Title:
OHADAC principles on international commercial contracts

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Content:
Principles Common Law

CHAPTER 1 – GENERAL PROVISIONS

ARTICLE 1.1 FREEDOM OF CONTRACT

Parties are free to enter into a contract and to determine its content.

ARTICLE 1.2 PACTA SUNT SERVANDA

Contract parties are bound to perform the agreed obligations according to contractual terms.

ARTICLE 1.3 DECLARATIONS AND NOTICES

1. Declarations and notices of the parties must be given by appropriate and effective means. They will be effective when they reach the addressee.

2. A declaration or notice reaches the addressee immediately when it is delivered to it is made orally and in its presence.

3. A written declaration or notice reaches the addressee when it is delivered to its place of business or mailing address, or when it is received in its fax receiver or e-mail server.

ARTICLE 1.4 COMPUTATION OF TIME

1. When a period of time is expressed in days, the day of the contract, event, decision or notice from which the period begins is not computed.

2. When a period of time begins from a determined day, such a day is computed within the period.
3. Periods of time expressed in months or years shall end on the day of the last month or year corresponding to the same day fixed for the beginning of that period. When the final month does not include that day, the period shall end the last day of the month. When the period is expressed in months and days, months are firstly computed and days are computed afterwards.

4. Unless otherwise stated, periods of time set by the parties refer to natural days, including official holidays and non-working days. When the period of time for performance ends on an official holiday or non-working day at the place of performance or at the place where the party who has to perform is established, it will be presumed to be extended until the next working or business day.

5. The time zone will be that corresponding to the place of establishment of the party who sets the time. If setting of time is not attributable to any party, as to the performance of obligations the time zone will be that corresponding to the place of performance or, failing that, to the place where the party who has to perform is established.

CHAPTER 2 - FORMATION OF CONTRACT

Section 1 – Offer and acceptance

ARTICLE 2.1.1 FORMATION OF A CONTRACT

The contract is concluded by the acceptance of the offer.

ARTICLE 2.1.2 DEFINITION OF OFFER

A proposal for concluding a contract constitutes an offer if it is sufficiently precise and indicates the intention of the offeror to be bound in case of acceptance.

ARTICLE 2.1.3 OFFER AND INVITATIO AD OFFERENDUM

1. The offer may be directed to one or more specific persons.

2. A proposal directed to the public shall not constitute an offer, unless so provided by the offeror or indicated by the circumstances.

3. Circumstances mentioned in the previous paragraph exist, particularly, in case of exhibition of goods and products at a particular price in physical or virtual spaces. In these cases, the offer is presumed effective until the stock of goods or the possibilities to supply the service are exhausted.

ARTICLE 2.1.4 EFFECTIVENESS OF THE OFFER

1. An offer becomes effective when it reaches the offeree.

2. Any offer may be withdrawn if the notice of withdrawal reaches the offeree before or at the same time as the offer.

ARTICLE 2.1.5 REVOCATION OF THE OFFER

1. The offer may be revoked if the revocation reaches the offeree before the acceptance has been dispatched.

2. However, an offer cannot be revoked if it establishes a period of irrevocability or the offeree could reasonably have believed that the offer was irrevocable and has started to perform acts of execution.

3. When the offer establishes a period of acceptance, this is presumed to be a period of irrevocability, unless otherwise indicated by circumstances.

ARTICLE 2.1.6 DEFINITION OF ACCEPTANCE
1. Acceptance is a firm adhesion to the offer.

2. Acceptance derives from a statement made by or other conduct from the offeree. This conduct may consist in the beginning of performance of the contract by the offeree.

3. Silence or inactivity does not in itself amount to acceptance.

ARTICLE 2.1.7 TIME OF ACCEPTANCE

1. The offer must be accepted within the time the offeror has fixed, and if no time is fixed, within a reasonable time considering the circumstances.

2. The offer expires at the end of the fixed or reasonable period of acceptance. A late acceptance is not effective, unless the offeror renounces the expiry date by notifying the offeror without delay that it accepts the offer.

ARTICLE 2.1.8 ACCEPTANCE WITH MODIFICATIONS

Acceptance by the offeree which establishes or implies additional or different terms that alter or condition the terms of the offer is a rejection of the initial offer and, in turn constitutes a new offer.

