

# Drafting and Negotiating International Commercial Contracts



A Practical Guide

Fabio Bortolotti



International Chamber of Commerce

*The world business organization*

# Drafting Negotiating International Commercial Contracts

**Charles Chatterjee**



## **Drafting Negotiating International Commercial Contracts:**

*Drafting and Negotiating*, 2013      Drafting and Negotiating International Commercial Contracts Fabio

Bortolotti, 2009-02-18 Drafting an international contract can be a risky business. Yet with the increasing globalization of markets these cross border contracts are becoming a common practice for most traders as well as for the lawyers assisting them. At the same time international contracts remain a difficult and mysterious subject for business people as well as their lawyers. In his new book *Drafting and Negotiating International Commercial Contracts* Professor Fabio Bortolotti, a world renowned expert on contract law, clarifies the issues surrounding these contracts and provides solutions to the thorny problems they raise: choice of the applicable law, choice of jurisdiction, international arbitration, the use of more international drafting techniques, hardship, force majeure and liquidated damages. As an added feature, this volume provides insights into the basic requirements of a well drafted contract and analyzes in depth the negotiating process. It concludes with incisive commentary on the model contracts developed by the International Chamber of Commerce Lawyers and other legal professionals will find in these pages the tools they need to ensure their contracts meet the requirements of a globalized world.

**Drafting and Negotiating International Commercial Contracts** Fabio Bortolotti, 2017      **Negotiating Techniques in International Commercial Contracts** Charles Chatterjee, 2020-09-29 *Drafting and Negotiating Commercial Contracts* Fourth Edition is the one stop shop for practical contractual matters making it essential reading for anyone involved in negotiating and drafting commercial contracts. Many works published on the topic of negotiating have dealt with techniques of and preparation for negotiation from a psychological standpoint but this book contends that in the commercial world hard commercial considerations rather than psychological warfare matter most in successfully negotiating commercial contracts. The text highlights the most important special features of selected contracts namely payment contracts and petroleum contracts in addition to ordinary export contracts, syndicated loan agreements, international engineering and construction contracts and issues relating to project finance and risk. One of the basic themes of this work is to remind negotiators of the changing attitudes towards the negotiation of international commercial contracts including more awareness of bargaining powers of both parties. The Fourth Edition has been fully updated to take account of important court decisions regarding the interpretation of contracts and changes in consumer legislation. This includes commercial lawyers, contract managers in house, lawyers in private practice, LPC course tutors and law and business students.

**Negotiating Techniques in International Commercial Contracts** Charles Chatterjee, 2018-01-12 This title was first published in 2000. Many works published on the topic of negotiating have dealt with techniques of and preparation for negotiation from a psychological standpoint but this book contends that in the commercial world hard commercial considerations rather than psychological warfare matter most in successfully negotiating commercial contracts. The text highlights the most important special features of selected contracts namely payment contracts and petroleum contracts in

addition to ordinary export contracts syndicated loan agreements international engineering and construction contracts and issues relating to project finance and risk One of the basic themes of this work is to remind negotiators of the changing attitudes towards the negotiation of international commercial contracts including more awareness of bargaining powers of both parties

**Internationale Verträge** Carsten Grau, Karsten Markwardt, 2011-09-15 Internationale Verträge sind in fast jedem Unternehmen zu einem wichtigen Thema geworden Im Vorfeld und Umfeld dieser Verträge bestehen zahlreiche Einzelprobleme die man als Praktiker beantworten muss Dazu gehört etwa die Frage welche internationalen Regelungen zu beachten sind welches nationale Recht zur Anwendung kommen soll und vor welchen Gerichten notfalls geklagt werden muss Das vorliegende Buch liefert in neun übersichtlichen Kapiteln einen kompakten Einstieg in den Bereich Internationale Verträge für jeden damit beschäftigten Praktiker Es beantwortet die wichtigsten Fragen und schafft das Problembewusstsein für die Abfassung und Prüfung künftiger Verträge Es beinhaltet neben zahlreichen Fallbeispielen die vorwiegend der ober und höchstgerichtlichen Rechtsprechung entnommen sind Vorschläge zur Vertragsgestaltung Vertragsdurchführung Konfliktbewältigung Durchsetzung von Ansprüchen im Ausland sowie Checklisten von Praktikern für Praktiker

