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International Arbitration 2025

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China: Law and Practice

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Global Law Office

Law and Practice

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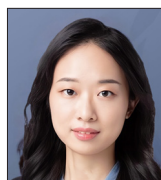
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1. General

1.1 Prevalence of Arbitration

In 2024, for cross-border commercial transactions, statistics show that more parties tended to resort to international arbitration administered by Chinese arbitration institutions.

According to the 2024 annual work reports of major arbitration institutions, the following were reported.

- The China International Economic and Trade Arbitration Commission (CIETAC) registered 758 new foreign-related cases, marking a year-on-year increase of 17.52%. The total amount in dispute reached CNY81.125 billion, representing a 53.75% increase from the previous year. The number of countries and regions involved further expanded to 93, with parties coming from 77 jurisdictions.
- The Shenzhen Court of International Arbitration (SCIA) also saw a significant increase. It handled 520 international commercial arbitration cases in 2024 – up 25.6% year-on-year – with a total disputed amount of CNY51.039 billion. Notably, one of SCIA's international cases involved a single dispute amount exceeding CNY30 billion, setting a record for the highest single-claim amount ever handled by an Asian arbitration institution.
- The Beijing Arbitration Commission (BAC) recorded a 10.36% year-on-year increase in foreign-related cases.
- The Shanghai International Economic and Trade Arbitration Commission (SHIAC) reported a 40.46% surge in foreign-related cases.

In China, the basis for international commercial arbitration is primarily the arbitration agreement between Chinese and foreign parties in their cross-border commercial transactions. It also includes scenarios where parties apply to Chinese courts for recognition and enforcement of foreign arbitral awards, or cases in which foreign arbitral institutions are chosen but the seat of arbitration is designated as China.

1.2 Key Industries

In 2024, the types of disputes handled by China's major arbitration institutions continued to diversify. Traditional sectors such as construction and infra-

structure, sale of goods, finance, services contracts, capital markets, and equity investment remained as key sources of disputes.

Emerging new industries and business models have given rise to a growing number of new and complex case types.

- Financial Derivatives – Disputes arising from over-the-counter transactions of financial derivatives, particularly involving structured products such as “snowball” options.
- Digital Technology – Technology and digital economy-related disputes, including those in the cross-border e-commerce sectors, online services contracts, data governance, and intellectual property issues such as software licensing and technology transfer between global tech giants and high-tech enterprises.
- New Energy – Disputes in the new energy vehicle sector, as well as those related to carbon emissions trading, carbon asset verification, capacity quota transfers, and co-operation under the Clean Development Mechanism framework.
- ESG – Corporate governance-related disputes, especially those involving anti-commercial bribery clauses, reflecting a heightened focus on ESG (environmental, social and governance) considerations.
- Third Party Funding – Disputes involving novel legal service arrangements, such as the performance and enforcement of third-party funding agreements in international arbitration.

1.3 Arbitration Institutions

In 2024, in terms of the number of cases, the SCIA handled a record-breaking 14,518 commercial arbitration cases, leading all other institutions and marking the highest number in its own history. The total amount in disputes increased from CNY138.31 billion in 2023 to CNY142.267 billion, maintaining over CNY100 billion in disputed amounts for the third consecutive year.

In terms of total disputed amount, the CIETAC ranked first with CNY188.96 billion (for 6,013 new cases in 2024). Notably, the CIETAC has exceeded CNY100 billion for the seventh consecutive year.

The following new establishments recently appeared in China.

- On 12 November 2024, the Chongqing International Commercial Arbitration Court was officially inaugurated.
- In December 2024, the Beijing Representative Office of the Hong Kong International Arbitration Centre (HKIAC) was formally registered, making it the first foreign arbitration institution to establish a representative office in Beijing.
- On 26 December 2024, the China (Shanghai) Securities and Futures Arbitration Centre was officially launched.

1.4 National Courts

China has not established a national standalone “international commercial court” system to hear disputes related to international arbitrations and/or domestic arbitrations, even though such courts have been established in certain cities like Shanghai, Shenzhen, Hangzhou and Beijing. In other cities, courts at the intermediate level are generally vested with jurisdiction over matters related to both international and domestic arbitrations. These courts are competent to handle various arbitration-related proceedings (including the grant of interim measures in arbitration, challenges to the validity of arbitration agreements, applications to set aside domestic arbitral awards, and requests for recognition and enforcement of foreign arbitral awards).

2. Governing Legislation

2.1 Governing Law

Legal Framework

The following legislation governs international arbitration in China.

- The Arbitration Law of the People’s Republic of China (the “PRC Arbitration Law”), enacted on 31 August 1994. The current effective version was promulgated on 1 September 2017 and came into effect on 1 January 2018. The PRC Arbitration Law constitutes the foundational legislation for commercial arbitration in China.

- The Supreme People’s Court (SPC)’s Interpretation on the Application of the PRC Arbitration Law (the “SPC’s Interpretation of the Arbitration Law”), issued on 16 December 2008, provides important judicial guidance on key issues.
- The Civil Procedure Law of the PRC (the “PRC Civil Procedure Law”) also contains important provisions relevant to arbitration, particularly concerning interim measures, enforcement of arbitral awards, and setting aside or refusal to enforce arbitral awards.

National Legislation and the UNCITRAL Model Law

The PRC Arbitration Law draws certain elements from the UNCITRAL Model Law (the “Model Law”); however, it does not directly adopt the Model Law framework. In fact, the two differ significantly in several key respects.

- *Ad hoc arbitration* – The Model Law permits ad hoc arbitration. However, under the current PRC Arbitration Law, ad hoc arbitration is not generally recognised in Mainland China, with the sole exception of certain circumstances in the Shanghai Free Trade Zone. Ad hoc arbitration is expected to be introduced when the amendment to the current PRC Arbitration Law comes into effect, hopefully in 2025 or 2026.
- *Competence-competence principle* – The Model Law embraces the competence-competence principle, whereby the arbitral tribunal can rule on its own jurisdiction. However, under the current PRC Arbitration Law, the authority to determine the validity of an arbitration agreement rests on either the arbitration institution or a competent court.
- *Seat of arbitration* – The Model Law recognises the concept of the seat of arbitration and its legal implications. The current PRC Arbitration Law does not explicitly adopt this concept, nor define it at legislative level. But it has been acknowledged in judicial practice and referenced in internal SPC memoranda.
- *Interim measures* – Under the Model Law, both courts and arbitral tribunals may grant interim measures. Under the current PRC Arbitration Law, for now such applications should be submitted to the arbitration institution and then forwarded to the courts. It is the courts, rather than the arbitra-

tion institution or the arbitral tribunal, that have the power to issue enforceable interim orders.

