THE ANNULMENT OF INTERNATIONAL ARBITRAL AWARDS IN THE REVISION OF CHINESE ARBITRATION LAW

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Abstract

China's Arbitration Law is undergoing dynamic reform, with the 2021 Draft for Comments prioritizing alignment with international standards, while the 2024 Draft Revision represents a notable retreat, featuring relatively limited adjustments. The Draft for Comments introduced significant revisions to the provisions on setting aside international arbitral awards, emphasizing alignment with the UNCITRAL Model Law to enhance their recognition and enforcement. However, these reforms were largely omitted in the final Draft Revision. This analysis traces the reform trajectory concerning the annulment of international arbitral awards, addressing key changes such as the unification of annulment grounds with domestic awards, procedural fairness enhancements, and alignment with international standards regarding annulment grounds, competent authorities, and time limits. Additionally, the essay evaluates the legality and rationality of these revisions from comparative legal perspectives, authoritative opinions, and practical considerations. While the reforms represent a modest step toward modernizing China's arbitration system, they remain incomplete, reflecting the need for continued efforts to bridge the gap and move closer to building a developed arbitration jurisdiction in line with international standards.

Key words: Arbitration Law Reform; Draft for Comments on the Arbitration Law; Arbitration Law (Draft Revision); UNCITRAL Model Law; Annulment of international arbitral award; Dual-tier; Single-tier.

I. INTRODUCTION: THE BACKGROUND OF ARBITRATION LAW REFORM

The current Arbitration Law of the People's Republic of China (hereinafter referred to as Chinese Arbitration Law) was first enacted on August 31, 1994, and came into effect on September 1, 1995. Over the course of nearly three decades, this law remained largely unchanged. Nevertheless, in September 2018, the legislative agenda of the 13th National People's Congress Standing Committee included the revision of the Arbitration Law as a priority item. In July 2021, the Ministry of Justice released the Draft for Comments on the Arbitration

Law (hereinafter referred to as the Draft for Comments), signaling the commencement of a significant overhaul. By May 2024, the State Council specifically designated the "Arbitration Law Revision Draft" for review by the Standing Committee in its respective 2024 legislative work plans. The National People's Congress Standing Committee also included the "Arbitration Law (Amendment)" as one of the key bills for its initial deliberation. On July 31, 2024, the State Council's Executive Meeting discussed and approved the revised draft, deciding to submit it to the National People's Congress Standing Committee for further review. On November 4, 2024, at the 12th session of the 14th National People's Congress Standing Committee, Minister of Justice HE Rong, on behalf of the State Council, presented an explanatory statement on the revised draft. On November 8, 2024, the Arbitration Law of the People's Republic of China (Draft Revision) (hereinafter referred as the Draft Revision) was publicly released. This marks a pivotal moment in the history of Chinese arbitration law reform, reflecting a growing recognition of its importance in both domestic and international contexts.

Arbitration, as a universally recognized mechanism for resolving commercial disputes, is renowned for its efficiency, fairness, confidentiality, and high degree of specialization. It occupies an irreplaceable role in the field of international commercial dispute resolution. The level of advancement of a country's arbitration law and its alignment with international practices are positively correlated with the country's overall performance in the international commercial and dispute settlement. In this context, the rule of law in foreign-related matters holds significant importance as it reflects the degree of integration into global legal standards, enhances international credibility, and facilitates the resolution of cross-border disputes in a manner consistent with global expectations.

In particular, compared to court judgments, the enforceability of arbitral awards on a global scale, backed by the 1958 New York Convention, remains the primary reason arbitration is often preferred in the resolution of foreign-related commercial disputes. Consequently, the strength in recognizing and enforcing international arbitral awards with respect to a country's legal framework is directly tied to the maturity of its arbitration system. Based on the newly published Draft Revision and the accompanying explanatory notes provided by the Ministry of Justice, one of the most crucial revisions aims to "improve the foreign-related arbitration system." This amendment is expected to serve as a catalyst for advancing the foreign-related rules of law in terms of arbitration and for fostering the development of international arbitration in China. The following section will provide a detailed analysis of these revisions.

II. THE ANNULMENT OF INTERNATIONAL ARBITRAL AWARDS

The measuring of annulment plays a vital role in maintaining the integrity of the arbitration process. The principle of competence-competence asserts that arbitral tribunals have the authority to decide on their own jurisdiction, while judicial review should be the exception reserved only for very limited and preclusive cases where arbitral tribunal lacks or exceeds its jurisdiction.[1] The grounds for annulment are highly limited to prevent unwarranted interference with arbitral decisions, ensuring that arbitration remains an efficient and final method of dispute resolution. Furthermore, arbitration is often chosen for its speed and efficiency, offering a more cost-effective alternative to traditional litigation. However, if an arbitral award is set aside, the time, costs, and efforts invested by the parties in the arbitration process can be rendered meaningless.[2] This reinforces the need to carefully circumscribing the grounds for annulment, balancing the need for fairness with the need to preserve the finality of arbitral awards.

