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I. Swiss Federal Supreme Court Rejects China's Request to Set Aside an Arbitral Award under China-UK BIT

In a decision dated 17 April 2025, the Swiss Federal Supreme Court ("FSC") dismissed China's request to set aside an arbitral award on jurisdiction in the investor-state arbitration case (FSC Case No. 4A_46/2024) under the 1986 China-UK Bilateral Investment Treaty ("China-UK BIT"). This decision highlights key procedural and substantive aspects relevant to arbitral award challenges under Swiss law, particularly regarding jurisdictional decisions and newly discovered evidence.

- **Background of the Arbitration**

The dispute began in 2019, when Mr. Jason Yu Song, a British national, commenced arbitration against China through the Permanent Court of Arbitration (PCA Case No. 2019-39), with Geneva as the seat of arbitration. Yu Song alleged that China unlawfully expropriated his investment in Shanxi Province.

China raised three main jurisdictional objections, asserting that Yu Song had abusively obtained British nationality solely for the purpose of pursuing arbitration (treaty shopping), the investment did not meet legality requirements stipulated by the China-UK BIT, and the underlying share transfer was illegal.

On December 30, 2021, the Tribunal rejected China's jurisdictional objections and affirmed its jurisdiction. The Tribunal concluded that Mr. Yu Song's nationality was valid, his investment in China was legitimate and protected, and China's allegations of illegality lacked sufficient evidence.

- **China's Subsequent Request for Reconsideration**

On January 23, 2024, China petitioned the FSC to set aside the jurisdictional award. At the same time, China also requested the Tribunal to reconsider its decision. The Tribunal rejected this request on April 12, 2024.

Subsequently, on October 4, 2024, China filed a second application with the FSC to set aside the award, invoking a criminal judgement issued on June 4, 2024 by the Intermediate People's Court of Yulin City, Shaanxi Province, which China claimed to be relevant to the arbitration. China also requested that this new application be consolidated with its earlier set-aside proceedings. In a decision dated October 9, 2024, the FSC rejected the consolidation request, holding that the two applications concerned different factual and legal circumstances.

- **Legal Framework and FSC's Reasoning**

China's request to the FSC to set aside the jurisdictional award was based on three pieces of newly discovered evidence: (1) a witness testimony dated October 9, 2023, acknowledging that the previous testimony in the arbitration was incorrect; (2) an email dated December 12, 2021; and (3) a document titled "Undertaking". The latter two documents purported to evidence that Yu Song acquired British nationality solely for arbitration purposes.

Under Article 190a(1)(a) of the Swiss Federal Act on Private International Law ("PILA"), an arbitral award may be challenged if new significant facts or decisive evidence come to light after the award has been issued, provided such facts or evidence existed prior to the award but could not have been presented earlier despite due diligence. Crucially, PILA explicitly excludes evidence created post-award and imposes a stringent 90-day filing deadline upon discovery of such evidence.

Applying Article 190(a) of the PILA to China's submission, The FSC rejected it on two procedural grounds. First, while the witness testimony dated October 9, 2023 was timely submitted, the FSC concluded it was inadmissible because it was created after the award was issued (*true novum*). Secondly, regarding the email and the "Undertaking", the FSC found China's submission inadequate due to the vagueness regarding the precise discovery date, thereby failing to meet the critical 90-day procedural deadline requirement set forth under Article 190a of the PILA. Given these procedural failures, the FSC concluded that China had neither complied with the time limits required by PILA nor submitted admissible evidence justifying reconsideration of the Tribunal's jurisdictional decision.

- **Conclusion**

The FSC's decision is not surprising. Any new evidence submission with the purpose to set aside an arbitral award must be subject to strict conditions: the evidence must have existed before the award was rendered and must have been undiscoverable despite due diligence. The logic is easy to understand: the parties were given sufficient opportunities to submit evidence substantiating their cases, based on which the case is heard and decided by the tribunal. As a result, a party cannot be allowed to create ex post facto evidence to unfairly better its legal position after the issuance of the arbitral award. It would irreparably jeopardize the integrity of the arbitral proceedings. In addition, in the event of discovery of new evidence that truly existed before the award, the parties must rigorously adhere to procedural deadlines, as any ambiguity could result in the dismissal of their claims.

II. The Shanghai International Commercial Court Issued the First Nationwide Injunction Supporting Interim Measures in International Arbitration

On May 14, 2025, the Shanghai International Commercial Court issued an investigation order in direct support of interim measures granted by an arbitral tribunal of the Shanghai International Economic and Trade Arbitration Commission (SHIAC). This case marks the first instance where a PRC court issuing an investigation order to enforce an interim measure decision in international commercial arbitration.

- **Background: Evidentiary Challenges in a Cross-Border Dispute**

The underlying dispute involved a data services agreement among a Hong Kong company, a foreign company, and a Chinese company based in Jiangxi. The core legal issue was whether a valid contract had been formed, which required identifying the identities of the parties' representatives who had communicated via WeChat.

During the proceedings, the parties were unable to obtain the necessary account registration data in WeChat, and a direct request by the arbitral institution to the third-party information holder working for WeChat was also rejected. This evidentiary obstacle brought the arbitral proceedings to a deadlock.

- **The Tribunal's Interim Measure Decision**

After applying the SHIAC arbitration rules regarding interim measures, the arbitral tribunal determined that the requested information constituted key evidence necessary for resolving the dispute. Consequently, the tribunal formally issued an interim measure decision approving the application to investigate and collect evidence. The tribunal later submitted this interim measure decision and relevant

supporting materials to the Shanghai International Commercial Court via its "one-stop" platform for international commercial disputes.

