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Game-changers: legal insight from the markets

Shipping is subject to many codes, regulations and laws. While some are enshrined in statute, many are not – the latter are determined by a judge or arbitrator, whose decision in one case often affects future similar cases. In this issue, *Fairplay* invited lawyers and experts to offer readers a mixture of both as samples of potentially game-changing events from around the world

>> comment

Growing influence of Chinese law

Peter Murray, resident partner, *Ince & Co, Shanghai*

With China undergoing the largest urbanisation in global economic history, thousands of contracts are being signed daily to cover the carriage and importation of goods from around the world. Few of these contracts end up in a court room but, when things do go wrong, the contracts are often described as “not worth the paper they’re written on”.

What happened

Chinese parties do not feel bound by the contractual terms in times of economic trouble and often demand flexibility both to make the contract work and maintain the long-term relationship. One reason for this is that Chinese law is based on the civil law system – it is thus closer

to German and other European laws than to English law.

In May 2009, after the start of the global financial crisis, the Supreme Court in Beijing laid down Interpretations of the Chinese (PRC) contract law. One interpretation reads:

“In the event of significant changes after conclusion of a contract, which are not foreseeable by the contracting parties at the time of entering into the contract, not attributable to *force majeure* and not considered as commercial risks, and further performance of the contract will cause obvious unfairness to one party or will cause the purpose of the contract to be impracticable, the courts are entitled, if one party so requests, to rule on

changing or terminating the contract based on principles of fairness and the actual circumstances of the case.”

This introduced a remedy of flexibility to a world convulsed by economic and financial crises. But what relevance does this interpretation have, given that English law is the most commonly used law in China for sale and carriage of goods and is known for its strict observance of contract terms?

Strictly speaking it has no relevance but the thinking of commercial people must be influenced by the laws of their home countries. And times are

changing. Increasingly, contracts are adopting Chinese law and arbitration in Shanghai. It is becoming a commercial expediency so, to survive and prosper in this market, overseas parties will have to adapt their way of doing business closer to the PRC and civil law approach. **E**

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