Notably, with the new amendments undergoing legislation review, China is undertaking major reforms (see **2.2 Changes to National Law**), which are expected to significantly narrow the gap between the PRC Arbitration Law and the Model Law.

2.2 Changes to National Law

On 30 April 2025, the Second Draft Amendment to the PRC Arbitration Law (the “Second Draft Amendment”) was reviewed by the 15th meeting of the Standing Committee of the 14th National People’s Congress. The Second Draft Amendment proposes substantive revisions to the current PRC Arbitration Law and is expected to become effective in 2026.

Key highlights of the Second Draft Amendment are as follows.

- *Competence-competence* – Grants the arbitral tribunal the power to rule on its own jurisdiction, whereas under the current PRC Arbitration Law, the validity of an arbitration agreement is determined by either the arbitration institution or a competent court.
- *Interim measures* – Introduces conduct preservation measures (ie, order parties to do or refrain from doing certain acts) while maintaining the current preservation interim measures on assets and evidence.
- *Expanded scope of foreign-related arbitration* – Broadens the current scope of “foreign-related” arbitration – previously limited to disputes involving foreign trade, transportation and maritime matters – to cover any dispute involving a foreign element.
- *Seat of arbitration* – Formally introduces the concept of the “seat of arbitration” at the legislation level (applicable to foreign-related arbitration cases only). Parties may designate the seat in writing, which will determine procedural laws and judicial oversight. If the seat is not agreed, it may be determined by the arbitral tribunal or by the rules of the arbitral institution.
- *Ad hoc arbitration (limited introduction)* – Permits ad hoc arbitration on a limited basis, specifically in foreign-related maritime disputes and disputes

between enterprises registered in pilot Free Trade Zones (FTZs) that involve a foreign element.

- *Foreign arbitral institutions in FTZs* – Explicitly permits foreign arbitral institutions to establish representative offices in Chinese FTZs and administer international commercial arbitration proceedings.
- *Legitimation of international investment arbitration* – Confirms that Chinese arbitration institutions may administer international investment arbitration cases in accordance with international investment treaties and the procedural rules agreed upon by the parties.

3. The Arbitration Agreement

3.1 Enforceability

Under Chinese law, if an arbitration agreement satisfies the formality and substance tests for validity, then it is generally enforceable.

If one party initiates court proceedings without disclosing to the court the existence of an arbitration agreement, the other party should promptly submit a valid arbitration agreement prior to the first court hearing and advocate for arbitration, upon which the court must review the arbitration agreement primarily for its validity, and, if valid, the court shall dismiss the litigation. Otherwise, the right to arbitration shall be deemed as waived (see Article 26 of the PRC Arbitration Law).

Therefore, the enforceability of an arbitration agreement under PRC law is tied to its validity. For an arbitration agreement to be enforceable, it should meet certain formality and substance legal tests.

- *In writing* – An arbitration agreement must be in writing (including contracts, letters, emails, telegrams, and any other written communication that contains an expression of intent to arbitrate).
- *Clear intent to arbitrate* – The arbitration agreement must reflect the parties’ clear and mutual intent to submit disputes to arbitration.
- *Being arbitrable* – The subject matter of the dispute must be arbitrable under Chinese law. Certain matters, such as administrative disputes, criminal issues, and marriage/family law, are not arbitrable.

- *Parties and consent* – The parties to the arbitration agreement must have legal capacity, and the agreement must be concluded voluntarily, without coercion or fraud.
- *Designation of an arbitration institution* – Unlike many jurisdictions that allow ad hoc arbitration, under the current PRC Arbitration Law, except in limited foreign-related scenarios, an arbitration agreement must designate a capable arbitration institution. Failure to do so renders the agreement invalid and thus unenforceable.

3.2 Arbitrability

Arbitrable disputes refer to disputes over contracts and other property-related rights and interests between citizens, legal persons and other organisations with equal legal status that may be submitted to arbitration (see Article 2 of the PRC Arbitration Law).

Non-arbitrable disputes refer to disputes concerning marriage, adoption, guardianship, child maintenance, inheritance, and administrative disputes that are subject to resolution by administrative authorities (see Article 3 of the PRC Arbitration Law).

The Second Draft Amendment largely retains the current structure, with only minor wording adjustments – replacing “citizen” with “natural person” and “other organisations” with “unincorporated organisations”.

3.3 National Courts’ Approach

The approach to determining the law governing the arbitration agreement is as follows (see Article 16 of the SPC’s Interpretation of the Arbitration Law).

- Firstly, where the parties have agreed on the law governing the arbitration agreement (as distinct from the governing law of the underlying contract), then such law shall govern.
- In the absence of such, if the seat of arbitration is specified, then the law of the seat shall apply.
- Lastly, the law of the forum (Chinese court) will apply.

It is worth noting that, in China, the agreed governing law over the underlying contract does not automatically become the governing law on the validity of the arbitration agreement.

Chinese courts usually take an arbitration-friendly stance. Unless an arbitration agreement is clearly invalid, Chinese courts generally respect and uphold its validity and enforceability.

For further discussion on enforceability, see [3.1 Enforceability](#).

3.4 Validity

The rule of separability is generally respected and upheld in China.

When reviewing the validity of an arbitration clause, Chinese courts typically treat the arbitration clause as independent from the contract in which it is contained, unless the clause itself is found to be invalid on specific legal grounds such as coercion, fraud, or circumvention of mandatory legal prohibitions.

The rule of separability under Chinese law encompasses the following.

- The amendment, rescission, termination or invalidity of the contract shall not affect the validity of the arbitration clause itself (see Article 19 (1) of the PRC Arbitration Law).
- Even if a contract itself is found to be invalid or has been rescinded, that shall not affect the validity of the arbitration clause (see Article 10 of the SPC’s Interpretation of the Arbitration Law).
- Where the parties have reached an arbitration agreement when concluding a contract, regardless of the contract’s formation or effectiveness, that shall not affect the validity of the arbitration agreement clause (see Article 10 of the SPC’s Interpretation of the Arbitration Law).

4. The Arbitral Tribunal

4.1 Limits on Selection

Parties have a high degree of autonomy in appointing arbitrators, though this autonomy must be exercised within the statutory framework and the rules of the relevant arbitration institution.

- *Numbers* – Parties may freely agree on the number of arbitrators, typically one or three.

