

# Contract-renegotiation law in nine key jurisdictions

A summary

	China	England and Wales	France	Germany	Hong Kong	Italy	Japan	Spain	United States
<b>What does the law say about renegotiating contracts?</b>	The law allows parties to rely on changes of circumstances and force majeure to modify or terminate a contract – even if the contract itself does not expressly provide for such a possibility.	N/A – there are no statutory provisions that address the renegotiation or termination of long-term contracts.	A party may request a renegotiation of the contract following an unforeseeable change in circumstances. This rule applies to contracts entered into on or after 1 October 2016 if it is not contractually excluded.	If a contract does not contain an adjustment or a negotiation clause, the agreement could be amended under the German Civil Code.	N/A – there are no statutory provisions that address the renegotiation or termination of long-term contracts.	N/A – there are no statutory provisions that address the renegotiation or termination of long-term contracts.	If a contract does not contain a negotiation clause (or it does contain one but negotiations fail), the agreement could be amended under the doctrine of changed circumstances ( <i>jijo henko no gensoku</i> ) permitted under Japanese law. Doctrine of changed circumstances (but application has been limited to a handful of cases); and concept of the allocation of risks (but has seldom been applied).	N/A – there are no statutory provisions that address the renegotiation or termination of long-term contracts	N/A – there are no statutory provisions that address the renegotiation or termination of long-term contracts.
<b>What are the key legal doctrines relevant for performance under long-term contracts?</b>	N/A	Promissory estoppel; good faith; force majeure; material adverse change; and frustration	N/A	N/A	Doctrine of frustration	<i>Pacta sunt servanda</i>		<i>Rebus sic stantibus</i> clause (implicit in Spanish-law contracts); and force majeure events	N/A – US contracts do not usually contain provisions that allow parties to renegotiate the terms post-signing.
<b>What do contractual terms typically say about renegotiating contracts?</b>	Contracts may include change-of-circumstances and force majeure provisions that mirror or broaden the scope of the statutory counterparts of these concepts. While Chinese law does not generally require a party to attempt to renegotiate a contract before that party can invoke a force majeure clause, the contract itself may impose such a requirement. Whether there is an obligation to renegotiate and whether that obligation has arisen will depend on the specific terms of the relevant clause and the facts.	The ability to renegotiate depends on whether this has been expressly agreed to by the parties (either upfront in the contract or as a matter of commercial agreement once the contract is entered into). The specific circumstances should be considered in each case.	For contracts entered into before 1 October 2016, a renegotiation clause is the main way for one party to request that a contract be adjusted following an unforeseeable change in circumstances. For contracts entered into on or after 1 October 2016, the parties must check whether their contract contains a renegotiation clause, as this will take precedence over the statutory regime.	The contract generally has priority over statute. Contracts often have a framework agreement, which allows parties to adjust the contract via either adjustment or negotiation clauses. These clauses share the principle that, if the legal requirements are met, the parties must enter into negotiations with the aim of amending the agreement.	Commercial contracts often contain force majeure or material adverse change clauses, which excuse a party from performing in certain circumstances or may even allow for termination of the contract without liability.	If the contract contains provisions allowing the parties to renegotiate, these provisions prevail over any legal remedies. Hardship clauses can provide that parties must renegotiate if an event fundamentally alters the equilibrium of the contract.	When seeking to amend a contract, the contract generally has priority over statute. Under a contract's framework agreement, the parties may try to make adjustments via negotiation clauses. Such clauses are common in Japanese contracts and typically require the parties to negotiate in good faith.	If the contract contains provisions allowing the parties to renegotiate, these provisions prevail over any legal remedies.	N/A – US contracts do not usually contain provisions that allow parties to renegotiate the terms post-signing.
<b>What could happen if negotiations fail (in context of contractual terms)?</b>	The contract should set out what the next step is (eg the party who requested the negotiations may be entitled to rely on force majeure).	It depends on what the contract says. If the contract is silent on the point, it could be terminated unilaterally or mutually but this again depends on the contract's wording.	Hardship clauses tend to specify consequences of a failure to reach an agreement.	The requesting party can gain the right to adjust the contract on their own terms. The requesting party may have the right to ask courts to adjust the contract. A clause can give the requesting party the right to immediately claim under terms of the amended contract.	Existing terms of the contract will continue to apply. Courts will not intervene to rewrite terms of a contract if parties are unable to agree on how the terms should be altered.	Hardship clauses tend to specify consequences of a failure to reach an agreement.	Negotiation clauses do not govern what happens if negotiations fail or if a party simply refuses to respond to a request. Under the good-faith obligation, each party must act so as not to betray the other party's trust in the circumstances.	Contracts tend not govern what happens if negotiations fail or a party refuses to respond to a renegotiation request. Renegotiation clauses cannot allow one of the parties to unilaterally modify the agreed terms.	The contract will likely be silent on this point.