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**CONTRACT LAW**

**DIFC LAW NO.6 of 2004**

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## **PART 1: GENERAL**

### **1. Title**

This Law may be cited as the “Contract Law 2004”.

### **2. Legislative Authority**

This Law is made by the Ruler of Dubai.

### **3. Application of the Law**

This Law applies in the jurisdiction of the Dubai International Financial Centre.

### **4. Date of enactment**

This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

### **5. Commencement**

This Law comes into force on the date specified in the Enactment Notice in respect of this Law.

### **6. Interpretation**

Schedule 1 contains:

- (a) interpretative provisions which apply to this Law; and
- (b) a list of defined terms used in this Law.

## **PART 2: CONTRACTS GENERALLY**

### **7. Choice of governing law and jurisdictions**

The Law relating to Application of DIFC Laws makes provision with respect to the choice by parties of governing law and jurisdictions in a contract.

### **8. Freedom of and capacity to contract**

- (1) Any person of competent legal capacity is free to enter into a contract and determine its content.
- (2) A natural person does not have competent legal capacity if the person:
  - (a) has not attained the age of 18 years; or
  - (b) is mentally ill or defective.
- (3) Where a person not of competent legal capacity enters into a contract, the contract is voidable:
  - (a) at the election of that person or his representative; or
  - (b) by order of the Court.

### **9. No form required**

Nothing in this Law requires a contract to be concluded in or evidenced by writing. It may be proved by any means, including witnesses.

### **10. Binding character of contract**

A contract validly entered into is binding upon the parties. It can only be modified or terminated in accordance with its terms or by agreement or as otherwise provided in this Law.

### **11. Exclusion or modification by the parties**

The parties to a contract may exclude the application of this Law or derogate from or vary the effect of any of their provisions, except as otherwise provided in this Law.

### **12. Usages and practices**

- (1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.
- (2) The parties are bound by a usage that is widely known to and regularly observed in international trade by parties in the particular trade concerned except where the application of such usage would be unreasonable.



13. **Notice**

- (1) Where notice is required it may be given by any means appropriate to the circumstances.
- (2) A notice is effective when it reaches the person to whom it is given.
- (3) For the purpose of Article 13(2) a notice “reaches” a person when given to that person orally or delivered at that person’s place of business or mailing address and in the case of electronic mail, when so delivered.
- (4) For the purpose of this Article “notice” includes a declaration, demand, request or any other communication of intention.

## **PART 3: FORMATION**

### **14. Manner of formation**

A contract is concluded by the acceptance of an offer.

### **15. Definition of offer**

A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance.

### **16. Withdrawal of offer**

- (1) An offer becomes effective when it reaches the offeree.
- (2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

### **17. Revocation of offer**

- (1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before it has dispatched an acceptance.
- (2) An offer cannot be revoked:
  - (a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or
  - (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

### **18. Rejection of offer**

An offer is terminated when a rejection reaches the offeror.

### **19. Mode of acceptance**

- (1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.
- (2) An acceptance of an offer becomes effective when the indication of assent reaches the offeror.
- (3) If, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act without notice to the offeror, the acceptance is effective when the act is performed.

20. **Time of acceptance**

Acceptance of an offer is effective if the offer is accepted within the time the offeror has fixed or, if no time is fixed, within a reasonable time having regard to the circumstances, including the speed of the means of communication employed by the offeror. Acceptance of an oral offer is effective if the offer is accepted immediately unless the circumstances indicate otherwise.

21. **Acceptance within a fixed period of time**

- (1) A period of time for acceptance fixed by the offeror in a written instrument begins to run from the date shown on the written instrument. A period of time for acceptance fixed by the offeror by means of instantaneous communication begins to run from the moment that offer reaches the offeree.
- (2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

22. **Late acceptance; delay in transmission**

- (1) A late acceptance is nevertheless effective as an acceptance if without undue delay the offeror so informs the offeree or gives notice to that effect.
- (2) If a written instrument containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance, unless without undue delay, the offeror informs the offeree that it considers the offer as having lapsed.

23. **Withdrawal of acceptance**

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

24. **Modified acceptance**

- (1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.
- (2) A reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror without undue delay, objects to the discrepancy. If the offeror does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

25. **Writings in confirmation**

If a writing which is sent within a reasonable time after the conclusion of the contract and which purports to be a confirmation of the contract contains additional or different terms, such terms become part of the contract, unless they materially alter the contract or the recipient, without undue delay, objects to the discrepancy in which case the confirmation shall have no effect.

26. **Conclusion of contract dependent on agreement on specific matters or in a specific form**

Where in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a specific form, no contract is concluded before agreement is reached on those matters or in that form.

27. **Contract with terms deliberately left open**

- (1) If the parties intend to conclude a contract, the fact that they intentionally leave a term to be agreed upon in further negotiations or to be determined by a third person does not prevent a contract from coming into existence.
- (2) The existence of the contract is not affected by the fact that subsequently:
  - (a) the parties reach no agreement on the terms; or
  - (b) the third person does not determine the term, provided that there is an alternative means of rendering the term definite that is reasonable in the circumstances, having regard to the intention of the parties.

28. **Freedom to negotiate**

A party is free to negotiate and is not liable for failure to reach an agreement.

29. **Duty of confidentiality**

Where information is expressly given as confidential by one party in the course of negotiations, the other party is under a duty not to disclose that information or to use it improperly for its own purposes, whether or not a contract is subsequently concluded. Where appropriate, the remedy for breach of that duty may include compensation based on the benefit received by the other party.

30. **Merger clause**

A contract in writing which contains a clause indicating that the writing completely embodies the terms on which the parties have agreed cannot be contradicted or supplemented by evidence of prior statements or agreements. However, such statements or agreements may be used to interpret the writing.

31. **Written modification clauses**

A contract in writing which contains a clause requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated. However, a party may be precluded by its conduct from asserting such a clause to the extent that the other party has acted in reliance on that conduct.

32. **Contracting under standard terms**

- (1) Where one party or both parties use standard terms in concluding a contract, the general rules of formation apply, subject to Articles 33 and 34.
- (2) Standard terms are provisions which are prepared in advance for general and repeated use by one party and which are actually used without negotiation with the other party.

33. **Conflict between standard terms and non-standard terms**

In case of conflict between a standard term and a term which is not a standard term the latter prevails.

34. **Battle of forms**

Where both parties use standard terms and reach agreement except on those terms, a contract is concluded on the basis of the agreed terms and of any standard terms which are common in substance unless one party clearly indicates in advance, or later and without undue delay informs the other party, that it does not intend to be bound by such a contract.

## **PART 4: VALIDITY**

### **35. Validity of mere agreement**

A contract is concluded, modified or terminated by the mere agreement of the parties, without any further requirements.

