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Legal Concerns

As with any large scale construction project, international projects are governed by a set of contractual relationships memorialized through written agreements. Globalization already has prompted the evolution of certain standard procurement procedures, forms of contract, and generally accepted contract principles that are very often used in international construction. Standardization certainly helps to simplify contractual arrangements; however, there are countless variations in contract forms used here in the U.S. and there are exponentially more possibilities for variation among international agreements. Should a dispute arise regarding the terms of your international contract, do you know which nation's laws apply or where the dispute will be resolved? Do any foreign treaties apply? Are you subject to the jurisdiction of a foreign court, or will the parties participate in an international arbitration hearing? How are responsibilities allocated among members of your foreign joint venture? What penalties may an international arbitration panel or foreign court assess against you for noncompliance with the terms of your contracts? What is your ultimate exposure, and is the potential reward of growing your global business worth the risk?

The ability to negotiate favorable and understandable terms is a significant advantage whether you are involved in foreign or domestic construction. With the added complexities and potential risks consequent to global construction, even those most familiar and comfortable with standard contract forms and the legalities of typical construction contracts must be sure to review and understand the terms of their international agreements.

Legal Structure

There are many ways to "stick your toe in the water" when starting to do business internationally. The simplest way is to export your products directly to customers. Many companies start off this way; it is relatively inexpensive, and avoids taxation and other legal issues in other countries. A good freight forwarder can help you get started with exporting.

Some companies engage a sales representative or distributor in another country. These arrangements can be tricky, however; the laws of many other countries are very protective of distributors, and terminating one can be difficult and expensive. It is critical to have a well-drafted distributor or sales representative agreement. Don't base this relationship on a handshake or an email exchange.

A branch office or subsidiary creates an actual physical presence in another country, and gives the U.S. Company more control over its in-country employees, distribution, and customer relations. This structure is more expensive, however, and will usually subject the U.S. Company to local taxes and employment laws.

Protecting your Intellectual Property

Intellectual property (IP) is a valuable asset for many companies. Laws and courts in the United States, the EU, and a number of other jurisdictions provide strong protection for patents, trademarks, copyrights and other IP rights. Some countries, however, such as China, India and Russia, have extremely spotty records when it comes to protecting the intellectual property of foreign companies against infringers.

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Your U.S. patent or trademark rights are valid only in the United States. If you plan to do business in another country, you should first apply for a patent or for trademark registration, depending on your business. If you are working with a partner in your target market, include a provision in your contract with that partner that prohibits them from registering your IP.

Otherwise, they may do that in their own name, and you might not own your patent or trademark there. Also, be aware that some countries may require you to license your IP to a local partner in order to do business there, which can increase the risk of infringement or piracy.

Legal Climate of the Target Market

Know the legal climate in your target market. Most countries outside the US use European civil law, which is different from the common law system we use here. For example, you can expect contracts written in a civil law country to have much broader language than a typical U.S. contract, because statutes and not case law will determine how it is interpreted.

Contracts in those countries may look very different from what you are used to here, with fewer provisions and less specificity around many issues such as indemnifications, limitations of liability, and dispute resolution. At a minimum, you want to address how and where disputes will be resolved, to avoid ending up in local courts.

If you plan to hire local employees in your target country, it is important to know the differences between U.S. employment law and the employment laws of the target country. The U.S. legal concept of “at-will” employment is rarely found in other countries. Local law may require a written employment contract for most employees, specific notice periods prior to terminating an employee, and substantial severance payments based upon length of service.

Local law may require more frequent and longer holidays. Some countries, such as Germany, require employers to have workers’ councils made up of employee representatives and management, which by law must be included in and approve certain management decisions.

U.S. laws will still apply

Even after you go global, some U.S. laws still apply to your international business operations, whether you have established a branch or subsidiary, are using a distributor, or are merely exporting. The U.S. Department of Commerce regulates exports; for certain sensitive items that could be adapted to military uses you may need an export license. U.S. companies are prohibited from exporting to certain countries such as North Korea, Syria, and Iran (with some limited exceptions), and must take precautions to ensure that their overseas customer does not intend to trans-ship products to a restricted country.

