Major amendment to Chinese Arbitration Act after three decades

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On 12th September 2025, the 17th session of the Standing Committee of the 14th National People's Congress passed the Amendment to the Arbitration Law of the People's Republic of China (hereinafter "Chinese Arbitration Act") to be effective from 1st March 2026[1], which was first adopted in 1994. Since its adoption, China has undergone enormous economic reforms and a more urgent need to align the legislation with international arbitration practices. There were only two minor revisions in 2009 and 2017 to fix technical inconsistencies with other procedural laws. In July 2021, the Ministry of Justice of China released a Draft Revision of the Arbitration Law for public consultation. [2] This was the first comprehensive reform since 1994. The draft was reviewed by the Sanding Committee of the National People's Congress three times.

The first draft was reviewed by the Standing Committee of the NPC in November 2024, covering legal aspects of foreign-related arbitration reforms, improvement of the international reputation of Chinese arbitration, streamlining of procedure rules, and arbitration institutional reforms.[3] The second draft was reviewed in April 2025, focusing on the internal governance of arbitration institutions and the judicial support and review of arbitration.[4] The third draft review was completed on 12th September 2025 (the latest Amendment), adding rules on online arbitration and interim measures in the pre-arbitration stage, ensuring the investigation powers of the arbitral tribunal, and expanding the scope of *ad hoc* arbitration as outlined in the previous draft.[5]

I. The urgent necessity of the amendment to the Chinese Arbitration Act

The current Chinese Arbitration Act has been effective since 1995. Back then, there were a few arbitration institutions, among which, CIETAC, CMAC are the most famous ones. According to the statistics, by August 2025, there are currently 285 arbitration institutions in China, taking over cases of parties from more than 100 nations or regions, involving financial disputes, e-commerce disputes, construction disputes, maritime disputes, intellectual property disputes, etc. [6]

Facing the global economic recession and anti-globalization trend, China has furthered its opening-up policies, including the initiation of its Belt and Road projects for foreign investment, establishing free trade zones and free trade ports to test advanced trade policies to be in alignment with the global trade practices. The amendment of the Chinese Arbitration Act is one of the necessary legislative reforms to promote the use of arbitration in international commercial disputes and enhance the attractiveness of foreign investment in China. The latest Amendment intends to serve for a high-quality and advanced level of opening-up, and create a business attractive environment to settle economic disputes. It includes Chinese characteristic features, together with foreign-related arbitration rules compatible with international practices.

II. Major aspects of the latest Amendment to the Chinese Arbitration Act

- Arbitration institutional reforms

Legal nature of the arbitration institution in China

The term “arbitration institution” is applied to replace the old term “arbitration commission”. This shows the understanding of Chinese legislators towards the nature of arbitration institutions. The wording “arbitration commission” represented an administrative and bureaucratic feature, as they were established by the local government and business associations. Now, it is clearly stipulated in Article 13 of the amendment that arbitration institutions are charitable not-for-profit legal persons, stressing the independence of arbitration institutions.

The Amendment no longer distinguishes between domestic arbitration institutions and foreign-related arbitration institutions, as most arbitration institutions in China accept foreign-related arbitration disputes nowadays. Nevertheless, unlike in other jurisdictions where arbitration institutions are self-regulated under their statutes and supervised by judicial powers[7], in China, the arbitration institutions are still registered and supervised by the administrative department of justice pursuant to Article 14 and Article 26 of the Amendment.

Internal governance of arbitration institutions

The arbitration institution shall comprise one chairman, two vice chairmen, and seven to eleven members. There is an additional requirement on the qualifications of the members in Article 18 of the Amendment. Firstly, at least two-thirds of the members shall have expertise in law, trade and economics, and scientific technology. Secondly, the composition of the members should be adjusted every five years, and at least one-third of the members should be replaced to avoid conflict of interest.

- Support for online arbitration

Online arbitration has become a common practice in recent years in China.[8] Article 11 of the Amendment has confirmed the legality of online arbitration and the effectiveness of online arbitration. The parties may opt out of online arbitration if they do not agree.

