

# Arbitration

*Contributing editors*

Gerhard Wegen and Stephan Wilske



2016

GETTING THE  
DEAL THROUGH 

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# Arbitration 2016

*Contributing editors*

Gerhard Wegen and Stephan Wilske

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## CONTENTS

<b>Introduction</b>	<b>7</b>	<b>China</b>	<b>82</b>
Gerhard Wegen and Stephan Wilske Gleiss Lutz		Shengchang Wang, Ning Fei and Fang Zhao Hui Zhong Law Firm	
<b>CEA</b>	<b>14</b>	<b>Colombia</b>	<b>91</b>
Pablo Poza and Ana Blanco Spanish Court of Arbitration		Alberto Zuleta-Londoño, Juan Camilo Fandiño-Bravo and Juan Camilo Jiménez-Valencia Cárdenas & Cárdenas Abogados	
<b>CEAC</b>	<b>17</b>	<b>Croatia</b>	<b>97</b>
Eckart Brödermann and Christine Heeg Chinese European Arbitration Centre Thomas Weimann Chinese European Legal Association		Zoran Vukić, Iva Sunko and Ana Pehar Vukić & Partners Ltd	
<b>DIS</b>	<b>22</b>	<b>Denmark</b>	<b>104</b>
Renate Dendorfer-Ditges DITGES PartGmbH		Peter Lind Nielsen and Morten Grundahl Bird & Bird Advokatpartnerselskab	
<b>European Court of Arbitration</b>	<b>26</b>	<b>Dominican Republic</b>	<b>110</b>
Mauro Rubino-Sammartano European Centre for Arbitration and Mediation		Fabiola Medina Garnes Medina Garrigó Attorneys at Law	
<b>HKIAC</b>	<b>29</b>	<b>Ecuador</b>	<b>118</b>
Paulo Fohlin Magnusson		Rodrigo Jijón Letort, Juan Manuel Marchán, Juan Francisco González and Javier Jaramillo Pérez Bustamante & Ponce	
<b>LCIA</b>	<b>32</b>	<b>Egypt</b>	<b>125</b>
Claire Stockford, Jane Wessel and Tom Stables Shepherd and Wedderburn LLP		Ismail Selim Khodeir and Nour in association with Al Tamimi and Company	
<b>The Polish Chamber of Commerce</b>	<b>35</b>	<b>England &amp; Wales</b>	<b>132</b>
Justyna Szpara and Maciej Łaszczuk Łaszczuk & Partners		Adrian Jones, Gordon McAllister, Edward Norman and John Laird Crowell & Moring LLP	
<b>Angola</b>	<b>38</b>	<b>Equatorial Guinea</b>	<b>143</b>
Agostinho Pereira de Miranda, Sofia Martins and Jayr Fernandes Miranda & Associados		Agostinho Pereira de Miranda and Sofia Martins Miranda & Associados	
<b>Austria</b>	<b>44</b>	<b>Finland</b>	<b>148</b>
Klaus Oblin Oblin Melichar		Tom Vapaavuori and Juha Ojala Bird & Bird Attorneys Ltd	
<b>Belgium</b>	<b>50</b>	<b>France</b>	<b>155</b>
Johan Billiet Billiet & Co Cecile Oosterveen Association for International Arbitration		Thomas Bevilacqua and Ivan Urzhumov Foley Hoag LLP	
<b>Brazil</b>	<b>60</b>	<b>Germany</b>	<b>165</b>
Hermes Marcelo Huck, Rogério Carmona Bianco and Fábio Peixinho Gomes Corrêa Lilla, Huck, Otranto, Camargo Advogados		Stephan Wilske and Claudia Krapfl Gleiss Lutz	
<b>Canada</b>	<b>67</b>	<b>Ghana</b>	<b>172</b>
John Judge and Daniel Dawalibi Arbitration Place		Kimathi Kuenyehia and Sarpong Odame Kimathi & Partners, Corporate Attorneys	
<b>Chile</b>	<b>75</b>	<b>Greece</b>	<b>180</b>
Paulo Román, Marta Arias and Rodrigo Donoso Aninat Schwencke & Cía		Antonios D Tsavdaridis Rokas Law Firm	
		<b>Hong Kong</b>	<b>188</b>
		Paulo Fohlin Magnusson	

<b>Hungary</b>	<b>196</b>	<b>Scotland</b>	<b>313</b>
Chrysta Bán Bán, S Szabó & Partners		Brandon Malone Brandon Malone & Company	
<b>India</b>	<b>203</b>	<b>Singapore</b>	<b>321</b>
Shreyas Jayasimha, Mysore Prasanna, Rajashree Rastogi, Spandana Ashwath and Sujaya Sanjay Aarna Law		Edmund Jerome Kronenburg and Tan Kok Peng Braddell Brothers LLP	
<b>Italy</b>	<b>215</b>	<b>Slovakia</b>	<b>330</b>
Cecilia Carrara Legance – Avvocati Associati		Roman Prekop, Monika Simorova, Peter Petho and Eduard Kutenic Barger Prekop sro	
<b>Japan</b>	<b>222</b>	<b>Spain</b>	<b>338</b>
Shinji Kusakabe Anderson Mōri & Tomotsune		Alberto Echarri Echarri & Brindle, Abogados	
<b>Korea</b>	<b>229</b>	<b>Sweden</b>	<b>346</b>
BC Yoon, Richard Menard and Liz (Kyo-Hwa) Chung Kim & Chang		Simon Arvmyren Sandart & Partners	
<b>Lithuania</b>	<b>237</b>	<b>Switzerland</b>	<b>353</b>
Ramūnas Audzevičius and Rimantas Daujotas Motieka & Audzevičius		Xavier Favre-Bulle, Harold Frey and Daniel Durante Lenz & Staehelin	
<b>Malaysia</b>	<b>244</b>	<b>Taiwan</b>	<b>360</b>
Foo Joon Liang Gan Partnership		Helena H C Chen Pinsent Masons LLP	
<b>Morocco</b>	<b>253</b>	<b>Tanzania</b>	<b>367</b>
Azzedine Kettani Kettani Law Firm		Wilbert Kapinga, Jacqueline Tarimo and Kamanga Kapinga Mkono & Co Advocates	
<b>Mozambique</b>	<b>260</b>	<b>Thailand</b>	<b>373</b>
Agostinho Pereira de Miranda, Sofia Martins and Filipa Russo de Sá Miranda & Associados		Kornkieat Chunhakasikarn and John Frangos Tilleke & Gibbins	
<b>Myanmar</b>	<b>266</b>	<b>Turkey</b>	<b>380</b>
Kelvin Poon, Min Thein and Daryl Larry Sim Rajah & Tann Singapore LLP		İsmail G Esin, Özgün Çelebi and Doğan Gültutan Esin Attorney Partnership	
<b>Nigeria</b>	<b>272</b>	<b>Ukraine</b>	<b>388</b>
Dorothy Udeme Ufot, SAN Dorothy Ufot & Co		Oleg Alyoshin and Yuriy Dobosh Vasil Kisil & Partners	
<b>Portugal</b>	<b>281</b>	<b>United Arab Emirates</b>	<b>397</b>
Sofia Martins and Pedro Sousa Uva Miranda & Associados		Robert Stephen and Laura Askew Herbert Smith Freehills LLP	
<b>Qatar</b>	<b>288</b>	<b>United States</b>	<b>404</b>
James Bremen, Christopher Humby and Gillian Carr Herbert Smith Freehills Middle East LLP		Jack Thomas, Arlen Pyenson and Randa Adra Crowell & Moring LLP	
<b>Romania</b>	<b>296</b>	<b>Venezuela</b>	<b>411</b>
Cristiana-Irinel Stoica, Andreea Micu and Daniel Aragea Stoica & Asociații		Fernando Peláez-Pier and José Gregorio Torrealba Hoet Pelaez Castillo & Duque	
<b>Russia</b>	<b>304</b>		
Ilya Nikiforov, Alexey Karchiomov and Svetlana Popova Egorov, Puginsky, Afanasiev and Partners			

