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China

International Arbitration

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in China.

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China: International Arbitration

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There are four different legal regimes in the People's Republic of China, i.e., mainland China, the Hong Kong Special Administrative Region, the Macau Special Administrative Region, and the Taiwan Province. In this article, the authors only discuss the law that applies to mainland China ("PRC law").

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

In mainland China ("China"), there are a range of codified laws that apply to arbitration. The core legislation is the Arbitration Law of the People's Republic of China (the "PRC Arbitration Law") along with the Interpretation of the Supreme People's Court on Certain Issues relating to Application of the Arbitration Law of the People's Republic of China (the "Interpretation of the PRC Arbitration Law").

In addition, there are other judicial interpretations made by the Supreme People's Court of the People's Republic of China which apply to more detailed and specific areas relating to arbitration, such as the judicial review (e.g., the validity of arbitration agreements, enforcement of arbitral awards, etc.) and judicial assistance (e.g., the reciprocal enforcement of arbitral awards, judicial assistance in the enforcement of interim measures) of arbitration proceedings, etc.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes, China is a Contracting State of the New York Convention and has made two reservations. Firstly, China will apply the New York Convention, only on the basis of reciprocity, to the recognition and enforcement of arbitral awards made in the territory of another Contracting State

(reciprocity reservation). Secondly, China will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the PRC law (commercial reservation).

3. What other arbitration-related treaties and conventions is your country a party to?

In addition to the New York Convention, China has signed the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, the United Nations Convention on International Settlement Agreements Resulting from Mediation. China has also signed a series of judicial assistance treaties with a range of countries/areas and some of which apply to the enforcement of the arbitral awards seated in the contracting countries/areas.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

China is not a UNCITRAL Model Law jurisdiction. One of the significant differences is that, in principle, PRC law does not recognize ad hoc arbitration but only institutional arbitration. However, Article 9 of the Opinions of the Supreme People's Court on Providing Judicial Safeguard for the Development of Free Trade Zones

stipulated that if enterprises registered in Free Trade Zones agree with each other to arbitrate the relevant disputes by designated personnel at a designated location in China (not necessarily in Free Trade Zones) according to designated arbitration rules, such arbitration agreement can be held valid by the People's Court. Other differences can be seen in issues relating to service, power of the court and the arbitral tribunal, interim measures, etc.

5. Are there any impending plans to reform the arbitration laws in your country?

Yes. The PRC's Ministry of Justice released the proposed revisions to the PRC Arbitration Law (the "Proposed Revision") for public consultation during July to August 2021. The main proposed revisions have been seen regarding the tribunal's power to grant interim measures, adopting ad hoc arbitration in foreign-related arbitration, adopting the competence-competence principle, enhancing the concept to the seat of arbitration, etc.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

There are more than 200 arbitration institutions (called arbitration commissions in most cases) in China. China International Economic and Trade Arbitration Commission (the "CIETAC") is the most well-known one. The current arbitration rules of the CIETAC are the China International Economic and Trade Arbitration Commission Arbitration Rules (2024).

7. Is there a specialist arbitration court in your country?

No.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The PRC Arbitration Law Article 16

An arbitration agreement shall include arbitral clauses stipulated in the contract and other written agreements that request arbitration to be made prior to or following the occurrence of a dispute.

An arbitration agreement shall include the following:

- (1) the expression of an application for arbitration;
- (2) items for arbitration;
- (3) the chosen arbitration commissions.

Please refer to Question 4 for the exception rule of the validity requirements for arbitration in the Free Trade Zones in China.

It is worth noting that in the Proposed Revision, the second and third requirements are removed.

9. Are arbitration clauses considered separable from the main contract?

Yes.

The PRC Arbitration Law Article 19

An arbitration agreement shall exist independently and its validity shall not be affected by changes, dissolution, termination, or invalidity of the contract.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

Under PRC law, the validation principle may apply to the foreign-related or foreign arbitration agreements, if the parties do not expressly agree on the governing law of the arbitration agreement.

