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Article 54

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

General

1. This provision deals with actions preparatory to payment of the price which are specified in the contract or in applicable laws and regulations. Thus the contract may provide for the opening of a letter of credit, the establishment of security or of a bank guarantee, or the acceptance of a bill of exchange. Preparatory actions required under the applicable laws or regulations could, for example, be any administrative authorizations required for a transfer of funds.

2. The usefulness of this provision is twofold. First, article 54 assigns these obligations, unless otherwise specified in the contract, to the buyer who must bear the costs thereof. One court decision seems to indicate that the costs associated with payment are generally the responsibility of the buyer[1]. Furthermore, the steps which the buyer has to take are obligations, violation of which entitles the seller to have

[1] Landgericht Duisburg, Germany, 17 April 1996, *Recht der Internationalen Wirtschaft*, 1996, 774, concerning costs associated with payment of the price by cheque.

* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.

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recourse to the remedies specified in articles 61 *et seq*. and are not considered simply as part of "his conduct in preparing to perform or in performing the contract" (article 71 (1)); they can be analysed, should the case arise, only in terms of an anticipatory breach of contract.

Scope of the buyer's obligations

3. The question arises whether article 54 obliges the buyer only to carry out such steps as are necessary for the accomplishment of preparatory actions, without making him responsible for the result, or whether the buyer is in breach of his obligations the moment it is seen that the result has not been attained. A number of decisions have been delivered with regard to letters of credit and follow the principle that the buyer is in breach of its obligations if it does not deliver the letter of credit opened on behalf of the seller[2].

4. Certain hesitations are justified with regard to the administrative measures required under the applicable laws or regulations. Under one possible interpretation of article 54, a distinction has to be drawn in determining the scope of the buyer's obligations, between measures of a commercial nature and administrative measures. Under the first of these the buyer is thought to assume a commitment with regard to the result whereas for the second the buyer is thought to take on only a best-effort obligation, since the buyer cannot guarantee, for example, that the competent administrative authority will approve the transfer of funds; the buyer's only obligation then would be to carry out the steps needed to obtain the relevant administrative authorization. Under another interpretation of the provision, however, this distinction should not be made since the buyer is responsible as a matter of law if the preparatory action, whatever its nature may be, is not carried out, subject to the operation of article 79 of the Convention.

Currency of payment

5. The provision says nothing about the currency of payment. Here one has to consider first and foremost the will of the parties (article 6) as well as commercial usage (article 9 (2)) and any practices the parties have established between themselves (article 9 (1)). In the many cases where the currency of payment cannot

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[2] Supreme Court of Queensland, Australia, 17 November 2000, available on the Internet at <http://www.austlii.edu.au/au/cases/qld/QSC/2000/421.html>; CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996] (in this case, however, the buyer was not considered to have been in breach of its obligations since the seller had omitted to indicate the port of embarkation when that was in fact necessary, under the contract, for establishing the letter of credit); CLOUT case No. 104 [Arbitration—International Chamber of Commerce No. 7197 1993]; Xiamen Intermediate People's Court, China, 31 December 1992, abstract available on the Internet at <http://www.unilex.info/case.cfm?pid=1&do=case&id=212&step=Abstract>. Similarly, it was decided in arbitration that a buyer who had not paid the price for equipment delivered was liable if it had merely given instructions to its bank to make a transfer to the seller but had done nothing to ensure that the payment could actually be made in convertible currency; see CLOUT case No. 142 [Arbitration-Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, award No. 123/1992 of 17 October 1995].

be established in this way, hesitations are justified as to the appropriate manner of determining it.

6. Most decisions in case law refer to the law of the place where the seller's place of business is located or to the law of the place where payment is to be made[3]. These decisions reflect a current of doctrine that reasons in terms of general principles on which the Convention is based (article 7 (2)), and in general defines the currency of payment as the one that exists in the place where the seller's place of business is located, since this is generally also the place where the obligation to pay the price is discharged (article 57) and the place where delivery is taken (article 31 (c)). However, one court has found the currency of payment should be determined by the law which would govern the contract if the Convention were not applicable[4].

[3] *See* CLOUT case No. 80 [Kammergericht Berlin, Germany, 24 January 1994], (see full text of the decision) (currency of payment should, in case of doubt, be that of the place of payment); CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993], (currency of the place where the seller has his place of business is the currency in which the price should be paid); CLOUT case No. 52 [Fovárosi Bíróság, Hungary, 24 March 1992], (court compelled the buyer to pay the seller in the seller's currency without stating reason).

[4] CLOUT case No. 255 [Tribunal Cantonal du Valais, Switzerland, 30 June 1998].