

CURRENT DEVELOPMENTS IN INTERNATIONAL CONTRACTS LAW

**Agency, distribution and franchising – Incoterms – ICC
rules and model forms**

Venice: 22-23 June 2006

**Three major events organized by the International Chamber of Commerce
and the International Distribution Institute**

The **International Chamber of Commerce (ICC)** and the **International Distribution Institute (IDI)** invite you to take part, on 22 and 23 June in Venice, in **three events of great importance** for attorneys, company lawyers and practitioners dealing with international contracts.

The purpose of this joint initiative of IDI and ICC is to offer the participants the opportunity to discuss a number of topical issues of international trade law, according to the following programme:

A one day conference on
Current Issues of International Distribution Law
Thursday, 22 June 9:00-17:00

Celebration of the
70th anniversary of Incoterms
Thursday, 22 June at 18:00

Meeting of the
ICC Commission on Commercial Law and Practice
Friday, 23 June 9:00-17:00

More details about these events can be found in the following pages as well as in the IDI website
(www.idiproject.com)

Thursday 22 June

09:00 – 17:00



International Distribution Institute

Current Issues of International Distribution Law

2006 Annual Meeting of the International Distribution Institute

THURSDAY 22 JUNE 2006, VENICE (ITALY)

Scuola Grande di San Giovanni Evangelista – 9:00-17:00
S. Polo 2454 – 30125 Venice



The **International Distribution Institute (IDI)**, the leading organisation dealing with the law of international distribution, will hold its 2006 annual conference in Venice, at one of the most prestigious locations of the city, the Scuola Grande di San Giovanni Evangelista.

The conference is addressed to **lawyers and businessmen** involved in negotiating, drafting and managing international distribution contracts (agency, distributorship, franchising, etc.) and will deal with a number of selected issues which have been identified between the most topical themes of this year.

The morning session is devoted to the basic problems of **choice of law** and **choice of jurisdiction**, which are still one of the main issues (if not the main issue) in this field.

The purpose of this session is to discuss the pros and cons of the various options with a special attention to recent developments in law and jurisprudence. In this context the following topics will be examined:

- the application of **mandatory rules on indemnity** for the commercial agents;
- the recent case law developments regarding the **Belgian law protecting distributors**;
- the problems arising when needing to comply with various **domestic laws protecting franchisees**.

As regards the choice of jurisdiction, a special attention will be devoted to ICC arbitration and especially to **ICC case law on distribution contracts**, with the aim of giving an updated view of the arbitral jurisprudence regarding international distribution contracts.

The other crucial topic regards the **choice of forum clauses**, and in particular the **2005 Hague Convention on Choice of Court Agreements** which will – if adopted by many countries – make the choice of forum clauses more effective and facilitate the recognition of judgments between different countries.

Finally, a panel composed of various IDI country experts will discuss the pros and cons of the various solutions from the point of view of a practitioner.

In the afternoon **three parallel workshops** will give the participants the possibility to choose the topic they are most interested in.

The first workshop will give an overview of recently enacted (or still to be enacted) **laws on franchising**, covering the following countries: Italy, China, Belgium and Sweden together with an update about the **Unidroit model law of franchising**.

The second workshop will give an updated overview of the **EU antitrust rules** on distribution together with a panel discussion on the way to approach some major topics, like **exclusivity clauses, resale price maintenance and export prohibitions**.

The third workshop will discuss one of the most important and tricky issues of international agency and distribution agreements: the **minimum turnover clauses**. These clauses, which are of paramount importance in international contracts are not easy to draft and may give rise to problems as to their effectiveness. This is why it was felt that a discussion between a number of leading experts could be of great practical interest.

In order to give the participants the opportunity of a more precise information regarding their specific problems, at the end of the afternoon session some time has been reserved for **individual contacts between the participants and the IDI experts of the various countries**.

MORNING SESSION

Drafting and negotiating choice of law and choice of jurisdiction clauses in agency, distribution and franchising contracts