**Negotiating and Drafting International Commercial Contracts**, 1988 **Negotiating International Sales Contracts** D. Mark Baker, Glade F. Flake, 1979 **International Commercial Agreements** William Fox, Ylli Dautaj, 2023-12-05 Precise planning drafting and vigorous negotiation lie at the heart of every international commercial agreement But as the international business community moves toward the third decade of the twenty first century a large amount of the detail of these agreements has migrated to the Internet and has become part of electronic commerce This incomparable one volume work now in its seventh edition begins by discussing and analyzing all the basic components of international contracts regardless of whether the contracting parties are interacting face to face or dealing electronically at some distance from each other The work stands alone among contract drafting guides and has proven its enduring worth Using an established and highly practical format the book offers precise information and analysis of a wide variety of issues and forms of agreement as well as the various forms of international commercial dispute resolution The seventh edition includes new and updated material on a large number of issues and concepts such as new developments and technical progress in electronic commerce the use of concepts of standardization i.e. the work of the International Organization for Standardization as a contract drafting tool new developments in artificial intelligence in contract drafting the use of cryptocurrencies as a payment device expedited arbitration early neutral evaluation and digital procedures for dispute resolution online dispute resolution including the phenomenon of the robot arbitrator and foreign direct investment investment law and investor state dispute resolution Each chapter provides numerous references to additional sources including websites journal articles and texts Materials from and citations to appropriate literature and languages other than English are included Recognizing that business executives entering into an international commercial transaction are mainly interested in drafting and negotiating

an agreement that satisfies all of the parties and that will be performed as promised this superb guide will measurably assist any lawyer or business executive in planning and implementing contracts and resolving disputes even when that person is not interested in a full blown understanding of the entire landscape of international contracts Business executives who are not lawyers will find that this book gives them the understanding and perspective necessary to work effectively with legal experts

International Commercial Agreements Michala Meiselles, 2013-06-24 What considerations do you need to take into account when planning an agreement What writing techniques will ensure that your contract is suited to your needs What provisions should you include in such a contract Michala Meiselles answers these questions

*International Commercial Contracts* Giuditta Cordero-Moss, 2014-05-29 The book verifies the impact of national law and transnational rules on international contracts particularly those with an arbitration clause

The International Arbitration Rulebook Arif Hyder Ali, Jane Wessel, Alexandre de Gramont, Ryan Mellske, 2019-10-24 The numerous arbitral regimes around the world differ in subtle yet complex ways These variations can have a profound effect on the procedural rights and obligations of the parties Broadly speaking the choice of regime will impact the way in which an arbitration is conducted its duration and expense the outcome of the dispute and the ultimate enforceability of the award To inform the parties choice this book is the first to deal specifically and in depth with a broad range of institutional and ad hoc arbitration rules on a comparative basis It provides a practical guide to the rules in one book a one stop shop from a distinctly rule and guide point of view This book has its genesis in the authors experience as practitioners and educators in international commercial and investor state arbitration and as advisers to and trainers for arbitral institutions arbitrators judges and government officials around the world This comprehensive descriptive and analytical road map covers the broad range of issues addressed in nine representative major sets of arbitration rules The authors detail the distinct ways in which rules governing such important issues as the following may differ among the various arbitral regimes the governance structure and role of the administering institutions in the arbitration including case management and administrative support the critical and recommended issues to be established in the agreement to arbitrate such as the place of arbitration and the governing law among others the requirements and best practices for starting the arbitration on the right foot the procedures for selecting appointing and challenging arbitrators the impact of the initial procedural conference on the proceedings the rules on presenting the case in chief written submissions documentary evidence witness and expert testimony and more the costs and fees of leading institutions the procedures and standards for award scrutiny and enforceability and a range of special and innovative procedures such as expedited proceedings interim relief and consolidation of proceedings The comparative analysis is organized around the chronological phases of an international arbitration and supported by rule comparison tables and clear explanations of each step of the process With this eminently practical book contract negotiators counsel and arbitrators can confidently navigate any international arbitration Thorough coverage of the applicable rules and guidelines enables parties and or the tribunal to

