

2024 INTERNATIONAL BUSINESS LAW MEMORANDUM

- Objectives
 - You are being tested on the following:
 - Your understanding of the materials covered in this course
 - Your ability to draft a concise, persuasive, clearly written memorandum that addresses the relevant issues
 - Your research skills
- Submission
 - **Due Date: 5 April @ 5:00pm (Friday)**
 - Upload electronically via Canvas
- Clarification and Additional Facts
 - If you have questions/clarifications related to the facts of the case, post them on the IBL Discussion Board (Canvas) by **27 March @ 5:00pm (Wednesday)**
- Word Limit
 - **5,000 words maximum** (not including footnotes, cover page, annex)
 - Do your best not to circumvent the word limit by abusing the footnotes. When in doubt, apply good faith
- Style & Format
 - Times New Roman (11 pt)
 - Single spaced
 - Use “Moderate” margins
 - Cover page containing: Your name, student ID number, word count (excluding the cover page, footnotes, and annex, should you have one), plus type “I did not cheat” and electronically sign your name next to it (assuming that you did not cheat)
- Structure
 - The case for the memorandum involves issues relating to sale of goods, carriage of goods, commercial arbitration, and so on. Treat each of these topics separately (i.e. analyze the sales issue from start to finish, then move on to carriage, etc.)
- Citation
 - The general rule is that if you cite an external source, you must identify them in a manner that the graders will be able to find the source, but how you do so (i.e. MLA, APA, etc.) is up to you
 - There is no need for a bibliography or a case list, but add them if you wish
 - The course reader, lecture slides, and “Mark” will NOT be considered as valid sources
- Collaboration
 - You are allowed to discuss with your classmates about the contents/substance of this case
 - However, you must draft your own answers (i.e. do NOT cut and paste or even paraphrase any part of anyone else’s memorandum as that will be considered plagiarism)
 - Students are invited to ask questions/clarifications as necessary on the IBL Discussion Board via the Canvas
- ChatGPT
 - You are permitted to use ChatGPT as a source of inspiration, but as with all other material, you’re not permitted to simply cut-and-paste any content from it

Good Luck & Have Fun!!

1 Chef **Maximo Buona-Fortuna** is not only a world-renowned chef, but a serious restauranter with
2 highly rated restaurants all over the world. He is also a TV personality and his cookbooks – not to
3 mention his autobiography – have all won literary acclaim. However, due in part to his multitudes of
4 success, he worries that the business side of things has taken too much time away from what he is most
5 passionate about: the cooking. To devote more time to his craft, he decides to delegate all business and
6 legal decisions to **MBF Srl**, which is the business end of his culinary empire. MBF has been tasked to
7 negotiate contracts on behalf of Maximo’s restaurants, facilitate the procurement of items needed at the
8 restaurants (from ingredients to utensils), and deal with any business/legal issues that may arise.

9 After spending 2023 in a cooking and development hibernation, Maximo has emerged with an entirely
10 new menu to be served at his flagship restaurant, **Osteria Paffuto**, in Modena. The experimental menu
11 is unique to say the least, if not a bit shocking to the ordinary dining public. However, the esteemed
12 guests that are admitted entrance to Osteria Paffuto are no ordinary diners. “We’re going to replace our
13 over-reliance on white truffles with Yartsa Gunbu¹ mushrooms for our new Spring menu at Paffuto”,
14 the excited chef revealed to one culinary magazine during an interview in January 2024. Yartsa Gunbu
15 mushroom, also known as (*ophio*)*cordyceps sinensis*, is one of the rarest and most expensive fungi on
16 earth. Given that (*ophio*)*cordyceps sinensis* naturally grow only in extremely high altitudes of the Tibetan
17 plateau (bordered by China, Nepal, Tibet, and India), the costs associated with this
18 rare mushroom are also exorbitant, fetching around €10,000 for a mere 100
19 gram. However, as the magazine article with the chef’s interview also notes,
20 the act of consuming this rare delicacy is a status symbol and “the demand for
21 cordyceps does not remain high in spite of high prices, but it remains high
22 because of them.”



