

CHINA – MAINLAND

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

- | | |
|--|----|
| 1. Law | ● |
| a. Framework | ● |
| b. Adherence to international treaties | ● |
| c. Limited court intervention | ● |
| d. Arbitrator immunity from civil liability | ● |
| 2. Judiciary | ●● |
| 3. Legal expertise | ●● |
| 4. Rights of representation | ● |
| 5. Accessibility and safety | ● |
| 6. Ethics | ●● |
| Evolution of above compared to previous year | ☰ |
| 7. Tech friendliness | ● |
| 8. Compatibility with the Delos Rules | ●● |

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Arbitration is a commonly used dispute resolution mechanism for Sino-foreign disputes in China. It is a key characteristic of the Chinese arbitration regime that PRC law draws a distinction between "foreign-related" disputes (broadly, where one or more parties are domiciled or habitually reside outside mainland China, or where the subject matter of the dispute is outside mainland China) and purely domestic disputes (where all parties and elements of the dispute are based in mainland China). This critical distinction affects many aspects of disputes subject to arbitrations in mainland China. The regime for foreign-related disputes is considerably more flexible.

Key places of arbitration in the jurisdiction?	The principal institution of relevance to non-Chinese parties is the China International Economic and Trade Arbitration Commission (CIETAC), headquartered in Beijing and with sub-commissions in Shanghai, Shenzhen, Chongqing, Tianjin, Hangzhou, Wuhan, Fuzhou, Xi'an, Nanjing, Chengdu and Ji'nan within mainland China, as well as an arbitration centre in Hong Kong.
Civil law / Common law environment?	PRC law largely adopts features from the civil law tradition. Precedents have no binding authority on future cases although the importance of precedents has now been recognised in improving consistency in adjudication.
Confidentiality of arbitrations?	The PRC Arbitration Law provides that arbitration proceedings are confidential unless the parties agree otherwise.
Requirement to retain (local) counsel?	Parties can be represented by counsel, agents or themselves. The Ministry of Justice also allows foreign law firms to represent clients (including advocacy before the tribunal) in arbitration cases conducted in China and/or governed by PRC law. However, only locally qualified and licensed lawyers may issue legal opinions on PRC law in an arbitration in mainland China.
Ability to present party employee witness testimony?	There is no limitation on a party's ability to present the testimony of its employees.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	PRC law does not have quite the same concept of a "seat" as other arbitration laws. In mainland China, the equivalent to a "seat" is usually the place where the arbitration institution is located. Alternatively, a "seat" may be determined according to the applicable arbitration rules and is usually referred to as the "place of arbitration". The arbitration rules of most leading arbitration institutions in China provide that the place of the arbitration institutions would be the place of arbitration, and they may also designate the place of arbitration based on specific circumstance of the case. Generally, parties are able to hold hearings outside of the "seat" or "place" of the arbitration by agreement or when so directed by the tribunal.
Availability of interest as a remedy?	In practice, arbitral tribunals seated in China usually award simple or compound interest, calculated from the due date set by the tribunal until the date of full payment.

Ability to claim for reasonable costs incurred for the arbitration?	In arbitrations seated in mainland China, the losing party is generally ordered to compensate the winning party for reasonable costs incurred in the arbitration. There are no express statutory limits on the amount of costs that a tribunal can order the losing party to reimburse.
Restrictions regarding contingency fee arrangements and/or third-party funding?	PRC lawyers are generally allowed to enter into success fee arrangements or pure contingency fee arrangements, or a combination of both arrangements, with their clients with limited exceptions. Where contingency fees are allowed, they may not exceed 30% of the amount in dispute. Third party funding of arbitration is not prohibited in mainland China.
Party to the New York Convention?	In 1987, China became a party to the New York Convention, subject to the reciprocity and commercial reservations.
Party to the ICSID Convention?	The ICSID Convention entered into force for China on 6 February 1993.
Compatibility with the Delos Rules?	The PRC Arbitration Law is generally compatible with the Delos Rules except for Article 7.1 of the Delos Rules (the right of arbitral tribunals to rule on their own jurisdiction) as the PRC Arbitration Law does not recognise the principle of competence-competence. Jurisdictional issues are determined by the arbitration institutions or the competent courts. However, the arbitration rules of most Chinese arbitration institutions provide that the arbitration institution may authorise arbitral tribunals to rule on the issue of jurisdiction and it is often the case in practice.
Default time-limitation period for civil actions (including contractual)?	The default limitation period is three years for civil actions. The limitation period starts from when the claimant knew or ought to have known of the alleged infringement of rights and who infringed such rights (Article 188 of the Civil Code).
Other key points to note	∅
World Bank, Enforcing Contracts: Doing Business score for 2020, if available?	80.9
World Justice Project, Rule of Law Index: Civil Justice score for 2020, if available?	0.53 (this does not represent our views).

ARBITRATION PRACTITIONER SUMMARY

China has not adopted the UNCITRAL Model Law ("Model Law"). Although certain key elements of the Model Law have influenced Chinese domestic legislation, many aspects of arbitration seated in China diverge from the Model Law. For example, tribunals seated in mainland China are not empowered by law to order interim measures. China does not apply the doctrine of competence-competence; the power to decide a tribunal's jurisdiction lies with arbitral institutions and the competent courts in China, rather than the tribunal itself. Another example is that *ad hoc* arbitration is not permitted for arbitrations in mainland China under the PRC Arbitration Law.

Arbitration is a commonly used dispute resolution mechanism for Sino-foreign disputes in China. It is a key characteristic of the Chinese arbitration regime that PRC law draws a distinction between purely domestic disputes (where all parties and other elements of the dispute are based in mainland China) and "foreign-related" disputes (broadly, where one or more party is domiciled or habitually resides outside mainland China, or where the subject matter of the dispute is outside mainland China). This critical distinction affects many aspects of disputes subject to arbitrations in mainland China. Overall, the regime for foreign-related disputes is considerably more flexible and similar to international standards than that for purely domestic disputes.

Date of arbitration law?	The PRC Arbitration Law has been in force since 1995. An amendment concerning the qualifications of the arbitrators took effect on 1 January 2018.
UNCITRAL Model Law? If so, any key changes thereto?	China has not adopted the UNCITRAL Model Law. Although certain key elements from the Model Law can be seen to have influenced Chinese domestic legislation, the PRC Arbitration Law and legal practice differ in a number of ways from jurisdictions that have adopted the Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	<p>There are four levels of courts of general jurisdiction: Basic (at the local level), Intermediate (at the city level or equivalent), Higher (at the provincial level) and the Supreme People's Court (SPC) in Beijing. There are also a number of courts of specialist jurisdiction (e.g. maritime courts, intellectual property courts, internet courts, the Shanghai Financial Court and the China International Commercial Courts of the SPC (CICC)).</p> <p>For foreign-related arbitrations involving foreign elements (e.g., where one party is not Chinese, or the subject matter of the dispute is located outside mainland China), applications related to setting aside the award and the validity of an arbitration agreement fall within the jurisdiction of the intermediate people's courts. In maritime or maritime trade disputes, cases concerning the validity of an arbitration agreement fall within the jurisdiction of the maritime courts. For recognition and enforcement of foreign awards under the New York Convention, the intermediate court where the award debtor is domiciled or has assets shall have jurisdiction. If there is no such court, the intermediate court that hears the case or the intermediate court at the place where the Chinese arbitration institution handling the case is situated will have jurisdiction to recognize the foreign award. Generally, a</p>

