



Choosing a Forum for International Disputes

Focus US/Taiwan

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A. Introduction – the 'Lowly' Forum Clause?

It remains common for companies negotiating international deals to treat forum selection clauses as “boilerplate” – not as the important strategic terms they are. Forum selection clauses encountered in litigation today all-too-frequently employ stock phraseology outmoded for decades without accounting for legal evolution and globalization.

The euphoria accompanying the deal, and the focus on the substantive commercial terms of price and performance may relegate forum selection to an afterthought. Optimism prevails, and the possibility of a future dispute is a remote abstraction no one wants to consider.¹

That sort of myopia is a mistake. Dispute forum selection is a crucial term in a well-drafted contract, with major economic consequences. Indeed, the selection of forum for disputes frequently determines the economic success or failure of the deal when viewed in hindsight. The so-called “boilerplate” term of forum selection can even have bet-the-company consequences.

- certain types of patent and IP disputes that warrant consideration.
- Consult with an experienced practitioner familiar with the proposed forum before selection.

F. Conclusion

With contractual, intellectual property and competition litigation between companies operating globally a fact of life, careful forum selection has never been more important. Where possible, decisions should be made with advice from seasoned lawyers with practical experience *and currency* in the best practices and the options available in each country.

Attention to the “lowly” issue of forum selection turns out to be one of the most important of all deal points for successful outcomes.