

ผนวก ก

ว่าด้วยเนื้อหาของประมวลกฎหมายของต่างประเทศในส่วนที่เกี่ยวข้องกับหลักความรับผิดชอบของลูก
หนี้เพื่อการกระทำของบุคคลที่มีอำนาจชำระหนี้แทนลูกหนี้

1. ประมวลกฎหมายแพ่งของประเทศเยอรมัน (The German Civil Law (Bürgerliches Gesetzbuch
“BGB”))

§ 164. [Effect of declaration by a representative]

(1) A declaration of intention which a person makes in the name of a principal within the scope of his agency operates directly both in favor of and against the principal. It makes no difference whether the declaration is made expressly in the name of the principal, or if the circumstances indicate that it was to be made in his name.

(2) If the intention to act in the name of another is not apparent, the agent's absence of intention to act in his own name is not taken into consideration.

(3) The provisions of (1) apply mutatis mutandis if a declaration of intention required to be made to another is made to his agent.

§ 165. [Representative limited in competency] The validity of a declaration of intention made by or to an agent is not impaired by the fact that he is limited in competency to enter into legal transactions.

§ 166. [Lack of intention; knowledge; power of attorney]

(1) Insofar as the legal effectiveness of a declaration of intention is vitiated by lack of intention, or by knowledge or by attributable knowledge of certain circumstances, the person not of the principal, but of the agent, is taken into consideration.

(2) When a power of agency (power of attorney) is conferred by legal transaction, if the agent has acted according to specific instructions of the principal, the latter may not rely on the ignorance of the agent with regard to circumstances known to him. The same applies to circumstances which

the principal should have known, so far as attributable knowledge is equivalent to knowledge.

§ 167. (Granting of power of attorney]

(1) A power of attorney is conferred by declaration to the person who is given the power of attorney, or to the third party with whom the matter delegated is to be transacted.

(2) The declaration need not be in the form prescribed for the legal transaction to which the power of attorney relates.

§ 168. [Expiration of power of attorney] The expiration of the power of attorney depends on the legal relationship upon which its creation is based. The power of attorney is also revocable during the subsistence of the legal relationship, unless a contrary intention appears from such relationship. The provision of § 167(1) applies *mutatis mutandis* to the declaration of revocation.

§ 169. (No fiction of continuation as against those in bad faith] Insofar as a terminated power of attorney of an agent or a managing partner is deemed to continue as provided for in §§ 674, 729, it is not valid in favor of a third party who, at the time when a legal transaction is entered into, knows or should know of the termination.

§ 170. [Period of effectiveness of power of attorney] If a power of attorney is conferred by declaration to a third party, it remains in force with respect to him until he is notified of the termination by the principal.

§ 171. [Period of effectiveness in case of public notification]

(1) If a person has announced by special notification to a third party or by public notice that he has given power of attorney to another, then the latter on the basis of the notice becomes authorized to represent, in the former case as regards the particular third party, in the latter case as regards any third party.

(2) The power of representation remains in force until the notice is revoked in the same manner as it was given.

§ 172. [Written power of attorney]

- (1) If the principal has delivered to the agent a written power of attorney and the agent shows it to a third party, this is equivalent to special notification of a power of attorney.
- (2) The power of representation remains in force until the written power of attorney is returned to the principal or declared invalid.

§ 173. [Knowledge of expiration] The provisions of §§ 17D, 171(2) and 172(2) do not apply if the third party knows or should know of the termination of the agency at the time when the legal transaction is entered into.

§ 174. [Unilateral legal transaction by a representative] A unilateral legal transaction which an agent enters into with another party is ineffective, if the agent does not produce a written power of attorney and the other party without delay rejects the legal transaction for this reason. The right to reject is barred if the principal had informed him of the authorization.

§ 175. (Return of written power of attorney] After the termination of the power of attorney the agent shall return the written power of attorney to the principal; he has no right of lien on it.