### **36. Initial impossibility**

- (1) The mere fact that at the time of the conclusion of the contract the performance of the obligation assumed was impossible does not affect the validity of the contract.
- (2) The mere fact that at the time of the conclusion of the contract a party was not entitled to dispose of the assets to which the contract relates does not affect the validity of the contract.

### **37. Relevant mistake**

- (1) A party may only avoid a contract for mistake if, when the contract was concluded, the mistake was of such importance that a reasonable person in the same situation as the party would not have concluded it at all if the true state of affairs had been known, and
  - (a) the other party made the same mistake, or was also mistaken, or caused the mistake, or knew or ought to have known of the mistake and it was contrary to reasonable commercial standards of fair dealing to leave the mistaken party in error; or
  - (b) the other party had not at the time of avoidance acted in reliance on the contract.
- (2) However, a party may not avoid the contract if:
  - (a) it was grossly negligent in committing the mistake; or
  - (b) the mistake relates to a matter in regard to which the risk of mistake was assumed or, having regard to the circumstances, should be borne by the mistaken party.

### **38. Error in expression or transmission**

An error occurring in the expression or transmission of a declaration is considered to be a mistake of the person from whom the declaration emanated.

### **39. Remedies for non-performance**

A party is not entitled to avoid the contract on the ground of mistake if the circumstances on which that party relies afford, or could have afforded, a remedy for non-performance.

### **40. Fraud**

A party may avoid the contract when it has been led to conclude the contract by the other party's fraudulent representation, including language or practices, or fraudulent non-disclosure of circumstances which the latter party ought reasonably to have disclosed.

41. **Threat**

A party may avoid the contract when it has been led to conclude the contract by the other party's unjustified threat which, having regard to the circumstances, is so imminent and serious as to leave the first party no reasonable alternative. In particular, a threat is unjustified if the act or omission with which a party has been threatened is wrongful in itself, or is wrong to use it as a means to obtain the conclusion of the contract.

42. **Confirmation**

If the party entitled to avoid the contract expressly or impliedly confirms the contract after the period of time for giving notice of avoidance has begun to run, avoidance of contract is excluded.

43. **Loss of right to avoid**

(1) If a party is entitled to avoid the contract for mistake but the other party declares itself willing to perform or performs the contract as it was understood by the party entitled to avoidance, the contract is considered to have been concluded as the latter party understood it. The other party must make such a declaration or render such performance promptly after having been informed of the manner in which the party entitled to avoidance had understood the contract and before that party has acted in reliance on a notice of avoidance.

(2) After such a declaration or performance the right to avoidance is lost and any earlier notice of avoidance is ineffective.

44. **Notice of avoidance**

The right of a party to avoid the contract is exercised by notice to the other party.

45. **Time limits**

Notice of avoidance shall be given within a reasonable time, having regard to the circumstances, after the avoiding party knew or could not have been unaware of the relevant facts or became capable of acting freely.

46. **Partial avoidance**

Where a ground of avoidance affects only individual terms of the contract, the effect of avoidance is limited to those terms unless, having regard to the circumstances, it is unreasonable to uphold the remaining contract.

47. **Retroactive effect of avoidance**

(1) Avoidance takes effect retroactively.

(2) On avoidance either party may claim restitution of whatever is supplied under the contract or the part of it avoided, provided that it concurrently makes restitution of whatever it has received under the contract or the part of it avoided or, if it cannot make restitution in kind, it makes an allowance for what it has received.

48. **Mandatory character of the provisions**

The provisions of this Part 4 are mandatory, except insofar as they relate to Articles 35, 36 and 37.

## **PART 5: INTERPRETATION**

### **49. Intention of the parties**

- (1) A contract shall be interpreted according to the common intention of the parties.
- (2) If such an intention cannot be established, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.

### **50. Interpretation of statements and other conduct**

- (1) The statements and other conduct of a party shall be interpreted according to that party's intention if the other party knew or could not have been unaware of that intention.
- (2) If Article 50(1) is not applicable, such statements and other conduct shall be interpreted according to the meaning that a reasonable person of the same kind as the other party would give to it in the same circumstances.

### **51. Relevant circumstances**

In applying Articles 49 and 50, regard shall be had to all the circumstances, including

- (a) preliminary negotiations between the parties;
- (b) practices which the parties have established between themselves;
- (c) the conduct of the parties subsequent to the conclusion of the contract;
- (d) the nature and purpose of the contract;
- (e) the meaning commonly given to terms and expressions in the trade concerned; and
- (f) usages.

### **52. Reference to contract or statement as a whole**

Terms and expressions shall be interpreted in the light of the whole contract or statement in which they appear.

### **53. All terms to be given effect**

Contract terms shall be interpreted so as to give effect to all the terms rather than to deprive some of them of effect.

### **54. Interpretation against party responsible**

If contract terms supplied by one party are unclear, an interpretation against that party is preferred.



55. **Linguistic discrepancies**

Where a contract is drawn up in two or more language versions which are equally authoritative there is, in case of discrepancy between the versions, a preference for the interpretation according to a version in which the contract was originally drawn up.

## **PART 6: CONTENT**

### **56. Express and implied obligations**

The contractual obligations of the parties may be express or implied.

### **57. Implied obligations**

Implied obligations arise from:

- (a) the nature and purpose of the contract;
- (b) practices established between the parties and usages;
- (c) good faith and fair dealing; and
- (d) reasonableness.

### **58. Co-operation between the parties**

Each party is bound to co-operate with the other party when such co-operation may reasonably be expected for the performance of that party's obligations.

### **59. Duty to achieve a specific result; duty of best efforts**

- (1) To the extent that an obligation of a party involves a duty to achieve a specific result, that party is bound to achieve that result.
- (2) To the extent that an obligation of a party involves a duty of best efforts in the performance of an activity, that party is bound to make such efforts as would be made by a reasonable person of the same kind in the same circumstances.

### **60. Determination of kind of duty involved**

In determining the extent to which an obligation of a party involves a duty of best efforts in the performance of an activity or duty to achieve a specific result, regard shall be had, among other factors, to

- (a) the way in which the obligation is expressed in the contract;
- (b) the contractual price and other terms of the contract;
- (c) the degree of risk normally involved in achieving the expected result; and
- (d) the ability of the other party to influence the performance of the obligation.

### **61. Determination of quality of performance**

Where the quality of performance is neither fixed by, nor determinable from, the contract a party is bound to render a performance of a quality that is reasonable in the circumstances.