ARTICLE 2.1.9 STANDARD TERMS

1. The standard terms of a contract are clauses that are not individually negotiated by the parties and which have been drawn up in advance for a number of contracts of a certain class.

2. In order to oppose the standard terms of the contract to the adhering party, it is necessary for the adherent party to be given notice on them before the conclusion of the contract. This condition shall not be considered satisfied by the mere reference to the conditions in the contract, although the adherent party has signed the contract when

   a. they are so surprising or unusual that the adherent could not reasonably take them into consideration in regard to the circumstances and purpose of the contract; or

   b. they are too onerous, taking into account the nature, language and the way they have been established.

ARTICLE 2.1.10 BATTLE OF FORMS

1. When both parties use forms with standard terms and they fail to reach an agreement on the terms to use, the contract is concluded on the basis of the agreed terms and the provisions of the standard terms that are substantially common to both parties.

2. However, the contract is not concluded if either party has informed or informs the other party, without undue delay, that it does not intend to be bound by the contract.

CHAPTER 3 - VALIDITY OF CONTRACT

Section 1 – General Provisions

ARTICLE 3.1.1 VALIDITY OF MERE AGREEMENT

A contract is concluded, modified or terminated by the mere agreement of the parties, without any further requirement.

ARTICLE 3.1.2 NO REQUIREMENTS AS TO FORM

Contracts will be enforceable regardless of the form of conclusion.

ARTICLE 3.1.3 INITIAL IMPOSSIBILITY
The mere fact that at the time of the conclusion of the contract the performance of the obligation was impossible does not affect its validity. However, parties may invoke the rules on impossibility (force majeure).

CHAPTER 4 - INTERPRETATION AND CONTENT OF THE CONTRACT

Section 1 – Interpretation of contractual terms

ARTICLE 4.1.1 IN CLARIS NON FIT INTERPRETATIO

1. When the conditions or terms of a contract are clear, they will be interpreted according to their literal meaning.

2. A contract term will not be considered clear if it is capable of different meanings or, in the light of the context of the contract, it is inferred that such a term or expression is due to a manifest mistake.

ARTICLE 4.1.2 GENERAL CRITERION OF INTERPRETATION

1. Contracts and statements of the parties will be interpreted according to the meaning that a reasonable person of the same kind as the parties would give them in similar circumstances.

2. In particular, in the interpretation of a contract and the statements of the parties, the following circumstances will be considered:
   a. The intent of a party, insofar as that intent was known or should or could have been known by the other party.
   b. The concurrent circumstances at the conclusion of the contract and during its execution.
   c. Commercial usages and practices between the parties.
   d. Commercial usages and the meaning of contractual terms in the trade concerned.
   e. General usages in international trade.
   f. The object of the contract.
   g. Business common sense.

ARTICLE 4.1.3 CONTRA PROFERENTEM PRINCIPLE

Unclear terms will be interpreted in the most adverse sense for the party who has written them.

ARTICLE 4.1.4 FAVOR NEGOTII

Unclear terms will be interpreted in the sense most favourable to give effects to them and to all terms of the contract.

ARTICLE 4.1.5 INTERPRETATION OF THE CONTRACT AS A WHOLE

1. Contractual terms will be interpreted in the light of the entire contract, giving to the particular terms the meaning most in accord with the other terms of the contract.

2. Individually negotiated contractual terms will prevail over terms that have not been individually negotiated.

ARTICLE 4.1.6 LINGUISTIC DISCREPANCIES

Where a contract is drawn up in two or more language versions, in case of discrepancy between the versions, and if the parties have not agreed to a prevailing version, the version in which the contract was originally drawn will prevail.
CHAPTER 5 - EFFECTS OF THE CONTRACT

Section 1 – Term of the contract

ARTICLE 5.1.1 CONTRACTS FOR AN INDEFINITE PERIOD

1. Each party may end a contract involving continuous or periodic performance of obligations unilaterally, at any time and without invoking any cause, by giving a reasonable period of notice.

2. Whenever the reasonable period of notice is observed, the party who decides to end the contractual relationship must only compensate the other party for the reasonable expenses that it has already made towards the performance of the contract.

