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# Negotiating International Contracts

By Lothar Katz

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The US State Department estimates the total number of lawyers in the United States at just under a million. *One million!* That's more than the total number of GM, Ford, and Chrysler employees combined. Assuming the same ratio of lawyers vs. overall population,

- Germany would be home to around 260,000 lawyers. The actual number is less than half that: about 110,000.
- Japan would have around 450,000 lawyers. The reality is not even close: the country has a mere 17,000 legal experts.

While such comparisons may be old news, the discrepancies are nonetheless startling. After all, each of these countries represents a highly developed economy with a well-established legal system. It appears that organizations and individuals belonging to these cultures do not share similar views of what constitutes adequate legal support. Indeed, negotiating business across borders often requires understanding more than just the specific legal framework of each of the countries involved. It is crucial to identify and align the parties' expectations and preferences *before* signing a contract with a foreign counterpart. Here are four points about contracts that negotiators need to clarify, both for themselves and about their counterparts:

## **1. In general, is the contract supposed to be detailed and comprehensive?**

Members of cultures such as the United States, Germany, or the United Kingdom tend to view contracts as critical instruments, preferring to capture all of the partners' obligations and include provisions for many eventualities. Australians, the French, and others also fall into this category, though they may be less obsessed over contractual details than the first group. All of them are strongly task-oriented cultures whose members usually believe that keeping contracts detailed increases the odds for the execution being smooth and trouble-free.

In contrast, contracts are often kept high-level in many Asian countries, including Japan and China, as well as some Arab and Latin American ones. Since their cultures emphasize the importance of personal and business relationships, members of this group may pay little attention to contractual details unless legal circumstances force them to.

## **2. Are the terms of the contract understood to represent firm and dependable commitments?**

What international partners view as commitments is not necessarily restricted to aspects that are clearly spelled out in contracts. They may also expect oral commitments or those captured in written exchanges and protocols to be dependable. The degree to which they expect any such commitments to be met might vary considerably across cultures. While some partners may reject even a day's delay or a minor variation from an asserted product characteristic as unacceptable, others might remain casual about much more significant deviations. Discussing and documenting such expectations during the closure phase of the negotiation can be extremely helpful should disagreements surface later on.

### **3. Are the contract terms expected to be continually binding?**

It is crucial to recognize that negotiations do not necessarily end with the signing of the contract. Requests for modifications may nevertheless lead to significant tension between the parties. International partners, in particular members of strongly relationship-oriented cultures, often expect their counterparts to remain very flexible should conditions change. This may include modifying contract terms or even ignoring some of them if necessary. Rejecting such requests could be detrimental to business relationships and tends to affect the other party's contract compliance. Moreover, businesspeople from China, South Korea, and several other countries frequently request contract changes, sometimes already a few weeks after the contract signing ceremony. Unlike Westerners, members of these cultures tend to take contracts merely as reflections of both parties' intentions that may change over time. When negotiating with such counterparts, consider the strong possibility of having to make additional concessions down the road.

### **4. Should a contract dispute reach a dead end, is legal action likely to follow (or will the parties remain determined to resolve the conflict through other means)?**

Few areas hold greater potential for culture clash than the legal enforcement of contracts. In countries with highly developed legal systems, business partners commonly rely on the framework they provide as a force that stimulates contract fulfillment. Whether or not contract partners are likely to take legal action against a counterpart who failed to fulfill contractual obligations often depends on the role relationships play in the country. For example, while litigation is a likely action in the United States or Canada in such a case, this option is rarely a choice in Japan. The Japanese and members of most other strongly relationship-oriented cultures prefer to resolve such issues through mediation or continued negotiation as required to restore full cooperation between the partners. In countries whose legal systems are less developed, the strength of relationships frequently determines whether and to what extent agreements are fulfilled.

Misaligned expectations over any of these points can wreak havoc with a business relationship and may cause promising deals to fail for reasons that can be avoided. If you answered 'yes' to all of the above questions, communicate such expectations very clearly, but realize that the fact that your contract partners may not share them in full does not necessarily indicate ill intentions on their side. Both sides own the responsibility to work out such differences. Consider also that regardless of the legal context, keeping in touch on a regular basis and continually nurturing close ties with partners who strongly focus on relationships is a powerful way to ensure that they will keep their commitments.

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A seasoned former executive of Texas Instruments, a Fortune 500 company, he regularly interacted with employees, customers, outsourcing partners, and third parties in more than 25 countries around the world. These included many parts of Asia, e.g., China, India, and Japan. Originally from Germany, he has lived and worked both in the United States and in Europe.

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