

# Drafting Effective International Contracts – Workshop-seminar on International Sales, Agency and Distributorship Contracts

**FRIDAY, MAY 29 & SATURDAY, MAY 30, 2015**



# ROME

# ITALY



 #UIAContract

Seminar organised by the UIA with the support of the Cassa Nazionale Forense





# Introduction

A growing number of companies are expanding internationally.

In doing so, they face new issues regarding the negotiation and drafting of international contracts. Even within a common market, such as the European Union, laws differ from country to country. Businesses selling in other countries are forced to deal with the complex issues which arise in international contracts.

The objective of this workshop-seminar is to analyse the issues involved in cross-border contracts and to discuss solutions. Particular attention will be paid to the three most common contracts used for international sales: sales, commercial agency, and distributorships.

At the same time, the seminar will focus on the drafting of the clauses most commonly used.

The seminar will also give participants a clear overview of the basic principles governing international contracts, together with a practical discussion and exercises in the implementation of such principles through drafting of clear and effective contractual clauses.

We have selected a group of highly qualified speakers with practical experience in drafting and negotiating international contracts.

Participants will receive the materials in advance as well as examples of clauses to be discussed during the seminar.



Thursday | May | 28 | 2015

**19:30 WELCOME COCKTAIL**

**Hotel Visconti Palace 4\***

Via Federico Cesi, 37

00193 Rome, Italy





Friday | May 29 | 2015

**08:30 – 09:00 REGISTRATION OF PARTICIPANTS**

**Cassa Nazionale Forense**

*Auditorium*

Via Giuseppe Gioacchino Belli, 3, 00193 Rome

**09:00 – 09:15 WELCOME AND OPENING OF THE SEMINAR**

- **Miguel LOINAZ**, *UIA President, ALS Abogados, Montevideo, Uruguay – or his Representative*
- **Nunzio LUCIANO**, *President of the Cassa Nazionale Forense, Rome, Italy*
- **Fabio BORTOLOTTI**, *Buffa, Bortolotti & Mathis, Turin, Italy*

**CHAIRMAN OF THE SESSION**

- **Fabio BORTOLOTTI**, *Buffa, Bortolotti & Mathis, Turin, Italy*

**09:15 – 09:45 International Sales Contracts: Practical Introduction to the CISG**

**Moderator:** • **Fabio BORTOLOTTI**, *Buffa, Bortolotti & Mathis, Turin, Italy*

- General introduction to the CISG
- When does the CISG apply?
- Reasons for not excluding the CISG
- Issues covered and not covered by CISG

**Speakers:**

- **Ignacio CORBERA DALE**, *President of the UIA Contract Law Commission, Garrigues UK LLP, London, United Kingdom*
- **Burghard PILTZ**, *Ahlers & Vogel, Hamburg, Germany*

**09:45 – 10:15 The Use of General Conditions of Sale (or Purchase). When are they Effective?**

- The rules on formation of contracts of sale
- Battle of the forms: “last shot” rule against “knock-out” doctrine
- Problems of validity of general conditions under certain national laws
- **Burghard PILTZ**, *Ahlers & Vogel, Hamburg, Germany*

**10:15 – 10:30 Q&A with the Participants**

**10:30 – 11:00 COFFEE BREAK**

**11:00 – 11:45 Workshop-discussion with Participants on Clauses Regarding Delivery**

- Delivery, place of delivery, passing of risk
- Liability of the seller in case of late delivery; possible limitation clauses
- **Fabio BORTOLOTTI**, *Buffa, Bortolotti and Mathis, Turin, Italy*

**11:45 – 12:10 How to Deal with Claims for Defects (Non-Conformity) of the Goods?**

- The notion of non-conformity in Article 35 of the CISG
- Notification of non-conformity. Determining the “reasonable time” after which claims are forfeited
- Case law on non-conformity and time limits for notice
- **Jean-Paul VULLIÉTY**, *President of the UIA International Sale of Goods Commission, Lalive & Associés, Geneva, Switzerland*

**12:10 – 12:30 Limiting Contractually the Seller’s Liability for Damages**

- Seller’s liability for damages arising out of non-conformity – the general rules of the CISG
- Effectiveness of limitation clauses under the applicable law
- The practice of relying on limitation clauses and related risks
- **Jelena PEROVIC**, *Faculty of Economics, University of Belgrade, Belgrade, Serbia*

**12:30 – 13:00 Workshop-discussion with the Participants on Examples of Limitation of Liability Clauses**

- **Jean-Paul VULLIÉTY**, *President of the UIA International Sale of Goods Commission, Lalive & Associés, Geneva, Switzerland*

**13:00 – 14:30 LUNCH**

**Ristorante Alle Due Fontanelle**

Via F. Cesi, 23 – 00193 Rome

**14:30 – 15:15 How to Choose the Right Incoterm?**

- The Incoterms 2010 of the ICC
- Reasons for avoiding the term “ex works”
- The passing of risk under the various incoterms
- **Burghard PILTZ**, *Ahlers & Vogel, Hamburg, Germany*

**15:15 – 16:00 Dispute Resolution in International Contracts of Sale**

**The Recourse to International Arbitration**

- Arbitration or court jurisdiction?
- Effectiveness of arbitration clauses
- Provisional measures, simplified proceedings
- **Martin WIEBECKE**, *Anwaltsbüro Wiebecke, Küsnacht, Switzerland*

**The Recourse to National Courts**

- Choice of forum clauses: conditions for effectiveness
- How does EU Regulation 1215/2012 affect decisions on validity of choice of forum clauses?
- Clauses which determine the place of delivery (art. 7(1)(b) Regulation 1215/2012)
- **Fabio BORTOLOTTI**, *Buffa, Bortolotti & Mathis, Turin, Italy*

**16:00 – 16:30 Workshop-discussion with Participants on Choice of Law and Jurisdiction Clauses in Contracts of Sale**

- **Fabio BORTOLOTTI**, *Buffa, Bortolotti & Mathis, Turin, Italy*
- **Martin WIEBECKE**, *Anwaltsbüro Wiebecke, Küsnacht, Switzerland*
- **Anna MASIOTA**, *Masiota Law Firm, Poznań, Poland*

**16:30 – 17:00 COFFEE BREAK**

**17:00 – 17:30 General Introduction Session on Distribution: Organising an International Distribution Network. The Main Options**

- Intermediaries v. resellers: the main option between agents and distributors
- Subsidiary/joint venture
- Controlling retail distribution (franchising, selective distribution)
- The need for flexibility
- **Fabio BORTOLOTTI**, *Buffa, Bortolotti & Mathis, Turin, Italy*
- **Burghard PILTZ**, *Ahlers & Vogel, Hamburg, Germany*

**17:30 – 17:45 Q&A with the Participants**

**17:45 – 18:00 Closing Remarks for the Working Session**

**20:00 OPTIONAL DINNER**

**Ristorante Il Vero Alfredo**

Piazza Augusto Imperatore, 30 – 00186 Rome

## 08:30 – 09:00 REGISTRATION OF PARTICIPANTS

**Cassa Nazionale Forense**

*Auditorium*

Via Giuseppe Gioacchino Belli, 3, 00193 Rome

### CHAIRMAN OF THE SESSION

- **Stephen L. SIDKIN**, *UIA Director of Communication, Fox Williams LLP, Solicitors, London, United Kingdom*

## 09:00 – 09:30 The Rules Protecting Commercial Agents in the European Directive and in the Laws of the Member States. A General Overview

- The directive harmonizes but does not unify the national rules
- Need to adapt the contract to the applicable domestic law
- Is it possible to minimize the impact of the rules on goodwill indemnity
- The choice of a law other than the agent's one. When is such choice effective?
- The choice of the law of a third country: the Ingmar case

- **Horst BECKER**, *Ariathes Rechtsanwälte, Munich, Germany*

## 09:30 – 10:00 Workshop-discussion with Participants on Exclusivity and Non-competition Clauses in Commercial Agency and Distributorship Contracts

- Granting exclusive rights and possible exceptions: excluded customers; right of the principal/supplier to make direct sales, etc.
- Analysing examples of non-competition clauses

- **Fabio BORTOLOTTI**, *Buffa, Bortolotti & Mathis, Turin, Italy*
- **Stephen L. SIDKIN**, *UIA Director of Communication, Fox Williams LLP, Solicitors, London, United Kingdom*

## 10:00 – 10:30 Goodwill Indemnity and Similar Rights in Agency and Distributorship Contracts: Analysing Recent Trends

- The goodwill indemnity for agents: different criteria of calculation in various countries

- The application by analogy of the agents' indemnity to distributors in various countries
- The trend towards recognizing an indemnity (or compensation for insufficient term of notice: rupture brutale) to distributors

- **Claudio ARTURO**, *Petsch Frosch Klein Arturo Rechtsanwälte, Vienna, Austria*

## 10:30 – 11:00 COFFEE BREAK

## 11:00 – 11:30 Contracts with Distributors: the Critical Issues

- Distributorship v. simple supply agreement
- The rules governing sales from supplier to distributor – payment conditions
- How to limit the financial risk

- **Marco HERO**, *PF&P Rechtsanwälte, Munich, Germany*

## 11:30 – 12:00 Complying with EU Antitrust Rules

- No vertical price fixing/recommended prices/maximum prices
- Export prohibitions: active/passive sales
- Non-compete clauses: 5 years' limitation and prohibition of post-contractual obligations

- **Susanne MARGOSSIAN**, *Novalac, Paris, France*

## 12:00 – 12:30 Hot Issues Regarding Sales on the Internet

- Selling through the Internet: possible impact on the existing network
- Limiting sales through Internet by distributors: trademark and anti-trust issues

- **Gusztáv BACHER**, *Szecskey Attorneys at Law, Budapest, Hungary*

## 12:30 – 13:00 Conclusion & End of Seminar

- **Ignacio CORBERA DALE**, *President of the UIA Contract Law Commission, Garrigues UK LLP, London, United Kingdom*





# Organising Committee

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## General Information

### SEMINAR VENUE

#### CASSA NAZIONALE FORENSE

Auditorium  
Via Giuseppe Gioacchino Belli, 3 – 00193 Rome, Italy  
T +39 06 36 21 11

### REGISTRATION FEES

	UIA Member		Non Member	
	≤ 29.04.2015	> 30.04.2015	≤ 29.04.2015	> 30.04.2015
STANDARD REGISTRATION	€ 390*	€ 440*	€ 440*	€ 490*
YOUNG LAWYER (<35)**	€ 340*	€ 390*	€ 390*	€ 440*

\*The VAT (22%) can be applied to the amount here above according to the European Directive 2006/112/CE of November 28, 2006. For more information, please contact the UIA.

\*\*Please attach proof of age to the registration form to benefit from young lawyers fee.

These fees cover participation in the welcome cocktail, participation in the seminar, coffee breaks, lunch on Friday, May 29, 2015, as well as the documentation of the seminar. The dinner on Friday night, May 29, 2015, is optional and at additional charge. Please note that the number of places at the seminar is limited. The organisers reserve the right to refuse registrations in the event of excess applications.

### CONTINUING LEGAL EDUCATION

Every participant attending the seminar will receive a "Certificate of Participation" at the end of the event that may be used for obtaining "Credits" for "Continuing Legal Education" – "Continuing Professional Development" purposes, depending on national rules. For more information, please contact the UIA.

### LANGUAGE

The working language will be **English** without simultaneous translation.

## HOTEL ROOM RESERVATION

A limited number of rooms has been pre-booked at a preferential rate. Reservations should be made directly through the hotel. Credit card details must be given in order to secure your reservation. Please note that the number of rooms is limited. We recommend that you proceed with your reservations as soon as possible.