23 Cordyceps are also believed to have a wide range of health benefits, including
24 but not limited to being an antioxidant and having anti-aging effects. The Chinese have
25 been using them for medicinal purposes for centuries to cure anything from high blood pressure to
26 erectile dysfunction, giving (*ophio*)*cordyceps sinensis* the unique nickname: “the Viagra of the
27 Himalayas”.

28 From a culinary perspective, Yartsa Gunbu has a very bold, earthy flavor that, when crisped with butter,
29 tastes similar to fried onions, except with much more layers of complexity. Chef Buona-Fortuna plans
30 to use a very special butter to crisp the cordyceps for his menu called *Craic 353*, which has been voted
31 as one of the most exquisite butters in the world by the Golden Spoon Awards in 2023. *Craic 353* is
32 indeed a very special butter infused with the savory sweetness of Irish lobster, the nutty complexity of
33 caviar, the zest of Sicilian lemon, and an elegant hint of fennel. 500 grams of this perfectly balanced,
34 hand-churned, sublime butter shaped like a lobster claw is sold commercially for €1,000. Even with this
35 outrageous price, there is still a waiting list for people fighting to obtain it.

36 Tasked with the mission to procure these extremely rare ingredients on behalf of Chef Buona-Fortuna,
37 MBF engages with two different exporters: **Select Import & Export SL** (henceforth “SIE”), a company
38 based in Spain, for the procurement of the exotic (*ophio*)*cordyceps sinensis* and **Coastal Pastures Ltd**
39 (henceforth “CP”), the sole company based in Ireland that creates and sells the award-winning *Craic*
40 *353*.

41 With SIE, they come to terms with a price of €500,000 for 5 kilograms of (*ophio*)*cordyceps sinensis*. The
42 contract specifically states that the mushrooms must be “of the highest quality” as MBF has been made
43 aware that depending on the fungus’s size, color, symmetry, freshness, and assortment of other factors,

¹ Yartsa Gunbu means “winter worm, summer grass” in Tibetan.

44 the price could range from around €40,000 per kilogram to above €100,000 per kilogram. The
45 representative of SIE, when he realizes that they will be supplying the mushroom for the legendary
46 Maximo Buona-Fortuna exclaims, “I’ve read all of his books!”. He promises that SIE will provide,
47 “nothing but the best for the best chef in the world”, although he laments that “it is getting increasingly
48 difficult to secure good Yartsa Gunbu though, especially after shows like the *Last of Us* or celebrities
49 like Gwyneth Paltrow talking up their health benefits on Goop, peaking the curiosities of Western
50 consumers.” Nevertheless, the SIE representative assures MBF that he will “do his
51 best” for Chef Buona-Fortuna by touting his reliable supplier based in
52 Guangdong, who will be able to deliver the Yartsa Gunbu directly to Osteria
53 Paffuto. They agree to a delivery date of 20 April, just in time for Chef
54 Buono-Fortuna to start his new Spring menu at the restaurant and the two
55 sides successfully conclude the contract with the general terms and
56 conditions of MBF.²



57 Next, MBF agrees with CP for the delivery of 3 kilograms worth of *Craic*
58 353 for €6,000 (plus the shipping costs) by 19 April at Osteria Paffuto. After
59 some negotiations, MBF agrees to CIF (Zeebrugge) and to CP’s general terms and
60 conditions. CP retains **Finnlines NV** as the sea carrier to transport the butter from Ferry Terminal
61 Rosslare (Ireland) to Port of Zeebrugge (Belgium) and MBF arranges for **Sargo Transporti Srl**
62 (henceforth ST) as the road carrier to transport the cargo from the Port of Zeebrugge to Osteria Paffuto
63 in Modena. Rosslare to Zeebrugge is a 1000 kilometer journey, which usually takes about a day and a
64 half with Finnlines and from Zeebrugge to Modena is another day and a half by truck. While the entire,
65 1200 kilometer trip can be done in a matter of 12 hours, the driver for ST must comply with various EU
66 Regulations and make the necessary stops for weighing and delivery of other consignments.

