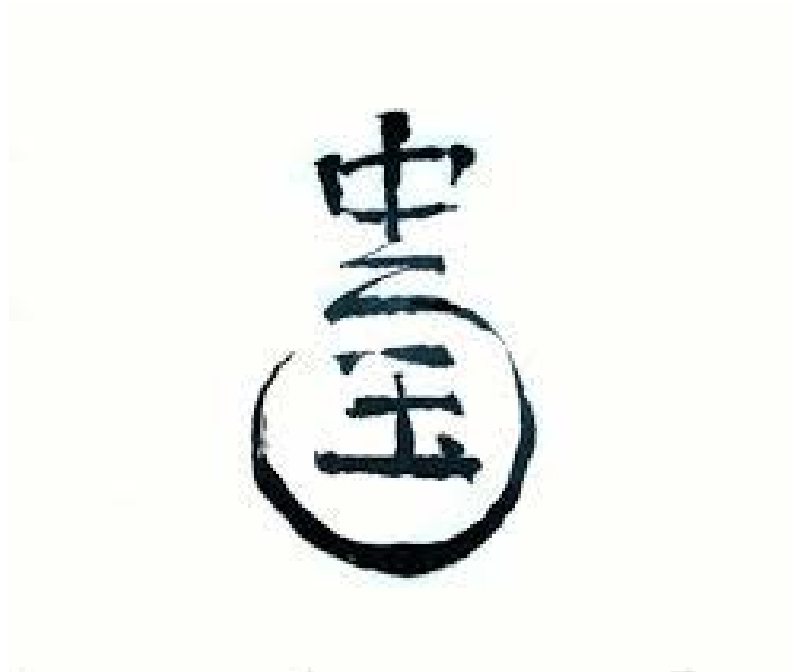


Arbitral Awards Annulled on Grounds Relating to the Conduct of the Arbitral Process: The Case of China

IBA Annual Conference 2018

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CHINA – A WORLD APART



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- **Not an UNCITRAL Model law country**
- **Arbitration regime governed by a multiplicity of texts (notably the 1995 Arbitration Law of the People’s Republic of China and the Civil Procedure Law)**
- **Different legal regimes for judicial review of foreign awards, foreign-related awards, and domestic awards**
- **Only foreign-related disputes can be submitted to arbitration abroad**
- **Ad-hoc arbitration invalid**
- **Power of foreign arbitral institutions to administer arbitrations in Mainland China uncertain**
- **Notion of seat of arbitration (仲裁地) is not recognized in the Arbitration Law, which refers instead to the “place of the arbitration commission” (仲裁委员会所在地)**

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Types of Arbitral Awards in China

Grounds for Setting Aside Arbitral Awards in China

Methodology and Outcome of the Study

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Types of Arbitral Awards in China

TYPES OF ARBITRAL AWARDS IN CHINA

- **Domestic Award**

- **Arbitral award issued in an arbitration administered by a Chinese arbitral institution, provided that this arbitration does not involve foreign elements.**

- **Foreign-related Award**

- **Arbitral award issued in an arbitration administered by a Chinese arbitral institution, which presents at least one foreign element.**
 - **One or both parties to the dispute are foreign persons**
 - **The habitual residence of one or both parties is outside of China**
 - **The subject matter of the arbitration is outside of China**
 - **The facts leading to the creation, change or termination of the legal relationship occurred outside of China**
 - **There are other circumstances under which the legal relationship can be determined as foreign-related**

- **Foreign Award**

- **Arbitral award issued in an arbitration administered by a foreign arbitral institution.**

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Grounds for Setting Aside Arbitral Awards in China

