

## **'Floating choice of law' clause: Change of the applicable law in international commercial contracts (summary)**

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The party autonomy principle allows contracting parties to agree upon the law governing their contract. The party autonomy provides 'the certainty and predictability' to commerce. Trading parties are well aware of this and in most international contracts, they include a governing law clause. Any contracting party will generally wish that his contract be 'subject to the substantive law of his own country'. This in turn suggests that when both parties are adamant, agreement may not be reached easily on this issue. If they cannot agree on either party's law or a law of any third country, there are two possible commonly found resolutions; one is to provide for no express governing law; and the other is to provide for a 'floating choice of law'. The phrase, 'floating choice of law' clause, in this article is used to refer to a governing law clause which does not specify the law of any one country at the outset, but allows either party to choose it from two or more systems of law upon the occurrence of a defined event in the future.

If a contract is totally silent on the governing law, then private international law of the forum can fill the gap and provide one for the parties. But where a contract provides for more than one governing law, a series of insuperable questions arise. Is the clause valid in the first place? Can contracting parties set the law halfway through their contract? What law governs the contract prior to the exercise of the option?

This article reviews variations of such clauses that appeared in decided English cases and discusses the validity, effect and other related issues under common law and since the Rome Convention on the Law Applicable to Contractual Obligations came into force in the UK. In doing so, it covers issues such as what law governs the contract in the meantime, whether a change of the governing law of the contract during its life is permissible, and if so which law is to decide this issue. It is hoped that the consideration of this hitherto seldom discussed

