

CHOOSING ENGLISH LAW:

What GEORGIAN BUSINESSES Need to Know

The choice of governing law is a critical decision for any commercial—particularly cross-border—transaction. While the laws of England and Wales—or English law, as is used more frequently—provides no formal definition of what a contract is, this has not diminished its enduring popularity for international business contracts. Its reputation for stability, predictability, and commercial practicality has made it the preferred choice for numerous international transactions, even between parties with no connection to the UK.

Yet this popularity can lead to surprises, particularly for parties unfamiliar with English law. Consider a Georgian company that signs a straightforward amendment to an English law-governed contract, extending a performance deadline and waving penalties for delay. The directors of both companies sign the document in good faith—perhaps even with a handshake—only to learn months later that the amendment might not be enforceable. Not because anyone acted in bad faith, but because there was no consideration under English law. While Georgian law would honor this type of mutual agreement, English courts typically demand that something of value be exchanged for a modification to take effect—a concept that does not apply under Georgian legal principles.

These scenarios are not just theoretical—they represent real risks for Georgian businesses venturing into international transactions. And while such clauses may be negotiated over a bottle of wine, they can ultimately alter the parties' legal rights, remedies, and obligations in ways that may not have been anticipated.

This article therefore briefly examines some of the key differences between English law and Georgian law, providing essential insights for Georgian companies choosing English law to govern their contracts.

Understanding the Foundations - Common vs Civil Law

One of the most fundamental differences between English law and Georgian law lies in the source of legal authority. English law is rooted in the common law tradition, in which relevant judicial decisions form a substantial body of binding precedent. Although acts enacted by the UK Parliament hold the highest power, the judiciary plays a central role in shaping and interpreting the law. In contrast, Georgian law follows the civil law tradition, where codified legal norms—such as those governing contracts and their interpretation—serve as the primary legal source. Although Georgian court decisions are increasingly influential, they do not generally carry the

same binding authority (except decisions by the Grand Chamber of the Supreme Court of Georgia) that judicial precedents hold in common law systems. For Georgian businesses entering into contracts governed by English law, this distinction may be disorienting and require a shift in mindset—one that treats case law as equally essential to understanding legal obligations as the written legislation itself.

One Promise, Two Legal Realities

Circling back to the earlier example, another key distinction Georgian companies should be aware of is the concept of consideration. Under English law, for a contract to be enforceable, each party must provide consideration—that is, something of value exchanged as part of the agreement. The consideration does not need to be equal in value to the goods or services provided, but it must be legally sufficient. Without this exchange, even a clearly worded and signed promise may not be legally binding. By contrast, Georgian contract law imposes no such requirement. What matters instead is mutual consent, formed through an offer and acceptance. Once the essential terms are agreed, the contract is valid, regardless of whether anything new is exchanged. This distinction can lead to practical misunderstandings. For example, a Georgian company might reasonably assume that a mutually signed amendment to extend a payment deadline is enforceable. Yet under English law, such a modification may fail for lack of consideration.

Statute of Limitations

Statutes of limitations play a critical role in commercial law, offering predictability in business relationships while imposing clear deadlines for initiating legal claims. Under English law, the standard limitation period for contractual claims is six years from the date of breach. However, if a contract is executed as a deed, the requirement for consideration is waived, and the limitation period extends to twelve years. In contrast, Georgian law imposes a three-year limitation period for contractual claims, with no comparable mechanism for extension through formal execution. For Georgian businesses, failing to account for these differences can result in unforeseen legal risks.

Good Faith or not Good Faith, That is the Question

One of the significant contrasts between English and Georgian contract law is the role of good faith. Under English law, there is no overarching statutory duty of good faith in commercial contracts. By contrast, the Civil Code of Georgia imposes a general obligation of good faith in parties' dealings. This divergence can easily be overlooked by Georgian businesses operating under English law, potentially leading to misunderstanding and unforeseen disputes if not carefully managed.

Where the Two Poles Meet

Despite many differences, the two systems also share a common goal: achieving fairness. Both legal traditions seek to balance strict legal rights with equitable considerations. In this regard, while English law relies on equity as a distinct body of principles developed to temper the rigidity of common law, Georgian law incorporates comparable fairness-based concepts directly into its codified framework. Doctrines such as abuse of rights and unjust enrichment serve a corrective function in Georgian law, much like equity does in English law. Although Georgian courts do not apply equity as a separate branch of law, they achieve similar results through statutory mechanisms designed to promote fairness and prevent unjust outcomes.

In conclusion, choosing English law as the governing framework for a contract should be a conscious and informed decision rather than a boilerplate clause. With the right preparation and legal guidance, Georgian businesses can confidently navigate English law contracts—maximizing their advantages while avoiding costly legal pitfalls. At BLC Law Office, our deep expertise in both Georgian and English legal systems enables us to support clients in evaluating the implications of English law, crafting tailored contractual provisions, and minimizing legal risks in cross-border transactions.



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