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PRINCIPLES OF EUROPEAN CONTRACT LAW

TEXT OF ARTICLES IN PART 3

IN ENGLISH

[Note. In the published book the English text of the Articles will appear on the left page and the corresponding French text on the adjacent right page.]

ENGLISH TEXT

CHAPTER 10

Plurality of parties

Section 1: Plurality of debtors

ARTICLE 10:101: SOLIDARY, SEPARATE AND COMMUNAL OBLIGATIONS

- (1) Obligations are solidary when all the debtors are bound to render one and the same performance and the creditor may require it from any one of them until full performance has been received.
- (2) Obligations are separate when each debtor is bound to render only part of the performance and the creditor may require from each debtor only that debtor's part.
- (3) An obligation is communal when all the debtors are bound to render the performance together and the creditor may require it only from all of them.

ARTICLE 10:102: WHEN SOLIDARY OBLIGATIONS ARISE

- (1) If several debtors are bound to render one and the same performance to a creditor under the same contract, they are solidarily liable, unless the contract or the law provides otherwise.
- (2) Solidary obligations also arise where several persons are liable for the same damage.
- (3) The fact that the debtors are not liable on the same terms does not prevent their obligations from being solidary.

ARTICLE 10:103: LIABILITY UNDER SEPARATE OBLIGATIONS

Debtors bound by separate obligations are liable in equal shares unless the contract or the law provides otherwise.

ARTICLE 10:104: COMMUNAL OBLIGATIONS: SPECIAL RULE WHEN MONEY CLAIMED FOR NON-PERFORMANCE

Notwithstanding Article 10:101(3), when money is claimed for non-performance of a communal obligation, the debtors are solidarily liable for payment to the creditor.

ARTICLE 10:105: APPORTIONMENT BETWEEN SOLIDARY DEBTORS

- (1) As between themselves, solidary debtors are liable in equal shares unless the contract or the law provides otherwise.
- (2) If two or more debtors are liable for the same damage under Article 10:102(2), their share of liability as between themselves is determined according to the law governing the event which gave rise to the liability.

ARTICLE 10:106: RECOURSE BETWEEN SOLIDARY DEBTORS

- (1) A solidary debtor who has performed more than that debtor's share may claim the excess from any of the other debtors to the extent of each debtor's unperformed share, together with a share of any costs reasonably incurred.
- (2) A solidary debtor to whom paragraph (1) applies may also, subject to any prior right and interest of the creditor, exercise the rights and actions of the creditor, including accessory securities, to recover the excess from any of the other debtors to the extent of each debtor's unperformed share.
- (3) If a solidary debtor who has performed more than that debtor's share is unable, despite all reasonable efforts, to recover contribution from another solidary debtor, the share of the others, including the one who has performed, is increased proportionally.

ARTICLE 10:107: PERFORMANCE, SET-OFF AND MERGER IN SOLIDARY OBLIGATIONS

- (1) Performance or set-off by a solidary debtor or set-off by the creditor against one solidary debtor discharges the other debtors in relation to the creditor to the extent of the performance or set-off.
- (2) Merger of debts between a solidary debtor and the creditor discharges the other debtors only for the share of the debtor concerned.

ARTICLE 10:108: RELEASE OR SETTLEMENT IN SOLIDARY OBLIGATIONS

- (1) When the creditor releases, or reaches a settlement with, one solidary debtor, the other debtors are discharged of liability for the share of that debtor.
- (2) The debtors are totally discharged by the release or settlement if it so provides.
- (3) As between solidary debtors, the debtor who is discharged from that debtor's share is discharged only to the extent of the share at the time of the discharge and not from any supplementary share for which that debtor may subsequently become liable under Article 10:106(3).

ARTICLE 10:109: EFFECT OF JUDGMENT IN SOLIDARY OBLIGATIONS

A decision by a court as to the liability to the creditor of one solidary debtor does not affect:

- (a) the liability to the creditor of the other solidary debtors; or
- (b) the rights of recourse between the solidary debtors under Article 10:106.

