AUSTRALIA AS AN ARBITRATION-FRIENDLY COUNTRY: THE TENSION BETWEEN PARTY AUTONOMY AND FINALITY

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ABSTRACT

The landmark decision of the High Court of Australia in the recent case of TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia [2013] HCA 5 reinforced the importance of the principle of party autonomy in international commercial arbitration in Australia. The case was highly acclaimed as a case that confirmed Australia as an "arbitration-friendly" country. This article examines the tension between the interest in finality and enforcement of arbitral awards, and the interest in a quality award. The first interest would generally argue against contractual expansion of judicial review clauses in the arbitration agreement; by contrast the second interest would support a contractual mechanism for the review of arbitral awards and contractually expanded judicial review clauses. By enforcing

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contractually expanded judicial review clauses, the interests of the "winner" (with an interest in finality and enforcement) and the shared interests of both parties in a quality award (irrespective of them being winner or loser) will be protected.

*This article argues that Australia may be arbitration-friendly from the point of view that arbitral awards will be enforced, but that it may only be fully "arbitration-friendly" if there is the possibility to enforce contractually expanded review clauses. A country that protects both the interest in finality and enforcement of arbitral awards **and** the interest in the quality of arbitral awards, and will further give full effect to the meaning of party autonomy in the context of arbitration as a contractual form of dispute resolution, will be a truly arbitration-friendly country.*

KEYWORDS: *arbitration, finality, party autonomy, review, Australia, extended review clause*