

# INTERNATIONAL BUSINESS

**LAW**

**CONSIDERATION  
OF EMERGING  
TRENDS**

*Pre-contractual  
Considerations*

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**UNDERSTANDING  
THE FUNDAMENTALS**

*Key Elements of contract  
drafting to consider*

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**INTERNATIONAL COMMERCIAL  
CONTRACTS:  
*HOW TO PROTECT YOUR INTERESTS?***

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# INTRODUCTION



Mr. Yves N...., a Rwandan businessman specializing in tea imports, traveled to Konya, Turkey in April 2024 to purchase tea bagging machines. After a successful facility visit and quick inspection of the machines, a simple handshake sealed the deal, along with a promise to deliver the machines within two (02) months.

Returning back to Kigali, Mr. Yves N.... noticed the value of US dollar (the currency agreed between the parties for the payment) had increased. He then decided to proceed to the payment in Turkish lira instead.

Around the same time, the supplier unilaterally extended the delivery deadline by three (02) additional months, citing technical issues. Now, both parties are considering taking legal action in their respective country's courts, claiming damages based on breach of contract.

According to the latest United Nations trade and development report published in December 2024, global trade has reached a record high of nearly \$33 trillion in 2024, representing a \$1 trillion increase from the previous year.

This highlights the growing significance of commercial transactions, particularly in international trade. However, it's clear that international transactions face ongoing and new challenges from a legal perspective. International commercial contracts involve multiple unknown factors, which may lead to situations like what Mr. Yves N.... experienced.

So, how can parties protect their interests in international commercial contracts? This article will highlight several key aspects and important points to consider.

# 1.

## UNDERSTANDING THE FUNDAMENTALS

A contract being simply understood as an agreement between two parties that creates an obligation to perform (or not perform) a particular duty, the two key words are “Commercial” and “international. According to Article 1(1) of the United Nations Convention on Contracts for the International Sale of Goods (the “CISG”) of Vienna 1980, a contract is considered as commercial where “each party is acting in the exercise of its trade or profession”.

The concept of commercial contracts should be understood in a way to include the most types of contracts such as trade contracts for the supply of good and services, but also any other type of economic transactions: investments, concessions agreements ,professional services. On the other side, there is not an absolute and universal definition of an “international contract”.

It is broadly defined under Unidroit of international commercial contracts 2010, as a contract “having significant connections with more than one State, ‘involving a choice between the laws of different States’, or ‘affecting the interests of international trade”.

International commercial contracts are distinct in their complexity and scope, primarily due to their cross-border nature, which involves parties from different countries, engaging in trade or business transactions.



This inherent diversity introduces multiple jurisdictions, which implies various legal frameworks and regulatory environments that govern each party's operations. About language, English was until recent years, considered as the language of business. But with the advent of new international markets such as China and Russia, language barriers may pose significant challenges in the interpretation and enforcement of contract terms. Finally, but not the least, cultural differences can influence negotiation styles, business practices, and expectations.

According to Yuanyuan Long, in Cultural Differences between China and America in the International Negotiations under the Cultural Dimensions, members of Chinese negotiating team cannot make a simple decision by themselves, because they represent not only a group rather than an individual, but also the interests of their people. The final decision is usually made by the superior who did not participate in the negotiations. On the contrary, the US side more highlights the role of individuals and often designates someone to be solely responsible for the negotiation, who can make the decision for all, within the scope of his or her authority. It then requires parties to an international contract to understand these differences and manage it with sensitivity and adaptability in order to foster successful partnerships.

## 2.

# PRE-CONTRACTUAL CONSIDERATIONS

Signing an international commercial contract is often filled with great enthusiasm. Business partnerships come with promises of substantial profits and the hope of lasting, mutually and beneficial relationships. However, ending these contracts might be much less pleasant, and sometimes turning yesterday's partners into tomorrow's "plaintiffs" and "defendants".

Whether future partners are individuals or companies, it's crucial to carefully prepare all elements related to negotiating, signing, and executing the contract from the very beginning. This preparation includes conducting thorough due diligence on potential partners - examining their profiles, years of experience, and satisfaction ratings from others in the same industry. Understanding local business culture and practices is particularly vital, as it helps you see things from the other party's perspective and adapt your negotiation strategies to fit local cultural norms.

International transactions always imply various tax considerations. Parties must understand withholding taxes, VAT implications, and other local tax regulations that could affect their bottom line.

It's finally essential to get support from a lawyer experienced in international contracts right from the start. This legal expert will be your best asset in drafting and/or understanding the contract itself.

### 3.

## KEY ELEMENTS OF CONTRACT DRAFTING TO CONSIDER

It is important to keep in mind that a (written) contract is not only the materialization of negotiations and parties' interests, but also the foundation that will set the rules governing their relationship for the future. The drafter should therefore avoid using too much technical and/or legal jargon, as the contract recipients are not lawyers and are not meant to be. Thus, the international commercial contract must be written in a common chosen language, with simple terms that will reflect the common intention of the parties. A practice derived from English law consists of creating specific definitions for each term used in the contract. This ensures a common understanding of the content by the parties and avoids any future ambiguity.

In an international commercial contract, all clauses are important. However, since it's impossible to anticipate everything absolutely, certain provisions require additional careful consideration.