Hotels	Rates
<b>Hotel VOI Cicerone 4*</b> <i>at 100 meters from the Cassa Nazionale Forense</i> Via Cicerone, 55/c 00193 Rome, Italy T +39 063 98 06 60 0/F +39 063 23 53 85 E <a href="mailto:meeting@voihotel.com">meeting@voihotel.com</a>	Single room € 168 Double room € 180 <b>American Breakfast included</b> <b>City tax NOT included: EUR 6/pers/day</b> <i>Please download the hotel reservation form from our Website:</i> <a href="http://www.uianet.org">www.uianet.org</a>
<b>Hotel Visconti Palace 4*</b> <i>at 65 meters from the Cassa Nazionale Forense</i> Via Federico Cesi, 37 00193 Rome, Italy T +39 063 68 48 72 /F +39 063 20 05 51 E <a href="mailto:mice@viscontipalace.com">mice@viscontipalace.com</a>	Single room € 185 Double room € 208 <b>American Breakfast included</b> <b>City tax NOT included: EUR 6/pers/day</b> <i>Please download the hotel reservation form from our Website:</i> <a href="http://www.uianet.org">www.uianet.org</a>

## CANCELLATION CONDITIONS

All cancellations will be subject to a 50% deduction and will have to be sent in writing, to be received by the Union Internationale des Avocats **no later than April 29, 2015**. No refund will be made for cancellations received after this date.

## VISAS

Anyone who requires a visa invitation letter in order to attend the seminar should register and pay their registration fees **no later than April 29, 2015** to ensure there is enough time to obtain a visa.

All cancellations will be refunded in full, minus €50 + VAT to cover administrative costs, provided that the UIA has received the registration documents and **total registration fees no later than April 29, 2015**.

If you register after this date, only 50% of the amount paid minus €50 + VAT to cover administrative costs will be refunded for cancellations due to visa refusals.

All cancellations due to a visa refusal must be sent in writing and reach the UIA **before the seminar**. Cancellations must be accompanied by a **proof of visa refusal**.

If your visa is issued after the seminar date or if you do not have proof of visa refusal, you will not be entitled to a refund.

## GENERAL CONDITIONS

All registrations received by the Union Internationale des Avocats (UIA) along with the full payment of fees corresponding to the events selected will be confirmed in writing.

The UIA reserves the right to cancel or postpone the seminar to a later date, change the seminar venue and/or programme, make any corrections or modifications in the information published in the seminar programme and cancel any invitation to participate in the seminar, at any time and at their entire discretion, without having to provide any reasons for the same.

Neither the UIA, nor any of its managers, employees, agents, members or representatives shall be held responsible for any loss or damage, of any nature, suffered (directly or indirectly) by a delegate, accompanying person or a third party following any cancellations, changes, postponements or modifications.

**The UIA strongly advises participants to subscribe to modifiable and/or refundable services, as well as to take out a cancellation insurance.**

Neither the UIA, nor any of its managers, employees, agents, members or representatives shall be held responsible for any loss or damage, of any nature whatever, suffered (directly or indirectly) by a delegate or accompanying person, except in case of death or personal injury due to gross negligence by the UIA.

The contractual relations between the UIA and each participant (delegate or accompanying person) in relation to the seminar are subject to French law and jurisdiction, to the exclusion of any other law. Paris is the city of jurisdiction.

It is the responsibility of participants to ensure compliance with police, customs and health formalities for their journey. Participants unable to take part in the seminar because of their inability to take a flight or any other means of transportation due to being unable to provide the documents required (passport, visa, vaccination certificate, etc.) cannot claim any reimbursement.

## FORMALITIES

## FORCE MAJEURE

“Force majeure” means any events external to the parties, of both an unforeseeable and insurmountable nature that prevents either the client or the participants, or the agency or service providers involved in organising the seminar, from executing all or part of the obligations provided for in the present agreement. By express agreement, such will be the case in the event of a strike affecting the means of transport, hotel staff, air traffic controllers, an insurrection, a riot or any prohibition whatever decreed by Governmental or public authorities.

It is expressly agreed that for the parties, a case of force majeure would suspend the execution of their reciprocal obligations. At the same time, each of the parties shall bear the burden of all the expenses incumbent upon them, resulting from the case of force majeure.

## HEALTH

The organisers decline any responsibility in case of any health problems existing prior to the seminar that may lead to complications or be aggravated during the entire period of the stay: pregnancy, cardio-vascular problems, any allergies, special diets, any disorders under treatment and not yet consolidated on the day the seminar starts, psychic or mental or depressive illness, etc. (Non exhaustive list).