The Draft for Comments introduces several significant modifications concerning the annulment of arbitral awards, including the standard of annulment, the authorized body for annulment, and the time limits of applying for annulment, indicating an impressive endeavor to improve the current arbitration law and to align with international practice in the legislation level. However, the recently released Draft Revision recovers most of the amendments in the Draft for Comments. This "one step back" is, on the one hand, more consistent with the actual needs of reform and the specific conditions of China, while on the other hand, it has given up some significant and celebrated progress in the reform of Chinese arbitration law.

A. The Standard of Annulment

The grounds for the annulment of arbitral awards are prescribed in Article 58 of the 2017 Chinese Arbitration Law, Article 77 of the 2021 Draft for Comments, and Article 68 of the 2024 Draft Revision. These provisions in the Draft for Comments reflect notable changes and reformative efforts, while the Draft Revision turns back to the original text in the 2017 version. This section examines the trajectory of the reform process, delving into its nuances and underlying considerations.

1. The swing between unification and separation of the standard for annulment

The unified standard for the annulment of domestic and foreign-related arbitral awards, provided in the Draft for Comments, has again

[1] *See* GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION, 1635 (3rd ed.2022).
[2] *See* Herman Verbist et al., ICC ARBITRATION IN PRACTICE 401-420 (2nd ed. 2012).

separated in the Draft Revision, distinguishing the grounds for setting aside both domestic and foreign-related arbitration awards.

The 2017 Chinese Arbitration Law has adopted a dual-tier system for the annulment of arbitral awards. The grounds for the annulment of domestic arbitration awards are specified in Article 58 of the Chinese Arbitration Law, while the grounds for the annulment of international arbitration awards, through the guidance of Article 70, are located in Article 291 of the Chinese Civil Procedure Law (2023).[3] Accordingly, the grounds for the annulment of international arbitration awards include only: no written arbitration clause or agreement; failure to appoint arbitrator, to take part in arbitral proceedings, or to present its case; the composition of the arbitration tribunal or the arbitration procedure was not in conformity with the rules of arbitration; exceed authority. In other words, the grounds for the annulment of international arbitration awards are purely procedural and do not include substantial judicial review. In contrast, the grounds for the annulment of domestic arbitration awards include substantive criteria such as forged evidence, concealed evidence, and arbitrator bias.

The Draft for Comments on the Arbitration Law, chose to remove Article 70, meaning that the grounds for the annulment of international arbitration awards will align with those for domestic arbitration awards, which includes several substantive grounds on the annulment, potentially subjecting international awards to judicial review on the merits by domestic courts. This modification deviates from the New York Convention and the UNCITRAL Model Law, since it may cause China to diverge from international consensus that not impose substantive judicial review in the annulment of international arbitration awards.

The Draft Revision, however, reinstates this bridge provision (as Article 80), thereby distinguishing the grounds for annulment between international and domestic arbitral awards. This progression from a "dual-single-dual" framework in the annulment provisions reflects careful deliberation throughout the reform process. Moreover, maintaining a dual-tier system of arbitration rules could act as a "buffer zone," acknowledging that China's domestic arbitration framework still requires substantial development to align with established practices in leading arbitration jurisdictions.

2. The fluctuating consistency of the grounds for annulment with international arbitration model practice

The grounds for annulment of arbitral awards in the Draft for Comments have been further aligned with the provisions of the New York Convention and the UNCITRAL Model Law, while those in

[3] The original text is Article 258 (within Chinese Civil Procedure Law 2007).

the Draft Revision follows back the previous text, reflecting the fluctuating consistency with international arbitration model practice.

On one hand, the removal of Article 70 of the Arbitration Law, which applies the same annulment standards to international arbitration awards and purely domestic arbitration awards, may increase judicial intervention in international arbitration awards seated in China. On the other hand, as a unified standard for annulment, Article 77 of the Draft for Comments introduces several changes, bringing the grounds for annulment closer to the New York Convention and the UNCITRAL Model Law.