ARTICLE 5.1.2 CONTRACTS FOR A DEFINITE PERIOD

1. Where, in a contract involving continuous or periodic performance of obligations, the parties have determined the period of duration, the contract terminates at its expiry.

2. However, if one party has given notice to the other expressing its intention to renew the contract, the party who does not wish to renew must notify the other of its decision within a reasonable time before the expiry of the contract.

3. Where a contract involving continuous or periodic performance of obligations for a definite period continues to be performed after that period has expired, it becomes a contract for an indefinite period.

Section 2 – Third party rights

ARTICLE 5.2.1 CONTRACTS IN FAVOUR OF THIRD PARTIES

1. The parties to the contract (promisee and promisor) may include stipulations in favour of a third party (beneficiary), who will acquire, in the absence of any agreement to the contrary, the right to require the promisor to perform it.

2. The existence and the content of the beneficiary's right against the promisor are determined by the agreement of the parties.

ARTICLE 5.2.2 EXCLUSION OR LIMITATION CLAUSES

The parties may give the beneficiary the right to invoke against the promisor a clause that excludes or limits the promisee's liability.

ARTICLE 5.2.3 REVOCATION OF THE STIPULATION IN FAVOUR OF A THIRD PARTY

The stipulation may be modified or revoked while the beneficiary has not notified its acceptance to any of the contracting parties.

ARTICLE 5.2.4 DEFENCES

The promisor may only assert against the beneficiary, in the absence of any agreement to the contrary, the defences derived from the contract which contains the stipulation in favour of the beneficiary.

CHAPTER 6 - PERFORMANCE OF THE CONTRACT

Section 1 – General rules

ARTICLE 6.1.1 PLACE OF PERFORMANCE
1. If the contract does not determine the place of performance of a contractual obligation, this place shall be:

   a. In the case of pecuniary obligations, the place of business or, failing that, the habitual residence of the obligee at the time of the conclusion of the contract.

   b. In other cases, the place of business or, failing that, the habitual residence of the obligor at the time of conclusion of the contract.

2. If there is more than one place of business, the place of business shall be the one that is most closely connected with the contract at the time of its conclusion.

3. However, if a party has changed its place of business after the conclusion of the contract, that party may request or deliver the performance in the new place of business, providing that it gives sufficient notice to the other party. In that case, the party that has changed its place of business or residence shall bear the expenses and costs resulting from the change of the place of performance.

ARTICLE 6.1.2 TIME OF PERFORMANCE

1. The obligor has to perform its obligations:

   a. At the time agreed, when the contract states a determined or determinable time.

   b. When the contract states a determined or determinable period, at any time within that period, unless it is interpreted that the choice of the time of performance is to the obligee.

   c. In other cases, within a reasonable time after the conclusion of the contract.

2. The obligor must perform its obligation completely in one time as far as possible, unless otherwise indicated by the circumstances.

ARTICLE 6.1.3 EARLY PERFORMANCE

1. The obligee may not refuse the early performance of the obligation unless it has a legitimate interest in doing so.

2. Additional expenses derived from an early performance must be borne by the obligor, without detriment to any other remedy of the obligee.

3. The acceptance of an early performance by the obligee does not modify the time of performance of its obligation.

ARTICLE 6.1.4 ORDER OF PERFORMANCE

1. In the absence of agreement, obligations of the parties must be performed simultaneously unless otherwise indicated by circumstances.

2. Notwithstanding, where the performance of only one party requires a period of time, in the absence of agreement, this performance should be performed at an earlier time unless otherwise indicated by circumstances.

ARTICLE 6.1.5 PARTIAL PERFORMANCE

1. The obligee may not refuse a partial performance, whether performance has been guaranteed or not, unless it has a legitimate interest in doing so.

2. Additional expenses derived from a partial performance must be borne by the obligor, without detriment to any other remedy of the obligee.

3. Where the obligation is severable, the obligee that accepts a partial performance may for its part perform its obligation partially or proportionally.

ARTICLE 6.1.6 PERFORMANCE BY A THIRD PERSON
Unless the contract requires a personal performance, the obligee may not refuse the performance by a third person acting with the obligor's consent.

ARTICLE 6.1.7 FORMS OF PAYMENT

1. A pecuniary obligation may be paid by any form used in the ordinary course of business.

2. Where the creditor accepts a negotiable instrument, order or promise to pay, it is presumed to do so only on condition that it will be honoured.

