2025 New Chinese Arbitration Law: Improvements Made and To Be Further Made

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I. Introduction

On September 12, 2025, the newly revised Arbitration Law (hereinafter New Arbitration Law) of the People's Republic of China (hereinafter "PRC") was adopted by the Standing Committee of the National People's Congress (hereinafter as "SCNPC") with the subsequent promulgation by the President of PRC, and will take effect on March 1, 2026. The New Arbitration Law features novelties such as the introduction of "arbitration seat", limited liberalization of *ad hoc* arbitration, enshrining online arbitration, a higher threshold for eligibility of arbitrator, and a shorter duration for applying for annulment of arbitral award from six months to three months. Nonetheless, some articles of the New Law leave room for further discussion. This article combs through the history of revision, delves into the highlights and remaining gaps of the New Arbitration Law, and provides insights into its significance for the development of commercial arbitration in Mainland China from the perspective of an arbitration practitioner in Mainland China.

II. A Snapshot of The Revision History

Since the enactment of the Arbitration Law in 1995, commercial arbitration in Mainland China has undergone overwhelming development from a blank slate to a non-ignorable hub in the arena of international arbitration. Nonetheless, for nearly three decades, the PRC Arbitration Law itself was left largely untouched, receiving only minor revisions to keep pace with other legislation in 2009 and 2017 (hereinafter collectively as the Old Arbitration Law).

On 30 July, 2021, a Draft Amendment to the Arbitration Law (hereinafter as 2021 Draft) released by the Ministry of Justice sparks the overhaul of arbitration legal framework, making it more in line with the common practice in international

commercial arbitration such as the UNCITRAL Model Law by embedding competence-competence principle, tribunal's power over interim relief, extension of arbitration agreements, etc., while a long-term silence emerged in the subsequent three years with no further official documents.

However, the first amendment draft issued on 4 November 2024 (hereinafter as 1st Draft) by SCNPC had given rise to controversies and generated criticism, as many of the novelties and reformative features aligning Chinese arbitration with the international standards as set out in the 2021 version were removed, including the abovementioned two articles concerning the non-signatory issues.

The 1st Draft gave rise to strong criticisms from the circles of research and practice[i]. Nonetheless, some articles concerning foreign-related arbitration, *inter alia*, auxiliary proceedings for *ad hoc* arbitration by the court of the seat were retained.

On 1st May, 2025, the Second Draft Amendment (hereinafter as 2nd Draft) was issued, even though one of the most controversial proposed clauses was removed, inter alia, Art. 23 (3) in the 1st Draft, endowing the administrative bureau with the power to fine arbitration institutions, the conservative stance remained unchanged. After that, the New Arbitration Law was enacted in mid-September of 2025 with minor revisions compared to the 2nd Draft.

As there have been plenty of comments making comparisons between the New Arbitration Law and the former version of the Arbitration Law, with a myriad of appreciations[ii], this article brings into focus the substantial differences between the adopted version and the working drafts to offer a more neutral and objective comment.

III. Revisions Concerning Arbitration Agreement: Breakthroughs and Limits

1. Revisions on the Formality and Substance of the Arbitration Agreement

Generally, the New Law retains the written-form requirement and the parties shall fix an arbitral institution. In case of any ambiguity about the arbitration institution, the parties shall reach a supplementary agreement subsequently,

failing which the arbitration agreement will be rendered null and void as stipulated in Article 27 (1) and Article 29 of the New Arbitration Law. This promulgation is identical to that in the Old Arbitration Law[iii].