The choice of the applicable law: contract strategies and practical problems

CHAIRMAN	Klaus Meyer Swantee , Retired Partner of Derks Star Busmann, Amsterdam. Member of the IDI Council
09:15-09:30	Welcome
09:30-09:50	Choice of law strategies for agency and distribution agreements. How to identify the most appropriate solution. Choosing between the law of the principal, the law of the agent/distributor or the law of a third country. André Thouvenin , Thouvenin Rechtsanwälte, Zürich
09:50-10:10	How to deal with mandatory rules of the agent's country, especially with respect to goodwill indemnity. Is it possible to exclude the rules on indemnity of the agent's country through a choice of law? In which such choice is effective? The jurisprudence of the European Court (Ingmar case). How to make the choice effective by choosing the appropriate jurisdiction. Fabio Bortolotti , Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino; Chair IDI; Chair, ICC Commission on Commercial Law and Practice (CLP)
10:10-10:30	Can a foreign supplier avoid the application of the Belgian law of 1961 on distributors by choosing his own law? A recent judgment of the Belgian Court of Cassation reopens the debate on this critical subject matter. The speaker will examine the effectiveness of possible choice of law clauses in contracts with Belgian distributors before the Belgian courts, foreign courts and international arbitrators. Ingrid Meeussen , Lafili, Van Crombrughe & Partners, Brussels
10:30-10:50	Dealing with local laws on franchising when operating abroad. The practical experience of a company lawyer. More and more countries enact laws on franchising, which must be taken into account when setting up a world-wide franchising network. The speaker will discuss the practical problems which arise for a company lawyer when dealing with this topic. Stefano Artuso , General counsel Benetton Group, Treviso
10:50-11:20	Coffee break

Dispute resolution within distribution contracts. Choosing the appropriate solution

11:20-11:40	A general overview of the main options: arbitration, courts of one of the parties, courts of a third country. One of the difficult options for a company establishing distribution networks abroad is the choice of the means for the resolution of possible disputes. The speaker will discuss the various options in a practical way, analyzing the pros and cons of each solution. Gustav Breiter , Viehböck Breiter Schenk & Nau, Vienna
11:40-12:00	ICC arbitration and international distribution. How do international arbitrators deal with international agency, distribution and franchising contracts? An overview of ICC arbitral case law. Distribution contracts represent an important part of the subject matters dealt with in ICC arbitration. The presentation will deal with a number of arbitral cases, with the aim of giving an overview of the approach taken by arbitrators on some of the main problems of distribution. Emmanuel Jolivet , General Counsel, ICC International Court of Arbitration

12:00-12:20	<p>Choice of court clauses in international trade: the new Hague Convention on Choice of Court Agreements.</p> <p>Litigation before national courts is still a widely used solution in agency and distribution agreements. Parties will try to decide in advance which court should deal with possible disputes, by agreeing upon a choice of forum clause. However, the effectiveness of these clauses is uncertain in most countries of the world and a possible judgment may not be enforceable in the country of the other party. Most of these problems may be solved by the Hague convention of June 2005.</p> <p>Andrea Schulz, First Secretary of the Hague Conference on Private International Law</p>
12:20-13:00	<p>PANEL on practical problems of choice law and jurisdiction.</p> <p>The members of the panel will exchange views on the strategies they tend to follow with respect to the following questions: choice of arbitration/domestic courts; choice of forum in favour of its own courts; no choice of forum.</p> <p>Carl Christiansen, Raeder law firm, Oslo</p> <p>Pedro da Costa Mendes, SAR - Sociedade de Advogados, Porto</p> <p>Petr Mrazek, Vitek & Mrázek Law Office, Prague</p> <p>Tatyana Slipachuk, Vasil Kisil and Partners, Kiev</p>
13:00-13:30	Discussion
13:30-14:30	Lunch

AFTERNOON SESSION

FIRST WORKSHOP

New laws on franchising and the Unidroit model law

CHAIRMAN:	Lena Peters , Unidroit
14:30-14:45	<p>The Italian law n. 129 of 6 May 2004 on franchising.</p> <p>Fabio Bortolotti, Professor of Law, University of Torino; Buffa Bortolotti & Mathis, Torino; Chair IDI</p>
14:45-15:00	<p>Franchising in China: the New Measures on Commercial Franchising of December 31, 2004.</p>
15:00-15:15	<p>Belgium: The new law on franchising of December 19, 2005.</p> <p>Nicole Van Crombrughe, Lafili, Van Crombrughe & Partners, Brussels</p>
15:15-15:30	<p>Sweden: The new draft law on franchising.</p> <p>Cecilia Ogvall, MAQS Law Firm, Gothenburg</p>
15:30-15:45	<p>The Unidroit model law on franchising and the national legislations.</p> <p>Lena Peters, Unidroit</p>
15:45-16:30	Discussion

SECOND WORKSHOP

Distribution contracts within the EU: complying with the European antitrust rules

CHAIRMAN:	Didier Ferrier , Professor of Law, University of Montpellier; Vice.Chair IDI
14:30-14:50	<p>The basic rules on vertical agreements. A general overview and recent case law developments.</p> <p>Michael Svendsen, MAQS Law Firm, Copenhagen</p>