62. **Price determination**

- (1) Where a contract does not fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have made reference to the price generally charged at the time of the conclusion of the contract for such performance in comparable circumstances in the trade concerned or, if no such price is available, to a reasonable price.
- (2) Where the price is to be fixed by a third person, and that person cannot or will not or does not do so, the price shall be a reasonable price.
- (3) Where the price is to be fixed by reference to factors which do not exist or have ceased to exist or to be accessible, the nearest equivalent factor shall be treated as a substitute.

63. **Contract for an indefinite period**

A contract for an indefinite period may be ended by either party by giving notice a reasonable time in advance.

## **PART 7: PERFORMANCE**

### **64. Time of performance**

A party must perform its obligations:

- (a) if a time is fixed by or determinable from the contract, at that time;
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the other party is to choose a time;
- (c) in any other case, within a reasonable time after the conclusion of the contract.

### **65. Performance at one time or in instalments**

In cases under Article 64(b) or (c), a party must perform its obligations at one time if that performance can be rendered at one time and the circumstances do not indicate otherwise.

### **66. Partial performance**

- (1) The obligee may reject an offer to perform in part at the time performance is due, whether or not such offer is coupled with an assurance as to the balance of the performance.
- (2) Additional expenses caused to the obligee by partial performance are to be borne by the obligor without prejudice to any other remedy.

### **67. Order of performance**

- (1) To the extent that the performances of the parties can be rendered simultaneously, the parties are bound to render them simultaneously unless the circumstances indicate otherwise.
- (2) To the extent that the performance of only one party requires a period of time, that party is bound to render its performance first, unless the circumstances indicate otherwise.

### **68. Earlier performance**

- (1) The obligee may reject an earlier performance unless it has no legitimate interest in so doing.
- (2) Acceptance by a party of an earlier performance does not affect the time for the performance of its own obligations if that time has been fixed irrespective of the performance of the other party's obligations.
- (3) Additional expenses caused to the obligee by earlier performance are to be borne by the obligor, without prejudice to any other remedy.

**69. Place of performance**

- (1) If the place of performance is neither fixed by, nor determinable from the contract, a party is to perform:
  - (a) a monetary obligation, at the obligee's place of business; and
  - (b) any other obligation, at its own place of business

provided that where the a provision of any Dubai Law applies a location to a particular obligation the place of performance will be the law of that location.

- (2) A party must bear any increase in the expenses incidental to performance which is caused by a change in its place of business subsequent to the conclusion of the contract.

**70. Payment by cheque or other instrument**

- (1) Payment may be made in any form used in the ordinary course of business at the place for payment.
- (2) However, an obligee who accepts, either by virtue of Article 70(1) or voluntarily, a cheque or any other order to pay is presumed to do so only on condition that it will be honoured.
- (3) If a cheque or other order to pay is dishonoured the obligee's right to sue on the debt revives and his original rights under the contract are restored to him.
- (4) The rights of an obligee under Article 70(3) shall not affect any rights he may have with respect to the cheque or other order to pay.

**71. Payment by funds transfer**

In case of payment by a transfer the obligation of the obligor is discharged when the transfer to the obligee's financial institution becomes effective.

**72. Currency of payment**

- (1) If a monetary obligation is expressed in a currency other than that of the place of payment, it may be paid by the obligor in the currency of the place for payment unless:
  - (a) the currency is freely convertible; or
  - (b) the parties have agreed that payment should be made only in the currency in which the monetary obligation is expressed.
- (2) If it is impossible for the obligor to make payment in the currency in which the monetary obligation is expressed, the obligee may require payment in the currency of the place for payment, even in the case referred to in Article 72(1)(b).
- (3) Payment in the currency of the place for payment is to be made according to the applicable rate of exchange prevailing there when payment is due.

- (4) If the obligor has not paid at the time when payment is due, the obligee may require payment according to the applicable rate of exchange prevailing either when payment is due or at the time of actual payment.

73. **Currency not expressed**

Where a monetary obligation is not expressed in a particular currency, payment must be made in the currency of the place where payment is to be made.

74. **Costs of performance**

Each party shall bear the costs of performance of its obligations.

75. **Imputation of payments**

- (1) An obligor owing several monetary obligations to the same obligee may specify at the time of payment the debt to which it intends the payment to be applied. The payment discharges first any expenses incurred in connection with the debt, then interest due and finally the principal.
- (2) If the obligor makes no such specification, the obligee may, within a reasonable time after payment, declare to the obligor the obligation to which it imputes the payment, provided that the obligation is due and undisputed.
- (3) In the absence of imputation under Article 75(1) or (2), payment is imputed to that obligation which satisfies one of the following criteria and in the order indicated:
  - (a) an obligation which is due or which is the first to fall due;
  - (b) the obligation for which the obligee has least security;
  - (c) the obligation which is the most burdensome for the obligor; and
  - (d) the obligation which has arisen first.

76. **Imputation of non-monetary obligations**

Article 75 applies with appropriate adaptations to the imputation of performance of non-monetary obligations.

## **PART 8: NON-PERFORMANCE**

### **77. Non-performance defined**

Non-performance is failure by a party to perform any one or more of its obligations under the contract, including defective performance or late performance.

### **78. Interference by the other party**

A party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's act or omission or by another event as to which the first party bears the risk.

### **79. Withholding performance**

- (1) Where the parties are to perform simultaneously, either party may withhold performance until the other party tenders performance.
- (2) Where the parties are to perform consecutively, the party that is to perform later may withhold its performance until the first party has performed.

### **80. Cure by non-performing party**

- (1) The non-performing party may, at its own expense, cure any non-performance, provided that:
  - (a) without undue delay, it gives notice indicating the proposed manner and timing of the cure;
  - (b) cure is appropriate in the circumstances;
  - (c) the aggrieved party has no legitimate interest in refusing cure; and
  - (d) cure is effected promptly.
- (2) The right to cure is not precluded by notice of termination.
- (3) Upon effective notice of cure, rights of the aggrieved party that are inconsistent with the non-performing party's performance are suspended until the time for cure has expired.
- (4) The aggrieved party may withhold performance pending cure.
- (5) Notwithstanding cure, the aggrieved party retains the right to claim damages for delay as well as for any harm caused or not prevented by the cure.

### **81. Additional period for performance**

- (1) In a case of non-performance the aggrieved party may by notice to the other party allow an additional period of time for performance.

- (2) During the additional period the aggrieved party may withhold performance of its own reciprocal obligations and may claim damages but may not resort to any other remedy. If it receives notice from the other party that the latter will not perform within that period, or if upon expiry of that period due performance has not been made, the aggrieved party may resort to any of the remedies that may be available under this Part 8 of this Law.
- (3) Where in a case of delay in performance which is not fundamental the aggrieved party has given notice allowing an additional period of time of reasonable length, it may terminate the contract at the end of that period. If the additional period allowed is not of reasonable length it shall be extended to a reasonable length. The aggrieved party may in its notice provide that if the other party fails to perform within the period allowed by the notice the contract shall automatically terminate.
- (4) Article 81(3) does not apply where the obligation which has not been performed is only a minor part of the contractual obligation of the non-performing party.

