





Interpreting the Intent of the Parties



I. Art. 8 - key article governing the intent of the parties

II. Art. 9 - additional article to consider in addition to Art. 8



Art. 8 - Three key provisions



Art. 8.1 - actual subjective intent of one party over the differing intent of the other party

narrow application in unique circumstances

Art. 8.2 - gives effect to the communication of each party as objectively viewed by a reasonable person

broader application and most typical circumstances

Art. 8.3 - provides for a broad scope of relevant circumstances to consider and apply Arts. 8.1 and 8.2

Article 8 only applies when *the parties' actual subjective intent differs*

Starting point: assumption that the subjective intent of A differs from that of B

Art. 8.1 gives effect to A's intent over B where B *knew* or *could not have been unaware* of A's intent (and *visé versa*)

Note: the language in Art. 8.1 imposes a higher standard than the language from Art. 8.2

B either *knew* or *had to know* as to A's intent

Different views as to what the standard entails

e.g., *before the eyes of one who can see*, gross negligence standard or estoppel

Art. 8.1 is an *exceptional rule*

Art. 8.2 gives effect to each communication as objectively viewed by a reasonable person in a position of the recipient the communication

Starting point: what would a reasonable person in the shoes of the parties understand as to their intent

Applies whenever Art. 8.1 *does not* answer the question

Note: Art. 8.1 is the exception, Art. 8.2 is the rule.

Art. 8.3: all relevant circumstances to be considered in applying Arts. 8.1 and 8.2

- contract negotiations,
- established practices (Art. 9.1),
- usages (Arts. 9.1 and 9.2), and
- subsequent conduct in performing the contract

Rule: Art. 8.3 does not preclude any evidence as to the intent

Parties may use *merger clauses* if they want to preclude any evidence outside of their writing agreement

Art. 8.1 - actual subjective intent of one party over the differing intent of the other party

narrow application in unique circumstances

Art. 8.2 - gives effect to the communication of each party as objectively viewed by a reasonable person

broader application and most typical circumstances

Art. 8.3 - provides for a broad scope of relevant circumstances to consider and apply Arts. 8.1 and 8.2



Interpreting the Intent of the Parties