14:50-15:30	<p>PANEL on practical problems of antitrust compliance.</p> <p>The members of the panel will exchange views on the approach to take with respect to the following basic questions: exclusivity clauses, resale price maintenance/recomm, export prohibitions.</p> <p>Marie Du Gardin, Fidal, Lyon</p> <p>Katarina Kresal, Miro Senica in odvetniki, Ljubljana</p> <p>Olga Szejnert, Drzewiecki, Tomaszek & Partners, Warsaw</p> <p>Michael Svendsen, Magnusson Wahlin Quist Stanbrook Law Office, Copenhagen</p>
15:30-15:50	<p>The point of view of the European Commission.</p> <p>Paolo Cesarini, European Commission</p>
15:50-16:30	<p>Discussion</p>

THIRD WORKSHOP

Drafting and enforcing minimum turnover clauses in agency and distribution contracts

CHAIRMAN:	<p>Erwin Gärtner, Gärtner, Stübel, Baumann & Partners, Stuttgart; Member of the IDI Council</p>
14:30-14:50	<p>Purpose and main characteristics of minimum turnover clauses: an overview of a number of typical clauses.</p> <p>The main purpose: earlier termination in case of non-attainment. Is it possible to exclude indemnity in case of termination? How to fix the turnover/target for the following years.</p> <p>Silvia Bortolotti, Buffa Bortolotti & Mathis, Torino; Member of the IDI Council and Secretary of IDI</p>
14:50-15:50	<p>PANEL on practical experience in negotiating and managing minimum turnover clauses.</p> <p>The members of the panel will exchange views on the strategies used when negotiating and enforcing minimum turnover clauses.</p> <p>Silvia Bortolotti, Buffa Bortolotti & Mathis, Torino</p> <p>Edward Miller, Reedsmitth, London</p> <p>Christoph Martin Radtke, Lamy & Associés, Lyon</p> <p>Agnès Szent-Ivany, Sándor Szegedi Szent-Ivány & Komáromi Attorneys at Law, Budapest</p>
15:50-16:30	<p>Discussion</p>

AFTER THE WORKSHOPS THE IDI COUNTRY EXPERTS WILL BE AVAILABLE FOR INDIVIDUAL CONTACTS WITH THE PARTICIPANTS:

The updated list of the country experts who will be present at the conference for individual contacts can be found at <http://www.idiproject.com/conference-contacts.html>.

A form for requesting a meeting with the expert(s) will be included in the papers handed over at the conference.

Thursday 22 June

18:00 – 20:30



International Chamber of Commerce
The world business organization

70 YEARS OF INCOTERMS

Presentation of the 70th anniversary of Incoterms

THURSDAY 22 JUNE 2006, VENICE (ITALY)

Scuola Grande di San Giovanni Evangelista,
S. Polo 2454 – 30125 Venice

18:00-18:10	Welcome Amerigo Gori , Secretary General ICC Italia
18:10-18:30	Birth and evolution of the ICC Incoterms from 1936 to 2000. Jan Ramberg , Arbitrator; Vice.Chair of the ICC Commission on Commercial Law and Practice, Stockholm
18:30-18:50	The application of Incoterms by Italian Courts. Franco Toni di Cigoli , University of Padua, Italy
18:50-19:10	Incoterms in arbitral jurisprudence. Emmanuel Jolivet , General Counsel, ICC International Court of Arbitration
19:10-19:30	Present and future role of Incoterms for international trade. Charles Debattista , Arbitrator and Associate Member, Stone Chambers, London; Vice.Chair of the ICC Commission on Commercial Law and Practice
19:30-20:30	Cocktail



International Chamber of Commerce
The world business organization

Friday 23 June

09:00 – 16:00



ICC COMMISSION ON COMMERCIAL LAW AND PRACTICE (CLP)

