

ADVANCED LEGAL SERVICES

DESIGNING GLOBAL CONTRACT TEMPLATES

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INTRODUCTION

As more businesses now operate in multiple countries, the standardisation of contract templates is increasingly important to facilitate legal operations and manage legal risks.

Most international businesses have contract standardisation projects, but these efforts are generally based on a single law's conceptual framework. Only few companies have adopted coherent and integrated global templates that can be adapted to multiple jurisdiction with little effort. The prevailing approach remains American-centric, reflecting the United States standing as the largest economy in the world. This approach persists in many in-house legal departments, even in non-US global companies. The US-centric model is the prototype of a "one-size-fits-all" approach, where local contracts must conform with standards based in the common law and in US culture overlooking important differences of local laws.

In this article, we propose a method for creating global templates that address universal legal issues while recognising the need for adaptation. The proposed method assumes that by identifying the points of convergence and divergence, legal drafters can develop clauses to be applied globally and others that allow for adaptation to meet the requirements of specific jurisdictions. This top-down approach reduces the need for adaptation, improves standards and more easily ensures compliance with local laws and cultures.

BACKGROUND

As business relations developed and expanded over the last 100 years or more, the world has evolved from businesses based and centred in their home countries to multinational businesses with a worldwide reach.

Before 1950, businesses operated mostly in a single country with exports being mere extensions of their local business. After World War II, large multinational businesses emerged, whose international business might at times exceed its domestic markets. More recently, we are seeing businesses whose international components not only exceed the value of their domestic business but are intrinsically global.

The approach to legal and contractual issues followed along the same lines. In a first moment, international companies would conform to the practices of the countries where they had a presence, with only some oversight from general counsels based in the US or elsewhere.

In the first half of the twentieth century, changes occurred in the contractual landscape with attempts by the International Chamber of Commerce (ICC) to standardise legal terms of international commerce. The ICC's Incoterms established in 1936 are one of the most successful set of international contract terms and essential to international trade.¹

The ICC also created various model contracts and clauses, that include models for joint venture, distribution and franchising agreements, among many others.²

The International Trade Centre (ITC), a joint agency of the World Trade Organisation (WTO) and the United Nations (UN), created a series of model contracts directed primarily to small and medium-sized enterprises, which include a corporate joint venture agreement, a commercial sale of goods agreement, a manufacturing agreement and a distribution of goods agreement.³

The ICC and the ITC models are offered in many languages and represent an effort to bridge the gap between civil law and common law systems. They are now widely used but did not achieve the same success as the Incoterms, which are prevalent in international trade. International standardisation did not follow the same pace as globalisation and a significant gap exists between successful common law

¹ See <https://iccwbo.org/business-solutions/incoterms-rules/incoterms-2020>.

² See <https://iccwbo.org/business-solutions/model-contracts-clauses>.

³ See <https://www.intracen.org/resources/publications/model-contracts-for-small-firms>.

examples, like the ISDA Master Agreement, and the less successful approach of international organisations.⁴

No serious attempt has been made to truly globalise contracts. Most US-based large multinational companies remain closely tied to their home country's laws and bring with them highly detailed common law precedents. In contrast, civil law contract tradition relies on legislation to fill the gaps in contracts. As European businesses expand, their legal departments tend to follow the same US-centric approach and to adopt the same common law precedents, which now dominate international markets.

THE CHALLENGES OF IN-HOUSE COUNSEL

The starting point

The first step for in-house counsel wishing to establish template business agreements and legal documents is to determine the starting point. Should they use the same model agreement used in domestic transactions? Should they use international models, like the ICC or ITC contracts? Or should they prepare new templates from scratch?

In most cases, the starting point will be a combination of the company's original home template or another internationally recognised model with some adaptations based on the in-house counsel's or their advisers' experience in international contracts.

Rarely, this effort is made by taking a holistic approach to the problem and laying out a plan of action for building models that can be easily adapted to local laws. Often work starts from a common law precedent, which cannot be easily adapted to meet local law requirements. Local lawyers will tend to revert to their own home country models as the sole means of ensuring compliance with their respective laws, clinging to outdated practices that also hinder the creation of cohesive standards. Only the adoption of truly global templates, based on common principles, can facilitate the adaptation to both common law and civil law systems in a consistent manner.