# China

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## Laws and institutions

### 1 Multilateral conventions relating to arbitration

**Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?**

China is a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 1958 New York Convention). China acceded to the 1958 New York Convention on 22 January 1987 and it entered into force in China on 22 April 1987. When acceding to the Convention, China made reciprocity reservation and commercial reservation pursuant to article I of the Convention. Upon resumption of sovereignty over Hong Kong and Macao, the government of China extended the territorial application of the Convention to Hong Kong and Macao in 1997 and 2005 respectively.

China has signed bilateral arrangements on mutual recognition and enforcement of arbitral awards with Hong Kong SAR (2000) and Macao SAR (2007).

China is a contracting state to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention). China signed the Convention on 9 February 1990, deposited the ratification on 7 January 1993 and the Convention was effective in China from 6 February 1993. On 7 January 1993, China notified ICSID pursuant to article 25 (4) of the Convention that the Chinese government would only consider submitting to the jurisdiction of the ICSID disputes over compensation resulting from expropriation and nationalisation.

### 2 Bilateral investment treaties

**Do bilateral investment treaties exist with other countries?**

Up to 1 December 2015, China has concluded 129 bilateral investment treaties (BITs) and 19 other investment agreements (other IIAs). China is a contracting party to the China-Japan-Korea Agreement for the Promotion, Facilitation and Protection of Investment. This trilateral treaty became effective on 17 May 2014 in China and it provides a wide range of options to resolve the investment dispute, which, inter alia, includes ICSID arbitration and arbitration under the UNCITRAL Rules.

### 3 Domestic arbitration law

**What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?**

China's primary sources of law relating to arbitration are:

- the Civil Procedure Law (2013);
- the Arbitration Law (1994);
- the Contract Law (1999);
- the Law on the Applicable Law for Foreign-related Civil Relation (2011);
- the Supreme People's Court Interpretation of the Arbitration Law (2006); and
- the various judicial interpretations given by the Supreme People's Court with regard to arbitration.

The Civil Procedure Law and the Arbitration Law generally apply to both 'foreign-related' and domestic arbitrations. The concept of 'foreign-related' is defined by the Interpretation of the Supreme People's Court on Several Issues Concerning the Law Applicable to Foreign-Related Civil Relation (2012), according to which an arbitration is 'foreign-related' if any of the following conditions is met:

- either party or both parties are foreign citizens, foreign legal persons or other organisations or stateless persons;
- the habitual residence of either party or both parties is located outside the territory of China;
- the subject matter is located outside the territory of China;
- the legal fact that leads to establishment, change or termination of civil relationship happens outside the territory of China; or
- other circumstances under which the civil relationship may be determined as a foreign-related one.

### 4 Domestic arbitration and UNCITRAL

**Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?**

China's arbitration legislation is not based on the UNCITRAL Model Law, but the Model Law had a great influence on the Arbitration Law when the latter was drafted. The differences between the Arbitration Law and the UNCITRAL Model Law include the following:

- ad hoc arbitration is permissible under the Model Law, while it is not permitted to be conducted in mainland China under the Arbitration Law;
- the arbitrators have the power to rule their own jurisdiction under the Model Law, while the Arbitration Law delegates the power to arbitration commissions only;
- under the Model Law, the tribunal may grant interim measures at the request of a party. The Arbitration Law requires that the arbitration commission must forward a party's application for interim measures to a competent court for determination;
- the Model Law does not contain any provisions on combining mediation with arbitration. Under the Arbitration Law, the arbitral tribunal may mediate the case during the arbitration process; and
- under the Model Law, an arbitral award may be set aside or refused for enforcement by a court based on serious procedural irregularities only. The Arbitration Law imposes a crucial scrutiny on domestic arbitral award that may be set aside or refused to be enforced for both procedural irregularities and limited substantive reasons.

### 5 Mandatory provisions

**What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?**

In the case of arbitration seated in China, certain provisions contained in the Arbitration Law are mandatory and the parties are not allowed to deviate from the same. The following is an indicative list of such provisions:

- the arbitration agreement must be in writing (article 16);
- a valid arbitration agreement must contain the following three elements: the expression of the parties' wish to submit to arbitration; the matters to be arbitrated; and the arbitration institution selected by the parties (article 16);

- the validity of an arbitration agreement shall be decided either by an arbitration commission or by a court (article 20);
- for domestic arbitration, the qualification of an arbitrator must satisfy the minimum conditions laid down by article 13; and
- the arbitration commission must forward a party's application for interim protection measure as to evidence or property to the competent court (articles 28, 46 and 68).

## 6 Substantive law

### Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

For foreign-related arbitration, the parties may freely decide on the law applicable to the merits of the case. For domestic arbitration, the substantive law shall be the Chinese law.

The Law on the Applicable Law for Foreign-related Civil Relation (2011) sets out a number of useful rules according to which the judges or arbitrators may decide which law shall be applied if the dispute is foreign-related. For instance, it provides that if the parties do not choose the laws applicable to contracts by agreement, the laws at the habitual residence of the party whose fulfilment of obligations can best reflect the characteristics of this contract, or other laws that have the closest relation with this contract, shall apply (article 41). However, if the application of foreign laws will damage the social public interests of China, the laws of China shall apply (article 5).

The Interpretation of the Supreme People's Court on Several Issues Concerning Application of the Law on the Applicable Law for Foreign-Related Civil Relations (2012) contains numerous conflict rules of law guiding the choice of law on merits of the disputes.