ARTICLE 6.1.8 CURRENCY OF PAYMENT

1. The parties may agree that payment shall be made in a specified currency. If the payment in the agreed currency is impossible or the currency of payment is not agreed, the payment shall be made in the currency of the place where the payment is due.

2. In the absence of agreement, a pecuniary obligation expressed in a currency other than that of the place of payment may be paid in the currency where payment is due providing that it is a freely convertible currency.

3. Payment in the currency where payment is due shall be made according to the exchange rate applicable in the place where payment is due at the time when payment is due. If the debtor has not paid at the agreed time, the creditor may opt to require the payment according to the exchange rate applicable there at the time when payment was due or at the time of actual payment.

ARTICLE 6.1.9 IMPUTATION OF PAYMENT

1. In the absence of an agreement, an obligor owing several pecuniary obligations to the same obligee may specify, at the time of payment, the obligation to which it intends the payment to be applied, providing that it put due obligations before those not yet due. However, the payment shall first discharge expenses, then due interests 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 the preceding paragraphs, payment shall be imputed to the obligation which meets one of the following criteria in the order indicated:
   a. the obligation which is due or is the first to fall due;
   b. the obligation for which the obligee has no security or the least security;
   c. the obligation which is the most burdensome for the obligor;
   d. the obligation which has arisen first.

4. If none of the preceding criteria applies, payment shall be imputed to all obligations proportionally.

5. The preceding rules shall be applied by analogy to non-pecuniary obligations of the same nature.

ARTICLE 6.1.10 REFUSAL OF PERFORMANCE

1. The obligee cannot refuse the performance by the obligor under the contract terms and, failing which, under the rules of these Principles.

2. If the creditor refuses the payment of a pecuniary obligation by the debtor, the debtor may pay by depositing, if possible, under the law of the place of payment.

3. If the obligee refuses the performance of a non-pecuniary obligation by the obligor, the obligor shall adopt all
reasonable measures to mitigate the consequences of the refusal, including the preservation of the goods concerned if appropriated. Particularly, where the obligee refuses the delivery of goods by the obligor, the obligor may perform by depositing goods, if possible, under the law of the place of payment.

ARTICLE 6.1.11 PUBLIC LICENCES

1. The party obliged to apply for and manage public licences and authorisations required as a condition for the validity or the performance of the contract or of its obligations shall be determined according to the mandatory rules of the country concerned and, failing that, in accordance with the agreements by the parties.

2. In the absence of agreement, it is presumed that the obligation to apply and manage public permissions and authorisations is the obligation of the party which has its place of business in the country concerned, unless this is considered unreasonable in the light of the circumstances. Failing that, the obligation is on the party obliged to perform the obligation for which the licence or authorisation is required.

3. The obligation to apply for and manage the licences and authorisations mentioned in preceding paragraphs requires that the obligor act with reasonable diligence, bear the resultant expenses and notify the other party about the grant or refusal without undue delay.

ARTICLE 6.1.12 COSTS OF PERFORMANCE

Unless otherwise specified, each party shall bear the costs arising from the performance of its obligations.

CHAPTER 7 - NON-PERFORMANCE OF THE CONTRACT

Section 1 – Non-performance in general

ARTICLE 7.1.1 CONCEPT OF NON-PERFORMANCE

There is non-performance when a party does not carry out all its contractual obligations in the agreed form, regardless of the cause.

ARTICLE 7.1.2 FUNDAMENTAL NON-PERFORMANCE

A non-performance of a contractual obligation is fundamental if:

a. strict observance of the obligation which has not been performed is of essence under the contract; or

b. the non-performance substantially deprives the other party of what it was entitled to expect under the contract, unless at the time of conclusion of the contract, it has not been foreseen or could not reasonably have been foreseen such result; or

c. the non-performance is of a nature that leads the obligee to believe that, in view of the circumstances, it cannot rely on the future performance of the other party.

ARTICLE 7.1.3 REMEDIES FOR NON-PERFORMANCE

1. In case of non-performance, the obligee, without affecting the right to cure by the debtor, may resort to the remedies set out in this Chapter, but may not claim damages if the non-performance is excused under article 7.1.8 of these Principles.