The Foreign Corrupt Practice Act (FCPA) prohibits U.S. companies and their employees, including overseas agents or employees, from paying bribes to foreign government officials or falsifying records to cover up such payments. The U.S. Department of Justice has been getting more aggressive in recent years with enforcing the FCPA, and penalties can be steep. Any company seeking to do business abroad, in particular with foreign governments, must be familiar with the FCPA and how to comply.

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While these legal considerations may sound intimidating, they are just part of the overall due diligence any company needs to work through in taking its business overseas. The upfront investment may seem high, but there can be significant returns as you expand your business outside the U.S. market.

U.S. contractors should proceed with caution when seeking to expand their footprint to an international stage, especially in developing countries where the local infrastructure may not promote a sustainable, stable environment, or a sustainable business model for the contractor. But by considering these three factors, contractors can mitigate exposure to the various risks involved in an international project.

What contract form and language should we use for the agreement?

The construction industry has come a long way in recent years in its attempt to harmonize a set of legal principles that govern the relationship of the contracting parties. This is especially evident in the development of standardized contract forms by private national and international organizations, including the FIDIC forms created by a Federation Internationale des Ingenieurs-Conseils (a Swiss company with a presence of consulting engineers in over 70 countries) and the contract forms developed by the American Institute of Architects (AIA); both of which are the most widely used contract forms in the international and domestic (U.S.) communities, respectively.

Once the parties select a form, they then need to determine the language in which the agreement will be drafted. Ideally, both parties will have a large presence and practice in the same country and can draft in a language with which they are both familiar. If not, however, drafting can be difficult and time consuming. Once the language is agreed on, parties should hire counsel fluent in the language to facilitate effective negotiations.

What governing law and/or principles should we use for the agreement?

Traditionally, the governing law in construction contracts tends to be the law of the country or jurisdiction where the project is located. This system generally succeeds in the U.S., where the combination of well-developed construction law and an in-depth body of common law provides more predictability to potential disputes and contractual ambiguities. However, from an international perspective, many countries do not have the well-developed body of construction law that the U.S. system has, and many countries operate on a civil law system rather than a body of common law. In choosing a governing law, it is important that all parties be aware of the applicable local laws and government regulations where the project will take place. To the extent applicable, certain issues parties should be aware of include:

- any unusual civil or criminal laws.
- any U.S. regulation or treaty that apply to U.S. entities conducting business in the foreign country.
- any local government corruption or civil unrest that may affect the project and the parties involved.

If the governing law is not U.S. law or is not as well-developed in construction, governing principles may be chosen to assist the parties in negotiation and performance of the contract. In terms of which governing principles to use in an industry where both goods and services exchange hands, the International Institute for the Unification of Private Law's Principles of International Commercial

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Contracts (UNIDROIT Principles) are considered one of the most significant contributions to international commercial contracting, because they function as a persuasive authority for interpreting commercial agreement for judges around the world.

The UNIDROIT Principles are intended to act as a neutral authority where certain laws may be inapplicable, and a gap filler for the contract language. The UNIDROIT Principles apply the same basic contract interpretation elements recognized in the U.S., including unconscionability and mistake of fact as a means to void the contract. Thus, where the governing law may not be favorable, the UNIDROIT Principles provide the parties a set of fair and neutral principles to govern and aid in interpreting the contract.

How will my construction project impact the local community (and vice versa)?

In a large, international construction project, before any dirt gets moved, the U.S. construction firm should do in-depth due diligence on the impact the project will have on the local community, as well as the impact the local community and government may have on the construction firm's business. Everything from communication and language barriers between the construction parties, to potential economic and political impact of the project, to unfamiliarity with local culture, weather, different forms of disease, materials and labor used, and vegetation and wildlife can impact the project. The U.S. construction company should be cognizant of the geographical and geopolitical surroundings that may impact considerations in the contract. Additionally, local regulatory requirements may conflict with U.S. federal law or treaties that may govern U.S. companies, and these requirements may prohibit conducting business in the area envisioned by the parties.

While these considerations may discourage U.S. construction companies from expanding their business internationally, they are more easily managed with help of local firms, counsel and consultants who know the region well and understand how to mitigate the risk in the contract. With adequate advance preparation, research and negotiation, there are valuable opportunities for U.S. contractors with the capability to perform projects overseas.

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Specifics of the governing law

International construction contracts address the most common problems and allocate most standard risks accordingly. However, no perfect contract exists because of the uniqueness and unforeseeable nature of this field. While governing laws contain mandatory clauses as a rule, adjustments in negotiating and drafting procedures increase the likelihood of ambiguities and may lead to invalid provisions. Therefore, the governing (applicable) law remains of great significance in international construction.

