



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

How to Review/Draft Simple Contracts

Richie He

Senior Associate, SC BAS

October 28th, 2020



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PART 01

**The importance of
contract reviewing**



01

Importance of Contract Review

Typical attitude in practice

01 “It’s Useless”

Someone tends to believe as long as there’re mutual trust, no contracts is needed for transaction; Or he is simply taking chances;

E.G.: transactions that occur with small amount and high frequency

Disadvantage: once the mutual trust is gone and one of the parties breaches the “consent”, there won’t be solid certificates or evidence to back the claim of payment

02 “Good Enough”

Aware of the necessity of contracts, but not a clue of what should be put in the contracts and what is vital to the contracts; No detailed reviewing or even no reviewing, entering the contracts for the sake of it

E.G.: cross-border purchase of face masks; only signing simple PO without stating applicable laws

Disadvantage: the key basic components of the contracts is omitted, such as: both entities information, commodities amount, quality standard, delivery time, liquidated damages for late delivery/payment; Once any of the above occurs, there might be significant loss

03 “Almost There”

Understand well the importance of contracts, able to discern the important content in relation to the business, but not comprehensive

E.G.: purchasing supervisor, financial director

Disadvantage: might overlook important legal terms (e.g. applicable laws, location of dispute settlement, obligation of breaching, priority of the prevailing language)

01

Importance of Contract Review

Example

“

Whereas different individuals' perceiving of idea can be different, both parties hereby agree that **in the event that any of the following conditions are met, it shall be deemed as the complete delivery of agreed obligations** and the customer shall pay the service fee:

- A) The vendor has revised and provided five drafts;
- B).....;
- C).....;

PART 02

How to Review Contracts

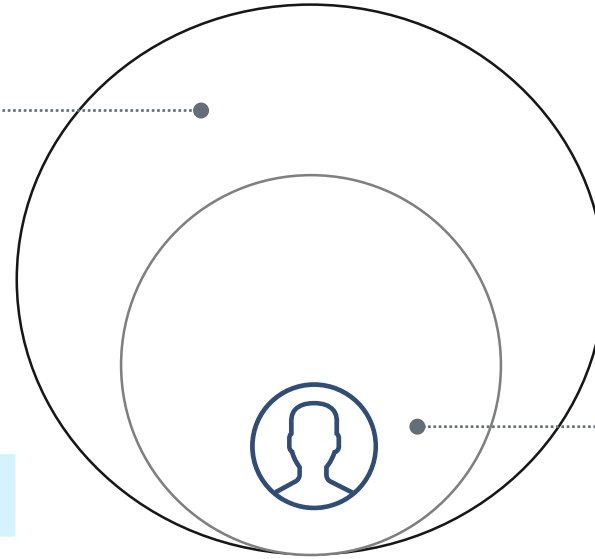
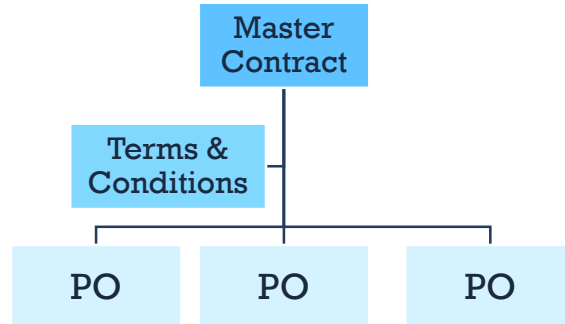
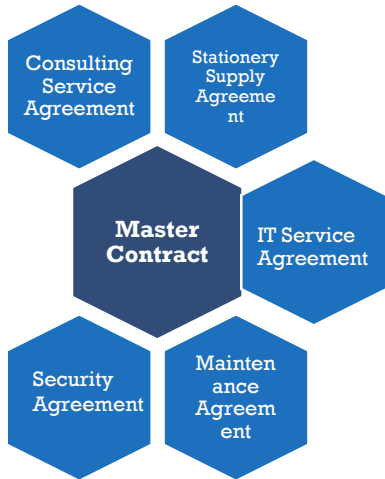


How to Review Contracts

Who?

