

# Preface

The overwhelming response to the two editions of the book and the continuing demand for copies of the book have encouraged me and the publishers to bring out this third edition. In the revised edition, two more appendices – Appendix III – guidelines issued by the Central Vigilance Commission in respect of Tender Procedures to be followed by Government Departments and Agencies, and Appendix V – Salient features of World Bank procedures—for appointment of consultants have been added. In Appendix III (renumbered as Appendix IV in the present edition)—Salient features of World Bank Procurement Procedures, revisions dated October 1, 2006, to the world Bank guidelines (May 2004) on procurement have been incorporated.

An important pronouncement of the Supreme Court interpreting the phrase ‘Public Policy of India’ used in Section 34 of the Arbitration and Conciliation Act 1996, in a case where an arbitral award relating to levy of liquidated damages was contested, has been reproduced in chapter 14 of this edition.

The present status of some of the legal cases and other changes where appropriate have also been incorporated.

These additions may be useful to those who are involved in the tendering process and those who are handling World Bank aided schemes & projects. I gratefully acknowledge the encouragement from the Publishers, M/s LexisNexis Butterworths and the editorial support provided particularly by Ms Pankhuri Srivastava, Publishing Manager, Ms Sheeba Bhatnagar, Senior Legal Editor, and Mr Prasenjit Das, Legal Editor, who put in considerable efforts to bring out the third edition expeditiously, as well as the secretarial support provided by Ms Debarati Banerjee, Commissioning Editor.

**BS RAMASWAMY**

## Preface to the Second Edition

Encouraged by the overwhelming response to the first edition of the book, I have ventured to bring out the second revised edition of the book on ‘Contracts and their Management’. The revised edition consists of additions in Chapter 1 (Contracts—General Principles), and Chapter 24 (Resolution of Disputes), Appendix II (Tendering Procedure) and Appendix III (Salient Features of World Bank Procurement Procedures). Chapter 1 highlights a case where one word ‘Prime’ became crucial in an arbitration award, which has been contested and has not reached a finality even after 7 years. In Chapter 24, an important decision of the Supreme Court laying down guidelines about the continued applicability or otherwise of three Acts which were repealed while enacting the Arbitration and Conciliation Act 1996, has been incorporated. Similarly an important decision of the

Supreme Court relating to Tendering Procedure has been incorporated in Appendix II.

The World Bank Guidelines in respect of procurement were revised in May 2004. Appendix III has therefore been substantially revised, incorporating the changes made in the guidelines.

I hope the second updated edition will also be found useful by the readers.

I gratefully acknowledge the encouragement and the editorial and secretarial support provided by the publishers, M/s LexisNexis Butterworths, particularly Ms Ambika Nair, Ms Pankhuri and Ms Banshi Talukdar who put in considerable efforts to bring out the second edition without losing any time after the stocks of the first edition were sold out.

**JANUARY 2005**  
**BS RAMASWAMY**  
**NEW DELHI**

## **Preface to the First Edition**

Encouraged by several of my colleagues, friends and participants in training programmes where I lectured on the subject Contracts and their Management, I have goaded myself to sit down and write this book. My lethargy in this direction over several years abruptly came to an end by the keen interest evinced by LexisNexis Butherworths in publishing a book on the subject. This is what actually gave the much needed impetus to my effort.

There are a large number of general books on the Contract Act 1872, the Sale of Goods Act 1930 etc, and books on specific subjects like arbitration written by eminent persons. However, there are very few books which deal with the concepts, principles and significance of each of the clauses in a commercial contract, explaining the ramifications and the pitfalls to be avoided while negotiating a contract and implementing it. The objective of this book is to bridge this gap, if it exists.

The book attempts to strike a balance between theory and practice of contracting without making it too legalistic. Its focus is on explaining the concepts and principles behind each clause in a contract, duly supported by case law to explain the practical aspects and the judicial interpretation. While several cases have been quoted with a brief mention of the substance of the pronouncements, a few cases, which in my opinion contain landmark judgements on bank guarantees and arbitration, have been reproduced in full. These judgements contain very important interpretations of law and therefore, I would particularly request the reader to go through the judgements in detail.

The appendices in the book contain the specimen clauses in a contract, tendering procedure as is prevalent in India, particularly in government departments and organisations, and the salient features of World Bank Tendering Procedures. The specimen clauses in Appendix 1 are meant to serve as a framework and have to be appropriately modified to suit individual circumstances.

I hope that this book will serve as a handy reference book to those who are engaged in negotiating and implementing contracts, and to others as a source of enhancement of their knowledge. Though there is normally very little scope for negotiating the terms and conditions of a contract where the Buyer opts for the general conditions of contract/special conditions of contracts route and not the self contained contract route to enter into a contract, the book would still be useful as the clauses are common to both the routes, and the focus of the book is on explaining the significance and principles behind each of the terms and conditions.

I would like to dedicate this book to my revered father, Shri BS Suryanarayana, and my father-in-law Shri SN Kalabhairavan, both civil servants, who were a source of inspiration throughout my life.

I gratefully acknowledge the encouragement and the editorial and secretarial support by LexisNexis Butterworths, particularly Ms Ambika Nair, Mr Vidyaranya Chakravarthy and Ms Kavita Saini, who put in considerable efforts to bring out the book in record time.

Finally, I must acknowledge the constant encouragement and support given to me by the members of my family.

**SEPTEMBER 2003**  
**BS RAMASWAMY**