	special division of the court is set up to hear arbitration-related matters together with other commercial cases.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes. PRC courts can grant <i>ex parte</i> pre-arbitration interim measures in aid of domestic arbitrations and foreign-related Chinese arbitrations administered by arbitration commissions established in mainland China. They generally have no power to order interim measures in support of arbitrations seated outside mainland China. However, there is an exception for arbitrations seated in Hong Kong. From 1 October 2019, parties to Hong Kong-seated arbitrations administered by an eligible arbitration institution in Hong Kong have the right to apply for interim measures before courts in mainland China.
Courts' attitude towards the competence-competence principle?	The PRC Arbitration Law does not recognise the principle of competence-competence. Instead, the power to determine the tribunal's jurisdiction is vested in the relevant arbitral institution and the competent courts. In practice, a Chinese arbitral institution may delegate power to arbitral tribunals to rule on their own jurisdiction. However, when one party has applied to the court to rule on the validity of the arbitration agreement (including the jurisdiction of the tribunal), and the other party requests the arbitral institution to decide the issue, the court takes precedence over the arbitral institution. Where the objection is first raised with the arbitral institution and a decision has been made, the court will not accept a later application to challenge the tribunal's jurisdiction.
May an arbitral tribunal render a ruling on jurisdiction (or other issue) with reasons to follow in a subsequent award?	Under the rules of some arbitral institutions in China, an arbitral institution may delegate to an arbitral tribunal the authority to rule on its own jurisdiction. In that circumstance, the arbitral tribunal may either make a separate decision on jurisdiction during the proceedings, or incorporate its decision in the final award. The arbitral tribunal must set out its reasoning in the award.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	For foreign awards, in general there are no grounds for refusing enforcement in China, other than those specified in New York Convention. However, the PRC courts may refuse to recognise or enforce an award for reasons such as expiry of the limitation period for enforcement (2 years) under PRC law.
Do annulment proceedings typically suspend enforcement proceedings?	Annulment proceedings typically suspend enforcement proceedings.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	PRC courts will generally refuse to recognise or enforce an arbitral award that has been annulled at its seat.
If an arbitral tribunal were to order a hearing to be conducted	The stance taken by the SPC is that the premise for a virtual hearing is the consent of the parties. ¹ The guidelines issued by various

¹ Article 2 of [SPC Notice of Strengthening and Regulating the Online Litigation Work during the Period of Prevention and Control of the COVID-19 Outbreak](#) (Chinese text only).

<p>remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of the ensuing award in the jurisdiction?</p>	<p>arbitral institutions adopt a similar approach. In practice, an arbitral tribunal will review the reasons for a party's objection to a virtual hearing and will not conduct a virtual hearing if it considers that such objection is justified. A challenge to an arbitral award made after a virtual hearing despite a party's objection rarely succeeds, unless there are other serious procedural irregularities. Serious procedural irregularities include, for example, the tribunal's ignorance of a party's legitimate objection to the virtual hearing, or lack of the arbitrators' signature and the arbitration institution's official seal on the award rendered after a virtual hearing. In addition, under Article 277 of the PRC Civil Procedure Law, no foreign organisation or individual may adopt compulsory measures to serve documents or make investigations and collect evidence within the PRC without the consent of the competent authorities. Compelling a witness in China by an arbitral tribunal seated outside of China to attend a virtual hearing may be considered as making investigations or collect evidence in violation of Article 277.</p>
<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>China adheres to the doctrine of absolute state immunity. Arbitral awards against foreign states or the PRC government will not be enforced by the PRC courts, unless the immunity is waived. As a matter of Chinese law, it is unclear whether contractual waivers of immunity will be effective against suit or execution in a Mainland court. It is safest to assume that any waiver must be made "in the face of the court".</p> <p>Immunity from suit should not be an issue where the parties have agreed to arbitrate their disputes. The arbitration agreement means that no national court has jurisdiction to decide the merits of the dispute, and the doctrines of state immunity do not apply to confer immunity from the jurisdiction of an arbitral tribunal. However, a state or state entity may claim immunity from execution in any court proceedings to enforce the arbitral award.</p> <p>In September 2005, China signed the United Nations Convention on Jurisdictional Immunities of States and Their Property. Under this Convention, governments may not be immune from the jurisdiction of another state in respect of their commercial transactions. However, the Standing Committee of the NPC has not ratified the Convention and it has not come into force.</p> <p>Generally, a Chinese state-owned enterprise (SOE) does not enjoy state immunity. However, this could differ on a case-by-case basis.</p>
<p>Is the validity of blockchain-based evidence recognized?</p>	<p>In September 2018, the SPC promulgated the <i>Provisions of the SPC on Several Issues Concerning the Trial of Cases by Internet Courts</i>, confirming that Internet Courts can rely on evidence that is authenticated by blockchain. Reported cases also show that some courts which are not Internet Courts have accepted blockchain-based evidence. In practice, Chinese arbitration tribunals tend to adopt a similar approach but this needs to be further tested in practice.</p>

<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognized as valid?</p>	<p>The PRC Arbitration Law requires an arbitration agreement to be in writing. Article 469 of the Civil Code clarifies that written forms include electronic data. Accordingly, an arbitration agreement recorded on a blockchain is likely to be regarded as electronic data, and therefore be recognised as in written form.</p> <p>With regard to an award recorded on a blockchain, the PRC Arbitration Law does not stipulate any compulsory form of recording arbitration awards. Unless there are other situations annulling the award, such an award should be recognised as valid.</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>Considering the tamper-proof nature of blockchain-based evidence, the courts may consider blockchain arbitration agreements and/or awards as originals. However, as mentioned above, these issues remain to be tested in judicial practice.</p>
<p>Other key points to note?</p>	<p>∅</p>

JURISDICTION DETAILED ANALYSIS

1. Legal framework

1.1 Is the PRC Arbitration Law Based on the UNCITRAL Model Law?

China has not adopted the UNCITRAL Model Law ("Model Law"). However, certain key elements from the Model Law can be seen to have influenced Chinese domestic legislation. For example, arbitration depends on a valid arbitration agreement between the parties. The parties can exclude the jurisdiction of the courts in Mainland China (referred to below as PRC courts) by concluding a valid arbitration agreement, and an arbitral award is final and binding on the parties to the arbitration.

The main differences between the Model Law and the PRC Arbitration Law include the following:

- *Ad hoc* arbitration is permitted under the Model Law, while it is not permitted for arbitrations seated in mainland China under the PRC Arbitration Law.²
- The Model Law adopts the doctrine of *competence-competence*, under which arbitrators have power to rule on their own jurisdiction. The PRC Arbitration Law gives this power to arbitral institutions and the competent courts rather than arbitral tribunals,³ although in practice some institutions may delegate the power to the tribunal.
- Under the Model Law, arbitral tribunals may grant interim measures at the request of a party. Under the PRC Arbitration Law, arbitral tribunals do not have the power to grant or implement interim measures. A party seeking interim measures may apply to the relevant arbitral institution, which will forward the party's application to the competent court for determination.⁴
- Under the Model Law, a court may set aside, or refuse enforcement of, an arbitral award on the basis of serious procedural irregularities. In purely domestic arbitrations, PRC laws provide limited grounds relating to evidence in addition to procedural irregularities, upon which the courts may refuse to enforce arbitral awards.⁵ Any decision not to enforce a foreign-related award rendered by a domestic arbitration institution (known in mainland China as an "arbitral commission")⁶ must be based on certain jurisdictional issues, or on serious procedural defects.⁷ In its Interpretation of the PRC Arbitration Law, the SPC has sought to limit the scope for parties to rely on trifling procedural defects as a basis for challenging awards.⁸

² The Arbitration Law of the People's Republic of China ("PRC Arbitration Law") does not expressly prohibit *ad hoc* arbitration. However the prohibition can be inferred from Article 16, which requires that an arbitration agreement shall contain the designated arbitration institution. In December 2016, the SPC indicated that "*ad hoc*" arbitration should be made available for companies registered in China's Pilot Free trade Zone. However, it remains to be seen how *ad hoc* arbitration will be received by the PRC courts. Nevertheless, awards rendered outside mainland China in *ad hoc* arbitration are enforceable in mainland China.