“Complicated Contracts”

Legal Professionals
Experts in other aspects



- ✓ One-time, independent
- ✓ Simple transaction relations (one-to-one)
- ✓ Small transaction amount
- ✓ Simple legal relationship (not including IP, third party and rights assignment)
- ✓ Monolingual

“Simple Contracts”

Personnel who are familiar with the transactions:
purchasing supervisor, sales supervisor, customer service supervisor, financial director, etc.



How to Review Contracts

How?

D

R

A



For what is unfavorable to self but has already been in the contract, **revise** it as to be favorable or simply **delete** it.



For what is necessary to self but lacks in the contract, **add** favorable terms.

How to Review Contracts

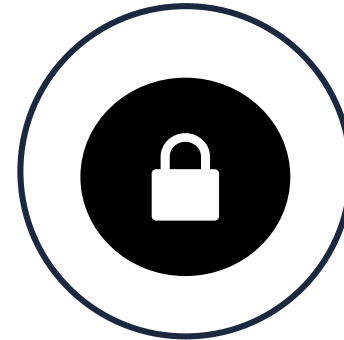
What?



Lease

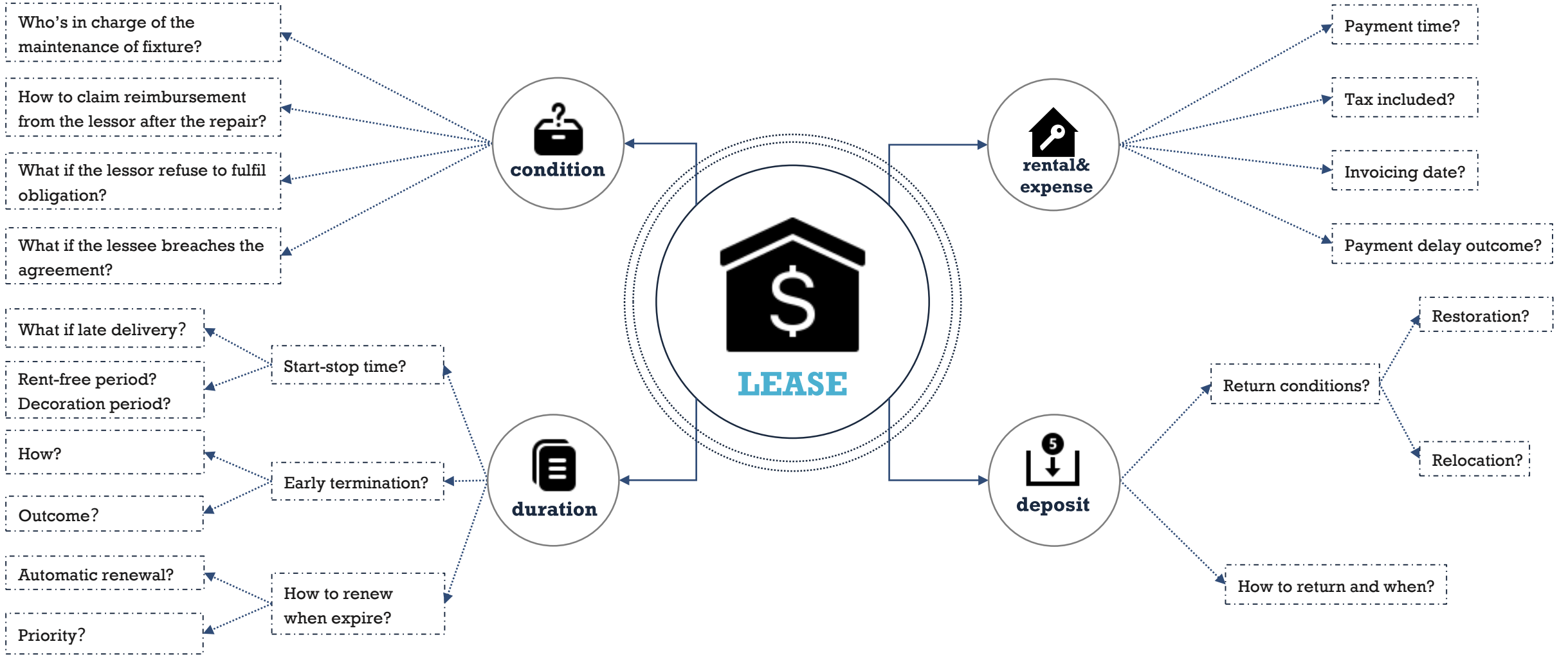


P&S of
Goods/Services

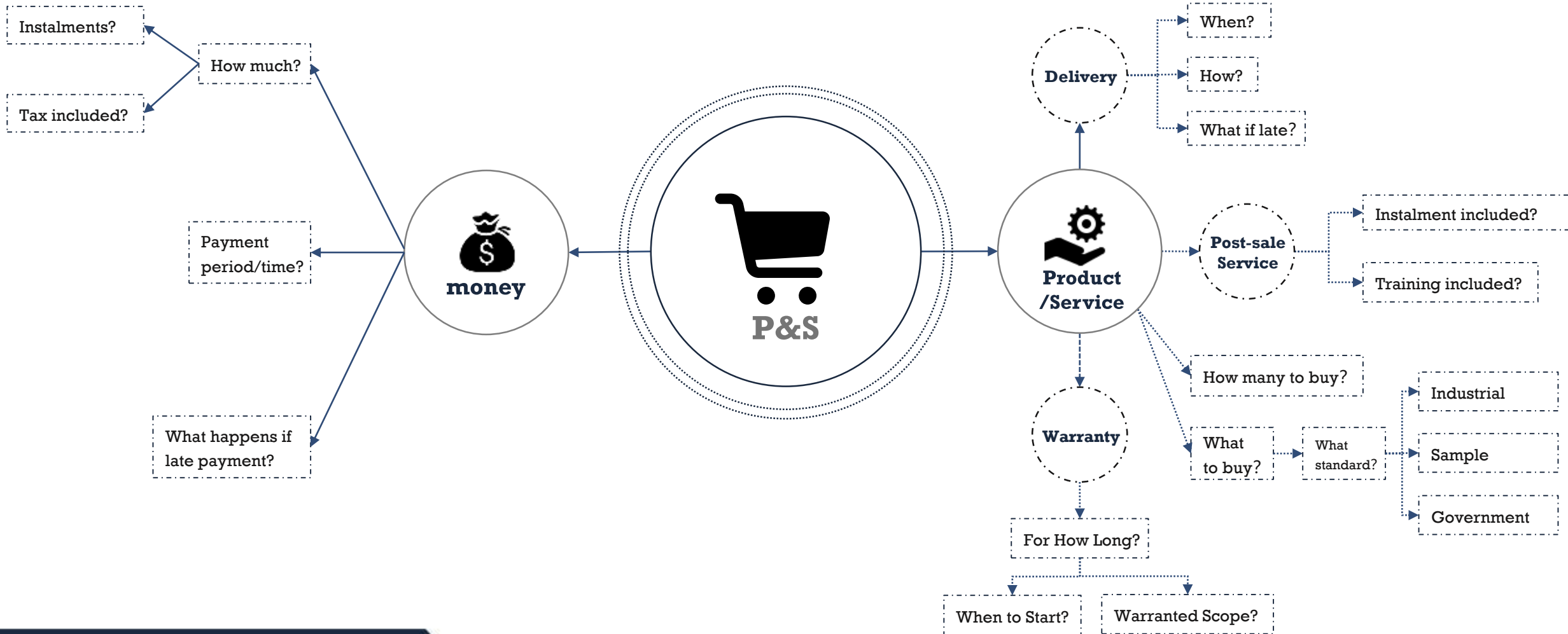


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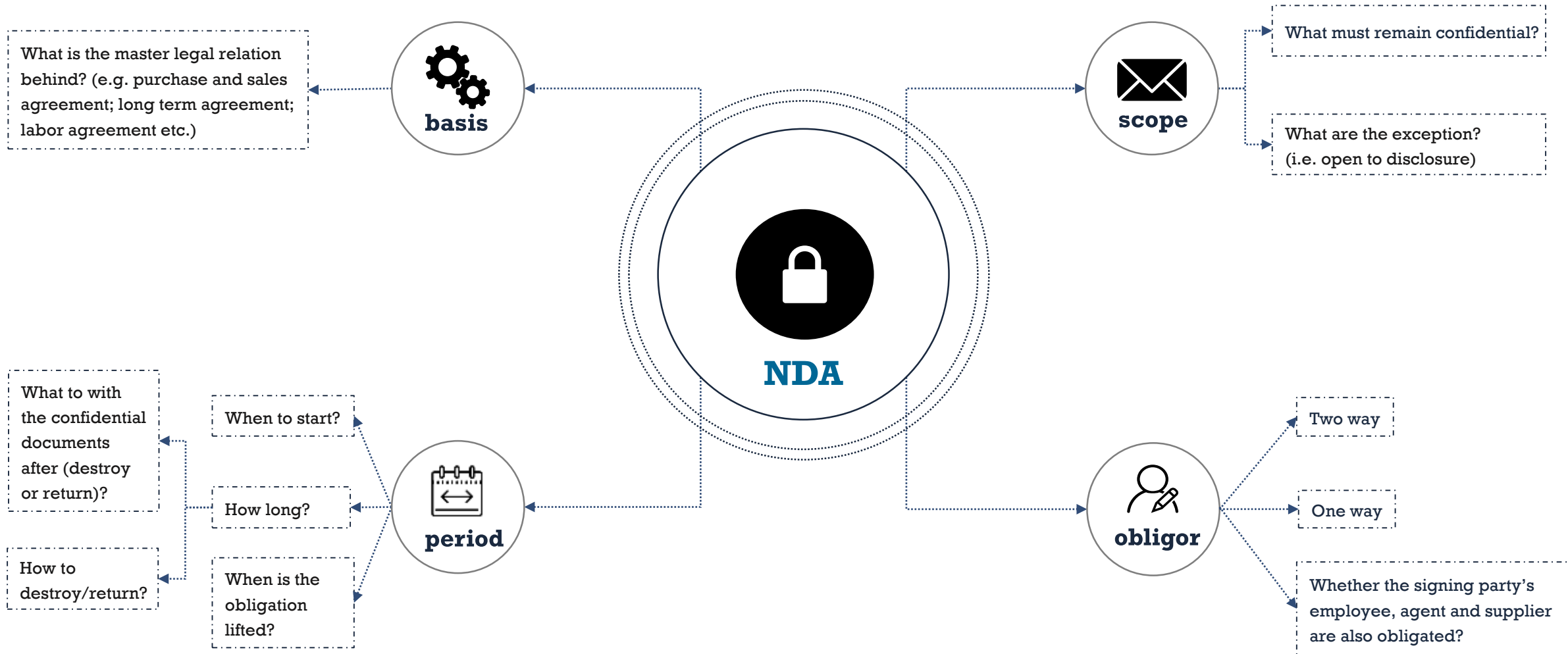
How to Review Contracts



How to Review Contracts

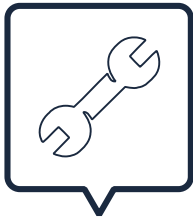


How to Review Contracts



How to Review Contracts

Special Tips



The “Parties”

- ✓ The FULL NAME of both parties listed at the top and the bottom of the agreement should be exactly the same;
- ✓ The FULL NAME of each party should be the same as the one on their official chop;
- ✓ The FULL NAME of each party should be the same as the one registered with authority.