- *From the panel list* – Parties may select arbitrators from the institution's official panel of arbitrators.
- *Outside the panel list* – If permitted under institutional rules, parties may also nominate arbitrators outside the panel, subject to approval by the arbitration institution or its chairperson. This flexibility is expressly provided in the rules of CIETAC, SHIAC, SCIA and BAC.
- *Assistance by institution* – If the agreed method of appointment is deemed manifestly unfair, some institutions (such as CIETAC) reserve the right to properly intervene and adjust the appointment mechanism to uphold procedural fairness.

4.2 Default Procedures

If the parties' chosen method for selecting arbitrators fails, the default appointment procedures under Chinese law and institutional rules shall apply instead (see Articles 31 and 32 of the PRC Arbitration Law).

- In cases where the parties have agreed to a three-member tribunal, each party appoints one arbitrator or entrusts the chairperson of the arbitration institution to do so on their behalf. The third arbitrator, who acts as the presiding arbitrator, shall be jointly appointed by the parties or jointly entrusted to the chairperson of the institution for designation.
- If the parties have agreed to a sole arbitrator, they must jointly appoint the arbitrator or entrust the chairperson of the arbitration institution to make the appointment.
- If the parties fail to agree on the method of constituting the arbitral tribunal or fail to appoint arbitrators within the time limit prescribed by the applicable arbitration rules, the chairperson of the arbitration institution will make the appointment.

The rules of mainstream arbitration institutions in China provide that if one party fails to appoint an arbitrator within the specified period, the chairperson of the institution will appoint one on that party's behalf.

While the PRC Arbitration Law does not set up a default procedure that applies in the case of multi-party arbitrations, institution rules (such as those of CIETAC and SHIAC) contain specific provisions. For example, under the SHIAC Arbitration Rules, if there are multiple claimants or respondents, each side is

required to jointly agree on and nominate an arbitrator. This joint nomination must be confirmed in writing and submitted to the institution's registrar.

4.3 Court Intervention

Chinese courts do not intervene in the selection of arbitrators, even in the event of a failure of the party-agreed appointment process. However, after an arbitral award has been rendered, any subsequent judicial review proceedings may serve as a basis for setting aside the arbitral award or resisting its enforcement.

A Chinese court may review the legality of the arbitrator appointment process as part of its procedural examination. For example, if the composition of the arbitral tribunal seriously violated the arbitration rules or the parties' agreement, it may be deemed a ground for refusing enforcement or setting aside the award.

4.4 Challenge and Removal of Arbitrators

Parties have the right to challenge or remove arbitrators on the following grounds:

- the arbitrator is a party in the case or a close relative or attorney-at-law (or representative) of a party;
- the arbitrator has personal interests in the case;
- the arbitrator has any other relationship with a party or their attorney-at-law (or representative) that may affect the impartiality of the arbitration; or
- the arbitrator has privately met with a party or their attorney-at-law (or representative), or accepted gifts or hospitality from them.

A party applying for recusal must state the grounds and generally make the application before the first hearing. If the grounds for recusal are discovered after the first hearing, the application may be submitted before the final hearing concludes.

The decision on whether an arbitrator should be recused is made by the chairperson of the arbitration institution. If the chairperson is acting as an arbitrator in the case, the decision is made collectively by the arbitration institution.

If an arbitrator is recused or otherwise unable to perform their duties, a replacement must be selected or appointed in accordance with the law. After the

replacement, a party may request that previously conducted proceedings be redone; whether to grant such a request is at the tribunal's discretion. The tribunal may also decide on its own initiative whether prior proceedings need to be redone.

Mainstream arbitration institutions have established formal recusal procedures. Recusal applications are typically decided by the arbitration institution, not by the arbitral tribunal itself. In 2024, for example, CIETAC handled 45 applications for arbitrator recusal under its updated rules, demonstrating the system's emphasis on independence and impartiality.

4.5 Arbitrator Requirements

Although Chinese law does not provide an explicit statutory definition of the standard of "independence and impartiality" for arbitrators, the requirement is embedded in the PRC Arbitration Law, relevant judicial interpretations, and the rules of major arbitration institutions.

Key safeguards include: the following.

- Arbitrators must make a declaration of independence and impartiality before accepting an appointment.
- Arbitrators are under a continuing duty to disclose any potential conflicts of interest related to the parties, their counsel or the subject matter of the dispute.
- If an arbitrator fails to remain independent or fulfil their disclosure obligations, a party may apply for recusal.

Mainstream institutions have implemented strict disclosure and recusal frameworks. For example, the Code of Ethical Conduct for Arbitrators and Guidelines for Arbitrator Appointment of CIETAC.

In addition, Chinese arbitration institutions have increasingly strengthened internal oversight mechanisms. For instance, CIETAC may issue reminders, warnings, reduce remuneration or take other disciplinary measures against arbitrators who delay proceedings or fail to disclose relevant conflicts – thereby promoting the neutrality and integrity of arbitral proceedings.

5. Jurisdiction

5.1 Challenges to Jurisdiction

Strictly speaking, the PRC Arbitration Law does not formally recognise the principle of competence yet (ie, the arbitral tribunal's authority to determine its own jurisdiction). Where a party challenges the validity of the arbitration agreement, it is the arbitration institution, rather than the arbitral tribunal, which has the authority to make a decision on the matter (see Article 20 (1) of the PRC Arbitration Law).

In practice, the arbitration rules of mainstream arbitration institutions permit the arbitration institution to delegate the power to rule on jurisdictional objections to the arbitral tribunal after the tribunal has been constituted.

Moreover, both arbitration institutions and the courts are empowered by law to decide on jurisdictional objections. Where one party disputes jurisdiction before the arbitration institution while the other party challenges that before a court in parallel, then the court's ruling prevails over that of the arbitration institution.

Notably, Article 30 of the Second Draft Amendment proposes to grant arbitral tribunals the authority to rule on their own jurisdiction.

5.2 Circumstances for Court Intervention

Only in limited situations do Chinese courts address the jurisdiction of an arbitral tribunal.

- Where the parties disagree on the validity of the arbitration agreement prior to the constitution of an arbitral tribunal, a party may submit the issue either to the arbitration institution or to a Chinese court. The other party may submit such to the court in parallel. If so, then the court will docket and hear the case, and the court's decision prevails. (See Article 20 of the PRC Arbitration Law.)
- Where a party initiates litigation on merits by concealing an arbitration agreement when filing the litigation, and the court accepts the case, in this event, the opposing party may raise objection by submitting the arbitration agreement to the court prior to the first court hearing. If so, the court must

put the merits aside but examine the validity of the arbitration agreement first. If found valid, the court will dismiss the litigation. Conversely, if the opposing party does not raise an objection to the court's jurisdiction prior to the first court hearing, the right to arbitration will be deemed waived, and the court will proceed to trial the case. (See Article 26 of the PRC Arbitration Law.)

