

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.

INTRODUCTION

1. This provision deals with actions preparatory to payment of the price, which are specified in the contract or in applicable laws and regulations. For example, the contract may provide for the opening of a letter of credit, the establishment of security to guarantee payment, or the acceptance of a bill of exchange. Preparatory actions required by applicable laws or regulations might involve, for example, an administrative authorization needed for the transfer of funds to enable payment to be made.

2. Article 54 is frequently cited by the courts. Although the provision is concerned solely with actions preparatory to payment of the price, many decisions nevertheless cite article 54 in cases of non-payment of the price by the buyer where the dispute did not specifically relate to steps or formalities required to enable payment to be made. In those cases, article 54 was referred to by the courts either in conjunction with article 53¹ or in isolation.² Conversely, a series of decisions rely exclusively on article 54 where the buyer has not taken such steps or complied with such formalities as might be required to enable payment to be made.³ However, the precise textual basis for the judgment against a breaching buyer is immaterial. Violation of the obligation to pay the price in accordance with article 53 and non-performance of the obligation to take steps and comply with formalities required to enable payment to be made in accordance with article 54 lead to the same outcome.⁴

3. Article 54 has a double effect. First, unless otherwise provided for in the contract, article 54 imposes these obligations on the buyer, who must thus bear the costs thereof.⁵ Secondly, the steps for which the buyer is responsible under article 54 are obligations whose violation permits the seller to resort to the remedies specified in articles 61 et seq.; they do not merely relate to "conduct in preparing to perform or in performing the contract", as stated in article 71 (1). Thus, failure to perform those steps constitutes a breach and not merely an anticipatory breach of contract.⁶

SCOPE OF THE BUYER'S OBLIGATIONS

4. The question arises whether article 54 merely obliges the buyer to perform the steps necessary to satisfy the preconditions for payment, but does not automatically make the buyer responsible for the result, or whether the buyer breaches its obligations if the measures implemented prove unsuccessful.⁷ Many decisions have adopted the second interpretation, which

is harsher for the buyer. The obligation to take steps and comply with formalities required to enable payment to be made is in all respects comparable to the obligation to pay the price. For the most part those decisions are concerned with the buyer's undertaking to issue a letter of credit or to provide a bank guarantee. A buyer who fails to issue a contractually stipulated letter of credit within the agreed period and for the agreed amount violates its obligations by that fact alone.⁸ The same is true if a buyer does not furnish a contractually agreed bank guarantee.⁹ It is also true if a buyer who gives instructions to its bank to make a transfer does not ensure that payment can be effected in convertible currency.¹⁰ On the other hand, it could be held that mere prior bank confirmation (as stipulated in the contract) of the opening of a letter of credit to be issued after inspection of each delivery was not a step required to enable payment to be made within the meaning of article 54.¹¹

5. Article 54 gives rise to particular difficulties with regard to administrative measures imposed by applicable laws or regulations in order that payment can be effected. Under one possible interpretation of article 54, a distinction is made between measures of a commercial nature, in respect of which the buyer assumes a commitment to achieve the result stated in the contract, and administrative measures, with regard to which the buyer takes on only an obligation to employ its best efforts without being answerable for the outcome. The rationale for the distinction is that the buyer cannot guarantee, for example, that administrative authorities will authorize a transfer of funds, so that the buyer should only be obliged to carry out the steps needed to obtain the relevant administrative authorization. A possible argument against this distinction is that, under article 54, the buyer is automatically responsible if a prerequisite to payment, whatever its nature, is not satisfied, subject to the possibility of exemption under article 79 of the Convention.¹²

CURRENCY OF PAYMENT

6. Article 54 says nothing about the currency of payment. Most often the parties indicate the currency when fixing the price. As several court decisions have stated, such an agreement is binding on the parties pursuant to article 6.¹³ Where the price is not contractually stipulated, reference has to be made to commercial usages (article 9 (2)) or to practices which the parties have established between themselves (article 9 (1)). In cases where the currency of payment cannot be established by these means, the method for fixing the price is unclear. There have been few court decisions which have ruled on this issue.

