete substitution on defences, set-off and security rights</p> <p>(1) The new debtor may invoke against the creditor all defences which the original debtor could have invoked against the creditor.</p> <p>(2) The new debtor may not exercise against the creditor any right of set-off available to the original debtor against the creditor.</p> <p>(3) [...]</p> <p>(4) [...]</p> <p>(5) [...]</p> <p>III. – 5:207: Effects of incomplete substitution</p> <p>(1) The effects of an incomplete substitution on defences and set-off are the same as the effects of a complete substitution.</p> <p>(2) To the extent that the original debtor is not discharged, any personal or proprietary security provided for the performance of that debtor's obligations is unaffected by the substitution.</p> <p>(3) So far as not inconsistent with paragraphs (1) and (2) the liability of the original debtor is governed by the rules on the liability of a provider of dependent personal security with subsidiary liability.</p>
	<p>III. – 5:205: Effects of complete substitution on defences, set-off and security rights</p> <p>(1) [...]</p> <p>(2) [...]</p> <p>(3) The new debtor cannot invoke against the creditor any rights or defences arising from the relationship between the new debtor and the original debtor.</p> <p>(4) [...]</p> <p>(5) [...]</p>
<p>Article 9.2.8 (<i>Rights related to the obligation transferred</i>)</p> <p>(1) The obligee may assert against the new obligor all its rights to payment or other performance under the</p>	<p>III. – 5:205: Effects of complete substitution on defences, set-off and security rights</p> <p>(1) [...]</p> <p>(2) [...]</p>

<p>contract in respect of the obligation transferred. (2) If the original obligor is discharged under Article 9.2.5(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 original 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 original obligor and the new obligor.</p>	<p>(3) [...] (4) The discharge of the original debtor also extends to any personal or proprietary security provided by the original debtor to the creditor for the performance of the obligation, unless the security is over an asset which is transferred to the new debtor as part of a transaction between the original and the new debtor. (5) Upon discharge of the original debtor, a security granted by any person other than the new debtor for the performance of the obligation is released, unless that other person agrees that it should continue to be available to the creditor.</p>
	<p>III. – 5:203: Consent of creditor (1) [...] (2) [...] (3) The consent of the creditor is not required for the addition of a new debtor but the creditor, by notice to the new debtor, can reject the right conferred against the new debtor if that is done without undue delay after being informed of the right and before it has been expressly or impliedly accepted. On such rejection the right is treated as never having been conferred.</p>
	<p>III. – 5:208: Addition of new debtor A third person may agree with the debtor to be added as a debtor, with the effect that the original debtor and the new debtor have solidary liability.</p>
	<p>III. – 5:209: Effects of addition of new debtor (1) Where there is a contract between the new debtor and the creditor, or a separate unilateral juridical act by the new debtor in favour of the creditor, whereby the new debtor is added as a debtor, the new debtor cannot invoke against the creditor any rights or defences arising from the relationship between the new debtor and the original debtor. Where there is no such contract or unilateral juridical act the new debtor can invoke against the creditor any ground of invalidity affecting the agreement with the original debtor. (2) So far as not inconsistent with paragraph (1), the rules of Book III, Chapter 4, Section 1 (Plurality of debtors) apply.</p>
<p>Section 3: Assignment of contracts Article 9.3.1 (Definitions) “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 of a contract with</p>	<p>[Transfer of contractual position] III. – 5:301: Scope This Section applies only to transfers by agreement. III. – 5:302: Transfer of contractual position (1) A party to a contractual relationship may agree</p>

another person (the "other party").	with a third person, with the consent of the other party to the contractual relationship, that that person is to be substituted as a party to the relationship. (2) [...] (3) [...]
Article 9.3.2 (<i>Exclusion</i>) This Section does not apply to the assignment of contracts made under the special rules governing transfers of contracts in the course of transferring a business.	
Article 9.3.3 (<i>Requirement of consent of the other party</i>) The assignment of a contract requires the consent of the other party.	III. – 5:302: Transfer of contractual position (1) A party to a contractual relationship may agree with a third person, with the consent of the other party to the contractual relationship, that that person is to be substituted as a party to the relationship. (2) [...] (3) [...]
Article 9.3.4 (<i>Advance consent of the other party</i>) (1) The other party may give its consent in advance. (2) If the other party has given its consent in advance, the assignment of the contract becomes effective when a notice of the assignment is given to the other party or when the other party acknowledges it.	III. – 5:302: Transfer of contractual position (1) [...] (2) The consent of the other party may be given in advance. In such a case the transfer takes effect only when that party is given notice of it. (3) [...]
Article 9.3.5 (<i>Discharge of the assignor</i>) (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 and the assignee are jointly and severally liable.	
Article 9.3.6 (<i>Defences and rights of set-off</i>) (1) To the extent that the assignment of a contract involves an assignment of rights, Article 9.1.13 applies accordingly. (2) To the extent that the assignment of a contract involves a transfer of obligations, Article 9.2.7 applies accordingly.	
Article 9.3.7 (<i>Rights transferred with the contract</i>) (1) To the extent that the assignment of a contract involves an assignment of rights, Article 9.1.14 applies accordingly. (2) To the extent that the assignment of a contract involves a transfer of obligations, Article 9.2.8 applies accordingly.	III. – 5:302: Transfer of contractual position (1) [...] (2) [...] (3) To the extent that the substitution of the third person involves a transfer of rights, the provisions of Section 1 of this Chapter on the assignment of rights apply; to the extent that obligations are transferred, the provisions of Section 2 of this Chapter on the substitution of a new debtor apply.

<p>CHAPTER 10 — LIMITATION PERIODS</p> <p>Article 10.1 (<i>Scope of the Chapter</i>)</p> <p>(1) The exercise of rights governed by these Principles is barred by the expiration of a period of time, referred to as “limitation period”, according to the rules of this Chapter.</p> <p>(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 to perform any act other than the institution of legal proceedings.</p>	<p>III. – 7:101: Rights subject to prescription</p> <p>A right to performance of an obligation is subject to prescription by the expiry of a period of time in accordance with the rules in this Chapter.</p>
	<p>III. – 7:502: Effect on ancillary rights</p> <p>The period of prescription for a right to payment of interest, and other rights of an ancillary nature, expires not later than the period for the principal right.</p>
<p>Article 10.2 (<i>Limitation periods</i>)</p> <p>(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.</p> <p>(2) In any event, the maximum limitation period is ten years beginning on the day after the day the right can be exercised.</p>	<p>III. – 7:201: General period</p> <p>The general period of prescription is three years.</p> <p>III. – 7:203: Commencement</p> <p>(1) The general period of prescription begins to run from the time when the debtor has to effect performance or, in the case of a right to damages, from the time of the act which gives rise to the right.</p> <p>(2) Where the debtor is under a continuing obligation to do or refrain from doing something, the general period of prescription begins to run with each breach of the obligation.</p> <p>(3) [...]</p> <p>III. – 7:307: Maximum length of period</p> <p>The period of prescription cannot be extended, by suspension of its running or postponement of its expiry under this Chapter, to more than ten years or, in case of rights to damages for personal injuries, to more than thirty years. This does not apply to suspension under III. – 7:302 (Suspension in case of judicial and other proceedings).</p>
	<p>III. – 7:301: Suspension in case of ignorance</p> <p>The running of the period of prescription is suspended as long as the creditor does not know of, and could not reasonably be expected to know of:</p> <p>(a) the identity of the debtor; or</p> <p>(b) the facts giving rise to the right including, in the case of a right to damages, the type of damage.</p>

	<p>III. – 7:202: Period for a right established by legal proceedings</p> <p>(1) The period of prescription for a right established by judgment is ten years. (2) The same applies to a right established by an arbitral award or other instrument which is enforceable as if it were a judgment.</p> <p>III. – 7:203: Commencement</p> <p>(1) [...] (2) [...] (3) The period of prescription set out in III. – 7:202 (Period for a right established by legal proceedings) begins to run from the time when the judgment or arbitral award obtains the effect of <i>res judicata</i>, or the other instrument becomes enforceable, though not before the debtor has to effect performance.</p>
<p>Article 10.3 (<i>Modification of limitation periods by the parties</i>)</p> <p>(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 four years; (c) extend the maximum limitation period to more than fifteen years.</p>	<p>III. – 7:601: Agreements concerning prescription</p> <p>(1) The requirements for prescription may be modified by agreement between the parties, in particular by either shortening or lengthening the periods of prescription. (2) The period of prescription may not, however, be reduced to less than one year or extended to more than thirty years after the time of commencement set out in III. – 7:203 (Commencement).</p>
<p>Article 10.4 (<i>New limitation period by acknowledgement</i>)</p> <p>(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 Article 10.2(1).</p>	<p>III. – 7:401: Renewal by acknowledgement</p> <p>(1) If the debtor acknowledges the right, vis-à-vis the creditor, by part payment, payment of interest, giving of security, or in any other manner, a new period of prescription begins to run. (2) The new period is the general period of prescription, regardless of whether the right was originally subject to the general period of prescription or the ten year period under III. – 7:202 (Period for a right established by legal proceedings). In the latter case, however, this Article does not operate so as to shorten the ten year period.</p>
	<p>III. – 7:402: Renewal by attempted execution</p> <p>The ten year period of prescription laid down in III. – 7:202 (Period for a right established by legal proceedings) begins to run again with each reasonable attempt at execution undertaken by the creditor.</p>
<p>Article 10.5 (<i>Suspension by judicial proceedings</i>)</p> <p>(1) The running of the limitation period is suspended</p>	<p>III. – 7:302: Suspension in case of judicial and other proceedings</p> <p>(1) The running of the period of prescription is</p>

<p>(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;</p> <p>(b) in the case of the obligor's insolvency when the obligee has asserted its rights in the insolvency proceedings; or</p> <p>(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.</p> <p>(2) Suspension lasts until a final decision has been issued or until the proceedings have been otherwise terminated.</p>	<p>suspended from the time when judicial proceedings to assert the right are begun.</p> <p>(2) Suspension lasts until a decision has been made which has the effect of <i>res judicata</i>, or until the case has been otherwise disposed of. Where the proceedings end within the last six months of the prescription period without a decision on the merits, the period of prescription does not expire before six months have passed after the time when the proceedings ended.</p> <p>(3) [...]</p> <p>(4) [...]</p>
<p>Article 10.6 (<i>Suspension by arbitral proceedings</i>)</p> <p>(1) The running of the limitation period is 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 arbitral proceedings or provisions determining the exact date of the commencement of arbitral proceedings, the proceedings are deemed to commence on the date on which a request that the right in dispute should be adjudicated reaches the obligor.</p> <p>(2) Suspension lasts until a binding decision has been issued or until the proceedings have been otherwise terminated.</p> <hr/> <p>Article 10.7 (<i>Alternative dispute resolution</i>)</p> <p>The provisions of Articles 10.5 and 10.6 apply with appropriate modifications to other proceedings whereby the parties request a third person to assist them in their attempt to reach an amicable settlement of their dispute.</p>	<p>III. – 7:302: Suspension in case of judicial and other proceedings</p> <p>(1) [...]</p> <p>(2) [...]</p> <p>(3) These provisions apply, with appropriate adaptations, to arbitration proceedings, to mediation proceedings, to proceedings whereby an issue between two parties is referred to a third party for a binding decision and to all other proceedings initiated with the aim of obtaining a decision relating to the right.</p> <p>(4) Mediation proceedings mean structured proceedings whereby two or more parties to a dispute attempt to reach an agreement on the settlement of their dispute with the assistance of a mediator.</p>
	<p>III. – 7:304: Postponement of expiry in case of negotiations</p> <p>If the parties negotiate about the right, or about circumstances from which a claim relating to the right might arise, the period of prescription does not expire before one year has passed since the last communication made in the negotiations.</p>
<p>Article 10.8 (<i>Suspension in case of force majeure, death or incapacity</i>)</p> <p>(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</p>	<p>III. – 7:303: Suspension in case of impediment beyond creditor's control</p> <p>(1) The running of the period of prescription is suspended as long as the creditor is prevented from pursuing proceedings to assert the right by an impediment which is beyond the creditor's control</p>

<p>Articles, the general limitation period is suspended so as not to expire before one year after the relevant impediment has ceased to exist.</p> <p>(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 has inherited the respective party's position. The additional one-year period under paragraph (1) applies accordingly.</p>	<p>and which the creditor could not reasonably have been expected to avoid or overcome.</p> <p>(2) Paragraph (1) applies only if the impediment arises, or subsists, within the last six months of the prescription period.</p> <p>(3) Where the duration or nature of the impediment is such that it would be unreasonable to expect the creditor to take proceedings to assert the right within the part of the period of prescription which has still to run after the suspension comes to an end, the period of prescription does not expire before six months have passed after the time when the impediment was removed.</p> <p>(4) In this Article an impediment includes a psychological impediment.</p> <p>III. – 7:305: Postponement of expiry in case of incapacity</p> <p>(1) If a person subject to an incapacity is without a representative, the period of prescription of a right held by or against that person does not expire before one year has passed after either the incapacity has ended or a representative has been appointed.</p> <p>(2) The period of prescription of rights between a person subject to an incapacity and that person's representative does not expire before one year has passed after either the incapacity has ended or a new representative has been appointed.</p> <p>III. – 7:306: Postponement of expiry: deceased's estate</p> <p>Where the creditor or debtor has died, the period of prescription of a right held by or against the deceased's estate does not expire before one year has passed after the right can be enforced by or against an heir, or by or against a representative of the estate.</p>
<p>Article 10.9 (<i>The effects of expiration of limitation period</i>)</p> <p>(1) The expiration of the limitation period does not extinguish the right.</p> <p>(2) For the expiration of the limitation period to have effect, the obligor must assert it as a defence.</p> <p>(3) A right may still be relied on as a defence even though the expiration of the limitation period for that right has been asserted.</p>	<p>III. – 7:501: General effect</p> <p>(1) After expiry of the period of prescription the debtor is entitled to refuse performance.</p> <p>(2) [...]</p>
<p>Article 10.10 (<i>Right of set-off</i>)</p> <p>The obligee may exercise the right of set-off until the obligor has asserted the expiration of the limitation period.</p>	<p>III. – 7:503: Effect on set-off</p> <p>A right in relation to which the period of prescription has expired may nonetheless be set off, unless the debtor has invoked prescription previously or does so within two months of notification of set-off.</p>

<p>Article 10.11 (Restitution)</p> <p>Where there has been performance in order to discharge an obligation, there is no right of restitution merely because the limitation period has expired.</p>	<p>III. – 7:501: General effect</p> <p>(1) [...]</p> <p>(2) Whatever has been paid or transferred by the debtor in performance of the obligation may not be reclaimed merely because the period of prescription had expired.</p>
	<p>II. – 7:301: Contracts infringing fundamental principles</p> <p>A contract is void to the extent that:</p> <p>(a) it infringes a principle recognised as fundamental in the laws of the Member States of the European Union; and</p> <p>(b) nullity is required to give effect to that principle.</p>
	<p>II. – 7:302: Contracts infringing mandatory rules</p> <p>(1) Where a contract is not void under the preceding Article but infringes a mandatory rule of law, the effects of that infringement on the validity of the contract are the effects, if any, expressly prescribed by that mandatory rule.</p> <p>(2) Where the mandatory rule does not expressly prescribe the effects of an infringement on the validity of a contract, a court may;</p> <p>(a) declare the contract to be valid;</p> <p>(b) avoid the contract, with retrospective effect, in whole or in part; or</p> <p>(c) modify the contract or its effects.</p> <p>(3) A decision reached under paragraph (2) should be an appropriate and proportional response to the infringement, having regard to all relevant circumstances, including:</p> <p>(a) the purpose of the rule which has been infringed;</p> <p>(b) the category of persons for whose protection the rule exists;</p> <p>(c) any sanction that may be imposed under the rule infringed;</p> <p>(d) the seriousness of the infringement;</p> <p>(e) whether the infringement was intentional; and</p> <p>(f) the closeness of the relationship between the infringement and the contract.</p>
	<p>II. – 7:303: Effects of nullity or avoidance</p> <p>(1) The question whether either party has a right to the return of whatever has been transferred or supplied under a contract, or part of a contract, which is void or has been avoided under this Section, or a monetary equivalent, is regulated by the rules on unjustified enrichment. [Book VII]</p> <p>(2) The effect of nullity or avoidance under this Section on the ownership of property which has</p>

	<p>been transferred under the void or avoided contract, or part of a contract, is governed by the rules on the transfer of property.</p> <p>(3) This Article is subject to the powers of the court to modify the contract or its effects.</p>
	<p>II. – 7:304: Damages for loss</p> <p>(1) A party to a contract which is void or avoided, in whole or in part, under this Section is entitled to damages from the other party for any loss suffered as a result of the invalidity, provided that the first party did not know and could not reasonably be expected to have known, and the other party knew or could reasonably be expected to have known, of the infringement.</p> <p>(2) The damages recoverable are such as to place the aggrieved party as nearly as possible in the position in which that party would have been if the contract had not been concluded or the infringing term had not been included.</p>
	<p>III. – 1:106: Conditional rights and obligations</p> <p>(1) The terms regulating a right or obligation may provide that it is conditional upon the occurrence of an uncertain future event, so that it takes effect only if the event occurs (suspensive condition) or comes to an end if the event occurs (resolutive condition).</p> <p>(2) [...]</p> <p>(3) [...]</p> <p>(4) [...]</p> <p>(5) [...]</p>
	<p>III. – 1:106: Conditional rights and obligations</p> <p>(1) [...]</p> <p>(2) [...]</p> <p>(3) [...]</p> <p>(4) When a party, contrary to the duty of good faith and fair dealing or the obligation to co-operate, interferes with a condition so as to bring about its fulfilment or non-fulfilment to that party's advantage, the other party may treat the condition as not having been fulfilled or as having been fulfilled as the case may be.</p> <p>(5) [...]</p>
	<p>III. – 1:106: Conditional rights and obligations</p> <p>(1) [...]</p> <p>(2) Upon fulfilment of a suspensive condition, the relevant right or obligation takes effect.</p> <p>(3) Upon fulfilment of a resolutive condition, the relevant right or obligation comes to an end.</p> <p>(4) [...]</p> <p>(5) When a contractual obligation comes to an end on the fulfilment of a resolutive condition any</p>

	<p>restitutionary effects are regulated by the rules in Chapter 3, Section 5, Sub-section 4 (Restitution) with appropriate adaptations.</p>
	<p>III. – 3:709: When interest to be added to capital</p> <p>(1) Interest payable according to the preceding Article is added to the outstanding capital every 12 months.</p> <p>2) Paragraph (1) of this Article does not apply if the parties have provided for interest upon delay in payment.</p>
	<p>[Chapter 4: Plurality of debtors and creditors Section 1: Plurality of debtors]</p> <p>III. – 4:101: Scope of Section</p> <p>This Section applies where two or more debtors are bound to perform one obligation.</p> <p>III. – 4:102: Solidary, divided and joint obligations</p> <p>(1) An obligation is solidary when each debtor is bound to perform the obligation in full and the creditor may require performance from any of them until full performance has been received.</p> <p>(2) An obligation is divided when each debtor is bound to perform only part of the obligation and the creditor may claim from each debtor only performance of that debtor's part.</p> <p>(3) An obligation is joint when the debtors are bound to perform the obligation together and the creditor may require performance only from all of them together.</p>
	<p>III. – 4:103: When different types of obligation arise</p> <p>(1) Whether an obligation is solidary, divided or joint depends on the terms regulating the obligation.</p> <p>(2) If the terms do not determine the question, the liability of two or more debtors to perform the same obligation is solidary. Liability is solidary in particular where two or more persons are liable for the same damage.</p> <p>(3) The fact that the debtors are not liable on the same terms or grounds does not prevent solidarity.</p>
	<p>III. – 4:104: Liability under divided obligations</p> <p>Debtors bound by a divided obligation are liable in equal shares.</p>
	<p>III. – 4:105: Joint obligations: special rule when money claimed for non-performance</p> <p>Notwithstanding III. – 4:102 (Solidary, divided and joint obligations) paragraph (3), when money is claimed for non-performance of a joint obligation,</p>

	<p>the debtors have solidary liability for payment to the creditor.</p>
	<p>III. – 4:106: Apportionment between solidary debtors</p> <p>(1) As between themselves, solidary debtors are liable in equal shares.</p> <p>(2) If two or more debtors have solidary liability for the same damage, their share of liability as between themselves is equal unless different shares of liability are more appropriate having regard to all the circumstances of the case and in particular to fault or to the extent to which a source of danger for which one of them was responsible contributed to the occurrence or extent of the damage.</p>
	<p>III. – 4:107: Recourse between solidary debtors</p> <p>(1) A solidary debtor who has performed more than that debtor's share may claim the excess from any of the other debtors to the extent of each debtor's unperformed share, together with a share of any costs reasonably incurred.</p> <p>(2) A solidary debtor to whom paragraph (1) applies may also, subject to any prior right and interest of the creditor, exercise the rights and actions of the creditor, including any supporting security rights, to recover the excess from any of the other debtors to the extent of each debtor's unperformed share.</p> <p>(3) If a solidary debtor who has performed more than that debtor's share is unable, despite all reasonable efforts, to recover contribution from another solidary debtor, the share of the others, including the one who has performed, is increased proportionally.</p>
	<p>III. – 4:108: Performance, set-off and merger in solidary obligations</p> <p>(1) Performance or set-off by a solidary debtor or set-off by the creditor against one solidary debtor discharges the other debtors in relation to the creditor to the extent of the performance or set-off.</p> <p>(2) Merger of debts between a solidary debtor and the creditor discharges the other debtors only for the share of the debtor concerned.</p>
	<p>III. – 4:109: Release or settlement in solidary obligations</p> <p>(1) When the creditor releases, or reaches a settlement with, one solidary debtor, the other debtors are discharged of liability for the share of that debtor.</p> <p>–</p> <p>(2) As between solidary debtors, the debtor who is discharged from that debtor's share is discharged</p>

	<p>only to the extent of the share at the time of the discharge and not from any supplementary share for which that debtor may subsequently become liable under III. – 4:107 (Recourse between solidary debtors), paragraph (3).</p>
	<p>III. – 4:110: Effect of judgment in solidary obligations A decision by a court as to the liability to the creditor of one solidary debtor does not affect: (a) the liability to the creditor of the other solidary debtors; or (b) the rights of recourse between the solidary debtors under III. – 4:107 (Recourse between solidary debtors).</p>
	<p>III. – 4:111: Prescription in solidary obligations Prescription of the creditor’s right to performance against one solidary debtor does not affect: (a) the liability to the creditor of the other solidary debtors; or (b) the rights of recourse between the solidary debtors under III. – 4:107 (Recourse between solidary debtors).</p>
	<p>[Chapter 4: Plurality of debtors and creditors Section 2: Plurality of creditors] III. – 4:201: Scope of Section This Section applies where two or more creditors have a right to performance under one obligation. III. – 4:202: Solidary, divided and joint rights (1) A right to performance is solidary when any of the creditors may require full performance from the debtor and the debtor may perform to any of the creditors. (2) A right to performance is divided when each creditor may require performance only of that creditor’s share and the debtor owes each creditor only that creditor’s share. (3) A right to performance is joint when any creditor may require performance only for the benefit of all the creditors and the debtor must perform to all the creditors.</p>
	<p>III. – 4:203: When different types of right arise (1) Whether a right to performance is solidary, divided or communal depends on the terms regulating right. (2) If the terms do not determine the question, the right of co-creditors is divided.</p>

	<p>III. – 4:204: <i>Apportionment in cases of divided rights</i></p> <p>In the case of divided rights the creditors have equal shares.</p>
	<p>III. – 4:205: <i>Difficulties of performing in cases of joint rights</i></p> <p>If one of the creditors who have joint rights to performance refuses to accept, or is unable to receive, the performance, the debtor may obtain discharge from the obligation by depositing the property or money with a third party according to III. – 2:111 (Property not accepted) or III. – 2:112 (Money not accepted).</p>
	<p>III. – 4:206: <i>Apportionment in cases of solidary rights</i></p> <p>(1) In the case of solidary rights the creditors have equal shares.</p> <p>(2) A creditor who has received more than that creditor's share has an obligation to transfer the excess to the other creditors to the extent of their respective shares.</p>