



NALSAR UNIVERSITY OF LAW
HYDERABAD



DAY: 7 SESSION-1 SUN: 23-08-2020: 09:00-11:00 AM

INTERNATIONAL CONTRACT LAW: NORMS AND DRAFTING GUIDELINES

by

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Assistant Professor of Law



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Aviation Contracts and Tenders

International Contracts Law Norms & Drafting Guidelines

Semester III (Batch 2019-2021)

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CONTENTS

- ☐ Tenders
- ☐ International Contracts
- ☐ Issues affecting International Contracts
- ☐ Parties to the Transaction
- ☐ Structure of an Ordinary Contract and an International Contract
- ☐ Drafting of International Contracts

Some Questions on Tenders?

- ☐ What is a Tender?
- ☐ Why Government should float a Tender?
- ☐ Does a Private Party float a Tender?
- ☐ Is a Tender floated for the highest or lowest bid?
- ☐ Does under a PPP Agreement, will there be a Tender?
- ☐ How Tenders are Regulated domestically (India) and globally
- ☐ Methods of Tenders (Open; Limited; Single)

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- ❑ Does acceptance of Tender creates a valid contract?
 - ❑ When the parties can withdraw from the Bidding of a Tender?
 - ❑ In a Tender, who is Offering (Proposal) and who is Accepting (Promise)?
 - ❑ What is Online and Offline Tenders?
 - ❑ Why disputes arise (after floating a tender) after bidding a Tender?
 - ❑ Finally a Contract or an International Contract comes into being.

Some Questions on International Contracts

- ☐ What are the Types of Legal Regimes are there globally?
- ☐ What is an International Contract?
- ☐ What is the Criteria in ascertaining an International Contract?
- ☐ Is there a difference between a Commercial Contract and a Consumer Transaction?
- ☐ Which law is applied for an International Contract? (Next Slide)

❑ UNIDROIT Principles (Preamble)

- These Principles set forth general rules for international commercial contracts;
- They shall be applied when the parties have agreed that their contract be governed by them;
- They may be applied when the parties have agreed that their contract be governed by general principles of law the *lex mercatoria* or the like.
- They may be applied when the parties have not chosen any law to govern their contract.

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- ❑ They may be used to interpret or supplement international uniform law instruments.
 - ❑ They may be used to interpret or supplement domestic law.
 - ❑ They may serve as a model for national and international legislators.

Issues Affecting International Contracts

- i. Cultural Issues** (etiquette traditions, values, communication, and negotiating styles of a group of people)
- ii. Role of Politics** governments throughout history have used direct and indirect trade barriers to force changes in the governments and policies of other countries.
- iii. Regulatory Laws** (Parties must be familiar with laws)
- iv. Internet Issues** (Sales can be made at electronic speed, suppliers can be sought worldwide, and classified advertising has taken on a global meaning.

Parties To The Transaction

Example: Leasing of International Airliner

- ❑ Seller and Buyer
- ❑ Seller, Buyer, Insurance Company, Freight Forwards, Transport, Banks

