

## Pre-Contract Negotiations: 5 key developments from the Civil Transactions Law

Businesses should be aware of the rights and obligations set by the new Civil Transactions Law (CTL) for pre-contract negotiations. If you're involved in negotiating a contract under KSA law, take note of the following five key impacts from the CTL:



### Heads of Terms

It's now more important than ever to ensure that all pre-contract communications, including emails, are expressly stated to be non-binding and subject to contract, and to avoid reaching agreement on material terms informally, such as by phone message.

This is because agreeing on the material terms of a deal is now enough for the courts to hold the parties to the agreement, (even if it means the court will have to flesh out the non-material terms itself) unless it is clear that the material terms are only agreed subject to contract.



### Future promises

If you've previously faced difficulties enforcing an obligation that only kicks in if certain conditions are achieved (such as an agreement to lease a commercial building once it is constructed, or an agreement to sell shares and exit a company once certain commercial targets are achieved), the CTL offers much-needed clarity on this front.

A commitment to enter into a contractual agreement in the future is not binding unless:

- > all the material terms of the future contract are agreed;
- > the time period to enter into the future contract is agreed;
- > and any agreed conditions precedent for entering into the contract have been fulfilled.

If these three conditions are satisfied, but the other party still refuses to enter into the terms, a court order can be obtained to require the contract to be entered into.



### Withdrawing an offer

If a commercial offer has been made with no specific time period for acceptance, then the offer can be withdrawn or amended at any time.

However, this should be immediately notified to anyone who received the offer or proposal, as the CTL provides that failure to notify the recipients can lead to compensation claims for costs incurred as a result of continuing to rely on the previous offer.



### Bad faith negotiation

Compensation claims can be made against a party for 'bad faith negotiation', such as continuing in negotiations when there is no genuine intent to enter into a contract, or deliberately failing to disclose a material matter that would change the course of the negotiations.

To minimise the risk of compensation claims (such as for the counter-party's costs incurred for feasibility studies, site surveys, legal fees etc), we recommend early disclosure of material terms and deal-breakers, and to promptly cut short negotiations that have no hope of achieving a mutually agreeable outcome.



### Misrepresentation and misleading behaviour

Deliberately failing to disclose a material issue, that would have stopped the other party from entering into the contract if it had known about it, can lead to the contract being annulled. It remains to be seen how courts will address such claims, but it would be best to ensure that contracts contain terms to require a party to conduct its own due diligence and not to rely on the other party's statements or representations.

For further information please speak to your usual Z&Co. contact.

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