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ARTICLE 10:110: PRESCRIPTION IN SOLIDARY OBLIGATIONS

Prescription of the creditor's right to performance ("claim") against one solidary debtor does not affect:

- (a) the liability to the creditor of the other solidary debtors; or
- (b) the rights of recourse between the solidary debtors under Article 10:106.

ARTICLE 10:111: OPPOSABILITY OF OTHER DEFENCES IN SOLIDARY OBLIGATIONS

- | (1) A solidary debtor may invoke against the creditor any defence which another solidary debtor can invoke, other than a defence personal to that other debtor. Invoking the defence has no effect with regard to the other solidary debtors.
- | (2) A debtor from whom contribution is claimed may invoke against the claimant any personal defence that that debtor could have invoked against the creditor.

Section 2 : Plurality of creditors

ARTICLE 10:201: SOLIDARY, SEPARATE AND COMMUNAL CLAIMS

- (1) Claims are solidary when any of the creditors may require full performance from the debtor and when the debtor may render performance to any of the creditors.
- (2) Claims are separate when the debtor owes each creditor only that creditor's share of the claim and each creditor may require performance only of that creditor's share.
- (3) A claim is communal when the debtor must perform to all the creditors and any creditor may require performance only for the benefit of all.

ARTICLE 10:202: APPORTIONMENT OF SEPARATE CLAIMS

Separate creditors are entitled to equal shares unless the contract or the law provides otherwise.

ARTICLE 10:203: DIFFICULTIES OF EXECUTING A COMMUNAL CLAIM

If one of the creditors in a communal claim refuses, or is unable to receive, the performance, the debtor may discharge the obligation to perform by depositing the property or money with a third party according to Articles 7:110 or 7:111 of the Principles.

ARTICLE 10:204: APPORTIONMENT OF SOLIDARY CLAIMS

- (1) Solidary creditors are entitled to equal shares unless the contract or the law provides otherwise.
- (2) A creditor who has received more than that creditor's share must transfer the excess to the other creditors to the extent of their respective shares.

ARTICLE 10:205: REGIME OF SOLIDARY CLAIMS

- (1) A release granted to the debtor by one of the solidary creditors has no effect on the other solidary creditors
- (2) The rules of Articles 10:107, 10:109, 10:110 and 10:111(1) apply, with appropriate adaptations, to solidary claims.

CHAPTER 11

Assignment of Claims

Section 1: General Principles

ARTICLE 11:101: SCOPE OF CHAPTER

- (1) This Chapter applies to the assignment by agreement of a right to performance ("claim") under an existing or future contract.
- (2) Except where otherwise stated or the context otherwise requires, this Chapter also applies to the assignment by agreement of other transferable claims.
- (3) This Chapter does not apply:
 - (a) to the transfer of a financial instrument or investment security where, under the law otherwise applicable, such transfer must be by entry in a register maintained by or for the issuer; or
 - (b) to the transfer of a bill of exchange or other negotiable instrument or of a negotiable security or a document of title to goods where, under the law otherwise applicable, such transfer must be by delivery (with any necessary indorsement).
- (4) In this Chapter "assignment" includes an assignment by way of security.
- (5) This Chapter also applies, with appropriate adaptations, to the granting by agreement of a right in security over a claim otherwise than by assignment.

ARTICLE 11:102: CONTRACTUAL CLAIMS GENERALLY ASSIGNABLE

- (1) Subject to Articles 11:301 and 11:302, a party to a contract may assign a claim under it.
- (2) A future claim arising under an existing or future contract may be assigned if at the time when it comes into existence, or at such other time as the parties agree, it can be identified as the claim to which the assignment relates.

ARTICLE 11:103: PARTIAL ASSIGNMENT

A claim which is divisible may be assigned in part, but the assignor is liable to the debtor for any increased costs which the debtor thereby incurs.