Judicial Attitude

In recent years, Chinese courts have established a pro-arbitration and limited-intervention approach. Courts tend to uphold the validity and enforceability of arbitration agreements, and do not intervene unless the arbitration agreement is manifestly invalid or fails to meet the statutory requirements under the PRC Arbitration Law.

Negative Jurisdictional Rulings

If an arbitral tribunal declines its jurisdiction, this is usually treated as a termination of arbitration proceedings. Parties may further resort to court for litigation.

If the jurisdiction for arbitration is held by arbitral tribunal or the institution, it will be respected by the court. Any further challenge before a court will not be docketed by the Chinese court.

5.3 Timing of Challenge

Prior to the first hearing of the arbitral tribunal, a challenge to the jurisdiction of the arbitral tribunal (ie, the validity of the arbitration agreement) must be submitted to the court (see Article 20 (2) of the PRC Arbitration Law).

This timing of challenge is reinforced as follows (see Article 13 of the SPC's Interpretation of the Arbitration Law).

- If a party fails to raise such a challenge prior to the first hearing of the arbitral tribunal, and subsequently applies to a court, the court shall not accept the case.
- Where the arbitration institution has already ruled on the jurisdiction (ie, validity of the arbitration agreement), any further challenges seeking to either confirm the validity of the arbitration agree-

ment or overturn that ruling will not be accepted by the court.

5.4 Standard of Judicial Review for Jurisdiction/Admissibility

In China, parties have the right to challenge the validity of an arbitration agreement either before a court or before the arbitration institution. Therefore, three scenarios may arise.

- If a party raises the challenge before the arbitration institution and the institution has rendered a decision on jurisdiction, any subsequent application by a party to a court to confirm the validity of the arbitration agreement or to annul the arbitration institution's decision will not be accepted by the court.
- If a party brings the challenge before a court, the court will review the issue in its entirety and decide whether the arbitration agreement is valid.
- If one party applies to the arbitration institution while the other applies to a court, it is the court – not the arbitration institution – that has the authority to review and determine the jurisdictional issue.

5.5 Breach of Arbitration Agreement

Where a party commences court proceedings in breach of an arbitration agreement, the opposing party shall raise the existence of the arbitration agreement prior to the first court hearing. If the court confirms that the arbitration agreement is valid and covers the dispute at hand, it will dismiss the court proceedings. However, if the opposing party fails to do so, it will be deemed that the parties have waived their rights to arbitration and accepted the court's jurisdiction, so the court will proceed with the court trial.

Chinese courts generally conduct a prima facie review when assessing the existence and validity of an arbitration agreement. For example, if a party attempts to avoid arbitration by alleging forgery of the arbitration agreement or the contract containing it, such arguments are usually not upheld by the courts, unless strong and convincing evidence is presented.

Overall, Chinese courts take a pro-arbitration stance and tend to respect arbitration agreements. Where

no deemed waiver has occurred, courts are usually reluctant to exercise jurisdiction.

5.6 Jurisdiction Over Third Parties

In China, an arbitration agreement generally binds only the party to the arbitration agreement or the signatories to the contract containing the arbitration agreement. However, under certain exceptional circumstances (including the following), the effect of an arbitration agreement may be extended to non-signatory third parties.

- *Merger or division of a party* – Where rights and obligations are transferred in their entirety in a merger or division, the arbitration agreement remains binding on the successor entity.
- *Legal succession* – Heirs are bound by an arbitration agreement previously entered into by the decedent in respect of inherited rights and obligations.
- *Assignment of claims* – Where the assignee is aware of the existing arbitration agreement between the assignor and the obligor at the time of assignment, the arbitration clause may remain binding on the assignee.
- *Indirect agency relationships* – Where an agent enters into a contract on behalf of the principal, the arbitration agreement may be enforceable against the principal.
- *Contracts for the benefit of third parties* – Where a third party acquires rights or undertakes obligations under the contract for the benefit of third parties, the arbitration agreement may extend to that third party.
- *Subrogated claims in insurance disputes* – If an insurer exercises subrogation rights under a non-foreign-related insurance contract, where the insured and a third party have reached an arbitration agreement prior to the insured event, that agreement is enforceable against the insurer in subsequent proceedings.

6. Preliminary and Interim Relief

6.1 Types of Relief

An arbitral tribunal has the right to grant an interim relief order (asset preservation, evidence preservation

or conduct preservation). However, to enforce such orders, they must be passed on by the arbitration institution to the court for enforcement.

- In 2025, during an international arbitration administered by the BAC on a technology development and services dispute, the arbitral tribunal issued interim relief measures per the claimant's request. The Beijing No 4 Intermediate People's Court subsequently further issued a preservation order and enforced the measures.
- On 14 May 2025, the Shanghai International Commercial Court supported an evidence preservation request passed on by the SHIAC, based on interim measures granted by the arbitral tribunal. The court subsequently issued a judicial investigation order as assistance.

6.2 Role of Courts

As noted in 6.1 **Types of Relief**, when a party applies for interim relief through a Chinese arbitration institution or arbitral tribunal, the arbitration institution is required to pass on the application to a competent court, which will decide whether to grant the requested interim measures.

In China, the court generally would not grant interim relief in aid of foreign-seated arbitrations due to a lack of legal basis (see, eg [2014] Hu Yi Zhong Chu No 2), except in limited circumstances explicitly allowed by Chinese laws – such as (i) in maritime arbitrations or (ii) arbitrations conducted under judicial assistance arrangements between Mainland China and Hong Kong or Macao.

Interim Relief in Maritime Arbitration

For maritime arbitration, if the property in dispute is located in China, parties may apply to a Chinese maritime court at the location of the property for maritime preservation or injunction, even though the dispute is under the jurisdiction of a foreign court or arbitral institution.

Judicial Assistance Arrangements With Hong Kong and Macao

Mainland China – Hong Kong

Parties in Hong Kong arbitration proceedings may apply to the mainland intermediate people's court at

the respondent's domicile, property location or evidence location for property preservation, evidence preservation or conduct preservation before the arbitral award is made. Likewise, Mainland parties may apply to the Hong Kong High Court for interim measures under the Hong Kong Arbitration Ordinance and High Court Ordinance (under the arrangement effective from 2019 – the Arrangement on Mutual Assistance Between the Courts of the Mainland and the Hong Kong Special Administrative Region in Aid of Interim Measures in Aid of Arbitral Proceedings issued by the Supreme People's Court).