Structure of a Simple Contract

GIFT TRANSACTION

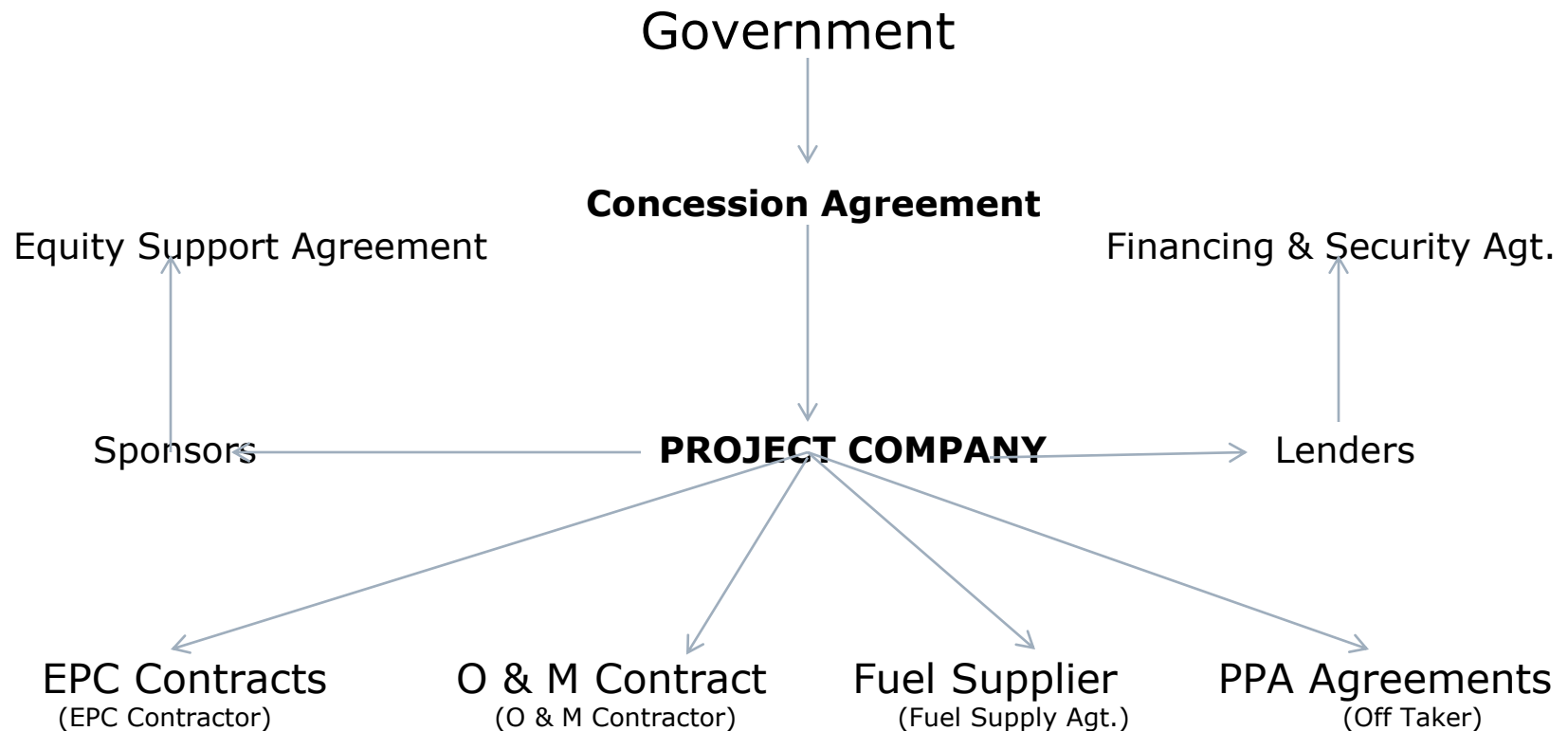
Donor → Donee

MORTGAGE TRANSACTION

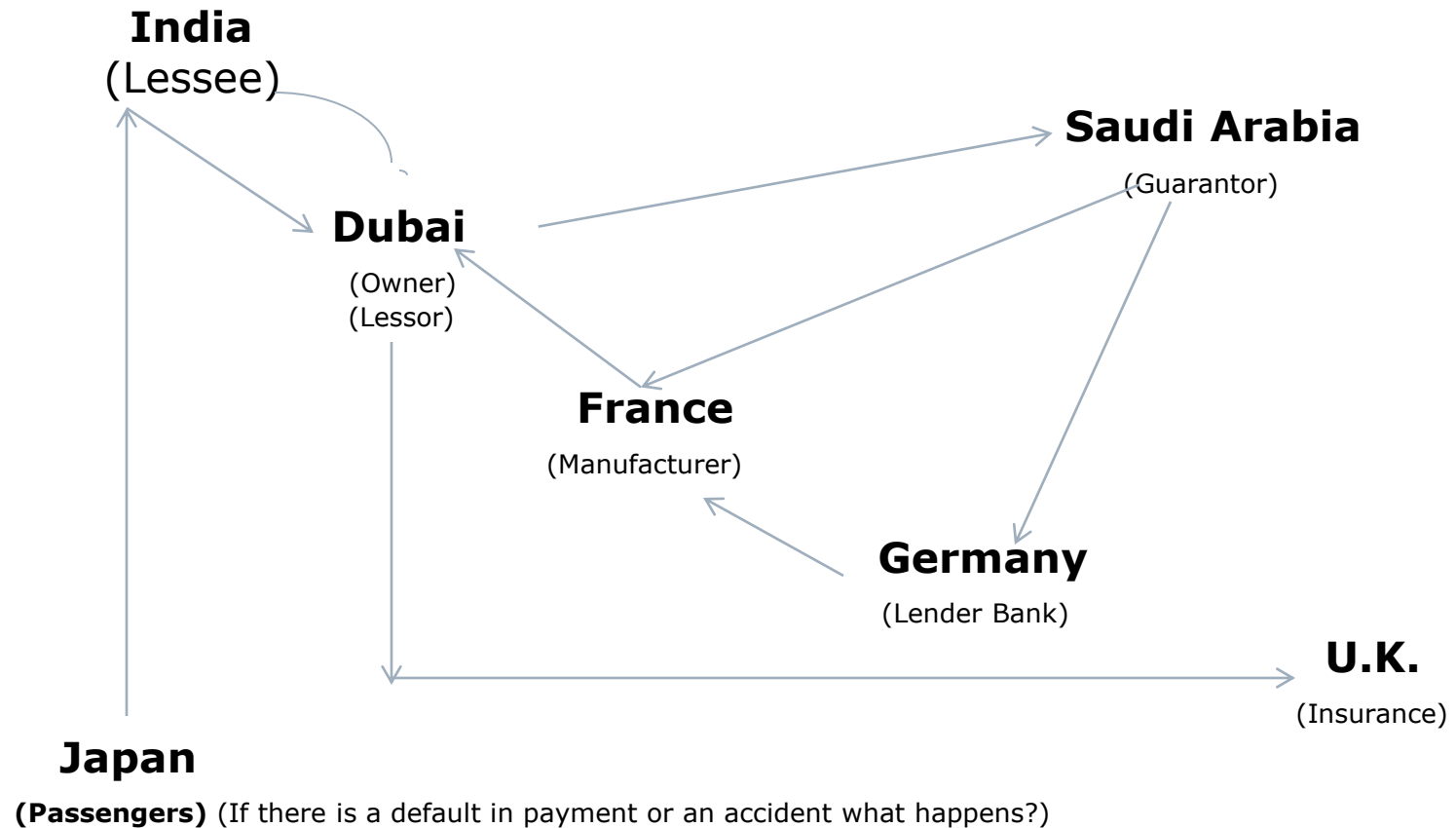
Mortgagor → Mortgagee

← Surety →

The Contractual Structure of a Project-Financed Power Project using the EPC Contract



Aircraft Leasing and Financing Agreement



UNIDROIT PRINCIPLES

(Purpose of the Principles)

- These Principles set forth **general rules** for international commercial contracts.
- They shall be **applied when the parties have agreed** that their contract be governed by them.
- They may be applied when the parties have agreed that their contract be governed by general principles of law, the ***lex mercatoria*** or the like.
- They may be **applied when the parties have not chosen any law** to govern their contract.
- They may be used to interpret or supplement **international uniform law** instruments.
- They may be used to interpret or supplement **domestic law**.
- They may serve as a **model for national and international legislators**.

SOME QUESTION REGARDING DRAFTING

- *Who has drafted or will draft/review the contract?*
- *What is the purpose of the contract?*
- *Whether it is a domestic or an international contract?*
- *Are all boilerplate terms effectively injected in the contract?*
- *Are all important terms carefully inserted in the contract?*
- *The construction of the contract – whether lengthy, bulky, or difficult to understand?*
- *Is there a correct arbitration clause in the contract?*

DRAFTING: PROVISIONS TO BE INCLUDED FOR A COMPLETE INTERNATIONAL CONTRACT

1. Contract Date
2. Identification of Parties
3. Goods-Description
4. Goods-Quantity
5. Goods-Price
6. Payment-Method of Payment
7. Payment-Medium of Exchange
8. Payment-Exchange Rate
9. Costs and Charges-Duties and Taxes
10. Costs and Charges-Insurance