The Provisions of the Supreme People's Court on Several Issues relating to the Hearing of Cases Involving Judicial Review of Arbitration Article 14

Where the People's Court identifies the law applicable to determine the validity of a foreign-related arbitration agreement according to Article 18 of the Law of the People's Republic of China on the Application of Laws to Foreign-related Civil Relations, and the parties concerned have not chosen such law, if there is a difference by applying the law at the place where the arbitration institution is located and by applying the law at the place of arbitration, the People's Court shall apply the law which will validate the arbitration agreement.

11. Is there anything particular to note in your

jurisdiction with regard to multi-party or multi-contract arbitration?

There is no express provision in the relevant arbitration legislation but such an issue has been regulated by the arbitration rules of some arbitration commissions (the CIETAC, etc.).

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

The Interpretation of the PRC Arbitration Law Article 9

An arbitration agreement shall bind a transferee of any creditor rights and debts transferred whether in whole or in part, unless the parties agreed otherwise, or where the transferee clearly objected or was unaware of the existence of a separate arbitration agreement at the time of the transfer.

In practice, some arbitration commissions also have their own rules on joinder of additional parties but require that the arbitration shall proceed only if and to the extent that it is satisfied, prima facie, that an arbitration agreement may exist or all parties have agreed to arbitrate.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

The PRC Arbitration Law Article 3

The following disputes shall not be subject to arbitration:

- (1) disputes concerning marriage, adoption, custody, fostering, and succession;
- (2) administrative disputes which shall, in accordance with the law, be dealt with by administrative bodies.

In practice, depending on different types of disputes and the relevant arbitration agreements, PRC courts may adopt a case-by-case approach regarding whether contractual disputes involving monopoly, torts are arbitrable.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law

has been specified by the Parties?

Under the PRC law, should it be mainland case (involving mainland parties and mainland transaction only), the applicable law shall be the PRC law, i.e., the parties do not have the right to choose a foreign law.

For foreign-related cases, it is expressly stipulated under Article 18 of the Law of the People's Republic of China on the Application of Laws to Foreign-related Civil Relations that should no law applicable to the arbitration agreement has been specified by the Parties, the law at the place where the arbitration institution is located or the law at the seat of arbitration shall apply. In circumstance there is a difference by applying the law at the place where the arbitration institution is located and by applying the law at the seat of arbitration, the People's Court shall apply the law which will validate the arbitration agreement as per Article 14 of the Provisions of the Supreme People's Court on Several Issues relating to the Hearing of Cases Involving Judicial Review of Arbitration.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

In principle, the parties cannot choose foreign law as the governing law if the subject matter is a purely mainland one (i.e., mainland transaction involving mainland parties only).

However, in foreign-related commercial transactions, the parties can freely agree to apply foreign laws in accordance with the Law of the People's Republic of China on the Application of Laws to Foreign-related Civil Relations.

Nevertheless, such a choice is still subject to certain limitations. As in some areas, PRC law is mandatorily applied even if the subject matters are foreign-related.

For example, as per Article 467 of the PRC Civil Code, Sino-foreign equity joint venture contracts, Sino-foreign cooperative enterprise contracts, and Sino-foreign contracts for the cooperative exploitation and development of natural resources which are to be performed within the territory of China shall be governed by PRC law.

16. In your country, are there any restrictions in the appointment of arbitrators?

The PRC Arbitration Law Article 13

An arbitration commission shall select as its arbitrators who are honest and just.

An arbitrator shall fulfil one of the following requirements:

- (1) obtained legal professional qualification upon passing the national unified legal professional qualification examination, and has undertaken arbitration work for eight years;
- (2) a full eight years as a lawyer;
- (3) has been appointed as a judge for eight years;
- (4) involvement in legal research or teaching as well as holding a senior academic title;
- (5) involvement in economics and trade and possessing an understanding of the law as well as having a senior academic title or its specialised equivalent.

An arbitration commission shall prepare an arbitration register of names according to different specialisation.

In practice, arbitration commissions may also make further stricter restrictions.

