

INTRODUCTION

Business in an integrated world economy brings together negotiating partners from very different cultures and business traditions, with different interests and a wide range of negotiating styles and experience. While this rich variety is a foundation of today's vibrant trading community, it also increases the chances for costly misunderstandings that impede the smooth flow of business.

In keeping with its mission to promote efficient and effective global trade, ICC has consulted with negotiators from businesses large and small, across sectors and around the world, to develop the following set of principles to help facilitate the process of commercial negotiations.

The ICC Principles to Facilitate Commercial Negotiation are based on the idea that the best deals are struck between negotiating partners that not only want or need to collaborate, but also respect and trust one another. Business increasingly involves sustainable partnerships and business arrangements that may need to evolve over time — in such situations, a respectful, communicative relationship with your negotiating partner can be an invaluable outcome in its own right.

The ICC Principles provide the direction for creating or enhancing a productive working relationship, for transactions of any size or length.

Every deal and set of negotiating parties is different, and the ICC Principles may be useful in different ways for different deals. The Principles may be used as:

- a **checklist** of considerations for a party to take into account during preparation for and conduct of negotiations
- a basic set of **guidelines** the parties can agree to use as a reference point for the conduct of negotiations¹
- a **benchmark** for guiding a party's own conduct during negotiations

Where the ICC Principles are used in the context of negotiating and drafting an agreement, parties may wish to consult the range of relevant ICC tools — including a variety of model contracts; the Incoterms® rules; ICC rules on documentary credits (UCP) and guarantees (URDG); and the ICC Rules on Arbitration and ADR — which reflect international trade practice and are accepted worldwide.

¹ The ICC Principles are not intended to impose a legally binding obligation on the parties.

ABOUT THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

ICC is the largest, most representative business organization in the world. Its global network comprises over 6 million companies, chambers of commerce and business associations in more than 130 countries, with interests spanning every sector of private enterprise.

A world network of national committees keeps the ICC International Secretariat in Paris informed about national and regional business priorities. More than 2,000 experts drawn from ICC's member companies feed their knowledge and experience into crafting the ICC stance on specific business issues.

The United Nations, the World Trade Organization, the G20 and many other intergovernmental bodies, both international and regional, are kept in touch with the views of international business through ICC.

For more information please visit www.iccwbo.org

To order ICC publications please visit the ICC Store at <http://store.iccwbo.org/>

The ICC Principles may be downloaded at <http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2013/ICC-Principles-to-Facilitate-Commercial-Negotiation/>

If you would like additional copies of the ICC Principles, please contact Emily O'Connor at eoc@iccwbo.org

This copy of the *ICC Principles to Facilitate Commercial Negotiation* is kindly sponsored by



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ICC PRINCIPLES TO FACILITATE COMMERCIAL NEGOTIATION



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ICC PRINCIPLES TO FACILITATE COMMERCIAL NEGOTIATION

1 Prepare carefully

- Engage the right people within your organization, define your objectives clearly, and review any history of dealings with your counterparty
- Learn all you can about your negotiating partners and the reality of the commercial context in which they operate. Imagine their likely interests, priorities, limitations and scope of authority
- Be ready to explore with your counterparty the various legal rules available to govern your deal

2 Take cultural differences into account

- Educate yourself on the local business practices of your negotiating partner
- Be sensitive to your own culturally-rooted habits and assumptions about how to conduct business
- Develop a practice that encourages you continually to question your assumptions and probe for assumptions your negotiating partner may be making about you
- Keep in mind the value of being able to deal well with difference

3 Make early agreements with a negotiating partner about a process to guide the logistics of the negotiation, which paves the way for making agreements about more substantive topics

- Decide early on with your negotiating partner on procedural questions such as timeline, venues and agendas for meetings, language of proceedings, attendees at meetings and drafting responsibilities

4 Allocate appropriate human and technical resources to a negotiation

- Anticipate the people you'll need to have in the room or on standby to support negotiations, such as people with decision-making authority on issues at hand, specialized technical experts, translators, legal drafters, tax advisors, and local counsel
- Aim to maintain consistency on the negotiating team – avoid presenting a revolving cast of characters

5 Aim to develop an open and reliable working relationship with a negotiating partner

- Deals are often on-going commitments that evolve over time as circumstances change. A good working relationship between the parties will make it easier to address both sides' future needs efficiently and effectively
- Acting with transparency and the genuine desire to understand and find solutions can help focus discussions on substance
- Negotiation partners need not be friends to create a productive working environment

6 Behave with integrity

- You don't need to reveal everything, but everything you say should be true
- Lying or misleading imperils the deal, the working relationship at hand and your reputation in the trading community, and may ultimately lead to legal sanctions
- Your willingness to bring your values and integrity to the table is a signal to your negotiating partner of how seriously you are approaching the negotiation

7 Manage your emotions

- Act rather than react – modeling that you are acting independently of a counterparty's provocation is powerful
- A counterparty that views you as reasonable may ask for help, allowing you to collaborate on a solution, rather than hiding information out of pride or fear, which may lead to an unrealizable agreement or no agreement at all

8 Be flexible

- Be open to thinking creatively with your negotiating partner about how your interests may complement each other and be satisfied without diminishing value for either party
- Only a mutually beneficial deal will be sustainable over time — if one party receives disproportionate benefit, the other party may be unable to implement the agreement
- Understanding the difficulties your negotiating partner may be facing is an important element in building a realistic, durable deal

9 Make realistic commitments

- Agree to only those things you genuinely intend to undertake, as you would expect your negotiating partner to do
- Clarify your negotiating partner's scope of authority: people may overstate their authority and make commitments they can't make or keep
- Know your alternatives, and know when to leave the table because you can find a more suitable deal elsewhere

10 Confirm the agreement to ensure a common understanding

- Review carefully what was agreed with your negotiating partner at the end of a negotiating session, resolving any details on which your views diverge

11 Be ready for the case where negotiations do not succeed

- Negotiations may not reach conclusion for a variety of reasons, either within or beyond the control of the parties
- Anticipate such situations, prepare and be ready to discuss alternative options with your negotiating partner