## 7 Arbitral institutions

### What are the most prominent arbitral institutions situated in your country?

In China, the leading arbitration commissions handling foreign-related disputes are the China International Economic and Trade Arbitration Commission (CIETAC) (also called Arbitration Court of China Chamber of International Commerce) and China Maritime Arbitration Commission (CMAC). CIETAC and CMAC have been playing a dominant role in administering foreign-related commercial and maritime arbitration cases. In 2012, CIETAC's Shenzhen Sub-Commission and CIETAC's Shanghai Sub-Commission declared breaking away from CIETAC. Afterwards, they announced their establishment as two independent arbitration commissions (ie, Shanghai International Economic and Trade Arbitration Commission, also called Shanghai International Arbitration Center, or SHIAC) and South China International Economic and Trade Arbitration Commission (also called Shenzhen Court of International Arbitration (SCIA)).

Headquartered in Beijing, CIETAC has seven sub-commissions, located in Hong Kong, Shenzhen, Shanghai, Tianjin, Chongqing, Wuhan and Hang Zhou respectively. In addition, CIETAC has the Online Dispute Resolution Center and Grain Industry Arbitration Center. The CIETAC list of arbitrators comprises 1,212 arbitrators from over 30 countries. CIETAC Rules permit the parties to agree on the place of arbitration, the language of arbitration and the applicable law to dispute. The fees of arbitrators are collected in advance by CIETAC from the parties as part of deposit for arbitration fees and finally allocated to the arbitrators by CIETAC. CIETAC Hong Kong Arbitration Center collects the administrative fee and arbitrator's fee separately.

CIETAC's contact details are as follows:

CIETAC  
6/F, CCOIC Building, No. 2 Huapichang Hutong  
Xicheng District, Beijing 100035, China  
Tel: +86 10 6464 6688 / 8221 7788  
Fax: +86 10 6464 3500 / 8221 7766  
info@cietac.org  
www.cietac.org

Details on CMAC, SHIAC and SCIA are available at their official websites as follows:

- China Maritime Arbitration Commission: www.cmac-sh.org;
- Shanghai International Arbitration Center: www.shiac.org; and
- Shenzhen Court of International Arbitration: www.scietac.org.

The new CIETAC Arbitration Rules come into effect on 1 January 2015 to replace its old rules adopted in 2012. For the convenience of reporting, this chapter relies on the new 2015 CIETAC Rules.

In addition to CIETAC and CMAC, there are 233 more arbitration commissions located at major cities across mainland China. These arbitration commissions are independent from each other and their cases are primarily domestic. In 2015, the Beijing Arbitration Commission (BAC) also published its new Arbitration Rules, which became effective as from 1 April 2015. Details on Beijing Arbitration Commission are available on its website: www.bjac.org.cn.

## Arbitration agreement

### 8 Arbitrability

#### Are there any types of disputes that are not arbitrable?

The Chinese law requires that arbitration should be conducted between parties on equal footing. Articles 2 and 3 of the Arbitration Law are the primary provisions dealing with the issue of arbitrability. Both contractual disputes and tortious disputes are arbitrable if they occur between parties on an equal footing, related to economic interest and covered by the arbitration agreement.

Article 3 of the Arbitration Law lists two typical situations where the subject matters are non-arbitrable: disputes over marriage, adoption, guardianship, child maintenance and inheritance; and administrative disputes falling within the jurisdiction of the relevant administrative organs according to law.

Disputes over the validity of registered trademark and patent and disputes relating to monopoly agreement are generally not considered as arbitrable. However, disputes over copyrights and securities transactions may be resolved through arbitration.

### 9 Requirements

#### What formal and other requirements exist for an arbitration agreement?

The Arbitration Law provides that an arbitration agreement shall not be made orally and it must be in writing. The Contract Law (1999) stipulates that 'in writing' means a contract, letter or electronic message that is capable of expressing its contents in a tangible form (article 11). Incorporating an arbitration clause existing in another document or standing general terms and conditions can serve to satisfy the 'in writing' requirement. The parties cannot waive this requirement of an arbitration agreement. An arbitral award made with no written arbitration agreement is exposed to the risk of non-enforcement or being set aside.

Failure to meet the statutory requirement of the arbitration agreement can sometimes be cured if the party who could raise an objection does not object (for example, article 5 of the 2015 CIETAC Rules). When local or state entities engage in commercial transactions and conclude arbitration agreements, they are treated as parties on equal footing with their counterparts, therefore no requirement for co-signing or approval is imposed.

### 10 Enforceability

#### In what circumstances is an arbitration agreement no longer enforceable?

If the law applicable to an arbitration agreement is the Chinese law, an arbitration agreement must satisfy the statutory requirements in order to be valid and enforceable. Article 16 of the Arbitration Law specifies that an arbitration agreement must contain the following three elements:

- it must express an intention to submit disputes to arbitration;
- it must stipulate the matters to be arbitrated under the arbitration; and
- it must designate an 'arbitration commission' to resolve the dispute.



Accordingly, the Chinese law and practice have developed the following doctrines under which an arbitration agreement will be deemed as invalid or non-enforceable:

- the arbitration agreement is made orally and does not meet the 'in writing' requirement;
- the subject matter is non-arbitrable or exceeding the scope of arbitration provided by law;
- either or both parties to the arbitration agreements are incapable or restricted in civil acts;
- the arbitration agreement is signed by means of coercion;
- the parties concerned agree that they may either apply to an arbitration institution for arbitration or bring a lawsuit before the people's court for settlement of dispute;
- the arbitration agreement only stipulates the arbitration rules applicable to the dispute, and such arbitration rules cannot lead to indisputable designation of an arbitration institution;
- the arbitration agreement stipulates two or more arbitration institutions, and the parties concerned cannot agree upon the choice of one of the arbitration institutions;
- the arbitration institution agreed upon by the parties does not exist;
- the arbitration agreement deprives one party's right of appointing an arbitrator and thus results in obvious unfairness;
- the arbitration agreement formulates ad hoc arbitration to be conducted in mainland China; or
- the arbitration agreement refers the pure domestic disputes for arbitration outside China.

### 11 Third parties – bound by arbitration agreement

#### In which instances can third parties or non-signatories be bound by an arbitration agreement?

Generally, third parties are not bound by an arbitration agreement under the law. However, a non-signatory to an arbitration agreement may nevertheless be bound by the arbitration agreement in special circumstances.

The Supreme People's Court Interpretation of the Arbitration Law (2006) enumerates four scenarios where the third party is bound by the arbitration agreement unless otherwise provided by the law:

- assignment of rights or obligations: the arbitration agreement associated with such rights or obligations shall have a binding force upon the assignee;
- merge or split of an entity: the arbitration agreement shall be binding upon the successor;
- decease of a party: the arbitration agreement shall be binding upon the inheritor who inherits his rights and obligations; and
- compliance with the international treaty: the involved parties shall be regarded as admitting to arbitration in accordance with the arbitration provision in the international treaty.

The Bankruptcy Law (2006) recognises that the bankruptcy administrator may continue on behalf of the bankrupt enterprise to participate in the arbitration proceedings that are started before the application for bankruptcy is accepted by the people's courts.

