

ICC Principles



ICC Principles to Facilitate Commercial Negotiation

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.

ICC's members span the globe, from the smallest to the largest companies in every industry. Our aim is to help them do business with one another – regardless of their background, size or experience - so that the benefits of open trade can be enjoyed by all. – Jean-Guy Carrier, ICC Secretary General

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

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

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The International Chamber of Commerce (ICC)

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote open international trade and investment and help business meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the 20th century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rule setting, dispute resolution, and policy advocacy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice. ICC also offers specialized training and seminars and is an industry-leading publisher of practical and educational reference tools for international business, banking and arbitration.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on relevant technical subjects. These include anti-corruption, banking, the digital economy, marketing ethics, environment and energy, competition policy and intellectual property, among others.

ICC works closely with the United Nations, the World Trade Organization and intergovernmental forums including the G20.

ICC was founded in 1919. Today its global network comprises over 6 million companies, chambers of commerce and business associations in more than 130 countries. National committees work with ICC members in their countries to address their concerns and convey to their governments the business views formulated by ICC.



Policy and Business Practices

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