

CHOICE OF THE PROPER LAW VS. PUBLIC POLICY

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ABSTRACT

The issue surrounding the choice of the proper law was analysed from three aspects: the advantages of international commercial arbitration; the expectations of the parties; and the arbitrator's point of view. Only by ascertaining the proper law of the contract can the disputes be properly decided and the award be enforced. However, the choice of the proper law sometimes can be interpreted as contradicting public policy or mandatory rules and condemned as invalid in terms of the choice of itself and the contents of the choice. This is especially the case of the choice of a-national principles. Following the examination of the development and the application of a-national principles in different jurisdictions, while the notion of a-national principles has been developed or applied in the Western arbitration, China and Taiwan has failed to utilise statutes to give a clear acceptance of a-national principles in China and the new lex mercatoria in Taiwan respectively.

KEYWORDS: *choice of law; public policy; mandatory rule; amiable compositeur; a-national principles*

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