### 12 Third parties – participation

#### Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

Historically, the joinder of a third party is very common in Chinese civil litigation but very rare in arbitration. However, the situation is changing with revision of arbitration rules by Chinese arbitration institutions.

The 2015 CIETAC Rules introduce new provisions allowing the joinder of additional parties under the same arbitration agreement to the existing arbitration proceedings. The admissibility of the joinder will be decided by either the arbitration institution or the arbitral tribunal after it hears from all parties including the additional party (article 18).

### 13 Groups of companies

#### Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

The group of companies doctrine is admitted in court litigation but not applicable to arbitration under Chinese law. The 'alter ego' or corporate veil piercing theory will overpass and go beyond the ambit of an arbitration agreement, thus the arbitral award rendered under such scenarios will be exposed to high risk of being setting aside or non-enforcement because of the lack of an arbitration agreement binding upon the non-signatory. A non-signatory of a group companies may have involved in the conclusion, performance or termination of a contract in dispute, but the behaviour of the group companies itself is not tantamount to concluding a written arbitration agreement.

### 14 Multiparty arbitration agreements

#### What are the requirements for a valid multiparty arbitration agreement?

The issue of multiparty arbitration or consolidation of arbitration is often addressed by the arbitration institution's rules of procedure.

The 2015 CIETAC Rules contain a significant number of rules regarding the multiparty arbitration as follows:

- Assumption of two sides only for each multiparty arbitration: there will be only two sides (ie, the claimant side and the respondent side) in a multiparty arbitration. If either side fails to jointly appoint or to jointly entrust the chair of CIETAC to appoint an arbitrator, the chair of CIETAC shall appoint all three members of the arbitral tribunal and designate one of them to act as the presiding arbitrator (article 29).
- Joinder of additional parties to the existing arbitration: during the arbitral proceedings, a party may apply to CIETAC to have an additional party join in its side (article 18.5).
- Consolidation of two or more arbitrations with multiple parties: CIETAC may decide to consolidate several separate arbitrations into one arbitration proceeding that was first commenced (article 19.2).
- Tests for consolidation of arbitrations: CIETAC may consolidate arbitrations if any of the following circumstances exists: (i) all of the claims in the arbitrations are made under the same arbitration agreement; (ii) the claims in the arbitrations are made under multiple arbitration agreements that are identical or compatible and the arbitrations involve the same parties as well as legal relationships of the same nature; (iii) the claims in the arbitrations are made under multiple arbitration agreements that are identical or compatible and the multiple contracts involved are constituted by a principle contract and its ancillary contract(s); or (iv) all the parties to the arbitrations have agreed to consolidation (article 19).

### Constitution of arbitral tribunal

### 15 Eligibility of arbitrators

#### Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

The Arbitration Law requires that all arbitrators shall be fair and upright persons (article 13). It provides that a Chinese national may not be appointed as an arbitrator unless he or she can satisfy at least one of the following requirements:

- has at least eight years' experience working in the field of arbitration;
- has at least eight years' experience working as a lawyer;
- has served as a judge for at least eight years;
- has a senior title in the legal research or legal education field; or
- has knowledge of the law and holds a senior title or has acquired an equivalent professional level in fields such as economic relations and trade.

Appointments of foreign nationals as arbitrators are subject to article 67 of the Arbitration Law that sets out relatively flexible criterion. There are no specific laws or rules that expressly prohibit retired judges from acting as arbitrators. The Supreme People's Court has imposed a stringent restriction on the incumbent judges who are forbidden to accept the invitation to be an arbitrator or to act as an arbitrator.

In accordance with article 13 of the Arbitration Law, each Chinese arbitration institution has established its list of arbitrators and the parties are required to select and appoint arbitrators from the lists of arbitrators (the closed panel approach). Meanwhile, a few arbitration institutions, for example CIETAC, BAC, SCIA and SHIAC, permit the parties to select and appoint arbitrators from outside the lists (the open panel approach).

Parties are permitted to stipulate, by agreement, requirements for arbitrators such as nationality, religion, gender, language or expertise.

## 16 Default appointment of arbitrators

### Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

The default appointment mechanisms set out by the Arbitration Law are twofold: first, the number of arbitrators of an arbitral tribunal shall be either one or three, no other number of arbitrators is lawful (article 30); secondly, if the parties fail to agree on a method for forming the arbitral tribunal or to appoint the arbitrators within the time limit specified in the rules of arbitration, the arbitrators shall be appointed by the chair of the arbitration commission (article 32).

Chinese lawmakers do not allow the court to intervene in the selection of arbitrators. Since no ad hoc arbitration is permitted in mainland China, the Chinese court will also not involve itself in, or assist with, the selection of an arbitrator.

## 17 Challenge and replacement of arbitrators

### On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

The Arbitration Law stipulates that the parties shall have the right to challenge an arbitrator on any one of the following grounds (article 34):

- the arbitrator is a party in the arbitration or a close relative of a party or of a party's counsel in the arbitration;
- the arbitrator has a personal interest in the case;
- the arbitrator has any other relationship with a party, or a party's counsel, in the case that may affect the impartiality of the arbitration; or
- the arbitrator has privately met with a party or a party's counsel, or accepted an invitation to entertainment or a gift from a party or a party's counsel.

The Arbitration Law provides that if a party challenges an arbitrator, it shall submit its challenge statement not later than the closing of the final hearing. The chair of the arbitration commission is empowered to decide whether the challenge should be approved.

Other than a successful challenge, the 2015 CIETAC Rules also provide that an arbitrator may be replaced in the following situations:

- the arbitrator being challenged voluntarily resigns;
- one party challenges an arbitrator and the other party agrees to the challenge; or
- an arbitrator is prevented de jure or de facto from fulfilling his or her duty.

These scenarios include illness, death or any other reason that prevents an arbitrator from continuing his or her work.

The parties may agree that the IBA Guidelines on Conflicts of Interest in International Arbitration be applied to arbitration.

## 18 Relationship between parties and arbitrators

### What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses of arbitrators.

In China, arbitration is viewed as a professional service rendered to the parties by arbitrators according to rules of law. Article 34 of the Arbitration Law requires that an arbitrator shall refrain from having any relationship with the party or the party's representative that may influence the impartiality and independence of that arbitrator. Almost all Chinese arbitration commissions have maintained their own codes of conduct for arbitrators.

Arbitrators are entitled to receive remunerations as well as compensation for actual costs and expenses occurred. The levels of remuneration are fixed by each arbitration institution according to its own internal standards, mostly unpublished. However, CIETAC Hong Kong Arbitration Centre and BAC recognise that the parties may agree on the levels of remuneration to arbitrators in international arbitration. The arbitrators' fees may be determined by agreed hourly rate or calculated based on the amount in dispute.

