IV.2.4 - Lapse of an offer

(a) An offer lapses when

i) the party to whom it is made fails to accept it within the time or in the manner prescribed by the offeror, or, if no time or manner is prescribed, within a time or in a manner reasonable under the circumstances,

ii) the offeree communicates his refusal of the offer, or makes a counter-offer,

iii) either party dies or, in case of a corporation, ceases to exist.

(b) An oral offer must be accepted immediately unless the circumstances indicate otherwise.

(c) A late acceptance is effective as an acceptance if without undue delay the offeror informs the offeree that the offeror is treating it as an effective acceptance.

Commentary:

1 Situations when an offer lapses are determined, first and foremost, by the parties themselves (party-autonomy). The offeror may indicate in his offer the time and/or manner in which his offer must be accepted by the other side. Alternatively, the offeree may indicate to the offeror that he refuses the offer or may make a counter-offer. An acceptance with material alterations, limitations or other modifications constitutes such a counter-offer.

2 Absent such scenarios, the offer must be accepted within the time or manner reasonable under the circumstances. What is reasonable depends on the circumstances of each individual case, and requires to take into account the professional sophistication of the parties, the means of communication used by the offeror and usages and practices of communication established between the parties or in the particular branch of trade in which the parties are operating.

3 If the offer is made orally, it must be accepted immediately, unless the parties have agreed or the circumstances indicate otherwise.

4 The sole purpose of Subsection (a) i) is to protect the offeror. Therefore, the offeror may decide to treat a late acceptance as a valid acceptance pursuant to Subsection (c). In such a case he must inform the offeree without undue delay of this intention. The time limit is necessary because of the need for legal certainty. The parties must know whether a contract was concluded or not. Whether the offeror has reacted without undue delay depends on the circumstances of each case, taking into account the previous practice established between the parties, the significance of the contract for the parties and the standard of reasonableness.