⁴ For more information about ISDA and the ISDA Master Agreement go to <https://www.isda.org>.

Linguistic barriers

The second obstacle is the linguistic barrier faced in translation work in general.

Ortega y Gasset, the renowned Spanish philosopher, argued in "Misery and Splendour of Translation" that translation was impossible because the nuances of languages and the meanings of words varied; their equivalents in different languages never meant exactly the same thing, as they evoked different realities.

Italians have a saying, "traduttore, traditore" (literally "translator, traitor"), which captures the fundamental problem of translations: all translations somehow betray the original text's meaning.

In legal translations the problem is exponentiated. Many specific legal terms do not have equivalents in other languages because there are no matching legal concepts in those languages and legal systems. For instance, a common law "warranty" has a precise legal meaning that does not match the corresponding word in Portuguese, "garantia", Spanish, "garantía", or French "garantie", which also can be used to translate the English word "guarantee". Meaning can be altered in legal translations.

The problems in translation, as described by Ortega y Gasset and other authors, is also well documented in what regards legal translations in various academic studies.⁵

Although machine translation facilitates the work of translators, it does not solve problems in translation that arise from the fundamental cultural and linguistic differences between languages.⁶

In other cases, syntax and style vary making it harder to have word for word correspondences. This is important for legal texts because the closer the translation is to the original less is lost in the

⁵ See Susan Šarčević, "New Approach to Legal Translation", 1997; Ghassan Nawaf Jaber Alhomoud, "On Translating and Drafting Sharia Legal Terms and Expressions in Saudi Contracts", 2022; Zakaryia Almahasees, Yousef Albudairi, Mouad Al-Natour, Ahmad AL-Harabsheh, Sameh Mahmoud, "Challenges and Strategies in Translating Legal Terms between English and Arabic: A Comparative Study of International Accords and Agreements", 2025; Law, Man Luo, "Culture and Language: Challenges in Legal Term Translation from the Perspective of Comparative Legal Culture", 2024.

⁶ Palanichamy Naveen and Pavel Trojovsky, "Overview and challenges of machine translation for contextually appropriate translations", 2024.

translation. Legal documents aim to be precise and unambiguous. Translation can strip away precision and create ambiguity.

Legal and cultural obstacles

On top of linguistic barriers, specific legal concepts and legal systems internal order vary. Some legal concepts may not exist in one jurisdiction, resulting in translations deviating from the intended purpose of the provision. For instance, the legal concept of "consequential damage" does not exist and should not be used in most civil law countries. "Force majeure", a concept originated in the French Civil Code, now has a different meaning in common law. The concept of "merchantability" of goods is not recognised in civil law countries.

The problem is not with finding the right word to express the concept, the problem lies in the lack of the concept, which makes it impossible to "transplant" it (more than translate it) to a different environment. The ideas behind "consequential damage", "force majeure", "merchantability", "warranty" can be understood, but to give the contract parties the same protection that is intended in a common law contract requires changes that will make the language of the two versions different and raise discrepancies in the text and in its interpretation.

Certain provisions used in common law contracts face strong objections in civil law countries, as is the case of limitation and exclusion of liability.

Cultural differences also account for different forms of drafting that will alter the form and substance of the original text.

Everchanging legislation

Last, in-house counsel will have to face the continuous evolution of laws, with new legislation and new court decisions impacting existing and future documents. Contracts need to be updated on a regular basis to keep up with these changes.

PROCESS FOR SETTING UP GLOBAL CONTRACT TEMPLATES

The objective of global templates is to create a standardised yet adaptable framework that can be translated into multiple languages and tailored to comply with local legal systems. The following is a steps plan for achieving that goal.

Step 1: Define the specific project goals

In-house counsel tasked with creating and deploying firm-approved templates must first define the scope of their task. Creating a single contract differs from drafting a set of documents covering all aspects of a company's international business.

