Governing Laws & Jurisdiction – Conflict with Applicable Laws

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In contracts, one of the most common and crucial clauses is the one defining the governing laws and jurisdiction. Seemingly precise, it plays a major role especially where entities from different geographies are involved. Ideally, commercial contracts must contain a clearly articulated governing laws and jurisdiction clause, the absence of which can lead to a lot of trouble for the contracting entities when a dispute arises. ***Relevance*** Where parties from different countries or jurisdictions enter into a contract, the question of which laws will govern the contract and how the terms will be interpreted becomes critical, particularly where services are to be performed or goods to be delivered/ produced in another country. Take the following example: 'A' is a company incorporated in New York. 'B' is a company incorporated in India and having a branch office in Dubai. 'A' and 'B' enter into a contract for goods to be supplied to 'B''s Dubai office. 'A' manufactures goods in England. In this scenario, while 'A' and 'B' will have to generally comply with New York and India laws respectively, 'A' will also have to comply with English laws pertaining to exports of goods and Dubai laws pertaining to imports. Now consider this – 'B' fails to pay 'A' upon delivery of goods in Dubai. 'A' decides to initiate legal proceedings against 'B'. Where will the jurisdiction lie? Since the example above has no reference whatsoever to jurisdiction or governing laws, upon default of payment, 'A' will be struggling to understand where a suit can be filed against 'B' and how to resolve the conflict of laws. The ambiguity over this conflict would lead to further expenses to be borne by 'A' and unnecessary hassles, both of which could have been easily avoided by the inclusion of a simple clause defining what laws will govern the contract and which courts will have jurisdiction to entertain related matters. "*This Agreement shall be governed, construed and enforced in accordance with the laws of the England and the parties submit themselves to the exclusive jurisdiction of the courts in England.*" By virtue of the abovementioned clause, it no longer remains a mystery for 'A' to know where the suit needs to be filed. ***Compliance vs. Governing Laws*** Although the jurisdiction aspect does get resolved with the addition of such a clause, sometimes the compliance factor may become tricky as multiple geographies are involved and the parties may get confused as to which laws need to be complied with. Proceeding with the same example, while 'B' may be anyway required to adhere to laws of India and Dubai since it has its place of business in both jurisdictions, 'B' will have to comply with English laws also to the extent it applies on the scope of the contract. In other words, if English laws require 'B' to comply with laws pertaining to purchase of goods manufactured in England, 'B' will have to ensure it is statutorily compliant, even though it does not have its place of business or any presence in England. While some may opine that it is not practically possible to comply with laws of all countries, it is advisable to draft the language in a way that either restricts the interpretation to only the country where the company has its principal place of business or list down the laws that need to be complied with, for instance "*The parties shall comply with laws of*

India and Dubai as applicable on the scope of work under this Agreement". ***Conclusion*** In contracts between entities based in different countries, it is advisable to zero in on a neutral jurisdiction of country that provides certainty and fairness in implementation of contract laws. The most common and preferred governing laws and jurisdictions in contracts are of England, New York, Singapore, Hong Kong, France, Germany, among others. In practice, it is common to see parties fight over the governing laws and forum for dispute resolution. However, as long as governing laws are expressly defined and are of a country having a reputed legal system such as the ones mentioned above, neither party should consider this as a deal-breaker per se, unless there are other concerns that cannot be negated. It is important that the dispute resolution mechanism is also clearly defined in the contract itself, especially where parties do not intend to approach the courts in the first instance and prefer the alternate methods of arbitration or mediation over litigation. *Authored by Urmi Lahiry.*

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