

Summary of Contents

<u>FOREWORD TO THE 2nd EDITION BY THE AUTHOR</u>	VII
<u>PREFACE TO THE 1st EDITION 2018 BY THE CHAIRMAN OF THE WORKING GROUP</u>	XIII
<u>THANK YOU</u>	XV
ABBREVIATIONS	LV
DEFINITIONS IN THE UNIDROIT PRINCIPLES	LVIII
GLOSSARY OF LATIN TERMS	LIX
GLOSSARY OF FRENCH TERMS	LXII
RELEVANT SUPPLEMENTARY SOFT LAW & DOCUMENTS	LXIII
MATERIALS: Preparatory work of UNIDROIT (Legislative History)	LXIV
BIBLIOGRAPHY	CIV
RELEVANT WEBSITES	CXIII
WORKING GROUPS	CXIV
UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2016	CXXI
TABLE OF CORRESPONDENCE OF THE ARTICLES OF THE 1994, 2004, 2010 and 2016 EDITIONS OF THE UNIDROIT PRINCIPLES	CXLVII
Introduction to the UNIDROIT Principles of International Commercial Contracts ("PICC")	1
Preamble (Purpose of the Principles)	25
Annex to Preamble — UNIDROIT Principles as General Principles of International Commercial Contract Law	41
<u>Chapter 1 General Provisions</u>	75
<u>Chapter 2 Formation and Authority of Agents</u>	103
Section 1 Formation	103
Section 2 Authority of Agents	145
	XVII

Chapter 3	Validity	163
Section 1	General Provisions	163
Section 2	Grounds for Avoidance	168
Section 3	Illegality	197
Chapter 4	Interpretation	207
Chapter 5	Content, Third Party Rights and Conditions	227
Section 1	Content	227
Section 2	Third Party Rights	260
Section 3	Conditions	268
Chapter 6	Performance	281
Section 1	Performance in General	281
Section 2	Hardship	313
Chapter 7	Non-performance	325
Section 1	Non-performance in General	331
Section 2	Right to Performance	363
Section 3	Termination	383
Section 4	Damages	415
Chapter 8	Set-off	453
Chapter 9	Assignment of Rights, Transfer of Obligations, Assignment of Contracts	479
Section 1	Assignment of Rights	481
Section 2	Transfer of Obligations	521
Section 3	Assignment of Contracts	537

Chapter 10	Limitation Periods	551
<hr/>		
Chapter 11	Plurality of Obligors and of Obligees	587
Section 1	Plurality of Obligors	589
Section 2	Plurality of Obligees	625
<hr/>		
INDEX		647

Table of Contents

FOREWORD TO THE 2nd EDITION BY THE AUTHOR	VII
PREFACE TO THE 1st EDITION 2018 BY THE CHAIRMAN OF THE WORKING GROUP	XIII
THANK YOU	XV
ABBREVIATIONS	LV
DEFINITIONS IN THE UNIDROIT PRINCIPLES	LVIII
GLOSSARY OF LATIN TERMS	LIX
GLOSSARY OF FRENCH TERMS	LXII
RELEVANT SUPPLEMENTARY SOFT LAW & DOCUMENTS	LXIII
MATERIALS: Preparatory work of UNIDROIT (Legislative History)	LXIV
BIBLIOGRAPHY	CIV
RELEVANT WEBSITES	CXIII
WORKING GROUPS	CXIV
UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2016	CXXI
TABLE OF CORRESPONDENCE OF THE ARTICLES OF THE 1994, 2004, 2010 and 2016 EDITIONS OF THE UNIDROIT PRINCIPLES	CXLVII
Introduction to the UNIDROIT Principles of International Commercial Contracts (“PICC”)	1
A. A Wake-Up Call	1
B. Conception	5
C. A Practitioner’s Perspective	8
D. Wording of the Choice of the Unidroit Principles Clause	11
E. Cross-Cultural Background	14
F. Twelve and more Languages	16
G. Structure	17
H. Interpretation and Case Law	17
I. Limits of the Unidroit Principles	18
J. A General Note of Caution on Contract Perception	19
K. On this PICC-Commentary: Background, Goals, Language, Method and Materials	19
1. Background	19
2. Goals	20
	XXI

3. Language	21
4. Method and Materials	21
L. Burden of Proof	23
M. A Recommendation and an Invitation	23
 Preamble (Purpose of the Principles)	 25
A. Purposes Defined in the Preamble	25
1. Para. 1: General rules for international commercial contracts	25
2. Para. 2: Choice of Unidroit Principles as governing contractual regime	26
3. Para. 3: Application of Unidroit Principles to supplement a more general choice of the parties	29
4. Para. 4: Application of Unidroit Principles in the absence of any choice of law	30
5. Para. 5: Use of Unidroit Principles to interpret or supplement international uniform law instruments	31
6. Para. 6: Use of Unidroit Principles to interpret or supplement domestic law	33
7. Para. 7: The Unidroit Principles as a model for legislators	36
B. Other Purposes	37
1. Incorporation	37
2. A Tool for Contract Drafting	38
3. A Contribution to Harmonisation of Private Contract Law	39
 Annex to Preamble — UNIDROIT Principles as General Principles of International Commercial Contract Law	 41
A. Introduction	41
B. Wording and Purpose of the Preamble	41
C. Universally Compatible Contents	42
D. A History of Comparative Legal Research and Compromise	44
E. International Practice	45
I. International Arbitration	45
1. Arbitral Awards Using the Unidroit Principles as an Expression of General Principles of Contract Law	46
2. An Arbitral Award Using the UNIDROIT Principles as Anglo-Saxon Principles of Law	51
3. Arbitral Awards using the UNIDROIT Principles as a Tool to Supplement the Application of International Uniform Law Instruments	51
4. Arbitral Awards using the UNIDROIT Principles as a Tool to Confirm or Supplement the Interpretation or Application of a National Law	52
5. Arbitral Awards Using UNIDROIT Principles as an Expression of Customs or Usages of International Trade or <i>lex mercatoria</i>	55
6. Arbitral Awards Applying the UNIDROIT Principles by Party Agreement	58
II. Application by National Courts	58
1. The UNIDROIT Principles as General Principles of Law before National Courts	59
2. National Courts using the UNIDROIT Principles to Supplement International Instruments	60

3. National Courts using the UNIDROIT Principles as a Tool to Confirm or Supplement the Interpretation or Application of a National Law	60
F. An Emerging <i>Opinio Iuris</i>	65
I. UNCITRAL Resolutions	66
II. Endorsements by International Lawyers' Organisations	67
III. Academic Writing	68
G. Assessment	69
H. Options for Practitioners	70
I. International Arbitration	70
II. International Litigation	71
III. International Contracting: Use of a Descriptive Choice of the Unidroit Principles Clause Emphasising their Character as General Principles of Law	72
Chapter 1 General Provisions	75
Article 1.1 (Freedom of contract)	75
A. The First of a Series of Fundamental Principles	75
B. Freedom of Contract	76
C. Limits	77
Article 1.2 (No form required)	77
A. Principle of Informality	77
B. Limits	77
C. Options	78
Article 1.3 (Binding character of contract)	78
A. <i>Pacta sunt servanda</i>	78
B. Limits	79
C. Options	79
Article 1.4 (Mandatory rules)	80
A. Priority of Private International Law with Respect to Mandatory Law	80
B. Applicability of Different Kinds of Mandatory Law Depending on the Dispute Resolution Forum	81
1. Restriction of the Scope of Mandatory Laws in Case of Combination of the Unidroit Principles with an Arbitration Clause	81
2. More Mandatory Law in Case of Combination of the Unidroit Principles with a Choice of Court Clause	83
C. Effects	84
Article 1.5 (Exclusion or modification by the parties)	84
A. Party Autonomy Emphasised	84
B. Limits of Mandatory Principles	85

