GOVERNING LAW AND JURISDICTION 
IN INTERNATIONAL CONTRACTS

In a transaction with no foreign element involved it will not usually be necessary to specify the system of law which is to govern the transaction or the courts which are to have jurisdiction in the event of a dispute. However, where there are international aspects to the transaction, it is sensible to set out in the contract both the governing law and jurisdiction – i.e which country’s laws govern the terms of the contract and in which country’s courts will any dispute be finally decided.

The principal foreign element aspects that impact materially on a transaction are:

a) Where the parties to the contract are not both based in the same country.

b) Where each party only has substantial assets in the country where it is resident.

c) Where the transaction is governed by the law of another country, e.g. because it may be considered that the contract was formed in that other country.

d) Where the whole or part of the transaction is to be performed in a different country from that in which one or both parties are based.

Where any one or more of these foreign elements are present it will be appropriate for the parties to be precise as to which system of law is to govern the contract, and which country’s courts are to have jurisdiction in the event of a dispute.

Simplistically, parties will tend to choose the system of law with which they are familiar, and such a choice of law will generally be respected by the courts of another jurisdiction - subject to matters of public policy and the mandatory laws of that other jurisdiction.

The question of which courts are to have jurisdiction in the event of a dispute, or where perhaps emergency enforcement of a contractual provision is to be sought, is also an issue. The parties may wish to submit to the exclusive jurisdiction of the courts of one country, but this may not be wise where one party has material assets in another country, or it may be necessary to obtain immediate enforcement of contractual obligations in that other country. Also, it is appropriate to consider whether there are reciprocal enforcement rights between separate jurisdictions.

For example, if an English company signs a contract for the supply of goods to a company in China, if the contract is written in English the English company may want to have the contract governed by English law and to have any dispute decided by the English courts. If the Chinese company has no assets in England and fails to comply with an award against it for damages, the English company would then have to try to enforce the English judgment in the Chinese courts – an expensive and time consuming business.
Also, there is a **risk that one of the parties will ignore the terms in the contract and start proceedings in another jurisdiction**. For example, in the case outlined above, if the Chinese company is unhappy with the quality of goods, it might start an action in the Chinese courts and the judge might decide to allow the case to go ahead even if the contract stipulates that the English courts have jurisdiction.

This principle also applies in the EU: there have been a number of cases where a party in one EU state has begun proceedings in its home state even though the contract specified the courts of the other party's home state would have exclusive jurisdiction – and the courts have allowed that action to go ahead.

**Governing law is another difficult area:** while a contract might stipulate that the laws of country A apply, if the contract is for work in country B, then the laws of country B are also going to have to be taken into account.

Partly to avoid some of these problems, **arbitration is quite often chosen as the method of resolving disputes in international contracts**, rather than leaving it to the courts.

We conclude with three recommendations:

- Be sure **to specify** your chosen **system of law** or jurisdiction correctly.
- The subject of governing law and jurisdiction is a complex one and **legal advice** should always be obtained.
- Consider having an **arbitration clause** if you are entering into a contract with a party in another country.

To obtain models of the main international contracts, click [here](#).
INTERNATIONAL CONTRACTS (ENGLISH, SPANISH, FRENCH & GERMAN)

- International Sale Contract
- International Distribution Contract
- International Commercial Agency Contract
- International Sales Representative Agreement
- Intermediary Contract for Trade Operations
- International Joint Venture Contract
- International Franchise Contract
- International Services Agreement
- International Consulting Agreement
- International License Contract
- International Supply Contract
- International Manufacturing Contract
- Expatriate Contract of Employment
- Pack 5 International Contracts English (Basic)
- Pack 12 International Contracts English (Premium)

COMMERCIAL CONTRACTS (ENGLISH, SPANISH, FRENCH & GERMAN)

- Distribution Contract
- Commercial Agency Contract
- Sales Representative Agreement
- Commission Contract
- Joint Venture Contract
- Services Contract
- Consulting Contract
- Technology Transfer Agreement
- Franchise Contract
- Supply Contract
- Manufacturing Contract
- Confidentiality Agreement
- Pack 5 Commercial Contract English (Basic)
- Pack 12 Commercial Contracts English (Premium)

CHINA CONTRACTS (ENGLISH-CHINESE DUAL VERSION)

- Distribution Contract China
- Agency Contract China
- Commission Contract China
- Supply Contract China
- OEM Manufacturing Contract China
- Confidentiality Contract China
- Memorandum of Understanding for Distribution Contract China
- Memorandum of Understanding for Joint Venture China

CONTRACTUAL LETTERS

- Letter Enclosing Contract for Signature
- Letter Proposing Amendments to Contract
- Letter Proposing Variation of Contract
- Letter Terminating Contract on Breach
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- Letter Terminating Contract on Notice
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LETTERS OF INTENTS

- Letter of Intent for International Sale
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- Letter of Intent for International Joint Venture
- Pack 3 Letters of Intent