11. Costs and Charges-Handling and Transport
12. Packaging Arrangements
13. Delivery-Date
14. Delivery-Place
15. Delivery-Transfer of Title
16. Transportation-Carrier
17. Transportation-Storage
18. Transportation-Notice Provisions
19. Transportation-Shipping Time
20. Transportation-insurance or Risk of Loss Protection

- 21. Import / Export Documentation
- 22. Invoice Preparation and Delivery
- 23. Re-exportation Prohibition
- 24. Inspection Rights
- 25. Indemnities
- 26. Intellectual Property Rights
- 27. Warranties
- 28. Enforcement and Remedies
- 29. Arbitration Provisions
- 30. Time is the Essence

- 31. Modification of Contract
- 32. Cancellation
- 33. Liquidated Damages
- 34. Attorneys' Fees
- 35. Force Majeure
- 36. Inurement and Assignment
- 37. Conditions Precedent
- 38. Governing Law
- 39. Choice of Forum
- 40. Severability of Provisions

- 41. Integration of Provisions
- 42. Notices
- 43. Authority to Bind
- 44. Independent Counsel
- 45. Acceptance and Execution

ANATOMY OF INTERNATIONAL CONTRACT

(Example: Purchase/Lease of an Aircraft)

1. Preamble
2. Interpretation and Definitions
3. Scope and Technical Specifications
4. Price
5. Terms of Payment
6. Price Variation
7. Bank Guarantees
8. Letters of Credit
9. Taxes and Duties
10. Scheduled Delivery Date
11. Force Majeure
12. Defaults, Liquidated Damages and Penalties

Contd...

- 13. Export Licence
- 14. Inspection and Acceptance
- 15. Shipment
- 16. Passing of Title and Risk
- 17. Warranty
- 18. Patents and Copyrights
- 19. Indemnities
- 20. Spares and Spares Policy
- 21. Options
- 22. Resolution of Disputes
- 23. Termination

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- 24. Assignment
 - 25. Amendments
 - 26. Confidentiality
 - 27. Notices
 - 28. Governing Laws
 - 29. Survival
 - 30. Effective Date

Thanks To One and All

END SLIDE

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