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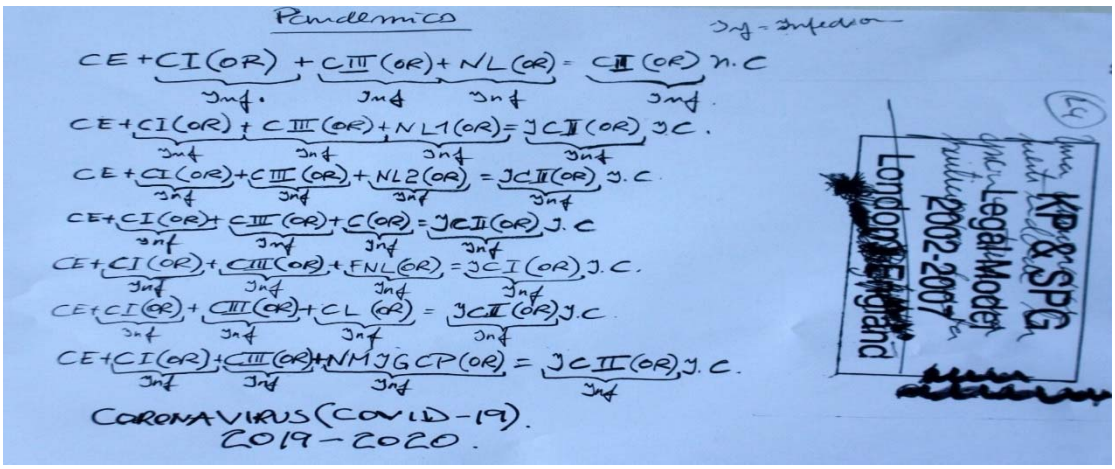

PYSDENS COVID-19: PURCHASE CONTRACTS, FAULTY GOODS AND RIGHTS OF RETURN OR REFUND AND PROBLEMS WITH ENFORCEMENT.

The desperate efforts to obtain much needed personal protective equipment for workers by governments and other entities across the globe and news of faulty equipment having been provided by Chinese manufacturers and manufacturers in other countries raises the issue of the ability to seek a refund or damages for faulty products internationally. It also raises the issue of testing by various customs authorities and other testing facilities and the question of how these items were either permitted to leave the countries where manufactured under quality testing locally or be allowed to pass customs in the import countries.

The immediate issue is to get the proper standard of equipment to those who need it and to avoid sub-standard goods being allowed either to leave the country or export or entering the country of import but whilst that is being resolved one has to keep in mind that faulty equipment already provided needs to be dealt with under the contractual arrangements made.

Nationally many countries may have legislation in place to deal with faulty goods on a default basis in case of any lack of contractual terms dealing with faulty goods. However this will only apply to national contracts of supply. Therefore in any contract for the supply of goods or services internationally one should seek to cover terms that focus on how to deal with issues of faulty goods or services and law and jurisdiction in terms of dealing with disputes arising under that contract which often they do not. Even if they do there may be problems with enforcement. In other words, just because the law of one country provides for a recovery in the form of a judgement, the law of the country where that recovery is to be enforced may not recognise the judgement of the country where the judgment was given even though the parties may contracted to deal with disputes in that country.

From an English law point of view judgments in this country are recognised by Commonwealth countries and European countries and a few others at present through bilateral agreements. However there are certain countries where there is no recognition of the efficacy of English judgments such as China, Russia, Japan and the U.S.A. Perhaps what is happening with coronavirus may bring various governments to the view that they all need to enable their citizens and government authorities to enforce judgements in other countries particularly in respect of international sale of essential goods such as protective personal equipment and other medical supplies. If countries are keen to encourage export markets to aid their economies then they ought to be ready to back their aspirations by granting the target import countries with a legal framework to support that international trade including a reciprocal recognition and enforcement of judgment agreement. Indeed why should countries accept imports if the parties involved do not have a satisfactory legal framework to deal with any disputes arising in relation to the imported goods?