design bespoke arbitration procedures based upon the various rules of leading regimes Arbitral institutions can survey the different approaches and identify emerging best practices in the design and drafting of arbitral regimes All in all this volume is a useful guide and comprehensive framework of rules for both arbitration practitioners and users of arbitration services as well as for students and teachers of international arbitration

**International Commercial Agreements and Electronic Commerce** William F. Fox, 2018-03-26 Although negotiation still lies at the heart of international commercial agreements much of the detail has migrated to the Internet and has become part of electronic commerce This incomparable one volume work now in its sixth edition with its deeply informed emphasis on both the face to face and electronic components of setting up and performing an international commercial agreement stands alone among contract drafting guides and has proven its enduring worth Following its established highly practical format the book s much appreciated precise information on a wide variety of issues including those pertaining to intellectual property alternative dispute resolution and regional differences is of course still here in this new edition There is new and updated material on such matters as the following the need for contract drafters to understand and to use the concepts of standardization i e the work of the International Organization for Standardization ISO as a contract drafting tool new developments and technical progress in e commerce new developments in artificial intelligence in contract drafting the possible use of electronic currencies such as Bitcoin as a payment device foreign direct investment special considerations inherent in drafting licensing agreements online dispute resolution including the innovations referred to as the robot arbitrator changes in the arbitration rules of major international organizations and assessment of possible future trends in international commercial arrangements Each chapter provides numerous references to additional sources including a large number of websites Materials from and citations to appropriate literature in languages other than English are also included In its recognition that a business executive entering into an international commercial transaction is mainly interested in drafting an agreement that satisfies all of the parties and that will be performed as promised this superb guide will immeasurably assist any lawyer or business executive to plan and carry out individual transactions even when that person is not interested in a full blown understanding of the entire landscape of international contracts Business executives who are not lawyers will find that this book gives them the understanding and perspective necessary to work effectively with the legal experts

**Basic Documents on International Trade Law** Chia-Jui Cheng, 2012-04-27 Anyone involved in trade law knows the time consuming nature of obtaining primary source material and consulting each of the main trade laws Now in its fourth edition Basic Documents in International Trade Law solves this problem by assembling in a single easy to use resource a very comprehensive collection of the most important and frequently used documents on the law of international trade In addition to its obvious practical value this work reveals much about the process of harmonization in international trade law and the operation of the key international trade bodies This makes the book a helpful reference for international business lawyers researchers legislators and government officials in the field Since

the successful publication of the previous editions of the book the appearance of new conventions and model laws has considerably enriched the law of international trade and the present edition contains a wealth of new material The book has been substantially revised and several new instruments have been included Among the most significantly important improvements to this new edition are new chapters added to different parts of the book a redesigned and thoroughly revised Part 6 reflecting the expansion of intellectual property rights under the framework of treaties administered by World International Property Organization and bibliographies and other research resources updated and enlarged to include an extraordinarily rich collection of books and articles in many trading languages besides English including for the first time major Chinese works in the international trade law field As the late Prof Clive M Schmitthoff commented on the first edition the book is not only of practical usefulness but has also considerable jurisprudential value and reveals the methodology of the harmonization process in the area of international trade law The International Business Lawyer first commented in 1987 that the book can only be described as a vade mecum for every international business lawyer an assessment that now seems more merited than ever

