

Negotiating international contracts

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The negotiating phase

- Limitations to the freedom to negotiate (*onderhandelingsvrijheid*)
 - offer and acceptance under civil law, common law and Islamic law
 - legal obligation to contract
 - a duty to negotiate
 - pre-contractual good faith obligations

Negotiation phase

- legal framework for contract negotiations
 - Baris/Riezenkamp and Plas/Valburg doctrine
 - The three legal actions during negotiation phase
 - at what stage is a party authorized to terminate negotiation?
 - legal implications of termination and basis for liability
 - international private law aspects
 - CBB/JPO case (12-8-2005)

Negotiation phase

- When does the pre-contractual phase change into the contractual phase?
- Consensus ad idem?
- Section 6:217 Dutch Civil Code
- Principle of ‘legitimate expectations’

Negotiation phase

- Procedural aspects:
 - ‘Letter of Intent’, ‘Heads of Agreement’, ‘Memorandum of Understanding’, ‘Point of Reference’, ‘Principle of Co-operation’
 - Which party has the initiative?
 - Who will bare the costs?
 - Termination?
 - Claim for damages?
 - Publicity?
 - Applicable law / forum clause?

Negotiation phase

- Non-Disclosure or Confidentiality Agreement including ‘evergreen-clause’
- Exclusivity

Negotiation phase

- Risk management
- Escape clauses:
 - ‘TINILEA-clause’
 - Gentlemen’s Agreement
 - ‘Subject to (formal) contract’
 - ‘Subject to board approval’
 - The Mirror Group case

Questions?

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