How to Review Contracts

Special Tips



“Presentation and Warranties”

- ✓ List all the key issues that can be absolutely fulfilled;



Example

8 WARRANTY

- 8.1 Party A hereby declares and warrants to Party B that it possesses full power and authority to enter into this Contract and to perform its obligations hereunder.
- 8.2 Party A hereby undertakes and warrants that it has all copyright, licence, requisite power, authority and approval to the launching advertising materials provided to Party B including but not limit to all television commercial tapes, print advertisement, and such advertising materials are true, correct and complete in all aspects. Party A also undertakes and warrants that such advertising materials does not infringe any third party rights.
- 8.3 Party A hereby undertakes and warrants that it will abide by all the contracts signed with third party by Party B under its authorization, and undertake relevant responsibilities.
- 8.4 Party A undertakes to indemnify Party B in full and hold Party B harmless against any losses, costs, liabilities, expenses or damage which Party B may suffer as a result of any breach of Party A’s undertakings or warranties in this Contract.

How to Review Contracts

Special Tips



“Presentation and Warranties”

- ✓ List all the key issues that can be absolutely fulfilled;
- ✓ Serious liability that might even cause the contract to be removed can spun from failure to comply or breach of guarantee



Example

8 WARRANTY

8.1 Party A hereby declares and warrants to Party B that it possesses full power and authority to enter into this Contract and to perform its obligations hereunder.

8.2 Party A hereby undertakes and warrants that it has all copyright, licence, requisite power, authority and approval to the launching advertising materials provided to Party B including but not limit to all television commercial tapes, print advertisement, and such advertising materials are true, correct and complete in all aspects. Party A also undertakes and warrants that such advertising materials does not infringe any third party rights.

8.3 Party A hereby undertakes and warrants that it will abide by all the contracts signed with third party by Party B under its authorization, and undertake relevant responsibilities.

8.4 Party A undertakes to indemnify Party B in full and hold Party B harmless against any losses, costs, liabilities, expenses or damage which Party B may suffer as a result of any breach of Party A's undertakings or warranties in this Contract

How to Review Contracts

Special Tips



“Presentation and Warranties”

- ✓ List all the key issues that can be absolutely fulfilled;
- ✓ Serious liability that might even cause the contract to be removed can spun from failure to comply or breach of guarantee
- ✓ Delete the part which cannot be guaranteed with 100% certainty or move it to the “rights and obligations” section



举例：

Article 3 Warranty

3.1 The supplier shall declare and warrant that it has obtained all the qualification, permit, license to supply the above-mentioned products or service.

3.2 The supplier shall declare and warrant the information and presentation it provided to fulfill the purchase order are authentic and unambiguous.

3.3. The supplier shall warrant that all the products it delivered subject to the following: (1) without any defect or flaw regarding technology, raw materials and manufacturing (2) in accordance with the standard and requirement set forth in the purchase order, including any design drawing or sample provided by the supplier which has been included in the purchase order (3) without any defect or flaw regarding design (4) without any claim or encumbrance

How to Review Contracts

Special Tips



“Automatic Renewal”

- ✓ Automatic renewal usually is in favour of the supplier (the beneficiary)
- ✓ Buyer (Paying party) should be cautious of automatic renewal



Sample

1. This contract shall be valid from dd/mm/yy to dd/mm/yy. This contract shall be **automatically renewed for another year if either party did not send termination notice to the other party 3 months prior to expiration date.**

1.1 Party B shall be responsible of notifying Party A 20 days prior to the expiration date for Party A to consider renewal. If both parties agrees and Party A **complete payment to renew 7 days prior to the expiration date, this contract shall be renewed for another year. If Party A fail to make the payment on time, this contract shall be terminated after the expiration date.**

PART 03

How to Draft Contracts



How to Draft Contracts

Commercial Terms VS Legal Terms



Commercial Terms

Money, Commodities (Service)

- ✓ What are you offering?
- ✓ What am I offering?
- ✓ When?
- ✓ What standards?
- ✓ How to check and accept?
- ✓ What if fail to deliver?
- ✓ What if being late?
- ✓ What if unqualified?



Legal Terms

Rights, Obligations

- ✓ Rights and Obligations
- ✓ Liability of Breach
- ✓ Termination
- ✓ Confidential
- ✓ Restrictions of Rights (e.g. non-competition)
- ✓ Priority of Related Contracts
- ✓ Prevailing Language
- ✓ Applicable Law

How to Draft Contracts

Terms Sheet Usage



Why use Term Sheet?

