



## Drafting and Negotiating Contracts

4-7 September 2023

For more information:

contact KFAS at [training@kfas.org.kw](mailto:training@kfas.org.kw) or +965 22278100 ext 1883/ 1879

## Programme Objective

This full 4 day Drafting and Negotiating Contracts course is designed to identify key issues of English law for contracts, common drafting errors, improve their writing and drafting skills and learn advanced negotiation skills in English.

The modules, with sample documents, checklists, flow diagrams, exercises, workshops, polls, group discussions and lots of interactivity built in to help delegates get the most out of the classes and interact with the trainer and other delegates.

**Module 1:** Contracts and Negotiations – In Depth

**Module 2:** Drafting – In Depth

**Module 1** focusses on the core contractual terms in the context of commercial transactions including preliminary agreements, liabilities and damages, warranties, representations, guarantees and indemnities, Force Majeure in an increasingly uncertain world. Day 3 is spent at enhancing negotiation skills with hands on facilitation, conducting a real world negotiation, introducing a framework of objectives and strategy, identifying the participants own individual style, and practising effective negotiation skills and behaviours

**Module 2** builds on the learnings from Module 1 with in depth drafting, with checklists, tips and techniques for drafting applicable immediately after the course, interpretation of contracts, with practical clause drafting.

Be introduced to the Facilitators unique '10 Key Steps Tool for Drafting and Analysing a Contract'.

All to give an in depth, workable understanding and approach to understanding, negotiating and drafting and contracts.

## Target Audience

The target audience for the course are:

- Lawyers working in business, government and private practice
- All those working in a legal context but not necessarily having law as their underlying professional qualification, including contracts managers, commercial managers and directors
- In-house lawyers
- Private practice lawyers
- Commercial and contracts directors and managers
- Procurement personnel
- Compliance officers
- Company secretaries

**For more information:**

contact KFAS at [training@kfas.org.kw](mailto:training@kfas.org.kw) or +965 22278100 ext 1883/ 1879

- Contract and commercial managers and engineers
- Sales and marketing managers
- Project and procurement managers
- And all those involved in the negotiation, drafting of commercial business contracts

Across domains, service and industrial sectors

## Learning Outcomes

Updated knowledge, confidence and familiarity with contracts required to tackle the most important aspects of commercial contract law.

Improved and enhanced skills and approach to immediately apply to:

- Drafting pre-contractual documentation
- Drafting general contractual terms and specific clauses
- Negotiation skills for lawyers and other professionals
- Tactics, techniques and personalities
- Negotiating key clauses
- Warranties, representations and entire agreement clauses
- Liability risk protection including indemnities, exclusion and limitation of liability clauses
- Remedial clauses and damages
- Force majeure
- Termination

## Delegates will receive

- Sample clauses
- Checklists and flow diagrams to rely on
- Diagnostic of their personal negotiating style
- The facilitators unique '10 Key Steps Tool for Drafting and Analysing a Contract

**Note** - A good level of spoken and written English is required to attend this course. Delegates should be of an intermediate standard in English at a minimum. Please refer to the Common European Framework of Reference for Languages - as a guide the level required is B2.

**For more information:**

contact KFAS at [training@kfas.org.kw](mailto:training@kfas.org.kw) or +965 22278100 ext 1883/ 1879

## Agenda

### Module One

#### Day One: Making the contract

##### Introduction

- Structure of course
- Expectations
- Contract of group

##### Formation of Contract

- What is a contract?
- Making a binding and enforceable contract
- 6 components
- Offer
- Acceptance
- Consideration
- Deeds
- Limitation periods

##### Preliminary agreement forms

- Memorandum of understanding
- Letter of intent
- Heads of Agreement
- Term sheet
- Authority to proceed
- Scope of work
- Subject to contract

##### Confidentiality agreements – Workshop

- Purpose
- Types of information they protect
- Causes of breach
- What information cannot be disclosed
- Enforcement