Article 1.6 (Interpretation and supplementation of the Principles)	85
A. A Modern Standard Rule on Interpretation (Para. 1)	85
1. A Global Approach to Interpretation	85
2. On Interpretation	86
B. Supplementation of the Unidroit Principles with Due Regard to the Underlying General Principles (Para. 2)	87
1. On Supplementation	87
2. The Underlying General Principles	88
Article 1.7 (Good faith and fair dealing)	88
A. Good Faith and Fair Dealing as a Mandatory Core of the Unidroit Principles pursuant to Art. 1.5 and 1.6 (2)	89
B. Standard and Options	91
C. Limited Practical Relevance	92
Article 1.8 (Inconsistent behaviour)	94
A. Part of the Mandatory Core of the Unidroit Principles Pursuant to Art. 1.5	94
B. Priority of More Detailed Principles	95
C. Examples	95
D. Remedies: Art. 1.8 as a Sword	95
E. Options	95
Article 1.9 (Usages and practices)	95
A. Two Kinds of Usages and a Limit	96
B. Hierarchy	97
C. Proof and Options	97
Article 1.10 (Notice)	97
A. Risk Allocation to the Sender	98
B. Abusive Prevention of Giving Notice	99
C. Withdrawal of a Notice	99
Article 1.11 (Definitions)	99
A. A Few Key Definitions	100
B. Further Definitions in the Unidroit Principles	101
Article 1.12 (Computation of time set by parties)	101
A. Impact of Holidays etc.	101
B. Relevant Time Zone	101
C. Options and Interpretation	102

Chapter 2	Formation and Authority of Agents	103
<hr/>		
Section 1	Formation	103
<hr/>		
Article 2.1.1	(Manner of formation)	103
A. Beyond the Traditional Approach to Contract Formation 103		
1. The Classical Offer-and-Acceptance Test		103
2. Conduct Sufficient to Show Agreement		104
B. A 'Relaxed' Approach towards Contract Negotiation 105		
C. Options: Form 105		
D. 'Sham' or 'Simulation' 106		
<hr/>		
Article 2.1.2	(Definition of offer)	106
A. Sufficient 'Definiteness' plus 'Intention' 106		
B. Interrelationship of the Two Criteria		107
<hr/>		
Article 2.1.3	(Withdrawal of offer)	108
A. Para. 1 is Declaratory 108		
B. Any Withdrawal Must be Clear		108
<hr/>		
Article 2.1.4	(Revocation of offer)	108
A. An International Middle Ground 108		
B. A Self-Explanatory Principle with two exceptions		109
<hr/>		
Article 2.1.5	(Rejection of offer)	109
A. Interpretation of Possibly Implicit Rejections 109		
B. Termination of an Offer by Other Means		110
<hr/>		
Article 2.1.6	(Mode of acceptance)	110
A. Function and Systematic Place of the Principle 110		
B. When Does the Offeree's Expression of Assent Amount to Acceptance? 111		
1. The Basic Principle in Para. 1 Sentence 1		111
2. Conduct without Notice (Para. 3)		111
3. Possible Impact of Silence (Para. 1 Sentence 2)		112
C. When Does the Offeree's Expression of Assent Become Effective to Establish a Binding Contract? 112		
D. Options 113		
<hr/>		
Article 2.1.7	(Time of acceptance)	113
A. Impact of Time 113		
B. 'Oral' Offer		114
C. Risk Allocation		114
<hr/>		
Article 2.1.8	(Acceptance within a fixed period of time)	115
A. Calculation of Relative Time Periods 115		
B. Uncertainty of Time of Dispatch		115

Article 2.1.9 (Late acceptance. Delay in transmission)	116
A. Principle (Para. 1)	116
B. Exception (Para. 2)	117
Article 2.1.10 (Withdrawal of acceptance)	117
A Self-Explanatory Addendum to 2.1.6(2)	117
Article 2.1.11 (Modified acceptance)	118
A. Modifications in the Acceptance Notice Generate a Counter-Offer	118
B. But Non-Material Alterations Generate a Duty on the Offeror to Speak Up	118
C. Options for the Offeror	120
D. Special Rule for Standard Terms	120
Article 2.1.12 (Writings in confirmation)	120
A. Exception: Changes Contained in Written 'Confirmations of the Contract' Might Alter a Contract	120
B. Burden of Proof and Test	121
C. An International Compromise	122
D. Options	122
Article 2.1.13 (Conclusion of contract dependent on agreement on specific matters or in a particular form)	122
A. Freedom to Insist on Substantive or Formal Specifics	122
B. Waiver	123
Article 2.1.14 (Contract with terms deliberately left open)	123
A. Possible Contract Conclusion Despite a Term Deliberately Left Open	123
B. Three Requirements for Contract Conclusion	124
C. Three Contractual Options (Para. 1)	125
D. Alternative Means (Para. 2)	125
1. Alternative Means contained in the UNIDROIT Principles	125
2. Special Circumstances (Long-term Contracts)	126
3. Contractual Options	126
4. Arbitration	126
Article 2.1.15 (Negotiations in bad faith)	127
A. Avoiding a Cultural Clash, Functions of Art. 2.1.15	127
B. Bad Faith Examples	129
C. Damage Calculation, Burden of Proof	130
D. Options	130
Article 2.1.16 (Duty of confidentiality)	131
A. Implied or Express Duty of Confidentiality (Sentence 1)	131
B. Remedies (Sentence 2)	132

Article 2.1.17 (Merger clauses)	132
A. Another Contribution to Cross Cultural Understanding	133
B. Limits	133
Article 2.1.18 (Modification in a particular form)	134
A. ‘No Oral Modifications’ Clauses	134
B. Limits	135
C. Options	135
Article 2.1.19 (Contracting under standard terms)	135
A. A Straightforward Regime on Standard Terms in Four Articles	136
B. Definition (Para. 2)	136
C. Incorporation (Para. 1)	137
Article 2.1.20 (Surprising terms)	139
A. Safeguard of Basic Fairness	139
B. Test	139
Article 2.1.21 (Conflict between standard terms and non-standard terms)	141
Priority of the Individual Term	141
Article 2.1.22 (Battle of forms)	141
A. A Favor Contractus Approach to Competing Standard Terms	141
B. Limits	143
C. Filling the Gaps	143
D. Options in View of Paramount Practical Importance of the Issue	143
Section 2 Authority of Agents	145
Article 2.2.1 (Scope of the Section)	145
A. Only Agency in the Contract Formation Process	145
B. Large Concept of Agency	147
Article 2.2.2 (Establishment and scope of the authority of the agent)	147
A. Authority Granted by the Principal (Para. 1)	147
B. Incidental Authority (Para. 2)	148
Article 2.2.3 (Agency disclosed)	148
A. ‘Actual Disclosed Agency’	148
B. ‘Classical’ Consequences	149
C. ‘Indirect’ or ‘Commission Agency’	149
Article 2.2.4 (Agency undisclosed)	149
A. Another Compromise	150
B. Only a Relation with the ‘Agent’	150