³ According to Article 20 of the PRC Arbitration Law, if a party challenges the validity of the arbitration agreement, it may request the arbitral institution to make a decision or apply to the court for a ruling. If one party requests the arbitral institution to make a decision and the other party applies to the court for a ruling, the people's court shall give a ruling.

⁴ Article 28 of the PRC Arbitration Law. Following amendments to the Civil Procedure Law in 2012 in relation to injunctive measures, it should also be possible for parties to apply directly to the court.

⁵ Article 58 of the PRC Arbitration Law and Article 21 of Interpretation of the Supreme People's Court concerning Some Issues on the Application of the "Arbitration Law of the People's Republic of China" ("SPC Interpretation of Arbitration Law").

⁶ An arbitration commission is an arbitration institution established according to the requirements set out in PRC Arbitration Law and registered with the administrative Departments of Justice at provincial level in mainland China.

⁷ Article 70 of the PRC Arbitration Law and Article 274 of Civil Procedure Law of the People's Republic of China (2017) ("PRC Civil Procedure Law").

⁸ Article 20 of SPC Interpretation of Arbitration Law.

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1.2 When was the Arbitration Law last revised?

The PRC Arbitration Law was promulgated in 1994 and came into force in 1995.

To date, the PRC Arbitration Law has not been subject to any significant update or amendment. However, in September 2017 China passed amendments to a number of laws relating to the professional qualifications required of judges, prosecutors, lawyers, notaries and civil servants.⁹ As it relates to the PRC Arbitration Law, the amendment concerns the qualifications of arbitrators, and is effective from 1 January 2018. In addition to the existing requirement of at least eight years' experience in the field of arbitration an arbitrator is required to pass the unified national examination for legal professional qualifications and to obtain a legal professional qualification. Alternatively, an arbitrator must have served as a judge for at least eight years (and retired from the bench). The other alternative qualification requirements remain the same.¹⁰

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the governing law of the arbitration agreement?

Under PRC law, there is no provision allowing parties to choose the governing law of a domestic contract. It is therefore generally understood that an arbitration agreement with no foreign element must be governed by PRC law.

However, parties may agree on the law applicable to a foreign-related arbitration agreement (*e.g.*, where one or more of the parties is not Chinese, or is habitually resident outside mainland China). In this regard, the SPC has clarified that the parties' agreement on governing law of the main contract should not be considered as their agreement on the governing law of the arbitration agreement.¹¹

In the absence of any agreement of the parties, the law of the domicile of the arbitral institution or the law of the place of arbitration shall apply to the arbitration agreement.¹² If the law of the domicile of the arbitration institution and the law of the place of arbitration lead to different positions on the validity of the arbitration agreement, the law which validates the arbitration agreement shall prevail and apply. If the parties do not stipulate an arbitral institution, or the place of arbitration is unclear, the arbitral institution or

⁹ Article 6 of the [Decision of the Standing Committee of the National People's Congress on Amending Eight Laws including the Judges Law of the People's Republic of China](#) (Chinese text only).

¹⁰ Under Article 13 of the [PRC Arbitration Law](#), alternative qualification requirements include (1) having worked as a lawyer for at least eight years, or (2) having been engaged in legal research or legal education, and in possession of a senior professional title; or (3) having acquired the knowledge of law and engaged in the professional work in the field of economy and trade, and acquired a senior professional title or reached an equivalent professional level.

¹¹ [Reply of the Supreme People's Court on Confirmation of the Validity of Arbitration Agreement](#) (Chinese text only) dated 9 March 2006, and Article 13 of the Provisions of the Supreme People's Court on Several Issues Concerning Deciding Cases of Arbitration-Related Judicial Review ("[SPC Provisions of Cases of Arbitration-Related Judicial Review](#)"), effective 1 January 2018.

¹² Article 18 of the [Law of the People's Republic of China on the Law Applicable to Foreign-related Civil Relations](#), effective 1 April 2011 and Article 16 of the [SPC Interpretation of Arbitration Law](#).

the place of arbitration can be determined according to the applicable arbitration rules agreed in the arbitration agreement.¹³

2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

The arbitration rules of most Chinese arbitration institutions provide that the arbitration institution may authorise arbitral tribunals to rule on the issue of jurisdiction and it is often the case in practice. Separately, there is nothing in PRC Arbitration Law to prevent parties holding hearings outside the place where the administering institution is located or any other designated "place"/"seat" of the arbitration.

2.3 Is the arbitration agreement considered to be independent from the rest of the content in which it is set forth?

Under PRC law, an arbitration agreement exists independently of the contract that contains it. The amendment, rescission, termination or invalidity of the main contract does not necessarily affect the validity of the arbitration agreement.¹⁴

If the parties have agreed when the contract is concluded to refer disputes to arbitration, failure of the formation of the contract shall not affect the validity of the arbitration agreement. If a contract does not come into effect, or is repealed after its formation, the validity of the arbitration agreement would also be determined independently.¹⁵

2.4 What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be in writing and must adequately identify the subject matter to be arbitrated. An arbitration agreement should contain the following particulars:¹⁶

- (1) an expression of intent to apply for arbitration;
- (2) the matters to be referred to arbitration; and
- (3) a designated arbitration commission.

In 2006, the SPC clarified that the requirement for a written arbitration agreement should be interpreted broadly, so as to encompass, for example, an exchange of emails.¹⁷

A more important restriction is that arbitrations involving no foreign element must be arbitrated in mainland China by a Chinese arbitral institution.¹⁸ Only foreign-related arbitrations may, in the eyes of PRC courts, be arbitrated elsewhere. Failure to comply may result in the award being unenforceable in mainland China.

2.5 To what extent is a third party to the contract containing the arbitration agreement bound by said arbitration agreement?

Generally, a third party is not bound by the arbitration agreement in the contract. However, there are a number of exceptions:

¹³ Article 14 of the [Judicial Interpretation of the Supreme People's Court on the Application of the Law of the People's Republic of China on the Application of Laws to Foreign-related Civil Relations \(I\)](#), effective 7 January 2013; and Article 14 and 15 of [SPC Provisions of Cases of Arbitration-Related Judicial Review](#).

¹⁴ Article 19 of the [PRC Arbitration Law](#).

¹⁵ Article 10 of the [SPC Interpretation of Arbitration Law](#).

¹⁶ Article 16 of the [PRC Arbitration Law](#).

¹⁷ Article 1 of the [SPC Interpretation of Arbitration Law](#).

¹⁸ Where the arbitration is seated in mainland China, the administering commission must be Chinese (Article 11 of the [PRC Arbitration Law](#)). Non-Chinese arbitral institutions, for instance, ICC, HKIAC or SCC, are not permitted to administer arbitrations seated in mainland China.

