ARBITRATION CLAUSE – IS IT TRANSFERRED TO THE ASSIGNEE?

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1. INTRODUCTION

The question whether an arbitration clause is transferred to the assignee in cases of assignment of receivables, has remained a major problem even after the text of the UNCITRAL Convention on the Assignment of Receivables in International Trade (hereinafter: Receivables Convention) was finalized in 2001. Aims of the treaty are "to promote the movement of goods and services across national borders by facilitating increased access to lower-cost credit"...to "remove legal obstacles to certain international financing practices, (...) to "enhance security and predictability with respect to the law applicable to key issues", and to "harmonize domestic assignment laws by providing a regime governing priority between competing claims for States to opt-into".[2] The Convention needs five accessions for entry into force, however, only Luxembourg has signed it so far[3] (status of 30 August 2003).

Hence, in this case, two major issues are concerned: arbitration and international assignment of receivables. The first one, arbitration, has an important role amongst means of dispute resolution. This results from its numerous advantages, e.g. more effective consideration of professional points of view, cheaper and speedier procedure compared to that of the state courts[4], neutrality and guaranteed enforceability with the assistance of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter: the New York Convention)[5]. Moreover, in the era of modern developed economy enormous amounts of money are involved in business transactions, which implies several supplementary issues and legal institutions including payment, banking activities etc. The Receivables Convention was also necessary because of the fact that the assignment of receivables has recently become even more widespread than it used to be. In search for quick and effective means of dispute resolution, assignment cases are more frequently dealt with by arbitrators. This is where the question of the article rises – whether an arbitration clause can be transferred from an assignor to an assignee when the receivables included in a certain contract *are* assigned to the latter.

2. THE MAIN QUESTION – IS THE TRANSFER AUTOMATIC?

The principle of automatic transfer has developed in the Roman law, namely in the *ius commune*. It has also been acknowledged in both continental and common law systems. In practice, however, the tendency is that the validity of arbitration clauses must be examined not only according to conflict of laws rules and substantive legal provisions but also with regard to specific rules of arbitration.

The expression 'automatic' concerns so-called 'further rights' other than those which are undisputedly the subject of transfer (e.g. money or other receivables). Therefore, automatic transfer applies to accessory rights deriving from the original (basic) contract and they *are* transferred to the assignee if the receivables were validly assigned to a third party. The general tendency in practice has recently become automatic transfer of all, including accessory, rights and this is underlined by international and national arbitration practice[6].

[2] http://www.uncitral.org/english/texts/payments/paymentsindex.htm
[3] Luxembourg ratified the Convention on 12 June 2002.
[4] Born p.7-
[5] Roth-Wulff-Cooper p. 3-4.; Berger p. 726-
[6] Code Civil (France): 1692. §; The Netherlands: B.W., Boek 6., 142. §.,; Belgium: B.W. 1692. §; Switzerland: CO 170.§ (1).

With regard to theoretical issues, firstly, the question whether an arbitration clause is a contractual collateral or a real accessory right, must be taken into account. According to a decision by the German Federal Constitutional Court[7], arbitration clauses and contractual collaterals work analogously (as provided by Art. 401 BGB), and the arbitration clause is a means of enforcing payment, therefore, it took the opinion that the arbitration clause is automatically transferred. This point of view was shared by Art. 1394 ABGB which implies that „the assignee's rights concerning the assigned receivables are the same as those of the assignor's". Furthermore, Art. 170 (1) of the Swiss Obligation Law (Schweizerisches Obligationsrecht) states that „the assignment of receivables includes the advantages concerning the receivables and the right deriving from it". Art. 1692 of the Code Civil further emphasizes this view by saying that „the assignment includes the transfer of all accessory rights related to the receivables".

