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Applicable Law in the Light of Modern Law of Obligations and Bases for the Preparation of the Law of Obligations Act

1. Development of Estonian private law

The Estonian private law has always been a part of Baltic-German law. The first major written body of law, the Baltic Private Law Code (BPLC) dates back to 1863. It was an extensive and extremely voluminous private law code that regulated in great detail the civil relations of the time. Its volume and contents were very similar to the old Common Prussian Land Law. The BPLC was in force in Estonia as a result of the so-called Baltic Special Rights granted to the Baltic countries by Russia (Estonia was a part of Russia from the beginning of the 18th century), which allowed to maintain the predominant Baltic-German law that was in force here before the Russian Empire.

In 1918, Estonia became independent and the young state gradually also started to enforce its own laws. In the area of private law, the preparation of the Estonian Civil Code commenced in 1920, which was meant to replace the tsarist legal acts (including the BPLC) that had been in force until that time. The draft was prepared mainly on the basis of the BPLC and the German Civil Code, but it was also largely influenced by the Swiss Civil Code. The draft was structured as a classical code: general provisions, law of property, law of obligations, family law and law of succession. While in several areas, particularly concerning the law of property, the code was clearly orientated to the establishment of a new thorough and systematic regulation, the same could not be said about the law of obligations and, above all, the family law in which the already outdated concepts of the BPLC still prevailed. The legislative proceeding of the draft in the *Riigikogu* (Estonian parliament) continued until 1940, but it never became an act because the USSR armed forces occupied Estonia just before the draft was passed. Hence, the old BPLC in fact continued to apply to private law relations until 1940, although it was obvious that several concessions and adjustments had to be made to be able to implement the code.

Under the Soviet occupation, the Civil Code of the Russian Federation was at first enforced in Estonia to regulate private law relations. Although it was an ideological document rich in propagandist provisions, its basic regulations were similar to those of the classical European civil code, the main distinctive feature being the lack of legal transactions with land due to the non-existence of real property law. With regard to the law of obligations, the basic regulations did not differ from what had been in force in Estonia until that time. In 1964, the occupying power formally replaced the

Russian code with the Civil Code of the Estonian SSR, which applied in full until 1993. As to its contents, there were no significant differences between that Code and the earlier code, apart from the fact that it had become even more ideological and the hitherto categories used in Estonian for the law of property and law of obligations (in Estonian: *võlaõigus*) were formally replaced with the new categories "title" and "law of the obligations" (in Estonian: *kohustisõigus*). However, it did not involve any fundamental changes as to their content.

When Estonia restored its independence at the beginning of the 1990s, the young state also lacked the authority and facilities for the enforcement of a new legal act to regulate private law. Instead, it was decided to reform the private law step by step, gradually proceeding to a legal system based on the Western-European standards. In 1993, the Law of Property Act entered into force as the first new source of civil law, followed by the General Part of the Civil Code Act and the Family Law Act in 1994. The Commercial Code governing primarily company law was passed in 1995, to be followed by the Law of Succession Act in 1996. Only one part of the old Civil Code — the one concerning obligations — has survived to date, which will be replaced by the Law of Obligations Act.

2. System of applicable private law

2.1. General regulation of private law

As mentioned above, the present system of Estonian private law consists of various legal acts that date from different periods. Despite the fact that the areas of private law have not been regulated by a single legal act (code), it can be said that, with regard to the system of law, Estonia is still a European country with classical codified civil law.

Namely, applicable private law clearly divides as follows:

(a) general principles concerning persons, objects and transactions (the General Part of the Civil Code Act);

(b) law of property (the Law of Property Act);

(c) family law (the Family Law Act);

(d) law of succession (the Law of Succession Act);

(e) law of obligations (the Civil Code of the ESSR, the Commercial Lease Act, the Employment Contracts Act, the Dwelling Act, the Consumer Protection Act, *etc*., henceforth to be regulated by the Law of Obligations Act);

(f) private international law (the General Part of the Civil Code Act, henceforth to be regulated by a separate act);

(g) company law (the Commercial Code);

(h) intellectual property law (the Copyright Act, the Patents Act, the Utility Models Act, the Trade Marks Act, *etc*.);

(i) contracts related to shipping (the Merchant Shipping Code).