According to data from the CIETAC Hong Kong Arbitration Center, it has successfully forwarded property preservation applications to multiple courts and maritime courts in Beijing, Shanghai, Guangdong, Sichuan and Guangxi, all of which were supported. The average preservation amount per case is approximately CNY23.39 million.

Mainland China – Macao

Since March 2024, a similar arrangement – the Arrangement on Mutual Assistance Between the Courts of the Mainland and the Macao Special Administrative Region in Aid of Interim Measures in Aid of Arbitral Proceedings – has been in effect, further extending the scope of cross-border preservation.

6.3 Security for Costs

Chinese law does not explicitly grant courts/arbitral tribunal the authority to order one party to provide a security for the opposing party's costs in arbitration-related proceedings.

However, similar effects may be attained through requiring the claimant to pay full arbitration costs in advance. When producing the final arbitral awards, an arbitral tribunal will have the discretion to make adjustment on the bearing of costs, such as ordering the losing party to reimburse the prevailing party for reasonable expenses incurred in the arbitration, based on the circumstances of the case. In determining whether the costs claimed by the prevailing party are reasonable, the tribunal typically considers factors such as:

- the outcome of the arbitration;

- the complexity of the case;
- the actual workload of the prevailing party and/or its legal representatives; and
- the amount in dispute.

7. Procedure

7.1 Governing Rules

Chinese law does not formally or explicitly provide a rule for determining the law governing arbitral procedure, nor has it adopted the concept of the “seat of arbitration”. However, the concept of the “seat of arbitration” has been recognised in the rules of mainstream arbitration institutions in China and in guidance from the SPC. It is expected to be formally adopted through the Second Draft Amendment.

The specific procedures for arbitration are governed by the applicable arbitration rules.

7.2 Procedural Steps

The PRC Arbitration Law sets out the following procedural requirements.

- *Filing of the case* – A party initiating arbitration must submit the arbitration agreement, a written application and the necessary copies to the arbitration institution. The institution shall decide within five days whether to accept the case. If accepted, it shall serve notice on the parties; if not, it shall notify the applicant and explain the reasons. (See Articles 22 and 24.)
- *Service of rules and panel* – Upon accepting the case, the arbitration institution must, within the time limit prescribed by its rules, serve both parties with the arbitration rules and the panel of arbitrators, and deliver a copy of the application to the respondent. The respondent shall submit a statement of defence within the prescribed period. Failure to do so does not affect the continuation of the arbitration proceedings. (See Article 25.)
- *Constitution of tribunal* – If the parties fail to agree on the method for constituting the tribunal or fail to appoint arbitrators within the prescribed period, the chairperson of the institution shall make the appointment. The parties shall be notified in writing. (See Articles 32 and 33.)

- *Recusal of arbitrators* – A party may request the recusal of an arbitrator by stating the grounds, typically before the first hearing. If the grounds become known only after the first hearing, the request may still be submitted before the final hearing concludes. (See Article 35.)
- *Hearings* – Arbitration is typically conducted through hearing unless the parties agree otherwise. Hearings are not open to the public unless otherwise agreed or if state secrets are involved. (See Article 39.)
- *Evidence* – Each party bears the burden of proof for its claims. Evidence is presented during the hearing and is subject to cross-examination. (See Articles 43 and 44.)
- *Partial awards* – If part of the dispute is clear, the arbitral tribunal may render a partial award. (See Article 55.)
- *Finality of awards* – China adopts a “one-final-award” system, meaning that once an award is rendered, parties may not re-arbitrate or litigate the same dispute. (See Article 9.)

7.3 Powers and Duties of Arbitrators

Under Chinese law, the powers and duties of arbitrators are primarily governed by the PRC Arbitration Law and the arbitration rules of the relevant arbitration institutions.

Powers of Arbitrators

Arbitrators have the following powers.

- *Conduct of proceedings* – Arbitrators have the authority to preside over hearings. They may also render awards based on written submissions if agreed by the parties (see Article 39). They may also decide on adjournments (see Article 41) and proceed with default awards if a duly notified respondent fails to appear without justification or withdraws from the hearing without permission (see Article 42).
- *Evaluation of evidence and fact-finding* – Arbitrators have the discretion to assess the admissibility, relevance and weight of evidence. Unless otherwise agreed, the tribunal may instruct parties to produce evidence or collect evidence on its own initiative. For technical matters, expert opinions

may be obtained either by party agreement or by tribunal appointment. (See Articles 43–44.)

- *Mediation and confirmation of settlements* – Arbitrators may render an award based on a settlement agreement upon party request (see Article 49). During proceedings, the tribunal may mediate if both parties consent and may issue a conciliation statement or an award reflecting the mediated outcome (see Article 51).
- *Rendering of binding awards* – Based on ascertained facts and applicable law, arbitrators may render legally binding decisions (see Article 53).

Duties of Arbitrators

The following duties are imposed on arbitrators.

- *Independence and impartiality* – Arbitrators must act independently and impartially, treating all parties equally and refraining from representing or favouring any side (see Article 8).
- *Ongoing duty of disclosure* – If an arbitrator becomes aware of any circumstance that may affect their impartiality (eg, conflicts of interest, private contact with a party), they must promptly disclose such information in writing and request recusal (see Article 34).

7.4 Legal Representatives

Foreign qualified lawyers can serve as attorneys appearing in international commercial arbitrations in China, provided they hold a valid power of attorney from parties.

8. Evidence

8.1 Collection and Submission of Evidence

In China, the collection and submission of evidence is mostly carried out by the party with the burden of proof, following the principle that whoever makes the claim bears the burden of proof. Evidence types are diverse and include party statements, documentary evidence, physical evidence, audiovisual materials, electronic data, witness testimony, expert opinions and inspection records. (See Articles 66 and 67 of the PRC Civil Procedure Law.)

Unlike the discovery procedures common in some common law jurisdictions, there is no mandatory, comprehensive evidence disclosure regime under the PRC Arbitration Law. Parties are required to submit evidence – including documentary, physical, audio-visual, electronic data and witness testimony – within deadlines prescribed by the arbitral tribunal. Evidence submitted after the deadline may be rejected or given no probative value at the tribunal's discretion (see, eg, Article 41 of the current CIETAC Arbitration Rules). The tribunal may collect evidence on its own initiative. For technical matters, expert opinions may be submitted by parties or directed and collected by the tribunal.