- Finalization of terms usually takes several round of negotiation;
- Specialist/Purchasing staff usually are more familiar with the transaction details therefore better to negotiate first to reach consensus on core terms.

How?

- Focus on commercial terms;
- Take notes of the negotiation using plain language;
- No need to be accompanied by lawyers and legal counsel every time and save cost;
- Pass on to lawyers or legal counsel to draft the contracts after the negotiation.

Legal Counsel/External Counsel/Senior Staff

- Provide helpful reminder after each round of negotiation;
- In charge of the final drafting of the contracts and complement legal terms on top of commercial terms.

How to Draft Contracts

Term Sheet Usage

Term Sheet of XXX Face Masks Purchase (only used for meeting minutes)		
Parties	Party A (Buyer):	Party B (Seller)
Products	<ul style="list-style-type: none"> - Products description, standard - Quantity - Reference line 	
Price	<ul style="list-style-type: none"> - Unit price - Tax included or not - Total price - Discount applicable or not - Any complimentary items or additional service 	
Payment Terms	<ul style="list-style-type: none"> - How many instalments - Time point for each instalment 	
Delivery Terms	<ul style="list-style-type: none"> - Destination - Forms of delivery (e.g. whether trade terms is applicable) - Which party undertake the delivery expense - Delivery date and pre-condition (e.g. shipping upon payment of first instalment) 	
Return Conditions	<ul style="list-style-type: none"> - Conditions of returning and switching - Which party undertake the delivery expense - The return of the payment 	
Invoice	<ul style="list-style-type: none"> - Whether VAT is required - Invoicing time 	
Buyer's Obligation	<ul style="list-style-type: none"> - Anything else besides payment? 	
Seller's Obligation	<ul style="list-style-type: none"> - Anything else besides delivery? 	

First, second
layer of the
mind map

Subject
items of the
mind map

How to Draft Contracts

Term Sheet Usage

Term Sheet of XXX Face Masks Purchase (only used for meeting minutes)	
Parties	Party A (Buyer): Italy ABC S.p.A Party B (Seller): China XYZ Co., Ltd.
Products	<ul style="list-style-type: none"> - Products description, standard: N95 - Quantity: 10000 pc - Reference line: Chinese national standard
Price	<ul style="list-style-type: none"> - Unit price: ¥1.0 - Tax included or not: NTotal price: ¥ 10,000+tax - Discount applicable or not: ¥ 100 deduction for purchase over 20,000 pcs - Any complimentary items or additional service: usage manual
Payment Terms	<ul style="list-style-type: none"> - How many instalments: lump sum - Time point for each instalment: pre-pay
Delivery Terms	<ul style="list-style-type: none"> - Destination: No. xxx, XXX Rd, Venice, Italy - Forms of delivery (e.g. whether trade terms is applicable): By air - Which party undertake the delivery expense: Party A - Delivery date and pre-condition (e.g. shipping upon payment of first instalment): Shipment before 15, May, 2020
Return Conditions	<ul style="list-style-type: none"> - Conditions of returning and switching: can send extra in case of quality issue - Which party undertake the delivery expense: Party B - Refund policy: Non-refund for non-quality issue
Invoice	<ul style="list-style-type: none"> - Whether VAT is required: Y - Special VAT or Regular VAT: Special VAT - Invoicing time: Upon receiving the full payment
Buyer's Obligation	<ul style="list-style-type: none"> - Anything else besides payment? Guarantee the successful export, if not full refund
Seller's Obligation	<ul style="list-style-type: none"> - Anything else besides delivery? Custom clearance by self or bear consequences at own risk