- (1) Transfer of credits or debts: the arbitration agreement over such rights or obligations shall be binding upon the transferee, unless the parties agree otherwise, or the transferee explicitly objects to or is unaware of the existence of a separate arbitration agreement when the credits or debts are transferred.¹⁹
- (2) Merger or split of an entity: the arbitration agreement shall be binding upon the successors to the party's rights and obligations, unless the parties agree otherwise when entering into the arbitration agreement.²⁰
- (3) Death of a party: the agreement shall be binding upon the heir to the party's rights and obligations in respect of arbitrable matters, unless the parties agree otherwise when entering into the arbitration agreement.²¹

2.6 Are there restrictions to arbitrability?

Both contractual disputes and tortious disputes are arbitrable in mainland China.²²

The following disputes are not permitted to be resolved via arbitration:²³

- (1) Disputes over marriage, adoption, guardianship, fostering and inheritance; and
- (2) Administrative disputes falling within the jurisdiction of the relevant administrative authorities.

Disputes concerning the validity of registered trademarks and patents are non-arbitrable.²⁴ However, disputes over copyrights may be resolved by arbitration.²⁵

Disputes between administrative authorities and business operators regarding the enforcement of anti-monopoly law are non-arbitrable.²⁶ Although PRC laws do not have express provisions concerning arbitrability of disputes between business operators regarding monopoly agreements, in practice PRC courts tend to deny the jurisdiction of the arbitral tribunal.

3. Intervention of domestic courts

3.1 Will the court stay litigation if there is a valid arbitration agreement covering the dispute?

A valid arbitration agreement may exclude the court's jurisdiction over the same issue. If one party has instituted an action in a court without declaring the existence of the arbitration agreement and, after the court has accepted the case, the other party submits the valid arbitration agreement prior to the first hearing, the court is required to dismiss the case.²⁷

However, if prior to the first hearing, the other party has not raised an objection to the court's jurisdiction to hear the case, that party shall be deemed to have renounced the arbitration agreement and the court will continue with the case.²⁸

¹⁹ Article 9 of the [SPC Interpretation of Arbitration Law](#).

²⁰ Article 8 of the [SPC Interpretation of Arbitration Law](#).

²¹ Article 8 of the [SPC Interpretation of Arbitration Law](#).

²² Article 2 of the [PRC Arbitration Law](#).

²³ Article 3 of the [PRC Arbitration Law](#).

²⁴ Articles 2 and 45 of the [Trademark Law of the People's Republic of China](#) (the latest amended version is in Chinese text only).

Articles 45 and 46 of the [Patent Law of the People's Republic of China](#) (the latest amended version is in Chinese text only).

²⁵ Article 55 of the [Copyright Law of the People's Republic of China](#) (the latest amended version is in Chinese text only).

²⁶ Article 3 of the [PRC Arbitration Law](#).

²⁷ Article 26 of the [PRC Arbitration Law](#).

²⁸ Article 26 of the [PRC Arbitration Law](#).

3.2 How do courts treat injunctions made by arbitrators enjoining parties to refrain from initiating, halting or withdrawing litigation proceedings?

There is no legal basis for a PRC court to stay its proceedings in response to an arbitral tribunal's order that purports to bind that court. In practice, such orders can be made only by tribunals sitting outside mainland China (as Chinese tribunals have no power to order interim relief), and they are likely to be disregarded by the PRC courts.

3.3 Will the courts intervene in arbitrations seated outside of the jurisdiction?

There is no provision in PRC law empowering the courts to render interim measures in aid of arbitrations seated outside of mainland China or Hong Kong SAR. PRC courts do not accept applications for interim relief in aid of arbitrations seated outside mainland China or Hong Kong SAR (see below for further explanation). The only exception is that the PRC courts may grant interim measures in support of a foreign maritime dispute under the Law of Maritime Special Proceedings.²⁹

From 1 October 2019, parties to Hong Kong-seated arbitrations administered by an eligible arbitration institution in Hong Kong have the right to apply for interim measures from the PRC courts.³⁰ Parties to *ad hoc* arbitrations cannot seek interim measures from the PRC courts in support of their arbitrations. Orders for interim relief in support of foreign arbitrations, whether granted by a foreign court or an arbitral tribunal, are not enforceable in China. Under the New York Convention, PRC courts are under an obligation to enforce foreign awards only. Unless the order is made in the form of a partial award, it will not be enforced in China.

In general, PRC courts will not intervene in arbitrations seated outside of mainland China. However, where an arbitration agreement is China-related (e.g., in a purely domestic contract that refers disputes to arbitration outside mainland China), one party may apply to a PRC court to rule that such arbitration clause is invalid. The court's decision is likely to impact on the overseas arbitration as well as on any attempt to enforce the award in China.

4. The conduct of the proceedings

4.1 Can parties retain foreign counsel or be self-represented?

Pursuant to the PRC Arbitration Law, parties may be represented by legal counsel or agents, or be self-represented.³¹

Foreign or international law firms are allowed to be counsel of record to participate in arbitration cases conducted in China. However, foreign or international counsel are restricted from arguing Chinese law issues.

²⁹ Article 21(2) of the [Interpretation of the Supreme People's Court on the Application of the Special Maritime Procedure Law of the People's Republic of China](#) (Chinese text only) provides that: "*Where a foreign court has already accepted a related maritime case or the relevant dispute has already been submitted for arbitration, but the involved property is within the People's Republic of China, if a party applies for maritime claim preservation with the maritime court of the place where the property is located, the maritime court shall accept the application*".

³⁰ [Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid Of Arbitral Proceedings by the Courts of the Mainland and the Hong Kong Special Administrative Region](#), effective 1 October 2019.

³¹ Article 29 of the [PRC Arbitration Law](#).

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

Despite the requirements of being "fair and honest", PRC Law does not impose a mandatory disclosure obligation on arbitrators.³² In the following circumstances, the arbitrator must withdraw, and the parties also have the right to challenge the arbitrator before the arbitration commission:³³

- (1) The arbitrator is a party in the case or a close relative of a party or its agent in the case;
- (2) The arbitrator has a personal interest in the case;
- (3) The arbitrator has another relationship with a party or its agent which may affect the impartiality of arbitration; or
- (4) The arbitrator has privately met with a party or its agent, or accepted a gift or entertainment from a party or its agent.

In practice, such challenges are usually handled by the arbitration commissions rather than the courts. Under the CIETAC Rules 2015, arbitrators are required to sign a declaration that discloses any facts or circumstances likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence.³⁴ Although the CIETAC Rules 2015 do not expressly provide any consequence for failure to disclose, in practice, parties might be able to challenge the arbitrators on that ground.

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

Under PRC law, the courts are not allowed to intervene in the nomination of arbitrators. Arbitrators are nominated by parties or appointed by the chairman of the arbitration commissions.³⁵ Since *ad hoc* arbitration is currently not permitted in mainland China, the PRC courts will not involve themselves in, or assist with, the nomination of arbitrators.

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

The power to grant interim measures in respect of a dispute that is subject to arbitration is reserved to the PRC courts. With respect to foreign-related arbitration, the court competent to hear applications for interim measures is the Intermediate People's Court at the place of the domicile of the respondent to the court proceedings or where relevant assets or evidence are located.³⁶

An application for interim measures of preservation is usually made on an *ex parte* basis to PRC courts. The court usually decides the application on paper without notifying the respondent or hearing the respondent's arguments. The rationale is that, once a respondent is put on notice of the application, the risk of destroying evidence or dissipating assets increases. The respondent has a right to apply for a review of the ruling made against it.

In a complex situation, a court may invite a respondent to respond to the application and may hold hearings to consider the parties' arguments in support of their respective positions. This is often the case in evidence preservation and asset preservation applications.

³² Article 13 of the [PRC Arbitration Law](#).

³³ Article 34 of the [PRC Arbitration Law](#).