C. One Narrow Exception (Para. 2)	151
D. Option for the Principal	151
Article 2.2.5 (Agent acting without or exceeding its authority)	151
A. Principle: No Direct Legal Consequence for the Principal (Para. 1)	152
B. Exception by the Principal's Own Action (Para. 2)	152
C. Options	153
D. Cherry Picking under Overriding Mandatory Non-Contractual Law	153
Article 2.2.6 (Liability of agent acting without or exceeding its authority)	154
A. Strict Liability (Para. 1)	154
B. Defences (incl. Para. 2)	155
Article 2.2.7 (Conflict of interests)	155
A. Coping with a Range of Conflicts (Para. 1 sentence 1)	156
B. Distinction to Excess of Authority Cases	156
C. Legal Consequences and Options: Avoidance or Confirmation	157
D. Avoidance Excluded (Para. 2)	157
E. Applicability beyond Contract Conclusion	157
Article 2.2.8 (Sub-agency)	157
A. Sub-Agency When 'Reasonable'	158
B. Details and Legal Consequences	158
Article 2.2.9 (Ratification)	159
A. Ratification With Retroactive Effect (Para. 1)	159
B. Timing; a First Option for Third Party (Para. 2)	160
C. A Second Option: Escape Clause for the Third Party (Para. 3)	160
Article 2.2.10 (Termination of authority)	160
A. A Clarification	161
B. Some Subsisting Actual Authority	161
Chapter 3 Validity	163
Section 1 General Provisions	163
Article 3.1.1 (Matters not covered)	163
A. A Self-Explanatory Distinction	163
B. Practical Consequences	164
Article 3.1.2 (Validity of mere agreement)	164
A. Merely Consensual Contracts	164
B. Limits	165

Article 3.1.3 (Initial impossibility)	165
A. A Compromise following the CISG	165
B. Legal Consequences: Claim for Damages	166
Article 3.1.4 (Mandatory character of the provisions)	166
A. Part of the Mandatory Core of Unidroit Principles pursuant to Art. 1.5	166
B. Limits	167
1. By Contract	167
2. By Law	168
Section 2 Grounds for Avoidance	168
Article 3.2.1 (Definition of mistake)	168
A. A Broad Concept of Mistake ...	168
B. ... With Numerous Boundaries (Test Scheme)	169
C. Legal Consequences and Options	170
Article 3.2.2 (Relevant mistake)	170
A. Two-Prong 'Reasonableness-Test' (Para. 1)	171
B. Exception for Gross Negligence and Assumed or Allocated Risks (Para. 2)	172
C. Legal Consequences	173
Article 3.2.3 (Error in expression or transmission)	173
A. Errors in Expression or Transmission as Mistakes	173
B. Legal Consequences	174
Article 3.2.4 (Remedies for non-performance)	174
A. Remedies for Non-Performance Trump Avoidance	175
B. Legal Consequences	175
Article 3.2.5 (Fraud)	175
A. Intended Leading Into Error and Thereby Gaining an Advantage	176
B. Legal Consequences and Option	177
Article 3.2.6 (Threat)	177
A. Two Kinds of Unjustified Threats	178
B. Legal Consequences	179
Article 3.2.7 (Gross disparity)	180
A. Avoidance in Case of Excessive Advantage	180
B. Legal Consequences	181
1. The 'Triplet' of Consequences (Avoidance, Restitution and Reliance Damages)	181
2. Alternative Option of Adaptation	182
C. Liquidated Damages and Penalty Clauses	182

Article 3.2.8 (Third persons)	182
A. Third Party from the Sphere of a Contracting Party	182
B. Avoidance Even Without ‘Responsibility’ if the Other Party Needs No Protection	183
C. Legal Consequences	184
Article 3.2.9 (Confirmation)	184
A. A Logical Consequence of Freedom of Contract (and of the Good Faith Principle)	185
B. Confirmation Requires ...	185
Article 3.2.10 (Loss of right to avoid)	185
A. Function: Part of the Regime for Mistakes	186
B. Right of the Other Party to Uphold the Contract in an Amended Version	186
C. Requirements	186
Article 3.2.11 (Notice of avoidance)	187
A. Avoiding a Cultural Clash	187
B. Requirement	187
Article 3.2.12 (Time limits)	188
A. A ‘Reasonable’ Time Limit	188
B. A Special Rule for Avoidance of Individual Terms	189
Article 3.2.13 (Partial avoidance)	189
Article 3.2.14 (Retroactive effect of avoidance)	190
A. Retroactivity	190
B. Limits	190
Article 3.2.15 (Restitution)	191
A. Principle of Concurrent Restitution in Kind (Para. 1)	191
B. ‘Impossible’ or ‘Inappropriate’ Restitution in Kind (Para. 2-3)	192
1. First Step: Determination of ‘Impossible’ or ‘Inappropriate’ Restitution in Kind	192
2. Second Step: Determination of an Allowance in Money ‘Whenever Reasonable’	193
C. Compensation for Expenses (Para. 4)	194
D. Application of General Rules	194
E. Contractual Options	195
F. Limits of the Restitution Regime	195
Article 3.2.16 (Damages)	195
A. Compensation of the ‘Reliance Interest’	196
B. Supplemental Application of General Rules on Damages	196

Article 3.2.17 (Unilateral declarations)	197
Validity Rules Apply Mutatis Mutandis to All Communications of Intention	197
Section 3 Illegality	197
Article 3.3.1 (Contracts infringing mandatory rules)	197
A. The Second Leg to Art. 1.4	198
B. Priority of Effects Provided For in the Mandatory Rule (Para. 1)	200
1. Kinds of Infringement	200
2. Consequences Provided for in the Applicable Mandatory Rules	201
C. The Supplementary Regime of Para. 2–3	201
Article 3.3.2 (Restitution)	204
A. Art. 3.3.1 (1) trumps Art. 3.3.2	204
B. A Reasonableness Test for Restitution	205
C. Application of Art. 3.2.15	206
Chapter 4 Interpretation	207
Introduction to Chapter 4	207
A. Chapter 4: One of the Most Important Chapters of the Unidroit Principles	207
B. Overcoming National Distinctions	208
C. Structure	209
D. An Important Template	210
Article 4.1 (Intention of the parties)	210
A. Step 1: Determination of a Joint Intention, if Possible (Para. 1)	210
B. Step 2 in Case of Default: Interpretation under an Individualised and Contextualised ‘Reasonable Person’ Test (Para. 2)	212
Article 4.2 (Interpretation of statements and other conduct)	213
A. A Rule Which is Often Incorporated Implicitly	213
B. Again a Two Step Approach to Interpretation	214
Article 4.3 (Relevant circumstances)	215
A. Two Groups of Criteria	215
B. ... Which are Non-Exhaustive	216
C. Long-term Contracts	217
D. Options	218
Article 4.4 (Reference to contract or statement as a whole)	218
A. A Supplement to Art. 4.3: Reference to the (Contractual) Context of the Term to be Interpreted	218
B. The Role of Art. 4.3 in Applying Art. 4.4	219