Richie He

Senior Associate

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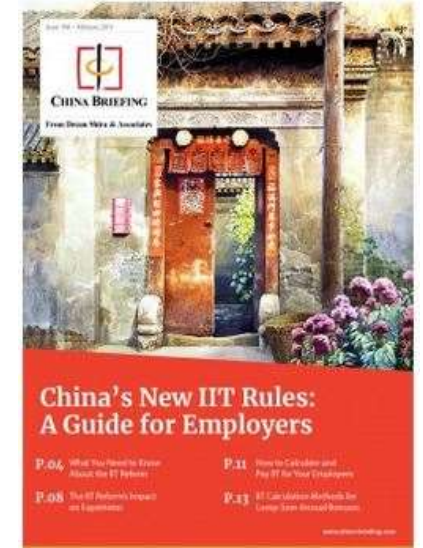
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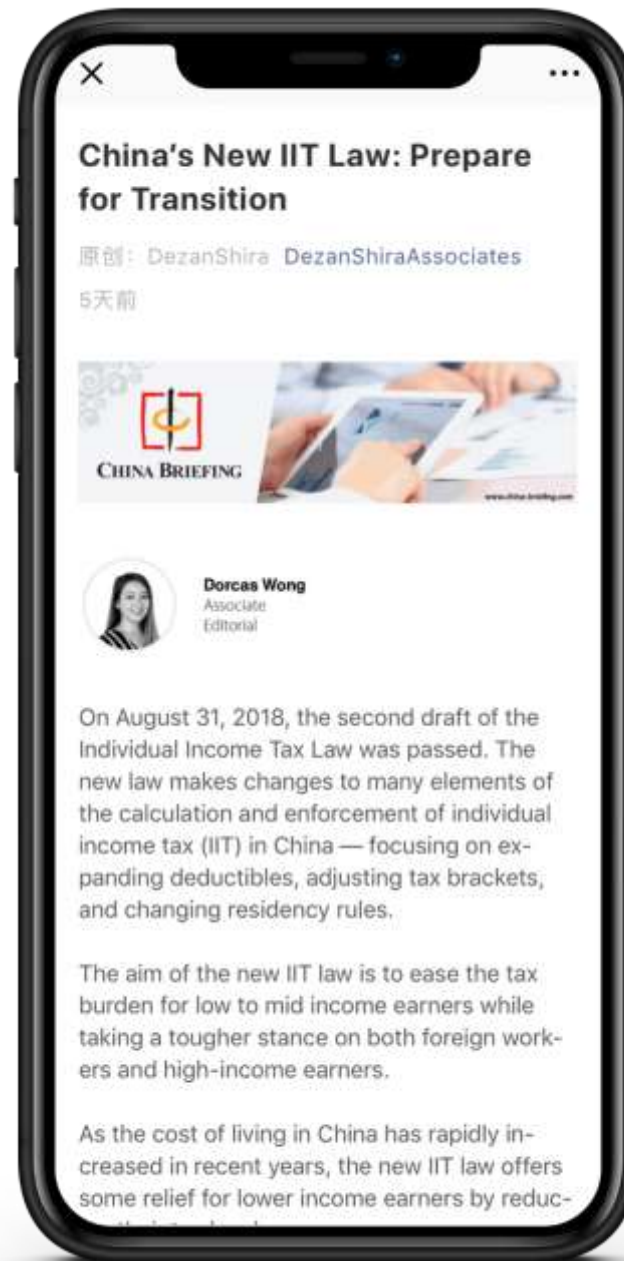
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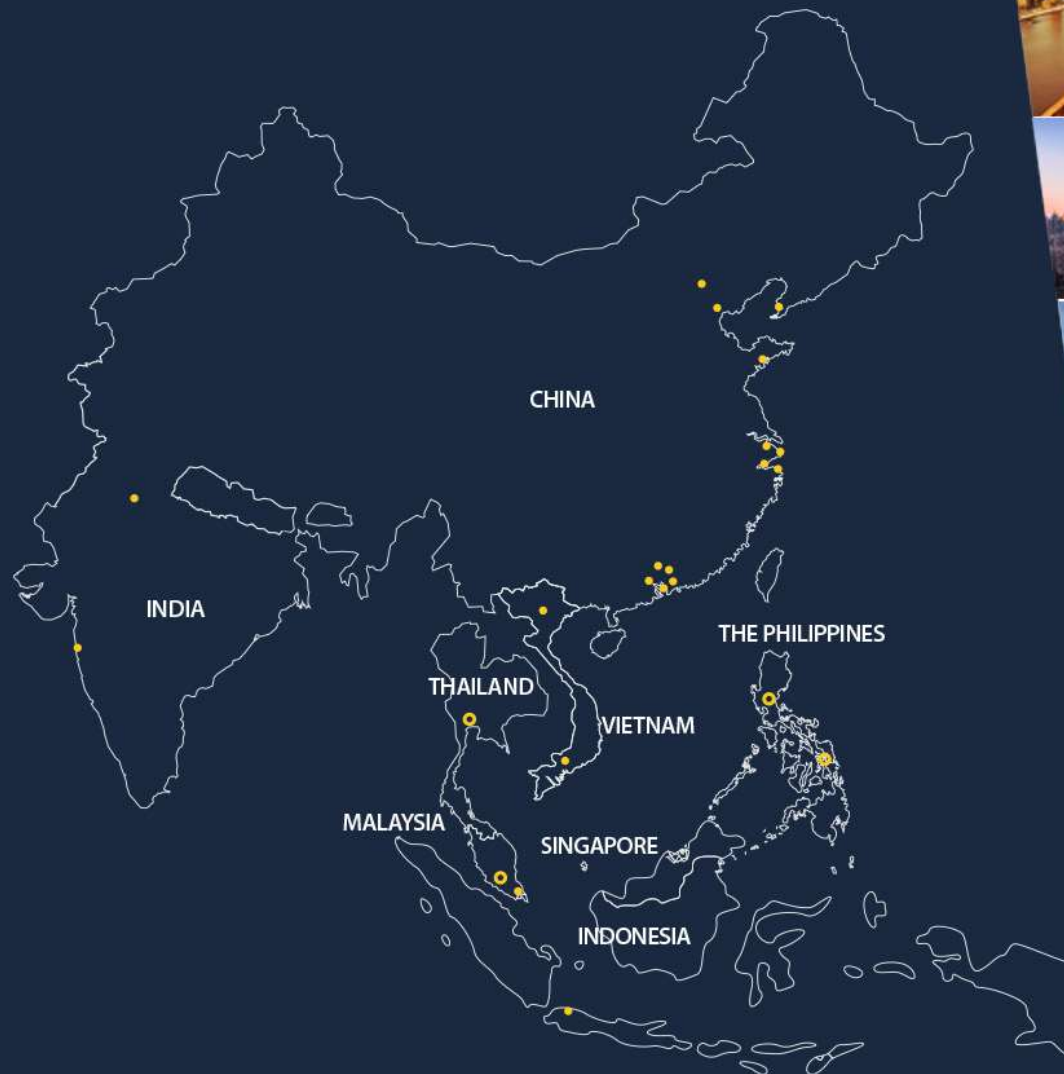
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Global Offices

