



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

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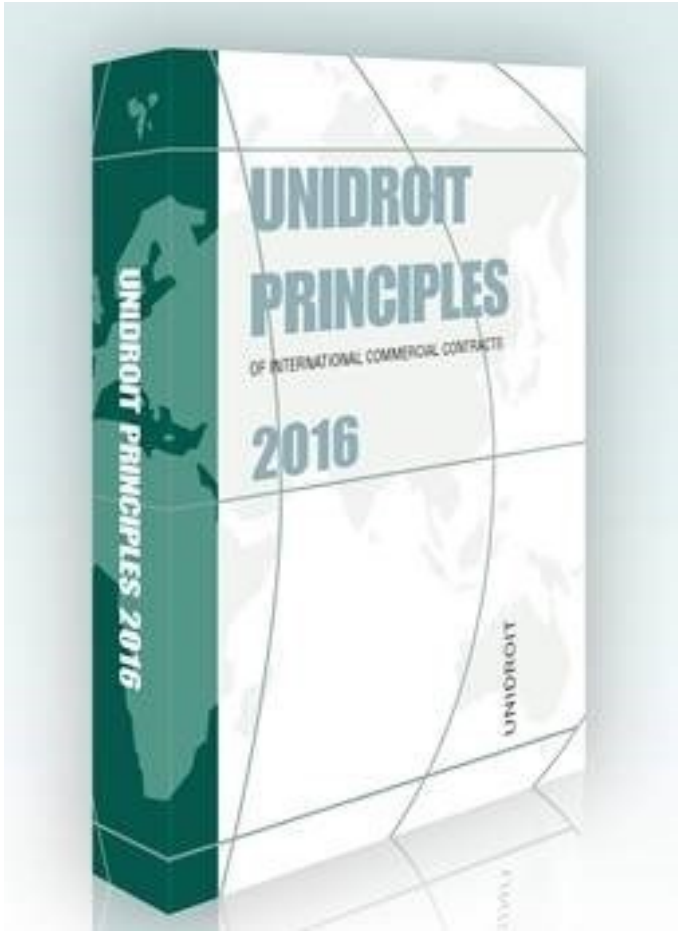
# **The “Note on the UNIDROIT Principles of International Commercial Contracts and the COVID-19 health crisis”**

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*Black-letter rules and comments in various languages available on-line at:*

<https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016>

*UNIDROIT Note on the UNIDROIT Principles and the Covid-19 Health Crisis (July 2020)*

<https://www.unidroit.org/english/news/2020/200721-principles-covid19-note/note-e.pdf>

# Force Majeure in the UNIDROIT Principles

## ARTICLE 7.1.7 (Force majeure)

- (1) 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 the 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.

# Hardship in the UNIDROIT Principles

## ARTICLE 6.2.1 (*Contract to be observed*)

Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship.

## ARTICLE 6.2.2 (*Definition of hardship*)

There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished, and (a) the events occur or become known to the disadvantaged party after the conclusion of the contract; (b) the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract; (c) the events are beyond the control of the disadvantaged party; and (d) the risk of the events was not assumed by the disadvantaged party.

## ARTICLE 6.2.3 (*Effects of hardship*)

- (1) In case of hardship the disadvantaged party is entitled to request renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based.
- (2) (The request for renegotiation does not in itself entitle the disadvantaged party to withhold performance.
- (3) Upon failure to reach agreement within a reasonable time either party may resort to the court.
- (4) If the court finds hardship it may, if reasonable, (a) terminate the contract at a date and on terms to be fixed, or (b) adapt the contract with a view to restoring its equilibrium.