67 CP has been relying on Finnlines for their exports on this route for the last few years and have never
68 experienced any major issues, aside from the inevitable delays due to severe weather conditions around
69 the English Channel. On 14 April, one of CP’s employees delivers the order of *Craic 353* destined for
70 Osteria Paffuto to Rosslare, arranges for the necessary export documents, and makes payment to
71 Finnlines. As the butter is stored in a cooling package that retains the freshness of the butter, the master
72 of the vessel, who is employed by Finnlines, is unable to check the inside of the packaging to ensure
73 that the butter is in apparent order and in good condition. However, she has no reasonable grounds to
74 suspect otherwise, so she notes the weight and value of the goods as specified by CP and issues a clean
75 bill of lading. CP immediately takes the bill of lading and sends it to MBF, together with an invoice,
76 through an overnight courier. Upon receipt of the documents on 15 April, MBF makes prompt payment
77 to CP.

78 In the early morning of 16 April, the driver from ST is waiting patiently to collect the *Craic 353* destined
79 for Modena, but the butter never reaches the driver. It turns out that the entire consignment was
80 confiscated by Belgian customs agents as the container that was storing the butter also contained 2,000
81 cans of Mushy Peas which was, in fact, concealing 600 kilograms of high-quality liquid cocaine. While
82 Ireland is known for their exportation of high-quality dairy products (with over €2.7 billion worth of
83 butter, milk, and cheese exported abroad every year), there are more than 15 drug gangs also operating
84 across Ireland, and Europol has been warning carriers like Finnlines to be more vigilant about drug

² MBF’s general terms and conditions state that the choice of law governing their international sales contract is the CISG supplemented by Italian law.

85 smuggling through commercial shippers across the English Channel. Of note, just in 2023, the Belgian
86 authorities seized a record amount of drugs (more than 120 tonnes of cocaine) across their ports.

87 According to the *Douane en Accijnzen* (Customs and Excise) inspectors at the Port of Zeebrugge, two
88 of the crew members employed by Finnlines were being paid by the **Houlihan Organized Crime**
89 **Group** (henceforth HOCG) to replace the pallets holding the normal cans of Mushy Peas with the liquid
90 cocaine infused cans of Mushy Peas while the goods were being loading at the Ferry Terminal Rosslare.
91 Finnlines argues that they had conducted a diligent background check of all their crew members and
92 the two arrested crew members had no criminal records when they were hired by the company a few
93 years ago. Finnlines, taking heed of the Belgian authorities' warning, also created a new mandatory
94 "Drug Trafficking Awareness Course" just last year to warn their crew members of the heightened risks.
95 However, Finnlines did not hire any additional staff to conduct extra security sweeps, nor did they invest
96 in new surveillance equipment or barriers to prevent unauthorized entry, which some of the other
97 carriers implemented. Finnlines cited that their hands were tied due to "budgetary constraints" and that
98 they did not want to increase the cost of shipping for their clients just to accommodate their
99 enhancements. As a result of their failure to detect the drugs on board and the subsequent confiscation
100 of all goods contained in the container, MBF's order of *Craic 353* from CP, much to the chagrin of Chef
101 Buona-Fortuna, never makes it to Modena.

102 On 17 April, at least the Yartsa Gunbu is delivered to the restaurant. The problem, however, is that the
103 quality of the mushroom is "subpar" at least according to the famous chef: "It doesn't taste like the ones
104 I had in Nepal!" he shouts angrily to no one in particular. As it turns out, there are large varieties of the
105 cordyceps species, some that are difficult to harvest, like the *(ophio)cordyceps sinensis*, and others like
106 *cordyceps militaris*, which are cultivated much easier (and thus cheaper). The chef suspects that perhaps
107 SIE sent them *cordyceps militaris* instead of *(ophio)cordyceps sinensis* and asks MBF to "look into this
108 and to fix it" as Osteria Paffuto cannot serve their customers with some widely available, cheap
109 imitation.

110 SIE assures MBF that what they sent were not *cordyceps militaris*, but *(ophio)cordyceps sinensis*.
111 However, SIE informs MBF that recently, a Chinese pharmaceutical company found a way to grow
112 *(ophio)cordyceps sinensis* in a lab, and they acknowledged that upon inquiring with their supplier in
113 Guangdong that some of their shipments did contain both the genuinely harvested *(ophio)cordyceps*
114 *sinensis* and the lab-grown ones as well. SIE is adamant that the lab-grown cordyceps are still of a high
115 quality with the same health benefits, not to mention that the taste is "near-identical, if not the exact
116 same". SIE asserts that due to over-harvesting and climate change, the shift from organic and naturally
117 sourced Yartsa Gunbu to a lab-grown one is an inevitability. There is some truth to this claim given that
118 Yartsa Gunbu, when sprouting, requires a certain range of temperature and
119 moisture to thrive. With the fluctuating temperatures brought on by
120 climate change, these variables are now extremely unpredictable,
121 and therefore, the harvesters are finding less and less of the
122 mushroom on the Tibetan plateau where it once grew in
123 abundance.