7. Most courts adopt the premise that the question of determining the currency of payment is governed by the Vienna Convention and not domestic law.¹⁴ Consequently, the currency has to be determined by a general principle on which the Convention is based, within the meaning of article 7 (2). Several courts have accordingly relied on article 57, which determines the place of payment of the price, and this has led them to rule in favour of the currency where the seller's place of business is located (article 57 (1) (a)).¹⁵ Conversely, one court on several occasions ruled in favour of the national law applicable by virtue of the rules of private international law, which led it to apply the domestic law governing the contract of sale on matters not covered by the Vienna Convention.¹⁶

8. The Vienna Convention does not provide for the buyer's right to discharge its debt in the currency of the place of payment if the price has been contractually specified in a different currency. Various courts have been faced with the question whether domestic laws which establish such an entitlement in the debtor's favour can nonetheless be applied under choice-of-law rules. One supreme court refused to allow this on the ground that no entitlement of the buyer to pay the price in a currency other than the currency of the contract could be derived from the Convention, since payment in an alternative currency would require an agreement of the parties to that effect.¹⁷ Conversely, lower

courts in other countries have, without giving any specific grounds, implicitly allowed the applicability, in principle, of domestic law provisions which recognize the debtor's right to discharge its debt in the currency of the place of payment.¹⁸

9. Nor does the Vienna Convention establish the seller's right to request payment of the price in the currency of the place of payment. Nevertheless, various courts have accepted the applicability of national laws which authorize or require the seller to request payment of the price in the currency of the place of payment.¹⁹

ALLOCATION OF PAYMENTS

10. Where a buyer has several debts to the seller, the buyer will generally indicate the debt which it intends to settle when effecting payment.²⁰ The Vienna Convention does not provide for a system of appropriation by law that can be applied in the absence of any indication by the buyer as to the assignment of the funds paid or any agreement of the parties. Since the Convention says nothing about this question, and there appears to be no relevant general principle on which the Convention is based, one court has applied domestic law as determined by the rules of private international law, pursuant to article 7 (2).²¹

Notes

¹ See, in particular, International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 28 September 2004, available in English on the Internet at www.cisg.law.pace.edu; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 30 December 2003, available in English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Karlsruhe, Germany, 10 December 2003, *Internationales Handelsrecht*, 2/2004, 62-65, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 22 October 2003, available in English on the Internet at www.cisg.law.pace.edu; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 17 September 2003, available in English on the Internet at www.cisg.law.pace.edu; China International Economic and Trade Arbitration Commission, People's Republic of China, 7 July 2003, available in English on the Internet at www.cisg.law.pace.edu; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 10 December 2002, available in English on the Internet at www.cisg.law.pace.edu; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 17 January 2000, available in English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Dresden, Germany, 27 December 1999, *Transportrecht-Internationales Handelsrecht*, 2000, 20, 22, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russia, 25 June 1998, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 236 [Bundesgerichtshof, Germany, 23 July 1997], *Neue Juristische Wochenschrift*, 1997, 3309, 3311; Arbitration Court of the International Chamber of Commerce, February 1997 (Arbitral award No. 8716), ICC International Court of Arbitration Bulletin, vol. 11, No. 2 (Fall 2000), 61, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 5 [Landgericht Hamburg, Germany, 26 September 1990], *Praxis des internationalen Privat- und Verfahrensrechts*, 1991, 400.

² Amtgericht Freiburg, Germany, 6 July 2007, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Tribunal de grande instance, Strasbourg, France, 22 December 2006, available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Okresný súd Nitra, Slovakia, 27 June 2006] available in Slovak and English on the Internet at www.cisg.law.pace.edu; Krajský súd Nitra, Slovakia, 23 June 2006, available in Slovak and English on the Internet at www.cisg.law.pace.edu (the fact that the invoice was also sent to a third party does not exempt the buyer from its obligation to pay the price); China International Economic and Trade Arbitration Commission, People's Republic of China, 25 May 2005, available in English on the Internet at www.cisg.law.pace.edu; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 23 March 2005 (Arbitral award No. 126, 2004), available in English on the Internet at www.cisg.law.pace.edu; Foreign Trade Court of Arbitration at the Serbian Chamber of Commerce, Serbia, 21 February 2005, available in Serbian and English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 904 [Tribunal cantonal du Jura, Switzerland, 3 November 2004]; International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry, Ukraine, 19 October 2004, available in English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Graz, Austria, 31 May 2002, available in German and English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Hamm, Germany, 12 November 2001, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Foreign Trade Court of Arbitration at