ARTICLE 11:104: FORM OF ASSIGNMENT

An assignment need not be in writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

Section 2: Effects of Assignment As Between Assignor and Assignee

ARTICLE 11:201: RIGHTS TRANSFERRED TO ASSIGNEE

- (1) The assignment of a claim transfers to the assignee:
 - (a) all the assignor's rights to performance in respect of the claim assigned; and
 - (b) all accessory rights securing such performance.
- (2) Where the assignment of a claim under a contract is associated with the substitution of the assignee as debtor in respect of any obligation owed by the assignor under the same contract, this Article takes effect subject to Article 12:201.

ARTICLE 11:202: WHEN ASSIGNMENT TAKES EFFECT

- (1) An assignment of an existing claim takes effect at the time of the agreement to assign or such later time as the assignor and assignee agree.
- (2) An assignment of a future claim is dependent upon the assigned claim coming into existence but thereupon takes effect from the time of the agreement to assign or such later time as the assignor and assignee agree.

ARTICLE 11:203: PRESERVATION OF ASSIGNEE'S RIGHTS AGAINST ASSIGNOR

An assignment is effective as between the assignor and assignee, and entitles the assignee to whatever the assignor receives from the debtor, even if it is ineffective against the debtor under Article 11:301 or 11:302.

ARTICLE 11:204: UNDERTAKINGS BY ASSIGNOR

- By assigning or purporting to assign a claim the assignor undertakes to the assignee that:
- (a) at the time when the assignment is to take effect the following conditions will be satisfied except as otherwise disclosed to the assignee:
 - (i) the assignor has the right to assign the claim;
 - (ii) the claim exists and the assignee's rights are not affected by any defences or rights (including any right of set-off) which the debtor might have against the assignor; and
 - (iii) the claim is not subject to any prior assignment or right in security in favour of any other party or to any other incumbrance;
 - (b) the claim and any contract under which it arises will not be modified without the consent of the assignee unless the modification is provided for in the assignment agreement or is one which is made in good faith and is of a nature to which the assignee could not reasonably object; and
 - (c) the assignor will transfer to the assignee all transferable rights intended to secure performance which are not accessory rights.

Section 3: Effects of Assignment As Between Assignee and Debtor

ARTICLE 11:301: CONTRACTUAL PROHIBITION OF ASSIGNMENT

- (1) An assignment which is prohibited by or is otherwise not in conformity with the contract under which the assigned claim arises is not effective against the debtor unless:
 - (a) the debtor has consented to it; or
 - (b) the assignee neither knew nor ought to have known of the non-conformity; or
 - (c) the assignment is made under a contract for the assignment of future rights to payment of money.
- (2) Nothing in the preceding paragraph affects the assignor's liability for the non-conformity.

ARTICLE 11:302: OTHER INEFFECTIVE ASSIGNMENTS

An assignment to which the debtor has not consented is ineffective against the debtor so far as it relates to a performance which the debtor, by reason of the nature of the performance or the relationship of the debtor and the assignor, could not reasonably be required to render to anyone except the assignor.

ARTICLE 11:303: EFFECT ON DEBTOR'S OBLIGATION

- (1) Subject to Articles 11:301, 11:302, 11:307 and 11:308, the debtor is bound to perform in favour of the assignee if and only if the debtor has received a notice in writing from the assignor or the assignee which reasonably identifies the claim which has been assigned and requires the debtor to give performance to the assignee.
- (2) However, if such notice is given by the assignee, the debtor may within a reasonable time request the assignee to provide reliable evidence of the assignment, pending which the debtor may withhold performance.
- (3) Where the debtor has acquired knowledge of the assignment otherwise than by a notice conforming to paragraph (1), the debtor may either withhold performance from or give performance to the assignee.
- (4) Where the debtor gives performance to the assignor, the debtor is discharged if and only if the performance is given without knowledge of the assignment.

ARTICLE 11:304: PROTECTION OF DEBTOR

A debtor who performs in favour of a person identified as assignee in a notice of assignment under Article 11:303 is discharged unless the debtor could not have been unaware that such person was not the person entitled to performance.