Venice Chamber of Commerce,
Via XXII Marzo, S. Marco 2032, Venice

- 09:15-09:30 **Welcome**
- **Venice Chamber of Commerce**
 - **ICC Italia**
- 09:30-09:45 **Changes at ICC International Secretariat.**
- The Chairman will inform the members about the changes at ICC Secretariat: Emily O'Connor succeeds Jonas Astrup as Secretary to the ICC Commission on Commercial Law and Practice (CLP).
- Fabio Bortolotti**, Chair, ICC Commission on Commercial Law and Practice (CLP); Partner, Buffa, Bortolotti & Mathis, Turin, Italy
- 09:45-10:15 **European Contract Law.**
- The European Commission is currently looking at contract law as an area for potential harmonization and/or development of a new legislative instrument. Recently, the European Commission established a Common Frame of Reference (CFR) network of experts and stakeholders. ICC has established a task force to follow this issue closely. Progress report from the new ICC Task Force on European Contract Law.
- Charles Debattista**, Arbitrator and Associate Member, Stone Chambers, London; Vice-Chair of ICC Commission on Commercial Law and Practice (CLP) and Chair of the ICC Task Force on European Contract Law
- 10:15-10:35 **Technology transfer.**
- Update on the work of the ICC Task Force on Technology Transfer and its efforts to develop an ICC Model Technology Transfer Contract.
- Jacques Beglinger**, Task Force Rapporteur; Attorney-at-law, Switzerland; **Mark Reuter**, Task Force Rapporteur; Partner, Walder Wyss & Partners, Switzerland
- 10:35-11:00 **Coffee break**
- 11:00-11:30 **The ICC Model forms and the ICC Model Confidentiality Agreement.**
- The ICC has worked out several model forms for use in international trade. Such models offer simple and balanced solutions for business people who negotiate international commercial contracts. One of the most recent models is the ICC model form confidentiality agreement presented here.
- Fabio Bortolotti**, Chair, ICC Commission on Commercial Law and Practice (CLP); Partner, Buffa, Bortolotti & Mathis, Turin, Italy
- Ake Nilson**, Co-Chair, ICC Task Force on Confidentiality Agreements; Chairman, Allagraf Ltd, UK
- 11:30-12:30 **Panel on the ICC Model Confidentiality Agreement.**
- Several business lawyers have been asked to give their views on the ICC model, its practical use and possible further improvements.
- Stefano Artuso**, General counsel, Benetton Group

Grazia Guazzi, In house counsel, Ansaldo Energia Spa
Claudia Kolb, Legal and corporate department, Gucci Spa
Carol Xueref, Director for legal affairs and group development, Essilor International S.A.

12:30-13:00 **Discussion**

13:00-14:00 **Lunch**

14:00-14:20 **Public Procurement.**

Public procurement is an issue that impacts the activities of many ICC member companies. The international legal framework for public procurement includes agreements and laws of WTO, the World Bank and UNCITRAL, which currently is revising its model law. Report from the newly established ICC Task Force on Public Procurement, which among other tasks provides business input into the revision of the UNCITRAL Model Law on Public Procurement.

Lauri Railas, Senior Counsel, Krogerus & Co. Attorneys-at-Law, Finland; and Chair of the ICC Task Force on Public Procurement

14:20-14:50 **New Hague Convention on Choice of Court Agreements.**

The Hague Conference on Private International Law has finalized a new convention on recognition of choice of court agreements between companies. This new convention has the potential to provide substantial benefits for international business and facilitate enforcement of foreign court decisions. Participants will be updated on the ratification process ahead and how this new legal instrument can be useful to companies and their legal advisors.

Michael Hancock, Co-Chair, ICC Task Force on Jurisdiction and Applicable Law; and Partner, Salans Lawfirm, Istanbul and Paris

Andrea Schulz, First Secretary at the Permanent Bureau of the Hague Conference on Private International Law, The Hague

14:50-15:10 **Incoterms in the United States of America.**

Participants will be updated on the latest developments related to the revision of the Uniform Commercial Code (UCC) of the United States of America and its impact on Incoterms. ICC's national committee in the USA, the United States Council for International Business (USCIB), has launched an initiative together with Frank Reynolds to make sure Incoterms fill the gap after the U.S. shipment and delivery terms have been deleted from the UCC.

15:10-15:30 **Questionnaire on Incoterms**

Six years after the adoption of Incoterms 2000, requests have been made in some quarters that consideration be given to whether and if so when a new revision of Incoterms might be desirable. With nothing being ruled in or out, this Commission meeting will provide the first opportunity since 2000 for participants to put their views forward regarding this question. Colleagues are encouraged to come to Venice with at least preliminary views from their own National Committees in this regard.

Jan Ramberg, Arbitrator; Vice-Chair of the ICC Commission on Commercial Law and Practice, Stockholm

Charles Debattista, Arbitrator and Associate Member, Stone Chambers, London; Vice-Chair of ICC Commission on Commercial Law and Practice (CLP)

15:40-15:50 **Status of CLP task forces.**

Based on the written task force report, participants will be invited to ask questions to task force chairs and the secretariat on the current status of CLP task force projects.