## 82. **Force majeure**

- (1) Except with respect to a mere obligation to pay, non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.
- (2) When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on performance of the contract.
- (3) The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.
- (4) Nothing in this Article prevents a party from exercising a right to terminate the contract or to withhold performance or request interest on money due.

## 83. **Performance of monetary obligation**

Where a party who is obliged to pay money does not do so, the other party may require payment notwithstanding Article 82.

## 84. **Performance of non-monetary obligation**

Where a party who owes an obligation other than one to pay money does not perform, the other party may require performance, unless

- (a) performance is impossible in law or fact;
- (b) performance or, where relevant, enforcement is unreasonably burdensome or expensive;
- (c) performance is of an exclusively personal character; or
- (d) the party entitled to performance does not require performance within a reasonable time after it has, or ought to have, become aware of the non-performance.



**85. Repair and replacement of defective performance**

The right to performance includes in appropriate cases the right to require repair, replacement, or other cure of defective performance. The provisions of Articles 83 and 84 apply accordingly.

**86. Right to terminate the contract**

- (1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.
- (2) In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether:
  - (a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract;
  - (b) strict compliance with the obligation which has not been performed is of essence under the contract;
  - (c) the non-performance is intentional or reckless;
  - (d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance.
- (3) In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed under Article 81 has expired.

**87. Notice of termination**

- (1) The right of a party to terminate the contract is exercised by notice to the other party.
- (2) If performance has been offered late or otherwise does not conform to the contract the aggrieved party will lose its right to terminate the contract unless it gives notice to the other party within a reasonable time after it has or ought to have become aware of the non-conforming performance.

**88. Anticipatory non-performance**

Where prior to the date for performance by one of the parties it is clear that there will be a fundamental non-performance by that party, the other party may terminate the contract.

**89. Effects of termination in general**

- (1) Termination of the contract releases both parties from their obligation to effect and to receive future performance.
- (2) Termination does not preclude a claim for damages for non-performance.
- (3) Termination does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination.

90. **Restitution**

- (1) On termination of contract pursuant to Articles 86 or 88 either party may claim restitution of whatever it has supplied, provided that such party concurrently makes restitution of whatever it has received. If restitution in kind is not possible or appropriate allowance should be made in money whenever reasonable.
- (2) However, if performance of the contract has extended over a period of time and the contract is divisible, such restitution can only be claimed for the period after termination has taken effect.

91. **Set-off**

- (1) Set-off is the discharge of reciprocal obligations to the extent of the smaller obligation.
- (2) Contractual set-off is a duty or option granted by contract whereby a debtor must or may set off his cross-claim in discharge of the creditor's primary claim, being a set-off created by contract in circumstances where in the absence of the contract there would be no right of set-off.
- (3) Transaction set off is available where both the claimants are solvent. A debtor may set off his cross-claim against the creditor's primary claim if:
  - (a) both claims arise out of the same transaction or closely connected transactions; and
  - (b) the creditor has defaulted in performance of the very obligation for which he is seeking payment by his primary claim.
- (4) Transaction set-off is available even if the creditor's primary claim or the debtor's cross-claim is unliquidated.
- (5) Where liquidated claims arise on two current financing accounts payable on each side on demand, a bank may set off against a credit balance, a cross claim owing to it on an overdrawn account provided there is no express or implied agreement to keep the accounts separate.

## **PART 9: ASSIGNMENT**

### **92. Assignment of rights and obligations**

- (1) An assignment of a contractual right is a transfer by virtue of which the assignor's right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance.
- (2) An assignment of a contractual obligation is delegation of the obligation to the assignee.
- (3) An assignment of a contract by a party is an assignment of the contractual rights and delegation of the contractual obligations of the party.

### **93. Assignment of future rights**

- (1) An assignment of a right to payment expected to arise out of an existing business relationship is effective in the same way as an assignment of an existing right.
- (2) A purported assignment of a right expected to arise under a contract not in existence operates only as a promise to assign the right when it arises and not as a power to enforce it.

### **94. Limits on assignments and delegations**

- (1) A contractual right can be assigned unless:
  - (a) the substitution of a right of the assignee for the right of the assignor would materially change the duty of the obligor, or materially increase the burden or risk imposed on him by his contract, or materially impair his chance of obtaining return performance, or materially reduce its value to him; or
  - (b) assignment is precluded by contract.
- (2) A contractual obligation can be delegated unless:
  - (a) the obligee has a substantial interest in having the obligor perform or control the acts promised; or
  - (b) the delegation is precluded by contract.
- (3) Neither delegation of performance nor a contract to assume the duty made with the obligor by the person delegated discharges any obligation or liability of the delegating obligor.

### **95. Contractual prohibition of assignment**

- (1) Unless the circumstances indicate the contrary, a contract term prohibiting assignment of the contract bars only the delegation to an assignee of the performance by the assignor of a duty or condition.

- (2) A contract term prohibiting assignment of rights under the contract, unless a different intention is manifested:
- (a) is for the benefit of the obligor, and does not prevent:
    - (i) the assignee from acquiring rights against the assignor; or
    - (ii) the obligor from discharging his duty as if there were no such application;
  - (b) gives the obligor a right to damages for breach of the terms forbidding assignment but does not render the assignment ineffective;
  - (c) does not prevent assignment of a right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation.

96. **Interpretation of words of assignment; effect of acceptance of assignment**

- (1) Unless the language or the circumstances indicate the contrary, as in an assignment for security, an assignment of a contract or of all rights under a contract or an assignment in similar general terms includes a delegation of the unperformed duties of the assignor under the contract.
- (2) Unless the language or the circumstances indicate the contrary, the acceptance by an assignee of such an assignment operates as a promise to the assignor to perform the assignor's unperformed obligations, and the obligor of the assigned rights is an intended beneficiary of the promise.

97. **Contracts to assign in the future, or to transfer proceeds to be received**

A contract to make a future assignment of a right, or to transfer proceeds to be received in the future by the obligor, is not an assignment.

