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International Arbitration Focus Team
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The People's Republic of China's arbitration law reform: a cautious step towards arbitration friendliness

Broader scope of foreign-related arbitration, including ad hoc arbitral proceedings; focus shift from administering institution to seat of arbitration; arbitrators' duty of disclosure; *Kompetenz-Kompetenz*; arbitration by tacit consent; new judicial interim measures in support of arbitration; shorter time limit for applications to set aside arbitral awards.

I. Introduction

The People's Republic of China ("**PRC**") has become one of the most important arbitration hubs worldwide. According to the 2025 International Arbitration Survey conducted by Queen Mary University of London, Beijing ranks fourth among the preferred seats of arbitration, Shenzhen ranks sixth, and Shanghai ranks eighth. Furthermore, the China International Economic and Trade Arbitration Commission (CIETAC) rules are the sixth most used set of arbitration rules globally.[1]

On 1 March 2026, the revised PRC Arbitration Law, enacted on 12 September 2025 ("**New Law**"), came into effect and replaced the Arbitration Law that had been adopted in 1994 (in effect since 1995) and lightly amended in 2009 and 2017 ("**Former Law**"). The New Law introduces several key changes to the Chinese arbitration regime, which is indicative of a shift towards a more arbitration-friendly approach. This newsletter analyses some of the most relevant innovations.

[1] https://www.qmul.ac.uk/arbitration/research/2025-international-arbitration-survey/.

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II. Broader scope of foreign-related arbitration, including *ad hoc* arbitral proceedings

The Former Law operated on a two-track system, distinguishing between purely domestic arbitration and foreign-related arbitration. The latter was governed by a dedicated set of provisions in Chapter VII, which applied to "disputes arising from foreign-related economic relations and trading, transport and maritime activities" (Art. 65).[2] The New Law significantly amends Chapter VII. The key amendments are outlined below.

First, the New Law broadens the scope of "**foreign-related arbitration**" to include "other foreign-related disputes" (**Art. 78**). However, because no statutory definition of foreign-related arbitration exists, reference is made to caselaw, pursuant to which the foreign-related character of an arbitration is to be assessed by reference, *inter alia*, to (i) whether either party is a **foreign national**, (ii) whether either party is domiciled **outside the PRC**, (iii) where the subject matter of the dispute is located, and (iv) where **the facts** that gave rise to the dispute occurred.

Second, the **set-aside and the opposition** to the enforcement of foreign-related awards are now governed by **Arts. 83 and 84** of the New Law, respectively, which envisage a comprehensive and self-contained framework that breaks ties with the general provisions of the PRC's Civil Procedure Code.

Third, whereas under the Former Law all arbitral proceedings had to be administered by an arbitral institution, **Art. 82** of the New Law introduces the possibility of ***ad hoc* arbitral proceedings**. This is, however, subject to significant cumulative limitations, including: (i) the dispute must be either "a foreign-related maritime dispute" or "a foreign-related dispute between enterprises established and registered in a free trade pilot zone approved by the State Council, a free trade port in Hainan, or any other region specified by the State"; (ii) the PRC must be the place of arbitration; (iii) the arbitration agreement must be in writing; (iv) the arbitration tribunal will be composed of persons who meet the conditions set out in the New Law to practise as arbitrators; and (v) within three working days after its constitution, "the arbitral tribunal shall […] file the names of the parties, the place of arbitration, the composition of the arbitral tribunal and the arbitration rules with the Arbitration Association", an entity comprising Chinese arbitration institutions endowed with supervisory functions that has yet to be established.[3]

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[2] All translations from the original Mandarin text are unofficial.

[3] Art. 25 of the New Law.

III. Focus shift from administering institution to seat of arbitration

The **seat** of arbitration is of paramount importance in international arbitral proceedings. It determines, among other things, the mandatory rules governing the arbitration proceedings and which court has supervisory jurisdiction on it, including the power to rule on applications to set aside the arbitral award.

In contrast, the Former Law contained no provisions on the seat of arbitration. It only stipulated that applications to set aside arbitral awards were to be heard by the "intermediate People's Court of the same region where the Arbitration Commission is located". In practice, the location of the Arbitration Commission served as a reference point for determining the nationality of arbitral awards, an approach that frequently led Chinese courts to classify awards rendered by foreign institutions in China-seated arbitrations as non-domestic awards. With the New Law, this paradigm has begun to shift.

Although it applies to only foreign-related arbitrations (Chapter VII of the New Law), **Art. 81** introduces a **new criterion** for determining the **nationality of the arbitral award**: "the arbitral award is deemed to have been made at the place of arbitration". Therefore, and irrespective of the nationality of the arbitral institution, the seat of arbitration "will be the basis for determining the law applicable to the arbitration proceedings and the court of jurisdiction".

Additionally, any reference to 'Arbitration Commission' has been replaced with the broader term 'arbitral institution', which "includes arbitration commissions, arbitration courts, and other institutions established in accordance with the law" (Art. 89). In the context of foreign-related arbitration, this term also encompasses "foreign arbitration institutions".[4]

As to the **determination of the seat**, Art. 81 establishes a **three-tiered framework**: (i) reference must be made to the written agreement of the parties; (ii) in the absence of an agreement or where it is ambiguous, the seat of arbitration will be determined "in accordance with the **arbitration rules** agreed upon by the parties"; and (iii) failing the above, the arbitral tribunal will determine the seat having regard to "the **circumstances of the case** and in accordance with the principles of facilitating the settlement of disputes".

To summarise, by selecting the seat of arbitration, the parties can influence and predict the procedural framework of the arbitration, and which court has jurisdiction to hear applications to set aside the arbitral award.