However, there are two novelties as to the arbitration agreement:

First, there is the implied consent to arbitrate by conduct *as per* Article 27 (2) of the New Arbitration Law, where the implied consent can be deemed to be reached if: (1) one party pleads the existence of an arbitration agreement when filing the Request of Arbitration; (2) the other party fails to object the existence of arbitration agreement before the first hearing on merits; (3) the silence is recorded in writing after express notice by the tribunal. The provision is in line with arbitral practice that tribunals routinely inquire parties' opinions on the jurisdiction and record via the minutes of hearing, while it is nuanced with the conduct-based estoppel as set out in Article 7 Section (5) (option I) of the 2006 UNCITRAL Model Law on International Commercial Arbitration[iv](hereinafter as UNCITRAL Model Law) where the implied consent is reached through exchange of statements of claim and defence, in other words, there will be no implied consent to arbitrate under Article 27 (2) in document-only hearing. The New Arbitration Law also sets up a higher threshold for implied consent by adding to the tribunal's obligation to notice and record, which is not found in the corresponding part of the 1st Draft.

Second, the recognition of *ad hoc* arbitration to a limited extent. Under the new law, *ad hoc* arbitration is permitted only for:(i) foreign-related maritime disputes; or(ii) foreign-related commercial disputes between enterprises registered in the Pilot Free Trade Zone permitted by the PRC State Council, Hainan Free Trade Port or other districts permitted by relevant regulations. This scope is therefore drastically narrower than the promulgation in the 2021 Draft and the 1st Draft, which allowed for *ad hoc* arbitration in "foreign-related cases"[v]. Moreover, arbitrators of *ad hoc* proceedings must satisfy the statutory qualification requirements applicable to institutional arbitrators, superseding the looser requirement for "arbitrators engaging in foreign-related arbitration" as set out in the 1st Draft[vi].

Crucially, the New Law deletes the seat court's power to assist arbitration through the appointment of an arbitrator when the parties to *ad hoc* arbitration

fail to agree upon the constitution of the tribunal (Art. 92 of the 1st Draft), and the deposit of the award by *ad hoc* tribunal (Art. 93 of the 1st Draft). Instead, the New Arbitration Law only stipulates that the tribunal must file a notice with the China Arbitration Association (which is yet to be established) within three working days upon its constitution. With the auxiliary role of the judiciary being vastly weakened, without the icebreaking function of the judiciary, the *ad hoc* proceedings will confront a grave challenge while deadlock arises, in particular where the parties are uncooperative as to the designation of arbitrators.

2. Introduction of the Arbitral Seat

For the first time, the New Arbitration Law defines the "seat" (???) to ascertain the "legal gravity" of the award, where the law governs the arbitration proceedings and the court possesses the power of supervision over the arbitration. A three-stage test is advanced in the ascertainment of the seat of arbitration: (i) party agreement; (ii) failing which, the arbitration rules; (iii) in the absence of such rules, the tribunal's determination. This sequencing aligns with international common practice as well as the courts' repeated judicial practice in Mainland China[vii].

Because courts' powers to assist with *ad hoc* arbitration have been repealed, the seat court's functions are largely confined to post-award judicial review. Also, the conflict-of-law rule that would have subjected the validity of the arbitration agreement to the law of the seat Art. 21) was also eliminated. Given that Art. 18 of the Law on the Application of Laws to Foreign-Related Civil Relations 2011 already provides an identical choice-of-law formula, the deletion avoids redundancy and potential inconsistency.

3. Determination of Jurisdiction and the Chinese Style Competence-competence

The New Arbitration Law reinstates the separability doctrine of arbitration agreement from the matrix contract, adding up that the non-conclusion, ineffectiveness or rescind of main contract are not detrimental to the effectiveness of arbitration clause incorporated therein.

Art. 31 of the New Arbitration Law empowers the tribunal or the arbitration institution to rule on its own jurisdiction "upon the request of a party". This is

considered the incorporation of competence-competence in statute by some commentators[viii]. However, Art. 31 is materially different from the competence-competence as set out in Art. 16 (3) of the Model Law, which only allows for the parties to resort to the court after the decision rendered by the tribunal, also promulgation of the New Arbitration Law fails to ensure“negative effect” of competence-competence which requires a *prima facie* review over the arbitration agreement by state court in pre-award stage, which is well established in jurisdictions like Singapore[ix], France[x], the UK[xi], and Hong Kong SAR[xii]. Under the New Arbitration Law, the court’s priority regarding the decision on arbitral jurisdiction in most circumstances remains unchanged[xiii]. As per some commentators, this may give rise to problems such as the violation of the “minimal intervention principle”[xiv]. Therefore, Art. 31 of the New Arbitration Law is at best a Chinese-style competence-competence.

Overall, unlike the liberal approach in the 2021 Draft and the 1st Draft, the New Arbitration Law takes a more conservative stance, leaving room for further perfection. Nonetheless, there are some laudable novelties concerning arbitration agreements in integrating the well-settled arbitration practice (including the common practice by the judiciary) during the past 30 years.

IV. Revisions Concerning Arbitration Proceedings and Judicial Review

The New Arbitration Law makes minor revisions as to the conduct of arbitration proceedings and judicial review over the arbitral award, compared with the parts of the arbitration agreement. There are several aspects to be delved into below:

1. Novelties Concerning Arbitration Proceedings and Judicial Review

1.1. The Recognition of Online Arbitration

Art. 11 of the New Arbitration Law explicitly states that arbitration can be handled through electronic means, hence the virtual hearings , electronic delivery of files, and other relevant conduct online are put on the same footing as their physical equivalents, unless the parties have otherwise agreed. The opt-out model for online arbitration aligns the statute with the technical development in internet-era, ensuring the efficiency of commercial arbitration.

1.2. Separated Standard for Proper Notice in Arbitration

Article 41 of the New Arbitration Law clarifies that the proper notice issue in arbitration is subject to the parties' agreement or the applicable arbitration rules, rather than rules for service in civil litigation, this article has integrated Article 14 of the 2018 *Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Cases Regarding Enforcement of Arbitral Awards by the People's Courts* and can be extended to proceedings of setting aside. This ensures the confidentiality, efficiency and flexibility of proper notice in arbitration.

1.3 Stringent Rules for Qualification and Disclosure of Arbitrator

Articles 14 and 43 of the New Arbitration Law refine the appointment of the presiding or sole arbitrator: the parties may agree that the two co-arbitrators nominate the presiding arbitrator, failing which the presiding arbitrator or sole arbitrator must be appointed by the director of the arbitration institution "*in accordance with the procedure laid down in the arbitration rules*" instead of the mere discretion of the director, this provides more transparency in appointment of arbitrators.

Moreover, the New Arbitration Law also introduces a continuing obligation of disclosure by arbitrators where there is any circumstance that is likely to give rise to justifiable doubts, which builds up arbitrators' ongoing statutory duty of disclosure in the ascertainment of the arbitrator's impartiality and neutrality to ensure the integrity of arbitration proceedings[xv]. While the legislature cannot exhaust all circumstances, detailed guidance from institutions and practitioners—such as the three color lists provided by the IBA Guidelines on Conflicts of Interest in International Arbitrations—is required for more legal certainty.

Art. 22 of the New Arbitration Law succeeded the high condition for a qualified arbitrator to be listed in the roster of an institution, which is traditionally summarized as "three eight-year working experiences, two senior titles" (????)[xvi]. The New Arbitration Law provides more draconian requirements, *i.e.*, the limits and prohibitions on civil servants being qualified as part-time arbitrators[xvii], and the mandatory removal of arbitrators from the roster while they are disqualified from certain certificates (i.e., disqualified from being a lawyer due to a criminal offence)[xviii]. This high threshold is applicable to *ad hoc* arbitration with foreign-related factors. The high threshold is set up for fairness

and integrity of arbitration, while whether the state's deep involvement in a gatekeeping role is more appropriate than the choice by the market-reputation is open to debate.

1.4. Shortening Time Limit for Application Setting Aside

For post-award judicial review, the time limit to apply for annulment is cut from six months upon the receipt of the award to three, bringing the law in line with international common practice like Article 34 (3) of the UNCITRAL Model Law. This warrants the finality of awards.

2. **Regulations That Remain Unchanged**

Many comments stress that the New Law adds pre-arbitral preservation and conduct preservation[xix], but from the author's perspective, these merely fill the loophole by aligning the statute with the Civil Procedural Law revised in 2012, which is not so notable. Article 43 of the 2021 Draft, which empowered both the court and tribunal to order interim relief in arbitration (two-tier system), is removed, leaving Mainland China among the few jurisdictions where arbitrators cannot issue interim measures (one-tier system). while this is to some extent compatible with the arbitration practice in Mainland China, which shall not be criticized heavily for the following reasons:

First, Chinese courts are likely to employ relatively lower threshold for granting asset preservation, which is always confined to a preliminary review on the formalities (i.e., whether there is a letter by the arbitration institution, or guarantee letter issued by competent insurance companies), instead of a review on merits concerning the risk of irreparable harm, proportionality, and urgency rate like the tribunal in international commercial arbitration seated outside Mainland China[xx]. Hence, the lower standard for issuance of interim relief by courts in Mainland China ensures the efficiency and enforceability of interim relief and may overall meet the requirements of parties.

Second, the two-tier system for issuance of interim relief may give rise to problems concerning the conflict of powers, as per the decision of the Gerald Metals case[xxi] by the High Court of England and Wales, courts can only grant interim relief while the power of the tribunal is inadequate. Hence, the one-tier system may be more suitable for common practice in Mainland China, as courts are more preferable for their efficiency and enforcement in granting asset

preservation.

Last but not least, some commentators disagree with the author's opinion for the reason that the lower standard is only applicable to asset preservation, while not applicable to other types of judicial preservation where the thresholds are relatively higher, and the tribunal shall be empowered to issue interim relief for recognition of the interim order outside Mailand China[xxii]. Nonetheless, the author disagrees with this position, as per the author's experience, in most arbitration cases, asset preservation is the only concern of parties; preservation of evidence and preservation of conduct are rarely seen. Also, the enforcement of interim relief outside Mainland China is insufficient to justify the tribunal's power over interim relief, for whether such relief is enforceable depends heavily on the law where the enforcement is sought, instead of the law where the order is rendered, see Art. 17 H (1) of the UNCITRAL Model Law: "An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article".

Other unchanged parts concerning arbitration proceedings and judicial review are not preferred, i.e., the high threshold for document-only hearing that only by the parties explicit agreement, the tribunal is not liable to conduct a hearing on evidence (unlike the UNCITRAL Arbitration Rule, which provides that a hearing shall be conducted at the request of one party). The evidence adduced shall be presented in the hearing for the comment by other parties ????, while the comment on evidence by exchange of written submissions, which has been widely used in arbitration practice, has been omitted, producing uncertainty for the efficiency and flexibility of arbitration. Also, the statutory limbs for annulment of arbitral award remain untouched, that the concealment of evidence or forgoing evidence may lead to the annulment of the award, which opens the door for review on the merits of the arbitral award, incompatible with the minimal intervention.

V. Other Changes in the New Arbitration Law

The New Arbitration Law makes notable adjustments to the terminology of arbitral institutions. It replaces the former term "arbitration commission" with "arbitral institution" across the board, clarifies that no hierarchy exists among

different institutions, and expressly defines their legal nature as “non-profit legal persons” as per Art. 13 (2) of the New Arbitration Law, which keeps the arbitration institution’s independence from governmental institutions and avoids administrative intervention. In Art. 86, it also encourages domestic institutions to expand overseas and allows foreign institutions to operate within China on a limited basis. This reflects the ruling party’s enthusiasm for improving the arbitration system and establishing world-class arbitration institutions, as revealed in the Resolution by the 20th Central Committee of the Communist Party of China in its third plenary session dated 18 July 2024.[xxiii]

As for the long-delayed and yet to be founded China Arbitration Association, the New Law once again underscores its role in supervision of arbitration institutions across the country, however, whether this will accelerate its establishment remains to be seen.