GROUNDS FOR SETTING ASIDE ARBITRAL AWARDS IN CHINA

- **Foreign Awards**
 - **No setting aside in Chinese courts**

GROUNDS FOR SETTING ASIDE ARBITRAL AWARDS IN CHINA

- **Foreign-related Awards**

- Can be set aside on **five specific grounds** pursuant to Article 274 of the Chinese Civil Procedure Law (2017 Revision, former Article 258):
 - i. The parties have neither included an arbitration clause in their contract nor subsequently reached a written arbitration agreement;
 - ii. The person against whom the application is made was not requested to appoint an arbitrator or take part in the arbitration proceedings or *the person was unable to state his opinions due to reasons for which he is not responsible*;
 - iii. The composition of the arbitration tribunal or the arbitration procedure was *not in conformity with the rules of arbitration*;
 - iv. The matters decided in the award exceed the scope of the arbitration agreement or are beyond the arbitral authority of the arbitration institution; or
 - v. The execution of the award would be against the public interest.

GROUNDS FOR SETTING ASIDE ARBITRAL AWARDS IN CHINA

- **Domestic Awards**

- **Can be set aside on seven specific grounds under Article 58 of the Chinese Arbitration Law and Article 237 of the Civil Procedure Law:**
 - i. There is no arbitration agreement in place;**
 - ii. The matters ruled on are beyond the scope of the arbitration agreement or the limits of authority of the arbitration institution;**
 - iii. The composition of the tribunal or the arbitration proceedings violated legal processes;**
 - iv. The evidence on which the ruling is based was forged;**
 - v. Matters that have an impact on the impartiality of the ruling have been found to be concealed by the other party;**
 - vi. The arbitrators accepted bribes, resorted to deception for personal gain or perverted the law in the ruling; or**
 - vii. The arbitral award violates the public interest.**

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METHODOLOGY AND OUTCOME OF THE STUDY

Identification and review of all decisions issued by the Chinese Intermediate People's Courts concerning applications for setting aside of:

- **Foreign-related awards**
- **Issued between 2003 and 2018**
- **Published on China Judgments Online and Pkulaw**
- **Made on grounds relating to the conduct of the arbitral process**

METHODOLOGY AND OUTCOME OF THE STUDY

160 applications for setting aside of foreign-related arbitral awards identified and reviewed:

- **61 applications** based on grounds related to the conduct of the arbitral process
- **11 applications** resulted in a setting aside of the award
- Only **2 applications** resulted in a setting aside of the award on grounds related to the conduct of the arbitral process

METHODOLOGY AND OUTCOME OF THE STUDY

EXAMPLE 1

Beijing No. 2 Intermediate People's Court, 12 May 2015, *Nexthill Investments Limited v. Beijing Huiquan Properties Development Ltd*

- The applicant had requested the Tribunal to order an audit process, which the Tribunal rejected
- The applicant had also requested a 45-day extension of time to file its Statement of Defense, which the Tribunal also rejected
- The applicant alleged that the Tribunal's decisions had deprived it of an opportunity to fully present its case
- Challenge **dismissed** by the Court

METHODOLOGY AND OUTCOME OF THE STUDY

EXAMPLE 2

Beijing No. 2 Intermediate People's Court, 18 March 2015, *RBRG Trading Ltd v. Sinocore International Co. Ltd.*

- The applicant had alleged that its main witness could not testify at the hearing in Beijing due to an important training he had to take part in abroad
- The applicant had requested a remote testimony or a postponement of the hearing
- The Tribunal declined the request without reason, just one day before the hearing
- Challenge **dismissed** by the Court

METHODOLOGY AND OUTCOME OF THE STUDY

EXAMPLE 3

Beijing No.2 Intermediate People's Court, 2002, *Taiwan Huaching Plastic Industry Ltd. v. Yantai Economic & Technological Development Zone Plastic Ltd*

- The applicant had requested an oral hearing
- The Tribunal declined the request and ruled on the basis of documents only
- Both the Arbitration Law and the CIETAC Rules provide that oral hearings should take place unless the parties consent to a document-only arbitration
- Award **annulled** by the Court

METHODOLOGY AND OUTCOME OF THE STUDY



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