98. **Defences against an assignee**

- (1) By an assignment the assignee acquires a right against the obligor only to the extent that the obligor is under a duty to the assignor; and if the right of the assignor would be voidable by the obligor or unenforceable against him if no assignment had been made, the right of the assignee is subject to the infirmity.
- (2) The right of an assignee is subject to any defence or claim of the obligor which accrues before the obligor receives notification of the assignment, but not to defences or claims which accrue thereafter except as stated in this Article.
- (3) Where the right of an assignor is subject to discharge or modification in whole or in part by impracticability, public policy, non-occurrence of a condition, or present or prospective failure of performance by an obligee, the right of the assignee is to that extent subject to discharge or modification even after the obligor receives notification of the assignment.
- (4) An assignee's right against the obligor is subject to any defence or claim arising from his conduct or to which he was subject as a party or a prior assignee because he had notice.

99. **Discharge of an obligor on assignment**

- (1) Except as stated in Article 99(2) or as otherwise agreed between the assignor and assignee, on an assignment, any right of the assignor to discharge or modify the duty of the obligor to the assignee is transferred to the assignee.
- (2) An agreement between an assignor and an obligor to discharge or modify the duties of the obligor made after assignment of the rights of the assignor and prior to the notification to the obligor of the assignment of such rights is effective as against the assignee.
- (3) If notwithstanding the assignment of his rights to an assignee, an assignor receives payment or other performance of the duties of an obligor who has no notice of the assignment of the rights of the assignor, the assignor shall be liable to account to the assignee for the benefit of such payment or other performance.
- (4) Notwithstanding a defect in the right of an assignee, he has the same power his assignor had to discharge or modify the duty of the obligor to the extent that the obligor gives value or otherwise changes his position in good faith and without knowledge or reason to know of the defect.

100. **Substituted performance**

- (1) If an obligee accepts in satisfaction of the obligor's obligation a performance offered by the obligor that differs from what is due, the obligation is discharged.
- (2) If an obligee accepts in satisfaction of the obligor's obligation a performance offered by a third person, the obligation is discharged, but an obligor who has not previously assented to the performance of his benefit may in a reasonable time after learning of it render the discharge inoperative from the beginning by disclaimer.

101. **Substituted contract**

- (1) A substituted contract is a contract that is itself accepted by the obligee in satisfaction of the obligor's existing obligation.
- (2) The substituted contract discharges the original obligation and breach of the substituted contract by the obligor does not give the obligee a right to enforce the original obligation.

102. **Novation**

A novation is a substituted contract that includes as a party one who was neither the obligor nor the obligee of the original obligation.

103. **Accord and satisfaction**

- (1) An accord is a contract under which an obligee promises to accept a stated performance in satisfaction of the obligor's existing obligation. Performance of the accord discharges the original obligation.
- (2) Until performance of the accord, the original obligation is suspended unless there is such a breach of the accord by the obligor as discharges the new obligation of the obligee to accept the performance in satisfaction. If there is such a breach, the obligee may enforce either the original obligation or any obligation under the accord.

- (3) Breach of the accord by the obligee does not discharge the original obligation, but the obligor may require specific performance of the accord, in addition to any claim for damages in respect of the breach arising under this Law.

## **PART 10: RIGHTS OF THIRD PARTIES**

### **104. Right of third party to enforce contractual term**

- (1) Subject to the provisions of this Law, a person who is not a party to a contract (a "third party") may in his own right enforce a term of the contract if:
  - (a) the contract expressly provides that he may; or
  - (b) subject to Article 104(2), the term purports to confer a benefit on him.
- (2) Article 104(1)(b) does not apply if on a proper construction of the contract it appears that the parties did not intend the term to be enforceable by the third party.
- (3) The third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description but need not be in existence when the contract is entered into.
- (4) This Article does not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.
- (5) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract (and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly).
- (6) Where a term of a contract excludes or limits liability in relation to any matter references in this Law to the third party enforcing the term shall be construed as including references to his availing himself of the exclusion or limitation.
- (7) In this Law, in relation to a term of a contract which is enforceable by a third party:
  - (a) "the promisor" means the party to the contract against whom the term is enforceable by the third party; and
  - (b) "the promisee" means the party to the contract by whom the term is enforceable against the promisor.

### **105. Variation and rescission of contract**

- (1) Subject to the provisions of this Article, where a third party has a right under Article 104 to enforce a term of the contract, the parties to the contract may not, by agreement, rescind the contract, or vary it in such a way as to extinguish or alter his entitlement under that right, without his consent if:
  - (a) the third party has communicated his assent to the term to the promisor;
  - (b) the promisor is aware that the third party has relied on the term; or
  - (c) the promisor can reasonably be expected to have foreseen that the third party would rely on the term and the third party has in fact relied on it.

- (2) The assent referred to in Article 105(1)(a):
  - (a) may be by words or conduct; and
  - (b) if sent to the promisor by post or other means, shall not be regarded as communicated to the promisor until received by him.
- (3) Article 105(1) is subject to any express term of the contract under which:
  - (a) the parties to the contract may by agreement rescind or vary the contract without the consent of the third party; or
  - (b) the consent of the third party is required in circumstances specified in the contract instead of those set out in Article 105(1)(a) to (c).
- (4) Where the consent of a third party is required under Article 105(1) or (3), the Court may, on the application of the parties to the contract, dispense with his consent if satisfied:
  - (a) that this consent cannot be obtained because his whereabouts cannot reasonably be ascertained, or
  - (b) that he is mentally incapable of giving his consent.
- (5) The Court may, on the application of the parties to a contract, dispense with any consent that may be required under Article 105(1)(c) if satisfied that it cannot reasonably be ascertained whether or not the third party has in fact relied on the term.
- (6) If the Court dispenses with a third party's consent, it may impose such conditions as it thinks fit, including a condition requiring the payment of compensation to the third party.

**106. Defences available to promisor**

- (1) Articles 106(2) to (5) apply where, in reliance on Article 106(1), proceedings for the enforcement of a term of a contract are brought by a third party.
- (2) The promisor shall have available to him by way of defence or set-off any matter that:
  - (a) arises from or in connection with the contract and is relevant to the term; and
  - (b) would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.
- (3) The promisor shall also have available to him by way of defence or set-off any matter if:
  - (a) an express term of the contract provides for it to be available to him in proceedings brought by the third party; and
  - (b) it would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.



(4) The promisor shall also have available to him:

(a) by way of defence or set-off any matter; and

(b) by way of counterclaim any matter not arising from the contract,

that would have been available to him by way of defence or set-off or, as the case may be, by way of counterclaim against the third party if the third party had been a party to the contract.

(5) Articles 106(2) and (4) are subject to any express term of the contract as to the matters that are not to be available to the promisor by way of defence, set-off or counterclaim.

**107. Enforcement of contract by promisee**

Article 104 does not affect any right of the promisee to enforce any term of the contract.

