

Consideration on Business Contract

1. Contract Consideration

It is a professional activity when a lawyer receives a client's commission , to consider the contract according to the client's request and the lawyer's professional judgement, through the ways of examination, collation, analysis and other methods, if there is any legal problems or other shortcoming or defect, the lawyer will offer opinions to the client, while the client make commercial decision or attend business negotiation.

Client , including the party who submit contract to the lawyer to consider or a party as one of contract part. Other party, is one party in interest besides client of the contract to consider .

2 . Points for Attention

Consideration is an activity that a lawyer give opinions about the problems of contract basing on legal stipulations and the lawyer's judgement.

The lawyer should remind the client of the clauses which is adverse for him when consider the contract. Especially the clauses are totally disadvantage to the client , important rights and interests haven't been bargained , or contract is so deficient that some part or all clauses of it will be invalid , and whether accept the opinions or not is depending on the client himself.

3. Contract Draft

When the client submit the draft of contract and annex about background and reference, please use electronic documents as possible, in order to keep and edit conveniently, annex may use PDF form. It will be very advantageous if the client offer annex of contract , documents that mentioned in the contract and other party's Business Licence, with all these above may help the lawyer to give right opinions when consider contract.

Firstly, the client shall check the commercial clauses and technical clauses, decide whether accept those clauses or not. Then, the lawyer consider the contract clauses according to legal stipulations, add, delete and amend the clauses, to reduce the relevant risk of the client.

4. Purpose to Consider

4.1 When submit contract, background and reference documents, the client shall initiatively provide information about background of contract's conclusion, the information of both parties, whether the client has advantage in transaction or not and so on, especially confirm the purpose of the transaction and what the main problem is, so the lawyer may judge the clauses.

4.2 When the client submit contract by email, should provide information as key-points to consider, purpose of contract , and background for consideration

4.3 If the client don't express the purpose and background of contract, the lawyer may judge by himself or initiatively ask the client about business background , contract purpose and other information in order to finish the work.

5. Content of Consideration

For electronic documents, the lawyer will write postil to express his amending opinions. The postil is in different color to identify from the original draft.

While the clauses is vague or confusion , the lawyer may provide opinions after getting exact reply , or just give indication such as clauses can't understand or semantic unknown.

5.1 Subject Qualification

(1) For Business Licence consider, shall accord with original documents to check the other party's information such as duration of the operation, business scope, whether

pass the annual examination or not. Then determine if its identity is according with the regulations of industry and business.

(2) For judging qualification level, shall consider their relevant qualification certificates to determine whether it is legal, valid and whether business activities are in the scope of legitimate.

(3) For some specific transaction, shall consider the transaction whether accord with the relevant production licences or operating permits and other related licensing system to determine whether the contract is valid.

(4) For the transaction involving the professional qualifications , shall consider the client's requirement or the necessity to perform the contract, consider if a professional has the appropriate qualifications to perform the contract.

5.2 Consider Legality

(1) Consider the clauses of the contract and the process of concluding the contract, check the existence of the situation stipulated in Contract Law such as contract invalid, exemption clause invalid, and may apply to alteration or remove.

(2) There is any agreed clause is in breach mandatory stipulation in laws or regulations;

(3) Consider the legal term and technical term mentioned in the contract if they are standardized

(4) Consider the quality standards of the transaction object if it is consistent with the legal stipulation.

(5) Consider it is consistent with the title of contract ,contract content and attributes, in particular, if there is any conflict between title and content of the contract which is addressed explicitly in the Specific Provisions of Contract Law.

5.3 Consider Practicality

The lawyers may accord with the type of the client's industry, product characteristics, the other party's situation and so on , consider if there are practicality clauses to avoid

disputes or to set down the rights and obligations. If it is only regular consider or the client does not need such kind of consideration, then the lawyer may avoid it.

- (1) Whether accord with the characteristics of the industry involved in a transaction to define the respective responsibilities of each parties;
- (2) Whether accord with the characteristics of the subject to make clauses which avoid disputes;
- (3) Whether accord with characteristics of contract breaching, to make the clauses of setting the responsibility;
- (4) Whether accord with the other party's situation in the transaction to set the practicality clauses
- (5) The effect of the way ,the order, and the place to perform the contract on transaction security.
- (6) The effect of the clauses of express or implied jurisdiction clause on the client.

5.4 Consider Clarity of Rights and Interests

- (1) whether the content of transactions are clear, specific, identifiable, and can be performed;
- (2) Whether transaction procedures are clear, specific, time limit , and obligation ascription;
- (3) Whether the settlement of dispute is clear, specific, time limit, and obligation ascription;
- (4) Whether there have defects in clauses, in order to accord with the problems then make the rights and obligations unclear;
- (5) whether there is lacking strict interpretation as a result of which the rights and obligations are unclear.
- (6) whether rights, obligations and breach of contract are identifiable;
- (7) Whether the annex content is clear, or conflict with the master contract, if has, is there an order to explain.