During arbitration proceedings, all evidence presented by one party is subjected to examination by the other party. Parties have the right to challenge the authenticity, legality and relevance of evidence and to examine witnesses and experts, which in practice functions similarly to cross-examination in common law jurisdictions.

There are also specific procedural rules regarding evidence collection. For instance, parties may apply for preservation of evidence when such evidence is at risk of loss or is difficult to obtain due to its possession by the other party. In such cases, the arbitration institution submits the preservation request to the court for enforcement. (See Article 46 of the PRC Arbitration Law.)

8.2 Rules of Evidence

For arbitration conducted in China, the primary rules of evidence can be found in the PRC Arbitration Law, the PRC Civil Procedure Law, and the rules of major arbitration institutions. Parties may agree to adopt specific evidentiary rules – such as guidelines modelled on the IBA Rules on the Taking of Evidence in International Arbitration. Notably, CIETAC has developed its own Evidence Guidelines with reference to the IBA Rules. An arbitral tribunal may apply the CIETAC Evidence Guidelines if agreed by the parties.

In general, the evidentiary rules applicable to international arbitration proceedings seated in China are largely the same as those applied in domestic arbitration, unless the parties agree otherwise or the institutional rules provide for specific differences.

8.3 Powers of Compulsion

Court Assistance to Order the Production of Documents

The arbitral tribunal may collect evidence on its own if it considers it necessary. It also has limited power to investigate and collect evidence on its own initiative. (See Article 43 of the PRC Arbitration Law.)

In practice, Chinese arbitral tribunals mainly adopt two approaches to evidence collection in commercial arbitration proceedings.

- The tribunal may issue a letter of assistance for evidence collection at the request of a party. The requesting party then presents the letter to the entity in possession of the evidence.
- The tribunal (or the arbitration institution on its behalf) may directly issue such a letter to the entity or assign staff to deliver it in person.

However, these letters cannot compel compliance.

To address this limitation, several local jurisdictions – such as Shanghai and Guangdong – have introduced local legislative or judicial measures allowing arbitral institutions to apply to the courts for investigation orders.

For example, the Regulations on Optimizing the Business Environment of Shanghai (2023) provide a local statutory basis for such compulsion. On 19 June 2025, the Guangdong High People's Court issued and implemented the Measures for Issuing Investigation Orders to Assist Commercial Arbitral Institutions in Evidence Collection. Courts in cities such as Shanghai and Zhuhai have already supported arbitral institutions in issuing compulsory investigation orders in practice.

Compulsion of Witness Attendance

Regarding witness attendance, the PRC Arbitration Law does not explicitly authorise the tribunal to compel witnesses to appear. Witness testimony in arbitration is generally voluntary, and tribunals cannot enforce witness attendance.

Compulsion of Non-Parties

The tribunal's powers differ between parties and non-parties. While letters of assistance for evidence collection issued by arbitral tribunals are generally not compulsory on non-parties, if a court supports the arbitration by issuing an investigation order, the third party is legally obliged to disclose relevant information in accordance with court orders.

9. Confidentiality

9.1 Extent of Confidentiality

Confidentiality of Arbitration Proceedings

Principle of non-public hearings

Pursuant to Article 40 of the PRC Arbitration Law, unless the parties agree otherwise, the arbitration proceedings – including parties' statements, submissions and examination of evidence – are not open to the public. In practice, attendance by third parties at hearings requires the parties' consent; otherwise, no attendance is permitted.

Confidentiality of arbitration information and documents

Although the PRC Arbitration Law does not explicitly impose confidentiality obligations on arbitration participants, the principle of non-public hearings implicitly acknowledges the confidentiality of arbitration. Many arbitration institutions' rules—such as those of CIETAC—explicitly provide for the confidentiality of arbitration proceedings and impose confidentiality duties on arbitrators and staff of the arbitration institution.

Confidentiality of arbitral awards

Arbitral awards are generally disclosed only to the parties and are not made public. Where agreed by the parties, the award need not disclose the factual background of the dispute or the reasoning for the decision.

Possibility of Disclosure of Information in Subsequent Proceedings

While arbitration proceedings are confidential, information disclosed therein may be revealed in subsequent proceedings under limited circumstances.

Mandatory legal disclosure

Where laws explicitly require disclosure, confidentiality must yield. For example, under the Measures for the Administration of Information Disclosure of Listed Companies, listed companies must disclose significant arbitration cases related to the company.

Court orders

Confidentiality may also be overridden to a certain extent by court orders in subsequent court proceedings. For instance, in judicial review proceedings for setting aside arbitral awards or for recognition and enforcement applications, or in criminal cases, courts may require the disclosure of arbitration documents and information relevant to the matters under review.

10. The Award

10.1 Legal Requirements

An arbitral award shall be rendered in writing and must state the parties' claims, the facts of the dispute, the reasoning of the award, the dispositive part, the allocation of arbitration costs, and the date of issuance. However, where the parties agree not to include the facts or reasoning, such content may be omitted. The award must bear the signatures of the arbitrators and the seal of the arbitration institution. An arbitrator who dissents may choose whether to sign the award. The award becomes legally effective on the date of issuance. (See Articles 54 and 57 of the PRC Arbitration Law.)

Where the parties reach a settlement during arbitration, they may request the arbitral tribunal to render an award based on the terms of settlement (see Article 49 of the PRC Arbitration Law). If the tribunal facilitates successful mediation, it shall either issue a conciliation statement or render a consent award in accordance with the mediated terms. Both the conciliation statement and the arbitral award have the same legal effect (see Article 51 of the PRC Arbitration Law).

While the PRC Arbitration Law does not specify a statutory time limit for issuing an award, most arbitral institutions impose time limits in their arbitration rules. For instance, under the current CIETAC Arbitration Rules, tribunals are generally required to render an

award within six months of their constitution; simplified procedures require issuance within three months. For domestic arbitrations, the period is typically four months. Extensions may be granted with approval from the chairperson of the arbitration institution.

10.2 Types of Remedies

Chinese law does not impose specific statutory limitations on the types of relief that an arbitral tribunal may award. In practice, tribunals may grant a wide range of civil remedies upon the parties' request, including:

- monetary compensation;
- specific performance;
- termination of the contract;
- damages;
- declaratory relief regarding rights and obligations;
- restitution of property; and
- cessation of infringing acts.

Certain types of relief, however, are subject to statutory constraints. For instance, punitive damages are only available where expressly provided by law, such as under the Law on the Protection of Consumer Rights and Interests, which entitles consumers to seek punitive damages.

