IV.7.4 - Right to avoid the contract for fraudulent misrepresentation

(a) A party may avoid a contract if the other party has induced the conclusion of the contract by fraudulent misrepresentation, whether by words or conduct, or fraudulent non-disclosure of any information which good faith and fair dealing, required that party to disclose.

(b) Misrepresentation is fraudulent if it is made with knowledge or belief that the representation is false, or recklessly as to whether it is true or false, and is intended to induce the recipient to make a mistake. Non-disclosure is fraudulent if it is intended to induce the person from whom the information is withheld to make a mistake.

(c) In determining whether good faith and fair dealing require a party to disclose particular information, regard should be had to all the circumstances, including whether that party had special expertise and good commercial practice in the situation concerned.

(d) Subsections (c) and (d) of Principle IV.7.3 apply.

Commentary:
1 This Principles provides for a right to avoid the contract in scenarios in which a party's consent to a contract was induced by fraudulent misrepresentation or fraudulent non-disclosure of any information by the other side. Whether disclosure was required must be determined by taking into account all the circumstances in the individual case, including good commercial practice in the situation concerned and the Principle of good faith and fair dealing.

2 Subsection (b) defines situations in which misrepresentation or non-disclosure is fraudulent. It requires a determination of the intentions and state of mind of the party making the misrepresentation or non-disclosure.

3 Avoidance is effected by clear and unambiguous notice to the other side. Principle IV.4.2 applies to that notice.