ARTICLE 11:305: COMPETING DEMANDS

A debtor who has received notice of two or more competing demands for performance may discharge liability by conforming to the law of the due place of performance, or, if the performances are due in different places, the law applicable to the claim.

ARTICLE 11:306: PLACE OF PERFORMANCE

- (1) Where the assigned claim relates to an obligation to pay money at a particular place, the assignee may require payment at any place within the same country or, if that country is a Member State of the European Union, at any place within the European Union, but the assignor is liable to the debtor for any increased costs which the debtor incurs by reason of any change in the place of performance.
- (2) Where the assigned claim relates to a non-monetary obligation to be performed at a particular place, the assignee may not require performance at any other place.

ARTICLE 11:307: DEFENCES AND RIGHTS OF SET-OFF

- (1) The debtor may set up against the assignee all substantive and procedural defences to the assigned claim which the debtor could have used against the assignor.
- (2) The debtor may also assert against the assignee all rights of set-off which would have been available against the assignor under Chapter 13 in respect of any claim against the assignor:
 - (a) existing at the time when a notice of assignment, whether or not conforming to Article 11:303(1), reaches the debtor; or
 - (b) closely connected with the assigned claim.

ARTICLE 11:308: UNAUTHORISED MODIFICATION NOT BINDING ON ASSIGNEE

A modification of the claim made by agreement between the assignor and the debtor, without the consent of the assignee, after a notice of assignment, whether or not conforming to Article 11:303(1), reaches the debtor does not affect the rights of the assignee against the debtor unless the modification is provided for in the assignment agreement or is one which is made in good faith and is of a nature to which the assignee could not reasonably object.

Section 4: Order of Priority between Assignee and Competing Claimants

ARTICLE 11:401: PRIORITIES

- (1) Where there are successive assignments of the same claim, the assignee whose assignment is first notified to the debtor has priority over any earlier assignee if at the time of the later assignment the assignee under that assignment neither knew nor ought to have known of the earlier assignment.
- (2) Subject to paragraph (1), the priority of successive assignments, whether of existing or future claims, is determined by the order in which they are made.
- (3) The assignee's interest in the assigned claim has priority over the interest of a creditor of the assignor who attaches that claim, whether by judicial process or otherwise, after the time the assignment has taken effect under Article 11:202.
- (4) In the event of the assignor's bankruptcy, the assignee's interest in the assigned claim has priority over the interest of the assignor's insolvency administrator and creditors, subject to any rules of the law applicable to the bankruptcy relating to:
 - (a) publicity required as a condition of such priority;
 - (b) the ranking of claims; or
 - (c) the avoidance or ineffectiveness of transactions in the bankruptcy proceedings.

CHAPTER 12

Substitution of New Debtor: Transfer of Contract

Section 1: Substitution of New Debtor

ARTICLE 12:101: SUBSTITUTION: GENERAL RULES

- (1) A third person may undertake with the agreement of the debtor and the creditor to be substituted as debtor, with the effect that the original debtor is discharged.
- (2) A creditor may agree in advance to a future substitution. In such a case the substitution takes effect only when the creditor is given notice by the new debtor of the agreement between the new and the original debtor.

ARTICLE 12:102: EFFECTS OF SUBSTITUTION ON DEFENCES AND SECURITIES

- (1) The new debtor cannot invoke against the creditor any rights or defences arising from the relationship between the new debtor and the original debtor.
- (2) The discharge of the original debtor also extends to any security of the original debtor given to the creditor for the performance of the obligation, unless the security is over an asset which is transferred to the new debtor as part of a transaction between the original and the new debtor.
- (3) Upon discharge of the original debtor, a security granted by any person other than the new debtor for the performance of the obligation is released, unless that other person agrees that it should continue to be available to the creditor.
- (4) The new debtor may invoke against the creditor all defences which the original debtor could have invoked against the creditor.