§ 176. [Declaration of invalidity of written power of attorney]

- (1) The principal may declare the written power of attorney invalid by public notice; the declaration of invalidity must be published according to the provisions of the Code of Civil Procedure applicable to public service of a citation. The declaration of invalidity takes effect upon the expiration of one month after the last appearance in the official newspapers.
- (2) The District Court in whose district the principal generally is subject to jurisdiction and the District Court which would be competent to entertain an action for the return of the document, are equally competent to authorize the publication, without regard to the value of the object in dispute.
- (3) The declaration of invalidity is ineffective if the principal cannot revoke the power of

attorney.

§ 177. [Conclusion of contract by an unauthorized representative)

(1) If a person enters into a contract in the name of another without authority, the validity of the contract depends, as regards the principal, on his ratification. (2) If the other party demands the principal to declare whether or not he ratifies, the declaration may be made only to him; a ratification or refusal to ratify declared to the agent before the demand is of no effect. The ratification must be declared before the expiration of two weeks after receipt of the demand; if it is not declared it is ~~deemed~~ to have been refused.

§ 178. (Right of other party to revoke] Until ratification of the contract the other party is entitled to revoke it, unless he knew of the absence of authority at the time when the contract was entered into. The revocation may also be declared to the agent.

§ 179. (Liability of an unauthorized agent)

(1) Whoever has entered into a contract as agent is, if he has not given proof of his authority, bound to the other party at his choice either to carry out the contract or to compensate him, if the principal refuses to ratify the contract.
 (2) If the agent did not know that he had no authority, he is bound to compensate only for the damage which the other party has sustained by relying upon the authority; not, however, beyond the value of the interest which the other party has in the validity of the contract.
 (3) The agent is not liable, if the other party knew or should have known of the lack of authority. The agent is also not liable if he was limited in his competency to enter into transactions, unless he had acted with the consent on his legal representative.

§ 180. [Unilateral legal transactions) In the case of a unilateral legal transaction, agency without authority is not permissible. However, if the person with whom such a legal transaction was to be entered into did not object to the authority claimed by the agent when the transaction was being entered into or if he agreed that the agent might act without authority, then the provisions

governing contract apply *mutatis mutandis*. The same rule applies if a unilateral legal transaction is entered into with an unauthorized agent with his consent.

§ 276 [Responsibility for one's own conduct]

(1) A Debtor is responsible, unless it is otherwise provided, for willful conduct and negligence. A person who does not exercise ordinary care acts negligently. The provision of section 827, 828 apply.

(2) A debtor may not be released beforehand from responsibility for willful conduct.

§ 278 [Responsibility for persons employed in performing obligation] A debtor is responsible for the fault of his legal representative and of persons whom he employs in performing his obligation, to the same extent as for his own fault. The provision of section 276(2) does not apply.

§ 831 [liability for employees]

(1) A person who employs another to do any work is bound to compensate for any damage which the other unlawfully causes to a third party in the performance of his work. The duty to compensate does not arise if the employer has exercised necessary care in the selection of the employee; and, where he has to supply apparatus or equipment or to supervise the work, has also exercised ordinary care as regards such supply or supervision, or if the damage would have arisen notwithstanding the exercise of such care.

(2) The same responsibility attaches to a person who, by contract with the employer, undertakes to take charge of any of the matters specified in (1), sent. 2.

2. ประมวลกฎหมายแพ่งฝรั่งเศส(The French Civil Code)

Article 1245 A person who has to hand over a thing which is definite and certain by the contract has fulfilled his obligation if he hands over the thing in the state it happens to be at the time when he has to deliver it over, provided that any deterioration there may be therein is not the result of

any act of commission (f) or omission of his, or of persons for whom he is responsible, and provided he was not in default before the deterioration took place. (C.1138,1302,1933.)

Article 1735 The lessee is liable for any damage or loss caused by the act of persons belonging to his family or caused by his sub-tenants. (C.1384.)

Article 1782 Carriers by land and by water are, in respect of care and preservation of things entrusted to them, under the same liabilities as those of innkeepers, which will be found under the title "Of Deposit and Sequestration." (C.1952,2102, 6th para.)

Article 1797 A contractor is liable for the acts of the persons he employs.

