



Virtual Meeting on Thursday, 23 April 2020, 13.00 – 15.00

Virtual Meeting

Executive Summary

Highlights and action items

- > **Next meeting: 8 June 2020** – Virtual meeting, platform details to come.
- > **COVID-19:** ICC taking whole-of-organization approach to response, including policy development. New model FM clause the subject of a guidance paper: <https://iccwbo.org/publication/general-considerations-force-majeure-clauses-in-commercial-contracts/> and a widely-seen ICC Academy webinar featuring CLP Commission Chair Ercument Erdem and WG member Angelika Zoder of ICC Austria: <https://www.youtube.com/watch?v=AnC82ucTyiw>
- > **B2C Model Online Conditions of Sale:** Approved by Commission subject to addition of prominent caveats on need for users to ensure compliance with applicable national/regional legal requirements. To be submitted to ICC Executive Board for adoption.
- > **Model contracts for international startups:** Initial comment drafts being finalized by WG members, for circulation to CLP Commission and NCs for comment.
- > **EU Digital Agenda:** Monitoring of EU Digital Single Market Strategy and any needed interventions or support to continue, with focus on non-personal data access, AI, and product liability. ICC Secretariat to explore collaboration with, Innovation for All Knowledge Hub, and other relevant colleagues on issues of common concern.
- > **Force majeure/hardship:** Clause available on ICC website in several languages, more to come. ICC Secretariat and WG Chair to explore organization of launch conference with Unidroit in Rome in Spring 2021.
- > **Incoterms® 2020:** Update of ICC Guide on Transport and Incoterms rules to continue.

1. Welcome and introductory remarks

Ercument Erdem, Chair of the CLP Commission, welcomed members to the first virtual CLP Commission meeting, applauding the unusually large number of registrants (c. 95) and broad geographic range of countries represented (c. 30) and wishing everyone well in the current challenging times.



2. ICC Action related to COVID-19

Damien Bruckard, Deputy Director of Trade + Investment, briefed the group on ICC's policy responses and initiatives related to COVID-19 disruptions.

- A. ICC SG John Denton early on called for a **whole-of-organization approach** to the pandemic: business as usual not sufficient. All ICC operations have adapted to serve critical business needs arising from the crisis
- ICC positioning itself as trusted source of advice to business and interlocutor with IGOs and government
 - Creation of tools to help business: health and sanitary advice, business continuity guide, guidance on force majeure, dispute resolution, digitization of trade finance, et al
 - Using all ICC tools, such as the ICC Academy dedicated series of COVID-19-related webinars, including one on Force Majeure with record-breaking attendance (4000+ registrants/c. 2000 participants listening live)
 - New dedicated ICC COVID-19 website: <https://www.covid.iccwbo.org/>
- B. **Pivoting all policy work, including advocacy** – for example towards G20 governments - and all Commission work to focus on COVID-19
- **2 main campaigns**
 - **G20:** Given urgent requirement for collective global collaboration, ICC called on G20 governments to hold an extraordinary virtual summit, which call was heeded, and wrote to Trade Ministers, urging them to speed health responses and mitigate health and economic damage. Additionally, the SG and ICC Chair Paul Polman have engaged with a huge range of organisations and groups, deepening ICC's existing relationship with WCO and developing new collaborations with
 - the World Health Organisation - joint ICC-WHO statement and ICC participation in private sector Working Group with the World Economic Forum and the B20;
 - the International Trade Union Confederation - joint advocacy;
 - the World Bank group and International Monetary Federation;
 - **Save our SMEs (SOS):** A new framework to encourage governments and companies to keep SMEs top of mind in all their considerations. SMEs comprise the majority of global economy and are the most exposed during crisis, and most critical to recovery. SOS has issued calls to action to both governments and corporations, calling for greater focus on SMEs and asking larger companies with major supply chains to advocate on behalf of the smaller companies in their value chains. https://www.sos.iccwbo.org/?_cldee=ZW1pbHkub2Nvbm5vckBpY2N3Ym8ub3Jn&recipientid=contact-7e711808b0f8e811a99e000d3ab38ab1-



[c7b90dcffc564a82b1b7428f37887ab3&esid=01dad591-eb8a-ea11-a811-000d3abaad31](https://www.iccwbo.org/press-releases/2020/05/06/icc-commission-on-commercial-law-and-practice-approves-model-online-b2c-conditions-of-sale/)

3. For approval: ICC Model Online B2C General Conditions of Sale

Mariaelena Giorcelli, Chair, B2C Working Group (Italy) presented the model online B2C conditions of sale for Commission approval.