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Section 2: Transfer of Contract

ARTICLE 12:201: TRANSFER OF CONTRACT

- (1) A party to a contract may agree with a third person that that person is to be substituted as the contracting party. In such a case the substitution takes effect only where, as a result of the other party's assent, the first party is discharged.
- (2) To the extent that the substitution of the third person as a contracting party involves a transfer of rights to performance ("claims"), the provisions of Chapter 11 apply; to the extent that obligations are transferred, the provisions of Section 1 of this Chapter apply.

CHAPTER 13

Set-Off

ARTICLE 13:101: REQUIREMENTS FOR SET-OFF

If two parties owe each other obligations of the same kind, either party may set off that party's right to performance ("claim") against the other party's claim, if and to the extent that, at the time of set-off, the first party:

- (a) is entitled to effect performance; and
- (b) may demand the other party's performance.

ARTICLE 13:102: UNASCERTAINED CLAIMS

- (1) A debtor may not set off a claim which is unascertained as to its existence or value unless the set-off will not prejudice the interests of the other party.
- (2) Where the claims of both parties arise from the same legal relationship it is presumed that the other party's interests will not be prejudiced.

ARTICLE 13:103: FOREIGN CURRENCY SET-OFF

Where parties owe each other money in different currencies, each party may set off that party's claim against the other party's claim, unless the parties have agreed that the party declaring set-off is to pay exclusively in a specified currency.

ARTICLE 13:104: NOTICE OF SET-OFF

The right of set-off is exercised by notice to the other party.

ARTICLE 13:105: PLURALITY OF CLAIMS AND OBLIGATIONS

- (1) Where the party giving notice of set-off has two or more claims against the other party, the notice is effective only if it identifies the claim to which it relates.
- (2) Where the party giving notice of set-off has to perform two or more obligations towards the other party, the rules in Article 7:109 apply with appropriate adaptations.

ARTICLE 13:106: EFFECT OF SET-OFF

Set-off discharges the obligations, as far as they are coextensive, as from the time of notice.

ARTICLE 13:107: EXCLUSION OF RIGHT OF SET-OFF

Set-off cannot be effected:

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- (a) where it is excluded by agreement;
 - (b) against a claim to the extent that that claim is not capable of attachment; and
 - (c) against a claim arising from a deliberate wrongful act.

CHAPTER 14

Prescription

Section 1: General Provision

ARTICLE 14:101: CLAIMS SUBJECT TO PRESCRIPTION

A right to performance of an obligation ("claim") is subject to prescription by the expiry of a period of time in accordance with these Principles.

Section 2: Periods of Prescription and their Commencement

ARTICLE 14:201: GENERAL PERIOD

The general period of prescription is three years.

ARTICLE 14:202: PERIOD FOR A CLAIM ESTABLISHED BY LEGAL PROCEEDINGS

- (1) The period of prescription for a claim established by judgment is ten years.
- (2) The same applies to a claim established by an arbitral award or other instrument which is enforceable as if it were a judgment.

ARTICLE 14:203: COMMENCEMENT

- (1) The general period of prescription begins to run from the time when the debtor has to effect performance or, in the case of a right to damages, from the time of the act which gives rise to the claim.
- (2) Where the debtor is under a continuing obligation to do or refrain from doing something, the general period of prescription begins to run with each breach of the obligation.
- (3) The period of prescription set out in Article 14:202 begins to run from the time when the judgment or arbitral award obtains the effect of res judicata, or the other instrument becomes enforceable, though not before the debtor has to effect performance.

Section 3: Extension of Period

ARTICLE 14:301: SUSPENSION IN CASE OF IGNORANCE

The running of the period of prescription is suspended as long as the creditor does not know of, and could not reasonably know of:

- (a) the identity of the debtor; or
- (b) the facts giving rise to the claim including, in the case of a right to damages, the type of damage.