10.3 Recovering Interest and Legal Costs Interest

The arbitral tribunal is empowered to award interest at the request of a party and in accordance with applicable laws, regulations and contractual provisions. Interest is typically calculated based on the contractual agreement, statutory provisions, or the prevailing loan prime rate (LPR) published by the central bank of China (the People's Bank of China).

Legal Cost

An arbitral award is generally required to address the allocation of legal costs. According to the arbitration rules of major institutions, the arbitral tribunal typically has discretion to determine the proportion of legal costs to be borne by each party based on factors such as:

- the cause of the dispute;
- the outcome of the case;
- the complexity of the case;

- the actual workload of the parties and their counsel; and
- the amount in dispute.

The principle of "costs follow the event" is commonly applied.

Furthermore, if the parties have agreed in the contract that the losing party shall bear the prevailing party's legal costs, arbitral tribunals will generally uphold and enforce such provisions.

11. Review of an Award

11.1 Grounds for Appeal

In China, arbitration awards are final and binding, and there is no right to appeal the award. If a party is dissatisfied with the arbitration award, there are primarily two remedies available.

Application to Set Aside an Arbitral Award

If a party presents evidence proving that the award has one of the following circumstances, it may apply to the Intermediate People's Court at the location of the arbitration institution to set aside the award within six months from the date of receipt of the award (see Article 58 of the PRC Arbitration Law).

- There is no arbitration agreement.
- The subject matter of the award is not within the scope of the arbitration agreement, or the arbitration institution has no jurisdiction.
- The composition of the arbitral tribunal or the arbitration procedure violated statutory procedures.
- The evidence on which the award is based is forged.
- The opposing party concealed evidence sufficient to affect a fair award.
- The arbitrator engaged in bribery, corruption, partiality or made a perverse ruling during the arbitration.
- The people's court determines that the award violates public interest and shall order the award to be set aside.

The court may:

- reject the application to set aside the award;
- notify the arbitral tribunal to re-arbitrate; or
- set aside the award.

Application to the Court to Refuse Enforcement of the Arbitration Award

During the enforcement process of an arbitration award, if the party subject to enforcement provides evidence proving that there are statutory grounds for refusal of enforcement, it may apply to the enforcement court to refuse enforcement of the arbitration award.

Under the PRC Civil Procedure Law, grounds for refusal of enforcement include the following.

- The parties did not have an arbitration clause in the contract or failed to reach a written arbitration agreement subsequently.
- The subject matter of the award is outside the scope of the arbitration agreement, or the arbitration institution has no jurisdiction.
- The composition of the arbitral tribunal or arbitration procedure violated statutory procedures.
- The evidence on which the award is based is forged.
- The opposing party concealed evidence sufficient to affect a fair award.
- The arbitrator engaged in bribery, corruption, partiality or made a perverse ruling during arbitration.

If the court determines that enforcing the award violates social public interest, it shall also refuse enforcement.

11.2 Excluding/Expanding the Scope of Appeal

Parties cannot agree to exclude or expand the scope of appeal or challenge. Courts' review of arbitral awards is confined to a statutory scope, primarily focusing on the fairness of arbitration procedures, the authenticity of evidence, and whether the arbitration violates social public interests. This scope of review is mandatory and cannot be excluded, limited or expanded by agreement of the parties.

11.3 Standard of Judicial Review

Chinese courts apply a self-restrained and deferential standard of judicial review to arbitral awards. This means that courts do not conduct a de novo review of the merits of the case. Chinese courts will not re-examine the factual findings or legal determinations made by the arbitral tribunal, nor will they reassess evidence or correct discretionary errors made by the tribunal on substantive matters.

Chinese courts may only set aside arbitral awards on specific statutory procedural grounds or limited substantive grounds. For reference, see **11.1 Grounds for Appeal**.

12. Enforcement of an Award

12.1 New York Convention

China signed and ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") in 1987. Upon accession, China made two reservations: the reciprocity reservation and the commercial reservation.

- The Reciprocity Reservation – China will apply the New York Convention only to awards made in the territory of another contracting state on the basis of reciprocity.
- The Commercial Reservation – China will apply the New York Convention only to disputes that are considered contractual or non-contractual commercial disputes under Chinese law.

In addition, China has entered into special arrangements for the mutual enforcement of arbitral awards with the Hong Kong and Macao Special Administrative Regions, such as the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region (as amended in 2020) and the Arrangement Concerning Mutual Recognition and Enforcement of Arbitral Awards between the Mainland and the Macao Special Administrative Region. These arrangements enable mutual recognition and enforcement of arbitral awards between Mainland China and the Hong Kong and Macao SARs, further expanding the scope

of application of arbitral award enforcement in China's legal framework.

12.2 Enforcement Procedure Enforcement Procedure in China

In China, both domestic arbitral awards and foreign-administered arbitral awards that are deemed to be a Chinese award can be directly enforced by Chinese courts under the PRC Civil Procedure Law, without the need for a recognition process.

With respect to the determination of a Chinese arbitral award, Chinese judicial practice has undergone a shift from the “Institution Standard” to the “Seat Standard”.

- **Institution Standard** – In previous years, Chinese courts have ruled the nationality of an award in accordance with the nationality of the arbitration institution that administered the underlying arbitration. For example, an ICC arbitration award seated in China would be a French award, and the recognition and enforcement should be pursuant to the New York Convention.
- **Seat Standard** – For example, an ICC arbitration award seated in China would be a Chinese award and such an award would be enforced, confirmed or set aside in a Chinese court pursuant to Chinese laws, which reflects the current prevailing approach. The nationality of an award is determined by the seat of arbitration.

On the other hand, foreign arbitral awards must be recognised by a Chinese court before they can be enforced in China. The court shall handle the recognition and enforcement applications in accordance with international treaties such as the New York Convention or based on the principle of reciprocity.

Enforcing an award that has been set aside

An award that has been set aside by the courts in the seat of arbitration may not be enforced in China. According to the Annual Report on Judicial Review of Commercial Arbitration (2023) released by the Supreme People's Court of China on 9 September 2024, only three applications for recognition and enforcement of foreign arbitral awards were dismissed by Chinese courts in 2023, one being due to the fact

that the award had already been set aside by the courts in the seat of arbitration.

Enforcing an award subject to an ongoing set-aside proceeding

The court may adjourn its decision whether to enforce an award if an award is subject to an ongoing set-aside proceeding.

Sovereign immunity

Prior to the enactment of the Foreign State Immunity Law, due to China's commercial reservation under the New York Convention, international investment arbitration awards with foreign states as respondents and their assets as enforcement targets lacked enforcement basis in China.