Article 1953 They are responsible if the travelers' property is stolen or damaged. The same rule applies whether the theft or damage has been done by the servants or head officials of the hotel, or by strangers going to and fro in the hotel. (C.1384; P. 386, para. 4-Law, 18th April, 1889.) This responsibility is limited to the sum of 1,000 francs when the property is coin or securities of any kind payable to the bearer, and it is not actually entrusted to the innkeeper or hotel-keeper personally.

Article 1994 The agent is responsible for any sub-agent whom he has appointed to carry out the agency (1) when he had no authority to appoint a sub-agent, (2) when he has been given authority to appoint a sub-agent generally, and no special person has been pointed out, and he chosen a sub-agent who was notoriously incapable or insolvent. The principal has in all cases a direct right of action against the sub-agent appointed by the agent. (C. 1384.)

3. ประมวลกฎหมายแพ่งว่าด้วยหนี้ของประเทศสวิตเซอร์แลนด์(The Switzerland Civil Code of Obligation)

Article 32 Where a person who is authorized to act as agent for another enters into a contract in the name of his principal, rights and obligations deriving therefrom devolve on the principal and not on the agent.

Where the agent did not disclose the agency when entering into the contract, there is no privity of contract with the principal, unless from the circumstances the other party had implied notice of the agency, or the identity of the contracting party was a matter of indifference to such other party.

In other cases an assignment of claim or assumption of debt in accordance with the principles applicable thereto is required.

Article 33 Where the authority for legally acting in another's name is derived from public law, such authority must be construed in accordance with the provisions of the public Federal and Cantonal laws.

Where the authority is based on a legal transaction, the extent thereof depends on the terms of such transaction.

Where the principal communicates the authority to a third person, its extent depends, as far as the third party is concerned, on the terms of the communication.

Article 34 (1) An authorization conferred by a legal transaction may at any time be limited or cancelled by the person conferring the power of attorney, without any prejudice to the rights which may arise from any other existing legal relationship between the parties concerned, such as an individual service contract, partnership agreement, or mandate.

(2) A declaration of waiver of this right made in advance by the grantor of the power of attorney is of no effect.

(3) If the principal has given formal or de facto notice of the power of attorney, he cannot invoke its total or partial revocation as against third parties acting in good faith unless he has also notified them of such revocation.

Article 35 Unless otherwise agreed or apparent from the nature of the transaction, an authority given by virtue of a legal transaction expires on the death, declaration of disappearance, loss of capacity or the bankruptcy of the principal or the agent.

The dissolution of a corporate body or of a company entered in the commercial register has the same effect.

The mutual rights in personam of the parties shall remain unaffected.

Article 36 Where a power of attorney has been handed to the agent, he is after the termination of the authority bound to return the instrument or to deposit it with the court.

Where the principal or his successors fail to enforce the return or the deposit of the instrument, they are liable to compensate bona fide third persons.

Article 37 Until the agent has notice of termination of his authority, rights and obligations deriving from his acts devolve upon the principal or his successors as though the authority were still in force.

This shall not apply to cases where the third party had notice of termination of the authority.

Article 38 Where an unauthorized person has entered into a contract purporting to act as agent, the alleged principal acquires no rights nor incurs obligations until he ratifies the contract.

Article 39 In the case of an express or implied refusal of the ratification, the alleged agent is liable for the damages resulting from the failure of the contract unless he proves that the other party knew or should have had knowledge of the absence of authority.

Where the agent is culpable, the court may, if it deems just, award further damages.

Nothing herein shall affect claims for unjustifiable enrichment.

Article 40 The power of agents and of officers of companies, holders of procurations and of other commercial attorneys are subject to special provisions.

Article 55 (1) The proprietor of a business is liable for damage caused by his employees or other helpers in the exercise of their service or business functions, unless he proves that he exercised due care necessary in the circumstances to prevent such damage, or that the damage would have arisen notwithstanding the exercise of such care.

(2) The proprietor has right of recourse against the person who caused the damage to such extent as the latter is personally liable.

Article 100 Any agreement in advance purporting to exclude liability for international illegality or gross negligence is void.

It is within the discretion of the court also to consider void a declaration in advance waiving liability for slight negligence if the waiving party was at the time of such declaration employed by the other party, or if the liability arises from the exercise of an occupation for which a public license is necessary.

Nothing herein shall affect the special provisions regarding insurance contracts.