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Item No. 13 on the Agenda: UNIDROIT Instruments in the COVID-19 pandemic

(prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>Presentation of the Secretariat's work in preparing a series of guidance documents regarding how COVID-19 affects a number of leading UNIDROIT instruments and how they can help overcome the challenges deriving from the pandemic and its economic consequences, as well as related outreach initiatives</i>
<i>Action to be taken</i>	<i>For the information of the Governing Council</i>
<i>Related documents</i>	<u>UNIDROIT 2020 – C.D. (99) B.9</u>

I. INTRODUCTION

1. In the context of the ongoing COVID-19 pandemic and the attendant economic crisis, the Secretariat has continued the preparation of guidance documents regarding the impact of COVID-19 on the application of a number of leading Unidroit instruments. The guidance seeks to illustrate ways in which these instruments may be of interest to a wide array of actors (e.g. domestic and international policymakers, legal practitioners, development experts, etc.) currently facing serious challenges in a number of areas such as the administration of justice, development and law, and the economy more broadly. These documents are intended to be the first of a series of Notes that the Secretariat is planning to periodically publish on UNIDROIT instruments and current legal issues.

2. The Secretariat has created a dedicated section on the Institute's website (<https://www.unidroit.org/covid-19>) to gather all of these materials as well as related initiatives. This document presents a brief overview of the work that has been carried out in this regard since the 99th session of the Governing Council held in September 2020.

II. UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS (UPICC)

3. UNIDROIT issued a guidance document in July 2020 on how the [UNIDROIT Principles of International Commercial Contracts](#)" (henceforth, the Principles or UPICC) could help address the main contractual disruptions caused both by the pandemic outright, and by the measures adopted because of it. A brief introduction of the purpose, scope and content of the Note was presented at the last Governing Council session ([C.D. \(99\) B.9](#), II).

4. While the [Note of the UNIDROIT Secretariat on the UPICC and the COVID-19 Health Crisis](#) was not meant to express an official position on the use or interpretation of the UNIDROIT Principles, it helped raise awareness on the modern and flexible approach taken by the Principles in regard to supervening circumstances. As such, it was the basis for further public discussion in conferences and other activities organised by the Secretariat (see below, section V).

Case-law citing the UNIDROIT Principles in the context of the COVID-19 Pandemics and its consequences

5. A [summary of a decision](#) rendered by The Rechtbank Amsterdam on 20 April 2020 referring to COVID-19 and the UNIDROIT Principles prepared by Michael Joachim Bonell and Eleonora Finazzi Agrò was published on the UNIDROIT website.

III. PRINCIPLES OF REINSURANCE CONTRACT LAW (PRICL) AND COVID-19

6. Since 2016, UNIDROIT cooperates with the PRICL Working Group to develop uniform soft law rules on reinsurance contracts. The project leaders expressed the view that the proposed principles presupposed the existence of adequate rules of general contract law. Rather than attempting to re-create such rules, the proposed new principles should refer to the UNIDROIT [Principles of International Commercial Contracts](#) as the general part of contract law. The first part of the PRICL was published in 2019 and is now freely available online (see <https://www.ius.uzh.ch/de/research/projects/pricl.html>). In the framework of the UNIDROIT Work Programme 2020-2022, the Secretariat continues to cooperate with the PRICL Working Group on the second part of the PRICL.

7. On 18 January 2021, UNIDROIT participated in the 8th PRICL Workshop, which was held online in-lieu of the biannual Working Group meeting. The Workshop included a presentation by the UNIDROIT Secretary-General and the Deputy Secretary-General on the [Note of the UNIDROIT Secretariat on the UPICC and the COVID-19 Health Crisis](#), followed by a discussion on the impact of COVID-19 and the PRICL, led by Professor Helmut Heiss (Co-Director of the PRICL Project, University of Zurich). As a result of the Workshop, participants agreed to create a special task force to draft a Note on the impact of the PRICL and the impact of the COVID-19 health crisis on the reinsurance market. The Note was meant to look at the impact of the PRICL in the pandemic and post-pandemic situation, also in the light of the relationship between general contract law (and particularly the UNIDROIT Principles) and the specific legal regime and practice of reinsurance and insurance contracts.