# Drafting Effective International Contracts

## Workshop-seminar on International Sales, Agency and Distributorship Contracts

Friday, May 29 & Saturday, May 30, 2015

**ROME, ITALY**

### REGISTRATION FORM

Register online at: [www.uianet.org](http://www.uianet.org)

or please complete and return this form **before May 15, 2015**, by email, fax or post, to:

**UNION INTERNATIONALE DES AVOCATS**

25 rue du Jour, 75001 Paris, France

Tel: +33 1 44 88 55 66 ■ Fax: +33 1 44 88 55 77 ■ Email: [uiacentre@uianet.org](mailto:uiacentre@uianet.org)



Register online

#### UIA INDIVIDUAL MEMBERS

Please specify your membership number (Please check your membership card or membership fees):

MI - - - - -

Family Name: .....

First Name: .....

Firm: .....

Address: .....

Post Code: ..... City: .....

Country: .....

Tel: ..... Fax: .....

Email: .....

Date of Birth: .....

EU VAT ID – Number: .....

Special requests (special diet, allergies, handicap...): .....

Arrival/departure times & flight numbers: .....

Hotel: .....

#### A. SEMINAR REGISTRATION FEES

	UIA Member		Non Member	
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\* The VAT (22%) can be applied to the amount here above according to the European Directive 2006/112/CE of November 28, 2006. For more information, please contact the UIA

\*\* Please attach proof of age to the registration form to benefit from young lawyer fee.

## B. SEMINAR SOCIAL ACTIVITIES

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Please indicate below whether you plan to attend the following events **included** in the cost of your registration.

- Welcome Cocktail – Thursday, May 28, 2015  
 Lunch – Friday, May 29, 2015

## C. OPTIONAL ACTIVITY

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(**not included** in the registration fees)

- Optional Dinner – Friday, May 29, 2015

• Please book ..... person(s) for the dinner on **Friday, May 29, 2015** € 50 (Excl. VAT) x \_\_\_ / pers

Total (C) (Excl. VAT) € .....

## D. TOTAL

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TOTAL (A) Excl. VAT – Registration Fees € .....

TOTAL (C) Excl. VAT – Optional Activity € .....

TOTAL (A+C) Excl. VAT € .....

VAT if applicable (22%)\* € .....

TOTAL (A+C+VAT) € .....

\* The VAT (22%) can be applied to the amount here above according to the European Directive 2006/112/CE of November 28, 2006. For more information, please contact the UIA.

## E. CANCELLATION CONDITIONS

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I, the Undersigned, confirm that I have read and accepted the **cancellation conditions** as well as the **general conditions** given on page 6 of the registration programme. My registration will only be taken into account on receipt of the payment.

Participants are aware that their image and/or voice may be photographed, recorded or filmed throughout the duration of the seminar. They hereby assign to the UIA, with the signature of this form, the right to exploit, reproduce and disseminate the images and recordings by all means, both known and unknown, using all media, for an unlimited term and free of charge.

## F. METHOD OF PAYMENT

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- By cheque in € payable to the UIA, addressed to: UIA – 25 rue du Jour – 75001 Paris – France  
 By bank transfer in €, without charges to the payee, in favour of the Union Internationale des Avocats, quoting “2015 Rome Seminar”, to the following bank and account:

**Société Générale – Paris Elysées Entreprise**  
**91 avenue des Champs Elysées – 75008 Paris – France**  
**BIC / SWIFT N°: SOGEFRPP**  
**IBAN: FR76 3000 3033 9200 0503 4165 164**

*Kindly attach a copy of your bank transfer order to your registration form*

- By credit card:       Visa       Eurocard / Mastercard

Card N°: \_ \_ \_ \_ \_

Expiry date: \_ \_ / \_ \_      3 digits: \_ \_ \_

Name of card holder: .....

I authorise the Union Internationale des Avocats to debit the above mentioned credit card in the amount of € (EUR) .....

Date: ..... / ..... / .....

Signature: .....