15:50-16:00 **Other Commission business.**

- Date and venue for next meeting
- Any other business

PRACTICAL INFORMATION

2006 IDI Conference: Current Issues of International Distribution Law (Thursday 22 June 2006 - 9:00-17:00)

- Venue:** Scuola Grande di San Giovanni Evangelista
S. Polo 2454 – 30125 Venice
Vaporetto: stop St. Tomà
- Language:** English and Italian
- Documentation:** A CD-Rom containing all documents discussed at the conference (e.g. International conventions, EC Regulations, new laws on franchising, examples of minimum turnover clauses etc.).
- Fee:**
- 500 € first participant
 - 200 € for additional participants within the same premises of the same organisation as the first participant (i.e. having the same address and VAT code)
 - 100 € for IDI members having paid their yearly subscription fee
- The fee includes the coffee break, lunch and documentation.

Presentation of the 70th anniversary of Incoterms (Thursday 22 June 2006 - 18:00-20:30)

- Venue:** Scuola Grande di San Giovanni Evangelista
S. Polo 2454 – 30125 Venice
Vaporetto: stop St. Tomà
- Language:** English
- Fee:** 50 € contribution to expenses

ICC Commission on Commercial Law and Practice (CLP) Meeting (Friday 23 June 2006 - 09:00 – 16:00)

- Venue:** Venice Chamber of Commerce
Via XXII Marzo, S. Marco 2032, Venice
Vaporetto: stop S. Marco
- Language:** English
- Fee:** Participation to this conference is free of charge, but subject to previous registration (places available: maximum 99).

Registration and cancellation

- Registration on-line:** Registration can be made through the IDI website, at the page:
<http://www.idiproject.com/conference-registration.ucw>.
In that case, you can pay with credit card or by bank transfer. After complete payment, you will receive a confirmation of your registration by e-mail or fax.
- Registration by fax:** Alternatively, you can fill in the registration form, and send it by fax to:
IDI Project Srl,
Via Alfieri 19, 10121
Torino (Italy)
fax: + 39 011 574 11 41
In case of registration by fax, payment shall be made by bank transfer and confirmation of your registration will be sent after having received the registration form together with the evidence of the payment.
- Cancellation:** Cancellation request received in writing by IDI Project on or before 12 June 2006 will be subject to a 20% administration charge of the total fees paid. After that date no refunds are possible.

Hotel Accommodation

Participants should book their hotels in due time, since June is high season in Venice.

Participants may use the reservation services of Oltrex 4M Spa, by using the booking form downloadable from the IDI website, at the page: <http://www.idiproject.com/conference-hotel.doc>.

REGISTRATION FORM

First Name Last name
Company Address
ZIP/ Postal code City
Country Value Added Tax (VAT) Code
E-mail Phone Fax.....

EVENTS (Please, indicate below to which events you would like to participate):

- ☐ I will attend the 2006 IDI Conference "Current Issues of International Distribution Law", on Thursday 22 June 2006 (09:00-17:00)

Please specify to which workshop you would like to attend (only one per person):

- ☐ I will attend the FIRST WORKSHOP: New laws on franchising and the Unidroit model law
☐ I will attend the SECOND WORKSHOP: Distribution contracts within the EU: complying with the European antitrust rules
☐ I will attend the THIRD WORKSHOP: Drafting and enforcing minimum turnover clauses in agency and distribution contracts
☐ I will attend the Presentation of the 70th anniversary of Incoterms, on Thursday 22 June 2006 (18:00-20:30)
☐ I will attend the Open meeting of the ICC Commission on Commercial Law and Practice – CLP, on Friday 23 June 2006.

FEES (in case of more participants, please fill in a separate form for each participant)

- IDI Conference (22/6/2006): ☐ € 500: First participant
☐ € 200: Second participant
☐ € 200: Third participant
☐ € 100 IDI member (subscriber).

- 70th Anniversary Incoterms (22/6/2006): ☐ € 50

Please add 20% (Italian VAT) to your payment, if you are in Italy.

TOTAL AMOUNT: €:

PAYMENT

Please make a bank transfer marked «22 June 2006 Conference» including a clear reference to the name of the participant. The bank transfer details are the following:

Bank: Banca Sella, Piazza Castello, Torino (Italy)
Account Name: IDI Project s.r.l.
Account Number: 052879649600
ABI: 03268 CAB: 01000
IBAN: IT86X0326801000052879649600

Please complete this form and return it, with your payment made out to:

IDI Project Srl,
Via Alfieri 19,
10121 Torino (Italy)
Fax: + 39 011 574 11 41

Date Signature

PRIVACY: All personal information is processed by IDI confidentially and in compliance with the provisions contained in the Italian Legislative Decree 196 of 2003. All personal information stored on our system is secured against unauthorised access. All users may exercise their rights provided by Article 7 of the Italian Legislative Decree 196 of 2003, by sending an informal request to privacy@idiproject.com