³⁴ Article 31-32 of the China International Economic and Trade Arbitration Commission CIETAC Arbitration Rules ("[CIETAC Rules 2015](#)").

³⁵ Articles 31 and 32 of the [PRC Arbitration Law](#).

³⁶ Articles 100 to 103 of the [PRC Civil Procedure Law](#) and Article 28 of the [PRC Arbitration Law](#).

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The PRC Arbitration Law stipulates that arbitration proceedings are confidential, unless the parties agree otherwise.³⁷

4.5.2 Does it regulate the length of arbitration proceedings?

There is no provision in the PRC Arbitration Law limiting the length of arbitration proceedings. This issue is normally dealt with by the relevant arbitration rules. In practice, Chinese arbitral commissions readily grant extensions to arbitral tribunals. Consent of the parties to such extensions is not required.

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

The place of a hearing is generally regulated by the rules of the arbitral institutions. Unless otherwise agreed by the parties, the default place of hearing is the place of the arbitration commission which administers the case. The tribunal does have the power to decide to hold the hearing at a different place, though it is seldom exercised.

4.5.4 Does it allow for arbitrators to issue interim measures?

In mainland China, the power to grant interim measures (such as injunctive relief or orders for asset and evidence preservation) in arbitration is reserved to the courts. The PRC Arbitration Law does not grant arbitral tribunals seated in mainland China any power to order interim measures.

The procedure for seeking interim relief differs where the application is made prior to initiating the arbitration proceedings or concurrently with the commencement of arbitration, and where it is made after proceedings have commenced. Once arbitration proceedings have commenced, the party seeking interim measures must submit the application to the relevant arbitration commission, which will forward the party's application to the competent people's court.³⁸ Before commencement of the arbitration, a party may apply directly to the competent court for property preservation or other preservative measures.³⁹ If this issue arises in practice, it is important to seek legal advice on the specific circumstances of the case.

Even though the PRC Arbitration Law does not confer the power of granting interim relief to arbitral tribunals, some Chinese arbitration commission rules nevertheless provide that arbitral tribunals may order interim relief upon agreement of the parties.⁴⁰ Where the place of arbitration is mainland China, a tribunal's order made pursuant to such rules depends on the parties' voluntary compliance and will not be enforced by a PRC court. However, such an order may be enforced in a jurisdiction outside of mainland China, such as Hong Kong or Singapore.

Some arbitration commissions' rules have introduced emergency arbitrator procedures. These allow an emergency arbitrator to order interim relief in support of arbitration, before the tribunal is formally constituted and subject to review by the tribunal once it is in place. Rules that provide for emergency arbitration include the CIETAC Rules 2015,⁴¹ the Beijing Arbitration Commission (BAC) Arbitration Rules

³⁷ Article 40 of the [PRC Arbitration Law](#).

³⁸ Articles 28 and 46 of the [PRC Arbitration Law](#).

³⁹ Article 101 of the [PRC Civil Procedural law](#), 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 the Hong Kong Special Administrative Region](#); Article 17 of the Beijing Arbitration Commission Arbitration Rules ("[BAC Rules 2019](#)"); Article 19 of The China (Shanghai) Pilot Free Trade Zone Arbitration Rules of Shanghai International Economic and Trade Arbitral Commission (Shanghai International Arbitration Center) ("[SHIAC Rules 2015](#)").

⁴⁰ See, for example, Article 23(3) of the [CIETAC Rules 2015](#).

⁴¹ Article 23(2), Article 77(2) and Appendix III of the [CIETAC Rules 2015](#).

2019⁴² and the SHIAC Rules 2016.⁴³ However, the interim measures ordered by emergency arbitrators can only be enforced by courts outside mainland China. The BAC accepted the first emergency arbitration proceeding in mainland China in late 2017, which decision was subsequently enforced in Hong Kong High Court.⁴⁴

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?

The PRC Arbitration Law does not provide detailed rules in relation to arbitrators' rights to admit or exclude evidence. The PRC Arbitration Law states that parties shall provide evidence to support their own arguments, and the arbitral tribunal may collect evidence of its own volition if it considers necessary.⁴⁵ However, it is widely understood and practiced that the arbitrators have the power to admit or exclude evidence as they see fit.⁴⁶ Unlike courts, an arbitral tribunal has no authority to compel a third party to disclose any document.

4.5.6 Does it make it mandatory to hold a hearing?

The default position is that arbitration shall be conducted by means of oral hearings.⁴⁷ If the claimant fails to appear before the arbitration tribunal without justified reasons after receiving written notice to appear, or leaves the hearing prior to its conclusion without the permission of the arbitration tribunal, it may be deemed to have withdrawn its application for arbitration. If the respondent is absent from the oral hearings, a default award may be made.⁴⁸

A hearing is not mandatory if the parties agree to arbitrate disputes without oral hearings. In that circumstance, the arbitral tribunal may render an award on the basis of the written submissions and other materials submitted by the parties during the proceedings.⁴⁹

4.5.7 Does it prescribe principles governing the awarding of interest?

The PRC Arbitration Law is silent on whether arbitrators may award interest in arbitration. In practice, arbitral tribunals seated in China usually award simple or compound interest, calculated from the due date set by the tribunal until the date of full payment.

According to the PRC Civil Procedure Law, if a party fails to fulfil its payment obligations within the time limit specified in the judgment, ruling or "*any other enforceable legal instrument*", the party is obliged to pay double interest on the belated payment for the period of deferred performance.⁵⁰ In 2014, the SPC clarified that interest for a late payment should be calculated according to the method stated in the award, plus additional interest at the rate of 0.0175% per day.⁵¹

⁴² Article 63 of the [BAC Rules 2019](#).

⁴³ Article 21 of the [SHIAC Rules 2016](#).

⁴⁴ <https://hsfnnotes.com/arbitration/2018/10/19/first-emergency-arbitration-procedure-in-china/>

⁴⁵ Article 43 of the [PRC Arbitration Law](#).

⁴⁶ In civil cases, Chinese judges have discretion to admit or reject evidence as they see fit having regard to the relevant rules of evidence. Arbitrators by analogy should also have similar discretion in admitting or rejecting evidence.

⁴⁷ Article 39 of the [PRC Arbitration Law](#).

⁴⁸ Article 42 of the [PRC Arbitration Law](#).

⁴⁹ Article 39 of the [PRC Arbitration Law](#).

⁵⁰ Article 253 of the [PRC Civil Procedure Law](#).

⁵¹ Article 1 of the [Interpretations of the Supreme People's Court on Certain Issues Concerning the Application of Law to the Calculation of the Interest Accrued on Debts for the Period of Delay in Performance during Enforcement Proceedings](#) (Chinese text only).

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

This principle is set out in the Measures on Arbitration Fees to be Charged by Arbitration Commissions⁵² (the "1995 Measures"), which relate to "arbitration fees", *i.e.*, fees collected by an arbitration commission and used to pay the arbitrators and for the administration of the case. Article 9 of the 1995 Measures states that: "*The arbitration fees shall, in principle, be borne by the losing party*". In arbitrations seated in China, the losing party is generally ordered to compensate the winning party for its reasonable costs of the arbitration.

There are no express limits in PRC law or in Chinese arbitration rules on the amount of costs that a tribunal can order an unsuccessful party to pay. Awards in respect of lawyers' fees depend heavily on the individual tribunal's discretion as to whether the costs are reasonable. The reasonableness of such costs is assessed on a broad brush basis.

Where a party is only partially successful, Article 9 of the 1995 Measures provides that: "*the arbitration tribunal shall determine the proportion of arbitration fees to be borne by each party according to the liability of each party.*"

Under some of the leading Chinese arbitration commissions' rules, the arbitral tribunal has discretion to decide the cost allocation between the parties. The factors that the arbitral tribunal is required to take into consideration include the outcome and complexity of the case, the workload of the successful party and/or its representatives and the amount in dispute.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

An arbitrator can become subject to civil or criminal liability, and the arbitral institution should remove his or her name from the register of arbitrators, in the following circumstances:⁵³

- (1) The arbitrators have privately met with a party or agent or accepted an invitation to entertainment or gift from a party or its agent, and the circumstance is serious;
- (2) The arbitrators have embezzled funds, accepted bribes, committed malpractice for personal benefit or perverted the law when deciding cases.

PRC law does not provide more details on this topic. There are a number of published cases in this regard, but they are not binding as precedents.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

An arbitrator who deliberately renders an award in violation of the law and against the facts may be charged with criminal liability of up to seven years imprisonment under the PRC Criminal Law.⁵⁴ According to the Supervision Law of the PRC⁵⁵ and the Jurisdiction Provisions of the National Supervisory Commission,⁵⁶ arbitrators fall within the scope of supervision. If an arbitrator is suspected of having deliberately rendered an award in violation of the law and against the facts, the arbitrator will be investigated by the relevant regulator. Other participants may be subject to criminal liability if they refuse to satisfy an award and the

⁵² [Measures on Arbitration Fees to be Charged by Arbitration Commissions](#) (Chinese text only), Promulgated by the State Council on July 28, 1995.

⁵³ Article 38 of the [PRC Arbitration Law](#).

⁵⁴ Article 399a of the [Criminal Law of the People's Republic of China](#).

⁵⁵ Article 15 of [Supervision Law of the People's Republic of China](#) (Chinese text only), effective on 20 March 2018.

⁵⁶ Article 4 and 15 of the [Jurisdiction Provisions of the National Supervisory Commission](#) (Chinese text only), effective on 26 April 2018.

circumstances are serious.⁵⁷ In practice, it is extremely rare for arbitrators appointed in foreign-related arbitrations to be liable for such criminal offence.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Under the PRC Arbitration Law, an award is required to specify the claims, the facts, the reasons for the decision, the results of the award, the allocation of arbitration fees and the date of the award. However, the facts and the reasons for the decision can be omitted if the parties so agree.⁵⁸ For example, under the BAC Rules 2019, the facts and the reasons on which the award is based may not be stated in the award if the parties have so agreed, or if the award is made in accordance with the terms of a settlement agreement between the parties.⁵⁹

5.2 Can parties waive the right to seek the annulment of the award?

The PRC Arbitration Law is silent on whether any of the grounds for setting aside the award are subject to waiver by agreement of the parties. Since the right to seek the setting aside of an award or to resist its enforcement are provided by law, in practice it is unlikely that the PRC courts would consider that parties can waive their statutory rights by agreement.

The SPC Interpretation of Arbitration Law indicates that failure by a party to object to the validity of an arbitration agreement during arbitration proceedings would be considered a waiver of its right to raise such objection to set aside or resist enforcement of the award after the award is made.⁶⁰

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

For arbitration administered by an arbitration commission in China, the arbitral award must be signed by the tribunal members and sealed by the arbitration commission.⁶¹

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

The arbitral award is final and binding. Neither party can bring a lawsuit before a court or commence another arbitration at an arbitration commission over the same dispute.⁶² The parties can only apply to the competent court to set aside or refuse to enforce an arbitral award. The ruling of a court to set aside or to refuse enforcement of an arbitral award cannot be appealed.⁶³

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Arbitral awards rendered by Chinese arbitration commissions out of proceedings seated in mainland China are enforceable as domestic judgments, subject to limited grounds for non-enforcement.

Foreign awards (which are rendered in arbitration seated outside of mainland China) are enforceable in mainland China under the New York Convention. The general procedures for the recognition and enforcement of foreign awards are as follows:

⁵⁷ Article 1 and Article 2 of [Interpretations of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Criminal Cases of Refusing to Satisfy Judgments or Rulings](#) (Chinese text only).

⁵⁸ Article 54 of the [PRC Arbitration Law](#).

⁵⁹ Article 49 of the [BAC Rules 2019](#).

⁶⁰ Article 27 of the [SPC Interpretation of Arbitration Law](#).

⁶¹ Article 54 of the [PRC Arbitration Law](#).

⁶² Article 9 of the [PRC Arbitration law](#).

⁶³ Article 154 of the [PRC Civil Procedure Law](#).

- (1) The competent court is the court where the party against whom enforcement is sought is domiciled or where the enforceable property is located.⁶⁴ If the above-mentioned court does not exist, the intermediate court handling the case or the intermediate court at the place where the arbitration institution handling the case is situated shall have jurisdiction to recognize the foreign award.⁶⁵
- (2) The party seeking enforcement should submit a written enforcement application, the duly authenticated original award or a certified copy thereof, the original arbitration agreement or a certified copy thereof, proof of the applicant's identity and a valid power of attorney.⁶⁶ A Chinese translation must be provided for any documents specified above that are not in Chinese;
- (3) The time limit for submitting a recognition and enforcement application is two years, commencing from the last day of the performance period specified in the arbitral award, or the effective date of the arbitral award if the award does not specify a period for performance;⁶⁷
- (4) Fees and expenses for enforcement are paid in deposit.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

If a party applies for enforcement of the arbitration award and the other party applies to set aside the same award, the court shall suspend the procedure of enforcement.⁶⁸

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

PRC courts make their decisions regarding whether to recognise and enforce a foreign arbitral award in accordance with the New York Convention. Article V(1)(e) of the New York Convention provides that the court may refuse to enforce an arbitral award that has been set aside by the court at the seat. Under PRC law, PRC courts shall refuse to enforce a foreign arbitral award if the award falls within the scope of Article V(1) or V(2) of the New York Convention.⁶⁹ Therefore, PRC courts will refuse to recognise or enforce an arbitral award that has been annulled at its seat.

5.8 Are foreign awards readily enforceable in practice?

In general, enforcing foreign awards in China under the New York Convention is relatively easy. The SPC has adopted a pro-enforcement stance, although local courts may occasionally be less ready to enforce such awards.

In 1995, the SPC introduced a special procedure (known as the "reporting system"), to reduce the scope for local protectionism that led to refusals to enforce arbitral awards. Under the reporting system, a local court must obtain the approval of its higher court, up to the SPC, before refusing to enforce a foreign (or foreign-related Chinese) arbitration award. In 1998, through its Notice on Vacating Foreign-related Awards, the SPC extended this reporting system to the annulment of foreign-related arbitral awards.⁷⁰ In December 2017, the SPC extended the application of the reporting system to proceedings for both foreign-related and domestic awards. Whilst the annulment of foreign-related awards must be approved by the SPC, decisions to annul or

⁶⁴ Article 283 of the [PRC Civil Procedure Law](#) and Article 3 of Notice of the Supreme People's Court on the Implementation of the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" Acceded to by China ("[SPC Notice regarding New York Convention](#)").

⁶⁵ Article 3 of [SPC Provisions of Cases of Arbitration-Related Judicial Review](#), effective 1 January 2018.

⁶⁶ [SPC Notice regarding New York Convention](#).

⁶⁷ Article 239 of the [PRC Civil Procedural Law](#).

⁶⁸ Article 64 of the [PRC Arbitration Law](#).

⁶⁹ Article 4 of the [SPC Notice regarding New York Convention](#).