the Serbian Chamber of Commerce, Serbia, 24 September 2001, *Journal Arbitraza No. 1 (2001)*, 89, available in English on the Internet at www.cisg.law.pace.edu; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 30 May 2001, available in English on the Internet at www.cisg.law.pace.edu; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 30 May 2001, available in English on the Internet at www.cisg.law.pace.edu; Oberlandesgericht Graz, Austria, 24 January 2001, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 429 [OLG Frankfurt, Germany, 30 August 2000], *Recht der Internationalen Wirtschaft*, 2001, 383, 384; CLOUT case No. 397 [Audiencia Provincial Navarra, Spain, 27 March 2000]; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 10 February 2000, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 333 [Handelsgericht des Kantons Aargau, Switzerland, 11 June 1999]; Hamburger Freundschaftliche Arbitrage, Germany, 29 December 1998, *Neue Juristische Wochenschrift-Rechtsprechungsreport*, 1999, 780, available in German on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; Landgericht Hamburg, Germany, 17 June 1996, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu.

³ See, in particular, Arbitration Court of the International Chamber of Commerce, 2003 (Arbitral award No. 11849), *Yearbook Commercial Arbitration XXXI*, 2006, 148, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 631 [Supreme Court of Queensland, Australia, 17 November 2000], [2000] QSC 421, available in English on the Internet at <http://www.sclqld.org.au/caselaw/> CLOUT case No. 261 [Bezirksgericht der Saane, Switzerland, 20 February 1997], *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1999, 195, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 17 November 1995, available in German on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 142 [International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 17 October 1995], available in English on the Internet at www.cisg.law.pace.edu.

⁴ See paragraphs 3 and 4 *infra*.

⁵ Landgericht Duisburg, Germany, 17 April 1996, *Recht der Internationalen Wirtschaft*, 1996, 774, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu (concerning costs associated with payment of the price by cheque).

⁶ Secretariat Commentary to draft article 50, paragraph 5, and the decisions cited in paragraphs 4 and 5 *infra*.

⁷ Secretariat Commentary to draft article 50, paragraph 3.

⁸ Arbitration Court of the International Chamber of Commerce, 2003 (Arbitral award No. 11849), *Yearbook Commercial Arbitration XXXI*, 2006, 148, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 986 [China International Economic and Trade Arbitration Commission, People's Republic of China, 4 February 2002], English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 631 [Supreme Court of Queensland, Australia, 17 November 2000] (*Down Investments Pty Ltd v. Perjawa Steel SDN BHD*), QSC, 2000, 421, available in English on the Internet at <http://www.sclqld.org.au/caselaw/> CLOUT case No. 717 [China International Economic and Trade Arbitration Commission, China, 6 January 1999]; China International Economic and Trade Arbitration Commission, People's Republic of China, 16 June 1997, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 261 [Bezirksgericht der Saane, Switzerland, 20 February 1997], *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1997, 195, available in German on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 176 [Oberster Gerichtshof, Austria, 6 February 1996], available in German on the Internet at www.cisg.at, available in English on the Internet at www.cisg.law.pace.edu (the buyer was, however, not deemed in breach of its obligations since the seller had omitted to indicate the port of embarkation, and that fact was necessary, under the contract, for establishing the letter of credit); Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, Hungary, 17 November 1995, available in German on the Internet at www.unilex.info (referring to article 73 (2)); CLOUT case No. 301 [ICC International Court of Arbitration, 7585, 1992], *ICC International Court of Arbitration Bulletin*, November 1995, 60, available in French in *ICC International Court of Arbitration Bulletin*, November 1995, 59, available in English on the Internet at www.unilex.info.

⁹ International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 25 May 1998, available in English on the Internet at www.cisg.law.pace.edu.

¹⁰ International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 17 October 1995 (Arbitral award No. 123/1992).

¹¹ Landgericht Kassel, Germany, 21 September 1995, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (failure to furnish such a bank confirmation, therefore, subjected the buyer to penalty under article 71 only and not under article 54).

¹² See CLOUT case No. 142 [International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 17 October 1995], available in English on the Internet at www.cisg.law.pace.edu (in connection with the obligation to pay the price in a convertible currency; the court refused, however, to accept force majeure since the buyer did not take sufficient steps to make payment possible).

¹³ CLOUT case No. 934, Tribunal cantonal du Valais, Switzerland, 27 April 2007, *Revue suisse de droit international et européen*, 2008, 184, available in French on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; Tribunal cantonal du Valais, Switzerland, 27 October 2006, available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 930 [Tribunal cantonal du Valais, Switzerland, 23 May 2006], available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 907 [Tribunal cantonal du Valais, Switzerland, 27 May 2005], available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 215 [Bezirksgericht St. Gallen, Switzerland, 3 July 1997], available in German on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 80 [Kammergericht Berlin, Germany, 24 January 1994], *Recht der Internationalen Wirtschaft*, 1994, 683, available in German on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu. See, however, Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, Argentina, 31 May 2007, available in Spanish on the Internet at <http://www.cisgspanish.com>, available in English on the Internet at www.cisg.law.pace.edu (national law as determined by private international law rules was applied by the court to the agreement between the parties).

