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Choice of Law in International Agreements

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The interpretation of commercial agreements is heavily influenced by the law that will be applied in enforcing them. Parties are often familiar with the standard interpretations of routine clauses in agreements from their home jurisdictions. However, when doing business with someone from another jurisdiction, the issue of whose law will apply to the contract will eventually come to a head.

For international sales agreements, the United Nations Convention on the International Sale of Goods (“CISG”) referred to as the “UN Convention” in the United States, and the “Vienna Convention” in many other places, will provide a set of common rules for most issues between buyers and sellers. But even the CISG does not actually provide for rules of interpretation for the text actually agreed to between the parties in the contract.

Among the primary factors to consider in selecting a particular jurisdiction’s law for the contract, are: (i) the parties’ familiarity with that law and the availability of counsel and arbitrators who are also knowledgeable about it; (ii) how developed the law of that jurisdiction is regarding the type of contract and related industry; (iii) whether the parties prefer a jurisdiction that holds them to the letter of the agreement or inserts many additional implied terms; and (iv) whether the law of their respective jurisdictions will allow them to select the law they desire.

Internationally, the law of England and Wales has been a favorite for commercial agreements. However, Swiss law and the law of New York are also favored in certain regions and industries. Within the United States, the laws of New York and Delaware are often favored for their reputation for enforcing the letter of the agreement, rather than reading additional obligations into the parties’ relationship. The choice of law in the parties’ contract will be a deciding influence in some disputes, since the law will decide how the words the parties use will be interpreted. However, the parties will need to consider all of the above factors in determining if the law they think they prefer can be applied to their contract.

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