If the task includes a wide range of matters, such as preparing a model employment agreement, a distribution agreement, a manufacturing agreement, a procurement agreement, and a sales agreement, the resources required will be greater, but, regardless of scope of the assignment, it is advisable to design the process in a manner that ensures future scalability.

When defining the project goals in-house counsel (or its external team assigned with the project) should make a preliminary assessment of how regulated are the subject matters of the model contract or contracts that are to be templated in the jurisdictions where the company operates and how extensive is that regulation. This assessment will serve as a basis for designing the first contract template and reduce the risk of making a template that is biased towards the author's or the company's own country laws.

Step 2: Identify points of convergence and divergence in potentially applicable local laws

The second step is to identify universal clauses that can be used as models for global templates, such as the contract's object, consideration, place and time of performance, basic elements of default, termination, dispute resolution, and governing law. These elements are generally present in contracts across legal systems.

It is also necessary to determine the level of regulatory pressure for each contract type and its various elements. For instance, employment agreements are generally highly regulated in most countries. Local laws regulate nearly all aspects of the contract, including time and place of work, days off, vacations, social benefits, and termination. Distribution and agency agreements may be subject to local laws, but the parties have greater freedom to stipulate their respective obligations, what constitutes a default, choice of law, and jurisdiction. Sales and services agreements are, in most instances, less regulated, and the parties have an even wider degree of freedom. Conversely, consumer agreements are highly regulated.

Likewise, several contracts may be subject to general or specific laws in the various countries where the contract is to be deployed. For instance, limitation and exclusion of liability provisions are subject to restrictions in many civil law countries. Non-compete and exclusivity clauses may trigger local or

multinational competition rules (such as the Treaty on the Functioning of the European Union and derivative regulations or the Sherman Act in the United States).

Upon completion of this task, it will be possible to build a matrix mapping the points of convergence and the points of divergence resulting from legal and regulatory pressure for each contract type and identifying the specific elements affected by contract-specific laws (e.g., employment, distribution, consumer sales, business sales) and general legal restrictions on particular clauses (e.g., warranties, limitation of liability).

Step 3: Create modular building blocks that can be used in multiple jurisdictions

Based on the clause matrix, you can develop a library of modular clauses including not only boilerplate clauses (governing law, jurisdiction, severability, entire agreement, interpretation, etc) but also other contract terms that are expected to be universally accepted (scope of contract, price, non-compete, confidentiality, default, term and termination). These modular clauses loop are the building blocks of individual contracts. It is important to identify the origin of each provision (block) and note related key legal issues that arise in common law and civil law countries. These initial blocks can be based on the company's home country's template and in international models.

International contract models (e.g., ICC, ITC) can be used as a starting point because they incorporate inputs from various legal systems and aim to harmonise common law and civil law concepts.

When starting from in-house precedents compare them with international standards to identify local aspects of the in-house precedent, noting points that may need review.

To the extent possible, clause blocks should be written in neutral, non-idiomatic terminology and avoid culturally specific references to minimise difficulties in translation and adaptation. To ensure future adaptation include placeholder clauses and terms for local variations in the places where changes may be needed (e.g., [LOCAL LAW LIABILITY ADAPTED LANGUAGE], [LOCAL LAW WARRANTY LANGUAGE], [LOCAL LAW CARVEOUT], [REFERENCE TO LOCAL LAW STATUTE/REGULATION]).

Step 4: Write first set of draft global templates

The contract building blocks serve to prepare the first set of draft templates. It is advisable to start with less regulated contract types and move up to more regulated and consequently in need of more adaptations to local laws.

To avoid specific laws' biases in existing templates and precedents, designing the contract from scratch is the best option. For instance, employment contracts tend to adopt particular styles of writing, are highly contextual, and contain elements dependent on the specific laws that apply to them. Starting from a blank page will allow the drafting of a more neutral model, which can later be adapted to each local jurisdiction.