- Arbitrators

Article 22 of the Amendment has excluded the double-heading of arbitrators who are prosecutors, judges, or any civil servants, who are restricted by law to act as arbitrators. It also welcomes foreign experts in law, trade and economics, maritime, and scientific technology to act as arbitrators.

Article 45 further requires the arbitrators to disclose any potential situations to the arbitration institutions in which a reasonable doubt could be cast on the independence or impartiality of the arbitrator.

Regarding the appointment of the third arbitrator in case of a three-member arbitral tribunal, Article 43 allows the parties can agree on different options: 1) the chief of the arbitration institution to appoint; 2) the parties to appoint themselves; 3) the already appointed two arbitrators to appoint.

- Interim measures in pre-arbitration proceedings

Article 39 of the Amendment has confirmed the possibility of the parties to apply for interim measures or injunctions before the initiation of the arbitration proceedings. The people's court has the responsibility to proceed with the parties' application.

- Arbitral tribunal's extended powers

Article 55 empowers the arbitral tribunal's power to collect evidence and request that relevant authorities assist. In the past, the arbitral tribunal had limited resources to collect evidence, except for requesting the parties to provide relevant evidence. With this latest amendment, the relevant authority has the duty to assist the arbitral tribunal if the evidence is hard to obtain by the arbitral tribunal.

- Setting aside and non-enforcement of arbitral awards

According to Article 72 of the latest Amendment to Chinese Arbitration Act, the time limit for applying for setting aside an arbitral award has been changed from 6 months to 3 months only. This is to enhance the efficiency of arbitration and avoid the party abusing the right of objection to delay the enforcement of arbitral awards.

During the enforcement stage, the respondent can invoke the same legal grounds of setting-aside the arbitral awards in Article 71 first paragraph to resist the enforcement of the arbitral awards. The Amendment has unified the legal grounds for setting-aside and non-enforcement applications of arbitral awards.

- Foreign-related Arbitration

Foreign-related arbitration refers to the two-track regime of arbitration in China, where domestic arbitration falls within a stricter judicial review over arbitral awards.[9] China traditionally uses a three-tiered approach to determine whether a dispute involves foreign-related elements: it looks at (1) who the parties are to the disputes, it assesses the (2) subject matter of the disputes, and looks at the (3) legal natures of the disputes.

Seat of arbitration

Before, Chinese Arbitration Act used the word "location of the arbitration commission" to determine the nationality of the arbitral awards. This point of view has been shifted by the judiciary towards the "seat theory" together with the development of case law.[10] In Article 81 of the Amendment, it is emphasized that the seat of arbitration should be chosen by the parties. In the absence of such choice in the arbitration agreement, the arbitration institutional rules should be used to determine the seat of arbitration. If there are no stipulations in the arbitration institutional rules regarding the seat of arbitration, the arbitral tribunal has the power to determine the seat of arbitration in accordance with the convenience principle. In the absence of the parties' agreement, the applicable

law to the arbitration proceedings and to the judicial review of arbitral awards should be the law of the seat of arbitration. The legislative bodies have confirmed the judicial practices supporting the seat theory and explored ways to ascertain the seat of arbitration.

Ad hoc arbitration

Article 82 of the Amendment allows parties in foreign-related maritime disputes, and parties from Free Trade Pilot Zones[11], Hainan Free Trade Port, and other regions approved by the Chinese government to choose *ad hoc* arbitration. The parties should nevertheless inform the Association of Chinese Arbitration about the parties' names, seat of arbitration, the composition of the arbitral tribunal, and the arbitration rules, within three days after the establishment of the arbitral tribunal. The people's courts should provide judicial support for the interim measures applied by the parties.

Foreign arbitration institutions welcomed in China's FTZs

Article 86 of the Amendment supports foreign arbitrations to establish business entities in the free trade pilot zones, Hainan Free Trade Port, or other regions that are approved by the government in China. No further stipulations are made regarding the types of activities that such entities can engage in.