ARTICLE 14:302: SUSPENSION IN CASE OF JUDICIAL AND OTHER PROCEEDINGS

- (1) The running of the period of prescription is suspended from the time when judicial proceedings on the claim are begun.
- (2) Suspension lasts until a decision has been made which has the effect of res judicata, or until the case has been otherwise disposed of.
- (3) These provisions apply, with appropriate adaptations, to arbitration proceedings and to all other proceedings initiated with the aim of obtaining an instrument which is enforceable as if it were a judgment.

ARTICLE 14:303: SUSPENSION IN CASE OF IMPEDIMENT BEYOND CREDITOR'S CONTROL

- (1) The running of the period of prescription is suspended as long as the creditor is prevented from pursuing the claim by an impediment which is beyond the creditor's control and which the creditor could not reasonably have been expected to avoid or overcome.
- (2) Paragraph (1) applies only if the impediment arises, or subsists, within the last six months of the prescription period.

ARTICLE 14:304: POSTPONEMENT OF EXPIRY IN CASE OF NEGOTIATIONS

If the parties negotiate about the claim, or about circumstances from which a claim might arise, the period of prescription does not expire before one year has passed since the last communication made in the negotiations.

ARTICLE 14:305: POSTPONEMENT OF EXPIRY IN CASE OF INCAPACITY

- (1) If a person subject to an incapacity is without a representative, the period of prescription of a claim held by or against that person does not expire before one year has passed after either the incapacity has ended or a representative has been appointed.
- (2) The period of prescription of claims between a person subject to an incapacity and that person's representative does not expire before one year has passed after either the incapacity has ended or a new representative has been appointed.

ARTICLE 14:306: POSTPONEMENT OF EXPIRY: DECEASED'S ESTATE

Where the creditor or debtor has died, the period of prescription of a claim held by or against the deceased's estate does not expire before one year has passed after the claim can be enforced by or against an heir, or by or against a representative of the estate.

ARTICLE 14:307: MAXIMUM LENGTH OF PERIOD

The period of prescription cannot be extended, by suspension of its running or postponement of its expiry under these Principles, to more than ten years or, in case of claims for personal injuries, to more than thirty years. This does not apply to suspension under Article 14:302.

Section 4: Renewal of Periods

ARTICLE 14:401: RENEWAL BY ACKNOWLEDGEMENT

- (1) If the debtor acknowledges the claim, vis-à-vis the creditor, by part payment, payment of interest, giving of security, or in any other manner, a new period of prescription begins to run.
- (2) The new period is the general period of prescription, regardless of whether the claim was originally subject to the general period of prescription or the ten year period under Article 14:202. In the latter case, however, this Article does not operate so as to shorten the ten year period.

ARTICLE 14:402: RENEWAL BY ATTEMPTED EXECUTION

The ten year period of prescription laid down in Article 14:202 begins to run again with each reasonable attempt at execution undertaken by the creditor.

Section 5: Effects of Prescription

ARTICLE 14:501: GENERAL EFFECT

- (1) After expiry of the period of prescription the debtor is entitled to refuse performance.
- (2) Whatever has been performed in order to discharge a claim may not be reclaimed merely because the period of prescription had expired.

ARTICLE 14:502: EFFECT ON ANCILLARY CLAIMS

The period of prescription for a right to payment of interest, and other claims of an ancillary nature, expires not later than the period for the principal claim.

ARTICLE 14:503: EFFECT ON SET-OFF

A claim in relation to which the period of prescription has expired may nonetheless be set off, unless the debtor has invoked prescription previously or does so within two months of notification of set-off.

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Section 6: Modification by Agreement

ARTICLE 14:601: AGREEMENTS CONCERNING PRESCRIPTION

- (1) The requirements for prescription may be modified by agreement between the parties, in particular by either shortening or lengthening the periods of prescription.
- (2) The period of prescription may not, however, be reduced to less than one year or extended to more than thirty years after the time of commencement set out in Article 14:203.

