

SEPARATE BUT EQUAL IN ARBITRATION? – AN ANALYSIS ON *AD HOC* ARBITRATION OF TAIWAN AND EAST ASIA

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ABSTRACT

As arbitration has become more popular in Asia, the attitudes of local courts toward recognition and enforcement of arbitral awards are of great importance to the developments of alternative dispute resolution. There are two kinds of arbitration, ad hoc arbitration and institutional arbitration. The former is conducted under rules agreed by the parties or laid down by the arbitral tribunal, while the latter is administered by a specific arbitration association agreed by the parties under its rules of arbitration. Compared to institutional arbitration, ad hoc arbitration is the most ancient form in the arbitration history and is known for its flexibility, timeliness and cost-efficiency. Since both ad hoc and institutional arbitration are established under the doctrine of party autonomy, they are equally enforceable in many countries, such as Singapore and Hong Kong. However, while the foreign ad hoc arbitration awards are enforceable, Taiwan Supreme Court has held that domestic ad hoc arbitration awards rendered within the territory of Taiwan are not

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enforceable because they are not rendered under the supervision of registered arbitration associations. This opinion “separated” the enforceability between foreign ad hoc and domestic ad hoc arbitration awards for a long period of time and was not challenged to be inconsistent with the equality of law, until a recent judgment expressed a contrary opinion in October 2011. It is a crucial milestone showing Taiwan court’s reflection of the needs of arbitration in Asia and around the world and the breakthrough of the previous situation of “separate but equal” between foreign and domestic ad hoc arbitration. To analyze the important impacts of the judgment, this paper will review the history of ad hoc arbitration and discuss the connections between different courts’ attitudes toward enforcement of ad hoc arbitral awards and their legal systems. For example, China’s explicit prohibition on domestic and foreign-related ad hoc arbitration is closely related with the special historical and political background. On the contrary, other countries in East Asia take a different position by acknowledging the enforcement of ad hoc arbitration awards. Based on the analysis of the New York Convention, the UNCITRAL Model Law and other legal instruments, this paper will take a close look at the future of ad hoc arbitration in East Asia as an effective dispute resolution method.

KEYWORDS: *ad hoc arbitration, institutional arbitration, enforcement, domestic arbitration, international arbitration, New York Convention, UNCITRAL Model Law, UNCITRAL Arbitration Rules*