III. Future alignment with international commercial arbitration practices: the way ahead

Compared with the 1994 Chinese Arbitration Act, the latest Amendment is an

applaudable endeavor showing the determination of the Chinese government to modernize its arbitration laws and align with international practices. Nevertheless, in contrast to the draft amendment by the Ministry of Justice in 2021, the latest Amendment was a step backward.

First of all, the validity requirement of the arbitration agreement has not been amended. Considering that *ad hoc* arbitration is currently only allowed in a limited scope of practices, the requirement of a named arbitration institution has been kept. However, as perceived from the *Longlide* case[12], the validity requirement of a named arbitration institution also includes foreign ones.

Secondly, the Amendment did not change the competence-competence rules in the Chinese Arbitration Act. The court still has the primary role in determining the jurisdiction of the arbitral tribunal, but it is worth mentioning that Article 31 of the Amendment has added *the arbitral tribunal*, together with the arbitration institution and the court, to be able to determine the jurisdiction of the tribunal in case the parties have objections against the validity of the arbitration agreement.

Thirdly, the tribunal still has no power to rule on parties' applications for interim measures, which is left to the people's court. Such an application must be passed from the arbitral tribunals to the courts.

Lastly, it's a pity that *ad hoc* arbitration has a limited scope of application. It is restricted to maritime disputes and parties from FTZ-related areas, without further expansion to foreign-related arbitration.

As a conclusion, the Amendment demonstrates major advancement of the arbitration rules, but much can be done in the future with the economic development and international commercial practices proceeding in China.

[1] Amendment to the Arbitration Law of the People's Republic of China, President's Order No. 54, <https://www.moj.gov.cn/pub/sfbgw/gwxw/xwyw/202509/t20250913_525029.html> accessed 15 September 2025.

[2] Ministry of Commerce, Draft Amendment to the Arbitration Law of the PRC for public consultation, < https://www.moj.gov.cn/pub/sfbgw/lfyjzj/lflfyjzj/202107/t20210730_432967.html> accessed 15 September 2025.

[3] He Rong, Minister of Ministry of Justice, Explanations on the Draft Amendment to the Arbitration Law of the PRC, < http://www.npc.gov.cn/npc/c2/c30834/202509/t20250912_447719.html> accessed 15 September 2025.

[4] NPC, the Second Draft Amendment of the Arbitration Law of the PRC intends to further implement the foreign-related arbitration regime, < http://www.npc.gov.cn/npc/c2/c30834/202504/t20250425_444888.html> accessed 15 September 2025.

[5] Xinhua Net, Amendment to Arbitration Law of the PRC, effective from 1st March 2026, < http://www.npc.gov.cn/npc/c2/c30834/202509/t20250912_447759.html>. The full text of the Amendment can be accessed via < https://www.moj.gov.cn/pub/sfbgw/gwxw/xwyw/202509/t20250913_525029.html> accessed 15 September 2025.

[6] People's Court Daily?Chief of the National People's Congress Legislative Committee Civil Law Branch Answering Questions regarding the amendment of Chinese Arbitration Act,<https://www.zcia.cn/info/10990.html> accessed 15 September 2025.

[7] Such as ICC, SIAC, ICSID.

[8] See Online Arbitration Rules of various arbitration institutions, including CIETAC, Guangzhou Arbitration Commission, Shenzhen Court of International Arbitration, etc.

[9] See Article 71 and Article 83 of the Amendment to Chinese Arbitration Act.

[10] Brentwood Industries v. Guangdong Fa Anlong Machinery Equipment Co., Ltd. (2015) Sui Zhong Fa Min Si Chu Zi No. 62. In this case, Guangzhou Intermediate People's Court rendered a judgment considering an arbitral award made by an ICC tribunal in Guangzhou as a foreign-related *Chinese* award that is subject to the enforcement regime under the Chinese Civil Procedure Law.

[11] China has approved 22 Free Trade Zones and 1 Free Trade Port (Hainan) across the country to experiment with new regulations and explore ways to improve business environment. See < https://investinchina.chinaservicesinfo.com/investspecials/chinapilotfreetrade/> accessed 17 September 2025.

[12] Longlide Packaging Co Ltd v BP Agnati SRL [2013] Min Si Ta Zu Di 13 Hao.