CHAPTER 15

Illegality

ARTICLE 15:101: CONTRACTS CONTRARY TO FUNDAMENTAL PRINCIPLES

A contract is of no effect to the extent that it is contrary to principles recognised as fundamental in the laws of the Member States of the European Union.

ARTICLE 15:102: CONTRACTS INFRINGING MANDATORY RULES

- (1) Where a contract infringes a mandatory rule of law applicable under Article 1:103 of these Principles, the effects of that infringement upon the contract are the effects, if any, expressly prescribed by that mandatory rule.
- (2) Where the mandatory rule does not expressly prescribe the effects of an infringement upon a contract, the contract may be declared to have full effect, to have some effect, to have no effect, or to be subject to modification.
- (3) A decision reached under paragraph (2) must be an appropriate and proportional response to the infringement, having regard to all relevant circumstances, including:
 - (a) the purpose of the rule which has been infringed;
 - (b) the category of persons for whose protection the rule exists;
 - (c) any sanction that may be imposed under the rule infringed;
 - (d) the seriousness of the infringement;
 - (e) whether the infringement was intentional; and
 - (f) the closeness of the relationship between the infringement and the contract.

ARTICLE 15:103: PARTIAL INEFFECTIVENESS

- (1) If only part of a contract is rendered ineffective under Articles 15:101 or 15:102, the remaining part continues in effect unless, giving due consideration to all the circumstances of the case, it is unreasonable to uphold it.
- (2) Articles 15:104 and 15:105 apply, with appropriate adaptations, to a case of partial ineffectiveness.

ARTICLE 15:104: RESTITUTION

- (1) When a contract is rendered ineffective under Articles 15:101 or 15:102, either party may claim restitution of whatever that party has supplied under the contract, provided that, where appropriate, concurrent restitution is made of whatever has been received.
- (2) When considering whether to grant restitution under paragraph (1), and what concurrent restitution, if any, would be appropriate, regard must be had to the factors referred to in Article 15:102(3).
- (3) An award of restitution may be refused to a party who knew or ought to have known of the reason for the ineffectiveness.
- (4) If restitution cannot be made in kind for any reason, a reasonable sum must be paid for what has been received.

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ARTICLE 15:105: DAMAGES

- (1) A party to a contract which is rendered ineffective under Articles 15:101 or 15:102 may recover from the other party damages putting the first party as nearly as possible into the same position as if the contract had not been concluded, provided that the other party knew or ought to have known of the reason for the ineffectiveness.
- (2) When considering whether to award damages under paragraph (1), regard must be had to the factors referred to in Article 15:102(3).
- (3) An award of damages may be refused where the first party knew or ought to have known of the reason for the ineffectiveness.

CHAPTER 16

Conditions

ARTICLE 16:101: TYPES OF CONDITION

A contractual obligation may be made conditional upon the occurrence of an uncertain future event, so that the obligation takes effect only if the event occurs (suspensive condition) or comes to an end if the event occurs (resolutive condition).

ARTICLE 16:102: INTERFERENCE WITH CONDITIONS

- (1) If fulfilment of a condition is prevented by a party, contrary to duties of good faith and fair dealing or co-operation, and if fulfilment would have operated to that party's disadvantage, the condition is deemed to be fulfilled.
- (2) If fulfilment of a condition is brought about by a party, contrary to duties of good faith and fair dealing or co-operation, and if fulfilment operates to that party's advantage, the condition is deemed not to be fulfilled.

ARTICLE 16:103: EFFECT OF CONDITIONS

- (1) Upon fulfilment of a suspensive condition, the relevant obligation takes effect unless the parties otherwise agree.
- (2) Upon fulfilment of a resolutive condition, the relevant obligation comes to an end unless the parties otherwise agree.

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CHAPTER 17

Capitalisation of Interest

ARTICLE 17:101: WHEN INTEREST TO BE ADDED TO CAPITAL

- (1) Interest payable according to Article 9:508(1) is added to the outstanding capital every 12 months.
- (2) Paragraph (1) of this Article does not apply if the parties have provided for interest upon delay in payment.