However, according to other opinions (e.g. the Receivables Convention), that arbitration clauses are not contractual collaterals because they do not operate like 'real' contractual guarantees e.g. warrant or hypothec. According to these opinions, automatic transfer concerns accessory rights and not arbitration clauses because the latter are not in close connection with the receivables themselves i.e. the existence of the receivables is not dependant on the validity of the original contract[8]. Even if this opinion was right, the nature of arbitration clauses implies that transfer *is* possible for the following reasons. On the one hand, an arbitration clause is always laid down with regard to the fact that legal disputes may occur. Therefore, the clause itself would not be interpretable if there was not any possibility of and reference to an incidental legal dispute. On the other hand, if the arbitration clause was not transferred in cases of assignment, the whole clause would be meaningless since its application could be evaded simply by assigning it to a third party. This opinion was emphasized in the *Hosiery Mfg. Corp. v. Goldston* case where the Court of Appeals in New York expressed that none of the parties can deprive the other of the advantages of arbitration[9]. Other American courts have also stated that the transfer is automatic because if it was not, assignment of rights deriving from the original contract would be modified unilaterally since in that case, means of dispute resolution different from what was laid down in the original contract would have to be used[10].
What other factors strengthen the principle of automatic transfer? Some courts have stated that the principle of reasonableness supports the idea[11]. Therefore, an arbitration clause operates as a procedural means of enforcing rights deriving from a contract. On the other hand, automatic transfer serves for the protection of the debtor. It ensures for the debtor to be able to enjoy the benefits of arbitration and not to be obliged to go to a state court. Debtor protection is appropriate if the possibility of neutral arbitration originally provided for in the contract is

[7] Bundesgerichtshof: III Zivilrecht 2/96, 2 October 1997; Bundesgerichtshof: III Zivilrecht 18/77, 28 May 1979, Neue Juristische Wochenschrift; Bundesgerichtshof: III Zivilrecht 103/73, 18 December 1975.
[8] Lionnet p. 65, cf. Girsberger-Hausmaninger p. 121, 131, 137, 139.
[9] Hosiery Manufacturing Corp. V. Goldston 238 N.Y. 22. (NewYork Court of Appeal 1924), 28; GMAC Commercial Credit LLC v. Springs Industries, Inc. 44 Uniform Commercial Code Reporting Service, Second Series (Callaghan) (hereinafter: Rep.Serv.) 903 (United States District Court, Southern District of New York (hereinafter: S.D.N.Y.)2001.)
[10] GMAC Commercial Credit LLC v. Springs Industries, Inc. 44 Uniform Commercial Code Reporting Service, Second Series (Callaghan) 903 (S.D.N.Y. 2001.): „an assignment cannot alter a contract's bargained-for remedial measures, for then the assignment would change the very nature of the rights assigned"; Cone Constructors Inc. V. Drummond Community Bank 754 So. 2d 779 (1st District Court of Appeal of Florida,. 2000); Banque de Paris et des Pays-Bas v. Amoco Oil Company 573 Federal Supplement (hereinafter: F. Supp.) 1464 (S.D.N.Y 1983), 1469; Robert Lamb Hart Planners and Architects v. Evergreen Ltd. 787 F. Supp. 753 (United States District Court, Southern District of Ohio 1992).
[11] ICC No. 3281, 1981.; ICC No. 1704, 1977.; ICC No. 2626, 1977..

harmed because in those cases the debtor is not obliged to take part in less advantageous proceedings[12].

Another factor that emphasizes automatic transfer is the requirement of legal certainty. In practice, state courts reject the assignee's claim if the debtor refers to an arbitration agreement laid down in the original contract[13]. State courts explained automatic transfer with the fact that otherwise, by assigning the receivables, the other party would ensure for himself proceedings before a state court. The latter reasoning provides for the possibility of the transfer which is not only possible but also automatic. Besides, validity of the arbitration clause is not affected by the assignment either. The assignee has the chance to examine the clause even before the assignment took place. Therefore, a party cannot say that he is not affected by the arbitration clause once he accepted the legal relationship 'as it is'. Including an arbitration clause into a contract means that solely arbitration is open for an incidental dispute resolution, all other ways, e.g. state court jurisdiction, are excluded. Hence, the assignee will be obliged to refer a dispute to arbitration by all means, even if there was no direct connection (agreement) between himself and the original contracting party.