- **The Court's Decision and Rationale**

After a thorough review, the Shanghai International Commercial Court approved the application. The Court's reasoning was threefold: **Firstly**, the evidence sought was relevant and necessary for resolving the core dispute in the arbitration. **Secondly**, both the parties and the arbitral tribunal had made efforts to collect the evidence but were unable to do so on their own. **Thirdly**, the arbitral tribunal's interim measure decision was made in accordance with its rules and standard international practice, which provides a solid basis for the Court's decision.

Based on this rationale, and pursuant to the *Trial Measures of the Shanghai High People's Court on Issuing Investigation Orders to Assist in Arbitral Investigation and Evidence Collection*, the Court issued a formal investigation order to compel the production of the evidence.

- **Enforceability of Interim Measures from Foreign Arbitral Institutions**

While the Shanghai decision is a significant step forward for domestic arbitration, the framework for enforcing interim measures from foreign arbitral institutions remains unchanged. Notably, interim measures issued by foreign arbitral institutions, such as the International Chamber of Commerce (ICC) and the Singapore International Arbitration Centre (SIAC), are not directly enforceable in mainland China. PRC law currently does not recognize foreign-seated tribunals' authority to grant enforceable interim relief domestically. Instead, parties must initiate a separate application for preservation orders before a competent PRC court under the PRC Civil Procedure Law, and the success of such an application is not guaranteed. Such a differentiation in treatment of interim measures issued by domestic and international institutions

created a de facto bias against international arbitration institutions in China.

- **The Unique Position of HKIAC**

In contrast, the Hong Kong International Arbitration Centre (HKIAC) is uniquely positioned according to *Article 3 of the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region*. Under this Arrangement, parties to HKIAC-administered arbitrations seated in Hong Kong may apply to PRC courts for interim measures. This mechanism presumably provides a route for obtaining enforceable interim relief within mainland China. However, according to Wenfei's very own and recent experiences, this route can be time consuming and thus not immediately helpful where urgent interim measures are sought.

- **Conclusion**

The Shanghai International Commercial Court's decision points to a positive direction. However, the legal basis is a local Shanghai regulation and it was made in support of a mainland-administered arbitration. Thus, this ruling does not alter the overall still uncertain or even biased landscape for arbitrations administered by foreign institutions seated outside mainland China. Moreover, it is worth noting or even alarming that even though the tribunal have been given the power to investigate and collect evidence under many major institutional rules, the reality remains that the tribunal's power rings hollow without the support of the state court.

III. Private Sector Promotion Law

On April 30, 2025, the 15th Session of the Standing Committee of the 14th National People's Congress voted to pass the Private Sector

Promotion Law (“the Promotion Law”), which came into effect on May 20, 2025. As China's first specialized legislation focusing on the development of the private sector economy, the law comprises 9 chapters and 78 articles, introducing comprehensive institutional measures aimed at fostering the growth of the private sector economy, including foreign-invested enterprises (“FIEs”). In this publication, we will briefly introduce you to the key content of the Law.

- **A Fair Market Competition Environment**

Articles 10 and 11 implement a unified negative list system, which applies equally to domestic private enterprises and FIEs, aiming to ensure transparency in market access for sectors open to foreign investment. Market regulatory authorities are responsible for accepting and addressing reports of violations of the fair competition review system, as well as rectifying policies and measures that hinder fair competition.

Article 15 emphasizes that anti-monopoly enforcement agencies must prevent and curb monopolistic practices, investigate cases where administrative power excludes competition, and provide a favourable market environment for private sector entities.

- **New Regulatory Approaches**

To address the shortcomings of traditional regulatory models, Article 52 introduces a tiered and categorized regulatory mechanism. Market regulatory authorities will adopt a differentiated supervisory approach based on the credit status of enterprises. Additionally, a cross-departmental joint inspection will be established to achieve integrated inspections that cover multiple items. Article 54 proposes improving systems for dishonesty penalties and credit restoration, allowing eligible private enterprises to apply for the removal of penalties.

- **Convenient Services**

Article 48 requires registration authorities to provide standardized and efficient services for business establishment, modification, and cancellation. It explicitly supports the voluntary transformation of individual businesses into enterprises and establishes a multi-departmental coordination mechanism to facilitate such transitions. Article 30 provides safeguards for participation in standard-setting, mandating that market regulatory authorities provide private enterprises with technical support, quality certification, and inspection testing. Article 33 specifically enhances intellectual property protection by implementing punitive compensation systems.

- **Administrative Law Enforcement Practices**

In response to enterprises' concerns about law enforcement, Article 50 requires that enforcement activities minimize disruption to normal business operations. Article 51 emphasizes proportionality between penalties and violations, as well as error tolerance. Article 64 strictly regulates cross-regional law enforcement, explicitly requiring the establishment of a law enforcement assistance system and prohibiting the abuse of enforcement power for economic gains.

- **Conclusion**

In summary, the Private Sector Promotion Law is expected to establish a positive framework for private sector development. However, its practical impact remains uncertain. Past experience shows that although the regulation framework is well-developed, the corresponding enforcement departments, such as the Administration for Market Regulation and the court enforcement departments, remain uneven in their competence, making it difficult to achieve a fully effective and efficient implementation of the rule of law. Similar

measures have often failed to ensure genuine equality. Therefore, while the law is a welcome step, its true test lies in implementation.

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