Highlights:

- **Congratulations to the dedicated, active working group** that included strong and consistent participation from companies, including Bulgari and Luxottica.
- Challenge to arrive at this point, since as discussed in the CLP Commission from project's inception, there are a variety of legal rules protecting consumers in different jurisdictions.
- **Much-needed and welcome tool for SMEs**, especially given current marketplace disruptions and pivot to online sales.
- Two documents:
 - Model sale conditions
 - Accompanying guidance document on various EU rules that may be relevant for users setting up websites to sell their goods online. This document currently includes supplemental EU Member State notes and an Annex on Brazilian law requirements.
- Since main users of this tool will be SMEs who often use models without amendment, it is essential to **include prominent warnings that the model sale conditions must be adapted to comply with local consumer law requirements** in the jurisdictions into which the goods will be sold.
 - A subtitle will be added to the model sale conditions document
 - Warnings will be included in the introductory notes in both the model and the accompanying EU/country-related guidance document.
 Request for country Annexes over time: OK
- **Additional Member State notes and non-EU-country annexes can be added** over time.
- The **documents will be offered for free** on the ICC website and the new Save Our SMEs (SOS) website (see above).
- The group indicated **approval** through the virtual meeting chat feature agreement. The documents will next be submitted to the ICC Executive Board for approval.

ACTION:

- ICC Secretariat to submit approved documents (with caveats added as above) to ICC Executive Board for approval at next meeting in June.



4. **Update on model contracts for international startups**

Ercüment Erdem, CLP Commission Chair (Turkey) gave a status update on the project.

Highlights:

- In November 2019, through the contact kindly provided by Miriam Goldby of Queen Mary University, we were in touch with Queen Mary's startup-focused legal clinic qLegal. We explored how to create a common approach, contacting the UK law firm of one of qLegal's advisors to invite the advisor's participation in the Working Group. ICC unfortunately didn't meet the firm's pro bono committee requirements, and so we decided to coordinate with qLegal once the ICC models are finalized.
- Once we receive/integrate the latest working group comments, including from the most recent additions to the group – Manuel Jeronimo and Peter Poleacov – on the latest drafts, first drafts of the various documents will be finalized for distribution for comment before the October CLP meeting.
- We are grateful to all working group members and are confident the models will be quite useful for SMEs and startups.

ACTION:

- Once final comments received from newest WG members, drafts to be circulated to CLP Commission and NCs for comment.

5. **EU Digital Agenda- Artificial intelligence, product liability and related issues**

Christian Steinberger, CLP Commission Vice Chair and Chair of EU Digital Agenda Task Force (Germany) briefed the group on the state of play in the EU.

Highlights:

- Margrethe Vestager, Executive Vice President of the European Commission for A Europe Fit for the Digital Age, is an enthusiastic champion of the EU's digital future. A trio of linked papers came out on 19 February 2020 setting out various elements of the EU digital strategy.
- AI + Product Liability: Topics are linked across various EU dossiers.
 - [White Paper on AI](#): Aim to reduce fear and encourage SMEs to develop solutions. Remarkable investment in AI development through



skills promotion, digital innovation hubs, etc. Policy options for a regulatory framework to enable trust, including a risk-based approach calling for close supervision, strict recordkeeping and fulfillment of compliance standards for high risk sectors, such as health care, and less strict requirements for lower risk sectors.

- *Report to the Parliament and Council on safety and liability implications of AI, the Internet of Things and Robotics*: Many possible safety risks for public and liability risks for developers. Report features conclusions of a newly-created EU technical group and could lead to a fundamental revision of the existing Product Liability Directive (85/374/EEC) – we in the CLP Commission need to be very careful and monitor this closely. Such reform initiatives often start with a small sector, such as AI, which then evolve into changes across the whole regime. See the report: https://ec.europa.eu/info/publications/commission-report-safety-and-liability-implications-ai-internet-things-and-robotics-0_en
- Data Strategy: Continuation of years-long discussion, now with new Commission. Big vision to create single EU space where data are available and everyone has easy access to important business data. Not a dramatic step forward, but linked to a consultation, in which ICC should participate; the 31 May deadline will likely be extended. We should also stay in touch with the 3 involved DGs to bring practical views of the business world into discussions. See the report: https://ec.europa.eu/info/sites/info/files/communication-european-strategy-data-19feb2020_en.pdf
- CLP Commission should coordinate with the Innovation for All team, in particular the Digital Economy Commission, on the data consultation and involvement in these dossiers, as well as with Competition Commission as needed.