Step 5: Finalise first draft global template

To finalise the global template, it is necessary to incorporate the inputs from various jurisdictions. Local law inputs may impact the design of clauses that are intended for global use by limiting or expanding certain terms or by using expressions that are neutral without compromising the meaning and purpose of the provision. Global templates should have a modular structure, separating the clauses that are to apply globally from those that will be localised later.

Step 6: Translate and adapt templates

The final step will be to translate the global template into the relevant languages and identify and resolve translation problems that could result in ambiguities or discrepancies. Translations and adaptations to local laws should be considered in the final draft of the global template. This must be done carefully not to overcomplicate the process. It is not possible to go back and forth considering all the inputs from local lawyers, but it is possible to put issues into buckets by language and legal system, starting from separating civil law and common law countries, Latin origin languages (French, Portuguese, Spanish Italian etc), Germanic languages (English, German, Swedish etc.), etc. When venturing into the Middle East and Asia, the profound differences of local cultures and languages must be considered.

After completing the first set of translations and adaptations, it is useful to compare the various country templates, which will serve to identify problems and points of convergence, for instance, between various common law or civil law countries, and ensure that the final country templates have the fewest variations possible.

Certain clauses can then be customised on a multi-jurisdiction basis using the clause matrix. For example, limitation and exclusion of liability clauses can be adapted to comply with local laws by comparing variations across different jurisdiction to identify regional points of convergence across different jurisdictions. In Europe, EU legislation helps to harmonise contract terms among its member states; civil law countries and common law countries have many points of contact within their respective groups.

CONCLUSIONS

In a globalised world where businesses operate in multiple countries, it is necessary to have a process for developing and deploying global templates in multiple languages and jurisdictions. A "one-size-fits-all" approach based on a single jurisdiction precedents is fundamentally flawed.

The proposed process aims to deal with the complexity of building, translating and adapting global templates, by adopting a top-down approach that takes into account more than one local law and different linguistic and cultural aspects since the beginning of the drafting process; this allows for a swifter implementation, reduce the need for overspecialised local variations, align local contracts with the business' global vision and mitigate the risk of disputes.

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ABOUT MACEDO VITORINO

MACEDO VITORINO is a leading Portuguese law firm. We advise domestic and foreign clients in a wide range of business sectors, including banking, distribution, industry and projects. We are known for our professional and client-oriented approach to complex and difficult matters.

Since the incorporation of the firm in 1996, we have been involved in several high-profile transactions in all of the firm's fields of practice, including banking and finance, capital markets, corporate and M&A, energy, real estate, project finance, complex disputes and restructurings.

OUR ADVANCED LEGAL SERVICES TEAM

We assist domestic and international clients in drafting global templates and adapting them to local laws and languages. We collaborate with several leading local and international law firms to ensure seamless integration of international standards across different jurisdictions in a cohesive manner.

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- **Improvement of Legal Document Accessibility.** Drafting user-centric legal documents, ensuring they are understandable to their addressees, such as clients, suppliers, government authorities, and other legal professionals, without compromising their intended purpose.
- **Simplification of Complex Legal Documents.** Applying design principles to legal drafting to make complex and dense legal documents simple and clear. Setting measurable goals for enhancing the clarity of legal texts, such as reducing the number of provisions in contracts and shortening sentence length. Implementing strategies to improve readability, including the use of short, clear sentences, minimizing complex legal jargon by replacing it with everyday language where possible, and reducing the use of embedded conditions.
- **Designing Documents for Specific Audiences.** Drafting documents with specific addressees in mind, such as creating accessible B2C legal terms (such as terms and conditions for online shops or websites, privacy policies, employment agreements) and reducing the complexity of B2B agreements while maintaining their precision and integrity (such as international, distribution agreements, supply agreements, finance agreements or M&A agreements).
- **Optimisation and Localisation of Global Templates.** Reviewing, adapting and deploying general terms and conditions and organisations' template agreements across multiple jurisdictions taking into account the local legal and linguistic characteristics.
- **Visual Design and Presentation.** Working with professional designers and the client design teams to improve the visual accessibility of legal texts through legible fonts, consistent numbering, font hierarchy and size aligned with the client's brand identity.

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