2.2. Main regulation of law of obligations

As said above, the law of obligations is the only area of private law where a new system of provisions conforming to modern requirements has not yet been established and the Civil Code of the Estonian SSR[*1] continues to remain in force. A question may arise of how it is possible to still live with the deeply Soviet rules dating from 1964 when almost ten years have passed since the restoration of independence and the revolutionary transformation of economic relations. Nevertheless, a large part of the disputes arising from contractual and extra-contractual obligations are solved on the basis of the Civil Code even nowadays. Presumably, it has been possible for the following reasons:

(a) as to their underlying structure, the provisions of the Civil Code regulating the law of obligations conform to the classical idea of contracts and extra-contractual obligations;

1 Eesti NSV Tsiviilkoodeks (Civil Code of the Estonian SSR), adopted on 12.06.1964; entered into force 1.01.1965 (abbreviated to the Civil Code) (in Estonian).

(b) the main regulations of the Civil Code are sufficiently general to avoid major problems in different social formations when the regulations are applied;

(c) several special areas have already been regulated by other legal acts;

(e) after the entry into force of the Constitution, courts no longer apply ideological provisions or provisions restraining the disposal of ownership and providing for the inequality of persons.

What was said above does not naturally mean that the regulation of the Civil Code is sufficient for the present situation. Since the preparation of the new act has been delayed for a number of reasons, the legal system has simply tried to adapt itself to the changed circumstances.

To date, approximately 250 sections of the Civil Code are officially in force, of which about 200 actually function and can be applied. Compared to the Western-European principles, an important difference in the understanding of the provisions of law of obligations is the imperative interpretation of law, *i.e*. the established provisions serve as imperative unless otherwise provided by the provision itself. This relatively unreasonable regulation is mitigated by the fact that in the unregulated part (which is the major one) the parties may adjust their relationships as they need.

The main functioning part comprises the **general provisions of the Civil Code** that govern obligations including, *inter alia*, rules concerning the entry into contracts, the performance of obligations and the liability arising from the violation of obligations. The provisions regulating solidary liabilities, penalties, surety, guarantee, cession of claims and transfer of debts as well as the provisions concerning the termination of obligations are also important. As for the factual principles, the provisions in force have no peculiarities. The common and general feature is superficiality and non-regulation of many important issues, which has, in its own way, probably been the factor allowing the application of the Code in contemporary society. In the light of European codes, the provisions concerning the entry into contracts and other general provisions of contracts are commonplace and do not contain any significant distinctive features. The performance of obligations has also been regulated without any major peculiarities; the Code regulates, *inter alia*, performance for the benefit of a third person, creditor default and interest in the case of delay in the performance of a financial obligation (although only 3% per year). As a special feature, the so-called favourable term of seven days could be mentioned, which is allowed for the performance of obligations and is calculated starting from the submission of claim unless the due date of performance has been pre-determined. On the whole, no formalities have been established concerning the debtor's delay. The regulation of penalties is also rather common apart from the fact that the law expressly allows the use of sanctioned penalties (independent of damage). The reduction of penalties by court is also allowed. The rather modern regulation of surety is favourable to creditors and, unlike the law of many other countries, it is based mainly on the solidary (not additional) liability of the surety. At the same time, the termination of surety with a specified term has been very problematic and confusing. The regulation of payment guarantees is also problematic, having in practice caused heated disputes over the validity of bank guarantees since the Civil Code does not recognise abstract payment obligations but considers the liability arising from a guarantee to be strictly accessory and connected with the principal debt. The cession of claims and transfer of debts are similar to the German Civil Code or *BGB* (*Bürgerliches Gesetzbuch*). Liability for the violation of obligations is one of the weakest points of the law of obligations in force as the general variety of sanctions applicable upon the violation of obligations does not meet the practical needs. The Code provides an absolute basis for the claim to perform the obligation in kind, in addition to which damages can be claimed. In the event of violation of an obligation, culpability serves as the basis for liability. However, it is true that in the Estonian practice the requirement of actual performance of an obligation (despite the strict wording of the law), similar to the principle of culpability as a basis for liability, has a rather limited area of application since the parties usually agree upon stricter liability, from which exemption can be achieved only under the *force majeure* circumstances. The inexpediency and deficiency of the legal system of sanctions presents a serious problem in practice, which forces the parties to contracts find their own thorough ways to regulate liability. The regulation of the termination of obligations is very general, containing, *inter alia*, the termination of obligations due to the impossibility of performance and due to the liquidation of a debtor who is a legal person, both of which have caused many disputes in practice. At the same time, the option to terminate a contract unilaterally if the contract is violated has not been regulated at all, which can be considered the greatest flaw of the system of sanctions.

