



MAXWELL LECTURES

Harmonising Judicial Approaches to Choice of Law in Arbitration Agreement

by Dr. Winnie Jo-Mei Ma 19 August 2021 | 5.00PM - 6.15PM (GMT+8)



About Speaker:

Dr. Winnie Jo-Mei Ma is an independent arbitrator and resident of The Arbitration Chambers, Fellow and Approved Faculty Member of CIArb (formerly convenor of East Asia Branch Taiwan Chapter). She is also an Advisor to the Chinese Arbitration Association, Taipei (formerly Deputy Secretary-General), and Honorary Assistant Professor of Bond University Law Faculty. Qualified and admitted to practise in Australia, Winnie has 20 years of teaching experiences, with special focus on international commercial arbitration and private international law. Her SJD thesis, "Public Policy in the Enforcement of Arbitral Awards: Lessons for and from Australia", has achieved more than 16,000 full-text downloads. Unknown to many, Winnie was a key member of an international team of experts from Taiwan, Australia and Singapore (2012-2016), initiating a project and presenting a draft convention and submission to the United Nations which culminated in the Singapore Convention on International Settlement Agreements Resulting from Mediation (2019).

Synopsis

In the absence of the parties' express choice of law for their arbitration agreement and any default choice provided by the applicable legislative or institutional rules, courts worldwide remain divided between the law governing the contract and the law of arbitral seat. This is because of different timing or context for determining the law applicable to the arbitration agreement, different types of arbitration agreement, or different permutations of the parties' chosen seat and chosen law for their contract. The courts also disagree on the parties' intentions when ascertaining the implied choice of law or the law with the closest connection, as well as on the applicability of the principles of separability and validation.

This webinar explores the sources and causes of the incessant inconsistency and intricacy in judicial determination of the law governing the arbitration agreement. Alleviating the current uncertainty demands concerted efforts by the parties to expressly specify the law governing their arbitration agreement, as well as by legislatures and arbitral institutions to provide for default choice of law. However, judicial consensus on the interpretation of Article V(1)(a) of the New York Convention on the Recognition and Enforcement of Foreign Awards remains paramount. The key questions are: (1) Does the choice of law rule in Article V(1)(a) apply to issues other than the validity of arbitration agreement? (2) Does the reference to "the law to which the parties have subjected it" entail the parties' express choice and implied choice? (3) Does Art V(1)(a) affect the application of the validation principle?

Winnie invites all participants to join her in working towards harmonising judicial approaches to choice of law in arbitration agreement, thereby enhancing the clarity and consistency in resolving this fundamental issue.

For further enquiries, please contact us at marketing@maxwellchambers.com



Practice Area
Alternative Dispute Resolution
Training Category
General

1 Public CPD Point

Who Should Attend?

This webinar will be of interest to legal practitioners, lawyers, arbitrators, academics.

Webinar Details

The webinar is free and will be conducted via Zoom

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