**108. Protection of promisor from double liability**

Where under Article 104 a term of a contract is enforceable by a third party, and the promisee has recovered from the promisor a sum in respect of:

(a) the third party's loss in respect of the term; or

(b) the expense to the promisee of making good to the third party the default of the promisor,

then, in any proceedings brought in reliance on that Article by the third party, the Court shall reduce any award to the third party to such extent as it thinks appropriate to take account of the sum recovered by the promisee.

## **PART 11: DAMAGES**

### **109. Right to damages**

Any non-performance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except where the non-performance is excused under this Law.

### **110. Full compensation**

The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss which it suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm.

### **111. Measure of damages**

Subject to the limitations stated in this Part 11 of the Law, the injured party has a right to damages as measured by:

- (a) the loss in the value to him of the other party's performance caused by its failure or deficiency, plus
- (b) any other loss, including incidental or consequential loss, caused by the breach, less
- (c) any cost or other loss that he has avoided by not having to perform.

### **112. Certainty of harm**

- (1) Compensation is due only for harm, including future harm, that is established with a reasonable degree of certainty.
- (2) Compensation may be due for the loss of a chance in proportion to the probability of its occurrence.
- (3) Where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the Court.

### **113. Foreseeability of harm**

The non-performing party is liable only for harm which it foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non-performance.

### **114. Proof of harm in case of replacement transaction**

Where the aggrieved party has terminated the contract and has made a replacement transaction within a reasonable time and in a reasonable manner it may recover the difference between the contract price and the price of the replacement transaction as well as damages for any further harm.

**115. Proof of harm by current price**

- (1) Where the aggrieved party has terminated the contract and has not made a replacement transaction but there is a current price for the performance contracted for, it may recover the difference between the contract price and the price current at the time the contract is terminated as well as damages for any further harm.
- (2) Current price is the price generally charged for goods delivered or services rendered in comparable circumstances at the place where the contract should have been performed or, if there is no current price at that place, the current price at such other place that appears reasonable to take as a reference.

**116. Harm due in part to aggrieved party**

Where the harm is due in part to an act or omission of the aggrieved party or to another event as to which that party bears the risk, the amount of damages shall be reduced to the extent that these factors have contributed to the harm, having regard to the conduct of each of the parties.

**117. Mitigation of harm**

- (1) The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps.
- (2) The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.

**118. Interest for failure to pay money**

- (1) If a party does not pay a sum of money when it falls due the aggrieved party is entitled to interest upon that sum from the time when payment is due to the time of payment whether or not the non-payment is excused.
- (2) The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment.
- (3) The aggrieved party is entitled to additional damages if the non-payment caused it a greater harm.

**119. Interest on damages**

Interest on damages for non-performance of non-monetary obligations accrues as from the time of non-performance.

**120. Manner of monetary redress**

Damages are to be paid in a lump sum.

**121. Currency in which to assess damages**

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

122. **Agreed payment for non-performance**

- (1) Where the contract provides that a party who does not perform is to pay a specified sum to the aggrieved party for such non-performance, the aggrieved party is entitled to that sum irrespective of its actual harm.
- (2) However, notwithstanding any agreement to the contrary the specified sum may be reduced to a reasonable amount where it is grossly excessive in relation to the harm resulting from the non-performance and to the other circumstances.

123. **Limitation**

- (1) An action for breach of any contract must be commenced within six years after the cause of action has accrued or in the case of fraud, when the aggrieved party becomes aware of the fraud. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.
- (2) Subject to Article 123 (1), a cause of action occurs when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

## **PART 12: AGENCY**

### **124. Agency; principal; agent**

- (1) Agency is the relationship which results from the consent by one person to another that the other shall act on his behalf, and consent by the other so to act.
- (2) The one for whom action is to be taken is the principal.
- (3) The one who is to act is the agent.
- (4) In this Part, a reference to an agent can include, where appropriate, an apparent agent.

### **125. General agent; special agent**

- (1) A general agent is an agent authorised to conduct a series of transactions involving continuity of service.
- (2) A special agent is an agent authorised to conduct a single transaction or a series of transactions not involving continuity of service.

### **126. Disclosed principal; partially disclosed principal; undisclosed principal**

- (1) If, at the time of a transaction conducted by an agent, the other party thereto has notice that the agent is acting for a principal and of the principal's identity, the principal is a disclosed principal.
- (2) If the other party has notice that the agent is or may be acting for a principal but has not notice of the principal's identity, the principal for whom the agent is acting is a partially disclosed principal.
- (3) If the other party has no notice that the agent is acting for a principal, the one for whom he acts is an undisclosed principal.

### **127. Consent**

An agency relation exists only if there has been consent by the principal to the agent that the agent may act on his account, and consent by the agent so to act.

### **128. Authority**

Authority is the power of the agent to affect the legal relations of the principal by acts done in accordance with the principal's consent.

### **129. Creation of authority**

Except for the performance of transactions required by statute to be authorised in a particular way, authority to do an act can be created by written or spoken words or other conduct of the principal.

130. **Apparent authority**

Apparent authority is the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's conduct towards such third persons.

131. **Creation of apparent authority**

Except for the conduct of transactions required by statute to be authorised in a particular way, apparent authority to do an act is created as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.

132. **Applicability of rules for interpretation of agreements**

Except as provided in this Part, the rules for the interpretation of contracts apply to the interpretation of authority.

133. **When incidental authority is inferred**

Authority to conduct a transaction includes authority to do acts which are incidental to it, usually accompany it, or are reasonably necessary to accomplish it.

134. **Inference that agent is to act only for principal's benefit**

Authority to act as agent includes only authority to act for the benefit of the principal.

135. **General principle of interpretation**

An agent is authorised to do, and to do only, what it is reasonable for him to infer that the principal desires him to do in the light of the principal's manifestations and the facts as he knows or should know them at the time he acts.

136. **Duty of care and skill**

- (1) A paid agent is subject to a duty to the principal to act with the standard of care and with the skill which is standard in the locality for the kind of work which he is employed to perform and, in addition, to exercise any special skill that he has.
- (2) A gratuitous agent is under a duty to the principal to act with the care and skill which is required of persons not agents performing similar gratuitous undertakings for others.

137. **Duty of loyalty**

An agent is subject to a duty to his principal to act solely for the benefit of the principal in all matters connected with his agency.

138. **Duty to account for profits arising out of employment**

An agent who makes a profit in connection with transactions conducted by him on behalf of the principal is under a duty to give such profit to the principal.

139. **Duty not to act as adverse party without principal's consent**

An agent is subject to a duty not to deal with his principal as an adverse party in a transaction connected with his agency without the principal's consent.

140. **Duty not to compete as to subject matter of agency**

An agent is subject to a duty not to compete with the principal concerning the subject matter of his agency.

141. **Duty not to act for one with conflicting interests**

An agent is subject to a duty not to act or to agree to act during the period of his agency for persons whose interests conflict with those of the principal in matters in which the agent is employed.