VI. Conclusion

In short, while the New Law runs substantially longer than the Old Arbitration Law, its substantive changes fall short of the 2021 Draft and even the 1st Draft, taking “two steps forward and one step back.” Yet many of its revisions merit praise: they consolidate three decades of innovation in Chinese arbitration practice and should help advance both the arbitration sector and the broader rule-of-law business environment. Through a skyrocket development in the past 30 years, Mainland China has been a non-negligible hub for commercial arbitration, with collectively 285 institutions, 60,000 listed arbitrators by 31 July 2025, and 4,373 foreign-related arbitrations being handled by Chinese institutions in 2024[xxiv], the revision of Arbitration Law worthy more in-depth discussion.

[i] Zhong, Li , *Dissecting the 2024 Draft Amendment to the PRC Arbitration Law: A Stride Forward or a Step Back?*, available at https://arbitrationblog.kluwerarbitration.com/2024/12/03/dissecting-the-2024-draft-amendment-to-the-prc-arbitration-law-a-stride-forward-or-a-step-back/, last visited on 19 September, 2025.

[ii] See i.e., Mingchao Fan, *An Unexclusive Comparative Analysis of the New Chinese Arbitration Law and the English Arbitration Act 2025*, available at

Shanghai Arbitration Commission, https://mp.weixin.qq.com/s/l-Q0HUEoAdJ09H8AkkjgnQ, See also Juanming He, *A Quick Comment on 2025 Arbitration Law with 10 Thousand Words: Walking Steadily with Promising Future* (?????????2025???——??????????), available at https://mp.weixin.qq.com/s/lUPUysV1bAfUHjGhP4DS0Q , last visited on 19 September, 2025.

[iii]That includes:"(a) an expression of the parties' intention to submit their dispute to arbitration; (b) the matters to be submitted for arbitration; and (c) the parties' chosen 'arbitration commission' which is generally recognized as the equivalent of an 'arbitral institution'." See Art. 16 of the Old Arbitration Law, see also Art. 27 (1) of the New Arbitration with only one minor revision (replacing arbitration commission with arbitration institution)

[iv](5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

[v] Art. 91 of the 1st Draft: "Parties to commercial disputes with foreign-related factors may either refer the dispute to agreed arbitration, or submit to an *ad hoc* arbitral tribunal agreed upon by the parties. Ad Hoc arbitration commences upon the date when the respondent receives the request for arbitration by the claimant. In the event the seat is absent or ambiguous, the tribunal may decide on the place of arbitration base on circumstances of specific case."(Original text: "??")

[vi] Article 88 of the 1st Draft: "Professionals who are specialized in law, arbitration, economy and trade, scientific technology can be designated to be arbitrators in foreign-related arbitrations." (Original text: "???")

[vii] Gao Xiaoli: *positive practice of Chinese courts in recognizing and enforcing foreign arbitral awards*, available at https://cicc.court.gov.cn/html/1/219/199/203/805.html, last visited on 19 September, 2025

[viii] See *i.e.* Author Dong, Chen, Yuwai, *Comments on the Highlights,*

Expectation and Outlook ??????????<???>?????????????, available at https://mp.weixin.qq.com/s/nl4R_V77AS0c_P88hXIoAw, last visited on 19 September, 2025.

[ix] Tomolugen Holdings Ltd and Another v. Silica Investors Ltd and other appeals [2015] SGCA 57.

[x] See Société Coprodag et autre c Dame Bohin, Cour de Cassation, 10 May 1995 (1995?, *cf.* Nadja Erk-Kubat, Parallel Proceedings in International Arbitration: A Comparative European Perspective, (Netherlands: Kluwer Law International, 2014), p.39.

[xi] Joint Stock Company 'Aeroflot-Russian Airlines v. Berezovsky & Ors [2013] EWCA Civ 784.

[xii] Private Company "Triple V" Inc v. Star (Universal) Co Ltd & Another [1995] 2 HKLR 62.

