VII.3.3 - Currency in which to assess damages

Content:
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Damages are to be assessed either in the currency in which the monetary obligation that was breached was expressed or in the currency in which the harm was suffered, whichever is more appropriate.

Commentary:
1 Currency issues are a corollary of the cross-border nature of transnational business transactions. The law of damages must take account of these issues.

2 The Principle gives courts or arbitral tribunal a choice. They may award damages in the currency in which the monetary (payment) obligation was expressed for whose breach the damages are awarded. They may also decide to award damages in a currency other than the contract currency if the aggrieved party has incurred expenses or has suffered other harm in that other currency.

3 In either scenario, a court or tribunal may want to make a special upward adjustment of compensation in order to take account for a severe depreciation of the currency in which damages are awarded. A severe currency depreciation may also be a factor for the court's or tribunal's choice between the currencies mentioned in this Principle. In extreme cases of depreciation of both currencies, the court or tribunal may resort to other measures, such as awarding damages in a third currency or delaying the conversion date.