First, the refinement of the annulment ground from "no arbitration agreement" to "no arbitration agreement or no valid arbitration agreement" aligns this provision with the New York Convention and the UNCITRAL Model Law, highlighting the increasing emphasis on the independence of arbitration agreements. As well acknowledged by both arbitration study and practice, the law governing the validity of arbitration agreements may differ from that governing the substantive contract or the arbitration procedure itself.[4] By requiring separate consideration of validity, this change strengthens the autonomy and enforceability of arbitration agreements, a cornerstone of modern arbitration practice.

Second, the addition of a ground for annulment based on the denial of an opportunity to present a party's case underscores procedural fairness. It provides that an arbitral award could be annulled if the party making application was not given notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case due to reasons not attributable to them. This newly-added subsection is almost a verbatim adoption of UNCITRAL Model Law Article 34(2)(a)(ii). However, by emphasizing the party's good faith and excluding procedural failures attributable to their own fault ("due to reasons not attributable to the party"), the amendment balances respect for procedural rights with the efficiency and finality of arbitration.

Third, the provision on non-arbitrability has been revised. The ground concerning arbitral tribunal's authority is revised from "beyond the scope of the arbitration agreement or the limits of authority of an arbitration commission" to "beyond the scope of the arbitration agreement or exceed the scope prescribed by this law." This revision strengthens the application of the competence-competence doctrine, widely recognized internationally, and clarifies the interpretation and scope of non-arbitrability. However, the distinction between non-arbitrability and exceeding authority, as stated in Article 77(1)(b) of the Draft for

[4] *See* GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION, 326 (3rd ed.2022).

Comments, still appears blurred compared to the clearer demarcations in the UNCITRAL Model Law Article 34(2)(a) and (2)(b).

Fourth, the addition of a ground for annulment based on "failure to comply with parties' agreed procedure" marks a significant advancement in upholding party autonomy. This new ground for annulment is consistent with New York Convention and UNCITRAL Model Law. Arbitration, as a preferred and amicable measure of dispute settlement especially in the international commercial field, is celebrated for its flexibility and respect for the parties' procedural preferences, and this amendment reinforces that principle. By making adherence to agreed procedures mandatory, it enhances the credibility and predictability of arbitration.

Fifthly, the inclusion of "serious infringement of the rights of the parties" as a standard for annulling an award based on procedure violation reflects an international trend to assess the material impact of procedural deviations, though not stated in the plain language of New York Convention or UNCITRAL Model Law. Courts generally would consider the importance of deviations from the agreed procedure, ensuring that minor or technical errors do not compromise the finality of arbitration.

Lastly, the revised provision for fraudulent arbitration specifies that awards obtained through fraud, such as malicious collusion or falsified evidence, should be annulled. This ground is derived from two scenarios under Article 58(1)(d) "[t]he evidence on which the ruling is based are forged" and (e) "[t]hings that have an impact on the impartiality of ruling have been discovered concealed by the opposite party" of the 2017 Chinese Arbitration Law. This refinement shifts the focus from judicial review of merits to procedural provisions, aligning with international standards and improving the integrity of arbitration proceedings.

The promising revisions outlined earlier, however, have been omitted in the final Draft Revision. Furthermore, the grounds for annulments of international arbitration awards provided in Article 291 of the Chinese Civil Procedure Law remains unchanged, in absence with the revisions pertaining to the emphasis on the validity of arbitration agreement, the respect to parties' procedural autonomy, and the clarification on the concept of non-arbitrability incorporated in the 2021 revisions. While returning back to dual-tier system, as elaborated in the last subsection, may necessitate less consistency in the grounds for annulment, this missed opportunity to align with international arbitration norms and enhance practices in international arbitration remains a disappointing shortcoming.

B. The Authorized Body of Annulment

The Draft for Comments amends the provision regarding the authorized body for the annulment of arbitral awards, replacing "the Intermediate People's Court at the location of the Arbitration Commission" with "the Intermediate People's Court at the arbitral seat." This change introduces the internationally recognized concept of the "arbitral seat" into China's arbitration legal framework. However, the final Draft Revision refuses this progressive amendment and sticks to "the location of the Arbitration Commission." Similarly, Article 291 of the Chinese Civil Procedure Law also misses "arbitral seat", while authorizes national courts to refuse to enforce arbitral awards concluded by Foreign-related Arbitration Institutions in China. Such legal text implicitly excludes arbitral awards concluded in international arbitration institutions and Chinese domestic arbitration institutions, even though for which proceedings are seated in China.