2. The remedies for non-performance may be cumulated if they are not incompatible with each other.

3. The obligee who is exercising its right to performance may change the remedy if it has not obtained satisfaction of its claim.

ARTICLE 7.1.4 WITHHOLDING PERFORMANCE
1. Where parties must perform their obligations simultaneously, either party may withhold performance until the other party has tendered its performance or has effectively performed its obligations.

2. The party who must perform its obligation at a later time than the other party may withhold performance until the other party has performed its obligations.

3. In any case, either party will be able to cancel the performance of its obligation as soon as it becomes clear that the other party will not perform theirs on the due date.

ARTICLE 7.1.5 CURE OF NON-CONFORMING PERFORMANCE

1. The obligor may cure any non-performance, at its expense, on condition that:
   a. it notifies the obligee, without undue delay, of the manner and timing of the cure; and
   b. the cure is appropriate to the circumstances; and
   c. the obligee has no legitimate interest in refusing the cure; and
   d. the cure is effected promptly.

2. The obligee may withhold its own performance pending cure.

3. Notwithstanding cure, the obligee retains the right to claim damages for delay and for any harm caused or not prevented by the cure. However, the rights of the obligee that are not compatible with the cure will be suspended from the time of the effective notification of the commitment to cure until the expiry date of the reparation.

4. The notification that a contract has been terminated does not exclude the right of the obligor to cure its non-performance.

ARTICLE 7.1.6 EXTENSION OF TIME FOR PERFORMANCE

1. In the event of non-performance, the obligee may grant the other party, by notice, an extension of time for performance.

2. During the period of extension, the obligee may withhold performance of its own obligations and claim payment for damage but it will not be able to resort to any other remedy for non-performance of its obligations, except in the case where the other party gives notice that it will not perform in the extension period.

3. If the delay in performance is not an essential non-performance, the obligee which has given notice to the other party of the provision of an additional reasonable period for performance may terminate the contract at the end of such period. An unreasonable additional period of performance is considered to be extended to a reasonable time.

4. In any case, on notifying the concession of this extension the obligee may stipulate that the contract will be terminated automatically if the other party does not perform within the agreed period.

ARTICLE 7.1.7 EXEMPTION CLAUSES

A clause that limits or excludes one party's liability for non-performance or which allows 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 and to the circumstances under which the non-performance took place.

ARTICLE 7.1.8 IMPOSSIBILITY (FORCE MAJEURE)

1. A contract party may justify breach of contract when the performance of its obligations becomes impossible due to force majeure reasons.
2. There is force majeure when the aggrieved party proves the existence of an event:
   a. alien to its responsibility and beyond its reasonable control, and
   b. whose risk it has not assumed, and
   c. which could not be reasonably expected or taken into consideration at the moment of the conclusion of the contract, and
   d. which makes impossible the performance of its obligations.

3. A party that invokes an event which makes performance impossible must give written notice to the other party as soon as possible, providing reliable evidence of that event and taking all reasonable measures to limit the effects on the performance of its contractual obligations. If this notification does not reach the other party in a reasonable period from the time when the invoking party has known or ought to have known of the force majeure event, the other party has the right to damages resulting from the absence or delay in notification.

4. The contract will be deemed to be terminated as from notification, unless the other party declares that it wishes otherwise within a reasonable period. If one of the parties has received a benefit before termination due to acts of performance made by the other party, it must compensate this party by paying a sum of money equivalent to the benefit obtained.

5. When impossibility is temporary, termination of contract will only be possible if the delay in performance significantly deprives one party of its reasonable expectations. In other cases, the party invoking force majeure must perform once the event disappears.

6. When impossibility is partial, termination of contract will only be possible if partial performance significantly deprives one party of its reasonable expectations. In other cases, the party invoking force majeure must perform partially and the obligation of the other party will be proportionally adjusted.

CHAPTER 8 - ASSIGNMENT

Section 1 – Assignment of rights

ARTICLE 8.1.1 SCOPE OF APPLICATION

1. By the assignment of rights, the obligee, called the “assignor”, transfers or provides as security to another person, called the “assignee”, its rights in a contract.

2. This Section does not apply to:
   a. assignments of rights governed by special rules on transfer of a business;
   b. assignments of negotiable or financial instruments and documents of title.