142. **Duty not to use or disclose confidential information**

An agent is subject to a duty to the principal not to use or to communicate information confidentially given to him by the principal or acquired by him during the course of or on account of his agency or in breach of his duties as agent, in competition with or to the detriment of the principal, on his own account or on behalf of another, although such information does not relate to the transaction in which he is then employed, unless the information is a matter of general knowledge.

143. **Period of employment**

Unless otherwise agreed, mutual promises by principal and agent to employ and to serve create obligations to employ and to serve which are terminable upon notice by either party; if neither party terminates the employment, it may terminate by lapse of time or by supervening events.

144. **Continuing duties after termination of agency**

After the termination of the agency, the agent:

- (a) has no duty not to compete with the principal;
- (b) has a duty to the principal not to use or to disclose to third persons, on his own account or on account of others, in competition with the principal or to his detriment, trade secrets, written lists of names, or other similar confidential matters given to him only for the principal's use or acquired by the agent in breach of duty. The agent is entitled to use general information concerning the method of business of the principal and the names of the customers retained in his memory, if not acquired in breach of his duty as agent;
- (c) has a duty to account for profits made by the sale or use of trade secrets and other confidential information, whether or not in competition with the principal;
- (d) has a duty to the principal not to take advantage of a subsisting confidential relationship created during the agency relationship.

145. **Liability for loss caused**

An agent is subject to liability for loss caused to the principal by any breach of duty by the agent.

146. **Liability for things received in breach of duty of loyalty**

If an agent receives anything as a result of his breach of a duty of loyalty to the principal, he is subject to a liability to deliver it, its value, or its proceeds, to the principal.

147. **Liability for use of principal's assets**

An agent who, in breach of duty to his principal, uses for his own purposes or those of a third person assets of the principal's business is subject to liability to the principal for the value of the use. If the use predominates in producing a profit he is liable to the principal for such profit.

148. **Principal's choice of remedies**

- (1) If an agent has received a benefit as a result of breach his duty of loyalty, the principal is entitled to recover from him what he has so received, its value, or its proceeds, and also the amount of damage thereby caused; except that, if the breach consists of the wrongful disposal of the principal's property, the principal cannot recover its value and also what the agent received in exchange therefor.
- (2) A principal who has recovered damages from a third person because of an agent's breach of his duty of loyalty is entitled to obtain from the agent any profit which the agent improperly received as a result of the transaction.

149. **Duty of indemnity**

- (1) A principal is under a duty to indemnify the agent in accordance with the terms of the agreement with him.
- (2) The principal has a duty to indemnify the agent where the agent:
  - (a) makes a payment authorised or made necessary in executing the principal's affairs or one beneficial to the principal; or
  - (b) suffers a loss which, because of their relation, it is fair that the principal should bear.

150. **When duty of indemnity exists**

A principal is subject to a duty to exonerate an agent who is not barred by the illegality of his conduct to indemnify him for:

- (a) authorised payments made by the agent on behalf of the principal;
- (b) payments upon contracts upon which the agent is authorised to make himself liable, and upon obligations arising from the possession or ownership of things which he is authorised to hold on account of the principal;
- (c) payments of damages to third persons which he is required to make on account of the authorised performance of an act which constitutes a breach of contract or is otherwise actionable;
- (d) expenses of defending actions by third persons brought because of the agent's authorised conduct, such actions being unfounded but not brought in bad faith; and



- (e) payments resulting in benefit to the principal, made by the agent under such circumstances that it would be inequitable for indemnity not to be made.

151. **When no duty of indemnity**

The principal is not subject to a duty to indemnify an agent:

- (a) for pecuniary loss or other harm, not of benefit to the principal, arising from the performance of unauthorised acts or resulting solely from the agent's negligence or other fault; and
- (b) if the principal has otherwise performed his duties to the agent, for physical harm caused by the performance of authorised acts, for harm suffered as a result of wrongful acts committed upon the agent by third persons because of his employment, or for harm suffered by the refusal of third persons to deal with him; or
- (c) if the agent's loss resulted from an enterprise which he knew to be illegal.

152. **Ratification**

Ratification is the affirmation by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorised by him.

153. **Affirmation**

Affirmation is an election (which may be express or implied, including by conduct) by one on whose account an unauthorised act has been done to treat the act as authorised.

154. **What acts can be ratified**

An act cannot be ratified if the purported or intended principal could not have authorised the act at the time it was performed.

155. **Purporting to act as agent as a requisite for ratification**

Ratification does not result from the affirmation of a transaction with a third person unless the one acting purported to be acting for the ratifier.

156. **Who can affirm**

To become effective as ratification, the affirmation must be by the person identified as the principal at the time of the original act or, if no person was then identified, by the one for whom the agent intended to act.

157. **Affirmation after rights have crystallised**

If in order to be effective in creating a right against another or to deprive him of a right, an act must be performed before a specific time, an affirmation is not effective against the other unless made before such time.

158. **Effect of ratification**

Upon ratification, the principal becomes responsible for contracts made for him by one purporting to act on his account as if the transaction had been authorised, if there has been no supervening loss of capacity by the principal or change in the law which would render illegal the authorisation or performance of such a transaction.

159. **Revocation of authority**

Authority terminates if the principal or the agent notifies the other of its termination.

160. **Liability based upon agency principles**

The liability of the principal to a third person upon a transaction concluded by an agent, or the transfer of his interests by an agent, may be based upon the fact that:

- (a) the agent was authorised;
- (b) the agent was apparently authorised; or
- (c) the agent had a power arising from the agency relation and not dependent upon authority or apparent authority.

161. **Liability of disclosed or partially disclosed principal; general rule**

A disclosed or partially disclosed principal is liable on contracts made by an agent acting within his authority.

162. **Liability of disclosed or partially disclosed principal; apparent authority**

A disclosed or partially disclosed principal is liable on contracts made by an agent acting within his apparent authority. The rules as to the liability of a principal for authorised acts are applicable to unauthorised acts which are apparently authorised.

163. **Unauthorised acts of general agent**

A disclosed or partially disclosed principal is liable for acts done on his account by a general agent which usually accompany or are incidental to transactions which the agent is authorised to conduct unless the other party has notice that he is not so authorised.

164. **Unauthorised acts of special agents**

A special agent for a disclosed or partly disclosed principal has no power to bind his principal by contracts which he is not authorised or apparently authorised to make, unless:

- (a) the agent's only departure from his authority or apparent authority is:
  - (i) in naming or disclosing the principal, or
  - (ii) in being negligent in determining the facts upon which his authority is based; or

(iii) in making misrepresentations; or

(b) the agent is given possession of goods or commercial documents with authority to deal with them.