Article 4.5 (All terms to be given effect)	220
A. Avoiding to Deprive Any Clause of An Effect	220
B. Standard Terms (Art. 2.1.19 (2))	220
Article 4.6 (Contra proferentem rule)	221
Interpretation Against the Supplier, as a Rule of Last Resort	221
Article 4.7 (Linguistic discrepancies)	222
A. A Default Rule to a Missing or to an Extreme Equal Language Clause	222
B. Options	223
Article 4.8 (Supplying an omitted term)	224
A. At the Edge of 'Interpretation'	224
B. Relationship to 'Interpretation'	225
C. Relationship to Art. 5.1.1-5.1.2	225
<hr/> Chapter 5 Content, Third Party Rights and Conditions	<hr/> 227
Section 1 Content	227
Article 5.1.1 (Express and implied obligations)	227
A. A Cultural Bridge to Common Law	227
B. The Arbitrator's Perspective	228
Article 5.1.2 (Implied obligations)	229
List of Criteria	229
Article 5.1.3 (Co-operation between the parties)	229
A. Consequence of a 'Common Project'	230
B. Limits	231
C. Legal Consequence of a Violation	232
D. Contractual Options	232
Article 5.1.4 (Duty to achieve a specific result. Duty of best efforts)	233
A. A Cultural Bridge to the French Law Family	233
B. Legal Consequences	233
C. Limitation of Liability (contractual option)	234
Article 5.1.5 (Determination of kind of duty involved)	235
Assistance in the Classification of an Obligation	235
Article 5.1.6 (Determination of quality of performance)	235
A. A System of Default Rules	235
B. An Autonomous Standard Characterised by 'Reasonableness'	236

C. Limits	237
D. Options	237
Article 5.1.7 (Price determination)	238
A. Part of a System of Default Rules	238
B. General Default Rule (Para. 1), Contractual Option	239
C. Specific Default Rules (Para. 3-4)	240
1. Paragraph 3 (Non Performance of a Price Determination)	240
2. Paragraph 4 (Non Existing Factors)	241
D. A Mandatory Boundary to Unreasonable Unilateral Price Determination (Para. 2)	241
1. The Rule	241
2. Contractual Options	242
E. Unreasonable Price Determination by a Third Party (Para. 3), Contractual Option	242
Article 5.1.8 (Termination of a contract for an indefinite period)	243
A. Contracts for an Indefinite Period of Time	243
B. Function of Art. 5.1.8	243
C. Reasonable Time in Advance	245
D. Legal Consequences	246
E. Contractual Options	246
Article 5.1.9 (Release by agreement)	246
A. A Clarification to Avoid Cultural Misunderstanding	246
B. Action Required; Silence can Constitute Consent	247
C. Distinction	247
Annex to Section 5.1 – UNIDROIT Principles for Specific Kinds of Contracts (Sales, Services, Construction) UNIDROIT	247
A. Party Autonomy	247
B. Contracts of Sale (Checklist)	248
C. Service Contracts (Checklist)	255
D. Construction Contracts	259
Section 2 Third Party Rights	260
Introduction to Section 5.2	260
Article 5.2.1 (Contracts in favour of third parties)	261
A. Concentration on Contracts in Favour of Third Parties (para. 1)	261
B. Shaping the Content (para. 2)	263
Article 5.2.2 (Third party identifiable)	264
A. Invalidity in case of Impossibility of Identification	264
B. Future Beneficiaries	264

Article 5.2.3 (Exclusion and limitation clauses)	265
A. Function of Art. 5.2.3-5.2.5	265
B. A 'Shield' to the Beneficiary	265
Article 5.2.4 (Defences)	266
A 'Shield' to the Promisor	266
Article 5.2.5 (Revocation)	266
A. Modification or Revocation	266
B. Limits	267
C. Options	267
Article 5.2.6 (Renunciation)	267
Right of Refusal	268
Section 3 Conditions	268
Article 5.3.1 (Types of condition)	269
A. Function	269
B. Types	270
C. Distinctions	271
D. Option	272
Article 5.3.2 (Effect of conditions)	273
A. A System of Default Rules	273
B. Suspensive Condition (lit. a): Special Characteristics	273
C. Resolutive Condition (lit. b): Special Characteristics	274
D. Joint Features	274
E. Options	275
Article 5.3.3 (Interference with conditions)	275
A. The Watch-Dog for the Condition	276
B. The Devil lies in the Detail	276
Article 5.3.4 (Duty to preserve rights)	278
A. The Watch-Dog for the Conditioned Right	278
B. Options	279
Article 5.3.5 (Restitution in case of fulfilment of a resolutive condition)	279
A. Details on the Effects of Resolutive Conditions	279
B. Optional: A Rule of Relevance if Parties Chose Retroactivity	279

Chapter 6 Performance	281
Section 1 Performance in General	281
Introduction to Section 6.1	281
Article 6.1.1 (Time of performance)	282
A. Notion of and Restrictions on Performance	282
B. A 'Fixed' Time or Period of Time	283
C. A Reasonableness-Test as Default Rule	284
D. Option: Special Exemption Clause for Delay	285
Article 6.1.2 (Performance at one time or in instalments)	285
Partial Performance is Principally Non-performance	285
Article 6.1.3 (Partial performance)	286
A. Protection of the Obligee against Imposed Partial Performance of the Obligor	286
B. Limits	287
C. Further Options for the Obligee If Partial Performance Amounts to Non-Performance	288
Article 6.1.4 (Order of performance)	288
A. Principle of Simultaneous Performance	288
B. Limits	289
Article 6.1.5 (Earlier performance)	290
A. Protection of the Obligee against Earlier Performance	290
B. The Good Faith Exception; Additional Costs	291
C. Other Remedies	292
Article 6.1.6 (Place of performance)	292
A. Expectation Management	292
B. Default Rule Favouring the Obligor ...	294
C. ... Except for Monetary Obligations	294
D. Change of Place of Business	295
Article 6.1.7 (Payment by cheque or other instrument)	295
A. Core Principles on Payment	295
B. A Choice of the Obligor	296
C. Protection of the Obligee in Case of 'Pull-Orders'	297
Article 6.1.8 (Payment by funds transfer)	297
A. A Regime for Push-Orders	297
B. Options of the Obligor as Controlled by the Obligee	298
C. Moment of Discharge of the Obligor	298