Governing (applicable) law is agreed upon by the parties as a general rule. Despite this, many international contracts do not contain a clause defining the choice of law. This may lead to conflict of law issues and, therefore, a different risk allocation than the one that the parties intended. A great deal of international construction takes place in less-developed countries with undeveloped or not fully adopted applicable law. Therefore, the characteristics of the applicable law are a key factor. These characteristics vary depending on their common or civil law origins.

Common law versus civil law: Differences and interconnections

When considering contract law in its widest sense, there are a number of key differences between the Anglo-American common law and European civil law systems. The Anglo-American system has its basis in precedents and builds on customs, pragmatic approaches and emphasizes the principle of contractual freedom. The European system, on the other hand, is comprised of civil codes and is based on Roman law and legal theory. The cornerstone of the civil law system is the importance of written law and mandatory provisions. This is of great significance as they can influence original agreements between parties.

At present, both systems seem to be moving closer to each other (a similar process is taking place in the other systems such the sharia, socialist and religious law). The main differences are still apparent but, without doubt, the similarities of both systems prevail over the differences. In the United States, for example, legislators create lengthy Acts and large volumes of legislation which bind the courts. In the civil code countries, on the other hand, decisions of the superior courts often enjoy such respect that a new law is created on the basis of these decisions.

However, different approaches are especially visible in construction project management and dispute resolution. Let us consider the British example. In construction projects, the British invented some now ‘traditional’ sample contract forms used internationally that are highly developed but formal in nature. These formalities may give rise to disputes in numerous countries that follow European law. For example, the requirement to strictly adhere to the contractual procedures when dealing with claims for additional payment and extensions of time for completion, notification of claims in short periods of time and a risk of lapse of claim in cases of late notice, can all easily be seen as offending the good faith protection principle typical in civil law jurisdictions.

The sample contracts used in the large-scale international projects are often based on the common law. However, the large and rapidly growing building markets in the Middle East, South America, the former states of the USSR, Central and Eastern Europe and many African countries are heavily influenced by the

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civil law tradition. Therefore, tensions and uncertainty can arise when sample contracts based on the common law conflict with local governing laws and customs which are based on civil law.

A governing law can hardly be found which does not influence a particular contractual relationship. At least in cases where a contract fails to address an issue, there are the obligatory and mandatory provisions, precedents and rules of interpretation meeting the same purpose. The principles of freedom of contract and pacta sunt servanda (Latin for 'agreements must be kept') form the basis of construction law around the world, and ensure that there is a thriving international construction industry (Charrett, 2012). The governing law sets limits of the traditional pacta sunt servanda tenet.

From a legal point of view, the differences tend to occur in the following areas:

- delay damages (liquidated damages) versus contractual penalty;
- substantial completion versus performance;
- binding nature of adjudication awards;
- limitation of liability;
- lapse of claim due to its late notification (time bars);
- allocation of unforeseeable and uncontrollable risk to the contractor;
- contract administration (the engineer's neutrality and duty to certify);
- termination in convenience;
- time-related issues;
- quantification of claims;
- statutory defects liability; and
- performance responsibility: reasonable skill and care versus fitness for purpose.

The above list is not exhaustive but serves as a summary of commonly encountered issues. Additional issues may include the right to interest, the approach to differing site conditions, changes in local laws, escalation of labor and materials, the impact of domicile in situations where some of the contractor's performance is executed in a different location than the project (e.g. fabrication of technological plant and design), local laws in respect to dispute resolution, the impact of implied terms and general aspects of commercial law, the right to suspend the works and the consequences of suspension, the rights of local subcontractors, limitation and prescription periods, liens, specifics of local public employers, etc.

There are other particularities and risks of local construction markets and international business. For example, the availability of skilled labor, labor law, local permits, necessary licenses, government regulation, political instability, government expropriation of private property and corrupt judicial systems. Some of these risks could, however, become a reason for contract renegotiation or termination entitlement with different legal consequences in particular legal systems. For example, Latin American labor laws (which tend to be more protective of workers' rights than those in the United States) may require use of local labor and usually require significant social welfare contributions as strikes can be considered a legitimate tactic for negotiation in certain regions.