In international arbitration, the concept of the arbitral seat (also referred to as the "arbitral forum" or "place of arbitration") is fundamental to the legal framework governing arbitration proceedings. The arbitral seat determines the procedural law applicable to the arbitration and the courts with supervisory jurisdiction.[5] This concept is enshrined in key international instruments such as the New York Convention and the UNCITRAL Model Law, as well as in the arbitration laws of most jurisdictions.[6]

The previous absence of this concept led to significant academic debates and practical challenges. Thus, the failure to adopt the arbitral seat as the determinant for jurisdiction, especially after noticing the celebrated improvement in the Draft Revision, is rather disappointing. The ignorance of arbitral seat may derogate its central role in the arbitration legal framework and fail to align Chinese arbitration law with the practices of other established arbitration jurisdictions, thereby undermines the arbitration law reform in China.

C. The Time Limit for Applying Annulment

In alignment with these international practices, the Draft for Comments reduces the time limit for applying for annulment from 6 months to 3 months, which is finally accepted in the Draft Revision. This amendment marks a significant step toward harmonizing China's arbitration framework with the UNCITRAL Model Law. Furthermore, it reinforces arbitration's position as an expedited dispute resolution mechanism. By narrowing the window for annulment applications, the

[5] *See* GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION, 420-421 (3rd ed.2022).

[6] For example, Article V(1)(e) of the New York Convention allows contracting states to deny recognition or enforcement of an arbitral award if it has been set aside by "a competent authority of the country in which, or under the law of which, that award was made."

amendment not only enhances procedural efficiency but also underscores the importance of finality in arbitral awards, a key factor in fostering confidence in arbitration as a preferred method for resolving commercial disputes.

III. REVIEWS ON THE REVISIONS OF ANNULMENT

A. The Choice of Substantive Grounds for Annulment

New York Convention, by its plain language, does not limit the ground of annulment, but only provides limitation of grounds to refuse recognition and enforcement of a foreign or non-domestic award. Hence, most authorities therefore conclude that the grounds for annulment of arbitral awards are reserved for national arbitration legislation, namely, the authority of annulment in international arbitration is territorial.[7]

Although the analysis concedes the substantial autonomy in annulling international arbitral awards within national arbitration legislations, there still exists international limits.[8] UNCITRAL Model Law as well as a variety of national arbitration rules, especially those of Model Law jurisdictions, have transferred and almost verbatim adopted the grounds for the denial of recognition and enforcement of arbitral awards. These grounds for annulment are mainly on a procedural level (except for the grounds of non-arbitrability and public policy).[9]

As analyzed above, the final Draft Revision reverts to a dual-tier arbitration law system, maintaining the current grounds for annulment of international arbitral awards and avoiding judicial review of the merits. While the substantive grounds proposed in the Draft for Comment—though distinct from the UNCITRAL Model Law and ultimately excluded from the Draft Revision—find parallels in the arbitration frameworks of other jurisdictions, including leading international commercial arbitration systems.

The following section explores the legitimacy and validity of these two substantive grounds for annulment, namely fraud and arbitrator impartiality or lack of independence, through the lenses of comparative legal analysis and the general principles of international arbitration.

1. Comparative Law

i. Fraud

Neither the New York Convention nor the UNCITRAL Model Law explicitly lists fraud as a ground for the annulment of arbitral awards.

[7] *See* GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION, 3467 (3rd ed.2022).
[8] *See* GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION, 3621 (3rd ed.2022).
[9] New York Convention (1958) Article V.2.(a)(b).

However, according to the drafting history of the UNCITRAL Model Law, fraud is considered a specific scenario that falls under the broader concept of public policy in Article 34(2)(b)(ii), which itself derives from Article V(2)(b) of the New York Convention.[10]

Some national arbitration laws and international arbitration conventions explicitly empower courts to annul awards obtained through fraud, reflecting a widespread consensus on this issue. For example, the U.S. Federal Arbitration Act provides annulment grounds for awards "procured by corruption, fraud, or undue means."[11] Similarly, the English Arbitration Act allows annulment if the award was "obtained by fraud or the award or the way in which it was procured being contrary to public policy."[12] Other jurisdictions, such as Belgium, the Netherlands, and Iran, include provisions in their arbitration laws that specifically address fraud. Article 1704(3)(a) of the Belgian Judicial Code, Article 1068(1)(a) of the Netherlands Code of Civil Procedure, and Article 33(1)(h)(i) of Iranian Arbitration Law explicitly recognize fraud as a ground for annulment. International frameworks like the European Convention Providing a Uniform Law on Arbitration also incorporate fraud as a criterion for setting aside an award.[13] These provisions demonstrate a clear alignment among jurisdictions, ranging from established arbitration jurisdictions to more conservative states, affirming that fraud as a ground for annulment aligns with the global legislative practice in arbitration.

