Conflicts Rules of Arbitration Agreements in China: Evolution and Reform

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ABSTRACT

The Evolution of the conflicts rules of arbitration agreements in China can be divided into three stages: Before the "Interpretation 2006" was issued by the Supreme People's Court, when designating the applicable law of the arbitration agreement the Chinese courts followed the judicial practices developed for a long time; the "Interpretation 2006" provides clear guidelines for the courts to assign the law applicable to the arbitration agreement, but the rigidity of the conflicts rules in the "Interpretation 2006" often results in the arbitration agreements being held invalid because in most if not all the cases the Chinese law will be determined as the lex causae of the arbitration agreements, greatly frustrating the parties' expectation to have their disputes settled through arbitration; the newly promulgated Law on the Application of Laws to the Foreign-Related Civil Matters (CPIL) contains a set of specific conflict rules of arbitration agreement, but such a provision is no but the old wine in the new bottle, causing more uncertainty and even contradictory results. The author analyzes the main approaches adopted in other jurisdictions in determining the validity of arbitration agreements and proposes the possible reform in Arbitration Law in China.

KEYWORDS: Conflicts rules, Arbitration agreements, Interpretation 2006, Reform

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I. Introduction

Arbitration agreements play a significant role throughout the arbitration process. The validity of an arbitration agreement can be directly determinative with regard to the arbitral tribunal's jurisdiction, the circumstances in which the arbitral award can be challenged, as well as with regard to matters of recognition and enforcement. In most cases, the validity of an arbitration agreement is determined by reference to the applicable law designated by the conflict rules. This article first considers the historical development of the conflict rules of arbitration agreements, then analyses the current situations and particular problems that China faces in this area of private international law. Finally, we propose a possible reform to improve the choice of law of arbitration agreements in China, which is premised on an examination of the legislation and practice of other countries and regions.

II. Development of the Conflict Rules of Arbitration Agreements in China prior to the "Interpretation 2006"

According to the doctrine of separability, an arbitration agreement is independent and autonomous from the main contract, and thus has its own applicable law to determine its validity and effectiveness. The Arbitration Law of the People's Republic of China ("CAL"), effective as of September 1, 1995,