For every large international construction project, it is highly recommended that the influence of the governing law and the efficiency of respective contractual provisions are monitored and evaluated.

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Influence of the governing law and the efficiency of respective contractual provisions

Delay damages (liquidated damages) versus contractual penalty

Delay damages are a type of 'liquidated damages'. They are typically paid as lump sum compensation for damages. According to Anglo-Saxon tradition, liquidated damages are the sum agreed by the parties to the contract, authorizing the party suffering from the other party's default to receive a predetermined indemnity, following a particular breach. A court will decide on the validity or level of these damages unless such future compensation is specified in the contract (damages at large).

Pursuant to common law principles, liquidated damages will not be enforceable if they are designed to punish rather than compensate. Under the principles of equity, judges strive for fair solutions instead of enforcing the conditions which lead to unjust enrichment. Two conditions must be satisfied where liquidated damages are to be awarded. First, the sum must approximately match the actual or potential damage incurred. The purpose of damages is to return the plaintiff to their original position before the damage occurred. Damages are not an instrument of profit or unjust enrichment. Second, the damages must be a reasonably foreseeable consequence of the breach. If the liquidated damages are not recoverable, the employer will be left with the common law remedy for damages.

In construction disputes, the courts sometimes refuse to enforce liquidated damages because of the doctrine of concurrent delay in cases where contributory negligence can be proved.

Under English law, liquidated damages are generally regarded as the only remedy for the breach of contract to which the liquidated damages relate. In the absence of interim contractual milestone dates, liquidated damages for delay to completion will normally be the only damages recoverable for slow progress and then only if a delay to completion results. The employer may, however, have a right to terminate the contract. This depends upon the terms of the contract and the facts. Critical delay caused by the contractor's fraud, willful misconduct, recklessness or gross negligence will not normally affect the position in regard to liquidated damages but may provide grounds for termination of the contract.

In the civil law environment, liquidated damages may potentially be in conflict with the governing law in two instances. First, there is a liability limitation issue and, second, the issue of contractual penalty.

As for the contractual penalty, this is a form of lump sum compensation for damages and, therefore, is similar to liquidated damages. However, unlike under common law, the contractual penalty acts as a sanction in addition to prevention and compensation. In civil law countries, the contractual penalty provision must be drafted in the contract precisely and in strict accordance with the governing law. Contractual penalties are often seen as invalid by judges if they are unreasonably high or not drafted in strict accordance with the governing law.

In Germany, for example, a contractual penalty (Vertragsstrafe) will not be enforceable if it is against good manners ('Verstoss gegen die guten Sittten' under §138 BGB) or against good faith ('Verstoss gegen Treu und Glauben' under §242 BGB). Furthermore, the judge can decrease the value of the contractual penalty if it is too high. The key aspects of an enforceable contractual penalty under German law are:

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It is efficient only if there is a default.

Its daily value is not higher than 0.2–0.3 % of the contract price.

The maximum amount of the penalty is not higher than 5% of the contract price.

Substantial completion versus performance

The common law distinguishes between such completion of work which allows the work to be used for an agreed purpose (substantial completion) and whole fulfilment of the performance of contractual obligations. Most sample forms of contracts used in international construction projects are therefore based on the substantial completion concept from the common law. This approach presumes the take-over of the work by the employer after substantial completion. Of note is that the contractor is not discharged of their contractual obligations until the performance certificate is issued. It often applies, however, in the civil law countries (pursuant to civil codes) that the 'work is performed if completed and handed over'. In some European jurisdictions, there may be disputes about when the statutory warranty for defects is triggered.

The principle of deemed acceptance exists, for example, under German law. If the employer refuses to accept the works even though they would be obliged to do so (if the works are in fact free of defects and materially completed), acceptance is deemed to have taken place. Deemed acceptance is also assumed where the employer takes possession of the works or starts using the works as per their intended purpose. The principle of deemed acceptance may be waived by the parties by explicit agreement (Kremer at www.globalarbitrationreview.com). French courts may consider that there is an implied acceptance of the works (réception tacite) in circumstances where the employer has taken possession of the works or paid nearly all of the contract price. However, this is subject to the terms of the contract not providing otherwise.