**International Contracting** Larry A. DiMatteo, 2021-11-05 For well over a decade this prized guide has served practitioners handling the legal ramifications of international contracting projects The fifth edition expands on issues discussed in the earlier one along with new topics that continue to redefine the researching drafting and execution of international contracts All the invaluable features of earlier editions are of course still here including analysis of key contract issues unique to various types of contracting common contract clauses contract checklists insights gleaned from actual cases and arbitral proceedings and clear explanation of the principles of good contract drafting The major relevant international conventions model laws pertinent national laws legal guides and other documents and instruments are all covered with primary texts provided in the appendices Some of the new issues and topics covered include new potential causes of force majeure and hardship pandemics and BREXIT review of Incoterms 2020 new clauses covered anti slavery exclusion interpretation no waiver sub contracting sustainability clauses among others rise of new international commercial courts legaltech smart contracts and artificial intelligence ethics implementation of technology in legal practice enforceability of penalty clauses Internet sales and agency contracts long term contracts and goodwill compensation data protection and the General Data Protection Regulation GDPR alliance collaboration and cooperation agreements noncompete and nonsolicitation clauses e mail disclaimers and separation and release agreements The book acts as a single volume reference in the negotiating and drafting of international contracts and offers expert insights regarding the reasonableness of many contract clauses and the likelihood of their enforcement in a foreign jurisdiction An adroit combination of contract theory and contract practice the book continues to provide guidance to law practitioners and students alike International Contracting is an excellent single volume reference that highlights the different issues relating to a variety of contracts I recommend it to drafting attorneys writing domestic as well as transborder contracts Christopher E Howard complex commercial transactions

and development projects Managing Partner Pierce Atwood LLP Portland Maine The latest edition of Professor DiMatteo's International Contracting constitutes a broad yet detailed coverage of international contract law and laws as well as international practice It drills down into the level of detail that supplies invaluable practical guidance of the sort not to be found in other publications Professor Michael G Bridge London School of Economics International Contracting is an ideal source for practitioners whether of the civil or common law It also provides a concise review of international contracting issues and practices for the scholar and student interested in this area of law I highly recommend it as a general resource on the topic Michel Cannarsa Dean Professor Lyon Catholic University      **US-Rechtspraxis** Kirk W. Junker, 2017-11-07 Das Handbuch US Rechtspraxis wendet sich sowohl an deutsche Anw lte als auch an international t tige Unternehmen die mit dem US amerikanischen Recht in der Praxis in Ber hrung kommen Thematisch umfasst die Darstellung die wesentlichen Grundz ge des US amerikanischen Prozess und Vertragsrechts Dar ber hinaus beinhaltet dieses Werk weitere wichtige Fachgebiete wie das Umweltrecht und das Seerecht sowie neue Rechtsgebiete wie das Lebensmittelrecht Zahlreiche Formulierungsmuster und Praxistipps unterst tzen bei der Anwendung und Umsetzung      Boilerplate Clauses, International Commercial Contracts and the Applicable Law Giuditta Cordero-Moss, 2011-03-17 With the aim of creating an autonomous regime for the interpretation and application of the contract boilerplate clauses are often inserted into international commercial contracts without negotiations or regard for their legal effects The assumption that a sufficiently detailed and clear language will ensure that the legal effects of the contract will only be based on the contract as opposed to the applicable law was originally encouraged by English courts and today most international contracts have these clauses irrespective of the governing law This collection of essays demonstrates that this assumption is not fully applicable under systems of civil law because these systems are based on principles such as good faith and loyalty which contradict this approach      *UNIDROIT Principles of International Commercial Contracts. An Article-by-Article Commentary* Eckart Brödermann, 2023-05-12 The Unidroit Principles of International Commercial Contracts provide an excellent and practice proven tool for cross border contracts They constitute a neutral and pragmatic business oriented contractual regime for cross border contracts They contain multiple solutions to typical contractual questions regarding the life of a contract often by way of a compromise between civil and common law They have been referenced in hundreds of decisions of arbitral tribunals or national state courts They have been endorsed inter alia by the United Nations Commission on International Trade Law last in 2021 and the Union Internationale des Avocats 2020 bringing together through its bar association and individual members approximately two million lawyers in more than 110 countries Thirty years after their first publication it is arguably malpractice to ignore them In this fully revised and enlarged 2nd edition the commentary continues to analyse the Unidroit Principles article by article from a practical perspective while always discussing alternative courses of action where they apply The commentary includes proposals for choice of the Unidroit Principles clauses and practical guidance for