The regulation of **transfer contracts** and mainly the contract of sale is obviously insufficient considering the importance of these relations, while it is also unclear and has given rise to many disputes. The Civil Code systematically draws a distinction between the ordinary contract of sale

and the procurement contract under which goods not yet produced are purchased. In practice, this kind of distinction is no longer made. The sale of real estate is largely conducted under the Law of Property Act and the Law of Property Act Implementation Act*[2]; the respective contracts are attested by a notary. Sales to consumers are generally regulated by the Consumer Protection Act and acts of the Government of the Republic. The transfer of state assets is regulated by the State Assets Act. The sale of goods between undertakings, where the provisions of the Civil Code are the most insufficient remain an actual area of application. Concerning the defects of the object of sale, purchasers have been provided with more sanctions as compared to the general part, those including the requirement to reduce the purchase price, to replace goods, to eliminate defects and to terminate the contract; however, the procedure for exercising these rights remains unclear (whether they are judicial requirements or unilateral rights of parties). The law refers to the complaint (submission of a prior warning) as a precondition for the submission of claims, starting from which the expiry of claims is calculated — without submitting a complaint, claims will expire within a year. Barter contracts and gratuitous contracts are regulated very briefly. In the case of a gratuitous contract, the law proceeds from the concept of real contract; in addition thereto, practically all gratuitous contracts have to be notarised, which is usually ignored in practice. The modern transfer contracts such as factoring, contracts of sale with an option, sale with the right of pre-emption, sale by auction, *etc*., have virtually not been regulated with regard to civil law. In these contracts, agreements between parties have given rise to major disputes and misunderstandings as the bases for the evaluation of such agreements are very questionable.

The Civil Code does not practically govern **contracts for the use of assets**. The general lease of property is regulated by the liberal and sufficiently abstract Commercial Lease Act*[3], which has given grounds for disputes concerning the procedure for the termination of contracts. Residential lease contracts are governed mainly by the Dwelling Act which, contrary to the regulation of commercial lease relationships, goes beyond the limit of reasonable detail — the act prescribes even the lessor's obligation to submit an invoice to the lessee and the information to be contained therein, it has imposed absurd restrictions on the amount of rental payment that in most cases are not followed in practice, and it makes it extremely difficult to terminate a contract even with a lessee who has seriously violated his or her obligations. In social efforts the legislator has probably gone beyond reason, for the rules have mainly been established in view of the co-called sitting tenants who have stayed as lessees in houses returned to the former owners. The use of state assets is regulated by the State Assets Act. The regulation of loan contracts is also based on the concept of real contract, *i.e.* the contract does not enter into force before the transfer of money, and pursuant to the law virtually all contracts have to be executed in writing (not followed in practice again). Rules related to consumer credit and consumer protection are not yet widely known in Estonia. Types of contracts that are very important in practice such as leasing and licence are either not regulated at all (leasing) or are regulated eclectically and superficially (licence). Yet the existence of minimum legal regulation is indispensable for a uniform understanding of the nature of these contracts.

The regulation of **contracts for the provision of services** is also incomplete. The regulation of the contract for services as a result-orientated contract is more or less traditional although there are problems related to the termination of contract and application of other sanctions. In the most important areas — in building and planning — the basic rules are in most cases established in the general conditions of the transaction and not in the Civil Code. The mandate has been established as a contract meant strictly for conducting legal acts, *i.e.* it is meant to be the basis for authorisation under the law of obligations. Its regulation is relatively acceptable and applicable, permitting mandates that are clearly subject to a fee. Employment contracts are governed by the Employment Contracts Act.*[4] The regulation itself is rather retrograde and does not meet the modern needs. Under the tag of employee protection, labour law has been detached from the general provisions of the law of obligations as well as from the General Part of the Civil Code Act in practice. In the currently advocated theory, labour law is seen as a separated set of provisions to which any other legal system is not liable to be applied. Such approach is the main problem in the interpretation and implementation of labour law as a whole. The Civil Code also regulates commission contracts and deposit contracts

2 Asjaõigusseadus (Law of Property Act), adopted on 9.06.1993; entered into force 1.12.1993 – Riigi Teataja (The State Gazette) I 1993, 39, 590 (in Estonian).