ARTICLE 8.1.2 CONDITIONS RELATING TO THE ASSIGNED RIGHTS

1. Rights, either to payment of a monetary sum or to performance of non-pecuniary obligation, may be assigned if they satisfy the following conditions:
   a. the rights exist at the time of the assignment or are future and recognizable rights; and
   b. the rights are individually identified or are recognisable.

2. A right may be totally or partially assigned, and in favour of one or several assignees. The partial assignment or in favour of several assignees is valid only if the assigned right is severable.

ARTICLE 8.1.3 CONDITIONS RELATING TO THE PARTIES
1. The assignment requires agreement between assignor and assignee.

2. Furthermore, the consent of the obligor shall be required if:

a. its obligation is personal; or

b. its obligation is more burdensome as a consequence of the assignment; or

c. assignor and obligor had agreed such consent or the prohibition of the assignment of rights.

3. The consent of the obligor may be given expressly or tacitly, simultaneously or subsequently to the conclusion of the assignment agreement.

ARTICLE 8.1.4 EFFECTIVENESS OF THE ASSIGNMENT

1. The assignment is effective against the obligor:

a. From the time when the notification of the assignment is received by the obligor, if the consent was not required or has been given in advance.

b. From the time when the consent is given by the obligor, simultaneously or subsequently to the conclusion of the agreement of assignment.

2. After the assignment is effective, the obligor is discharged only by performing in favour of the assignee.

3. When an assignee successively transfers the right to other assignee, the obligor is discharged according to the last assignment that was effective.

4. When the same assignor transfers the same rights to two or more assignees, the obligor is discharged according to the first assignment that was effective.

ARTICLE 8.1.5 POSITION OF THE OBLIGOR

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

2. The obligor may assert against the assignee any right of set-off available against the assignor and that arose before the assignment took effect.

3. The obligor shall be compensated for additional costs caused by the assignment. The assignor and the assignee are jointly and severally bound to pay these costs.

ARTICLE 8.1.6 POSITION OF THE ASSIGOR

Unless otherwise is agreed, the assignor undertakes towards the assignee that:

a. the right exists or is a future and recognizable right, that can be assigned and that is free from any right or claim of a third person; and

b. it is entitled to assign the right, that the obligor does not have any defences and that there is not and there will not be any set-off with debts of the assignor.

ARTICLE 8.1.7 POSITION OF THE ASSIGNEE

1. The assignee acquires the assigned right, as well as the accessory rights and guarantees.

2. Notwithstanding the provisions of the preceding paragraph and unless otherwise stated by a guarantor, a guarantee made by third persons shall be extinguished if:
a. the obligation of the obligor is more burdensome as a consequence of the assignment; or
b. assignor and obligor had agreed the prohibition of the assignment of rights; or
c. the guarantor had granted the guarantee with the condition that the right should not be assigned.

Section 3 – Assignment of the contract

ARTICLE 8.3.1 SCOPE

1. By the assignment of the contract, a contracting party, called the “assignor”, transfers to another person, called the “assignee”, its rights and obligations in a contract in respect of the other contracting party, called “counterparty”.

2. This Section does not apply to assignment of contracts governed by special rules on transfer of a business.

ARTICLE 8.3.2 CONDITIONS RELATING TO THE PARTIES

1. The assignment requires the consent of the other party.

2. That consent may be given expressly or tacitly and before, at the same time, and after the conclusion of the agreement of assignment.

ARTICLE 8.3.3 EFFECTIVENESS OF THE ASSIGNMENT

1. The assignment is effective against the counterparty:

From the time when the consent is given by the counterparty, simultaneously or subsequently to the conclusion of the agreement of assignment.

From the time when the notification of the assignment is received by the counterparty, if the consent has been given in advance.

2. After the assignment is effective, the counterparty is discharged only by performing in favour of the assignee.

3. When an assignee successively transfers the contract to another assignee, the counterparty is discharged by performing according to the last assignment that was effective.

ARTICLE 8.3.4 LEGAL FRAMEWORK OF THE ASSIGNMENT

1. To the extent that the assignment of contract involves a transfer of rights, Section 1 of this Chapter shall be applied.