Article 6.1.9 (Currency of payment)	299
A. Two Articles on Currency Issues	299
B. Importance of the Place of Payment	300
C. Some Protection of the Obligee Against Currency Fluctuation	301
Article 6.1.10 (Currency not expressed)	301
A. Currency of Place of Payment as a Default Rule	301
B. Limits	302
Article 6.1.11 (Costs of performance)	302
Each Party Bears its Own Costs as a Default Rule	302
Article 6.1.12 (Imputation of payments)	303
A. A Balanced International Compromise	304
B. A Three-Layered Order of Decision	304
1. Layer 1: Decision of the Obligor (Para. 1)	304
2. Layer 2: Decision of the Obligee (Para. 2)	305
3. Layer 3: Default system of Para. 3	305
C. Limits	306
Article 6.1.13 (Imputation of non-monetary obligations)	306
Extension to Non-Monetary Obligations	306
Article 6.1.14 (Application for public permission)	307
A. A Default System to Cope with Public Permission	307
B. Determination of the 'Who'	307
Article 6.1.15 (Procedure in applying for permission)	308
A. Regulating the 'How'	309
B. Information of the Other Party	309
Article 6.1.16 (Permission neither granted nor refused)	310
A. Right and Effect of Termination in Case of a 'Stuck Process'	310
B. Exception: Only Part of the Contract is Affected	311
Article 6.1.17 (Permission refused)	311
A. Legal Consequences of a Refusal	311
1. A Refusal Affecting the Validity of the Contract	311
2. A Refusal Which Merely Renders the Performance Impossible	312
3. Usually No Damages	312
B. Permission with Extremely Burdensome Conditions	312

Section 2 Hardship	313
Introduction to Hardship	313
Article 6.2.1 (Contract to be observed)	315
A. Inspired by International Contract Practice	315
B. A Reminder to <i>Pacta Sunt Servanda</i> as a ‘Mission Statement’	317
C. Option in Case of a Deteriorating Financial Ability of the Obligee	317
Article 6.2.2 (Definition of hardship)	317
A. A Fundamental Alteration for the Equilibrium of the Contract	318
B. Plus Four Factors Relating to the Sphere of the Disadvantaged Party	319
1. Knowledge After Contract Conclusion (lit. a)	319
2. Anticipation Reasonably Impossible (lit. b)	319
3. Beyond Control (lit. c)	319
4. No Risk Allocation to the Disadvantaged Party (lit. d)	320
C. Contractual Options (Corona Clause)	320
Article 6.2.3 (Effects of hardship)	321
A. Renegotiation	321
B. Continued Performance of the Contract	322
C. Application by the Court	322
D. Contractual Options (Corona Clause)	323
Chapter 7 Non-performance	325
Introduction to Chapter 7	325
A. Overview	325
B. A Concept based on ‘Spheres’, not on Fault	326
C. Six Kinds of Rights and Remedies in Four Sections, with Limitations and Exclusions	326
D. Often a Choice between Several Options	327
E. Options at the Contract Drafting Stage	328
F. A Note on Comparative Law	329
Section 1 Non-performance in General	331
Article 7.1.1 (Non-performance defined)	332
A. A Unitary Concept ...	332
B. ... Based on ‘Spheres’ as Defined in the Contract, Not on Fault	332
C. Impact on Contract Drafting	333
Article 7.1.2 (Interference by the other party)	333
A. A Shield for the Obligor	333
B. Partial Relevance of the Interference	335
C. Most Relevant for Duties to Achieve a Specific Result	335

Article 7.1.3 (Withholding performance)	335
A. A Shield for Both Parties Based on Timing	336
B. Requirements	337
1. Non-performance of the Other Party of an Obligation with Sufficient Connection to the Duty Underlying the Withheld Performance	337
2. Anticipatory Suspension	338
3. ‘Clean Hands’	339
4. Procedural Consideration	339
C. Options	339
Article 7.1.4 (Cure by non-performing party)	340
A. A Right to Cure for the Obligor	340
B. Parallel Options for the Obligee (Subject to Meeting the Individual Requirements of the Other Provisions)	343
Article 7.1.5 (Additional period for performance)	345
A. A Proactive Way for the Obligee to Cope with Non-Performance	345
B. A Privileged Way to Termination in Case of Delay (Para. 3)	347
C. Parallel Options for the Obligee (Para. 2)	347
Article 7.1.6 (Exemption clauses)	348
A. The Importance in Practice	349
B. A Basic Assumption that Exemption Clauses are Valid	350
C. A Prohibition to Rely on Grossly Unfair Exemption Clauses is Part of the Mandatory Core of Unidroit Principles	350
D. A Test of Severity	351
E. Limits and Contractual Options	353
Article 7.1.7 (Force majeure)	355
A. A Shield for the Obligor	356
B. Conditions	356
C. Management of Force Majeure by the Obligor	359
D. Options and Obligations for the Obligee, including Termination	360
E. Force Majeure Clauses	360
1. General Function (Drafting)	360
2. Long-term Contracts, Combination with Hardship	361
3. Impact of Practice and Usages	362
Section 2 Right to Performance	363
An Introductory Comparative Remark on Section 2: Right to Performance	363
Article 7.2.1 (Performance of monetary obligation)	364
A. Action for an Agreed Sum as ‘Specific Performance’	364
B. Parallel Options for the Obligee (Subject to Meeting the Individual Requirements of the Other Provisions)	366

Article 7.2.2 (Performance of non-monetary obligation)	366
A. A Pragmatic Compromise between Civil and Common Law	366
B. The Exceptions (for the Benefit of the Obligor)	368
C. Further Options for the Obligor	375
D. Parallel Options for the Obligee	375
Article 7.2.3 (Repair and replacement of defective performance)	377
A. A Reminder	377
B. Restitution	379
C. Parallel Options	379
Article 7.2.4 (Judicial penalty)	379
A. A Contribution to the French Legal Family (para. 1)	379
B. Tactical Considerations (Para. 2 Sentence 1)	380
C. Refusal to Obey	381
D. Parallel Options (Para. 2 Sentence 2)	382
Article 7.2.5 (Change of remedy)	382
Limited Freedom to Change the Mind	382
Section 3 Termination	383
Overview	384
Article 7.3.1 (Right to terminate the contract)	385
A. Termination as a Last Resort (Para. 1)	385
B. Fundamental Non-Performance (Para. 2)	387
1. Factors Focussing on the Contract from the Perspective of the Obligee (lit. a-b)	388
2. Factors Focussing on the Action of the Obligor (lit. c-d)	391
3. One Factor Focussing on the Economic Impact to the Obligor (lit. e)	392
C. <i>Nachfrist</i> -Procedure as an Alternative in Case of Delay (Para. 3)	392
D. Partial termination	393
E. Parallel Options for Obligees and Obligors	394
F. Legal Consequences	395
Article 7.3.2 (Notice of termination)	395
A. A Concept of Clarity by Notice (Para. 1)	395
B. Balanced by a 'Reasonable Time' – Constraint (Para. 2)	396
C. Options	398
Article 7.3.3 (Anticipatory non-performance)	398
A. 'Clear' Cases of Anticipatory Non-Performance	398
B. Notice	400
C. Effects	400
D. Alternative Options	400

