

Introduction to the ICC Model Contract “Consortium agreement”

A new publication in the series of ICC Model Contracts has been released. This time its dedicated to a completely new subject: consortium agreements. We asked Isabelle Smith Monnerville, the Co-Chair of the working group, to introduce the new model and explain in which cases it can be used.



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What are Consortium agreements and who usually has to deal with them?

Consortium agreements are one of the legal formats used by businesses for the organization of their co-operation with others. Whilst the Latin word “consortium” is widely used in practice, the plain English equivalent is “joint operation”. In recent years, joint operations and joint arrangements have flourished in a difficult economic context and their number and economic value are on a par with those of typical M&A operations. Motivations for entering into a consortium agreements are many and varied. In a construction context, one driving force is the client’s preference of a single point of responsibility. Joint operators, from their perspective, aim at sharing the risks and the liabilities of major projects and/or want to enhance their chances in the bidding process by presenting a joint offer.

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How was the Model Contract put together?

The Model Contract was put together by a process of co-development which was based on the shared experiences of substantial global businesses of diverse specialties as well as of transactional and litigating legal consultants. In line with the international footprint of the ICC, all world regions were represented in the working group in the objective of producing a Model Contract which is capable of providing a framework which can be acceptable in most legal systems whilst, of course, not being capable of being a substitute to specific legal advice.

What are the difficulties a party can run into when drafting a Consortium agreement? Parties entering into an agreement are naturally focusing on the success they expect and may well not have the time or resources for anticipating difficulties and potential disagreements within the cooperation. The Model Contract provides readymade safety nets and pitfall warnings, as well as methods and processes for overriding the differences, incidents and accidents that are inherent to any human activity.

What are the basic concepts described in this Model?

The basic concepts of this Model are how to make a unanimous governance system work and how to make it bearable for a business to undertake liability for the actions of others, through close day-to-day management, anticipation and prevention, recourse and other mitigating systems.

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Is there any difference between this Model and other models which exist for these types of deals?

The ICC Model is up-to-date and provides more detailed methods than other existing agreements for avoiding differences and overcoming difficulties. It points out areas where digital tools can enhance the efficiency of the cooperation of distant parties. Plain language has been used to the maximum possible extent so as to allow direct access by users with little or no legal background.