Full transfer of the arbitration clause is supported by practical cases as well. The French Court de Cassation has recently laid down that „an international arbitration clause, the validity of which depends only on the parties' intentions, is transferred to the assignee along with the rights related to the receivables and in the same form and way as they were valid between the assignor and the original contracting party"[14]. The Paris Court of Appeals referred to financial interests when emphasizing automatic transfer of the arbitration clause in the C.C.C. *Filmkunst* case[15]. The court expressed that the party to which the exploitation rights of a film were assigned, is bound to the arbitration clause. It stated that assignment implies that the assignor assigns the beneficiary means of arbitral dispute resolution with regard to the fact that the clause is related to financial aspects of the contract. This reasoning is imperative because both the assignee and the original contracting party have financial interests in turning to arbitration. The District Court of New York went on to build up a procedural principle by stating that „an assignee is (...) is bound by the remedial provisions bargained for between the original parties to the contract"[16].

[12] According to Girsberger & Hausmaninger, there is no neutrality if the seat of the assignee is the same as that of the arbitral tribunal, or if the assignee is a native of that country the law of which was chosen as applicable law by the original parties, especially if this results in a close connection with the previously nominated arbitrator. (p. 146-147)

[13] Cour de Cassation, 19 October 1999, Revue de l'Arbitrage (Rev. Arb.) 2000, 86; Paris (1re Ch Urg.), 20 April 1988, Rev. Arb., 1988, 570; GMAC Commercial Credit LLC v. Spring Industries, Inc. (U.S. District Court, S.D.N.Y., 24 April 2001, 00 Civ. 2893 (NRB); DiMercurio v. Sphere Drake Insurance Plc. (U.S. Court of Appeals, First Circuit, 31 January 2000, 202 F.3d 71); Heirs of Augusto L. Salas, Jr v. Laperal Reality Corp., (Supreme Court of the Phillippines, 13 December 1999, G.R. No. 135362); Cone Constructors, Inc v. Drummond Community Bank (Court of Appeal of Florida, First District, 10 June 1999, 754 So.2d 779); Thomson-CSF, S.A. v. American Arbitration Association (U.S. District Court, S.D.N.Y., 31 October 1983, 573 F.Supp 1464); Lumbermens Mutual Casualty Company v. The Borden Company (U.S. District Court, S.D.N.Y. 7 April 1967, 268 F.Supp. 303); Instituto Cubano v. The MV Driller (U.S. District Court, S.D.N.Y., 11 February 1957, 148 F. Supp. 739).

[14] Banque Worms v. Bellot, Cass. 1e Ch. C., 05.01.1999, No. S. 96-20.202, Rev. Arb. 2000, 85 (86)

[15] C.C.C. v. Filmkunst, CA Paris, 28.01.1988, 1988 Rev. Arb. 567.

[16] Banque de Paris et des Pays-Bas v. Amoco Oil Company, 31.10.1983, S.D.N.Y. 573 F.Supp. 1464 (1469).

3. IS AUTOMATIC TRANSFER EXCLUSIVE?

In spite of all those arguments supporting automatic transfer of the arbitration clause from the assignor to the assignee, still there are some practical examples of the fact that the clause is not always assigned. Three main points will be discussed here: first, 'deliberate' actions excluding transfer of the arbitration clause ('express clause', informing the debtor of exclusion) and then 'implied' theoretical factors making automatic transfer impossible (intuitu personae and separability).