Article 7.3.4 (Adequate assurance of due performance)	400
A. Avoiding a 'Dilemma' for the Obligee	400
B. Three Tools for the Obligee	401
1. Tool 1: Request for Adequate Assurance of Due Performance	401
2. Tool 2: A Withholding Right	403
3. Tool 3 (which may follow the use of tool 1 or 2): An Extraordinary Right to Termination	403
C. Possible Alternative Options	404
Article 7.3.5 (Effects of termination in general)	404
A. A Compromise Between Different Approaches	404
B. Limitation of the Effect of Termination to the Future	405
C. Subsisting Rights and Contract Provisions	405
1. In Case of a Lawful Contract Termination	405
2. In Case of an Unfounded Contract Termination (Unlawful Termination)	406
Article 7.3.6 (Restitution with respect to contracts to be performed at one time)	407
A. Principle of Concurrent Restitution in Kind (Para. 1)	407
B. 'Impossible' or 'Inappropriate' Restitution in Kind (Para. 2)	408
C. Risk Allocation, Options	409
D. Compensation for Expenses (Para. 4) and Other Options	410
E. General Rules Governing the Obligations under Art. 7.3.6	411
F. Impact of Art. 7.3.6: A Quasi-Unified Approach to Restitution	411
Article 7.3.7 (Restitution with respect to long-term contracts)	413
A. Limitation of Restitution Rights	413
B. Conditions	413
1. Principle Rule	413
2. Exception	414
C. Reference to Art. 7.3.6	414
D. Other Options	414
Section 4 Damages	415
Introductory Remarks	415
Article 7.4.1 (Right to damages)	416
A. Damages for Non-Performance unless Excused	416
B. Application in Addition to Parallel Options	417
C. Analogical Application, Special Rules with Priority	417
Article 7.4.2 (Full compensation)	418
A. Principle of Full Compensation	418
B. Adaptation in Cases of Analogical Application	421

Article 7.4.3 (Certainty of harm)	421
A. Certainty, Probability or Assessment of the Court	421
1. Harms Established by a Reasonable Degree of Certainty (Para. 1)	422
2. Loss of a Chance Depending on Probability of its Occurrence (Para. 2)	422
3. Assessment at the Discretion of the Court (Para. 3)	423
B. Contractual Options	424
Article 7.4.4 (Foreseeability of harm)	424
A. An International Standard Meeting Comparative Legal Benchmarks	424
B. Specifics of the UNIDROIT Principles' Foreseeability Test	425
C. Impact on Risk Management at the Contract Drafting Stage	426
Article 7.4.5 (Proof of harm in case of replacement transaction)	427
A. Function of Art. 7.4.5	427
B. Four Requirements	428
C. Legal Consequences	429
D. Options	430
Article 7.4.6 (Proof of harm by current price)	430
A. Function of Art. 7.4.6	430
B. Three Requirements	431
C. Legal Consequences	431
D. Options	432
Article 7.4.7 (Harm due in part to aggrieved party)	432
A. Function of the Concept of Contributory Causation	432
B. Requirements	433
C. Legal Consequences	434
D. Options	434
Article 7.4.8 (Mitigation of harm)	435
A. Function of Mitigation	435
B. Two Forms of Application	435
1. A Partial Shield for the Obligor	436
2. A Basis for A Claim by the Aggrieved Party	437
C. Options	437
Article 7.4.9 (Interest for failure to pay money)	437
A. Function and Practical Importance, Relation to the CISG	438
B. Two Requirements and One Clarification	440
C. Interest Rate	441
D. Additional Damages, Compound interest	441
E. Options	442

Article 7.4.10 (Interest on damages)	443
A. Scope of Application and Function	443
B. Application	443
C. Avoidance of Double Compensation	444
Article 7.4.11 (Manner of monetary redress)	444
A. Flexibility to the Court	444
B. Indexation	445
Article 7.4.12 (Currency in which to assess damages)	445
A. An Option for the Aggrieved Party	445
B. Alternative and Distinction	446
Article 7.4.13 (Agreed payment for non-performance)	446
A. Function	446
B. Freedom to Negotiate an Agreed Payment for Non-Performance	448
C. Judicial Control of Grossly Excessive Clauses as Part of the Mandatory Core of Unidroit Principles	450
D. Contractual Option	451
<hr/> Chapter 8 Set-off	453
Introduction	453
A. Definition and Relevance	453
B. A Neutral Compromise on Set-Off	454
C. A Liberal Approach	456
Article 8.1 (Conditions of set-off)	456
A. Function of Art. 8.1 within the Unidroit Principles-System of Set-Off	456
1. Relation to Art. 8.2-8.5	456
2. Special Rules with Priority	457
B. Requirements	457
1. Mutuality (or Reciprocity)	457
2. 'Money or Other Performance of the Same Kind'	458
3. Principle Claim: Entitlement to Performance by the First Party ((1) lit. a)	459
4. Cross-Claim: An 'Ascertained' and 'Due' Obligation of the Other Party ((1) lit. b)	460
5. Exception to the 'Ascertainability' Requirement	462
C. Legal Consequences and Terminology	463
D. Contractual Options and/or Restrictions and Other Restrictions	463
1. Contractual Options and/or Restrictions	463
2. Other Restrictions	464

Article 8.2 (Foreign currency set-off)	465
A. Function and Principle	465
B. A Race to become the 'First Party'	466
1. Currency	467
2. Exchange rate	467
C. Restrictions	468
1. No 'freely convertible currencies'	468
2. Currency Imposed by Agreement	468
D. Contractual Options	469
Article 8.3 (Set-off by notice)	470
A. A Straightforward Instruction to the First Party	470
B. Form	470
C. Limits	471
D. Options	471
Article 8.4 (Content of notice)	471
A. Specification of the Obligations	472
1. The Basic Rule of Para. 1	472
2. Further Contents of the Notice	472
B. Multiple Obligations	473
1. The Default Rule for Missing Specifications in Case of Multiple Obligations of the Other Party	473
2. Missing Specifications in Case of Multiple Obligations of the First Party	474
3. Multiple Obligations on Both Sides	474
Article 8.5 (Effect of set-off)	475
A. Defined Substantive Effect for the Future	475
1. Substantive Effect of Set-Off (Para. 1)	475
2. Different Amounts (Para. 2)	475
3. Prospective Effect (Para. 3)	476
4. Limits	477
B. Practical Consequences, Options	477
Chapter 9 Assignment of Rights, Transfer of Obligations, Assignment of Contracts	479
Introduction	479
Section 1 Assignment of Rights	481
Article 9.1.1 (Definitions)	481
A. Perspective and Scope	481
B. Beyond 'Definitions': Mere Agreement, No Consent for Assignments of Monetary Rights	482
C. Limits	484

Article 9.1.2 (Exclusions)	484
A. A Reminder of Priority of Certain Laws	484
B. Lit. a	485
C. Lit. b	485
Article 9.1.3 (Assignability of non-monetary rights)	485
A. Purpose	486
B. Requirements for an Effective Assignment of Non-Monetary Obligations	486
C. Effects	487
D. Options	488
Article 9.1.4 (Partial assignment)	488
A. Principle	488
B. Requirements	489
1. Rights to the Payment of a Monetary Sum (Para. 1)	489
2. Rights to Other Performance than the Payment of a Monetary Sum (Para. 2)	489
C. Options	490
Article 9.1.5 (Future rights)	490
A. Principle	490
B. Identification as Requirement	491
C. Effect	492
D. Options	492
Article 9.1.6 (Rights assigned without individual specification)	493
A. Assignment of a Bundle of Rights	493
B. Requirements	493
1. Identifiability at the Relevant Time	493
2. Partial Validity	494
Article 9.1.7 (Agreement between assignor and assignee sufficient)	494
A. Mere Agreement	494
1. Assignment of Rights to Receive Payment of a Sum of Money	494
2. Assignment of Rights to Non-Monetary Performance	495
B. Options	495
C. Limits	496
Article 9.1.8 (Obligor's additional costs)	496
A. An Innovative Concept	496
B. Requirements	497
C. Legal Consequence: Joint and Several Liability	497
D. Options	498

