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COMMERCIAL USAGE SCENARIO

The Deal Making Process

Negotiating a contract? Practical Law Commercial's first-class contract law materials will guide you through each stage of the deal making process.

SCOPING THE DEAL AND PRE-CONTRACTUAL NEGOTIATIONS

AT THIS STAGE YOU WILL NEED TO:

- Put in place any pre-contractual safeguards. These allow the parties to continue negotiating without inadvertently binding each other in a contract.
- Establish what the key terms of the deal are.
- Conduct appropriate due diligence. This includes ensuring correct contracting parties and verifying any pre-contractual representations.

THE PRACTICAL LAW SOLUTION:

At the start of contractual negotiations, put in place a mutual confidentiality agreement. This will allow commercial parties the freedom to further discussions and reveal necessary information to each other during the due diligence process, without concerns that business sensitive information will be revealed to the market.

Practical Law Commercial has a variety of standard documents for this purpose that range from a *simple confidentiality letter agreement* (uk.practicallaw.com/1-375-8305) to a *mutual confidentiality agreement* (uk.practicallaw.com/0-384-4083) for more complex transactions.

Once key deal terms are agreed, contracting parties often document these in a letter of intent or heads of terms, as a preliminary step before entering into a binding contract.

Our practice note on *Contracts: formation* (uk.practicallaw.com/3-107-4828) reviews the legal concepts involved in the formation of binding contracts and covers some common contract formation problems which can arise in the first stages of the deal making process.

For a discussion of the main issues to consider when drafting, reviewing or entering into head of terms documents, see our practice note on *Heads of terms in commercial transactions* (uk.practicallaw.com/6-383-2652). You may also wish to use our standard document, *Heads of terms for commercial transactions document*, (uk.practicallaw.com/7-504-9955) to start documenting the deal terms with confidence.

As part of the due diligence process, it is important to establish that the correct parties are entering into the contract and they have the authority to contract on behalf of the businesses they represent. Our practice notes on *Contracts: authority* (uk.practicallaw.com/9-107-3963) and *Contracts: capacity* (uk.practicallaw.com/1-107-3962) will provide useful background.

NEGOTIATING AND DRAFTING THE CONTRACT

AT THIS STAGE YOU WILL NEED TO:

- Record the commercial terms in a written contract.
- Include contractual safeguards such as appropriate indemnity provisions and a right to interest for late payments.
- Consider including appropriate limitations of the parties' liability.
- Ensure there are clear dispute resolution procedures.
- Clearly document any exit or termination provisions.

THE PRACTICAL LAW SOLUTION:

Practical Law Commercial has a range of general commercial standard agreements with integrated drafting notes to help start customising the contract for your deal. So whether you are *selling goods or services* (uk.practicallaw.com/2-501-7221), *appointing an agent* (uk.practicallaw.com/3-100-9611), *starting up a franchise* (uk.practicallaw.com/9-223-1966) or *outsourcing services* (uk.practicallaw.com/9-223-1966), our resources will ensure that your agreement is based on an up to date standard agreement.

In addition, our practice note, *Contracts: structure and terms of commercial contracts* (uk.practicallaw.com/0-107-4877) will help you draft a well-constructed contract. Our *boilerplate agreement* (uk.practicallaw.com/9-107-3656), containing specimen boilerplate clauses with optional language, will then assist you in deciding which all-important boilerplate clauses to include.

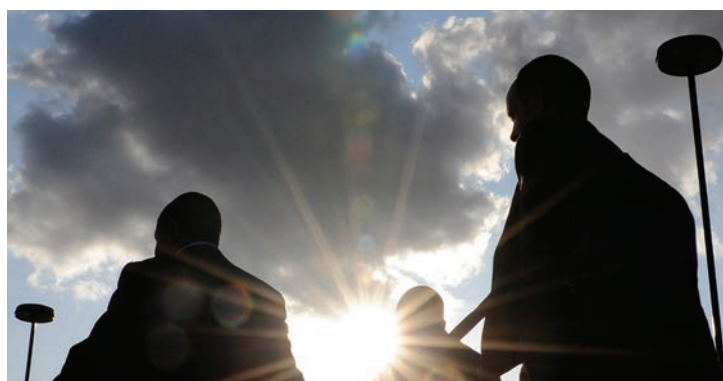
EXECUTING THE CONTRACT

AT THIS STAGE YOU WILL NEED TO:

At this stage, you will need to ensure that you comply with the appropriate execution formalities for the agreement.

THE PRACTICAL LAW SOLUTION:

Practical Law's *toolkit for executing deeds and documents* (uk.practicallaw.com/2-560-4292) will provide you with an overview of the law on executing deeds and documents, including guidance on who can execute a contract for a company, any additional formalities that may be necessary, and how to hold a valid virtual signing when not all parties can be physically present to sign the contract at the same time.



CONCLUSION

With the help of the Practical Law's practice notes, standard documents and checklists, the deal making process will be completed with a well-constructed and clearly drafted agreement that accurately sets out the commercial parties' rights and obligations.