

Negotiating, Drafting & Understanding Contracts

Law and Contract Management
Lisbon (Portugal)
17 - 21 Feb 2025

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Negotiating, Drafting & Understanding Contracts

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Introduction:

Contracts are the basic structure of all business relationships, whether they be for the construction of a major new facility, or the supply of stationery, the terms and the management of the contract itself are critical to the success of all companies. As such, contracts touch every aspect of business life, and all staff whether directly involved in contract management or not must understand how they operate, particularly in an international context.

The seminar covers the three stages of contracting; negotiating the “deal”; documenting that deal in a robust, but practical way; and managing the performance of the contract itself. The intention is to develop general skills with application to a wide range of contracts and to allow participants to have an awareness of practices in other areas and other industries, which may add value to their situations. The seminar will also allow considering matters from the perspective of the other party to a contract.

Course Objectives

- Emphasize the need to negotiate the “deal” before structuring the contract documentation
- Provide tools and techniques to assist in such negotiations
- Examine the drafting and modification of specific contract clauses, using real examples
- Look at some of the differences in approach in different jurisdictions and the common themes that run through contracting
- Review some of the skills that will enhance the efficient management of contract
- Examine ways to avoid disputes, or to manage them successfully

Course Outline

Day 1

The “Deal” Behind the Contract, and How Do We Get There?

- What constitutes a contract?
- How to structure commercial arrangements

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- Innovative commercial solutions e.g. Partnering, “BOOT” contracts, etc
- How to negotiate a contractual structure
- Basic techniques for negotiation
- How to document discussions
- Relationship between negotiation and contract drafting
- Closing a deal
- Dealing with difficult negotiators

Day 2

Drafting Contracts:

- Using standard forms
- Developing your standards
- Modifying forms
- Dealing with contract qualifications and amendments
- Structuring complex documents

Day 3

Negotiating Contracts:

- “Level playing field” issues - how to be fair to more than one bidder
- Dealing with errors in a bid
- Negotiating complex wording
- Formalities to finalize the contract
- Authority to sign

Day 4

Drafting Specific Clauses:

- Performance of the work
- Title
- Risk
- Intellectual property
- Variations
- To the contract
- To the scope of work
- Extension of time
- Force majeure
- Time for completion
- Liquidated damages and penalties
- Acceptance and testing
- Termination and suspension
- Law of the contract and dispute resolution

Day 5

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Management of Contracts

- Risk assessment and management
- Kick-off meetings
- Assignment of responsibilities
- Setting and managing expectations
- Planning
- Reporting - being realistic with requirements
- Progress meetings and expediting
- Dealing with defaults
- Dealing with external factors e.g. force majeure
- Recognizing and managing change
- To the contract terms
- To the scope of work
- Payment issues including international trade
- Closeout
- Lessons learned

Dealing with Disputes:

- Recognizing potential problems
- Dealing with issues as they arise
- Legal rights and commercial outcomes distinguished
- Negotiation structures for internal dispute resolution
- Types of external dispute resolution
- Litigation
- Arbitration
- Adjudication
- Expert Determination
- Mediation
- Issues with different legal systems
- Enforcement of awards
- Management of disputes
- Avoiding disputes in the first place

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