## 19 Immunity of arbitrators from liability

### To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

Article 38 of the Arbitration Law imposes sanctions on an arbitrator in two situations:

- where the arbitrator has privately met with a party or a party's counsel, or has accepted an invitation to entertainment or a gift from a party or a party's counsel, and the circumstances are serious; or
- while arbitrating the case, the arbitrator has accepted bribes, resorted to deception for personal gains or perverted the law in the ruling.

Under these circumstances, the Arbitration Law provides that the arbitrator concerned shall assume liability 'according to the law'. It is generally understood that the liability may include either civil liability or criminal liability, or even both.

As with a judge, an arbitrator who deliberately renders an award in violation of the law and against the facts may be charged with criminal liability of up to seven years' imprisonment under article 399 of the Criminal Code.

## Jurisdiction and competence of arbitral tribunal

### 20 Court proceedings contrary to arbitration agreements

#### What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

The Arbitration Law affirms the principle that a valid arbitration agreement may exclude court's jurisdiction over the same dispute. In case one party commences an action in a people's court without declaring the existence of the arbitration agreement and, after the court has accepted the case, the other party submits the arbitration agreement prior to the first oral hearing conducted by the court, the court shall dismiss the case unless the arbitration agreement is found to be null and void (article 26).

However, if the other party has not raised an objection to the court's acceptance of the case prior to the first oral hearing, the party shall be deemed to have waived its right of arbitration under the arbitration agreement and the court will continue to try the case (article 26 of the Arbitration Law).

### 21 Jurisdiction of arbitral tribunal

#### What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

Under the Arbitration Law, the arbitral jurisdiction is reserved for determination by either an arbitration institution or a people's court. The arbitration institution may also delegate its power to the arbitral tribunal. Upon authorisation from an arbitration institution, an arbitral tribunal may



either make a separate decision on jurisdiction during the arbitral proceedings, or incorporate the decision in the final arbitral award.

An objection to jurisdiction shall be raised in writing before the first oral hearing or before the respondent's submission of the first substantive defence if no hearing is to be held.

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## Arbitral proceedings

### 22 Place and language of arbitration

#### Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

The Arbitration Law is silent on the default rules for ascertaining the place and language of arbitration. These questions are deferred to the authority of relevant applicable rules of arbitration.

The 2015 CIETAC Rules stipulate that where the parties have agreed on the place of arbitration and the arbitration language, the parties' agreement shall prevail. Otherwise, CIETAC will make the decision where it deems proper and necessary taking the specialties of a case into account (articles 7 and 81). The arbitral award is deemed as having been made at the place of arbitration (article 7).

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### 23 Commencement of arbitration

#### How are arbitral proceedings initiated?

The Arbitration Law provides that the claimant shall submit the application for arbitration to the arbitration institution in order to commence the arbitration proceedings.

The application for arbitration must be in writing, and shall meet the following requirements (article 21):

- there is an arbitration agreement;
- there is a specific arbitration claim, with facts and reasons supported by evidence; and
- the application is within the scope of the arbitration commission's jurisdiction.

Copies of applications for arbitration and their annexes should be submitted in accordance with the number of arbitrators, plus one set for the arbitration institution as a record. The 2015 CIETAC Rules provide that the arbitration proceedings shall commence on the day on which CIETAC receives the application for arbitration (article 11).

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### 24 Hearing

#### Is a hearing required and what rules apply?

The Arbitration Law provides that arbitration shall be conducted by means of oral hearings. However, if the parties agree to arbitrate their disputes without oral hearings, the arbitral tribunal may render an arbitration award on the basis of written submissions and other materials without any oral hearings (article 39). A notice of oral hearing shall be served upon the parties in advance. The claimant's absence for the hearing may be deemed as having withdrawn its application, and the respondent's absence for the hearing will not prevent the arbitral tribunal from making an arbitral award by default (article 42).

The Arbitration Law is silent on the methods of holding an oral hearing. Article 35 of the 2015 CIETAC Rules makes the method clear by providing:

- fair treatment to the parties: the arbitral tribunal shall act impartially and fairly and shall afford a reasonable opportunity to both parties to present their case;
- flexible approaches: the arbitral tribunal may adopt an inquisitorial or adversarial approach in hearing the case with regard to the circumstances of the case;
- effective procedural management tools: the arbitral tribunal may issue procedural orders or question lists, produce terms of reference or hold pre-hearing conferences, etc;
- power of the presiding arbitrator: with the authorisation of the other members of the arbitral tribunal, the presiding arbitrator may decide on the procedural arrangements in his or her own discretion; and
- a convenient place of deliberation: the arbitral tribunal may hold deliberations at any place or in any manner that it considers appropriate.

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### 25 Evidence

#### By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

As a general principle, the Arbitration Law requires that the parties must furnish evidence to prove their allegations (article 43). Where an arbitral tribunal deems it necessary to collect further evidence, it may collect it on its own initiative (article 45).

The categories of admissible evidence are regulated by the Civil Procedure Law (2013) that enumerates the following: statements of the parties; documentary evidence; physical evidence; audio-visual materials; electronic data; testimony of witnesses; expert conclusions; and records of inquests. The above evidence must be verified before it can be taken as a basis for ascertaining the facts (article 63 of the Civil Procedural Law). The arbitral tribunals may decide on the admissibility, relevance and weight of the evidence.

In recent years, there has been an increasing tendency for the parties to agree on, and for the arbitral tribunal to apply or seek guidance from, the IBA Rules on the Taking of Evidence in International Arbitration.

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### 26 Court involvement

#### In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

An arbitral tribunal may expect Chinese courts' intervention in aid of arbitration in the following circumstances:

- ruling on the validity of an arbitration agreement: at request of a party the court may rule on the validity of an arbitration agreement;
- ordering to take interim measures on preserving evidence: where evidence is vulnerable to being destroyed or is likely to be lost and will be difficult to recover, the parties concerned may apply to the court for evidence preservation;
- ordering to take interim measures on preserving property: where, because of the acts of the other party or other reasons, the arbitration award cannot be enforced, or is hard to enforce, the parties concerned may apply for putting the assets or property under the court's custody; and
- ordering one party to conduct or not to conduct certain acts: the court may order a party to conduct or not to conduct certain acts for the purpose of enforcement or elimination of damages.

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### 27 Confidentiality

#### Is confidentiality ensured?

In general, commercial arbitration shall follow the principle of confidentiality. The individual rules of arbitration formulated by the arbitration institutions normally set out strict rules for confidentiality. Article 38 of 2015 CIETAC Rules provides that hearings shall be held in camera and all participants (the parties, their authorised representatives, witnesses, arbitrators, experts, appraisers and staff of the commission) in the arbitration shall not disclose to any outsider any substantive or procedural matters relating to the case.

An arbitral award under judicial enforcement will no longer enjoy the privilege of confidentiality since court hearings and judgments are generally open to the public.

