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The Arbitration Law of the PRC (2025 Revision)

I. Introduction

On September 12, 2025, China formally promulgated *the Arbitration Law (2025 Revision)* (the “**New Arbitration Law**”), which will take effect on March 1, 2026. This revision marks the first comprehensive overhaul of China’s arbitration framework since the original 1994 enactment, moving beyond the partial amendments adopted in 2009 and 2017. The New Arbitration Law comprises 8 chapters and 96 articles.

In this publication, we will outline its most important changes, analyze their practical implications for arbitration in China, and provide some guidance, particularly for foreign-invested enterprises (the “**FIEs**”).

II. Efficiency-driven Revisions

Article 11: Equal Legal Effect for Online and Offline Arbitration

Article 11 of the New Arbitration Law is a completely new provision, stipulating: *"Arbitration activities could be conducted online via information networks, unless the parties explicitly express disagreement. Arbitration activities conducted online via information networks have the same legal effect as offline arbitration activities."*

Article 11 confirms that online proceedings hold the same validity as offline hearings, resolving prior legal uncertainties. However, it preserves procedural choice by requiring offline arbitration if either party objects.

For FIEs in China, this provides significant convenience, especially when key personnel who must attend the proceedings are located abroad. Our experience in recent years also indicated an increasing recognition and adaptation of virtual hearings in international arbitration. However, for disputes concerning complex factual/technical background or cases with significant economic or political implications, the tribunal sometimes still prefer the participants to attend physically.

Article 27: Broader Recognition of Arbitration Agreement Forms

Article 27 of the New Arbitration Law adds that: *"If one party claims the existence of an arbitration agreement when applying for arbitration, and the other party does not deny it before the first hearing, it shall be deemed that there is an arbitration agreement between the parties upon the arbitral tribunal's reminder and recording."*

Under this article, if a claimant asserts an agreement and the respondent fails to object before the first hearing, the tribunal will deem an agreement to exist, thereby accepting jurisdiction. A critical safeguard requires the tribunal to formally prompt and record this waiver of objection, a procedural step that sets a higher standard and may be closely examined by courts.

Article 39: Expanded Interim Measures

The former Arbitration Law only provided for property preservation and evidence preservation, without stipulating act preservation, nor were there provisions regarding pre-arbitration preservation. In the absence of these rules, there was uncertainty about whether a court could issue act preservation orders in arbitration proceedings.

Article 39 of the new law allows parties to apply for act preservation, in addition to evidence and property preservation and enables them to apply for such preservation measures before arbitration commences.

However, it is noteworthy that the power to grant interim measures still remains firmly with the court and has not been delegated to arbitral tribunals which substantially deviates from the regular practices in international arbitration, i.e. the arbitral tribunal should be the competent body to review the relevant application and issue the requested interim measures.

Article 43: Enhanced Party Autonomy in Appointing Presiding Arbitrator

Article 43 of the New Arbitration Law enhances party autonomy in appointing the presiding arbitrator by introducing a more flexible procedure. It permits a method commonly used in international practice whereby the two party-

appointed arbitrators may jointly select the third (presiding) arbitrator. This expands the options beyond the former approaches, which were limited to a joint appointment by the parties or delegation of the appointment to the arbitration institution's director.

Article 72: Shorter Time Limit for Applying to Set Aside an Arbitral Award

The New Arbitration Law shortens the time limit for applying to set aside an arbitral award **from 6 months to 3 months**. This urges parties to exercise their right to recourse promptly after the award is made, thereby resolving disputes more quickly.

III. Explicit Recognition of the “Seat of Arbitration”

Article 81 formally codifies the “seat of arbitration” as the basis for determining the applicable governing law and the court of jurisdiction for the arbitration proceedings, unless the parties have otherwise agreed on the applicable governing law for the arbitration proceedings.

Historically, for example, the 2024 CIETAC Rules (Article 7) provided that an arbitral award is deemed to be made at the seat of arbitration, indicating that the nationality of the award is determined by reference to the seat of arbitration. Article 81 now formally codifies this longstanding practice on legislative level, eliminating any possible remaining doubts.

Specifically, this article clarifies the role of the seat of arbitration in 2 key aspects:

- A clear hierarchy for determining the seat.