Article 12 of the Foreign State Immunity Law and related notices provide clear legal basis and institutional guarantees for applying to Chinese courts for enforcement of international investment arbitration awards against foreign states and their assets.

12.3 Approach of the Courts

Chinese courts generally adopt a pro-enforcement stance towards the recognition and enforcement of arbitral awards. Courts will only refuse enforcement of arbitral awards rendered by foreign-related arbitral institutions seated in China under limited circumstances. For reference, see **11.1 Grounds for Appeal** and **11.3 Standard of Judicial Review**.

With respect to public policy, the SPC has adopted a cautious, restrained and conservative approach in the judicial review of arbitral awards. Invocations of “public policy” by the SPC have been rare and are typically confined to exceptional circumstances – such as when an award contravenes fundamental principles of Chinese law, undermines national sovereignty, or endangers public safety or social morality.

A case recorded in the SPC's public case database (Reference No 2024-10-2-463-001) provides further clarification on the interpretation of “public policy” in the context of recognising and enforcing foreign arbitral awards. According to the ruling of that case, Chinese courts shall apply the public policy exception under the New York Convention narrowly and with

caution. The court emphasised that refusal to enforce an award on the grounds of public policy shall be limited to situations where enforcement would seriously violate the fundamental principles of Chinese law, infringe upon national sovereignty, jeopardise public security, offend social morality, or undermine the fundamental interests of China's public order.

Chinese case law further confirms that a mere violation of mandatory provisions of Chinese law does not, by itself, constitute a breach of public policy. Relevant precedents include:

- [2003] Min Si Ta Zi No 3;
- [2001] Min Si Ta Zi No 12;
- [2013] Qingdao Fahai Fashang Chu Zi No 1032;
- [2010] Min Si Ta Zi No 18; and
- [2014] Rong Zhi Jian Zi No 5.

Similarly, the mere perception that an arbitral award is unfair does not satisfy the threshold for a public policy violation. See, for instance: [2008] Min Si Ta Zi No 48 and [2012] Min Si Ta Zi No 12.

In practice, Chinese courts primarily apply a “domestic public policy” standard, focusing on core principles of Chinese law, fundamental moral values, national sovereignty and public order. While international public policy is occasionally referenced in cross-border enforcement contexts, its application remains firmly rooted in domestic legal norms and socio-political considerations.

China's centralised and hierarchical reporting and review system for foreign-related and foreign arbitral awards – which requires lower courts to refer cases involving potential non-enforcement to the SPC – has further reinforced the uniform and narrow interpretation of the public policy exception.

13. Miscellaneous

13.1 Class Action or Group Arbitration

There is currently no legal basis for group arbitration under Chinese law. Although the arbitration rules of certain institutions – such as CIETAC – provide for the consolidation of arbitral proceedings, such mecha-

nisms differ in nature and scope from the concept of group arbitration. As for now, no regime comparable to group international commercial arbitration exists in China.

13.2 Ethical Codes

Ethical Codes for Lawyers

In China, lawyers are primarily governed by the Law of the People's Republic of China on Lawyers, as well as professional codes issued by the All China Lawyers Association (ACLA), including the Code of Professional Ethics and Practice Discipline for Lawyers and the Code of Conduct for Legal Practice. The core principles underpinning legal practice include:

- loyalty to the Constitution and laws;
- acting in the best interests of clients;
- maintaining confidentiality;
- diligence and competence; and
- upholding judicial integrity and fairness.

Ethical Codes for Arbitrators

The Arbitration Law does not contain explicit provisions on the ethical standards for arbitrators. Arbitrators' conduct is mainly regulated by codes of conduct and internal management rules adopted by individual arbitration institutions.

For example, the CIETAC Guidelines for the Assessment of Arbitrators' Conduct (as revised in 2023) set out key principles such as:

- independence and impartiality;
- diligence;
- integrity;
- confidentiality; and
- strict compliance with disclosure and recusal obligations.

Arbitrators found to be in breach of these standards may face disciplinary measures imposed by the arbitral institution, including:

- warnings;
- interviews;
- reduction of remuneration;
- suspension from handling cases; or
- removal from the panel list of arbitrators.

13.3 Third-Party Funding

China has yet to establish a unified legal framework governing third-party funding (TPF). In practice, TPF is generally regarded as a legitimate financing mechanism in the field of arbitration.

For example, the Beijing Fourth Intermediate People's Court's decision in case [2022] Jing 04 Min Te No 368 marked the first judicial precedent explicitly recognising the legality of third-party funding in arbitration. In recent years, platforms offering legal services akin to third-party funding have begun to emerge in China.

There are rules on TPF in arbitral institutions in China. For instance, CIETAC has incorporated disclosure obligations into its arbitration rules, requiring parties to disclose any funding arrangements in order to prevent potential conflicts of interest.

13.4 Consolidation

The PRC Arbitration Law does not explicitly provide for the consolidation of arbitral proceedings.

Major arbitration institutions such as CIETAC and SHIAC have established rules for consolidation under their respective arbitration rules. For instance, under Article 19 of the current CIETAC Arbitration Rules, CIETAC may consolidate two or more arbitrations pending under these Rules into a single arbitration if:

- all of the claims in the arbitrations are made under the same arbitration agreement;
- the claims in the arbitrations are made under the arbitration agreements in multiple contracts that consist of a principal contract and its ancillary contract(s), or involve the same parties as well as legal relationships of the same nature, or involve related subject matters, and the arbitration agreements in such contracts are identical or compatible; or
- all the parties to the arbitrations have agreed to the consolidation.

13.5 Binding of Third Parties

In principle, arbitration agreements and arbitral awards are binding only upon the signatory parties. However, under specific circumstances, third parties will be bound by an arbitration agreement or award. This extension primarily applies to surviving entities following a corporate merger or division, or heirs of a deceased party. These scenarios are explicitly set out in the SPC's Interpretation of the PRC Arbitration Law.

In addition, certain arbitration rules permit the joinder of third parties into arbitration proceedings upon the consent of all parties involved. For instance, Article 41 (5) of the 2024 Arbitration Rules of the SHIAC allows for such joinder.

Other common but more contentious scenarios in practice include:

- assignment of claims;
- subrogation by insurers;
- exercise of subrogation rights by creditors;
- shareholder derivative actions; and
- disputes involving guarantee contracts.

With respect to foreign third parties, Chinese courts may also bind them under the aforementioned conditions. Neither the applicable arbitration rules nor the SPC's Interpretation of the PRC Arbitration Law differentiate between domestic and foreign third parties in this regard.

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