Modified acceptance: Articles 30 and 31 of the new Contract Law and Article 2.11 of the UNIDROIT Principles differ on some counts. The UNIDROIT Principles stipulate that

“a reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.”

The new Contract Law for its part stipulates that

“[t]he contents of an acceptance shall correspond to those of the offer. If the offeree substantially modifies the contents of the offer, it shall constitute a new offer. Modifications relating to the contract object, quality, quantity, price or remuneration, time or place or method of performance, liabilities for breach of contract and the settlement of disputes, etc. constitute substantial modifications of an offer.”

As to the effect of insubstantial modification, Article 31 of the new Contract Law and Article 2.11(2) of the UNIDROIT Principles are basically the same. The UNIDROIT Principles provide that

“... a reply ... which do[es] not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects to the discrepancy. If the offeror does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.”

Article 31 of the new Contract Law stipulates that:
“The acceptance which does not substantially modify the contents of the offer shall be effective, and the contents of the contract shall be subject to those of the acceptance, unless rejected promptly by the offeror or if the offer indicates that an acceptance may not modify the offer at all.”

To conclude, over 20 Articles of the new Contract Law relating to offer and acceptance closely follow the provisions contained in the UNIDROIT Principles as well as in CISG.

6. Standard terms

Although standard terms are commonly used in transactions involving large-scale industries, e.g. water, electricity, post and telecommunications, railways, aviation, maritime transport, etc., the three former Contract Laws in China contained no provision on standard terms, rendering them unequal to the growing needs of social and economic development. Articles 2.19, 2.20, 2.21 and 2.22 of the UNIDROIT Principles provide general rules on standard terms which served as a model for the new Contract Law, whose Articles 39-41 now provide similar rules in the matter. The two texts offer the same definition of “standard terms”; both reflect the contra proferentem rule and, following Article 2.21 of the UNIDROIT Principles, Article 41 of the new Contract Law stipulates that

“where the standard terms are inconsistent with non-standard terms, the latter shall be adopted.“

[...]

Referring Principles:
- IV.2.6 - Modified Acceptance
- IV.3.1 - Scope of application; definition
- IV.3.3 - No surprising standard terms