In South Africa, there is no provision in common law that determines whether or not the works are completed. It is therefore advisable for parties to have adequate procedures and organization to cope with the administrative matters in monitoring, updating and managing programmers and assessing whether completion has been achieved. In practice, the contract will provide a procedure for certification of completion of the works; and the contracts generally contain a provision that where the employer takes occupation and possession of the works and starts to use them, the works will be deemed to have been completed. However, it is emphasized that this only arises as part of a contractual provision and not under governing law.

Taking-over of the works

A common subject of disputes is whether the work was substantially completed and should therefore be taken over with the consequence that the employer cannot impose contractual penalties (or delay damages). In the ICC case no. 10847 (2003) (ICC, 2012), for example, the contractor claimed that the works met the requirements for the issuance of a taking-over certificate at a particular date, in that they were capable of being used for the purpose for which they had been designed. The engineer had refused to issue the taking-over certificate at that date on the basis that certain finishing works were outstanding and that certain items prevented some testing and commissioning operations. The tribunal declared that for the issuance of the taking-over certificate, the works must be at a stage so as to allow

for the beneficial use of the facility being constructed. In the tribunal's opinion, the items of work that can properly be undertaken after issue of the taking-over certificate are items that do not interfere with the employer's beneficial use, such as architectural finishing works, repair work, fencing, landscaping and demobilization. On this basis, the tribunal saw no reason to overturn the engineer's decision and dismissed the contractor's claim that the taking-over certificate should have been issued on an earlier date.

Under the FIDIC forms (1999, 1st Edition) Sub-Clause 10.1:

The contractor may apply by notice to the engineer for a taking-over certificate not earlier than 14 days before the works will, in the contractor's opinion, be complete and ready for taking over. If the works are divided into sections, the contractor may similarly apply for a taking-over certificate for each section. The engineer shall, within 28 days after receiving the contractor's application: (a) issue the taking-over certificate to the contractor, stating the date on which the works or section were completed in accordance with the contract, except for any minor outstanding work and defects which will not substantially affect the use of the works or section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or (b) reject the application, giving reasons and specifying the work required to be done by the contractor to enable the taking-over certificate to be issued. The contractor shall then complete this work before issuing a further notice under this Sub-Clause. If the engineer fails either to issue the taking-over certificate or to reject the contractor's application with the period of 28 days, and if the works or section (as the case may be) are substantially in accordance with the contract, the taking-over certificate shall be deemed to have been issued on the last day of that period.

However, according to Sub-Clause 11.9:

Performance of the contractor's obligations shall not be considered to have been completed until the engineer has issued the performance certificate to the contractor, stating the date on which the contractor completed his obligations under the contract. The engineer shall issue the performance certificate within 28 days after the latest of the expiry dates of the defects Notification Periods, or as soon thereafter as the contractor has supplied all the contractor's documents and completed and tested all the works, including remedying any defects. A copy of the performance certificate shall be issued to the employer. Only the performance certificate shall be deemed to constitute acceptance of the works.

Regularly, the governing law must be considered in terms of the taking-over procedures. How it was mentioned, in France, a so-called 'réception tacite' will arise if the employer simply takes possession of the works under certain conditions both in civil and public tender (Wyckoff, 2010). In France, according to the Cour de Cassation in order to determine if any implied approval of the employer to take over the works occurred, the courts should see if the employer has demonstrated an intention to approve the works. There are three material conditions of such implied approval: (1) the works are nearing completion; (2) the employer has taken possession of the works and (3) nearly all the contract price has been paid. CCAG (the French standard form for public construction works) states for example that the employer shall not use the works without approving them first. This is to protect contractors against employers delaying the approval and the taking-over procedure.

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According to the New Czech Civil Code (§2628), the employer is not entitled to refuse to take over the works because of minor defects that by themselves or in connection with others do not prevent the works from being used for their purpose both functionally and aesthetically, nor do they constrain the use of the works in a significant manner.

Binding nature of adjudication awards

Settlement of disputes in construction projects requires speed, an informal approach and expertise. This is why adjudication is commonly used. In practice, we most frequently deal with Dispute Adjudication Boards (DABs). The parties may submit their dispute to a DAB for its judgment. The DAB must decide in compliance with the process most clearly defined in the contract. Sometimes, it is also a statutory adjudication, as is the case in the United Kingdom, where either of the participants of a construction project can use the opportunity to resolve a dispute in statutory adjudication within 28 days.

