

PRINCIPLES AND CRITERIA FOR INTERNATIONAL AND TRANSNATIONAL PUBLIC POLICIES IN COMMERCIAL ARBITRATION

Chang-fa Lo^{*}

ABSTRACT

“Public policy” is an important concept in the enforcement of foreign arbitral awards. However, the same notion could have different meanings and scopes in different countries. This could create uncertainty to international transactions and to the predictability of dispute settlement procedures. It is of importance to reduce differences in different jurisdictions by setting up principles and criteria for the application of public policy in the refusal to enforce foreign arbitral awards. The paper clarifies the terms “public policy” and “ordre public” in common law and civil law systems and introduces the different levels of public policy. It proposes setting principles and criteria for international public policy and transnational public policy so that there will be increased stability in commercial transactions. It argues that if it is about transnational public policy, the courts should be expected to refuse the recognition and enforcement of foreign awards. If it is about international public policy, the courts should conduct a “weighing and balancing” process to decide whether it is appropriate to refuse the recognition and enforcement.

^{*} National Taiwan University (NTU) Chair Professor; NTU Distinguished Professor; Director of Asian Center for WTO and International Health Law and Policy, NTU College of Law.

KEYWORDS: *commercial arbitration; public policy; domestic public policy; international public policy; transnational public policy; enforcement of foreign arbitral award*