III.2 - Assignment of claim

(a) The creditor (assignor) may assign his claim by contract to the assignee. An assignment is not subject to any form requirements. The assignment is valid irrespective of whether the debtor has been notified of the assignment.

(b) A claim for the payment of a sum of money may be assigned in part. A claim for a non-monetary performance may be assigned in part only if the debtor consents to the assignment; or the claim is divisible and the assignment does not render performance significantly more burdensome for the debtor.

(c) An assignment is invalid if the assigned claim does not exist. A future claim may be the subject of an assignment but the transfer of the claim depends on its coming into existence and being identifiable as the claim to which the assignment relates.

(d) In a b2b-context, a contractual prohibition of, or restriction on, the assignment of a claim, agreed upon by the parties to the contract out of which the claim arises, does not affect the assignability of that claim.

(e) A claim is not assignable, if the parties intended that the promisee alone should be entitled thereto. Such an intention is presumed if the nature of the transaction involves personal confidence between the parties, or is otherwise such that personal consideration is of the essence of the contract.

(f) An accessory right securing performance of the assigned claim is transferred to the assignee without a new act of transfer notwithstanding any agreement between the assignor and the debtor or other party granting that right, limiting in any way the assignor’s right to assign the receivable or the right securing payment of the assigned claim. If a non-accessory right is, under the law governing it, transferable only with a new act of transfer, the assignor is obliged to transfer such right and any proceeds thereof to the assignee.

(g) As soon as the assignment becomes effective the assignor ceases to be the creditor and the assignee becomes the creditor in relation to the claim assigned.

(h) The debtor may put forward against the assignee any defenses which at the date the assignment becomes effective were available to him against the assignor.

Commentary:

1 Assignment means the transfer of a claim for payment or for other kinds of performance by agreement between the old (assignor) and the new (assignee) creditor. The assignment is effective irrespective of whether the obligor is notified of the assignment.

2 For the assignment to become effective, the claim to be assigned must exist. This is a consequence of the Principle that no one may transfer more rights than he actually has.

3 A non-assignment clause concluded between the obligor and the assignor in a b2b-contract does not prevent the assignment from becoming effective but may make the assignor liable for breach of contract vis-à-vis the obligor.

4 Because the assignment becomes effective even if the obligor is not notified of the assignment (see para. 1), the latter may not be put in a disadvantage by the assignment. His legal position existing at the moment the assignment becomes effective must be preserved. The obligor may therefore put forward against the assignee any defenses that were available to him against the assignor, including a right to set-off.