17. Are there any default requirements as to the selection of a tribunal?

The PRC Arbitration Law Article 34

An arbitrator shall be withdrawn from the case and the parties concerned shall have the right to request such withdrawal for any of the following reasons:

- (1) the arbitrator is a disputing party or an immediate relative of the parties to the case or their agents;
- (2) the arbitrator has a personal interest in the case;
- (3) the arbitrator has some other relationship with the parties to the case or their agents which may affect the case to be arbitrated fairly;
- (4) the arbitrator has had private meetings with the parties concerned or their agents, or has accepted gifts or has attended banquets provided by the parties concerned or their agents.

In practice, arbitration commissions may also make extra requirements.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

No express codified law on this issue. There were some cases in which courts set aside and/or refused enforcement of the arbitral awards on the ground that arbitrators were not independent or impartial.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

The PRC Arbitration Law Article 34

An arbitrator shall be withdrawn from the case and the parties concerned shall have the right to request such withdrawal for any of the following reasons:

- (1) the arbitrator is a disputing party or an immediate relative of the parties to the case or their agents;
- (2) the arbitrator has a personal interest in the case;
- (3) the arbitrator has some other relationship with the parties to the case or their agents which may affect the case to be arbitrated fairly;
- (4) the arbitrator has had private meetings with the parties concerned or their agents, or has accepted gifts or has attended banquets provided by the parties concerned or their agents.

In practice, arbitration commissions may also have further stricter rules and set forth detailed procedural rules regarding such challenges.

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators

Such duty is generally mentioned in the arbitration rules of arbitration commissions in China and some arbitration commissions have issued a code of conduct in this respect.

It is worth noting that as per the Proposed Revisions, where an arbitrator is aware of any circumstance that may cause the parties concerned to have reasonable doubt upon his/her independence or impartiality, he/she shall disclose such circumstance in writing.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

The PRC Arbitration Law Article 37

Where an arbitrator is to be withdrawn or is unable to perform his/her duties due to other reasons, a new arbitrator shall be chosen or appointed in accordance with the relevant provisions of this Law.

Where the reselection or reappointment of an arbitrator is made due to withdrawal, the parties concerned may apply for the proceedings to be commenced again, but this shall be decided by the arbitration tribunal. An Arbitration tribunal may also make its own decision as to whether or not arbitral proceedings shall recommence.

In practice, arbitration commissions may also have more detailed procedural rules.

22. Are arbitrators immune from liability?

The PRC Arbitration Law Article 38

Where a situation is serious that the arbitrator has had private meetings with the parties concerned or their agents, or has accepted gifts or has attended banquets provided by the parties concerned or their agents, or the arbitrator has committed bribery or favoritism or perverted the law in making the arbitral award in the arbitration procedures, that arbitrator shall bear legal responsibility in accordance with the law and shall be removed from the panel of arbitrators by the arbitration commission.

The Criminal Law of the People's Republic of China Article 399 (A)

[Crime of Perverting the law in Arbitration] Where anyone who undertakes the duties of arbitration in accordance with the law makes any wrongful ruling purposely in violation of the facts and laws in the activities of arbitration, in case the circumstances are serious, he/she shall be sentenced to not more than three years of fixed-term imprisonment or criminal detention. If the circumstances are particularly serious, he/she shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

23. Is the principle of competence-competence recognized in your country?

Arbitration commissions (not the arbitral tribunals) may

rule on their own jurisdiction. However, the courts may intervene in such a process.

The PRC Arbitration Law Article 20

If a party challenges the validity of the arbitration agreement, he may request the arbitration commission to make a decision or apply it to the People's Court for a ruling. If one party requests the arbitration commission to make a decision and the other party applies to the People's Court for a ruling, the People's Court shall give a ruling.

It is worth noting that the Proposed Revisions aims to adopt the competence-competence principle and empowers the arbitral tribunal to rule on its own jurisdiction. However, it also allows a party to apply to the court for reviewing of the tribunal's decision on its jurisdiction.

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

The PRC Arbitration Law Article 5

If the parties have concluded an arbitration agreement and one party submits the same dispute to the People's Court, the People's Court shall not accept the case, unless the arbitration agreement is null and void.

