

# Student Note

## **DETERMINING “APPROPRIATE” PROCEDURAL RULES OF INTERNATIONAL COMMERCIAL ARBITRATION AND ITS RELATIONSHIP WITH THE LAW GOVERNING ARBITRAL PROCEDURE: IN THE PERSPECTIVE OF ENFORCEMENT UNDER THE NEW YORK CONVENTION**

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### **ABSTRACT**

*While acknowledging the great respect for party autonomy of international commercial arbitration, how to determine suitable procedure rules is regarded as an important issue due to the inherent complexities of transnational commerce. The intertwined relationship between rules of procedure and the law governing arbitral proceedings adds a more perplexed color to such difficult tasks. Inappropriate determination may lead to dispute at the stage of recognition and enforcement of arbitral awards, which eliminates incentives to use arbitration as an efficient dispute resolution method. This paper aims to help decide on appropriate procedural rules by providing a basic structure of relevant factors*

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*that are necessary to be considered. Furthermore, it also addresses the effect of “compromised lex loci arbitri principle” in the ground for refusal of recognition and enforcement of awards under Article 5.1(d) of the New York Convention, and the appropriateness of not addressing the hierarchy of procedural determination made by the arbitral tribunal. In conclusion, this paper emphasizes the importance of weighing factual elements under a case-by-case basis and makes further suggestions on the modification of Article 5.1(d) to solve the problems that may arise therefrom. Before the provision is officially modified, it should be interpreted in a restrictive way as an alternative.*

**KEYWORDS:** *international commercial arbitration, the law governing the arbitral procedure, procedural rules, the seat theory, lex arbitri, lex loci arbitri, the de-localization/de-nationalization theory, party autonomy, enforcement, arbitral award, New York Convention*