The EU deals with such problems by having reciprocal agreements for enforcement of judgments between entities in different member states and where a third country is concerned as the domicile of the exporter, if that exporter does not have a legal presence in the EU, then the party responsible to any consumer for bringing the goods into the EU will be the responsible party if the goods are faulty and that is usually a freight forwarder or distributor. The EU has a similar means of protecting its members' customs authorities in terms of collecting duties and VAT. If the duty and VAT is due from a legal entity in one member state then the customs authority will have the duty to pursue that party for a recovery. However, if the legal entity is in a third country then the party responsible for the entry will be the party to pursue within the EU. In other words in order to get over difficulties with enforcement of rights in countries outside the EU it deems entities within the EU as responsible leaving those entities deemed responsible with the problem of recovery against the entity in a third country under their contractual terms which may be difficult if not impossible through being prohibitively expensive.

Generally speaking if there is no reciprocal agreement in place between countries for recognition and enforcement of judgments in each other's jurisdictions the wronged party will need to bring a case in the country where they will need to enforce the judgment therefore dealing in a foreign law and a foreign jurisdiction even though they may have agreed contractually to bring cases in another jurisdiction. It is advisable to always have arbitration as an alternative means of dealing with contractual disputes to courts in contracts or have disputes dealt with only by means of arbitration. This is because most of the countries that avoid entering into reciprocal agreements for the recognition and enforcement of judgements are signatories

to the New York Convention on the enforcement of arbitral awards. Under this Convention the countries who have signed up have agreed to enforce the arbitral awards of other signatories.

Of course contractual terms need to be by consent and it may not be possible to agree to use arbitration to deal with disputes. If blocs such as the EU avoid the problems by deeming entities in their own jurisdictions to be liable what hope is there for operators who face the risk of these deeming provisions which may cause their ultimate demise if they cannot recover or afford to recover liabilities under the deeming provisions from an entity in a third country? Robust contractual terms need to be in place to facilitate such recoveries.

Now is the time for governments to step forward and table this issue with countries with whom they do not have reciprocal agreements as moral pressure is capable of being applied during this current pandemic where issues of life and death arising out of faulty equipment are in the public domain. As said, governments are in general supportive of international marketing by legal entities operating within their jurisdictions but they need to facilitate those exports by ensuring a suitable international legal framework with the countries to which their entities wish to market in. This has not been done in the main and those legal entities end up having to deal with complex legal issues when they need to take legal action in relation to their international contracts.

We at Pysdens have considerable experience in drafting international contracts and are able to assist in ensuring that suitable terms to deal with these issues are included in any draft contract for consideration and if the other party is not willing to agree to such clauses, in giving advice on how to ameliorate such problems. Our opinion is that it is incumbent on governments to push for reciprocity in terms of recognition of and enforcement of judgments with countries using all necessary opportunities and means to obtain this. Absent such agreements being in place legal entities dealing or intending to deal internationally need to consider these risks very carefully and take legal advice to ensure the risks are minimised.

We at Pysdens Solicitors make every effort to keep our expenses to a minimum in order to pass our savings to our clients. Our fees are very competitive which, in times of economic difficulties, is important to consider. Our policy is to resolve disputes early rather than to litigate.

Note: In producing this press release by Pysdens Solicitors, the models published in books entitled "**GUIDELINES TO CONSIDER IN RESPECT OF COMMERCIAL DEALINGS**" (**CI**); "**GLOBAL ENVIRONMENTAL LEGAL & COMMERCIAL STRATEGY**" (**CIII**) and the draft "**THE DARWIN PROJECT: UNIVERSAL CODE**" (**CIV**) by S. Perez-Goldzveig and K.Pysden

forming part of the research and development programme "COMMERCIAL GUIDE INITIATIVE" by S. Perez-Goldzveig and K.Pysden being part of "TheHouseofBranchofGold" were used with the authorisation of the authors.

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