

PUBLIC ORDER AND GOOD MORALS IN RECOGNITION OF FOREIGN ARBITRAL AWARDS—AN OVERVIEW OF TAIWAN COURTS’ PRACTICE

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ABSTRACT

Enforceability of the arbitral award is a critical consideration for parties weighing arbitration as a dispute resolution mechanism. Internationally, courts may refuse to recognize or enforce a foreign arbitral award when there is a “violation of public policy.” But under the Taiwan Arbitration Act, a court must refuse to recognize or enforce a foreign award when there is a “contradiction with public order or good morals.” Therefore, the meaning and scope of “public policy” or “public order and good morals” warrant close examination. This paper parses the interpretation and scope of “public policy” in International Conventions, United Nations Commission on International Trade Law (UNCITRAL) Model Law and other jurisdictions, and then explores the concept of “public order and good morals” in Taiwan by looking into the legislative history and the courts’ practice. Taiwan court decisions over the last

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fifteen years chart the pro-recognition attitude among the courts towards foreign arbitration, leading to a certain level of predictability on recognition and enforcement of foreign arbitral awards in Taiwan.

KEYWORDS: *arbitration, public policy, public order, good morals, Taiwan Arbitration Act, recognition of foreign arbitral awards, enforcement*