3 Eesti Vabariigi rendiseadus (The Republic of Estonia Commercial Lease Act), adopted on 26.09.1990; entered into force 1.10.1990 – Riigi Teataja (The State Gazette) 1990, 12, 126 (in Estonian).

4 Eesti Vabariigi töölepinguseadus (The Republic of Estonia Employment Contracts Act), adopted on 15.04.1992; entered into force 1.07.1992 – Riigi Teataja (The State Gazette) 1992, 15/16, 241 (in Estonian).

in an acceptable manner. The Merchant Shipping Code*[5] governs special contracts related to shipping, but does it on the basis of rather outdated ideas and is in great conflict with other laws in force. At the same time, there is no contract in Estonian laws clearly and generally aimed at the performance of work and not at the achievement of a result (as the contract for services is), the object of which is not the performance of legal acts (mandate) and which is not be based on the traditional dependent relationship between the employer and the employee, which serves as the main criterion for defining an employment contract. Hence, no legal regulation exists for such important contracts as contracts for the provision of medical services, agency contracts and contracts with executives of companies. This can be considered the major flaw of the existing system. Practically non-existent in the Civil Code is the regulation of contracts of carriage, while the existing regulation is not applied in practice either. In addition, there are no generally accepted standard conditions and the majority of carriers directly rely on the rules of the CMR Convention*[6] in their mutual relationships. Credit transfer relationships (including the matters related to credit cards) are based on the acts of the Bank of Estonia the legal force of which is arguable. In this area, ongoing heated disputes are frequent in practice, which is indicative of the lack of legislation. Insurance contracts as a very important type of contracts have not been governed by law at all to date. For the client, the only protection is the concordance of the insurers' standard conditions with the insurance supervisory body. The situation is intolerable. The contracts of civil law partnerships have not been regulated in the usual manner despite the relatively significant position that the contracts occupy in practice. However, the Civil Code contains some general provisions concerning the contract of joint activity, which also characterise the essence of civil law partnerships. Unfortunately, the provisions are not regulative and have caused problems rather that helped to solve them.

Of **extra-contractual obligations**, the Civil Code regulates tort, unjust acquisition and retention and competition.

Similarly to the French *Code Civile*, the regulation of tort as an extra-contractual obligation is based on the general clause of compensation for damage, supplemented with provisions concerning specific liability. A general clause also regulates the liability of possessors of a major source of danger (risk liability). The employer's liability for his or her employees does not allow exculpation as in the German *BGB*. When determining the compensation for damage, both the conduct of the injured party and the financial situation of the tortfeasor are taken into account. As a negative aspect, the restrictions on the injured parties' claims for damage to health, which are based on the daily rates of minimum salary and do not take sufficient account of the individual damage caused to the injured party could be mentioned. There are no unambiguous grounds for claiming compensation for non-proprietary damage in cases other than the violation of personal rights; payment of smart money for bodily injuries is virtually unknown. The general liability of the state for performing the functions in public law has not been regulated by law, also giving rise to major disputes.

The obligations concerning unjust acquisition and retention of assets should replace unjust enrichment. The category of the unjust acquisition of assets does replace it, allowing to reclaim unjust acquisitions; yet it provides no option to submit an objection if the circumstances of enrichment have ceased to exist. In fact, however, only the *condictio indebiti* is covered. The institution of unjust retention is meant to partly cover the area which in the German *BGB* is regulated by the institution of conducting business without mandate (*Geschäftsührung ohne Auftrag*). At the same time, the regulation is very abstract and provides little support to the submission of a specific claim.

The rules of competition establish the general obligation to pay a fee for the performance of the best-promised work according to the conditions of the competition. Nevertheless, there is no general obligation concerning the obligation to actually pay the fee that was promised in public, which has also caused problems in practice.

3. Reform of law of obligations

As mentioned above, the Civil Code still applies largely in the area of the law of obligations. Despite the adjustment of the provisions to the requirements of the new social order it is inconceivable to continue to regulate relationships under the law of obligations pursuant to the law of the occupying state, particularly as it was meant to regulate completely different relationships. To date, the majority

[5] Kaubandusliku meresõidu koodeks (Merchant Shipping Code), adopted on 09.12.1991; entered into force 1.03.1992 – Riigi Teataja (The State Gazette) 1991, 46/48, 577 (in Estonian).

