Title:
III.3 - Transfer of contract

Content:

No. III.3 - Transfer of contract

(a) The parties to a contract may agree on the transfer from one party (the "transferor") to another person (the "transferee") of the transferor's rights and obligations arising out of the contract with the person remaining a party to that contract (the "other party").

(b) The transfer of a contract requires the consent of the other party. That consent may be given in advance or at the moment the transfer is effected by transferor and transferee. If the other party has given its consent in advance, the transfer of the contract becomes effective when a notice of the transfer is given to the other party or when the other party acknowledges it.

(c) The other party may discharge the transferor or may retain the transferor as an obligor in case the transferee does not perform properly. Otherwise the transferor and the transferee are jointly and severally liable.

Commentary:

1 Party autonomy allows the parties to a contract to assign individual claims arising out of that contract to another person. It also allows the transfer of the full position of one party to a contract to another person that has not yet been a party to that contract. Essentially, such a transfer is a combination of the assignment of all rights and the transfer of all obligations of the assignor to the new party.

2 The transfer of the transferor's position to the transferee requires an agreement between them. Because the transfer leads to the situation that the party remaining in the contract is confronted with a new party with which it has not concluded the contract, such a transfer also requires the consent of that party. This consent can be given by that party in advance or, e.g. by way of a trilateral agreement, at the moment the transfer is effected by agreement between transferor and transferee.

3 When the transfer becomes effective because all three parties have agreed to it, the assignee assumes the contractual position of the transferor, i.e. becomes bound by the transferor's obligations and becomes the creditor of the transferor's claims under the contract.

4 The party remaining in the contract is protected in case of transfer. It may decide to fully discharge the transferor. It will agree to such a complete and final transfer only if it is confident that the assignee is as reliable and as solvent as the assignor. The remaining party may also decide to retain the assignor as a subsidiary obligor in case the transferee does not perform. The remaining party may also choose to retain the transferor as jointly and severally liable with the transferee. In the latter case, the other party may exercise its claim against either the transferor or the transferee. If the other party obtains performance from the transferor, the latter would have a claim for reimbursement against the transferee.