CHINA

Beijing
beijing@dezshira.com

Hangzhou
hangzhou@dezshira.com

Shenzhen
shenzhen@dezshira.com

Dalian
dalian@dezshira.com

Ningbo
ningbo@dezshira.com

Suzhou
suzhou@dezshira.com

Dongguan
dongguan@dezshira.com

Qingdao
qingdao@dezshira.com

Tianjin
tianjin@dezshira.com

Guangzhou
guangzhou@dezshira.com

Shanghai
shanghai@dezshira.com

Zhongshan
zhongshan@dezshira.com

HONG KONG

hongkong@dezshira.com

INDONESIA

indonesia@dezshira.com

SINGAPORE

singapore@dezshira.com

INDIA

Delhi
delhi@dezshira.com

Mumbai
mumbai@dezshira.com

VIETNAM

Hanoi
hanoi@dezshira.com

Ho Chi Minh City
hcmc@dezshira.com

DEZAN SHIRA ASIAN ALLIANCE MEMBERS

Malaysia
malaysia@dezshira.com

The Philippines
philippines@dezshira.com

Thailand
thailand@dezshira.com

DEZAN SHIRA LIAISON OFFICES

Germany
germandesk@dezshira.com

Italy
italiandesk@dezshira.com

United States
usa@dezshira.com

For more information, please visit www.dezshira.com



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