[xiii] See i.e. Article 3 of Reply of the SPC on the Confirmation of the Validity of Arbitration Agreements, which states that: "1. If one party requests the arbitration institution to confirm the validity of the arbitration agreement while the other party requests the people's court to declare the arbitration agreement invalid, the people's court shall reject the party's request provided that the arbitration institution has already ruled on the validity of the arbitration agreement. 2. If the arbitration institution has not yet made a ruling, the people's court shall accept the request and order the arbitration institution to terminate the arbitration." *Cf.* Fu, Panfeng, *The Doctrine of Kompetenz-Kompetenz A Sino-French Comparative Perspective*: Hong Kong Law Journal, Vol. 52 Part 1 (2022), p. 276.

[xiv] See Xie, Xiaosong, *Reform of Arbitration System from The Len of New Arbitration Law: Highlights and Shortcomings*? ????????????????????? available at https://mp.weixin.qq.com/s/1PWooLr9unRoBfs7nfys9Q, last visited on 19 September 2025

[xv] Art. 45 of the New Arbitration Law: "Where any circumstance exists that may give rise to justifiable doubts as to an arbitrator's impartiality or independence, the arbitrator shall, without delay, disclose such circumstance in writing to the arbitral institution." (Original

text:??”)

[xvi]These conditions are:“(1) engaged in arbitration work for (at least) eight years;(2) practiced as a lawyer for (at least) eight years;(3) served as a judge for (at least) eight years;(4) been involved in legal research or law teaching as well as holding a senior academic title; or(5) been professionally involved in economic and trade matters, and also possess an understanding of the law as well as having a senior academic title or its specialized equivalent.” Lu, Song, *National Report for China (2020 through 2024)*, in Lise Bosman (ed), ICCA International Handbook on Commercial, Kluwer Law International 2023, p. 14. It is also notable that “three eight-year working experiences, two senior titles” applies only to nationals domiciled in Mainland China, persons with identities of foreign country or Hong Kong, Macao, Taiwan are generally not subject to it.

[xvii] Art. 22 (2) of the New Arbitration Law: ”Where laws like the Supervisory Officials Law, the Judges Law or the Public Prosecutors Law of the People’s Republic of China provide that the relevant public officials may not concurrently serve as arbitrators, those provisions shall prevail; any other public official who wishes to serve simultaneously as an arbitrator shall comply with the applicable regulations” (Original text: “??”)

[xviii] Art. 23 (2) of the New Arbitration Law : “Arbitrators who are disqualified from civil servant, lawyer’s license or senior titles, or the occurrences of other circumstances that deprive him of condition for arbitrator, shall be removed from the roster of institution ” (Original text:“??”)

[xix] See *i.e*. Author Dong, Chen, Yuwai, *Comments on the Highlights, Expectation and Outlook* ??????????<???>?????????????, available at https://mp.weixin.qq.com/s/nl4R_V77AS0c_P88hXIoAw, last visited on 19 September, 2025.

[xx] Stephen Benz, *Strengthening Interim Measures in International Arbitration*, Georgetown Journal of International Law, Vol. 50, 2018, p. 147.

[xxi] Gerald Metals v. Timis and ors, [2016] EWHC 2327(Ch), para. 8 (Accordingly, it is only in cases where those powers, as well as the powers of a

tribunal constituted in the ordinary way, are inadequate, or where the practical ability is lacking to exercise those powers, that the court may act under section 44.)

[xxii] See Xie, Xiaosong, *Reform of Arbitration System from The Len of New Arbitration Law: Highlights and Shortcomings* (??????????????????????), available at https://mp.weixin.qq.com/s/1PWooLr9unRoBfs7nfys9Q, last visited on 19 September, 2025.

[xxiii] Resolution of the Central Committee of the Communist Party of China on Further Deepening Reform Comprehensively to Advance Chinese Modernization, available at https://www.chinadaily.com.cn/a/202407/22/WS669db327a31095c51c50f2f8.html, last visited on 20 September, 2025.

[xxiv] The statistic is drawn from the conference concerning foreign-related arbitration hosted by Ministry of Justice on 31 July, 2025, available at https://www.moj.gov.cn/pub/sfbgw/fzgz/fzgzggflfwx/fzgzggflfw/202409/t20240910_505751.html, last visited on 20 September, 2025.