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

The PRC Arbitration Law Article 42

If the respondent fails to appear before the hearing without justified reasons after having been notified in writing or leaves the hearing prior to the conclusion of the hearing without the permission of the arbitration tribunal, a default award may be made.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

No express codified law in this regard. Some arbitration commissions have made the relevant rules. In practice, if all parties agree to the intervention, the arbitral tribunal

will respect party autonomy, vice versa.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

As per the civil procedural rules under PRC law, parties may apply for property preservation, evidence preservation, and conduct preservation when appropriate.

Under the PRC Arbitration Law, there is no specific provision of interim measures except for property preservation and evidence preservation. If a party applies for such preservation in accordance with PRC law, arbitration commissions shall transfer the party's application to the competent court (the arbitral tribunal has no power to make the decision). Meanwhile, the arbitral tribunal may make the decision pursuant to the specific rules made by the arbitration commission of those interim measures that are not provided in the law. However, such a decision has been rarely seen in practice.

It is worth noting that as per the Proposed Revisions, arbitral tribunals also have the power to grant interim measures.

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Under PRC law, there are no anti-suit and/or anti-arbitration injunctions, and the courts generally refuse to recognize the anti-suit injunction issued by courts/tribunals in other legal regimes. In HUATAI PROPERTY & CASUALTY INSURANCE CO LTD, SHENZHEN BRANCH v CLIPPER CHARTERING SA case, the Wuhan Maritime Court of China even ordered the respondent to apply to the High Court of the HKSAR to withdraw the anti-suit injunction issued by the court. In China Life Property & Casualty Insurance Co., Ltd v VERBA MARINE COMPANY LIMITED, the Guangzhou Maritime Court of China ordered the respondent to apply to the High Court of the HKSAR to withdraw the anti-suit injunction issued by the court. This case is one of the ten classic maritime judgement of PRC as published by the PRC Supreme People's Court for year 2022.

However, the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region (coming into force on 1 October 2019) Article 1 stated that the interim

measures referred to in this Arrangement include, in the case of the HKSAR, injunction, and other interim measures.

Such provision has expanded the scope of the application for interim measures to some extent and includes the injunctions issued in the HKSAR within the scope of interim measures.

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

No particular rules governing evidentiary matters in arbitration and local courts cannot compel witnesses to participate in arbitration proceedings.

The Several Provisions of the Supreme People's Court on Evidence for Civil Actions (Amended in 2019) may be applied to arbitration proceedings as general rules.

Please also refer to the answer under Question 27.

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

As far as lawyers are concerned, there are laws and regulations such as the Law of the People's Republic of China on Lawyers under PRC Law, which stipulates the professional ethics of lawyers in principle. The local lawyers' associations also have their own rules to regulate the ethics of lawyers.

As far as arbitrators are concerned, apart from that mentioned in Questions 16, 17, 19 and 22, there is no expressed codified law. However, many arbitration committees have developed their code of conduct for arbitrators.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

The PRC Arbitration Law Article 40

The arbitration shall be conducted in camera. If the parties agree to public arbitration, the arbitration may be

public unless State secrets are involved.

In practice, arbitration commissions may have more detailed rules in this regard.

32. How are the costs of arbitration proceedings estimated and allocated?

The State Council of the People's Republic of China issued Fee Charging Standard on Arbitration Commissions. Each arbitration commission has its own ad valorem schedule of fees. Recently, there has been some development of promoting an hourly-rate fee-charging mechanism for the arbitrators' fees.

For example, as per the arbitration rules of the CIETAC, for arbitration cases administered by the CIETAC Hong Kong Arbitration Center, where the parties have agreed in writing that the arbitrator's fees and expenses are to be based on an hourly rate, their agreement shall prevail. The Beijing Arbitration Commission also promoted such kind of fee-charging mechanism in their updated arbitration rules.

33. Can pre- and post-award interest be included on the principal claim and costs incurred?

Yes and please also see answer to Question 32 above.

34. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

For arbitration administered by mainland arbitration institutions and seated in mainland, the award shall specify the arbitration request, the facts in dispute, the reason for the award, the result of the award, the burden of the arbitration fee, and the date of the award. The award shall be signed by the members of the tribunal (those with dissenting opinions can choose to sign or not) and stamped by the arbitration institutions. If the parties agree that they do not wish to specify the facts in dispute and the reasons for the ruling, such sections can be left out in the award.

To file an application for recognition or enforcement of a foreign arbitral award, a party shall submit: (i) the written application; (ii) the duly authenticated original arbitral award or the certified copy thereof; (iii) the original arbitration clause or arbitration agreement or the certified copy thereof; and (iv) the foregoing documents shall be

accompanied by a certified Chinese translation should they are in a foreign language.

Please also refer to the answer under Questions 36, 38, 39 and 40.

35. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

After accepting the application made by an applicant regarding the recognition and enforcement of an arbitral award, the court will send out notice to the opponent party.

As for the timeframe, it may vary and depends on a series of factors, including but not limited to the type of the arbitral award (for example, if a foreign party is involved, more time will incur to complete the procedure), whether the opponent party raises an object, the workload of the court, etc. Normally, it will take several months, at least.

36. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Under PRC law, arbitral awards can be classified into four types: (i) mainland arbitral awards (involving mainland parties and mainland subject matter only, seated in mainland China and administered by a mainland arbitration institution, without any foreign elements); (ii) foreign-related arbitral awards (involving certain foreign elements (for example, one of the parties is a foreign party, the subject matter is foreign-related) but still seated in mainland China and administered by a mainland arbitration institution); (iii) HK SAR/Macau SAR/Taiwan Province arbitral awards (i.e. seated in HK SAR/Macau SAR/Taiwan Province); (iv) foreign arbitral awards (i.e., seated in foreign jurisdictions). The recognition and enforcement (including setting aside or refusing enforcement of an arbitral award) of different types of arbitral awards are governed by different legal provisions.

As for the challenge of HK SAR/Macau SAR/Taiwan Province, foreign and foreign-related arbitral awards, PRC law generally follows the judicial review framework set forth in Article V of the New York Convention.

As for the challenge of mainland arbitral awards, in addition to making a challenge based on procedure

defects, there may be other grounds. As per Article 58 of the PRC Arbitration Law and Article 248 of the Civil Procedure Law of the People's Republic of China (the "PRC Civil Procedure Law"), a party can apply for setting aside or not enforcing a mainland arbitral award on the ground that the other party has concealed evidence to the degree that fairness has been affected or arbitrator has committed bribery or favoritism or perverted the law in making the arbitral award.

See also Question 38.

37. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

No expressed codified law.

38. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Under PRC law, arbitral awards cannot be appealed but can be set aside or refused to enforce. A party should apply to the competent courts for such a procedure (in most circumstances is the Intermediate People's Courts).

Grounds:

For mainland arbitral awards, as per article 58 of the PRC Arbitration Law and article 248 of the PRC Civil Procedure Law, those grounds are:

- (1) No arbitrations agreement between the parties;
- (2) The issue does not fall under the scope of the arbitration agreement or the arbitration institution has no jurisdiction over the case;
- (3) The composition of the arbitral tribunal or the arbitration procedures is in violation of statutory procedures;
- (4) The evidence on which the arbitral award is based is forged;
- (5) The counterparty has concealed evidence which has a genuine impact on making a fair arbitral award; or
- (6) The arbitrators have committed bribery or favoritism or perverted the law in making the arbitral award in the arbitration procedures.
- (7) Where the enforcement of the arbitral award is

contrary to public interest.

