**MEETING REPORT**

Chaired by Thierry CLERC (France) and Christian SCHLEMMER (Germany)

**40 lawyers from 19 countries:** Austria, Belgium, China, Czech Republic, France, Germany, India, Italy, Monaco, Netherlands, Norway, Poland, Romania, Spain, Thailand, Turkey, UAE, UK, USA

**5 Topics:** Legal privilege, Covid19,Exequatur**,** Survival clauses,Directors’ liability

**Legal Professional Privilege**” in the UK,

by **Charlotte CLODE**, “*best lawyer of the year*” (FBCMB Solicitors) and **Cat Mac Lean** (MBM Solicitors)

**Covid 19: consequences on business contracts and justice systems** **by Thierry CLERC** (FCA),

Business contracts

Covid 19 is not a Force Majeure (FM) case itself.

One must prove a link between the Covid and the non-performance of the contract.

Reference is made to the definition of the FM by Vienna Convention (CISG) art 79 and 81, to the ICC FM standard clause 2003, or to the CJUE case 145/85.

And the WHO publication of 30 January 2020 which called the coronavirus a “Public Health emergency of international concern”.

**Unpredictability** (if the contract was signed before 30th January 2020) and **irresistibility** (if the Covid 19 renders the performance impossible) are the two criteria to be released of any liability. No penalty in case of FM.

In China, the Authorities can deliver **a certificate of Force Majeure**.

But the contract may be cancelled and the parties being in the same state where they were before the conclusion of the contract: no performance and no payment

(**restitutions**?)

In case of **suspension** of the performance, who will take care of the costs? and who will bear the responsibility of the cancellation at the end of the suspension, if the case arises.

**Cascading cancellations** if the suppliers wear aware of the main contract.

Difference between **Hardship** (the performance becoming excessively costly) and Force Majeure (impossibility to perform the contract)

**The judge may modify the contract** in some countries.

Some legislations provide for a reduction of the price in case of partial performance

The parties must ckeck their insurance policies.

See also articles published on Eurojuris Web site “ Covid 19” : <https://www.eurojuris.net/en/node/45191>

Justice Systems: the example of France

Courts are closed, except for urgent cases

* No video conferences, except before some commerce and criminal courts in case of emergency and if they have video conferencing equipment
* Only written submissions and supporting documents, no oral pleadings
* Time limits are suspended or postponed, cessation of payments delayed

Specific rules for Company AGM

Law Offices management

* Remote working when possible
* Video conferences for training
* Certificate proving your business moving entitlement
* Partial unemployment
* Suspension of rent, of taxes (except VAT), social taxes, electricity, gas, water invoices
* Bank Loan guaranteed by the French State

**Exequatur of Court decisions outside Europe (UK?)**

by **Christian SCHLEMMER** (Caemmerer and Lenz-Germany) and **Naveen INDRAKANTI** (Cresco- UAE)

questionnaires received from 12 countries: Gotelee (UK), Alpha (India), Espada (Spain), FCA (France), Fiutowski (Poland), Van Zinnicq (Netherlands) , Proksch (Austria)

**What clauses survive after the end of the contract**

by **Thierry CLERC**, (FCA Avocats-France) and **Moritz SCHUMANN** (USA)

**Vienna Convention article 81, 1**°: Avoidance does not affect disputes clauses and other provisions governing the rights and obligations of the parties consequent upon the avoidance of the contract

This international **convention supplants the national law if not excluded** by the parties located in the countries signatories of the convention which is not the case for India and the UK

Depending on the countries, **may survive the following clauses**: governing law and venue, confidentiality, non-competition, non-poaching, limitation of liability, penalty, responsibility for defective products, effect of termination, representation and warranties, IP rights, Insurance,….

Example: survivance of an arbitration clause of a contract expired for 5 years renewed by tacit agreement

**No survivance if** the contract is null and void and if the contract is tacitly renewed with another purpose

**From the US Perspective**:

The survival clause specifies which are the remaining provisions after termination

Survival clauses are used in Commercial, Distribution, Employment, and Merger agreements,

Governing law is important because **US has federal law+ state law = different legislation**

Non-compete clause in Employment agreements are problematic

New York State: time limit shall be reasonable

California: Non-compete clause prohibited, unless the agreement involve the sale or dissolution of a business and falls within the narrow statutory exceptions.

The limitation of where a corporation may be sued is subject to the court’s power to change the place of trial

**Questionnaires received** from 7 countries: Giaccardi (Monaco), Gotelee, Rix & Kay(GB),Holubova (CZ), Legrand(Belgium), Fiutowski(Poland),

KSS(Thailand), Proksch(Austria)

**The liability of Directors and board members in cases of Antitrust violations** in Germany, by Christoph **HERRMANN** (Einem & Partners- Germany)

Next topics for Paris and further meetings

* Visit of Paris International courts
* Visit of ICC and / or CMAP (arbitration and mediation centers)

And topics related the venues

Other suggestions from the attendance:

* Hacking of emails and bank details (Espada)
* Gathering of evidences before the courts (Bienfait)
* Moot courts management (Daubner)
* Brexit impact on litigation and contract (Legrand)
* Specific provisions for service agreements (Clerc)
* Lawyers fees’ enforcement (Clerc)

**NEXT MEETING: PARIS Friday 16 OCTOBER 2020**