3.1. 'Deliberate' actions excluding automatic transfer

Two main cases of these 'deliberate' actions must be named here. The first one is called using an 'express clause' in order to exclude automatic transfer of the arbitration clause if the parties want it to be effective only between themselves and exclude third parties (e.g. assignees) from it.

The parties are obliged to set out beyond doubt that the clause is of personal nature and it cannot be transferred at all. The express exclusion must be in writing and in detail. Mentioning the names of the parties throughout the whole contract is not enough for such an exclusion because, according to related practice, it can only be interpreted and evaluated as a form of naming the parties but it does not fulfil the requirements of a separate and detailed exclusion in writing (express clause). Therefore, a contract using the names of the parties is valid not only between the original contracting parties but it results that it is not valid only between themselves but the arbitration clause may apply to third parties, i.e. assignees, too. Even if one of the parties had the opinion that the clause is not applicable to an assignee, these kinds of secret reservations can be taken into account only if they are shared by the other party as well[17]. Yet, an American court overruled this point of view by stating that an arbitration agreement reflecting the parties' intentions must be interpreted literally and not extensively[18].

Turning to the question in which cases it is useful and necessary to exclude third parties from the arbitration agreement, two main possibilities have to be mentioned. Firstly, there are cases when the possibility of the assignment has already occurred at the time of concluding the contract and the arbitration clause. Alternatively, the parties may, at the time of the conclusion of the contract and the arbitration clause, be aware of a possible subsequent assignment. In such cases, the debtor might have to face an unknown and unfavourable assignee. It is also possible that several arbitration proceedings at the same time would be brought against the debtor. The latter situation might occur if separate receivables were to be assigned separately and different arbitration proceedings were initiated concerning each of those receivables[19]. With regard to all these dangers and uncertainties concerning the assignability of the arbitration clause, parties to a contract had better precisely clarify in writing whether the clause was meant to be applicable only between themselves or it can be assigned to a third party. Such an appropriate clarification is for example the following: „This agreement to arbitrate is binding only upon the signatories hereto and not to their successors or assigns"[20]. In order to avoid

[17] Zweigert-Kötz p. 402; UNIDROIT Principles 4.1.; CISG Art. 8.; Principles of European Contract Law 2:102.
[18] McCarthy v. Azure, 22 F.3d 351.
[19] See: Dr. Vincze Andrea: A választottbírósági klauzula jogi sorsa a szerződésben foglalt követelés engedményezése esetén - Nemzetközi kitekintés , In: Cég és jog, 2003/1-2, p. 42-45.
[20] Born: International Arbitration and Forum Selection Agreements, p. 81.

misinterpretations or failures in applying the arbitration clause, the original contracting parties should provide for the exclusion or admittance of third parties – otherwise they should not be surprised if problems occurred regarding the interpretation of the arbitration clause.

After having examined the first means of excluding automatic transfer, the second one will be analysed. This implies that transfer is not automatic either if the assignee informs the debtor that he does not consider the clause valid to himself. According to a decision of an American court[21], the assignee can ask for the debtor's permission that the receivables be transferred to him (the assignee) without the arbitration clause. This opinion was further developed by another court which stated that the assignee may be released from the requirement if it can show that it has given „proper notice of the limited nature of its involvement, or by obtaining a separate and legally sufficient agreement with the account debtor that the debtor will pay without asserting offsets or counterclaims"[22].

Consequently, automatic transfer is overruled if the assignee commits pre-determined, deliberate actions in order to avoid it. This implies explicit exclusion of transferring the arbitration clause to third parties or informing the debtor of neglecting the arbitration clause either by making a literal agreement on it or by expressing that the debtor will not initiate proceedings against the assignee if he does not intend to be bound to the arbitration clause. Next, 'implied' factors denying automatic transfer will be dealt with.

3.2. 'Implied' factors making automatic transfer impossible

There are some factors which, by themselves, make automatic transfer of an arbitration clause impossible. They are referred to as 'implied' because their main and original purpose is not the avoidance of automatic transfer but they serve other specific aims concerning the performance of the contract (intuitu personae) or they are based on an important theoretical feature of the relationship between the main contract and the arbitration clause (separability).

