

## **Res Judicata Effects of Arbitral Awards in International Commercial Arbitration: Focusing on the Governing Law and its Objective and Subjective Scope**

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### **Abstract**

Arbitration has been the most preferred dispute resolution method in international commercial transactions, both before and after the COVID-19 pandemic. The international commercial arbitration would not function without res judicata effects of arbitral awards. It is thus generally accepted in all of the relevant legal systems that international commercial arbitral awards have res judicata effects. However, in terms of the objective and subjective scope of res judicata effects, there are various approaches to be identified; in other words, the issue of how to delineate the scope of res judicata effects of arbitral awards remains highly controversial. In this regard, the following two related questions arise and need to be answered: first, among the different jurisdictions involved in an international commercial arbitration, should any national law of them govern the res judicata effects of the arbitral award? And if this is the case, then which one should govern? If not, is there any applicable transnational rules? Secondly, provided that the choice of national laws should be made, should the res judicata effects of arbitral awards follow the same rule applicable for court judgments, in spite of all the differences between arbitration and civil procedure? To which extent an arbitral award is equivalent to a court judgment as regards the res judicata effects? Since Taiwan is a country relying on foreign trade and must consequently establish an efficient international arbitration system, the

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aforementioned questions should also be addressed. To this end, this article will review the discussions in the local literature and case law on the one hand, and do a comparative study on German law, French law and the ILC Recommendations on Res Judicata and Arbitration on the other hand. The aim of this article lies in providing a guideline for the application of Article 37(1) and 47(2) of the Arbitration Law of ROC, which will promote the legal certainty of Taiwanese international arbitration law.

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