

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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The world business organization

33-43 Avenue du président Wilson, 75116 Paris, France
T +33 (0)1 49 53 28 28 F +33 (0)1 49 53 28 59
E icc@iccwbo.org www.iccwbo.org



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

引言

在世界经济一体化背景的商业活动使得文化和商业传统迥异的合作伙伴走到一起，他们有不同的利益关注点和多元化的商业谈判风格和经验。商业文化的丰富多样性虽是当今贸易领域勃勃生机的源泉所在，但有时也会对商业谈判的顺利进行产生阻力，由文化差异引起的误解甚至会使贸易双方付出高昂代价。

为实现其促进全球贸易发展效率和效绩之使命，为了促进商务谈判，国际商会通过咨询全球不同规模、不同行业的谈判精英，制定了下列这套准则。

《国际商会促进商务谈判准则》的制定基于最好的交易是在既重视合作也给予对方尊重和信任的商业伙伴间达成这一理念。现代商业发展越来越需要可持续的合作伙伴关系，同时商务合作的交易安排总是随着时间的推移不断发展。因此，彼此尊重和保持交流是维护合作伙伴关系的重要手段。

《国际商会促进商务谈判准则》适用于各种类型和期限的商业合作，为建立和加强富有成效的合作伙伴关系提供指导。

由于国际贸易往来的多样性和贸易参与方的千差万别，《国际商会促进商务谈判准则》也将因不同场景发挥不同作用，其适用性大致如下：

- 作为帮助贸易双方在商务谈判筹备和进行阶段核对有关事项的对照清单。
- 为商务谈判各方可参照的基本行为指南。¹
- 作为商务谈判可参照的操作手册。

贸易双方在进行商务谈判或拟定合作协议时，除运用《国际商会促进商务谈判准则》以外，还可以配套使用国际商会制定的相关工具，包括各种标准合同、国际贸易术语解释通则、跟单信用证和见索即付保函规则、国际商会仲裁规则和非诉讼纠纷解决程序等。这些国际规则反映了国际贸易实务，在全球范围内被广泛认可。

¹ 《国际商会促进商务谈判准则》的目的不是要给谈判各方强加富有约束力的法律义务。

关于国际商会

国际商会是全球最大和最具代表性的商业组织。它由全球130多个国家的600多万家企业、商会和商业机构组成，代表了各行业的利益。

遍布全球的各国家委员会协助位于巴黎的国际商会总部秘书处及时获悉各国家和地区的商业发展情况。超过2000多名来自国际商会会员企业的专家运用他们的知识和经验协调处理各类商事问题。

联合国、世界贸易组织、G20和其他诸多国际和区域性政府间组织通过国际商会了解国际商业的发展动态。

如需掌握更多信息，请访问 www.iccwbo.org

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《国际商会促进商务谈判准则》英文版下载链接：

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如果您需要《国际商会促进商务谈判准则》影印本，可以通过邮箱联系Emily O' Connor，eoc@iccwbo.org

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The world business organization

33-43 Avenue du président Wilson, 75116 Paris, France
T +33 (0)1 49 53 28 28 F +33 (0)1 49 53 28 59
E icc@iccwbo.org www.iccwbo.org



国际商会

促进商务谈判准则



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国际商会 促进商务谈判准则

1 精心准备

- 在团队中选择合适人选，明确谈判目标，并回顾与谈判对手所在企业的合作历史。
- 尽可能了解你的谈判对手，同时评估对方所处的商业环境。考量对手可能的兴趣点、优先事项、不足以及授权的范围。
- 做好与谈判对手讨论各种可能适用于此次交易的法律规则的准备。

2 考虑文化差异

- 了解谈判对手所在地的商业习惯。
- 敏感认知根植于自己文化的生意习惯和判断。
- 养成鼓励不断质疑自己的判断并揣摩谈判对手对你的可能做出的判断的习惯。
- 谨记处理好文化差异的重要性。

3 与谈判对手尽早敲定谈判流程， 为达成更多实质性的共识铺平道路

- 与谈判对手尽早敲定谈判流程和操作细节，如时间表、谈判地点、谈判议程、谈判语言、谈判参与人员名单和文书起草责任归属等。

4 合理配置人力和技术资源

- 考虑清楚需要参加谈判或预备支持人员，如对谈判事务有决策权的决策者、资深技术专家、翻译、法律文件起草人、税务顾问和当地的法律顾问等。
- 确保谈判团队的稳定性—避免人员调换。

5 与谈判对手建立开放可靠的合作关系

- 商业交易常常会涉及长期的、合作环境会因时因地不断变化的义务。当事人之间良好的合作关系能使双方更加容易相互理解并有效地满足对方未来的需求。
- 公开透明的行为和力争解决问题的诚意将有助于提升谈判的实效性。
- 创造有效的工作环境并不需要谈判对手之间是朋友。

6 诚信行事

- 你并不需要公开一切，但你说的都应是真实的。
- 谎言或有意误导将使合作陷于困境、使现有的合作关系破裂并影响到自己在商界的声誉，甚至可能招致法律制裁。
- 你的价值观和诚信将向谈判对手释放积极信号，表明你的认真态度。

7 掌控情绪

- 主动行动而不是被动反应-不受谈判对手挑衅的影响。
- 认为你合理可靠的谈判对手可能请你提供帮助，使你们达成合作协议，而不会因为出于傲慢或害怕隐匿信息，导致达成不切合实际的协议，合作根本达不成协议。

8 灵活变通

- 与谈判对手一起创造性地思考如何优势互补、实现双赢。
- 只有互利共赢，才能长久合作——一方获利失衡，将使另一方无法履行协议。
- 理解谈判对手可能面临的难处有利于建立经久稳固的合作关系。

9 做出现实承诺

- 只承诺自己真正意在承担的责任是谈判双方喜闻乐见的。
- 明确谈判对手的权限：人们可能会夸大自己的权限并作出无法实现的承诺。
- 明确自己的底线，清楚何时离开谈判桌，因为你可以在其他地方找到更合适的商机。

10 确认协议，确保共识

- 在谈判结束前与对方重新梳理和确认已经达成的共识，解决任何存在的分歧。

11 做好谈判失败的准备

- 出于各种谈判双方可控或不可控的原因，谈判可能无法达成协议。
- 做好谈判失败的准备，准备与你的谈判对手讨论其他替代方案。