The first 'implied' factor is the institution of 'intuitu personae'. According to the definition, the arbitration clause is not transferred to the assignee if the original contract was concluded with regard to the fact that the other contracting party was chosen for a specific reason (intuitu personae) and therefore, possible assignees and other entities acting on behalf of the assignor would not be able to perform as good as the original contracting partner. The mentioned specific reason can be any special ability, confidential or long-term business relationship between the parties. Besides these special features, the contractual partner must trust the other party's good faith and he must accept that particular means of dispute resolution. Therefore, automatic transfer is possible only if one can prove that the legal relationship is exempt from the above mentioned features.

Consequently, the implied factor in this case is that the parties concluded the original contract with regard to a special ability or relationship, which was originally aimed at achieving the best performance possible. However, the 'background' effect of this confidential relationship means that the arbitration clause refers to the original contractual partner and therefore, the arbitration clause must not be transferred to any subsequent third party.

[21] GMAC Commercial Credit LLC v. Springs Industries, Inc. 44 U.C.C. Rep. Serv. 2d (Callaghan) 903 (S.D.N.Y. 2001)
[22] Banque de Paris et des Pays-Bas v. Amoco Oil Company 573, F. Supp. 1464 (S.D.N.Y. 1983), 1466.

Under what circumstances can a party refer to the fact that the contract was not concluded intuitu personae and therefore, the arbitration clause *is* automatically transferred to the assignee?

One of these cases is when the performance of the contract does not require any special skills of the other party or any special confidential relationship between the parties[23]. In other words, it is the negative wording of what was mentioned before, namely the criteria of the 'specific reason'. Back to the latter reasoning, if the personality of the other contracting party was not a determining factor in signing the original arbitration agreement, it can be assumed that the other party to the contract implicitly agreed to transfer the clause by assigning it to a third party[24]. However, this is still not enough. It must also be taken into account that in most cases the basis of arbitration clauses is not primarily the confidential relationship with the other party but the validation of the advantages of arbitration. In the *Shayler v. Woolf*[25] case automatic transfer was found by the Court of Appeals of England by stating that an arbitration clause is not of personal nature. A contrary reasoning was born in the *Cottage Club Estates v. Woodsides Estates Co.*[26] case where the same court ruled that the arbitration is of personal nature but it must be examined in each and every case – i.e. there are no general rules of determining whether the clause is of personal nature and such rules are not necessary either.

The other 'implied' factor concerning the exclusion of automatic transfer is a widespread point of view distinguishing between substantive legal and procedural aspects of a contract. According to the principle of separability, if the contract containing the clause is invalid or void, the arbitration clause is still valid, i.e. it is separable from the main contract[27]. Consequently, it is also possible that the main contract and the arbitration clause are governed by different laws.

The doctrine of separability can be interpreted in two main ways concerning the assignment of receivables. On one hand we can contend that autonomy of the arbitration clause results that it cannot be transferred to the assignee, and on the other hand we can assume that the aim of the doctrine is to ensure arbitration even if the clause itself is void or invalid.

Looking at the first alternative, what evidence underlines the submission that the autonomy of the arbitration clause means intransferability? According to practical cases[28], the arbitration clause is an autonomous procedural agreement which is separate from all other aspects of the contract. Consequently, as the assigned receivables are included in the main contract, the clause separate from the latter is not assigned to the assignee. This kind of autonomy also suggests that different laws might be applicable to the main contract and the autonomous arbitration clause because the latter is, thus, not affected by changes regarding the main contract[29].