**165. Rights between third person and agent**

The liability of a disclosed or partially disclosed principal is not affected by any rights or liabilities existing between the other party and the agent at the time the contract is made.

**166. Defences of principal – in general**

A disclosed or partially disclosed principal is entitled to all defences arising out of a transaction between his agent and a third person. He is not entitled to defences which are personal to the agent.

**167. Undisclosed principal; general rule**

An undisclosed principal is bound by contracts made on his account by an agent acting within his authority, except that the principal is not bound by a contract which is still subject to negotiations, or upon a contract which excludes him.

**168. Acts of general agents**

A general agent for an undisclosed principal authorised to conduct transactions may subject his principal to liability for acts done on his account, if usual or necessary in such transactions, although forbidden by the principal to do them.

**169. Acts of manager appearing to be owner**

An undisclosed principal who entrusts an agent with the management of his business is subject to liability to third persons with whom the agent enters into transactions usual in such businesses and on the principal's account, although contrary to the directions of the principal.

**170. Unauthorised acts of special agents**

A special agent for an undisclosed principal has no power to bind his principal by contracts which he is not authorised to make unless:

(a) the agent's only departure from his authority is:

(i) in not disclosing his principal, or

(ii) in being negligent in determining the facts upon which his authority is based, or

(iii) in making misrepresentations; or

(b) the agent is given possession of good or commercial documents with authority to deal with them.

**171. Defences of undisclosed principal – in general**

An undisclosed principal is entitled to all defences arising out of a transaction made by an agent, but not defences which are personal to the agent.

172. **Power of agent to modify contract before disclosure of principal**

Until the existence of a principal is disclosed, an agent who has made a contract for an undisclosed principal has power to cancel the contract and to modify it with binding effect upon the principal if the cancellation or modification is authorised or is within the inherent power of the agent to make.

173. **Contracts, disclosed agency; general rule**

The other party to a contract made by an agent for a disclosed or partially disclosed principal acting within his authority, apparent authority or other agency power is liable to the principal as if he had contracted directly with the principal, unless the principal is excluded as a party by the form or terms of the contract.

174. **Defences of other party**

The other party to a contract made by an agent on behalf of a disclosed or partially disclosed principal has all the defences which he would have had against the principal if the principal had made the contract under the same circumstance.

175. **Rights between other party and agent**

The liability of the other party to a disclosed or partially disclosed principal upon a contract made by an agent is not affected by any rights or liabilities then existing between the other party and the agent.

176. **Contracts, undisclosed agency; general rule**

A person who makes a contract with a person acting as an agent of an undisclosed principal is liable to the principal as if the principal himself had made the contract with him, unless:

- (a) he is excluded by the form or terms of the contract;
- (b) his existence is fraudulently concealed; or
- (c) there is set-off or a similar defence against the agent.

177. **Principal excluded from transaction**

A person with whom an agent makes a contract on account of an undisclosed principal is not liable in an action at law brought upon the contract by such principal:

- (a) if the contract is in the form of a negotiable instrument; or
- (b) if the terms of the contract exclude liability to any undisclosed principal or to the particular principal.

**178. Rights between other party and agent**

- (1) Subject to Article 178(2), the liability to an undisclosed principal of a person dealing with the agent within his power to bind the principal is diminished by any claim which such person may have against the agent from the time of formation of the contract until the existence of the principal becomes known to him, if he could set off such claim in an action against the agent.
- (2) Article 178(1) does not apply where the agent is authorised only to contract in the principal's name.

**179. Defences of other party**

In an action by an undisclosed principal against the other party to a contract, the other party has all the defences, except those of a purely procedural nature:

- (a) which he would have had against the agent if the agent had made the contract under the same circumstance;
- (b) which he had against the agent until the discovery of the principal, unless the agent was authorised to contract only in the principal's name.

**180. Status of agent as party to a contract**

- (1) A person making or purporting to make a contract with another as agent for a disclosed principal does not become a party to the contract.
- (2) A person purporting to make a contract with another for a partially disclosed or undisclosed principal is a party to the contract.
- (3) An agent, by making a contract only on behalf of a competent disclosed or partially disclosed principal whom he has power so to bind, does not thereby become liable for its non-performance.

**181. Agent who warrants authority**

A person who purports to make a contract or representation on behalf of another who has full capacity, but whom he had no power to bind, thereby becomes subject to liability to the other party thereto on an implied warranty of authority, unless the other party knows or agrees that the agent is not so authorised.

**182. Defences of agent**

In an action against an agent on a contract between a third person and the principal to which the agent is a party, defences which are personal to the principal are not available to the agent.

**183. Agent surety for principal**

In an action brought against an agent upon a contract to which the agent is a party but under which the primary duty of performance rests upon the principal, the agent has the defences available to a surety.

184. **Election by other party to hold principal; agency undisclosed**

An agent who has made a contract on behalf of an undisclosed principal is not relieved from liability by the determination of the other party thereto to look to the principal alone for the performance of the contract.

## SCHEDULE 1: INTERPRETATION

### 1. Rules of interpretation

- (1) In the Law, a reference to:
- (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
  - (b) a person includes any natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association, government or state;
  - (c) a calendar year shall mean a year of the Gregorian calendar;
  - (d) a day shall refer to a business day, being a normal working day in the DIFC; and
  - (e) a reference to the masculine gender includes the feminine.
- (2) The headings in the Law shall not affect its interpretation.

### 2. Legislation in the DIFC

References to legislation in the Law shall be construed in accordance with the following provisions:

- (a) Federal Law is law made by the federal government of the United Arab Emirates;
- (b) Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;
- (c) DIFC Law is law made by the Ruler (including, by way of example, the Law), as applicable in the DIFC;
- (d) the Law is the Contract Law, DIFC Law No.6 of 2004 made by the Ruler;
- (e) the Rules are legislation made by the Court under the Law and are binding in nature.

### 3. Defined terms

- (1) In the Law, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

<b>Term</b>	<b>Definition</b>
Court	the DIFC Court as established under Dubai Law.
DIFC	the Dubai International Finance Centre.
Law	the Contract Law 2004.
mistake	an erroneous assumption relating to facts or to law existing when the contract was concluded.

<b>Term</b>	<b>Definition</b>
obligee	refers to a party who is entitled to performance of an obligation.
obligor	refers to the party who is to perform an obligation.
President	the president of the DIFC, appointed by a decree of the Ruler pursuant to Dubai Law.
Ruler	the ruler of the Emirate of Dubai.
Schedule	a schedule to the Law.
writing	Any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form, including electronic means.

- (2) Where a party to a contract has more than one place of business the relevant "place of business" is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract.