

STANDARD FORMS OF CONTRACTS: ADAPTATIONS WORLDWIDE AND THEIR LEGAL IMPLICATIONS

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INTRODUCTION

Have you ever thought about the way international contracts are formed and how their structure impacts the way global business is conducted? Standard forms of contracts have become a popular approach for international agreements, especially given the complexities of commerce conducted across borders.

Standard forms are a great way to save costs, but they need modifications in order to comply with different countries laws. In this article, we'll explore what they are, how they work in various countries and their implications for international business. A standard form contract is a take-it-or-leave-it agreement between two parties that cannot be negotiated. It is also known as an adhesion contract or boilerplate contract and is usually used when there is an unequal power dynamic between the two parties. Such contracts are legally binding agreements requiring one side to do something, with the more powerful side writing the agreement in their own favour.

Whether you're a business owner looking to streamline your operations or an individual working on a global project, understanding how standard forms of contracts and their adaptations around the world can benefit you is essential knowledge. So let's dive right in and explore the world of standard forms—and their implications both legally and financially.

Recently, the law of contract has faced an issue that is becoming more and more prevalent: the widespread use of standardized forms for concluding contracts. This leaves individuals with little to no choice but to accept whatever conditions are outlined in the form, giving large companies an advantageous position to exploit the weaker side with terms that may even

exempt them from all liability. To protect these individuals' interests, courts have created rules to safeguard them.

A common feature of commercial relationships, standard form contracts (SFCs) have been a product of organised trade in some fields such as marine shipping and banking for many centuries, and, more recently, in others such as mass production industries as a form of service contract between companies or for consumersⁱ.

WHAT ARE STANDARD FORMS OF CONTRACTS?

If you're involved in global business transactions, chances are you've come across "standard forms of contracts" (or SFCs). But what exactly are they and what implications do they have?

Simply put, standard forms of contracts are written agreements that cover the most common areas of a business transaction. They usually include elements such as product or service descriptions, payment options, the timeline for delivery and consequences for breach of contract. Many international companies rely on these universal forms to facilitate cross-border deals.

What makes SFCs so useful is that they provide a way for businesses to streamline their processes - it's a single agreement that can be adapted to fit different deals all over the world. This means, once signed, there's no need for further negotiation. Furthermore, with their standardized structure and language, it ensures compliance with international law and avoids legal disputes between two parties.

One of the defining features of SFCs is that they are assumed to be exempt from negotiation based on their fixed clauses and facilitation of routine transactions.ⁱⁱ SFCs have many positives for industry: they encourage trade by increasing transactional efficiency and, as they are presented on a 'take-it-or-leave-it' basis, significantly decrease transaction costs.ⁱⁱⁱ

In short: Standard Forms of Contracts make global deals simpler and more reliable - provided both parties read through the document carefully before signing.

Nature

The natural course of these forms of contracts is economically efficient for business transactions and less perplexing. Innumerable positive objectives like its economic efficiency, cost-cutting and almost zero negotiation quality associated with SFCs make it prevalent and preferred in the contemporary world.

However, these forms of contracts have become very deceptive with the advent of the digital world. People click on the “I Agree” button on various digitalized standard forms of contracts daily on the internet. They don’t even realise that they have entered into a contract. If you ask them whether they have ever in their life entered into any contract with anyone. The plain answer to most of them remains negative. Therefore, these forms of contracts always put one party at the higher end, this party has usually greater bargaining power.

Objective

Despite its use in highly efficient regularised systems, contract law generally has no complete descriptive or normative theory; instead, it is generally viewed as a remedial ‘institution’ whose function is to adjudicate any issues that arise between two individuals or entities after transactional activity.^{iv} Foundationally it rests on an idea called ‘freedom of contract,’ which promotes the facility of individuals to transact without the interference of oversight systems such as government institutions^v. Broadly, then, contract law sees its goal as one of enabling the “power of self-governing parties to further their shared objectives through contracting”^{vi}. Contract law is seen as embodying this tension between freedom of contract and the ability or need for sovereign or third-party entities to intervene in their governance ^{vii}.

To put simply, the ‘Standard form of Contract’ is in general a contract which is pre-fixed, non-negotiated, and based on uniformly set conditions by a party to a contract against anyone who wishes to enter a contract with him.

For instance, whenever we download any ‘Application’ from the google play store or online, it comes with a kind of ‘Standard Form of Contract’ displayed as ‘Terms and Conditions’. These ‘Terms and Conditions’ are in standardised form for everyone who wishes to use that App. Only if we agree with it, we can use the application and not otherwise. These “Terms and Conditions’ are pre-printed, equal for all customers and non-negotiable.

HOW DO STANDARD FORMS OF CONTRACTS VARY ACROSS THE WORLD?

Standard forms of contracts act as a starting point for many international transactions; however, the contents of these forms can vary widely depending on the country in which they are used. For example, some countries have laws that limit the ability of parties to contract out of liability for certain types of damages or losses, meaning that certain clauses may not be enforceable. Similarly, some countries may have laws that require prior notification to workers and other affected parties prior to any changes in a contract.

In addition, there are often differences in terms related to governing law. This means that a standard form of contract used in one country may not be suitable for use in another due to legal requirements and preferences specific to that jurisdiction. Understanding how standard forms of contracts differ across jurisdictions is an essential step for any business engaging in international transactions.

Unlike India, many countries across Europe and parts of the world have made specific legislation to adopt and regulate SFC.

India

Black's Law Dictionary defines them as a standard form contract prepared by one party, to be signed by another, usually a consumer, who, being in a weaker position, adheres to the contract with little choice about the terms. These contracts are loosely interpreted by courts in favour of weaker parties.

In India, any kind of contract can be executed provided it fulfils the essentials under Indian Contract Act. Therefore, the Standard forms of Contracts in general keep an equal position in the Indian scenario. Very similar to any other contracts.

In the words of the Supreme Court of India, 'the 'standard form' of the contract is the rule. One must either accept the terms of the contract or go without. Since it is not feasible to deprive oneself of such necessary services, the individual consumer is compelled to accept those terms. In view of this fact, it is quite clear that freedom of contract is now largely an illusion.^{viii}

United States

The Uniform Commercial Code of the United States provides specific provisions for SFCs. Companies must carefully examine SFCs to determine whether they are enforceable. A two-step process is followed.

If the contract contains terms and conditions that a reasonable person would not expect, and if the parties are contracting unequally, it is not enforceable. Furthermore, terms are evaluated according to their purpose, prominence, and circumstances. In addition, the doctrine of unconscionability is applied in deciding what we have already discussed.

Israel

To address the problems associated with the standard form of contracts, the Israeli government has used both judicial and administrative approaches.

Israel then enacted a statute to deal with "restrictive terms" and "standard contracts", covering a large number of contracts or agreements that try to offer a service or product and where the terms are already decided by the other party. With this, the novelty of Israel lies in the formation of an administrative board to help and assist the Israeli courts in the matters of standard contracts. In addition to approving restrictive terms, the Board represents both the company/supplier and the consumer in the process. And is directed to see whether these contracts or terms are not prejudicial to anyone.

This system of the administrative board is efficient and useful. It is a very positive step in adjudicating such contracts as it is uniform in its results and also in the quality of adjudication.

The United States is also considering and examining this system in order to apply it in their system. However, there are various implementation issues related to it which makes Israel special in maintaining and keeping this dual system^{ix}.

Other countries

While some countries like China are quite reluctant in terms of using SFCs on global markets. The People's Republic of China has not yet formulated any Commercial Code. And also its law

sources have reduced in number over the past few years. But not trading with international markets and companies. Thus, the companies of P.R.C. use intensive use of Standard Forms of Contracts. It can also be seen through studies made by law experts on the policies and legal practices of P.R.C.^x

WHAT ARE THE INTERNATIONAL TRANSACTION IMPLICATIONS?

You might be interested in learning how standard contracts affect cross-border business. It's crucial to keep in mind that different nations frequently have different laws and regulations, which may have an impact on the enforcement of these contracts if issues emerge.

Rules of Choice

The rules of choice are a very important factor when it comes to contract formation and enforcement in other jurisdictions. This is because, typically, contracting parties will agree on which law applies to their contract to give it some certainty.

Unfortunately, due to the nature of international transactions and different laws in different countries, parties may not be able to agree on a single law—but they will usually reach an agreement as to which courts should have jurisdiction over any disputes that may arise. This is why it is important for parties using standard forms of contracts in an international context to consider adding a choice of law clause.

Depending on the specific country or jurisdiction, some court systems may not enforce a contract that has been agreed upon by means other than a traditional signed document or even one that contains an arbitration clause. So it's important for parties entering into international transactions with standard forms of contracts to ensure all legal requirements are met before doing so.

ARE THERE DIFFERENT TYPES OF TENDERS?

Did you know that not all Standard Forms of Contracts are the same from country to country? Depending on where your business is located, there are likely different types of tenders and legal implications to consider.

For example, Design-Build Contracts in the US refer to the use of one contract for the design and construction services between two parties, while European countries like Germany offer a two-contract approach. Then there's Project Management Contracting, which is found in Asia and can include both the project management role as well as the construction role.