ACTION:

- CLP Vice Chair/Secretariat to monitor EU developments on free flow of data, AI, product liability and to stay in touch with relevant DGs.
- CLP Secretariat to explore collaboration with the Digital Economy Commission and Competition Commissions as needed.



6. **Force Majeure + Hardship model clauses**

Fabio Bortolotti, Chair of FM Task Force; Vice Chair ICC Italy gave an update on the new ICC FM and Hardship clauses.

Highlights:

- New FM and Hardship model clauses are up on the ICC website, translations into various languages are being prepared. For the first time, we have created a short form version of the FM clause to cater to SMEs. An Introductory Note will also be added to the ICC website.
- Novelty in new Hardship clause to allow parties greater flexibility for adaptation or termination of the contract. In some cases, parties don't want a 3rd party to interfere, but where it may be important to salvage the contract – a long-term contract, for example – the new clause allows parties to choose how a contract adaptation may be requested and carried out. Hardship is becoming more and more important, as it applies where a party cannot invoke FM but has strong reasons for not performing the contract.
- The envisaged plan to organize a joint conference in Rome with Unidroit on FM will be postponed to no sooner than May 2021, at which point we will have some feedback on the uses of the new ICC model clause, including in cases related to COVID-19.
- The release of the clause was coincidentally quite well timed in light of the COVID-19 pandemic. CLP Commission Chair Ercument Erdem was instrumental in preparing a short guidance document on FM clauses, and in preparing and speaking at a very widely seen ICC Academy webinar, with Angelika Zoder of ICC Austria and a representative of the ICC Court of Arbitration, for which over 4000 people registered.
- Guidance paper: <https://iccwbo.org/publication/general-considerations-force-majeure-clauses-in-commercial-contracts/>
- Webinar: <https://www.youtube.com/watch?v=AnC82ucTyiw>

ACTION:

- WG Chair to explore organization of launch conference with Unidroit in Rome in mid-2021.



7. Incoterms® 2020 rules – Updates on training, launches and publications

Christoph Martin Radtke, Co-Chair of Incoterms® 2020 Drafting Group, Chair of ICC France CLP Committee (France) briefed the group on developments related to the Incoterms® 2020 rules.

Highlights:

- In times of crisis, clear international standard rules such as the Incoterms® rules are especially important to help facilitate world trade.
- Launches and trainings: Many ICC national committees have made great efforts to present and promote the new rules. ICC France has collaborated with COSEC (the Senegalese Shippers Council) to provide a training bringing together regional Francophone African countries, and has delivered separate trainings in Africa, including in Morocco, Nigeria, and Egypt. There is a huge local demand for trainers, so ICC France has set up a dedicated program to develop local trainers. Building on the great success of launches via the network of NCs, ICC should now look to expand into areas where there is currently no NC.
- Flexible pricing and translations: The Incoterms® 2020 Drafting Group recommended to ICC to sell the new rules at an affordable price adapted to the situation of customers. Big thanks are due to ICC's Global Director of Membership and Development, Julian Kassum, who has provided a mechanism to grant significant price, in order to make the rules available to the largest population possible, including in African countries and China. The book has been translated into many languages, some in e-book format, to further the goal of making the rules accessible and understood.
- Related publications: The ICC Guide on Transport + Incoterms Rules was first issued relating to the Incoterms® 2010 rules and was a very useful tool for traders, giving practical logistics guidance on how use of an Incoterms rule affects a transport contract. The Guide is currently being updated by Incoterms® 2020 Drafting Group Co-Chair Christoph Radtke, and Drafting Group members Bob Ronai and Burghard Piltz. The guide is being expanded to become a much more detailed publication, a very good complementary resource publication for users of the Incoterms® 2020 rules.
- ICC Academy: The ICC Academy has a virtual training available, as well as several free overview webinars, which provide introductions to various aspects of the rules. See the ICC Academy website: <https://icc.academy/livecast/>

ACTION:

- Update of ICC Guide on Transport and Incoterms rules to move forward: amended text to be circulated to initial guide drafters for comment, followed by broader circulation to relevant Commissions and NCs for input.

8. AOB + Next meetings

8 June 2020 – Virtual meeting to continue discussion and brainstorm on projects useful for SMEs to contribute to new ICC SOS campaign.

October 2020 – Date to be confirmed. In light of pandemic and associated travel difficulties, presumption for virtual rather than physical meeting.

May 2021 – Exploring possibility of physical meeting in Rome and associated conference with Unidroit on force majeure and hardship. To be confirmed.