124 They say that bad things come in threes, and that is precisely the
125 case here. Since January 2024, MBF was also engaged in an
126 international commercial arbitration against one of its suppliers, **Wong**
127 **Yen Group, Ltd** (henceforth WYG), a distributor based in Hong Kong. The **Singapore International**
128 **Arbitration Centre** (henceforth SIAC) just ruled against MBF, in favor of WYG for an award of €1.2
129 million. Although there were no procedural issues with the arbitration (*e.g.* no issues of impartiality or



130 arbitrability), MBF still believes that this was an unfair result. The underlying breach of contract issue
131 was triggered by the fact that Maximo Buona-Fortuna wanted to sever ties with suppliers who have
132 been complicit in environmental degradation and labor violations.

133 WYG, on the other hand, has been accused of working with suppliers who are indifferent towards
134 sustainability and respecting labor standards. For example, it is known that WYG deals with
135 import/export of a variety of commodities including, but not limited to cattle, cocoa, soy, and palm oil,
136 some of which were items that MBF was sourcing through WYG in the past. MBF believes that paying
137 the arbitral award to an entity that is actively subverting the UN Sustainable Development Goals would
138 be a great injustice that would undermine the EU's ongoing efforts to combat climate change.

139 Given the birth of new EU regulations like the Deforestation Regulation and the Directive on Consumer
140 Sustainability Due Diligence, or the proposed Forced Labor Regulation, MBF is wondering whether
141 there are legitimate arguments, if any, which could be made for courts in the EU to refuse the recognition
142 and enforcement of SIAC's arbitral award, should WYG attempt to seek enforcement in Italian Courts,
143 where all of MBF's assets are located.

144 After graduating from the Maastricht University's European Law School, you have started your summer
145 internship at the Legal Department of MBF (congratulations!). You have been tasked to draft a memo
146 for your manager, **Carelen Supati**, who is aware of the facts of the case and has some ideas about how
147 MBF should proceed but is curious to see how you would assess the issues currently facing MBF.

148 Carelen informs you that Maximo has quietly confided in her that the public reaction to the interview
149 he gave back in January has not been received very positively. Given that the (*ophio*)*cordyceps sinensis*
150 naturally grows out of the carcasses of an insect or its larvae (giving it other nicknames like the "zombie
151 fungus" or "caterpillar fungus") the chef is now slightly concerned that the new menu maybe too bold
152 even for the most daring gourmands, who are usually willing to spend a small fortune to dine at Osteria
153 Paffuto. If SIE cannot deliver the natural cordyceps, "it will not be the worst thing" says the chef.
154 Carelen also notes that in the past, the chef had served as a Goodwill Ambassador for the SDG Fund
155 and he has continued to encourage other chefs to join his crusade to promote biodiversity, protect the
156 environment, and reduce food waste. While in the past, he attempted to carefully balance these
157 important social issues with running and maintaining a highly successful business serving high quality
158 haute cuisine to the super elites, in his old age, the chef is starting to care more and more about the
159 social issues over the business aspect of these matters.

1. Draft a claim against **Select Import & Export** and **Finnlines** for their alleged breaches of contract, including foreseeable counter arguments that they will make, and the likelihood of MBF succeeding on the merits of the cases. Advise, as concisely as possible, how Chef Buona-Fortuna and MBF should proceed on each of these issues, bearing in mind not only the legal aspect of the cases, but MBF's business/personal interests.
2. Suggest possible arguments that a European court could consider to justify refusing the recognition and enforcement of **SIAC's** arbitral award should **Wong Yen Group** seek its enforcement in European courts, bearing in mind the factors that the court will have to consider. Advise MBF on the likely outcome based on your analysis.