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## New New York Choice of Law Law

Parties to international agreements commonly provide that some state law will govern the contract. When New York law is so chosen, however, the effect of the provision may be uncertain since New York courts take the view that such a governing law clause will be given effect only if there is a "reasonable" or "significant" relation between the transaction and New York.<sup>1</sup> Doubt is consequently introduced into such clauses when they have little connection with New York.

In 1982, a legislative effort began in New York to bring certainty to the subject. A bill was introduced to amend the New York General Obligations Law to provide that, in large commercial transactions, where the parties agree that New York law governs their rights, the agreement must be given effect even though the contract does not have a reasonable relation to New York.

The bill also covered the related matter of forum selection clauses. Such clauses may provide that New York courts are the proper forum for the adjudication of disputes arising under the contract, but the intention of the parties may be defeated by statutes that bar access to New York courts in actions between foreign entities (except in specified cases) and by the doctrine of *forum non conveniens*. The doctrine permits a New York court to stay or dismiss an action properly brought under its jurisdiction when it finds that the case should be heard in another forum "in the interest of substantial justice". Whether the doctrine also permitted the court to dismiss an action founded on a New York forum selection clause was an open question.

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\*Member, Fox Glynn & Melamed, New York City; Chairman, Committee on Foreign and Comparative Law, Association of the Bar of the City of New York.

1. See Gruson, *Governing Law Clauses in Commercial Agreements—New York's Approach*, 18 COLUM. J. TRANSNAT'L L. 323 (1979); The Committee on Foreign and Comparative Law, *Proposal For Mandatory Enforcement of Governing-Law Clauses And Related Clauses In Significant Commercial Agreements*, 38 THE RECORD 537 (1983) (hereinafter, the "Committee Report"). The Committee Report was largely the work of a subcommittee chaired by Michael Gruson, Esq., of the New York Bar.

The 1982 bill won the support of the Committee on Foreign and Comparative Law of the Association of the Bar of the City of New York and others interested in international commercial and banking transactions.<sup>2</sup> As it evolved in the legislative process the bill was simplified (at the cost of some precision and comprehensiveness), was passed by the legislature, and, on July 19, 1984, was signed into law by the Governor as chapter 421 of the laws of 1984, with immediate effect.<sup>3</sup>

The new law provides, first, that "the parties to any contract . . . relating to any obligation arising out of a transaction covering in the aggregate not less than two hundred fifty thousand dollars . . . may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not such contract . . . bears a reasonable relation to this state."<sup>4</sup> Thus, the statute gives indubitable effect to a choice of New York law, or to a partial choice of New York law, by, say, an English company and a California corporation in an ordinary contract for the sale of goods priced at \$250,000. However, the statute does not apply to contracts for labor, personal, family, or household services and does not permit such a contract to override express provisions of the New York Uniform Commercial Code that fix the law governing particular transactions.<sup>5</sup>

Additionally, the new statute provides for access to New York courts by foreigners. Regarding contracts containing a New York choice of law clause and involving a transaction of at least \$1,000,000 (not merely \$250,000), a provision by which a foreign corporation (or other nonresident) agrees to submit to the jurisdiction of New York courts is effective to permit "any person" to sue such foreign corporation (or nonresident) in an action arising out of the contract notwithstanding any New York statute that would otherwise limit the plaintiff's right to sue.<sup>6</sup> The new statute thus permits contract parties to override a number of other statutes, including Section 1314(b) of the New York Business Corporation Law, which restricts actions against a foreign corporation by another foreign corporation (or nonresident) to five specified cases.<sup>7</sup>

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2. The Committee Report, *supra* note 1.

3. McKinney's Session Laws of New York, 207th Sess., No. 6A, August 1984, p.1400.

4. N.Y. Gen. Oblig. Law § 5-1401 (McKinney Supp. 1984-1985).

5. The entrenched governing law provisions relate to creditors' rights in fraudulently sold goods, the liability of banks for mishandling money instruments, the bulk transfer of goods, the liability of issuers of securities, and the perfection of security interests. N.Y. U.C.C. § 1-105(2).

6. N.Y. Gen. Oblig. Law § 5-1402 (McKinney Supp. 1984-1985).

7. NEW YORK BUSINESS CORPORATION LAW § 1314(b) provides:

(b) Except as otherwise provided in this article, an action or special proceeding against a foreign corporation may be maintained by another foreign corporation of any type or kind or by a nonresident in the following cases only:

(1) Where the action is brought to recover damages for the breach of a contract made or to be performed within this state, or relating to property situated within this state at the time of the making of the contract.

Finally, the new statute declares that the doctrine of *forum non-conveniens* does not apply to actions relating to a contract containing such a choice-of-forum clause and which chooses New York law as the governing law of the contract.<sup>8</sup>

The new statute contains problems of its own making, due, no doubt, to the hasty revision of the 1982 bill from which it evolved. In the main, however, it achieves the central purpose of the 1982 bill: it gives assurance to foreign parties to sizable commercial agreements that the laws and courts of New York are available to them.

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(2) Where the subject matter of the litigation is situated within this state.

(3) Where the cause of action arose within this state, except where the object of the action or special proceeding is to affect the title of real property situated outside this state.

(4) Where the action or special proceeding is based on a liability for acts done within this state by a foreign corporation.

(5) Where the defendant is a foreign corporation doing business in this state.

8. N.Y. Civ. Prac. R. 327(b)(McKinney Supp. 1984-1985).