[23] Application of Reconstruction Finance Corp. V. Harrions & Crosfield, Ltd. (106 F.Supp. 358 (S. D.N.Y 1952) 360); Kelso p. 89.
[24] Fouchard-Gaillard-Goldman p. 431.
[25] Shayler v. Woolf (1946) Ch. 320 (323)
[26] (1928) 2 KB 463, 466.
[27] Fouchard-Gaillard-Goldman: no. 410; Girsberger-Hausmaninger p. 121.; Raeschke-Kessler-Berger No. 379-től; Redfern-Hunter No. 5-30.
[28] Sojuznefteexport v. Joc Oil Ltd., YCA 1998, 745.; IMP Group v. Aeroimp, Moscow District Court, Yearbook Commercial Arbitration 1998, 745.
[29] Fouchard – Gaillard – Goldman p. 470.

Another consequence of the autonomy of the arbitration clause implies that the arbitration agreement forms a fully separate contract and therefore arbitration is not only a right but also an obligation for the original parties – yet, exclusively for the original parties, which means that the arbitration clause cannot be transferred to an assignee[30]. However, several scholars say that this latter statement can be overruled[31], i.e. the arbitration clause *can* be transferred to the assignee but only if *all* parties involved in the legal relationship have agreed to it. A similar argumentation can be found in Art. 15 (1) of the Receivables Convention but that one implies that the arbitration clause can be transferred to the assignee without any special act as well. According to the provision, "Except as otherwise provided in this Convention, an assignment does not, without the consent of the debtor, affect the rights and obligations of the debtor, including the payment terms contained in the original contract." Interpreting this rule, as transferring the arbitration clause does not affect or alter any such rights and obligations, the legal situation of the debtor remains the same and consequently, automatic transfer *is* possible.

This is what leads us to the second way of interpreting the doctrine of separability. Therefore, it can also be contended that the aim of the doctrine is to ensure arbitration even if the clause is void or invalid. This means that autonomy is to be interpreted in a way that the assignee is bound to arbitration, even if there are legal disputes concerning the main contract, e.g. the assignment itself. Therefore, separability is aimed at ensuring and encouraging arbitration in any case[32].

Summarizing the application of separability, we can contend that exact interpretations can be different. Therefore, once again, we have to emphasize that the most secure way is to lay down clearly in the original contract (or in the arbitration agreement) whether the arbitration clause can be transferred or not. Doing so, many subsequent problems of interpretation can be avoided.

4. THE INTERPRETATION OF THE 'WRITING-REQUIREMENT' IN CASES OF ASSIGNMENT

It is a requirement of concluding an arbitration agreement that it must be in writing[33]. However, if an arbitration clause is transferred (assigned) to a third party who originally had nothing to do with the basic contract and the other contracting party, the question rises whether the latter requirement applies here. Alternatively, is it sufficient in cases of assignment that there is a written arbitration agreement only between the original parties (and it is analogously transferred to the assignee) or is the arbitration clause valid between the assignee and the original contracting party only if they concluded another, separate arbitration clause?

In examining this question, firstly, the principle of the priority of the contract must be taken into account. This has two main aspects – first, that only those parties can refer to an

[30] AT & T Technologies, Inc. V. Communications Workers of America et al., 475 U.S., 643., 649., 106 S.Ct., 1415, 1419; Lachmar v. Trunkline LNG Company, 753 Fed. Rep. 2nd Series, p. 8., 10; Laborers Intern. Union v. Foster Wheeler Corp., 868 F.2d 573, p. 576.
[31] Schricker p. 103-105., Schopp p. 259., Girsberger-Hausmaninger p. 121.; Schwab-Walter: Kap. 7., No. 32.; Farnsworth 11.10 §, p. 742.
[32] Weinacht p. 9-10.; Trade Finance Inc. V.Bulgarian Foreign Trade Bank Ltd. (Stockholm Chamber of Commerce, 5 May 1997); Hosiery Manufacturing Corp. V. Goldston (238 N.Y. 22, New York Court of Appeal 1924)
[33] Art. 7 (2) of the UNCITRAL Model Law on International Commercial Arbitration; Art. II 2. New York Convention.