It is the case of applicable law. If the parties do not choose (or choose poorly) an efficient law applicable to their contract, this may lead to a legal imbroglio, involving conflicts of laws. This inextricable legal battle, far from the merits of the dispute will move parties away from their initial interests and intentions. Parties should therefore refer to a body of rules that is widely prevalent in international trade. This is particularly the case with the United Nations Commission on International Trade Law (UNCITRAL), the "CISG", or the Principles on Choice of Law in International Commercial Contracts of 2015.

Logistical issues such as transport delays or customs clearance may affect contract performance. Goods that are delayed at customs due to incomplete documentation for instance, may result in financial losses and lead to disputes. Parties to an international commercial contract should therefore integrate logistical planning into their contract management processes to anticipate and address these challenges proactively. In international contracts for the sale of goods, for example, it is strongly recommended to include Incoterms that define the responsibilities of the buyer and seller, particularly who pays for transport and insurance, and at what point the risk of loss or damage transfers to the buyer.



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Contracts must clearly define the currency of payment to avoid losses related to exchange rate volatility. The relevant clauses must clearly and expressly mention how exchange rate fluctuation risks will be handled, including adjustment mechanisms or the specification of hedging agreements.

This is exemplified in the case of *Sempra Energy International v. Argentina*, where an American company (Sempra) entered into contracts in Argentina with payments in US dollars. During Argentina's economic crisis, the government unilaterally converted dollar-denominated contracts to payments in Argentine pesos at an unfavorable fixed exchange rate.

This measure resulted in considerable financial losses for foreign investors and ultimately led to international arbitration, where the verdict was rendered in favor of Sempra (See ICSID Case No. ARB/02/16).

**On the other hand, from the beginning of negotiations, care should be taken to**

ensure that all information, trade secrets, and intellectual property are covered by a confidentiality clause. That clause should be drafted in a way that it would survive whether or not a final agreement is reached, and whose breach would be sanctioned by damages. Moreover, a force majeure clause protects the parties' interests by defining the limits of their liability in the face of exceptional (well specified) events.



Although it often requires the affected party to promptly notify the other party of the event and its effects, this nevertheless allows for limiting consequences, preventing the application of penalties for breach of contractual obligations, and finding alternative solutions to mitigate the effects of events covered by this clause. To this end, clear, precise drafting that complies with international standards is crucial for its effectiveness.

Regarding dispute resolution methods, several international instruments give prominence, as with other clauses, to the principle of party autonomy. It is therefore up to parties to freely determine the competent jurisdiction to hear their disputes. However, this attribution of jurisdiction should not be presumed... It must be expressly mentioned in the contract to avoid any conflict and declination of jurisdiction by the courts seized.

Furthermore, it is necessary to ensure a good understanding of the judicial organization of the country where such jurisdiction is attributed. In light of these elements, it is advisable to consider other methods of conflict resolution such as mediation and arbitration.



Those decisions (especially arbitration) have a more global scope, particularly as established by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Finally, parties must keep written records of all their communications, preferably in writing, to protect against any inconvenience in contract execution.

## 4.

### CONSIDERATION OF EMERGING TRENDS

The emergence of new digital technologies has significantly impacted the global economy, and international commercial contracts have not been immune to this wave of innovation. Given the numerous variables involved in such contracts, various solutions have been developed to reduce costs, eliminate intermediaries, and enhance security. This is where concepts like "smart contracts" and "blockchain" are increasingly making their mark in the realm of international commercial contracts landscape.

A smart contract is a self-executing computer program that automatically enforces the terms of a contract once predefined conditions are met. The parties involved set the terms of the agreement as coded rules (e.g., "Pay \$10,000 upon confirmed delivery").



When these conditions are satisfied—for instance, when delivery is verified through a tracking system—the contract executes the predetermined action, such as transferring payment. Several platforms support smart contracts, including Ethereum, Binance Smart Chain, and Hyperledger Fabric.

This type of contract relies on blockchain technology, which can simply be understood as a digital ledger that records transactions securely, transparently, and immutably. In simple terms, each participant in the blockchain network (comprising thousands of computers worldwide) holds a copy of the transaction, with details accessible only to the contracting parties.

The execution of the contract occurs only after validation by these participants, making it difficult to alter data once recorded. Moreover, the blockchain system decentralizes and digitizes the process at a lower cost, bypassing the need for centralized intermediaries like banks.

Blockchain can greatly enhance international commercial contracts by addressing common challenges such as trust, speed, cost, and efficiency. Many companies have already successfully implemented this technology. For instance, HSBC utilizes the Contour platform to streamline trade financing processes, from issuing letters of credit to exchanging documents.



This has reduced the time needed for document verification and exchange from 5–10 days to less than 24 hours. Similarly, AgriLedger, a blockchain-based Kenyan startup, helps farmers access information about buyers and market prices. Retail giant Walmart has employed a Hyperledger Fabric based system to trace the origin and safety of its products, cutting the process from 6 days to just 2.2 seconds. While blockchain technology is still subject to criticism and skepticism, particularly regarding its efficiency, it has already demonstrated its potential and continues to transform the landscape of international commercial agreements.

## CONCLUSION

International commercial contracts remain a constant subject of legal reflection, as they present new opportunities while also introducing challenges that need to be addressed. For the parties to the contract—the initiators and key stakeholders—it is crucial to remember that all aspects, including cultural considerations, language, and prior research on the potential partner, are just as important, if not more so, than the content of the contract itself.

The drafting of the contract should prioritize simplicity, clarity, and fairness. Finally, it is essential to enlist the services of a legal professional who can provide informed advice and guidance to ensure the best possible choices are made.



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