
Marshall Legal

Technology + Branding

ITECHLAW

Presentation by

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Introduction

- Considerable time/cost spent negotiating International Technology Agreements.
- Choice of law clause often causes deadlock.
- Solution - Select “neutral” country based on “equality of unknowingness”.
- Foreign law advice needed.
- Consider actuality of proceedings – Threshold question of jurisdiction.

Jurisdiction

- Proceedings under the contract - could be commenced anywhere despite exclusive jurisdiction clause.
- *lex fori* will determine jurisdiction.
- *lex fori* will generally determine if choice of law clause is effective.
- Decisions on either may be made under *lex fori* , *lex loci contractus*, *lex loci solutions* or *lex domicili*.

Arbitration and International Instruments

- Arbitration clause in agreement may assist.
- Arbitration clause is generally a collateral contract.
- Arbitration clause is subject to *lex fori*.
- Arbitration friendly and unfriendly jurisdictions
- International instruments – UNCITRAL and New York Convention.

UNCITRAL Model Law

- Parties should pre-select Arbitration Rules.
- Select UNCITRAL's Model Law in arbitration clause.
- Art. 35 – tribunal to apply the rules designated by the parties.
- Not a treaty, just a model set of arbitration rules.

New York Convention

- New York Convention 1958.
- Obliges contracting states to respect parties' choice to arbitration.
- 149 countries out of 193 are contracting states.
- Limitations – reciprocity and commercial arbitral awards.
- Recognition and enforcement of foreign arbitral awards

CISG

- Beware CISG – Vienna Convention on International Sale of Goods.
- It will govern various aspects of the contract – formation, risk, delivery, payment price, etc.
- Query if your agreement relates to the sale of goods – sale of software included under CISG?
- Long arm effect.
- Specifically exclude.

Summary

- Check New York Convention country.
- Nominate UNCITRAL.
- Consider specifically excluding CISG
- Should lead to predictable choice of law.
- Next Step – get foreign law advice.

Foreign Law Advice

- Different emphasis depending on who you are acting for.
- Supplier – payment and exclusions.
- Customer – progress, delivery, warranties, indemnities, remedies for breach, liquidated damages.
- General – termination, breach, vitiating factors, local mandatory laws.

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