##### Warranties, Representations, Guarantees & Indemnities – Workshop

- Definitions and identification
- Pointers to distinguish and negotiation
- Warranties
- Representations

#### For more information:

contact KFAS at [training@kfas.org.kw](mailto:training@kfas.org.kw) or +965 22278100 ext 1883/ 1879

- Guarantees
- Indemnities
- Entire agreement clauses

## Day Two: In-depth clause review

### Exclusions, Limitations of Liability, Liquidated and Ascertained Damages and Penalties

- Liability for personal injury or death
- Liability for late delivery, performance or similar
- How to limit the maximum aggregate damages
- Examples of limitation of liability clauses
- Liquidated and ascertained damages

### Exclusions, Limitations of Liability, Liquidated and Ascertained Damages and Penalties – Workshop

#### Force Majeure, Frustration and Economic Hardship

- The concepts of force majeure and economic hardship
- Doctrine of frustration
- Changing circumstances and unforeseen events
- Hardship clauses
- Defining the events
- Typical claims
- The termination period
- Re-execution/re-negotiating

#### Direct, indirect damages and consequential loss

- Types of damages
- Damages for breach of contract
- Back-to-back contracts
- Physical damages
- Costs and expenses
- Waste
- Loss of profit
- Consequential losses and expenses

#### Boilerplate – Sample Clauses and Pointers

- Agency/partnership
- Assignment and sub-contracting
- Counterparts
- Insolvency and bankruptcy
- Communication notices

### For more information:

contact KFAS at [training@kfas.org.kw](mailto:training@kfas.org.kw) or +965 22278100 ext 1883/ 1879

- Set off
- Severance clause
- Waiver
- Governing law & jurisdiction

## Day Three: Negotiation

### Introduction – Negotiation Essentials

- What is Negotiation?
- Framework for Negotiation
- Simulation

### Negotiation Objectives

- Creating value
- Maximising value
- Claiming value
- Examples of value

### Negotiation Strategy

- BATNA
- Reservation price
- ZOPA

### Diagnostic – Know Your Dominant Negotiating Style – and Recognise Others Style – Broadening and Adapting Your Style

### Key Negotiation Behaviours

- Listening
- Asking questions
- Body language
- Direct and indirect communication
- Negotiating face to face, by phone and by email

### Power, Interests and Positions

- Preparation – Developing a Scoring System
- Bargaining and Haggling
- Offers and Anchors

### For more information:

contact KFAS at [training@kfas.org.kw](mailto:training@kfas.org.kw) or +965 22278100 ext 1883/ 1879

## Module 2

### Day 4 – Drafting Contracts – In Depth

#### Structure and Format of Agreements

- Parties
- Recitals
- Interpretation
- General Terms
- Commercial Terms
- Industry Specific Terms
- Assignment
- Third Party Rights
- Schedules
- Execution
- Contract review

#### Checklist and Procedures for Drafting – Workshop

- Workshop – Checklist
- Style Guide
- Key Writing Strategies
- 4 Phases of Writing
- Contra proferentum rule
- Parol evidence rule
- Implied terms

#### Common Terms and Phrases

- Best & Reasonable Endeavours
- Time is of the Essence
- Joint & Several Liability
- Term & Termination
- Remedies

#### Interpretation of Contracts under English Law

- Express Terms
- Purposive Construction
- Canons of Construction
- Contra Proferentum Rule
- Implied Terms

#### For more information:

contact KFAS at [training@kfas.org.kw](mailto:training@kfas.org.kw) or +965 22278100 ext 1883/ 1879

### Case Studies and Practical Exercises

The delegates will break into groups to draft important clauses in domestic and international agreements clauses including:

- Indemnities
- Termination
- Force Majeure

Participants will be provided with helpful flow diagrams as part of the feedback.

### The 10 Key Steps Tool for Drafting and Analysing a Contract

**For more information:**

contact KFAS at [training@kfas.org.kw](mailto:training@kfas.org.kw) or +965 22278100 ext 1883/ 1879