

Asia: Different contracts, different cultures

KENNETH A. ADAMS

Globalisation has resulted in increased commingling of ways of doing business, especially in Asia, where a variety of influences has resulted in a uniquely varied contract-drafting culture. The only constant is that business contracts are drafted in English, particularly for cross border transactions.

Contracts in Asia can be drafted in different ways. For example, contracts drafted in the civil-law tradition differ from those in the style typically used in common-law jurisdictions. Civil-law contracts are usually shorter than common-law contracts: civil-law jurisdictions generally have more statutory contract law, and in theory, that reduces the need to address different scenarios in a contract.

Take China, for example. According to Steve Dickinson of the law firm Harris & Moure, "Chinese courts won't pay attention to

contracts more than about eight pages long."

But common-law contracts exhibit different approaches of their own: You have U.S.-style contracts and English-style contracts. Both reflect the common-law practice of addressing deal points explicitly. But as Mark Anderson, an English solicitor and commentator on contract drafting, says: "U.S. contracts seem to take this approach one stage further than English contracts, spelling out obligations in what sometimes seems, to an English lawyer, excruciating detail."

In some Asian jurisdictions, notably Hong Kong and Singapore, the English approach has traditionally prevailed, due to historical ties with Britain and the presence of UK-based law firms. But Andrew Godwin, senior lecturer at Melbourne Law School, says: "The U.S. approach has made inroads due to the increasing presence of U.S.-based law firms."

According to Godwin, U.S.-based firms are increasingly establishing a Hong Kong law practice in addition to their U.S. law practice, leading to an interesting blend of styles and influences.

An example of that is the Hong Kong office of the U.S. law firm Akin Gump. According to partner Andrew Abernethy, their dual-qualified lawyers are equally adept at handling U.S.-style and English-style contracts. Says Abernethy: "Because of protections offered by New York law and comprehensive U.S.-style documents, our loose rule of thumb is 'Buy under New York law, sell under English law.'"

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