¹⁴CLOUT case No. 80 [Kammergericht Berlin, Germany, 24 January 1994], *Recht der Internationalen Wirtschaft*, 1994, 683, available in German on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 52 [Fovárosi Bíróság, Budapest, Hungary, 24 March 1992].

¹⁵CLOUT case No. 80 [Kammergericht Berlin, Germany, 24 January 1994], *Recht der Internationalen Wirtschaft*, 1994, 683, available in German on the Internet at www.unilex.info, available in English on the Internet at www.cisg.law.pace.edu (see full text of the decision) (in cases of doubt, the currency of payment is the currency of the place of payment); CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993], *Recht der Internationalen Wirtschaft*, 1993, 934, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (the currency of the seller's place of business is the currency in which the price should be paid); CLOUT case No. 52 [Fovárosi Bíróság, Budapest, Hungary, 24 March 1992] (without stating a reason, the court ordered the buyer to pay the price to the seller in the latter's currency).

¹⁶CLOUT case No. 934 [Tribunal cantonal du Valais, Switzerland, 27 April 2007], *Revue suisse de droit international et européen*, 2008, 184, available in French on the Internet at www.globalsaleslaw.org, available in English on the Internet at www.cisg.law.pace.edu; Tribunal cantonal du Valais, Switzerland, 27 October 2006, available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 930 [Tribunal cantonal du Valais, Switzerland, 23 May 2006], available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 907 [Tribunal cantonal du Valais, Switzerland, 27 May 2005], available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; Tribunal cantonal du Valais, Switzerland, 19 August 2003, available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu; CLOUT case No. 255 [Tribunal cantonal du Valais, Switzerland, 30 June 1998], *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1999, 192, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu.

¹⁷Oberster Gerichtshof, Austria, 22 October 2001, available in German on the Internet at www.cisg.at, available in English on the Internet at www.cisg.law.pace.edu.

¹⁸Handelsgericht des Kantons Aargau, Switzerland, 25 January 2005, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (the court, however, rejected the applicability of article 84 (2) of the Swiss Code of Obligations since that provision confers the right of conversion solely on the debtor, i.e., in this case, the buyer, and not on the creditor, who sought to rely on it); CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993], *Recht der Internationalen Wirtschaft*, 1993, 934, available in German on the Internet at www.cisg-online.ch; available in English on the Internet at www.cisg.law.pace.edu (the court held that section 244 of the German Civil Code (BGB) was not applicable in favour of the buyer, who wished to discharge its debt in Deutschmarks (DM), since payment of the price, which was expressed in French Francs, had to be effected in France and not in Germany).

¹⁹CLOUT case No. 255 [Tribunal cantonal du Valais, Switzerland, 30 June 1998], *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1999, 192, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (the court applied the Italian Civil Code (article 1277), which required the creditor to denominate the debt in Italian Lire, whereas the creditor had taken legal action seeking payment of the price in Swiss Francs); CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994], *Zeitschrift für Rechtsvergleichung*, 1995, 79, available in German on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (it can be seen from the judgment that the appeal court had allowed the seller to claim payment of the price in Schillings on the basis of Austrian law, whereas the agreed price had been expressed in DM); cf. Tribunal cantonal du Valais, Switzerland, 27 October 2006, available in French on the Internet at www.cisg-online.ch, available in English on the Internet at www.cisg.law.pace.edu (default judgment ordering the buyer, whose place of business was in France, to pay the price in Swiss Francs although the price on the invoices had been denominated in Euros, on the grounds that the seller's judicial claim, which made reference to Swiss Francs, constituted a modification of the contract by reason of the buyer's silence).

²⁰See the following decision, which opposed a lower-court decision that had referred to article 59 in connection with the allocation of payments: CLOUT case No. 911 [Cour de Justice de Genève, Switzerland, 12 May 2006], available in English on the Internet at www.cisg.law.pace.edu.

²¹CLOUT case No. 828 [Gerechthof 's-Hertogenbosch, Netherlands, 2 January 2007], available in Dutch on the Internet at www.unilex.info.