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### Interim measures and sanctioning powers

### 28 Interim measures by the courts

#### What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Under the Chinese Law, there are three types of interim measures available for a party to seek from the people's court (ie, preservation of property, preservation of evidence and order to act or not to act). The revised Civil Procedure Law (2013) permits a party to apply for interim measures prior to initiating arbitration owing to urgent situations and upon providing a guarantee (article 101).

The competent people's courts, which have jurisdiction over an application for interim measures, are the courts where the preserved property or evidence or the domicile of the party against whom the application is sought is located.

### 29 Interim measures by an emergency arbitrator

**Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?**

CIETAC, SHIAC and BAC have adopted new rules of arbitration to set out special provisions regarding emergency arbitrators who may order interim measures. Under the 2015 CIETAC Rules, a party may apply to the Arbitration Court of CIETAC for urgent interim relief pursuant to the CIETAC Emergency Arbitrator Procedures (Appendix III). The president of the Arbitration Court will decide on the application and appoint an emergency arbitrator within one day of the advance payment being paid in full. The salient features of CIETAC emergency arbitrator procedures can be summarised as follows:

- flexibility of proceedings: the emergency arbitrator shall conduct the proceedings in the manner that the emergency arbitrator considers to be appropriate;
- precondition for interim measures: the emergency arbitrator may order the applicant to provide guarantees as a precondition to taking emergency measures;
- scrutiny of the orders: the emergency arbitrator or an arbitral tribunal formed later may modify, suspend or terminate the order made by the emergency arbitrator; and
- binding force of the orders: the emergency arbitrator may order necessary or appropriate emergency measures. The order of the emergency arbitrator shall have binding force on both parties.

### 30 Interim measures by the arbitral tribunal

**What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?**

Subject to the restrictive provisions of Chinese law, an arbitral tribunal has very few options to order interim protection measures. Nevertheless, the arbitral tribunal may order some other sorts of interim measures that are beyond the court's exclusive domain. For instance, an arbitral tribunal may issue an interlocutory award ordering sale of perishable goods, inspection and test run of equipment in dispute, audit of accounting records, or suspension or prevention of a party from carrying on certain conduct during the process of the arbitration. Unless otherwise agreed by the parties, an arbitral tribunal will not order one party to deposit security for costs for another party.

### 31 Sanctioning powers of the arbitral tribunal

**Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?**

Under Chinese law, there is no express provision pursuant to which an arbitral tribunal may impose sanctions on the recalcitrant parties or their counsel who use guerrilla tactics to delay or obstruct arbitration proceedings. However, the parties are free to introduce any rules or guidelines, such as the IBA Guidelines on Party Representation in International Arbitration, into their arbitration agreement to govern the arbitration proceedings.

An alternative means to sanction the guerrilla tactics available for an arbitral tribunal is to adjust the allocating proportion of costs by exercising its discretionary power under the relevant arbitration rules. Article 52 of the 2015 CIETAC Rules allows an arbitral tribunal to decide the allocation of costs based on the principle of reasonableness. Article 51 of the 2015 BAC Rules expressly empowers an arbitral tribunal to decide that the additional costs resulting from any delay to the arbitral proceedings shall be borne by the party responsible for causing the grounds for challenge. Owing to lack of support by laws or procedural rules, the Chinese arbitration institutions or arbitral tribunals do not have the power to impose sanctions on a party's counsel for any conduct that infringes the integrity of the arbitration proceedings.

### Awards

#### 32 Decisions by the arbitral tribunal

**Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?**

Where a case is examined by an arbitral tribunal composed of three arbitrators, the arbitral award shall be made in accordance with the opinion of the majority of the arbitrators. If the arbitral tribunal is unable to form a majority opinion, the arbitral award shall be made in accordance with the opinion of the presiding arbitrator (article 53 of the Arbitration Law). Chinese Law does not require that an arbitral award be made by unanimous vote, which may sometimes create a deadlock in the decision-making process. The validity, finality and enforceability of an arbitral award will not be affected if an arbitrator dissents.

#### 33 Dissenting opinions

**How does your domestic arbitration law deal with dissenting opinions?**

The 2015 CIETAC Rules add that written opinions of dissenting arbitrators shall be docketed into the file kept by CIETAC and may be appended to the arbitral award. The written dissenting opinions are not considered as forming a part of the arbitral award (article 49).

#### 34 Form and content requirements

**What form and content requirements exist for an award?**

The Arbitration Law provides that an arbitral award must specify the nature of the claim, the facts of the dispute, the reasons for the decision, the result of the award, the allocation of arbitration costs and the date of the award. If the parties agree that they do not wish the facts of the dispute and the reasons for the decision to be specified in the arbitral award, these items may be omitted in the award. The arbitral award must be signed by the arbitrator who decides the dispute and affixed with the stamp of the arbitration institution (article 54). The dissenting arbitrator may have a choice to sign or not to sign on the arbitral award.

If the arbitral award is made in accordance with a settlement agreement reached by the parties through a successful mediation, either conducted by an arbitrator-turned-mediator or by any other neutrals, the arbitral award is categorised as a consent award. For a consent award, the facts of the dispute and the reasons on which the award is based may not be stated in the award (article 49 of 2015 CIETAC Rules).

#### 35 Time limit for award

**Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?**

The Arbitration Law does not set out any time limit within which an arbitral award must be rendered. This issue is normally dealt with by the relevant arbitration rules.

In practice, the time limit for making award may vary depending upon the types of arbitral procedure. For an ordinary arbitration procedure, the 2015 CIETAC Rules state that an arbitral tribunal shall render an award within six months from the date the arbitral tribunal is formed (article 48). In summary procedure, the time limit is three months (article 62), and for domestic arbitration, the time limit is four months (article 71). The president of the Arbitration Court of CIETAC may, at the request of an arbitral tribunal, extend the time period if the president considers it truly necessary and the reasons for the extension truly justified. An extension of the time limit does not require the parties' consent for avoidance of any possible deadlock.

#### 36 Date of award

**For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?**

The Arbitration Law provides that a written arbitral award shall become legally effective from the date it is made (article 57). The date of making an award is usually clearly stated in the arbitral award and a tribunal may

correct typographic or calculation errors or omissions on its own initiative. A party may also make a request for a correction of award within 30 days of its receipt of the award.

The Arbitration Law prescribes that if a party wishes to apply for setting aside an arbitral award, the party must do so within six months from the date of its receipt of the award (article 60). An application exceeding the prescribed time limit may lead to rejection of the application by the court.

### 37 Types of awards

#### What types of awards are possible and what types of relief may the arbitral tribunal grant?

The Arbitration Law has prescribed that both partial awards (article 55) and final awards (article 54) are final and have binding force on the parties. In addition, a consent award is also final and enforceable.

An arbitral tribunal under CIETAC rules may make an order on interim protection measures according to the applicable law (article 23), or make a decision on jurisdiction if the tribunal is authorised to do so by CIETAC (article 6). An emergency arbitrator may make an order on interim measures as well (article 23 and Appendix III). The order or decision made by an arbitral tribunal or an emergency arbitrator has binding force on the parties concerned according to the applicable law.