arbitration clause who originally agreed to turn a possible legal dispute to arbitration[34]. Secondly, arbitration as a contractual question means that the party which did not expressly agree to the clause, cannot be obliged to take part in arbitration[35]. This is supported by the view that it is the arbitration clause "which gives rise to the consensual and predominantly bilateral nature of the arbitration to the exclusion of third parties"[36]. According to van den Berg and Reithmann & Martiny[37], the requirement of writing relates to both drafting the clause and transferring it to a third party. Therefore, referring to an oral or an implicit agreement is not enough for transferring the arbitration clause.

Representatives of the contrary point of view state that the 'writing-requirement' does not apply to parties entering into a legal relationship subsequently. According to Girsberger & Hausmaninger[38], the requirement of writing set out in Art. 7 (2) of the UNCITRAL Model Law on International Commercial Arbitration refers only to the original contracting parties. It aims at protecting the contracting parties and making them aware of the consequences of their agreement. Furthermore, lack of the 'writing-requirement' could *only* be objected to by the assignee because he is the only one who did not take part in concluding the original contract. Consequently, both necessity and ignorability of the 'writing-requirement' are present and at the same time disputed in theory and in practice. Final resolution of the question might depend on tendencies in practice.

5. SUMMARY

With regard to the fact that international trade and commerce is developing at a rapid pace, several new problems might emerge. However, development cannot be hindered either by too extensive interpretation or by too casuistic regulation.

Assignment of receivables is truly a complex legal institution. Although the main rule seems to be automatic transfer, each and every case is to be determined separately.

The mentioned exceptions to the main rule emphasize that special legal characteristics, security of trade and commerce and legal security have a very special role in practice. We can also contend that judicial discretion and 'equity' have a lot to do in such cases but it does not mean that, without exact legal provisions, the legal fate of the arbitration clause would be degraded by certain interests. As relevant cases have proven, imperative rules of law are always in the first place in governing the problem of assignment, and some kind of general tendency is being developed.

However, the text of the Receivables Convention has already been finalized but it has not entered into force yet. More effective solutions and a unified interpretation of the transfer of the arbitration clause will only be instituted if the Convention will be more generally

[34] Fouchard-Gaillard-Goldman p. 280.

[35] Labors International Union of North America v. Foster Wheeler Corp., 868 F.2d 573, 576; Reyes Compania Naviera S.A. v. Manumante S.A., 649 F.Supp. 789, 791; Nicholas A. Califano, M.D. v. Shearson Lehman Bros., 690 F.Supp. 1354, 1355.
[36] Russel, p. 5, 1-003.
[37] van den Berg p. 206; Reithmann-Martiny-Hausmann, no. 2341.
[38] [38] Girsberger-Hausmaninger p. 138, Rubino-Sammartano p. 229, Loquin p. 1030, UNCITRAL Model Law on International Commercial Arbitration 16. §.

widespread. Until that time, theoretical and practical tendencies can be followed by courts and unified methods and interpretations must be urged in order to lay down the foundations of a generally accepted doctrine of 'automatic transfer' and the exceptions to it.

BIBLIOGRAPHY

Berger, Klaus-Peter: International Economic Arbitration. Deventer, Boston, 1993.
(cited as: Berger)

Born, Gary: International Arbitration and Forum Selection Agreements – Planning, Drafting and Enforcing. The Hague, 1999.
(cited as: Born: Int. Arb. and Forum Selection Agreements)

Born, Gary B.: International Commercial Arbitration in the United States, Commentary and Materials. Deventer, Boston 1994.
(cited as: Born)

Farnsworth, E. Allan: Contracts. 3rd Ed., 1999.
(cited as: Farnsworth)