Article 9.1.9 (Non-assignment clauses)	498
A. A Balance Between Conflicting Interests	498
B. The System	499
C. Options	501
Article 9.1.10 (Notice to the obligor)	502
A. Function and Functioning	502
1. Until Receipt of Notice	503
2. After Receipt of Notice	503
B. Notice	504
1. Silent Assignments	504
2. Requirements If Notice is Given	504
3. Revocation of Notice	505
C. Limited Options	505
Article 9.1.11 (Successive assignments)	506
A. Rare Relevance	506
B. Purpose and Functioning of the Rule	507
C. Open Issues	507
D. Options	508
Article 9.1.12 (Adequate proof of assignment)	508
A. Protection of the Obligor	509
B. Inadequate Proof Sanctioned by Ineffectiveness of the Notice	509
1. Request for Proof	509
2. Risk Allocation	510
3. Consequences of Insufficient Proof and Withholding Right	511
C. Options	511
Article 9.1.13 (Defences and rights of set-off)	511
A. Scope of Application	512
B. 'In the Assignor's Shoes' (Para. 1)	512
1. Principle	512
2. Examples for Available Defences	513
3. Rights of the Assignee Confronted with such an Objection	514
C. Set-Off (Para. 2)	514
1. Principle (Until Receipt of a Notice of Assignment)	514
2. Restrictions	515
D. Options	516
Article 9.1.14 (Rights related to the right assigned)	516
A. Scope of Application	516
B. Another Useful Compromise Between Civil and Common Law	517
C. Limits	518
D. Options	518

Article 9.1.15 (Undertakings of the assignor)	519
A. Self-explanatory Undertakings	519
B. Effect	520
C. Limits and Options	520
Section 2 Transfer of Obligations	521
Article 9.2.1 (Modes of transfer)	521
A. One Option for Each Contract Partner	522
B. Agreement between the Original Obligor and the New Obligor (lit. a)	523
1. Agreement between the Original Obligor and the New Obligor	523
2. Legal Consequence	523
C. Agreement between the Obligee and the New Obligor (lit. b)	524
D. Limits	525
E. Options	525
Article 9.2.2 (Exclusion)	525
A. Principle	525
B. Exception	526
Article 9.2.3 (Requirement of obligee's consent to transfer)	526
A. A Supplement to Art. 9.2.1 (a)	526
B. Contents and Communication of the Consent of the Obligee	526
1. Contents	526
2. Communication	527
Article 9.2.4 (Advance consent of obligee)	527
A. A Useful Tool in Practice	527
B. Application of the Rule	528
C. Options	529
Article 9.2.5 (Discharge of original obligor)	529
A. Options for the Affected Third Party	529
B. Options for the Obligee under Para. 1 and 2	529
C. Default Rule in Para. 3	530
D. Additional Option by the Obligee	530
E. Option for the Original Obligor	530
Article 9.2.6 (Third party performance)	530
A. Freedom for the Obligor as a Rule	531
B. Extensive Interpretation	532
C. Limits	532
Article 9.2.7 (Defences and rights of set-off)	532
A. Scope of Application	533
B. No Cut Off of Obligor's Defences Through the Transfer (Para. 1)	533

C. Restriction Regarding Set-Off (Para. 2)	534
1. No Transfer of Set-Off Rights	534
2. Limits	535
Article 9.2.8 (Rights related to the obligation transferred)	535
A. Scope of Application	535
B. Rights to Performance	535
C. Security Rights	536
1. Securities given by the original obligor	536
2. Securities given by a third party	536
3. Securities given by the new obligor	537
D. Limits	537
Section 3 Assignment of Contracts	537
Article 9.3.1 (Definitions)	537
A. A Useful Tool	538
B. Definitions	539
C. Overview	539
D. Options	539
Article 9.3.2 (Exclusion)	540
Limitation of the Scope of Application	540
Article 9.3.3 (Requirement of consent of the other party)	540
A. Coping with a Need for Consent	540
B. Modalities of Consent	541
C. Options	542
Article 9.3.4 (Advance consent of the other party)	542
A. A Useful Tool in Practice	542
B. Advance Consent	543
C. Effect Upon the Transfer of Contract	543
D. Option	543
Article 9.3.5 (Discharge of the assignor)	544
A. Three Options for the Other Party	544
B. Modalities of Execution	544
C. Advance Discharge	545
Article 9.3.6 (Defences and rights of set-off)	545
A. Overview	545
B. Defences and Rights of Set-Off with Respect to Rights Assigned in the Context of Assignment of Contract	546
1. Defences	546
2. Set-Off	546

C. Defences and Rights of Set-Off with Respect to Obligations Transferred in the Context of Assignment of Contract	547
1. Defences	547
2. Set-Off	547
D. Referral	547
Article 9.3.7 (Rights transferred with the contract)	548
A. Overview and Distinction to Rights of Performance	548
B. Rights Related to the Rights Assigned in the Context of Assignment of Contract	548
C. Rights Related to the Obligations Transferred in the Context of Assignment of Contract	549
1. Security Rights Regarding a Transferred Obligation Given by the Original Obligor	549
2. Securities given by a Third Party	549
3. Securities Given by the New Obligor	550
D. Referral	550
Chapter 10 Limitation Periods	551
Introduction	551
A. A Balance Between Competing Interests of the Parties	551
B. Issues	551
Article 10.1 (Scope of the Chapter)	552
A. A Useful Compromise between Different Systems	552
B. Scope of Applicability (Based on the Scrutiny by Wintgen)	554
1. Examples of Applicability	554
2. Counter-Examples to Which Limitation Periods under Chapter 10 Do Not Apply	555
3. An Observation on the Application of Chapter 10 from a Private International Law Perspective	556
4. Options	557
Article 10.2 (Limitation periods)	558
A. General and Underlying Principles Regarding Limitation Periods	558
1. A Two-Tier System	558
2. Starting Point on 'The Day After'	559
3. Gregorian Calendar	559
4. Official holidays or non-business days	559
B. Beginning of the Limitation Period	560
1. General Limitation Period (3 years)	560
2. Maximum Limitation Period (10 Years)	562
C. Options	563
Article 10.3 (Modification of limitation periods by the parties)	563
A. Principle of Party Autonomy as a Starting Point	563
B. Modalities	564

