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Cultural Differences in the Crossroad of Different Jurisdictions

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Legal Systems Overview

- **Brazil:** A traditional Civil Law system rooted in extensive codes (Civil Code, Code of Civil Procedure) and a robust Federal Constitution.
- **China:** A Socialist Legal System with Chinese characteristics, blending civil law traditions with state-driven guidelines and Confucian values.
- **Hong Kong (The Hub):** Operates under the Common Law system, serving as a neutral, world-class bridge for international arbitration and cross-border dispute resolution.

Choice of Law & Jurisdiction

- **Brazil:** Historically restrictive regarding “party autonomy” in domestic courts (LINDB Art. 9). However, Arbitration Clauses allow parties full freedom to select the governing law for their disputes.
- **China:** Grants autonomy to parties in contracts with “foreign elements” (2024 CPL Art. 277), provided it does not violate “social public interest”.
- **Practical Tip:** Utilizing Hong Kong as a seat of arbitration ensures a predictable legal environment for applying the chosen governing law.

Enforcement & Judicial Cooperation

- **Brazil:** Foreign judgments must be ratified (Exequatur) by the Superior Court of Justice (STJ) before enforcement.
- **China:** Enforcement relies on bilateral treaties or the principle of reciprocity; the 2024 Civil Procedure Law has streamlined recognition for foreign commercial rulings.
- **The Gold Standard:** Both nations are signatories to the New York Convention, making Arbitral Awards significantly easier to enforce than court judgments.

CISG Comparison – Brazil vs. China

- **Status:** Both are members of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- **China’s Reservations:** China originally opted out of Article 1(1)(b) (application by private international law) and Article 11 (freedom of form), though it has since withdrawn the reservation regarding written form requirements.
- **Brazil’s Integration:** Brazil joined more recently (2013). Courts are increasingly citing the CISG to modernize local interpretations of “good faith” and “breach of contract”.
- **Key Difference:** In China, the CISG is often the “default” for international trade; in Brazil, practitioners still frequently default to the Brazilian Civil Code unless the contract explicitly triggers the CISG.

Negotiation Dynamics & Legal Culture

- **Chinese Negotiators:** Focus on Guanxi (long-term relationships) and “High-Context” communication. The contract is often seen as the beginning of a partnership rather than the final word.
- **Brazilian Negotiators:** Highly communicative but legally formal. They rely heavily on detailed written protections to mitigate local bureaucratic risks.
- **Digital Innovation:** China leads in Internet Courts; Brazil excels in Judiciary Digitalization, making remote litigation feasible in both jurisdictions.

Good faith

- **Typical issues:** Asymmetrical information with parties choosing the law they know best, typically their own law - US practitioners believe in the “four corners of the contract” principle as opposed to civil lawyers ‘habits’ to disrespect the doctrine and attempt to incorporate other communication as part of the contract. Where does “good faith” lay?

For us ‘good faith’ is not as an enemy of predictability, but rather a tool for efficiency. In systems where good faith is paramount, we don’t need to draft for every theoretical contingency, making contracts shorter and negotiations faster. No tension between Predictability and Merits – Good Faith serves as a moral safety valve, whereas in Common Law it’s often viewed as a threat to contractual certainty.

- The meaning of ‘reasonableness’ as a manifestation of ‘good faith’ is dependent on your legal tradition

- **CISG (food for thought)**
 - Art. 7 – (1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application.
 - ‘Uniformity, or just a predictable way to manage disagreement? Or a more interventionist mandatory good faith doctrine?’

Thanks!

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Cross-Cultural, Legal and Choice of Law Issues in Multi-Jurisdictional Contracts