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[4] Art. 86(2) of the New Law reads: "According to the needs of economic and social development and reform and opening-up, foreign arbitration institutions may, in accordance with relevant State regulations, be permitted to establish business institutions in free trade pilot zones, the Hainan Free Trade Port, and other areas approved by the State Council to conduct foreign-related arbitration activities".

As far as **foreign awards** are concerned, the New Law introduces a provision, **Art. 88**, which is specifically dedicated to "arbitral awards rendered outside the territory of the People's Republic of China that have become legally effective and require recognition and enforcement by the People's Courts". The application to **enforce** these awards may be brought directly to the **intermediate People's Court** ("at the domicile of the person subject to enforcement or the place where its property is located"), which will hear the application "in accordance with international treaties concluded or acceded to by the People's Republic of China".
Notably, the PRC is a signatory of the 1958 **New York Convention**. Put simply, how Art. 88 applies depends on the place where the award was rendered, in line with the new seat-centric framework applicable to foreign-related arbitration.

IV. Arbitrators' duty of disclosure

The selection of arbitrators is among the most consequential decisions in any arbitration. However, the Former Law addressed only the withdrawal of arbitrators, without stipulating any duty to disclose information capable of raising suspicions of conflicts of interest. This heightened the risk that arbitral proceedings might be conducted in the presence of undisclosed conflicts of interest, thus jeopardising the validity and enforceability of the resulting award.

While retaining substantially the same grounds for withdrawal,[5] the New Law introduces a **new provision (Art. 45) that imposes an express duty of disclosure on arbitrators**. Under this provision, an arbitrator who "is in a situation that might cause the parties to have reasonable doubts about his or her independence or impartiality" is required to "promptly disclose in writing to the arbitral institution".

Although Art. 45 does not enumerate the specific circumstances that trigger the disclosure obligation, the reference to "reasonable doubts" is a call for caution, implying that arbitrators should decide what to disclose based on the optics of the circumstance from the parties' perspectives, irrespective of whether an actual conflict of interest exists.

This duty aligns the New Law with international standards and significantly enhances the legitimacy and efficiency of arbitral proceedings, particularly with a view to avoiding (successful) challenges to arbitrators and awards.

[5] Art. 46 of the New Law reads: "An arbitrator must withdraw, and the parties will have the right to apply for recusal, if he/she: (1) is a party or agent in the case, or a close relative of a party or agent in the case; (2) has an interest in the case; (3) has other relationships with a party or agent in the case, which might affect fair arbitration; or (4) privately meets with a party or agent, or accepts hospitality or gifts from a party or agent".

V. *Kompetenz-Kompetenz*

A tenet of international arbitration is that arbitral tribunals may rule on their own jurisdiction (*Kompetenz-Kompetenz* principle). Nevertheless, this principle was not part of PRC law. Indeed, Art. 20 of the Former Law stipulated that the validity of an arbitration agreement could only be submitted to either "the Arbitration Commission" (i.e., the institution administering the proceedings) or "the People's Court", but not to an arbitral tribunal.

Conversely, **Art. 31 of the New Law empowers arbitral tribunals to decide "on the validity of the arbitration agreement"**. However, this is only assuming that all parties agree to leave this determination to arbitrators, as either party may obtain that it be referred to the People's Court instead. In any event, any challenge to an arbitral tribunal's jurisdiction must be raised promptly before it no later than the first hearing.

VI. Arbitration by tacit consent

Although the requirements for the validity of arbitration agreements remain unchanged,[6] **Art. 27** of the New Law now expressly stipulates that arbitral jurisdiction may be based on the parties' **implied consent**. For this to occur, however, it is not sufficient for one party to pursue arbitration based on an alleged arbitration agreement and for the other not to raise any jurisdictional objection by the first hearing: the arbitral tribunal must also **remind the parties** (including the party against which arbitration is brought) and record the matter. In this case, the arbitral tribunal "will consider that an arbitration agreement exists between the parties".

VII. New judicial interim measures in support of arbitration

Like the Former Law, the New Law does not empower arbitral tribunals to issue interim measures. Therefore, these measures remain within the **jurisdiction of state courts**. However, two changes were introduced:

- First, the range of **available interim measures has been expanded**. In addition to property[7] and evidence[8] preservation, **Art. 39** of the New Law now allows either party to "apply for an order requiring the other party to perform certain actions, or an order prohibiting the other party from performing certain actions".

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[6] See Art. 16 of the Former Law and Art. 27(1) of the New Law, both of which require: (i) an expression of intent to submit to arbitration; (ii) the matters to be referred to arbitration; and (iii) the choice of an arbitration institution (formerly referred to as an arbitration commission).

[7] Property preservation was already available under Art. 28 of the Former Law.

[8] Evidence preservation was already available under Arts. 46 and 68 of the Former Law.

- Second, interim measures are now available also **before arbitral proceedings are initiated**. This applies to all categories of measures in the case of urgency.[9]

VIII. Shorter time limit for applications to set aside arbitral awards

Art. 59 of the Former Law stipulated that an application to set aside arbitral awards could be filed within six months of receiving the arbitral award, which **Art. 72** of the New Law **reduces this time limit to three months**. The time limit for the issuance of a decision remains unchanged at two months (Art. 73).

IX. Conclusion

The New Law marks a significant step in the modernisation of the PRC arbitration framework, bringing it closer to the prevailing international standards, particularly with respect to arbitrators' duty of disclosure and the seat of arbitration.

Conversely, the New Law does not break away from tradition in that it retains a degree of diffidence towards arbitration, to the potential detriment of PRC's attractiveness as a seat of arbitration in the eyes of international arbitration users. This is exemplified by the precedence still broadly given to courts in assessing the validity of arbitration agreements and the fact that interim measures remain beyond the powers granted to arbitral tribunals.

[9] See Arts. 39(2) and 58(2) of the New Law.

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