C. Limits as Part of the Mandatory Core of UNIDROIT Principles	564
1. Limits for the General Limitation Period	564
2. Limits for the Maximum Limitation Period	564
3. Violations	565
D. Options	565
1. Principle: No Deviation	565
2. Exception by Dépeçage	566
3. Arbitration Clauses	567
 Article 10.4 (New limitation period by acknowledgement)	 567
A. Principle, Timing and Effect	568
B. Form of Acknowledgement	569
 Article 10.5 (Suspension by judicial proceedings)	 569
A. A Concept of Suspension	569
B. Details	571
1. Reference to the Law of the Court for the Beginning of Suspension	571
2. End of Suspension	571
C. Contractual Options: Suspension by Negotiation	572
D. Effect of the Judicial Proceedings on Joint and Several Obligors	573
 Article 10.6 (Suspension by arbitral proceedings)	 573
A. Adaptation of the Concept of Suspension to Arbitration	573
B. Details	574
1. Beginning of Suspension	574
2. End of Suspension	574
C. Effect of the Arbitral Proceedings on Joint and Several Obligors	575
 Article 10.7 (Alternative dispute resolution)	 575
A. Formal Mediation and Conciliation as Suspending Event	575
B. Legal Consequence: Application of Art. 10.5 and 10.6	576
1. Commencement of Suspension	576
2. End of Suspension	576
C. Effect of the Alternative Dispute Resolution on Joint and Several Obligors	577
D. Option: Third Party Involvement to Determine Contractual Terms	577
 Article 10.8 (Suspension in case of force majeure, death or incapacity)	 577
A. Force Majeure as an Excuse for the Obligee with Regard to the General Limitation Period	578
B. Details	578
1. Definition of Force Majeure	578
2. Effects of force majeure	579
3. Death and Incapacity	580

Article 10.9 (Effects of expiration of limitation period)	581
A. The First of Three Articles on the Effects of the Expiration of the Limitation Period	581
B. Rights for the Obligee and for the Obligor	581
1. Introduction	581
2. A Requirement to Actually Assert the Right	581
3. A Remaining Right to Defend	582
C. No Effect on Collaterals	582
D. Options	582
Article 10.10 (Right of set-off)	583
A. Supplement to Art. 10.9	583
B. Supplement to Art. 8.1 <i>et seq.</i>	584
C. Contractual Options	584
Article 10.11 (Restitution)	584
A. Time-Barred Claims as a Valid Basis for Performance	584
B. Restitution Based on Other Grounds	585
Chapter 11 Plurality of Obligors and of Obligees	587
Introduction	587
A. Overview	587
B. Language	588
C. Scope	588
Section 1 Plurality of Obligors	589
Article 11.1.1 (Definitions)	589
A. Two Kinds of Obligations	590
B. Joint and Several Obligations (lit. a)	590
C. Separate Obligations (lit. b)	591
D. Options	592
Article 11.1.2 (Presumption of joint and several obligations)	593
A. A Default Rule	593
B. Contractual Interpretation	594
C. Options	595
Article 11.1.3 (Obligee's rights against joint and several obligors)	595
A. A Choice of the Obligee	595
B. Non-Performance	595
C. Contractual Option	596

Article 11.1.4 (Availability of defences and rights of set-off)	596
A. A Clear Distinction Between Common and Personal Defences	597
B. Common Defences	597
1. The Principle and Examples	597
2. Assertion	598
C. Personal Defences	598
1. The Principle	598
2. Legal Impact on Contributory Action	599
D. Set-Off	600
E. Communication	600
F. Contractual Options	601
Article 11.1.5 (Effect of performance or set-off)	601
A. A Generally Accepted Rule on Discharge by Performance or Performance Substitute	601
B. Merger	602
C. Contractual Option	602
Article 11.1.6 (Effect of release or settlement)	603
A. Principle of Partial Discharge of Remaining Obligors	603
B. Impact on Contributory Claim	604
1. General Impact	604
2. Increase of Contributory Shares Subsequent to the Release	604
C. Contractual Options	605
Article 11.1.7 (Effect of expiration or suspension of limitation period)	606
A. Individual Effect of an Expiration of a Limitation Period	606
B. Effect of Proceedings against One Obligor	607
1. The Effect of Para. 2	607
2. Limits	608
C. Contractual Options	608
1. Regarding the Contract between Obligee and Obligors	608
2. Regarding the Relationship between Co-Obligors	609
Article 11.1.8 (Effect of judgment)	609
A. Principle	609
1. No Binding Effect on Co-Obligors	609
2. Freedom of the Obligee	610
B. Exception in case of Personal Defences	610
Article 11.1.9 (Apportionment among joint and several obligors)	612
A. The Foundation for Contributory Claims and Subrogation	612
B. A Default Rule	612
Article 11.1.10 (Extent of contributory claim)	613
A. Contributory Claim of an Obligor	613
B. Details	614
1. Qualification of Contributory Claims as Separate	614

2. Extent of the Contributory Claim – Calculation Example	614
3. Cost and Interest	615
4. Contribution in Money	615
5. Prescription	615
C. Contractual Options	615
 Article 11.1.11 (Rights of the obligee)	616
A. An Additional Tool for the Obligor	616
1. Conditions	617
2. Legal Consequences	617
B. Priority for the Obligee	618
 Article 11.1.12 (Defences in contributory claims)	619
A. A Straightforward Rule	619
B. A Clear Distinction between Common and Personal Defences	620
1. Common Defences	620
2. Personal Defences in General	621
3. Special Personal Defences	622
4. Set-Off	622
C. Options	623
 Article 11.1.13 (Inability to recover)	624
A. A Possible Change of the Apportionment	624
B. Conditions	624
C. Calculation	625
 Section 2 Plurality of Obligees	625
 Article 11.2.1 (Definitions)	625
A. Three Kinds of Obligations Offered by the Unidroit Principles, No Presumption	626
B. Separate Claims (lit. a)	627
1. Principle	627
2. Selected Advantages or Disadvantages	628
3. Contractual Options Within This Kind of Obligation	628
C. Joint and Several Claims (lit. b)	628
1. Principle	628
2. Selected Advantages or Disadvantages	629
3. Contractual Options Within This Kind of Obligation	630
D. Joint Claims (lit. c)	630
1. Principle	630
2. Selected Advantages or Disadvantages	631
3. Contractual Options within this Kind of Obligation	631
E. Absence of an Explicit Choice	632
F. Options to Agree on Other Concepts	633

Article 11.2.2 (Effects of joint and several claims)	634
A. A Supplement to Art. 11.2.1 lit. b	634
B. Details	634
1. Formal Procedures with One Obligee	634
2. Performance in Circumstances Governed by Chapter 7	635
3. Merger	635
C. Contractual Options	636
Article 11.2.3 (Availability of defences against joint and several obligees)	636
A. Function and Principle	636
B. Defences and Set-Off under Para. 1	637
1. Defences which are Common to the Obligor's Relationship with All Obligees	637
2. Defences Which are Personal to the Obligor's Relationship with One Obligee	637
3. Contractual Options	638
4. Set-Off	638
C. Defences and Set-Off under Para. 2	639
1. Performance and Rights of Set-Off	639
2. Effect of Release and Settlement	639
3. Effect of Expiration and Suspension of Limitation Period	640
4. Special Rules on Effect of Judgement	641
Article 11.2.4 (Allocation between joint and several obligees)	642
A. Purpose	642
B. Apportionment	643
C. Transfer of Excess Received from the Obligor	643
1. Obligation to Transfer the Excess	643
2. Set-Off with Expenses	644
3. Contractual Options	644
D. Merger of the Obligor with One Obligee	644
INDEX	647