A wide range of remedies are available to arbitrators. Generally, every remedy available in litigation is available in arbitration as well. The remedies often granted by arbitral tribunals include declaratory relief, specific performance, damages or monetary compensation.

### 38 Termination of proceedings

#### By what other means than an award can proceedings be terminated?

In China, the arbitration proceedings are normally terminated by a final arbitral award (including a consent award) or by a decision made either by an arbitration institution or by an arbitral tribunal.

In the case of a lack of arbitral jurisdiction, an arbitration institution shall make a decision to terminate the arbitration proceedings.

Under the 2015 CIETAC Rules, a case shall be dismissed if the claim and counterclaim have been withdrawn in their entirety (article 46). The dismissal decision will effectively terminate the arbitration proceedings.

An arbitral tribunal may decide to terminate arbitration proceedings on its own initiative if it finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

### 39 Cost allocation and recovery

#### How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

The Arbitration Law contains no provision on cost allocation for arbitration. This issue is dealt with by the relevant arbitration rules.

The 2015 CIETAC Rules have provided useful guidelines for an arbitral tribunal to consider thereon. In general, a Chinese arbitral tribunal tends to adopt the principle that the costs follow the event to allocate the cost liability between the parties. In this regard, an arbitral tribunal has the power to determine in an arbitral award that the losing party shall compensate the winning party for the expenses reasonably incurred by it in pursuing the case. If a party wins in part and loses in part, an arbitral tribunal may allocate the costs in proportion to the outcome. By so doing, an arbitral tribunal enjoys a fairly broad discretionary power to make proper decision.

The recoverable costs awarded to a winning party may include administrative fees, arbitrators' fees, attorneys' fees, in-house fees and costs, costs of witnesses, appraiser's fees, travel expenses and other reasonable costs.

### 40 Interest

#### May interest be awarded for principal claims and for costs and at what rate?

The issue of interest normally falls within the scope of substantive law and an arbitral tribunal may award it at request of one or both parties. Very often, the arbitral tribunals seated in mainland China award with simple or compound interest on principal claims, calculated from the date due until the date of actual payment.

According to the Civil Procedure Law (2013), if a party fails to fulfil its obligation to pay the money within the time limit specified in an arbitral award, that party is obliged to pay double interest on the debt for the belated payment (article 253). The Supreme People's Court interpreted in 2014 that the interest on the debt for the belated payment shall be calculated according to the method stated in the award plus additional interest at the rate of 0.0175 per cent per day.

### Proceedings subsequent to issuance of an award

#### 41 Interpretation and correction of awards

##### Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The Arbitration Law provides that, if there are clerical or calculation errors in an arbitration award, or if matters that have been decided by an arbitral tribunal are omitted in the arbitration award, the arbitral tribunal shall correct or supplement the award on its own initiative. Within 30 days after receipt of the arbitral award, any party may request the arbitral tribunal to make the correction (article 56). The correction constitutes a part of the award and supersedes the part in error. There is no express provision for an arbitral tribunal to issue interpretation of an arbitral award.

#### 42 Challenge of awards

##### How and on what grounds can awards be challenged and set aside?

The Arbitration Law provides that a court that has the exclusive jurisdiction over setting aside an arbitral award is the intermediate people's court where the arbitration institution is domiciled (article 58). The court may rule to set aside an award on any of the grounds enumerated by law at the request of a party, or rule to nullify an arbitral award if the court finds *ex officio* that the award is contrary to the social public interest (ie, public policy).

The grounds for setting aside an arbitral award vary depending upon the nature of the award. Chinese law gives a bifurcated treatment towards pure domestic arbitration and foreign-related arbitration.

A court may rule to set aside a domestic arbitral award if a party can furnish evidence to prove that there exists any of the following circumstances (article 58 of the Arbitration Law):

- there is no agreement for arbitration;
- the matters awarded are out the scope of the arbitration agreement or are beyond the limits of authority of an arbitration commission;
- the composition of the arbitral tribunal or the conduct of arbitration proceedings violates the procedures prescribed by law;
- the evidence on which the award is based is forged;
- evidence that has sufficient impact on the impartiality of an award has been discovered as having been concealed by the opposite party; or
- arbitrators have accepted bribes, resorted to deception for personal gains or perverted the law in the award.

A court may rule to set aside a foreign-related arbitral award if a party can furnish evidence to prove that there exists any of the following circumstances (article 70 of the Arbitration Law):

- the parties concerned have not stipulated an arbitration clause in the contract or have not subsequently reached a written agreement for arbitration;
- the applicant is not duly notified to appoint the arbitrator or to proceed with the arbitration, or the applicant fails to state its opinions owing to reasons for which the applicant is not held responsible;
- the composition of the arbitral tribunal or the conduct of arbitration proceedings is not in conformity with the rules of arbitration; or
- matters for arbitration are out of the scope of the arbitration agreement or are beyond the limits of authority of the arbitration commission.

The court shall form a collegiate bench to hear the application. Where any of the aforesaid grounds should be found, the arbitral award shall be ruled to be set aside. The time limit for a party to apply for setting aside an award is six months starting from the date of receipt of the award. During the process of setting aside, the court may afford the arbitral tribunal an opportunity to re-arbitrate the disputes at issue and render a new award in substitution of the original award, otherwise the court may proceed to set aside the original award if the arbitral tribunal declines to re-arbitrate (articles 59–61 of the Arbitration Law).



#### 43 Levels of appeal

**How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?**

The Civil Procedure Law stipulates that the ruling to set aside or to refuse enforcement of an arbitral award cannot be appealed (article 154). In lieu of an appeal, the Supreme People's Court issued judicial interpretations to set up a level-by-level report mechanism in 2008 to the effect that the Supreme People's Court shall have a final say on whether or not an arbitral award shall be set aside if the arbitral award is one that is foreign-related. The level-by-level report mechanism is an internal procedure within the court system, so it does not cause additional costs to the parties. This mechanism does not apply to a pure domestic arbitral award.

#### 44 Recognition and enforcement

**What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?**

The Arbitration Law sets out a general obligation on parties to comply with an arbitral award. If a party fails to comply with the award, the successful party is entitled to apply for enforcement of the award.

The grounds for refusal of enforcement of an arbitral award vary depending upon the nature of an arbitral award. Generally, there are six types of arbitral awards that may be sought for enforcement in mainland China and the grounds for refusal of enforcement are contained in different sources of law as follows:

- the arbitral award under the 1958 New York Convention (Convention award): article V of the 1958 New York Convention;
- the arbitral award of a foreign country that is not a contracting state to the 1958 New York Convention (non-Convention award): article 238 of the Civil Procedure Law that requires that the enforcement shall be pursued under the principle of reciprocity;
- the arbitral award made in Hong Kong SAR or Macao SAR: the Supreme People's Court Interpretations on recognition and enforcement of Hong Kong arbitral awards (2000) or Macao arbitral awards (2007);
- the arbitral award made in Taiwan region: according to the Supreme People's Court Stipulation on Recognition and Enforcement of Arbitral Award Made in Taiwan Region (2015);
- the foreign-related arbitral award made in mainland China: identical to those for setting aside a foreign-related arbitral award made in mainland China (article 71 of the Arbitration Law, article 274 of the Civil Procedure Law); and
- the pure domestic arbitral award made in mainland China: identical to those for setting aside a domestic arbitral award made in mainland China (article 237 of the Civil Procedure Law).