[6] Convention on the Contract for the International Carriage of Goods by Road, 19.05.1956, Geneva.

of other states that used to be in the shadow of the former Eastern bloc have abandoned the old regulation, even Russia has adopted a new Civil Code. Unfortunately, the progress of the reforms in Estonia has been slow. The Ministry of Justice initiated the preparation of a new private law already in 1993. The new acts were to be based on the draft Civil Code of 1940. Yet it appeared in the course of preparation that the draft had become outdated in many respects and was unsuited to the changed social situation. Above all, it concerned family law and the law of obligations. It took about two years to come to this realisation, after which it was decided to develop the whole Law of Obligations Act on the conceptual basis of modern civil law.

Intensive work on the draft began in 1995. The working group mainly consisted of persons connected with the Ministry of Justice, also including scholars and practitioners of the University of Tartu. In a short time, a relatively small number of people went through numerous laws of other states, as well as their legal theories and practice. In the course of work, new areas of regulation have been added to the draft and the existing regulations have been constantly improved. The work has lasted till the present time. An expert assessment of the draft was conducted by several European leading specialists of private law. The contribution of Professor Dr. Peter Schlechtriem (Freiburg University, presently working in Oxford) to the preparation of the entire draft deserves special emphasis.

The Law of Obligations Act aims at creating as homogeneous regulations as possible in the whole area of the law of obligations, including, *inter alia*, provisions of residential lease contracts and insurance contracts. It is the only way to avoid potential conflicts between regulations and the abundance of provisions between, for instance, commercial law and general civil law.

A definite criterion for the selection of sources was to proceed from the law of obligations of such countries that have served as models for the preparation of other legal acts in private law. Steady development of a systematic and complete legal system can be ensured only through homogenous sources, thus achieving the main aim of positive law — its applicability being accepted by the society. Another criterion for preparing the draft was its orientation to the future. Efforts have been made to take into account recent developments in Europe in the draft and the development of the draft has been based thereon.

The specific part of the Law of Obligations Act provides the regulation of different types of contracts. However, the specific part of the Law of Obligations Act does not give a comprehensive list of the types of contracts. Most types of modern and distinguishable contracts have been regulated — these were the criteria for the separate regulation of a particular type of contract. At the same time, proceeding from the principle of the freedom of contract and on the condition that the contract is not in contradiction with the contents and meaning of the law, the parties may enter into a contract the content of which can not be categorised under any type of contract. The preparation of the specific part of the Law of Obligations Act was aimed at incorporating all contracts regulated in Estonia in the Law of Obligations Act. Any type of contract is in itself an object of regulation in the law of obligations, which means that incorporating the regulation of all contracts in one legal act is in accordance with the codification principle recognised in Estonia. In principle, it does not preclude the regulation of a particular type of contract in a separate legal act, but it would not be in accordance with the civil law codification principle and there would be no practical necessity, since all important types of contracts have been included in the draft.

The draft is one of the most voluminous drafts in the history of Estonian legislation, containing approximately 1,300 sections. The draft is presently being processed in the Estonian parliament (*Riigikogu*) where, regrettably, some delays have occurred. Hopefully, the Act will enter into force without major changes in 2002 at the latest.

4. Bases for Law of Obligations Act

4.1. European Union law

Estonia, as a country striving for accession to the European Union (EU), cannot but meet all requirements of the European Union for legislation, including those in the area of the law of obligations (mainly focused on consumer protection). At present Estonia probably fails to meet the provisions established for the law of obligations in the EU in most respects and our consumers are in a relatively defenceless position. Therefore, meeting the requirements of the EU has been one of the priorities during the preparation of the draft. From the very beginning, the drafters of the Law of Obligations Act attempted not to copy the rules of the EU literally, but to incorporate them into the rest of the system and harmonise the directives creatively in order to avoid possible later conflicts

upon the application of national law. Unfortunately, contradictions and problems surfaced with regard to the directives themselves, which further complicated their incorporation.