their use as template or to supplement the CISG or national law In addition to arbitral and state court decisions and recent literature the 2nd edition includes an in depth analysis of extensive legislative material The author is a German practitioner with international training and familiarity with both common and civil law He has been admitted to the New York Bar and also teaches at the University of Hamburg as a Professor of Law The author is using the Unidroit Principles for more than 20 years in his commercial and arbitration practice in recent years on a daily basis in multiple industries As he shares his experience under the Unidroit Principles the commentary can also be used as a practical guide and checklist of issues to consider in international contracting Die Unidroit Principles of International Commercial Contracts sind das ideale Instrument f r grenz berschreitende Vertr ge sie bilden ein neutrales pragmatisches und wirtschaftsorientiertes Regime f r grenz berschreitende Vertr ge sie enthalten zahlreiche praxisnahe L sungen f r bliche Vertragsfragen und vers hnen dabei Civil Law und Common Law Unidroit Principles werden in zahlreichen Entscheidungen von Schiedsgerichten oder nationalen Gerichten zitiert u a bef rwortet von der Kommission der Vereinten Nationen f r internationales Handelsrecht zuletzt 2021 und der Union Internationale des Avocats 2020 die ber ihre Anwaltskammern und Einzelmitglieder rund zwei Millionen Anw lte in mehr als 110 L ndern vereinen Nach drei ig Jahren Anwendung in der Praxis kann es sich r chen die Unidroit Principles zu ignorieren Die vollst ndig bearbeiteten und erweiterte 2 Auflage des Kommentars analysiert weiterhin die Unidroit Principles Artikel f r Artikel aus Sicht des Praktikers Alternative Handlungsm glichkeiten werden dort er rtert wo sie sinnvoll und anwendbar sind Der Kommentar enth lt Vorsch l ge f r die Wahl der Klauseln der Unidroit Principles und praktische Anleitungen f r deren Verwendung auch als Vorlage oder zur Erg nzung des CISG oder des nationalen Rechts Neben Schiedsgerichts und staatlichen Gerichtsentscheidungen sowie aktueller Literatur enth lt die 2 Auflage eine eingehende Analyse des umfangreichen Gesetzesmaterials Als deutscher Praktiker mit internationaler Ausbildung ist der Autor mit dem Common Law und dem Civil Law bestens vertraut Er ist als Rechtsanwalt in New York zugelassen und lehrt als Professor f r Rechtswissenschaften an der Universit t Hamburg Der Autor wendet die Unidroit Principles seit 20 Jahren in seiner t glichen Handels und Schiedsgerichtspraxis an Aufgrund zahlreicher Berichterstattung aus der Praxis bietet der Kommentar zugleich ein Handbuch und Checklisten zum allgemeinen Schuldrecht in grenz bergreifenden F llen

**Advanced Introduction to International Commercial Contracts** Julien Chaisse, 2025-08-11 This practical globally focused book explains how international commercial contracts are structured negotiated and enforced across major economies and key trade hubs Instead of centring on a single jurisdiction it provides comparative insights into major legal systems helping readers manage legal economic and cultural complexities in cross border agreements Covering contract formation risk allocation dispute resolution and regulatory compliance it also explores emerging trends like digital contracts AI in contract management and sustainability requirements ensuring professionals stay ahead in a fast changing market For lawyers business leaders and students this textbook offers the tools to draft negotiate and enforce international contracts with confidence Departments

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