

## LETTER OF THE LAW

# WHOSE LAW IS IT?

*For contracts with foreign suppliers, deciding which laws apply can have a major impact on the result of any disputes, as Alan Ma explains*

In *Print Concept v GEW*, a German company agreed an exclusive deal to distribute GEW's products in Switzerland, Germany and Austria, which was later terminated.

The contract was made orally and no governing law was agreed. Had German law been chosen, GEW would have had to be responsible for the claims made by Print Concept's customers. This would not have been the case had the contract been governed by the law of England and Wales.

In a business dispute, the courts in England and Wales, like any others in the European Union, will decide which law applies by reference to the Rome Convention, introduced by the Contracts (Applicable Law) Act 1990. This says the parties' express choice of law will be the applicable law of the contract. An express choice is conclusive. The choice is also effective if a choice of law can be implied under Article 3(1) of the Convention.


### *Characteristic performer*

Where no selection is made, the law most closely connected to the contract shall apply. Under the Convention, this is the law of the country of the contract's "characteristic performer". First, who fulfils the fundamental

purpose of the transaction and second, the country of its central administration or place of business when the contract was concluded. For a goods or services contract, the characteristic performance is the work performed under the contract, rather than its payment.

The distribution agreement in *Print Concept v GEW* involved reciprocal obligations other than payment. The Court of Appeal found that Print Concept's obligation under the contract was to use its best endeavours to maximise sales in a German-speaking country. The reciprocal obligation on GEW's part was to supply products when ordered. It was ruled that the characteristic performance of the contract was the supply of the products, so the seller was the characteristic performer. The laws of England and Wales applied and no payment from GEW was required.

### *Dr Ma's Remarks*

When negotiating a contract with an overseas supplier, it is important to ensure that a choice of law provision is included in any agreement to avoid expensive litigation when things go wrong. 

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