‘How to capture cooperation in a contract?’

by MARIJKE ROELANTS

www.boldlaw.eu
Avenue Paul-Henri Spaak 17
1060 Brussels
Belgium
Marijke.Roelants@boldlaw.eu

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• Why do you need a contract? **It helps to shape a successful collaboration!**

• Answers to 4 questions:
  
  • which contracts would you typically need to set up a cooperation?
  • what would you need to put in those contracts?
  • who may sign the contracts?
  • what do you need to know about handling disputes in the contract?
SCHEDULE OF THE WORKSHOP

1. **Session 3**: 13.45 p.m. to 14.45 p.m.

2. **Session 4**: 16.15 p.m. to 17.15 p.m.

Questions?

• Feel free to ask on the spot.

• Last 15 minutes of the workshop are reserved for your questions.
Background
Marijke Roelants

- Germanic languages KU Leuven
- European Studies UCL
- Law studies KUB and VUB (Intern European Parlement, know-how assistant Allen & Overy, Paralegal at Bogaert & Vandemeulebroeke PwC)
- Lawyer since 2004 (International law firms NautaDutilh, Dechert, ...)
- Managing Partner BoldLAW since 2018
- Member Editorial Board TRV-RPS (Legal Magazine on company law, association law, financial law and tax law) since 2009
- President Belgian National Committee of the Union Internationale des avocats since 2023
- Author of articles on legal topics such as partnerships and director liability
Question 1: which contracts would you typically need to set up a cooperation?

- **Step 1**: Confidentiality agreement
- **Step 2**: Memorandum of understanding
- **Step 3**: Cooperation contract
Question 2: what would you need to put in these contracts?

(confidentiality agreement, memorandum of understanding, and cooperation contract)
Confidentiality agreement (CA)
Purpose CA
= protection of:

- Trade secrets
- Business information
- Research results
- Membership data
- Personal data
- …
Important clauses confidentialy agreement

- Reciprocity
- Exceptions to non-disclosure
- Damages clause
- Duration
Memorandum of Understanding (MoU)
Purpose MoU

= finding out if ‘it is a match’

- Shared vision
Important clauses MoU

- Intention to cooperate
- Goals - tasks – responsibilities – costs (general principles)
- Exclusivity?
- Binding?
Cooperation contract (CC)
Purpose CC
= to formalize the cooperation

- Definitive binding legal document
Important clauses CC

- Commitment to cooperate
- Goals - tasks – responsibilities- costs (details)
- Liability
- Duration
Question 3: who may sign the contracts?
How to find out?

1. Verify the representation clause in the statutes (applicable in general and for daily matters) [https://statuten.notaris.be/stapor_v1/search](https://statuten.notaris.be/stapor_v1/search)

2. Identify what are considered daily matters within your association


4. Alternative: special power of attorney
Question 4: what do you need to know about handling disputes in the contract?
Applicable law

- **Dont’s:**
  - Applicable law not mentioned
  - Laws of two countries
  - **Risk:** complex international private law issues

- **Do’s:**
  - Choose the law of one country
  - Alternatives (?)
    - UNICITRAL
    - EU LAW
Jurisdiction (competent court)

Dont’s:
- Competent courts not determined
- Choose for the court of the country of which the law is not chosen as applicable law
- **Risk:** complex international private law issues

Do’s:
- Choose the courts of one country
- Arbitrage: ICC (International Chamber of Commerce), CEPINA (Belgium)
Amicable dispute resolution starts with the contract

- **Mediation:**
  - A neutral person independent from the parties helps to find a solution

- **Collaborative negotiations:**
  - Each party has its own collaborative lawyer with a mandate to reach a settlement. If it fails, the lawyers must resign from the case
Contact us:
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Marijke.Roelants@boldlaw.eu
Avenue Paul-Henri Spaak 17, 1060 Brussels, Belgium
Tel: 02 892 02 03
www.boldlaw.eu
Right next to the Brussels South Station
Accessible from everywhere with public transport
Q-Park for cars next to the office