"The Special Provisions of Conflict of Laws in Arbitration Law" —— The Special Grounds for Set Aside by the Judgments in Singapore, Hong Kong and United States (summary)

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There special provision about governing law is provided in Arbitration Law art.36 and Model Law art.28. The conflict of laws and or the law of the general rule for application of laws are not applied in Arbitration proceedings.

It is a difficult legal problem if the arbitration award may be set aside in case the tribunal applies wrong laws against the applicable arbitration law.

I will explain this paper how the problem is considered in the Singapore Court, the Hong Kong Court and the US Courts.

To the argument that the award should be set aside by Model Law 36 (2) (a) (iii) as the tribunal improperly decided the matters which had not been submitted, in other words, exceeded its power by failure to apply the law agreed between parties.

It was decided in the Singapore Court that mere errors of the law are not sufficient to warrant setting aside an arbitral award under Model Law 34 (2) (a) (iii) but the deliberate disregard or ignoring by the arbitrator of the choice of law clause agreed by the parties may be the ground to set aside the award but the set aside was not allowed (Quarella Spa v Scelta Marble Austraria Pte. Ltd. [2012] SGHC 166, 14 August 2012).

In Hong Kong Court, to the argument that "conscious disregard of the agreed governing law is the relevant consideration in determining whether to set aside an award in case of unauthorized amicable composition, it was determined that there must be sufficiently clear evidence from which the court can logically and reasonably infer that the Majority of the Tribunal had consciously ignored New York Law and deliberately failed to apply the principles set out in the cases decided by the US Courts which are binding on them, with the intent to arrive at their conclusion which contradict the legal authorities but there is no evidence in this case (American International Group v X company 2016HKCFI 1530 (30 August 2016)).

The US Supreme Court held that Section 10 (a) of the Federal Arbitration Act provides the exclusive grounds for vacating arbitration awards (Hall Street Associations LLC v

Mattel Inc., 552US 576 (2008)). It was considered that "Manifest disregard" as a ground for vacature appears consistent with FAA 10 (a) (4) which allows vacature if the arbitrator exceeds its power.

The Supreme Court of the State of New York held that in addition to the grounds set forth in the FAA, a court may vacate an arbitration award if it was rendered in manifest disregard of the law and concluded that the award must be vacated as the tribunal manifestly disregarded New York Law. (Daesang Corp.v The Nutrasweet Co. (May15 2017)).

But it was overturned at the Applellate Division of the Supreme Court on September 27. 2018.

It is quite new trend to set aside the award by "manifest disregard".

The case will be decided in the U,S. Supreme Court.

The decision may be changed the arbitration practice in the USA.