

Moser and McIlwrath: Negotiating International Commercial Contracts

Gustavo Moser and Michael McIlwrath have just published “Negotiating International Commercial Contracts” (with Eleven publishers). More information is available on the publisher’s website.

The authors have kindly provided us with the follow summary:



The choices of law and forum are seldom negotiated in great depth, despite presenting far reaching implications, often more than what negotiators would generally consider or predict. Poorly negotiated clauses of law and forum might (and often do!) result in unwelcome surprises and costly mistakes. Negotiating these clauses has always been, and is likely to become even more, pivotal to a contract’s ‘well-being’ going forward, particularly in light of Brexit and the pandemic

It is therefore a rather opportune time to consider a few key issues in the negotiation (prospective) and enforcement (actual) of choice of law and choice of jurisdiction clauses.

For example, what law applies to a defective choice of law clause or, in the absence of it, to the main contract, or, rather, to a (defective or otherwise) dispute resolution clause? In which court should I initiate legal proceedings and what are the main commercial risks and benefits of such choice.

It is also pertinent to rethink prospective choices: what is the optimal law(s) to my contract based on a pre-selected set of variables and preferences (e.g. approach given to contract interpretation, contract performance, mandatory rules or gap-fillers)? Are there any other contractual arrangements which might be of particular interest? What are the

main difficulties to bear in mind when considering choice of law and choice of dispute resolution clauses?

*The above and many more questions are raised and discussed in our recently published book **Negotiating International Commercial Contracts: Practical Exercises** (Eleven 2020). The 80+ exercises, with inspiration from real-life scenarios, invite the readers to understand the importance of these clauses. The book further aims to provide guidance to anyone involved in contract negotiation as to how they may more effectively make informed and commercially sensible choices in their deals.*