Title:
VII.4 - Duty to mitigate

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A party who relies on a breach of contract by the other party must take such measures as are reasonable in the circumstances to mitigate its loss, including loss of profit, resulting from the breach. If it fails to take such measures, the party in breach may claim a reduction in the damages in the amount at which the loss should have been mitigated.

Commentary:
1 This Principle is one of the most firmly established rules of transnational commercial law. A party suffering damages from a breach of contract by the other party cannot simply lean back and let the damages mount up. In fact, it often happens that a party wants to shift all the responsibility for certain damages on its counterpart while the evidence reveals that it would have been possible for that party to minimize that damage had it acted without delay at the moment it received knowledge of the damage.

2 Which measures a party relying on a breach by the other party is required to take in order to mitigate its damages, e.g. with respect to the amount of time and financial resources to be invested in or the nature of such measures, must be determined by application of the standard of reasonableness.

3 Depending on the circumstances and on what is to be considered reasonable in a given case, the party relying on a breach of contract by the other side may be under an obligation to accept alternative performance or to agree to a renegotiation of the contract in order to mitigate its damages. However, the duty to mitigate its damages does not require that party to accept unreasonable risks or burdens.