8. On 27 May 2021, the draft Note was discussed at the second lecture in the Transatlantic Lectures on Insurance Law (ATILA) series organised by the Insurance Law SIG at the European Law Institute, which was dedicated to the illustration of the application of the PRICL to the COVID-19 health crisis. The topic of COVID-19 losses, PRICL and UNIDROIT Principles was introduced by Professor Helmut Heiss and Marta Ostrowska (General Secretary of the PRICL Project, University of Zurich and Warsaw), followed by an illustration by the UNIDROIT Secretary-General and Deputy Secretary-General on the Note on the UNIDROIT Principles of International Commercial Contracts and the COVID-19 health crisis. Oliver D. William (Special Advisor PRICL Project, Senior Researcher, University of Bern) then spoke of the Aggregation of COVID-19 losses under the PRICL, whereas Professor Jeffrey W. Stempel (University of Nevada, Las Vegas) and Kevin Bork (Special Advisor PRICL Project, Deputy General Counsel, Helvetia Insurance, Germany) delivered a presentation on Settlements. The lecture was concluded by Professor Manfred Wandt, Co-Director PRICL Project, Goethe-University Frankfurt/Main. The [video](#) of the webinar is available on the ATILA Lectures YouTube channel.

9. The Secretariat is undertaking further consultations and will continue to follow up on the finalisation of the PRICL Note towards its publication.

IV. CONTRACT FARMING & COVID-19

10. UNIDROIT, the Food and Agriculture Organization of the United Nations (FAO), and the International Chamber of Commerce Italy (ICC Italy), together with Professor Fabrizio Cafaggi (University of Trento, Italy), and in coordination with the International Fund for Agricultural Development (IFAD), are collaborating to prepare a joint document providing guidance on the impacts of the COVID-19 pandemic and similar disastrous events on the performance of food supply chain contracts—in particular contract farming arrangements.

11. As reported to the Governing Council at its 99th session in September 2020 ([Document C.D. \(99\) B.9](#), paras. 13-17), this joint initiative initially focussed on the legal implications of the COVID-19 pandemic on contract farming operations. Contract farming is a risk management tool based on an agreement between producers and contractors. At the heart of contract farming arrangements is an agricultural production contract between parties who agree to the terms and conditions of production (and marketing) of agricultural products in advance. In 2015, the [UNIDROIT/FAO/IFAD Legal Guide on Contract Farming](#) was adopted, providing guidance on the entire relationship, from negotiation to conclusion, including performance and possible breach or termination of the contract.

12. In a first phase, UNIDROIT and its partners undertook research and reached out to stakeholders and organisations active in the field to gather information on the legal implications of the COVID-19 pandemic. The results showed that the pandemic and the related government actions to limit its spread could hinder contractual performance by parties to food supply chain agreements. Similar problems had been caused by a variety of other emergencies, including natural disasters such as floods, droughts and the outbreak of pests or diseases. While contract farming relationships were affected, it became apparent that other contractual relationships along the food supply chain were even more severely affected, and that, in view of their interlinkages, they should both be considered in the guidance document. Furthermore, it was noted that the guidance should not only address the legal implications of the pandemic alone, but also similar disastrous events, in order to be truly useful for the sector.

13. Accommodating the above feedback received from stakeholders, UNIDROIT and FAO agreed to broaden the scope of the initiative to extend the analysis to the entire food supply chain and also include disastrous events other than pandemics. At this juncture, the ICC Italy joined the initiative, given its vital interest in the topic as well as its extensive network in the sector. Based on the enlarged scope, the organisations prepared a detailed questionnaire and reached out to a number of stakeholders to gather information, including: producers; producer organisations; extension service providers, and similar entities dealing primarily with agricultural producers; multinational companies; certifiers; and insurance service providers. The first results showed that the impacts at farmer level could be severe; that contracts at the level of producers and producer organisations did not usually contain clauses on force majeure or change of circumstances/hardship balancing such risks; and, that parties commonly aim to renegotiate their contractual relationships informally.