And don't forget about Single Source Procurement or the Traditional Tender—the latter being mostly a matter of jurisdiction. There are also various hybrids in between, each with its distinct contractual arrangement and legal implications depending on where you're located.

If you're thinking about entering into a new international transaction and making use of Standard Forms of Contracts, it's important to familiarize yourself with what type of tender applies for your region—and then consult a qualified lawyer in regard to any accompanying legal issues.

HOW CAN STANDARD FORMS OF CONTRACTS BE ADAPTED TO DIFFERENT SITUATIONS?

It's reasonable to wonder how common contract formats can be modified to fit certain circumstances. The answer is that, while keeping the protections they provide, the forms can be altered to meet the requirements of a particular transaction. They may also be written in a style that is simpler to comprehend than conventional legalese. This is significant because it shows that everyone who will be a member of the agreement is aware of their rights and obligations.

There are several ways this can be done:

1. **Lawyers and Legal Advisors:** Lawyers and legal advisors are well-versed in the law and understand how to properly customize contract documents for particular circumstances. They can also provide advice about the terms of an agreement or dispute resolution processes if needed.
2. **Consultants:** Consultants specialize in developing standard forms of contracts for particular uses or industries. For example, a consultant may develop an oil-and-gas operating agreement tailored specifically to a region or country's legal system, rather than just adopting a standardized form.
3. **Software Platforms:** Software platforms like Documate provide automated legal document solutions that are designed to make the process of managing contracts faster and easier by allowing users to easily generate custom agreements without having to have any prior knowledge of contract law or writing skills.

WHAT POTENTIAL ISSUES COULD ARISE WITH STANDARD FORMS OF CONTRACTS?

Standard form contracts (SFCs) are a common feature of commercial relationships. They are made up of regularised or commonly used clauses that are written by one party with the expectation of acceptance by the other, often without the latter reading the terms. They are assumed to be exempt from negotiation and are an important part of the world's economic landscape, accounting for 99% of all contracts used in commercial and consumer transactions. They have many positives for the industry, such as increasing transactional efficiency and significantly decreasing transaction costs. Contract law is a remedial 'institution' whose function is to adjudicate any issues that arise between two individuals or entities after transactional activity.

When it comes to international transactions, there can be certain legal implications and potential issues that could arise when using standard forms of contracts, such as:

Litigation

If a customer or supplier of a party to the contract is dissatisfied with the terms and conditions of the contract, they may seek to bring the case to court. If so, it's up to the parties in agreement to decide which court or legal system they'll use. How do you know you're making the right choice?

Dispute Resolution

Disputes can arise from not leaving enough room for negotiation, or due to any unforeseen events happening before or during the performance of the contract. The parties must agree on how these disputes are going to be resolved (through arbitration, mediation etc). This should be discussed beforehand and should provide options for how these disputes can be resolved without unnecessary delays or costs.

Language Barriers

Language barriers pose a challenge when drafting international contracts that are legally binding in more than one country. Parties must ensure that misunderstandings don't occur due to their language differences, as well as make sure that they use unambiguous terminology to prevent any confusion or misinterpretation.

In short, adopting a global contract template comes with inherent risks but also has its advantages if done right. Companies need to ensure they stick within the legal bounds in each country, take care of any potential issues that could arise and find ways around language barriers when necessary.

CONCLUSION

In conclusion, standard contract formats are crucial in the realm of cross-border business. Businesses can quickly and securely enter into contracts with international companies by adjusting them to various national legal frameworks.

Nonetheless, while working with international contracts, parties should proceed with prudence and be sure to take into consideration their particular legal needs. To that end, business owners should seek the advice of knowledgeable attorneys to make sure their contracts are legitimate, applicable, and current. Standard forms of contracts can be an essential resource in the field of cross-border commercial operations with the right planning.

ENDNOTES

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ⁱⁱ D'Agostino, E. (2015). *Contracts of Adhesion Between Law and Economics*. Cham: Springer International Publishing.

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^{vi} Eisenberg, M. A. (1994). Expression Rules in Contract Law and Problems of Offer and Acceptance. *California Law Review*.

^{vii} Lonegrass, M. T. (2012). Finding Room for Fairness in Formalism—The Sliding Scale Approach to Unconscionability. *Loyola University Chicago Law Journal*, 44.

^{viii} Delhi Transport Corporation v. DTC Mazdoor Congress, 1991 Supp (1) SCC 600

^{ix} Columbia Law Review Association Inc., Comment: Administrative Regulation of adhesion contracts in Israel, available at: <http://www.jstor.org/sable/1120987>

^x Smith Alan H, Standard Form Contracts in International Commercial Transaction of The People's Republic Of China, available at: <http://www.jstor.org/stable/757629>