⁷⁰ [Notice of the Supreme People's Court on Matters Related to the setting aside by a People's Court of an Arbitral Award Involving Foreign Elements](#).

refuse to enforce domestic arbitral awards can be approved by a higher people's court at the provincial level unless (a) the parties to the proceedings are domiciled in different provinces, or (b) the annulment or refusal to enforce the award concerns public interests.⁷¹

These reporting requirements both discourage refusals to enforce, and ensure that the SPC obtains an overview of arbitration-related court practice across the country, with a view to achieving consistency of approach. In practice, however, problems may still be encountered in seizing assets depending on the local situation. Under the PRC Civil Procedure Law, the courts now must also provide written reasons for any decision to refuse enforcement or set aside awards.⁷²

6. Funding arrangements

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such restrictions?

Generally, there is no restriction on PRC lawyers entering into conditional fee arrangements (*i.e.* charging an uplift on their fees in case of success), or pure contingency fee arrangements (*i.e.*, taking a percentage of the damages awarded to the client only if the client is successful), or a combination of both with limited exceptions. Where contingency fees are allowed⁷³, the party and its legal advisor are required to enter into a contingency fee agreement, setting out the allocation of risks and responsibilities, and method and amount/rate of the charges. Contingency fees are not permitted to exceed 30% of the amount in dispute.⁷⁴ Note that the restriction only applies to Chinese lawyers; foreign lawyers are subject to the codes of conduct and regulations applicable to them.

6.2 Third party funding in arbitration and litigation is not prohibited in mainland China. Is there likely to be any significant reform of the arbitration law in the near future?

No. As of the date of this publication, we are not aware of any significant reform of the arbitration law in relation to third party funding.

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

Blockchain evidence was accepted by a Chinese court for the first time in June 2018. The Hangzhou Internet Court held that blockchain-based evidence is electronic data evidence, and its authenticity should be assessed according to the rules applicable to electronic data evidence. In that case, the court also recognised that blockchain technology, based on its characteristics of distributed storage, tamper-proof mechanism and traceability, has advantages in preserving and extracting e-evidence.⁷⁵

In September 2018, the SPC promulgated the *Provisions of the SPC on Several Issues Concerning the Trial of Cases by Internet Courts*, confirming that Internet Courts can rely on evidence that is authenticated by electronic signatures, time stamps, hash value verification, blockchain and other tamper-proof verification methods.⁷⁶ This was the first time that blockchain-based evidence was recognised by formal rules.

⁷¹ Article 3 of [Provisions of the Supreme People's Court on Issues concerning Applications for Verification of Arbitration Cases under the Judicial Review](#), effective 1 January 2018.

⁷² Article 154 of the [PRC Civil Procedure Law](#).

⁷³ Articles 11 to 13 of [Measures for the Administration of Lawyers' Service Charges](#) (Chinese text only). Contingency fee arrangement are only allowed in cases involving monetary or property claims. The client needs to be properly informed of the government guided fixed price.

⁷⁴ Article 13 of [Measures for the Administration of Lawyers' Service Charges](#) (Chinese text only).

⁷⁵ Hangzhou Huatai Media Culture Media Co., Ltd. v. Shenzhen Daotong Technology Development Co., Ltd, (2018) Zhe 0192 Min Chu No.81.

⁷⁶ Article 11 of [Provisions of the SPC on Several Issues Concerning the Trial of Cases by Internet Courts](#).

Subsequently, these provisions were applied in a case heard by the Beijing Internet Court, in which the court accepted e-evidence preserved by third-party blockchain service providers.⁷⁷ In December 2018, the Beijing Internet Court also took a lead in establishing a blockchain-based database for evidence preservation.⁷⁸

From reported cases, we have seen the acceptance of blockchain-based evidence by some Chinese courts which are not the Internet Courts.⁷⁹ This indicates a trend that the validity of blockchain-based evidence would be recognised in Chinese judicial practice. Arbitration tribunals tend to adopt a similar approach. Therefore, the validity of blockchain-based evidence is capable of being recognised in arbitration.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

The PRC Arbitration Law requires an arbitration agreement to be in writing.⁸⁰ Under Article 469 of the Civil Code, electronic data that can visibly show the described contents and can be accessed and used at any time by means of electronic data interchange and e-mails shall be regarded as being in written form. In 2006, UNCITRAL recommended that electronic communications be recognised as “agreements in writing”.⁸¹ Therefore, an arbitration agreement recorded on a blockchain is likely to be considered to be in writing. We are aware of a case in which the Shanghai No.1 Intermediate Court followed such recommendation and recognised an arbitration agreement recorded in emails.⁸² Likewise, arbitration agreements recorded on a blockchain are capable of being recognised as electronic communications and will therefore be valid. Guangzhou Arbitration Commission has used blockchain to deal with over 150 financial lending cases. Arbitration agreements and evidence in those cases were verified via blockchain.⁸³

The PRC Arbitration Law does not stipulate a compulsory form in which an award should be recorded. Unless there are other situations annulling the award, the fact that an award is recorded on a blockchain would not have the effect of invalidating the award.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

Pursuant to Article IV of the New York Convention, a party applying for recognition and enforcement of an award shall supply (a) the duly authenticated original award or a duly certified copy; and (b) the original arbitration agreement or a duly certified copy.⁸⁴ Considering the tamper-proof nature of blockchain-based evidence, the court may consider blockchain arbitration agreements and/or awards as originals. However, these issues remain to be tested in judicial practice.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

Under the PRC Electronic Signature Law, if an electronic signature meets all the conditions below, it shall be deemed as a reliable electronic signature:

⁷⁷ Beijing Weibo Shijie Technology Co., Ltd. v Baidu Online Network Technology (Beijing) Co., Ltd, (2018) Jing 0491 Min Chu No.1.

⁷⁸ <https://tpl.bjinternetcourt.gov.cn/tpl/>.

⁷⁹ Shanghai Qinxiang Internet Co., Ltd. v. Song Chengxi, (2020) Hu 0107 Min Chu No.3976.

⁸⁰ Article 16 of the [PRC Arbitration Law](#).

⁸¹ [Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#), 10 June 1958 (2006).

⁸² <http://shfy.chinacourt.gov.cn/article/detail/2017/04/id/2753593.shtml>.

⁸³ <https://www.gzac.org/jtal1/36569.jhtml>.

⁸⁴ Article IV of the [New York Convention](#).

- (1) the creation data of the electronic signature is owned exclusively by the electronic signatory at the time of signing;
- (2) the creation data of the electronic signature is controlled only by the electronic signatory at the time of signing;
- (3) any alteration to the electronic signature after signing can be detected; and
- (4) any alteration to the contents and form of a data message can be detected.⁸⁵

The parties may also choose to use an electronic signature which meets the conditions of reliability they have agreed to.⁸⁶ A reliable electronic signature shall have the same legal effect as a seal or signature by hand.⁸⁷ An award that has been electronically signed by inserting the image of a signature is less likely to be considered as satisfying the conditions above.

In addition, according to Article 94 of *Several Provisions of the SPC on Evidence in Civil Proceedings (Revised in 2019)*, unless there is sufficient evidence to the contrary, the court may confirm the authenticity of electronic data if the data is provided or confirmed by a neutral third-party platform that records and stores the electronic data.⁸⁸ Further, Article 14 of the *SPC Provisions on Issues Concerning Online Handling of Cases by People's Courts (Draft for Comment)* provides that, unless there is sufficient evidence to the contrary, verified blockchain-based evidence is presumed to be tamper-proof and the courts can confirm the authenticity of such evidence.⁸⁹ Therefore, if an electronic signature is securely digitally signed (by, for example, using encrypted electronic keys authenticated by a third-party certificate), the courts are more likely to confirm the authenticity of the electronic signature and consider it as an original.

