

MemberUpdate

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TOPIC: Proposed amendment to the GTA Trade Rules - Assignment of a Contract

DISTRIBUTION: GTA Members – primary contact list. Please circulate to all appropriate internal parties.

1. Purpose

The purpose of this Member Update is to seek GTA Member input and feedback into a proposal to add a mutual consent '**Assignment Clause**' into the GTA Trade Rules.

2. Background

"Assignment" of a contract occurs where a contract party transfers (i.e. assigns) the rights, benefits, and obligations under a contract from one party to another.

Contract assignment is permissible at law and in some circumstances, contracts may be able to be assigned without express agreement of both contract parties. In many situations, contract assignment can be useful and for legitimate purposes. However, under some circumstances it may also lead to disputes when contracts are assigned, without the written or mutual consent of both parties.

3. GTA Contracts and Trade Rules

Current **GTA Trade Rules and Contracts do not contain (i.e. are silent) an assignment clause** (by mutual agreement or otherwise). While GTA Trade Rules (Rule 2) require any amendment or variation to a contract be mutually agreed in writing, a contract assignment may not be an amendment or variation of a contract (i.e. its rights, benefits, and obligations).

It should be noted GTA Contracts and Trade Rules are developed as 'base' or beginning terms of agreement between counterparties. Parties are free to make additional or separate agreements (such as contract assignment) to GTA standard terms. GTA Contracts and Trade Rules are also used frequently as 'catch all' or 'all other' terms and conditions to catch the general processes of contracting and delivery of grain.

Having contract terms and conditions "standardised" as much as possible, is beneficial as it reduces disputes, improves liquidity and the facilitation of trade.

4. Proposed Amendment to the GTA Trade Rules

The GTA Commerce Committee has reviewed the issue of contract assignment and the 'silence' in GTA Contracts and Trade Rules.

The Committee considered whether a mutual written consent clause for contract assignment within GTA Trade Rules would mitigate circumstances that have arisen and thwart the use of contract assignments to avoid debts and create confusion on contractual rights; and/or impact facilitation of trade.

The Committee considered the intended use of any mutual agreement to assign contracts would likely be for all GTA contracts, therefore it is proposed, subject to Member submissions, **to insert a Clause into the GTA Trade Rules** (if agreed) after Rule 24.

The proposed clause is:

Neither party may assign its rights or obligations under a contract without the written consent of the other party, which consent will not be unreasonably withheld. All other terms and conditions pertaining to the said contract shall remain unchanged.

The inclusion of “...*not unreasonably withheld*” implies a party would be obliged to consider any assignment request and would need ‘reasonable’ grounds for not consenting to assign a contract. The premise of this inclusion is so as not to unintentionally impede contract assignments intended for a proper purpose or restrict the facilitation of trade.

Members are welcome to comment on this issue as well as the proposed wording in their submissions.

5. Calling for Submissions

The Commerce Committee is seeking GTA member comment and feedback via this GTA Member Update and call for submission.

The Committee will then consider all GTA member submissions and determine how to proceed with the proposal.

A proforma for lodging submissions can be accessed [here](#), noting that submissions do not need to be supported by other GTA Members, however, if they are supported, please indicate on the form.

Submissions should be received prior to the **close of business on Friday 18th December 2020.**

Unless marked “confidential” and appropriate supporting reasons are provided, all submissions may be placed on the GTA website for industry review.