

Student Notes

THE IMPACT OF THE DISTINCTION BETWEEN FOREIGN, FOREIGN RELATED AND DOMESTIC ARBITRAL DISPUTES ON THE ENFORCEABILITY OF ARBITRAL AWARDS IN THE PEOPLE'S REPUBLIC OF CHINA

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ABSTRACT

Chinese courts apply different rules when deciding whether an arbitral award is enforceable or not depending on whether the dispute arbitrated is classified by the enforcing court as one of either foreign, foreign related or domestic character. The following is an examination of how each class of dispute is distinguished according to Chinese law. Further discussion explores which individuals or legal entities may be unsure as to which class their dispute belongs and the consequences if the arbitral agreement does not suit the particular type of dispute that arises. In order for parties to an arbitral agreement to choose a forum which on one hand suits their preferences of perceived ease of use, economy and fairness and on the other hand, will be enforceable in China, those parties must anticipate correctly which class (or classes) of dispute they may have at some later stage from the time they make the arbitral agreement. Implicit in the system is the fact that a Chinese court being asked to enforce an award will not necessarily come to the same conclusion as to the jurisdiction or lack thereof of the arbitrator as the arbitrators themselves do. In the latter part of the

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paper is an exploration of whether there is any mechanism available to Chinese courts to prevent parties from arguing about to which class their dispute belongs if the issue was not raised earlier at the time of arbitration.

KEYWORDS: *arbitral agreement, arbitration agreement, arbitral award, arbitration clause, China, domestic arbitration, enforceability of foreign arbitral award, enforcement, foreign arbitration, foreign related arbitration, jurisdiction*