Fouchard, Philippe – Gaillard, Emmanuel – Goldman, Berthold: Fouchard, Gaillard, Goldman on International Commercial Arbitration. Szerk.: Gaillard, E.- Savage, J., The Hague, Boston, London 1999.
(cited as: Fouchard-Gaillard-Goldman)

Girsberger, D. – C. Hausmaninger: Assignment of Rights and Agreement to Arbitrate. 1992 8 (2), Arbitration International 121-165.
(cited as: Girsberger-Hausmaninger)

Kelso, R.C.: International Law of Commerce. 2. Kiadás, New York, Dennis & Co., Inc., 1961.
(cited as: Kelso)

Lionnet, Klaus: Handbuch der internationalen und nationalen Schiedsgerichtsbarkeit. Stuttgart, München, Hannover, Berlin, Weimar, Dresden, 1996.
(cited as: Lionnet)

Loquin, Eric: Note on Filmkunst Decision. 116 Journal de Droit International (1989) 1025.
(cited as: Loquin)

Mustill, Michael J. – Boyd, Stewart C.: The Law and Practice of Commercial Arbitration in England. London, 1982.

Raeschke-Kessler, Hilmar – Berger, Klaus-Peter: Recht und Praxis des Schiedsverfahrens. 3rd Ed., Cologne 1999.
(cited as: Raeschke-Kessler-Berger)

Redfern, A. – M. Hunter: Law and Practice of International Commercial Arbitration. 2nd Ed., London, Sweet & Maxwell, 1991.
(cited as: Redfern-Hunter)

Reithmann, Christoph – Martiny, Dieter: Internationales Vertragsrecht. 5th Ed., Cologne, 1996.
(cited as: Reithmann-Martiny)

Roth, Bette J. – Wulff, Randall W. – Cooper, Charles A.: The Alternative Dispute Resolution Practice Guide. New York, 1998.
(cited as: Roth-Wulff-Cooper)

Rubino-Sammartano, M.: International Arbitration Law. Deventer: Kluwer Law and Taxation Publisher, 1990.
(cited as: Rubino-Sammartano)

Russel on Arbitration (ed.: Sutton, David St. John; Kendall, John; Gill, Judith): Russel on Arbitration 21st Ed., London, 1997.
(cited as: Russel)

Schlechtriem, Peter: Schuldrecht – Besonderer Teil. 5th Ed., Tübingen, 1998.

Schopp, Heinrich: Die Abtretung in Schiedsgerichtsverfahren. KTS 1979, p. 255.
(cited as: Schopp)

Schricker, Gerhard: Zur Geltung von Schiedsvertragen bei Anspruchsabtretung. In: Festschrift für Karlheinz Quack zum 65. Geburtstag. Berlin, New York, 1991., 99.o.
(cited as: Schricker)

Schwab, Karl Heinz – Walter, Gerhard: Schiedsgerichtsbarkeit, 6th Ed., München, 2000.
(cited as: Schwab-Walter)

Van den Berg, A.J. (ed.) : International Dispute Resolution: Towards an International Arbitration Culture. The Hague, Kluwer Law International, 1998.
(cited as: van den Berg)

Weinacht, F.: Party Succession in Agreements to Arbitrate, Sweden Backs Down On Practical Considerations. (1999) 14/9 Mealey's International Arbitration Report 1.
(cited as: Weinacht)

Yearbook Commercial Arbitration 1992

Zweigert, Konrad – Kötz, Hein: Einführung in die Rechtsvergleichung aug dem Gebiete des Privatrechts. 3rd Ed., Tübingen, 1996.
(cited as: Zweigert-Kötz)

LIST OF LEGAL AUTHORITIES

ABGB [Allgemeines Bürgerliches Gesetzbuch] – Austrian Civil Code

BGB [Bürgerliches Gesetzbuch] – German Civil Code

Code Civil – the French Civil Code

Schweizerisches Obligationsrecht - Swiss Obligations Law

UNCITRAL Convention on the Assignment of Receivables in International Trade

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards