



Принципы международных коммерческих договоров

Principles of International Commercial Contracts

УНИДРУА ~ UNIDROIT | 2004

(главы 8 - 10)

(на английском языке)

miripravo.ru/lpr1



Резюме, Lex Mercatoria, Торговые обычаи, Принципы договорного права,
Международные контракты a-Z

Chapter 8 - Set-Off

Article 8.1 Conditions of set-off

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,

a) the first party is entitled to perform its obligation;

b) The other party's obligation is ascertained as to its existence and amount and performance is due.

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

Article 8.2 Foreign currency set-off

2

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.

Article 8.3 Set-off by notice

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

Article 8.4 Content of notice

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.

Article 8.5 Effect of set-off

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

Chapter 9 - Assignment of Rights, Transfer of Obligations, Assignments of Contracts

Section 1: Assignment of Rights

Article 9.1.1 Definitions

"Assignment of a right" means the transfer by agreement from one person (the "assignor") to another person (the "assignee"), including transfer by way of security, of the assignor's right to payment of a monetary sum or other performance from a third person ("the obligor").

Article 9.1.2 Exclusions

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.

Article 9.1.3 Assign ability of non-monetary rights

A right to non-monetary performance may be assigned only if the assignment does not render the

obligation significantly more burdensome.

Article 9.1.4 Partial assignment

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.

Article 9.1.5 Future rights

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.

Article 9.1.6 Rights assigned without individual specification

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

4

Article 9.1.7 Agreement between assignor and assignee sufficient

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.

Article 9.1.8 Obligor's additional costs

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

Article 9.1.9 Non-assignment clauses

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.
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. Nevertheless, the assignment neither is effective if the assignee, at the time of the assignment, neither new nor ought to have known of the agreement. The assignor may then be liable to the obligor for breach of contract.

Article 9.1.10 Notice to the obligor

1. Until the obligor receives a notice of the assignment from either the assignor or the assignee, it is discharged by paying the assignor.
2. After the obligor receives such a notice, it is discharged only by paying the assignee.

Article 9.1.11 Successive assignments

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

Article 9.1.12 adequate proof of assignment

1. If notice of the assignment is given by the assignee, the obligor may request the assignee to provide within a reasonable time adequate proof that the assignment has been made.
2. Until adequate proof is provided, the obligor may withhold payment.
3. Unless adequate proof is provided, notice is not effective.

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

Article 9.1.13 Defenses and rights of set-off

1. The obligor may assert against the assignee all defenses that the obligor could assert against the assignor.

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.

Article 9.1.14 Rights related to the right assigned

The assignment of a right transfers to the assignee:

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

Article 9.1.15 Undertakings of the assignor

The assignor undertakes towards the assignee, except as otherwise disclosed to the assignee, that:

- a) the assigned right exists at the time of the assignment, unless the right is a future right;
- b) the assignor is entitled to assign the right;
- c) the right has not been previously assigned to another assignee, and it is free from any right or claim from a third party;

d) the obligor does not have any defenses;

e) neither the obligor nor the assignor has given notice of set-off concerning the assigned right and will not give any such notice;

f) the assignor will reimburse the assignee for any payment received from the obligor before notice of the assignment was given.

Section 2: Transfer of Obligations

Article 9.2.1 Modes of transfer

An obligation to pay money or render other performance may be transferred from one person (the "original obligor") to another person (the "new obligor") either

a) by an agreement between the original obligor and the new obligor subject to Article 9.2.3, or

b) by an agreement between the obligee and the new obligor, by which the new obligor assumes the obligation.

Article 9.2.2 Exclusion

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

Article 9.2.3 Requirement of obligee's consent to transfer

The transfer of an obligation by an agreement between the original obligor and the new obligor requires the consent of the obligee.

Article 9.2.4 Advance consent of obligee

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.

Article 9.2.5 Discharge of original obligor

1. The obligee may discharge the original obligor.
2. The obligee may also retain the original obligor as an obligor in case the new obligor does not perform properly.
3. Otherwise the original obligor and the new obligor are jointly and severally liable.

Article 9.2.6 Third party performance

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

Article 9.2.7 Defenses and rights of set-off

1. The new obligor may assert against the obligee all defenses which the original obligor could assert against the obligee.
2. The new obligor may not exercise against the obligee any right of set-off available to the original obligor against the obligee.

Article 9.2.8 Rights related to the obligation transferred

1. The obligee may assert against the new obligor all its rights to payment or other performance under the contract in respect of the obligation transferred.
2. If the original obligor is discharged under Article 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.

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 another person (the "other party").

9

Article 9.3.2 Exclusion

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 Requirement of consent of the other party

The assignment of a contract requires the consent of the other party.

Article 9.3.4 Advance consent of the other party

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.

Article 9.3.5 Discharge of the assignor

1. The other party may discharge the assignor.

2. The other party may also retain the assignor as an obligor in case the assignee does not perform properly.

3. Otherwise the assignor and the assignee are jointly and severally liable.

Article 9.3.6 Defenses and rights of set-off

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 Rights transferred with the contract

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.

Article 10.1 Scope of the Chapter

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.
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.

Article 10.2 Limitation periods

1. The general limitation period is three years beginning on the day after the day the obligee knows or ought to know the facts as a result of which the obligee's right can be exercised.
2. In any event, the maximum limitation period is ten years beginning on the day after the day the right can be exercised?

Article 10.3 Modification of limitation periods by the parties

1. The parties may modify the limitation periods.
2. However they may not
 - a) shorten the general limitation period to less than one year;
 - b) shorten the maximum limitation period to less than four years;
 - c) Extend the maximum limitation period to more than fifteen years.

Article 10.4 New limitation period by acknowledgement

1. Where the obligor before the expiration of the general limitation period acknowledges the right of the obligee, a new general limitation period begins on the day after the day of the acknowledgement.
2. The maximum limitation period does not begin to run again, but may be exceeded by the beginning of a new general limitation period under Art. 10.2(1).

Article 10.5 Suspension by judicial proceedings

1. The running of the limitation period is suspended
 - a) when the obligee performs any act, by commencing judicial proceedings or in judicial proceedings already instituted, that is recognized by the law of the court as asserting the obligee's right against the obligor;
 - b) in the case of the obligor's insolvency when the obligee has asserted its rights in the insolvency proceedings; or
 - c) in the case of proceedings for dissolution of the entity which is the obligor when the obligee has asserted its rights in the dissolution proceedings.

2. Suspension lasts until a final decision has been issued or until the proceedings have been otherwise terminated.

Article 10.6 Suspension by arbitral proceedings

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 recognized 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.
2. Suspension lasts until a binding decision has been issued or until the proceedings have been

otherwise terminated.

Article 10.7 Alternative dispute resolution

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.

Article 10.8 Suspension in case of force majeure, death or incapacity

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

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

13

Article 10.9 the effects of expiration of limitation period

1. The expiration of the limitation period does not extinguish the right.

2. For the expiration of the limitation period to have effect, the obligor must assert it as a defense.

3. A right may still be relied on as a defense even though the expiration of the limitation period for that right has been asserted.

Article 10.10 Right of set-off

The obligee may exercise the right of set-off until the obligor has asserted the expiration of the limitation period.