In the civil law jurisdictions, the decisions handed down by DABs may be persuasive in nature but not binding or enforceable. In the common law jurisdictions, on the other hand, the decision is often final and binding if the parties do not appeal it within the contractually agreed period of time.

If the contracting parties (under a governing civil law) want to make a DAB's decision enforceable, they can, for example, modify the DAB's status to ad hoc arbitration. The parties can agree to use the arbitration clause for an institutional arbitration court (or for an additional ad hoc arbitration) so that this arbitration court (or the arbitrator or the arbitrators ad hoc) would become the authority to examine the DAB's award or resolution, should one of the contracting parties challenge the award or resolution via a lawsuit.

Limitation of liability

In common law, there is a tradition of highly esteeming the principle of contractual freedom and it is generally allowed to contractually limit liability, including liability for damages. In civil law countries, however, the governing law sometimes contains provisions that do not allow the imposition of such limits. For example, provisions may be encountered that stipulate that claims for damages may not be waived before an obligation is breached that gives rise to damage.

In the majority of legal systems, however, such limitations are acceptable. Under English law, such provisions can be effective but may be subject to the Unfair Contract Terms Act (1977).

Under French civil law, limitations and exclusions of contractual liability are normally effective. There are, however, two broad exceptions: (1) where the breach was caused by a faute dolosive (i.e. typically fraud or a particularly serious willful misconduct) or faute lourde (i.e. a serious breach, which often corresponds to the common law concepts of recklessness or gross negligence), both defined on a case-by-case basis by the courts; and (2) where the contractual liability provided for is considered derisory or insignificant. Courts will consider the economic rationale for the clause. These principles apply even if the contract is silent as to such behavior and the parties cannot agree otherwise. Limitation and exclusion clauses are not valid where the contractor is liable by reason of a law that is a matter of a public policy (such as decennial liability). In principle, it is not possible to exclude or limit liability in tort.

Lapse of claim due to its late notification (time bars)

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Construction contracts usually contain provisions that establish a duty to notify a claim for additional payment or extension of time in a certain period of time. If the claim is not notified, it is 'time-barred'.

When considering time bars, it is very important to evaluate: (1) if it is possible to contractually agree on such a consequence within a particular jurisdiction; and (2) what exactly the consequence is of filing a claim notice out of time.

The precedents in respect of the admittance and status of contractually time-barred claims are generally unambiguous across different jurisdictions. Every particular time-barred claim must be evaluated individually in respect of the particular delivery method, related risk allocation, nature of the claim and the limits imposed by governing law.

Allocation of unforeseeable and uncontrollable risk to the contractor

In some construction projects it can be efficient to allocate the majority of risk to the contractor. This is especially so where it is possible to transparently control and evaluate the risks and allow for risk contingencies in the contract price. The knowledge of the total contract price (no matter how high it is) may be an employer's priority in certain cases. In common law jurisdictions, the contract will be usually respected and even an extreme risk shift to the contractor will be protected by the governing law. More complications can be encountered in civil law jurisdictions and the parties to the contract must recognize the existence of the following principles of civil law:

- good faith (good manners) protection;
- imprévision;
- protection of the weaker party;
- force majeure;
- hardship.

Such risk allocation has its limits also in common law jurisdictions. Parties to the contract must also be aware of the potential effects of the following principles applicable to both in common law and civil law countries:

- frustration of purpose;
- impossibility;
- impracticability.

Principle of good faith (good manners) protection

In civil law countries, local civil codes usually contain a general provision protecting and requiring the parties to the commercial, contractual relationship to act in good faith, to be fair and comply with good manners. Good faith lacks a universal definition but it is usually perceived as a sincere intention to deal fairly with others. Similar provisions may be encountered that protect the public order in general.

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For example, §307 (1) of the German Civil Code

Feature	Common Law	Civil Law
Written constitution	Not always	Always
Judicial decisions	Binding	Not binding on 3rd parties; however, administrative and constitutional court decisions on laws and regulations binding on all
Writings of legal scholars	Little influence	Significant influence in some civil law jurisdictions
Freedom of contract	Extensive – only a few provisions implied by law into contractual relationship	More limited – a number of provisions implied by law into contractual relationship
Court system applicable to PPP projects	In most cases contractual relationship is subject to private law and courts that deal with these issues	Most PPP arrangements (e.g. concessions) are seen as relating to a public service and subject to public administrative law administered by administrative courts