

International Business Law: Drafting and Negotiating Contracts

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Introduction to International Business Law

Welcome to the presentation on Drafting and Negotiating International Business Contracts. This presentation will provide valuable insights into the negotiation, drafting, and execution of international commercial contracts. We will explore the importance of negotiating and drafting a contract, especially in the context of cross-border trade. Additionally, we will discuss the role of lawyers in the negotiation process and the responsibility of the parties during negotiations. Join us as we delve into the complexities of international business law and the intricacies of contract negotiation.

Why Negotiate and Draft a Contract

The Importance of Legal Aspects in Agreements

1 Domestic Business Relationships

In domestic business relationships, parties often limit themselves to negotiating the basic contents of their deal, without discussing the legal aspects of their agreement.

2 International Business Contracts

The need for establishing specific contractual rules increases substantially in international contracts due to the less certain and foreseeable legal framework of cross-border contracts.

The Trend Towards Self-Sufficient Contracts

Impact of Legal System on Contract Drafting

Use of Standard Clauses or Models

Standard forms play an essential role in identifying key issues and providing hints for possible solutions in individual contracts.

Negotiation Margins

Working out alternative solutions during the negotiation phase allows for flexibility and understanding of the needs of the parties.

The Role of the Lawyer

A close cooperation between the lawyer and the businessman is crucial for preparing a draft that truly matches the specific needs of the parties.

Preparing for the Negotiation of an International Contract

Identification of Legal Framework

1 First Step

Identify the rules that govern the type of contract in question within the potentially applicable legal systems.

2 Draft Preparation

While identifying the legal framework, the parties begin to draw up the terms of the contract in order to have a draft to submit to the other party.

3 The Use of Local Lawyers

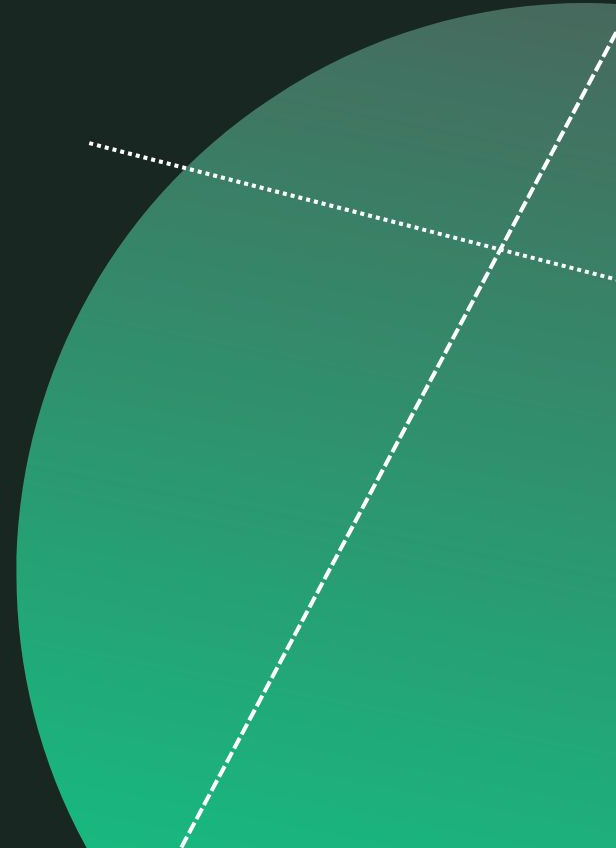
The involvement of local lawyers should require the assistance of a lawyer from the country whose law is to be applied.

4 Responsibility of the Parties

The responsibility of the parties during negotiation varies substantially from one legal system to another, impacting the conduct of the negotiation.

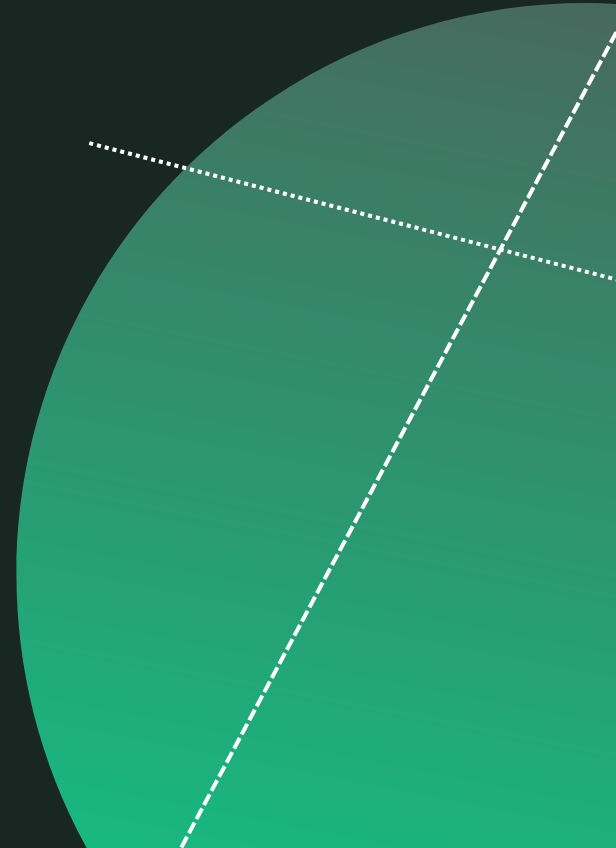
The Approach to Negotiation

The negotiation of a contract implies discussing respective positions and seeking compromise solutions that reflect the bargaining power of the parties. It is important to understand the significance of the negotiation and the impact it has on the agreement. The ability of the negotiator plays a crucial role, and both parties must be open to discussing and modifying proposed clauses to reach a mutually beneficial agreement.



The Role of the Lawyer in Negotiation

The lawyer plays a vital role during negotiation, especially in complex deals, where their legal expertise is crucial. It is essential for the lawyer to be involved from the beginning to understand the strengths and weaknesses of the deal, as well as to work out alternative solutions to problems that may arise. The involvement of the lawyer ensures that legal considerations are taken into account during the negotiation process.



Recourse to Local Lawyers

Advising on Foreign Law Application

1 Legal System Understanding

Foreign lawyers should have the necessary legal background and closely involve themselves in the negotiation to provide effective advice on the application of foreign law.

2 Responsibility of the Parties

The responsibility of the parties during negotiations differs across legal systems, impacting the conduct of the negotiation and the potential pre-contractual liability.

3 The Role of the Lawyer

The lawyer should be involved in the negotiation from the beginning and understand the business needs of the client to provide effective legal advice.

4 Pre-contractual Liability

Most civil law countries adopt the principle that parties must act in good faith during negotiations, leading to potential liability for damages if negotiations are interrupted in bad faith or conducted parallelly without informing the other party.

Conclusion

Key Takeaways

Negotiation Best Practices

Understanding the importance of effective negotiation and the role of legal aspects in the process.

Importance of Legal Assistance

The involvement of a lawyer is crucial in ensuring that legal considerations are taken into account during the negotiation process, mitigating potential legal risks.