2. To the extent that the assignment of contract involves a transfer of obligations, Section 2 of this Chapter shall be applied.

CHAPTER 9 – LIMITATION PERIODS

ARTICLE 9.1 RIGHTS AND ACTIONS SUBMITTED TO LIMITATION PERIODS

Unless otherwise agreed, the rights and actions derived from contracts are subject to limitation periods due to the expiry of a period of time according to the following Articles.

ARTICLE 9.2 LIMITATION PERIODS

1. The general limitation period is three years beginning at the moment when a party knew or should have known the facts as a result of which such a party can exercise a right.

2. The parties may agree the extension or the shortening of limitation periods, provided that the agreed period is not
shorter than one year and longer than ten years.

3. The maximum limitation period is fifteen year beginning at the moment when the right could be exercised, regardless of the knowledge of the facts which allows this exercise, the agreement of the parties or the concomitance of any cause of suspension.

ARTICLE 9.3 SUSPENSION OF LIMITATION PERIODS

1. The computation of a general or voluntary limitation period is suspended by the commencing of judicial, arbitral, conciliating or any other procedure whose objective is to take a decision on the concerned right, as well by the opening of a procedure of insolvency or dissolution of the obligor where the obligee exercises a right. The suspension carries on until the definitive issue or the conclusion of the procedure otherwise.

2. The death or the incapacity of any contract party as well as any other circumstance reasonably unforeseeable and inevitable which prevent a party from exercising a right are causes of suspension of the limitation period until the designation of a heir or representative or until the impediment disappears.

3. The commencement by the parties of a negotiating process on the right or on the circumstances from which the right can be exercised shall suspend the limitation period until six months shall have passed since the last communication made within the negotiating process or since a party notified the other party it did not want to continue the negotiations.

4. The suspension of a limitation period stops temporarily the computation of time without deleting the time already passed.

ARTICLE 9.4 NEW LIMITATION PERIOD BY ACKNOWLEDGMENT

1. If the obligor acknowledges the obligee's right, a new limitation period begins the day after the acknowledgment.

2. Acknowledgment derives, particularly, from performance, partial performance, payment of interests, provision of a guarantee or declaration of set-off.

3. Acknowledgment deletes the limitation period passed and implies the beginning of a new limitation period of the same length than the limitation period deleted.

3. The maximum limitation period will not be renewed by acknowledgment and cannot be overtaken by the beginning of a new general or voluntary limitation period.

ARTICLE 9.5 EFFECTS OF LIMITATION PERIODS

1. When a limitation period expires, the contract party benefiting must invoke it in order to be effective against any party having a right.

2. What has been performed cannot be required simply because the limitation period had expired at the moment of performance, even when this circumstance was not known.

ARTICLE 9.6 RENUNCIATION OF LIMITATION PERIODS

1. The benefiting party may renounce the consolidated limitation only once the limitation period has expired.

2. An anticipated renunciation of a limitation period has the same effects than an acknowledgment according to that stated in Article 9.4.

Referring Principles:

III.2 - Assignment of claim
III.3 - Transfer of contract
IV.1.1 - Freedom of contract
IV.1.2 - Sanctity of contracts
IV.2.1 - Contractual consent
IV.2.2 - Silence by offeree
IV.2.4 - Lapse of an offer
IV.2.6 - Modified Acceptance
IV.3.1 - Scope of application; definition
IV.3.2 - Inclusion of standard terms
IV.3.3 - No surprising standard terms
IV.3.4 - Conflicting terms; battle of forms
IV.3.5 - Unfair standard terms
IV.4.1 - Freedom of form
IV.5.1 - Intentions of the parties
IV.5.3 - Interpretation in favor of effectiveness of contract
IV.5.4 - Interpretation against the party that supplied the term
IV.5.2 - Context-oriented interpretation
IV.5.9 - Linguistic Discrepancies
IV.6.14 - Third party rights
V.1.1 - Place of performance
V.1.2 - Time of performance
V.1.3 - Early performance
V.1.5 - Costs of performance
V.1.4 - Principle of simultaneous performance; right to withhold performance
VI.1 - Termination of contract in case of fundamental non-performance
VI.3 - Force majeure
V.2.1 - Payment in currency of place of payment
V.2.6 - Imputation of payments