8. Is there likely to be any significant reform of the arbitration law in the near future?

The current PRC Arbitration Law was enacted in 1994 and was amended twice in 2009 and 2017. In September 2018, the Standing Committee of the People's Congress included amending the PRC Arbitration Law in its legislative plan. However, this has not yet happened.

While the PRC Arbitration Law remains unchanged, there have been a number of significant reforms concerning arbitration in the last two years. These include (i) several major judicial interpretations on judicial assistance for arbitration and detailed rules on the reporting procedure in judicial review of awards; (ii) the conclusion and implementation 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 HKSAR*; and (iii) the conclusion of the *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland China and of the HKSAR* (yet to become effective).

Ad hoc arbitration has long been prohibited under the PRC Arbitration Law. However, recent judicial developments indicate that parties will not necessarily be required to designate an arbitration commission if the arbitration agreement is (a) between enterprises registered in China's Pilot Free Trade Zones and (b) fulfils specific requirements as regards the place of arbitration, arbitration rules and arbitrators.⁹⁰ Subsequently, the first set of Chinese *ad hoc* arbitration rules was issued ("Hengqin FTZ Ad Hoc Arbitration Rules"). Under the Hengqin FTZ Ad Hoc Arbitration Rules, if the parties are not able to nominate arbitrators, the Zhuhai Arbitration Commission would serve as the appointing authority to appoint arbitrators.⁹¹ The SPC has not provided further clarification on these issues. It remains to be seen how *ad hoc* arbitration can be

⁸⁵ Article 13(1) of the [Electronic Signature Law](#).

⁸⁶ Article 13(2) of the [Electronic Signature Law](#).

⁸⁷ Article 14 of the [Electronic Signature Law](#).

⁸⁸ Article 94 of [Several Provisions of the SPC on Evidence in Civil Proceedings \(Revised in 2019\)](#).

⁸⁹ Article 14 of [SPC Provisions on Issues Concerning Online Handling of Cases by People's Courts \(Draft for Comment\)](#).

⁹⁰ Article 9 of [SPC's Opinions on the Provision of Judicial Safeguards for the Construction of the Pilot Free Trade Zones](#). Article 9 of [SPC's Opinions on the Provision of Judicial Safeguards for the Construction of the Pilot Free Trade Zones](#).

⁹¹ Article 20 of the [Hengqin Pilot Free Trade Zone Ad Hoc Arbitration Rules Hengqin Pilot Free Trade Zone Ad Hoc Arbitration Rules \(Chinese Text Only\)](#).

administered in mainland China, and on what grounds the courts will be allowed to intervene in such arbitrations.

Since 2015, a number of international arbitration institutions, including HKIAC, SIAC and ICC, have opened representative offices in the Shanghai Free Trade Zone. These offices were established to facilitate the institutions' marketing operations in Mainland China and strengthen the institutions' ties there, including by cooperating with local arbitration commissions to promote international best practice.

In August 2019, a policy paper issued by the State Council stated that foreign arbitral institutions may be permitted to set up business organisations in Shanghai's extended free trade zone to "conduct arbitration businesses in relation to civil and commercial disputes arising in the areas of international commerce, maritime affairs, investment, etc." However, it remains to be seen which types of "arbitration businesses" those branches will be permitted to conduct.

On 7 September 2020, the State Council of China published a policy paper on opening up the services sector in Beijing.⁹² The paper states that foreign arbitral institutions will be allowed to set up "business organisations in designated area(s) in Beijing", to "provide arbitration services in relation to civil and commercial disputes arising in the areas of international commerce and investments". The paper does not explain the exact scope of activities that business organisations will be entitled to carry out in Beijing. While certain measures need to be clarified, this policy paper signals further liberation and opening up of commercial arbitration practice in Mainland China.

Finally, the Standing Committee of the National People's Congress (NPC) released its legislation plan in September 2018, which includes revision of the existing Arbitration Law.

All these developments in recent years indicate a trend that China is working hard to bring its legal system in line with international standards. There are likely to be further reforms in the near future. For example, we expect to see changes: promoting party autonomy; strengthening the doctrine of competence-competence; opening up the Chinese arbitration market to foreign arbitration institutions; and strengthening the PRC courts' supporting role in granting interim measures in support of arbitration.

9. Compatibility of the Delos Rules with local arbitration law

Article 7.1 of the Delos Rules provides that the tribunal shall have the power to determine its own jurisdiction. The principle of *competence-competence* (i.e., the right of arbitral tribunals to rule on their own jurisdiction) is not well established in Mainland China. When one party has applied to the court to rule on the validity of the arbitration agreement (including the jurisdiction of the tribunal), and the other party requests the arbitral institution to decide the issue, the court takes precedence over the arbitral institution. Where the objection is first raised with the arbitral institution and a decision has been made, the court will not accept a later application to challenge the tribunal's jurisdiction.⁹³

10. Further reading

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⁹² Article 8 of the [Work Plan for Deepening Comprehensive Pilot and New Round of Opening-Up of Services Sectors in Beijing and Building Comprehensive Demonstrative Area of Opening-up of State Services Sectors \(Chinese Text only\)](#) Article 8 of the [Work Plan for Deepening Comprehensive Pilot and New Round of Opening-Up of Services Sectors in Beijing and Building Comprehensive Demonstrative Area of Opening-up of State Services Sectors \(Chinese Text only\)](#)

⁹³ Article 13 of the [Interpretation of the Supreme People's Court on Certain Issues relating to Application of the Arbitration Law of the People's Republic of China](#).

ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	The leading international arbitral institution (commission) in China is CIETAC, headquartered in Beijing and with “sub-commissions” in many cities in Mainland China. CIETAC also has centres in Hong Kong, Vancouver (as its arbitration centre in North America) and Vienna (as its arbitration centre in Europe).
Main arbitration hearing facilities for in-person hearings?	The following Chinese arbitration institutions are equipped with hearing facilities: <ul style="list-style-type: none"> • CIETAC • Shanghai International Economic and Trade Arbitration Commission/Shanghai International Arbitration Center (SHIAC) • South China International Economic and Trade Arbitration Commission/Shenzhen Court of International Arbitration (SCIA) • Beijing Arbitration Commission/Beijing International Arbitration Center (BIAC) • China Maritime Arbitration Commission (CMAC) • Shanghai Arbitration Commission (SHAC) • Guangzhou Arbitration Commission
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	There are in-house reprographics facilities in some arbitration institutions. Most arbitration institutions are located in city centres, therefore it is convenient to find reprographics facilities within reasonable proximity.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Leading Chinese arbitration institutions provide in-house court reporting services. International providers such as Epiq also have offices or service capacity in China.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	There are many local interpreters in the market. We advise parties to select interpreters based on the specific circumstances of their cases.
Other leading arbitral bodies with offices in the jurisdiction?	Hong Kong International Arbitration Centre (HKIAC), International Chamber of Commerce International Court of Arbitration (ICC) and Singapore International Arbitration Centre (SIAC) have established representative offices in the Shanghai Free Trade Zone. Note that they do not administer arbitrations from these offices.

**The contents of In-house and Corporate Counsel Summary, Arbitration Practitioners Summary, Jurisdiction Detailed Analysis and Arbitration Infrastructure in the Jurisdiction do not constitute an opinion upon Chinese law. If you require such an opinion, please seek separate advice.*