The draft contains, *inter alia*, the requirements of EU directives concerning liability for defective products[*1], contracts negotiated away from business premises[*2], consumer credit[*3], package travel contracts[*4], unfair terms of contracts[*5], timesharing[*6], distance contracts with consumers[*7], sale of consumer goods[*8] and cross-border credit transfers.[*9] In addition to this, the draft takes into consideration EU directives concerning insurance contracts and employment contracts. EU requirements for the *Handelsvertreter*[*10] have also been incorporated. Electronic payment instruments have been regulated in compliance with the EU recommendation.[*11]

4.2. Laws of other countries and international law

The preparation of the draft was based on three civil codes — the German *BGB* (taking into consideration the reform proposals made by the Commission for the Revision of the Law of Obligations, *BGB-KE*[*12]), the Swiss *OR*[*13] and the Dutch *Burgelijk Wetboek*. Thus, the bases were the legal systems that have also served as the foundation for the reform of other legal acts in private law and that are probably the closest to our legal system and its traditions. Besides this, an important role was played by the German *HGB* and Insurance Contract Act as well as other German laws regulating the law of obligations issues. Furthermore, the Italian *Codice Civile*, the new Russian Civil Code[*14], legal acts of the State of Louisiana, USA, the province of Quebec in Canada and the Scandinavian countries (Sweden, Finland and Denmark) concerning contracts for the sale of goods and compensation for damage as well as the Czech Commercial Code, the Japanese Civil Code and the legal acts of many other countries were examined in the course of drafting.

Besides national laws, a number of international conventions were taken account of during the preparation of the draft. The most important among them is undoubtedly the United Nations Convention on Contracts for the International Sale of Goods (CISG). An important role was also played by the Convention on the Contract for the International Carriage of Goods by Road (CMR) and conventions concerning the circulation of bills of exchange and cheques.[*15] The bases for leasing and factoring contracts were the respective UNIDROIT Conventions concerning the international circulation of the above-mentioned institutions.[*16] The provision of healthcare services was regulated on the basis of the Council of Europe Convention on Human Rights and Biomedicine.

1 85/374/EEC: Council Directive of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the member states concerning liability for defective products.

2 85/577/EEC: Council Directive of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.

3 87/102/EEC: Council Directive of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the member states concerning consumer credit; 90/88/EEC: Council Directive of 22 February 1990 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the member states concerning consumer credit.

4 90/314/EEC: Council Directive of 13 June 1990 on package travel, package holidays and package tours.

5 93/13/EEC: Council Directive of 5 April 1993 on unfair terms in consumer contracts.

6 94/47/EEC: Directive of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.

7 97/7/EC: Directive of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.

8 1999/44/EC: Directive of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

9 97/5/EC: Directive of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers.

10 86/653/EEC: Council Directive of 18 December 1986 on the co-ordination of the laws of the member states relating to self-employed commercial agents.

11 97/489/EC: Commission Recommendation of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder.

12 Abschlussbericht der Kommission zur Überarbeitung des Schuldrechts, 1992.

13 Bundesgesetz vom 30. März 1911 betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches (Fünfter Teil: Obligationenrecht).

14 Grazhdanskii kodeks Rossiiskoi Federatzii, 1995.

15 Genfer Abkommen vom 7. Juni 1930 über das Einheitlichen Wechselgesetz und von 19. März 1931 über das Einheitlichen Scheckgesetz.

16 UNIDROIT Conventions on International Financial Leasing, 20 May 1988, Ottawa; on International Factoring, 28 May 1988, Ottawa.

Due attention was paid to the conventions and recommendations of the UNCITRAL and the International Chamber of Commerce regarding payment guarantees*[17], documentary credits and collection.*[18]

4.3. Model laws and drafts

A variety of model laws and projects of different national legal order reforms were of great importance for the preparation of the draft. The Principles of European Contract Law and UNIDROIT Principles of International Commercial Contracts had a major impact on the draft. One of the most important examples was the *BGB-KE* as well as the preceding and following *BGB* reform projects. An important source for the regulation of compensation for damage was the corresponding Swiss draft.*[19] An inspiring example for the regulation of the cession of claims was the UNCITRAL project pertaining to the cession of international financial claims. In the course of drafting, the working group also examined the legislative reform plans of many other countries and the drafts of possible future EU regulations.

4.4. Law applicable in Estonia

Naturally, the draft was also based on the currently applicable Civil Code and on the pre-war draft Civil Code. Since the main concepts of both of these legal acts are similar to the civil codes in force elsewhere in Europe, but at the same time the whole law of obligations has undergone rapid development, the role of these legal acts in the preparation of specific provisions remained rather marginal.

17 United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, 11.12.1995, New York.

18 Uniform Customs and Practice for Documentary Credits (UCP 500).

19 Schweizerische Entwurf für die Gesamtrevison des Haftpflichtrechts, 1991.