14. The guidance document being prepared aims to identify best practices and lessons learned from national legal frameworks and practice in order to strengthen the legal framework underpinning contract farming and, more broadly, food supply chain governance. It will include analysis, based on the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming, on how contract clauses on force majeure, hardship/change of circumstances and remedies would apply in view of the COVID-19 pandemic and similar disastrous events. It will also provide guidance for the design or adaptation of contractual arrangements to accommodate similar future disastrous events, and on what elements should be taken into consideration when negotiating and drafting such clauses. Guidance will, therefore, be given on preparing more flexible contracts allowing for the need for adjustments and cooperation in overcoming contractual performance difficulties, with a view to harmonising the approach along the entire food supply chain and promoting a fair balance of risks between the contracting parties.

V. OTHER COVID-19 RELATED INITIATIVES

15. The Secretariat has undertaken a number of initiatives aimed at providing broader awareness of UNIDROIT's instruments and the important role they can play in facilitating the economic recovery from COVID-19. The following provides an update in relation to selected initiatives organised since August 2020.

A. Lectures and webinars

16. On 3 September 2020, the Secretary-General participated in a webinar organised by the International Bar Association (IBA) Arbitration Committee, IBA European Regional Forum, IBA International Commerce and Distribution Committee, IBA Litigation Committee and supported by the IBA Corporate and M&A Law Committee, with a presentation entitled "COVID-19 and UNIDROIT Principles of International Commercial Contracts Solutions". More information and the agenda of the webinar are available at: <https://www.ibanet.org/UNIDROIT-Contract-Principles-webinar>.

17. On 8 January 2021, Legal Officer Philine Wehling delivered a lecture via videoconference to the postgraduate students from the International Training Centre of the International Labour Organization (ITC-ILO) in Turin, within the framework of the 2020-2021 edition of the Master of Laws in International Trade Law programme. The lecture addressed the legal implications of the COVID-19 pandemic and governmental containment measures on the performance of international commercial contracts in light of the UPICC.

18. On 27 May 2021, the draft Note on PRICL and the COVID-19 pandemic was discussed at the second lecture in the Transatlantic Lectures on Insurance Law (ATILA) series. For more information see section III above.

B. UNIDROIT COVID-19 Essay Competition

19. In 2020, the UNIDROIT Secretariat organised an Essay Competition, supported by [Stibbe](#), and facilitated by the [UNIDROIT Foundation](#). Participants were invited to author an essay in English between 2000-3000 words examining the impact and usefulness of UNIDROIT instruments either during the COVID-19 pandemic, or in the post COVID-19 economy. The competition focused on any relevant UNIDROIT instrument such as the UNIDROIT Principles of International Commercial Contracts, the Convention on International Interests in Mobile Equipment and its Protocols, the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, the UNIDROIT/FAO/IFAD Legal Guides on Contract Farming, and/or Agricultural Land Investment Contracts, among others. The deadline for submission was 7 September 2020. The top five essays were rewarded as follows:

- 1st Position 2,500 € + Publication opportunities
- 2nd Position: 1,500 € + Publication opportunities
- 3rd Position: 500 € + Publication opportunities
- 4th and 5th Position: Publication opportunities

20. UNIDROIT published the [CVs of the winners of the essay competition](#) on its website in March 2021 and invited them to present their research at a Webinar hosted on 8 March 2021.

- 1st Position **Augusto Garcia Sanjur** - [UNIDROIT Principles and the Covid-19 Economy](#);
- 2nd Position: **Soterios Loizou** - [UNIDROIT: Tackling Covid-19 through Private Law](#);

- 3rd Position: **Benedetta Mauro** - [Using the UNIDROIT Principles to Preserve Long Term Contracts in Times of Pandemic: The Case for a Covid-19 Model Clause](#);
- 4th Position: **Tamás Szabados** - [The Global Pandemic as an Opportunity: Towards a Cutting-Edge Legal 'App' for Online Art Trade](#);
- 5th Position: **Gabriella Prado** - [The UNIDROIT Principles of International Commercial Contracts and the Covid-19 Pandemic](#).

VI. ACTION TO BE TAKEN

21. *The Governing Council is invited to take note of the activities of the Secretariat and to actively support its initiatives in this field.*