The level-by-level report mechanism set up by the Supreme People's Court with its judicial interpretation in 1995 applies to non-enforcement of foreign-related arbitral awards, foreign arbitral awards and arbitral awards made in Hong Kong, Macao and Taiwan regions. According to the mechanism, only after the Supreme People's Court has agreed in a written reply that an intermediate people's court may issue its ruling to refuse enforcement. It is widely recognised that the report-level-by-level mechanism is centralised and effective in combating against potential local protectionism.

The procedural requirements for enforcement of an arbitral award can be summarised as follows:

- application is made to the people's court in the place where the party against whom the enforcement is sought is domiciled or where the property subject to enforcement is located;
- documents to be submitted include a written application for enforcement, original or notarised and authenticated copies of the arbitral award and arbitration agreement, proof of the applicant's identity and valid power of attorney;
- fees and expenses for enforcement are paid in deposit; and
- the time limit for submission of an application for enforcement is two years, commencing from the last date of voluntary compliance prescribed by the arbitral award or, failing that, from the date that the arbitral award becomes binding.

#### Update and trends

The jurisdictional controversy arising from the split of CIETAC continues to be a hot topic in 2015. On 15 July 2015, the Supreme People's Court promulgated its 'Notice of Reply to Questions Raised by the Shanghai Municipal Higher People's Court et al Relating to Judicial Review of Arbitral Awards Involving the China International Economic and Trade Arbitration Commission and Its Former Sub-commissions'. According to the Notice of Reply, SCIA and SHIAC enjoy jurisdiction over cases under arbitration agreements that refer to CIETAC sub-commissions in Shenzhen or Shanghai and that were concluded before SCIA and SHIAC changed their names (22 October 2012 and 8 April 2013, respectively), and CIETAC takes all other cases where the parties have agreed to arbitration by its sub-commissions. The Notice of Reply not only ends the uncertainty on jurisdiction issues arising from the CIETAC split, but also signals that SHIAC and SCIA are arbitration bodies independent from and equal to CIETAC.

Another significant breakthrough is that the Hong Kong International Arbitration Centre (HKIAC) established the HKIAC Shanghai Representative Office in China (Shanghai) Pilot Free Trade Zone on 19 November 2015. The launch of HKIAC's Shanghai office marks the beginning of a new chapter of arbitration in mainland China, since it is the first time an offshore arbitration institution has set up a formal presence on the mainland. It is expected that more foreign arbitration institutions will enter into the Chinese market in the near future. The flexibility and resilience of China's arbitration law will be put to the test.

#### 45 Enforcement of foreign awards

**What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

The Chinese courts will generally not recognise and enforce arbitral awards that have been set aside by the courts at the place of arbitration. However, no case has been reported in which a Chinese court did not recognise and enforce an arbitral award that had been nullified at the place of arbitration.

#### 46 Enforcement of orders by emergency arbitrators

**Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?**

The Arbitration Law does not contain a provision on emergency arbitration. It is generally understood that a Chinese court will not enforce the orders made by emergency arbitrators. The arbitration rules of CIETAC, SHIAC and BAC have provisions for emergency arbitrators, which only state that the orders given by emergency arbitrators shall have binding force on the parties. Compulsory enforcement of the orders is not mentioned.

#### 47 Cost of enforcement

**What costs are incurred in enforcing awards?**

The costs for recognition and enforcement of an arbitral award are calculated and paid to the enforcing court according to the Measures on the Payment of Litigation Costs (2007) formulated by the State Council of the PRC.

The fees chart is the following:

Amount/value to be executed (yuan)	Fees (yuan)
No monetary amount or value involved	50 to 500
Less than 10,000	50
10,001 to 500,000	50 plus 1.5% of the amount above 10,000
500,001 to 5 million	7,400 plus 1% of the amount above 500,000
5,000,001 to 10 million	52,400 plus 0.5% of the amount above 5 million
More than 10,000,001	77,400 plus 0.1% of the amount above 10 million

**Other****48 Judicial system influence****What dominant features of your judicial system might exert an influence on an arbitrator from your country?**

The Chinese legal system belongs to the civil law system and arbitration in China shares a number of common characteristics with litigation in court. In practice, arbitrators and judges intend to take an inquisitorial approach to hear the cases. The duration of oral hearings is usually short but concentrated, and judges or arbitrators often offer to mediate the disputes in order to help the parties settle. Judges and arbitrators give a great weight on the documentary evidence that has been produced and examined at hearings. Employees or officers of the parties may testify, but normally they appear before the arbitral tribunals in the capacity of arbitration agents authorised by the parties, and their counsel alike. If the parties agree in their arbitration agreements that US-style discovery shall be employed, an arbitral tribunal is bound to honour the parties' agreement.

**49 Professional or ethical rules applicable to counsel****Are specific professional or ethical rules applicable to counsel in international arbitration in your country? Does best practice in your country reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?**

There are a number of laws and rules that contain professional or ethical rules applicable to counsel in international arbitration in China. Article 35 of the Law on Lawyers (1997) provides that a lawyer shall not commit

any acts in his or her practice activities, such as privately meeting with an arbitrator in violation of relevant regulations, providing false evidence, concealing facts, obstructing the opposing party's lawful obtaining of evidence, disrupting the order of an arbitral tribunal or interfering with the normal conduct of arbitration activities. Similar guidelines are given by Lawyers' Professional Ethics and Practice Disciplines (2001) formulated by All China Lawyers Association and the Codes of Conduct of CIETAC Arbitrators (2009). To a large extent, the best practice in China has reflected that embraced by the IBA Guidelines on Party Representation in International Arbitration.

**50 Regulation of activities****What particularities exist in your jurisdiction that a foreign practitioner should be aware of?**

After China's accession to WTO, the State Council of the PRC formulated the Regulation on Administration of Foreign Law Firms' Representative Offices in China (2001), which provides that the activities of a representative office of a foreign law firm and its representatives may not encompass Chinese law affairs. The Ministry of Justice clarified in 2002 that 'Chinese law affairs' include expression in arbitration activities in the name of attorney, of attorney opinions or comments on application of Chinese law or facts involving Chinese law. In practice, when arbitrating in China and where the Chinese law is the applicable law to the disputes, foreign lawyers will normally hire or be accompanied by local Chinese-qualified and practising lawyers to represent their clients at hearings.



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