Under the New Arbitration Law, the rules for determining the seat follow this order: first, by party agreement; if silent, by the agreed arbitration rules; and if both are also silent, by the arbitral tribunal. The added tier allows the tribunal to determine a seat that best facilitates fair and efficient dispute resolution.

- The seat is no longer a mandatory requirement for a valid arbitration agreement.

Article 81 moves away from the rigid prior requirement that an arbitration agreement must specify a seat to be valid. Instead, it enables a flexible, rule-based mechanism for determining the seat, directly resolving the past issue where arbitration agreements could be invalidated solely for failing to name a seat. However, since the judicial practice in China had for a very long time embraced the rigid rule of “no seat, no agreement”, it remains advisable to include an expressly agreed seat in arbitration agreement entered into with PRC counterparties and/or before PRC arbitration institutions.

IV. Ad Hoc Arbitration in Foreign-Related Disputes

Article 82 introduces "ad hoc arbitration", allowing its use for "foreign-related maritime disputes" or “foreign-related disputes” between enterprises in "free trade pilot zones, the Hainan Free Trade Port, and other areas specified by the state."

However, such “ad hoc arbitration” remains only available to very limited disputes (foreign related maritime disputes/foreign related disputes) between very limited eligible participants (companies within certain free trade zones and ports). Moreover, while Article 82 introduces ad hoc arbitration, it does not grant the tribunal the power to issue interim measures. Instead, such power is exclusively vested in the court.

The newly introduced “ad hoc arbitration” is therefore not equivalent to the internationally recognized ad hoc arbitration practices, but seems more to be a pilot program suited PRC participants to have a more familiar platform to have their dispute arbitrated partly similar to international arbitration practices but partly still under the possible intervention of PRC courts.

V. Mandatory Disclosure of Potential Conflicts by Arbitrators

While major domestic arbitration institutions have long set disclosure requirements in their institutional rules, Article 45 elevates these duties to the statutory level, ensuring greater clarity and uniformity.

Article 45 explicitly stipulates that an arbitrator must promptly disclose in writing to the arbitration institution any circumstances that are likely to give

rise to **justifiable doubts** as to his/her impartiality or independence, and the arbitration institution must inform the parties of such disclosures together with the tribunal's composition, in writing.

As PRC arbitration practices offer very limited interpretation on what constitutes “justifiable doubts”, in practice much reliance has to be placed on established international arbitration practices, such as IBA Guidelines or guidelines published by specific arbitration institutions.

VI. Strengthened Power for Tribunal to Collect Evidence

In practice, it is often difficult for an arbitral tribunal to collect evidence on its own. Article 55 clarifies that the arbitral tribunal could request relevant entities to provide assistance in investigating and collecting evidence.

Article 55 serves as a procedural safeguard to reduce information dissymmetry. However, this power is discretionary, and tribunals may sometimes be reluctant to use it without clear guidance on proper procedures and standards.

VII. Conclusion

The New Arbitration Law presents both opportunities and challenges for international arbitration participants. It undoubtedly represents a significant modernization of China's arbitration regime and an attempt towards aligning with international norms. Reforms such as the explicit validity of online proceedings, the strengthened independence of arbitration agreements and the introduction on the legislative level of the seat of arbitration are poised to enhance China's attractiveness as a seat for international commercial dispute resolution.

However, the New Arbitration Law is a package deal that comes with persistent systemic features and new uncertainties. The most significant limitation remains the exclusive jurisdiction of Chinese courts over interim measures. Furthermore, while the expansion of ad hoc arbitration is a landmark change, its confinement to specific zones and foreign-related disputes, coupled with the mandatory filing requirement and the aforementioned court monopoly on interim measures, signals a cautious, controlled experimentation. The

transparency of these new rules still requires real-world verification. Therefore, arbitration participants should exercise particular care in drafting arbitration clauses, selecting a seat of arbitration and planning preservation strategies.

The New Arbitration Law opens doors, but walking through them requires a map drawn with a clear-eyed view of both the opportunities and the enduring constraints of the Chinese legal system. Wenfei is well-positioned to guide you through this new terrain, helping you to structure dispute resolution strategies that leverage the reforms while mitigating their inherent risks.

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