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Opinion

PRINCIPLES ON CHOICE OF LAW IN INTERNATIONAL CONTRACTS.
Jurisdiction and Arbitration Clauses.

When parties enter into a contract that has connections with more than one State, the question of which set of legal rules governs the transaction necessarily arises. The answer to this question is obviously important to a court or arbitral tribunal that must resolve a dispute between the parties but it is also important for the parties themselves, in planning the transaction and performing the contract, to know the set of rules that governs their obligations.

Determination of the law applicable to a contract without taking into account the expressed will of the parties to the contract can lead to unhelpful uncertainty because of differences between solutions from State to State. For this reason, among others, the concept of "party autonomy" to determine the applicable law has developed and thrived.

Party autonomy, which refers to the power of parties to a contract to choose the law that governs that contract, enhances certainty and predictability within the parties' primary contractual arrangement and recognises that parties to a contract may be in the best position to determine which set of legal principles is most suitable for their transaction. Many States have reached this conclusion and, as a result, giving effect to party autonomy is the predominant view today. However, this concept is not yet applied everywhere.

The parties' choice of law must be distinguished from the terms of the parties' primary contractual arrangement ("main contract"). The main contract could be, for example, a sales contract, services contract or loan contract. Parties may either choose the applicable law in their main contract or by making a separate agreement on choice of law (hereinafter each referred to as a "choice of law agreement").

Choice of law agreements should also be distinguished from "jurisdiction clauses" (or agreements), "forum selection clauses" (or agreements) or "choice of court clauses" (or agreements), all of which are synonyms for the parties' agreement on the forum (usually a court) that will decide their dispute. Choice of law agreements should also be distinguished from "arbitration clauses" (or agreements), that denote the parties' agreement to submit their dispute to an arbitral tribunal. While these clauses or agreements (collectively referred to as "dispute resolution agreements") are often combined in practice with choice of law agreements, they serve different purposes. The Principles deal only with choice of law agreements and not with dispute resolution agreements or other matters commonly considered to be procedural issues.