
Global Contract Practices

By Lothar Katz

Pacta sunt servanda. Agreements must be kept. People around the world agree on this legal principle, which goes back all the way to the Roman Empire.

Unfortunately, while everybody may agree in principle, interpretations of the meaning of “agreement” vary greatly across countries and cultures. At the individual level, this easily leads to misunderstandings and mutual disappointment. In the business world, different expectations and interpretations may also have severe consequences.

Role and Importance of Contracts in Different Countries

Let’s look at a few examples that illustrate such differences. The following compares relative perspectives and expectations (categorized as Low, Medium, or High) of local businesspeople in four countries: the United States, Japan, China and Russia.

	USA	Japan	China	Russia
Importance of business contracts	H	L - M	L - M	L
Level of detail in business contracts	H	H	M - H	L - M
Likelihood of legal action if a business contract is breached	H	L	L	L - M
Dependability of legal system for business contract enforcement	H	H	M	L - M

More so than anywhere else, contracts in the **United States** serve multiple purposes. They confirm the exact nature and scope of the agreement, document resulting rights and obligations, often including provisions for many eventualities, and serve as the primary enforcement tool. Accordingly, Americans consider business contracts important and prefer them to be highly detailed. The country’s legal system recognizes contracts as the valid representation of the agreement between the parties involved. Breaches of contract can quickly trigger threats of legal action, which is deemed acceptable once other attempts to resolve the issues have failed. The fact that one company is suing another does not necessarily mean that they will cease to do business with each other.

The importance that Americans attribute to them is in stark contrast with how **Japanese** businesspeople view contracts. In Japan, contracts primarily document the underlying agreement and resulting actions. Given the Japanese inclination to avoid uncertainty, contracts tend to be very detailed. They don’t need to be signed, though. While the country’s legal system dependably supports the enforcement of contracts, Japanese companies almost never sue each other. Instead, they rely on the strength of mutual business relationships to resolve disagreements. If they cannot resolve issues, the Japanese look for mutually respected arbitrators to achieve out-of-court resolution.

Chinese practices are similar to those in Japan. Contracts serve for clarification purposes. They do not exist to enforce the underlying agreements. While all relevant information should be included, Chinese contracts are usually not as detailed as those in Japan or in the U.S. The Chinese legal system has made significant progress in the last 10-15 years and the legal enforcement of contracts now seems possible, at least technically. Nevertheless, Chinese expectations remain unchanged: since contractual terms&conditions aren't 'etched in stone', business partners should work together to resolve differences and remain flexible as required to accommodate changes affecting the execution of the agreement.

The realities of the business climate and legal system in **Russia** let the enforcement of contracts through legal action seem a lofty proposition. Most Russian businesspeople pay limited attention to contracts, keeping them high-level and documenting only the essentials of the underlying agreement. Should disagreements arise, pointing to a contract rarely changes behaviors. Instead, the parties may initially try to resolve their issues in a collaborative fashion. If that fails, they might resort to building political or economic pressure on the other side as a way to enforce the agreement.

Implications for Global Companies

Different attitudes towards the role and importance of contracts raise the question of how global companies should deal with others' expectations: how best to get a foreign business partner to keep an agreement? How to make a foreign business partner feel that agreements are being kept?

No single strategy is universally successful. Those insisting that foreign partners must abide by the same standards as domestic ones are rarely effective. Several American companies had to find that taking a Chinese partner to court burned many bridges, not only with that partner and with local or national government representatives, but also with other industry players, making it much harder to do business in the country. In Russia, some foreign companies paid dearly for trying to enforce contractual rights in court when local judges sided with Russian contract partners and issued highly unfavorable rulings.

Successful global companies recognize local realities and adjust their strategies accordingly. They strive to understand their partners' expectations, emphasize business relationships, and remain flexible when disagreements arise. After all, when it comes to closing and executing contracts in foreign countries, it is helpful to remember the old adage:

When in Rome, do as the Romans do.

Lothar Katz is an International Business Advisor and the author of "Negotiating International Business – The Negotiator's Reference Guide to 50 Countries Around the World". He has a wealth of experience in achieving productive cooperation across cultures and driving business success on a global scale.

A seasoned former executive of Texas Instruments, a Fortune 500 company, Lothar regularly interacted with employees, customers, outsourcing partners, and third parties in more than 25 countries around the world. He teaches International Project and Risk Management at the University of Texas at Dallas' School of Management and is a Business Leadership Center Instructor at the Southern Methodist University's Cox School of Business.
