

LAW

An Introduction to the Foreign Economic Contract Law of the Peoples Republic of China *by Ajmal Hameed*

China has added another very important Law to its structure of economic legislation. It is the Foreign Economic Contract Law which came into force on the 1st July, 1985.

The new Law will apply to all contracts between Chinese and Foreign entities except international transport contracts. The Law in general terms follows the United Nations code on contracts for international sale of goods.

The Law has the following salient features:-

Scope

The Law may not be confused with the "Economic Contract Law" which applies where both parties are Chinese. The new Law does not apply to Contracts between Joint Ventures and Chinese parties as the Joint Ventures are Chinese legal persons. The Law states that in the event of a conflict international or bilateral treaties will prevail over the Chinese domestic laws.

Contracts which are against public interests of the State of the Peoples Republic of China are void e.g. tax-evasion contracts and agreements for smuggling, buying or selling of contraband goods.

Formation

The Law stipulates that a contract must be in writing and subject to the approval of the competent authorities of the State. Once the contract is entered into effect, it will be binding on both parties who must fulfil all of their contractual obligations under it. The contract can only be amended by written agreement between the parties. All contracts concluded under duress and fraud are void. Generally, the following items should be included in the contract:-

- (a) Names and addresses, nationalities, places of business or domiciles of the parties;
- (b) Date and place of signing the contract;
- (c) The type of contract and the kind and scope of its subject matter;
- (d) Technical conditions, quality standard and specifications;
- (e) Time limit, place and method of performance;

- (f) Conditions of price, amount and terms of payment and other additional expenses;
- (g) Assignments and conditions of Assignments, if any;
- (h) Damages and other liabilities for breach of contract;
- (i) Settlement of disputes arising from the contract;
- (j) Language used in the contract and its effect.

Damages and Assessment of Damages

The law allows the parties to provide for penalties to be fixed in advance for breach as compensation for losses due breach. If the amount of penalty is excessively higher than the actual loss an arbitral body or a court has the authority under the new Law to reduce or increase if the penalty is much lower than the amount of actual loss.

Governing Language

The Law provides that the Chinese text shall always govern the contract. This means that there must always be a Chinese text.

Subsequent Legislation

In long term equity or contractual joint venture contracts or contracts relating to natural resources the party which is adversely effected by the changes in law will be able to renegotiate the terms of the contract to restore the lost benefit. This provision is in conformity with the principle of non retroactivity and must encourage foreign investors.

Force Majeure

"Force Majeure means an event which the parties cannot foresee at the time of conclusion of the contract and whose occurrence or consequences the parties can neither avoid nor overcome." The range of "force majeure" events can be specified in the contract.

Modification, Recision and Termination

The new Law provides that the Contracts can be modified through consultation and agreement between the parties. Both recision and termination have been mentioned in the new Law. The difference seems to be that a recision must be reported to the original approving agency

while there is no such requirement for termination. A recision therefore has to be in writing while a termination may not be.

Dispute Settlement

The new Law requires that disputes arising from the contracts should, as far as possible, be settled through consultation between the parties or conciliation by a third party. The parties are free to choose the law for the settlement of disputes but where it is not provided the law of the country with closest relation to the contract will apply. Contracts of cooperative exploration and development of natural resources which are performed within the territory of the PRC must be governed by the Law of the Peoples Republic of China and have no freedom to choose the law for dispute settlement.

Limitation Period

The Law specifies a period of 4 years beginning on the day when the party knew or should have known of the infringement of its rights. But this applies only to contracts for the sale of goods. The periods of limitation for other types of contracts are stipulated in other laws separately.

Conclusion

The Law is general in terms. Every effort has been made to assimilate the experience of other countries, to pay due regard to the international practices and to suit conditions in China. Inevitably there will be critics of the new Law. For any industrial based society the most appropriate legal order is the law of contract. The industrial base of the West has flourished now for over a hundred years. Today, if one looks at the laws of many of the western nations, one can hardly boast of having devised a perfect regime. The new Law is a breakthrough based on modification of existing knowledge to suit the socialist modernisation of the largest developing nation in the world. Many questions that have been left unanswered will be resolved when the law is implemented in the years to come. In the meantime it is wise to include all statements and terms in the contracts and make every effort to detail material provisions.