For HK SAR/Macau SAR/Taiwan Province awards, according to the Arrangements of the Supreme People's Court on the Reciprocal Enforcement of Arbitration Awards by Mainland China and the Hong Kong Special Administrative Region, the Arrangement of the Supreme People's Court on Mutual Recognition and Enforcement of Arbitration Awards Between the Mainland and Macau Special Administrative Region and Provisions of the Supreme People's Court on Recognition and Enforcement of Arbitration Awards Issued in Taiwan, the grounds for refusing enforcement are in principle briefly the same:

- (1) The parties to the arbitration agreement under the law applicable to them, under some incapacity, or the said arbitration agreement is not valid; or
- (2) The respondent has not received a notice to appoint the arbitrator or participate in the arbitration proceedings, or the respondent is unable to present its case due to any reason not attributable to the respondent; or
- (3) The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the arbitral award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (4) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (5) The arbitral award has not yet become binding on the parties, or has been set aside or suspended/refused of enforcement by a competent court of the seat of arbitration; or
- (6) The subject matter of the dispute is not capable of settlement by arbitration under the law of the place of enforcement; or
- (7) The enforcement of the award would be contrary to the public policy/public interests of mainland China.

For foreign-related arbitral awards, as per article 70 of the PRC Arbitration Law and article 291 of the PRC Civil Procedure Law, those grounds are:

- (1) No arbitration agreement;

(2) The respondent has not received a notice to appoint the arbitrator or has not been informed of the arbitration procedure, or the respondent is unable to present its case due to any reason not attributable to the respondent;

(3) The composition of the arbitral tribunal or the arbitration procedure does not comply with the arbitration rules;

(4) The issue does not fall under the scope of the arbitration agreement or the arbitration institution has no jurisdiction over the case;

(5) The arbitral award is contrary to public interest.

For foreign arbitral awards which shall apply the New York Convention (i.e., arbitral awards made in the territory of another contracting state and the dispute is a commercial one), given China is one of the contracting parties to the New York Convention but has made the commercial reservation and reciprocity reservation, the grounds for recognition/enforcement are set forth in Article V of the New York Convention.

For foreign arbitral awards that are not subject to New York Convention, the recognition/enforcement of the awards shall apply the relevant treaties, if any, signed by China and the state in which the awards are issued or as per the principle of reciprocity.

Procedure:

As for the procedure, after a party applies for challenging an arbitral award, if the court of the first instance thinks that the challenge should be dismissed, the court can rule directly. However, if the court thinks that the challenge should be upheld, it shall follow an internal judicial review process and report to the higher courts level by level.

For mainland arbitral awards, in principle, the decision-making power of the relevant judicial review shall be exercised by the High People's Court in the same jurisdiction, unless the ground for setting aside or refusing enforcement of the arbitral awards is the violation of public interests. If so, only the PRC Supreme People's Court has the decision-making power to confirm the ruling on the setting aside or refusal (where applicable). In any case, the relevant High People's Court shall file its judicial review decision with the Supreme People's Court for the record.

For foreign-related arbitral awards, HK SAR/Macau SAR/Taiwan Province arbitral awards, and foreign arbitral awards, for potential setting aside or refusing recognition/enforcement, the lower court shall report to the higher court level-by-level and only the PRC Supreme

People's Court has the decision-making power to confirm the ruling on setting-aside or refusing recognition/enforcement (where applicable).

39. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

No express codified law.

40. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

The Provisions of the Supreme People's Court on Several Issues concerning the Handling of Cases of Enforcement of Arbitral Awards by People's Courts Article 9

To apply for non-enforcement of an arbitral award or an arbitration mediation statement to the People's Court, A party not involved in the arbitration case shall submit a written application and evidence substantiating its request, and satisfy the following conditions:

(1) Where there is evidence that the parties to the arbitration case have maliciously applied for arbitration or engaged in fictitious arbitration, undermining the legitimate rights and interests of the party not involved in the arbitration case;

(2) The subject matter of enforcement involved in the lawful rights claimed by the party not involved in the arbitration case has not yet been enforced and concluded; and

(3) Where the party not involved in the arbitration case submits its application within 30 days after it comes to know or should have known that the People's Court has taken enforcement measures against the said subject matter.

41. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

Recently, the Beijing Fourth Intermediate People's Court made a court decision on the application for setting aside an arbitral award involving third-party funding ((2022) Beijing No.04 Intermediate People's Court Civil Special Procedure No. 368). After making a comprehensive interpretation of issues relating to conflicts of interest,

disclosure obligations, and arbitration confidentiality regarding third party funding, the court rendered that the third party funding was not in violation of any current laws or the applicable arbitration rules.

42. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

No expressed codified law but some arbitration commissions have such rules (e.g., the CIETAC, the Beijing Arbitration Commission, the Shenzhen International Arbitration Court, etc.). There was case applying the emergency arbitrator proceedings accepted by the Beijing Arbitration Commission in Mainland China (known as the GKML case), under which the interim measure granted by an emergency arbitrator obtained an enforcement order rendered by the High Court of the HK SAR Region Court of First instance.

It is worth noting that the Proposed Revisions aims to empower the emergency arbitrator to grant interim measures.

43. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

No expressed codified law but most arbitration commissions have such rules and quite often used.

44. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

No expressed codified law but there are some promotions in this regard in the arbitration community in China.

45. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

One reported case (UNI-TOP ASIA INVESTMENT LIMITED v. SINOPEC INTERNATIONAL PETROLEUM EXPLORATION AND PRODUCTION CORPORATION) showing that an award which was set aside by a Chinese court has been applied for enforcement in the United States (the result is still pending).

46. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

For mainland arbitral awards (see also answers to Questions 36 and 38), there are some reported cases in which the arbitral award was set aside or refused enforcement on the ground that "the arbitrators have perverted the course of justice, committed bribery, or cheated in the arbitration procedures" as per Article 58 of the PRC Arbitration Law and Article 248 of the PRC Civil Procedure Law. As for the standard for proving, it is stipulated in Article 18 of the Provisions of the Supreme People's Court on Several Issues relating to the Hearing of Cases Involving Judicial Review of Arbitration that, the foregoing situate refers to the conduct that has already been convicted by an effective criminal judgment or determined by a disciplinary decision. There is no specific expressed standard that applies to the burden of proving corruption in arbitration proceedings, therefore the general rules may apply, that is the burden of proof is borne by the claimant.

47. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

Mainland Chinese arbitration institutions have made efforts to promote the concept of virtual hearing (or semi-virtual hearing), in which remote evidence may be provided. For example, the Beijing Arbitration Commission has issued its guidelines on conducting the virtual hearing.

As for virtual hearing platforms, different online platforms have been used, mainly Tencent Meeting and Zoom. Some institutions even have their own platforms, such as the Wisdom Hearing Platform adopted by the CIETAC.

In addition, some arbitration institutions also adopt a reduced fee schedule to support arbitration during the pandemic.

48. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

Similar to answer to Question 47.

49. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

Guided by the philosophy promoted by President Xi that lucid waters and lush mountains are invaluable assets, China advocates harmonious coexistence between humans and nature and sticks to the path of green and sustainable development.

50. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

According to Article 58 of the PRC Arbitration Law and Article 248 of the PRC Civil Procedure Law, where the People's Court decides that should there has been a violation of the public interest, it shall order to set aside the award/refuse to acknowledge and enforce the award. However, there is no clear definition or scope of "public interest" under PRC law.

From a procedural perspective, there is rarely decisions of the PRC court involving the factor of sanction on international arbitration proceedings. In a case regarding

the recognition and enforcement of foreign arbitral awards decided by the Shanghai Financial Court ((2021) Shanghai No.74 Xie Wai Ren No. 1), the court considered the sanction imposed by Chinese government on a barrister chambers where the arbitrator practiced and held that such a sanction was imposed after issuance of the award, did not constitute a violation of article V of the New York Convention, and thus should not affect the recognition and enforcement of the arbitral award.

From a merits perspective, a sanction may constitute force majeure or changed circumstance under PRC law.

51. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

No expressed codified law in the context of international arbitration, but China has formulated plans and opinions, i.e., the New-generation Artificial Intelligence Development Plan (Guo Fa [2017] No. 35) released by China's State Council, and the Opinions of the Supreme People's Court on Regulating and Strengthening the Applications of Artificial Intelligence in the Judicial Fields (Fa Fa [2022] No. 33), to promote the application of artificial intelligence in the judicial fields in China.

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