In contrast, arbitration practitioners has argued that fraudulent arbitration cases are exceedingly rare and whether such applications would be successful will depend on "the outcome of the bare-knuckle fight between two important and long-established principles . . . the fraud principle and the finality principle"[14] The outcome of leading case in developed arbitration jurisdiction also suggests that the inclusion of fraud as a ground for annulment, while theoretically justified, has limited practical relevance given its infrequent occurrence.[15] Hence, it is crucial for arbitration frameworks to address fraud rigorously while safeguarding the efficiency, finality, and reliability of arbitration as a dispute resolution mechanism. For example, some Chinese scholars suggest limiting fraud as a ground for annulment only if it constitutes "a violation of procedural fairness."[16]

[10] *See* H. HOLTZMANN & J. NEUHAUS, A GUIDE TO THE UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION: LEGISLATIVE HISTORY AND COMMENTARY 912-15, 1001-02 (1st ed. 1989).

[11] The U.S. Federal Arbitration Act (1990) 9 U.S.C. §10(a)(1).

[12] English Arbitration Act (1996) §68(2)(g).

[13] European Convention Providing a Uniform Law on Arbitration (1996), Annex I, Article 25(2)

[14] *See* Takhar v Gracefield Developments Ltd [2019] UKSC 13.

[15] *See* Sinocore International Co Ltd v RBRG Trading (UK) Ltd [2018] EWCA Civ 838.

[16] Zhou Hang (周航), Tian Hongyun (田洪鋆), Shewai Zhongcai Jiandu Zhong De Dangshiren Qizha Yu Zhongcaiyuan Xunsiwangfa Qianxi—Yi "Chengxü Shencha Wei Beijing

ii. Arbitrators' Lack of Independence or Impartiality

Authoritative opinions agree that, although this ground for annulment is not explicitly provided for in Article 34(2) of the UNCITRAL Model Law (or in the recognition provisions of Article V of the New York Convention), it remains one of the compelling reasons for deeming an arbitral award unlawful and thus subject to annulment.

Several national arbitration laws, including some of the prestigious locations of arbitration, explicitly recognize arbitrators' lack of independence or impartiality as a valid ground for annulling an international award. Examples include Section 68 of the English Arbitration Act, 1996; Section 10(a)(1) of the domestic FAA, the U.S.; Article 1520 of the French Code of Civil Procedure; Section 34 of the Indian Arbitration and Conciliation Act; Article 829 of the Italian Code of Civil Procedure; Article 44 of the Japanese Arbitration Law; and Article 36 of the South Korean Arbitration Act.

Moreover, the arbitration rules of many renowned arbitration jurisdictions include provisions specifically addressing arbitrator impartiality, even if such requirements are not explicitly stated in the clause of setting aside. For instance, Article 190(2)(a) of Swiss Private International Law Act (2021) provides that an arbitral award could be set aside "where the sole member of the arbitral tribunal was improperly appointed or the arbitral tribunal improperly constituted." Some cases also have shown the importance of arbitrator's impartiality and fairness.[17]

Although a more efficient remedy for arbitrator bias is to challenge arbitrators during the proceedings, it remains necessary to preserve the parties' right to seek annulment as a last resort. This is because situations may arise where a party only becomes aware of an arbitrator's misconduct or partiality after the award has been rendered. On the other hand, due regard must be given to preventing scenarios where a party being aware of the tribunal's partiality, deliberately withholds such information and remains silent until the issuance of the final award to ensure the efficiency and finality of arbitration.[18]

The 2021 Draft for Comments' attempt to include "Arbitrators have accepted bribes, resorted to deception for personal gains, or perverted

(涉外仲裁监督中的当事人欺诈与仲裁员徇私枉法浅析——以"程序审查"为背景) [An Analysis of Party Fraud and Arbitrator Favouritism in the Supervision of Foreign Arbitration - In the Context of 'Procedural Review'], SHEHUI KEXUE ZHANXIAN (社会科学战线) [SOCIAL SCIENCE FRONT] 275, 278-79 (2022).

[17] *See* Judgment of 22 December 2020, DFT 4A_318/2020, ¶7.1 (Swiss Fed. Trib.) ("An arbitrator must . . . present sufficient guarantees of independence and impartiality . . . to determine whether an arbitrator presents such guarantees, reference must be made to the constitutional principles developed in relation to state courts whilst also having regard to the specificities of arbitration"; award annulled where presiding arbitrator's comments about Chinese people on social media cast doubt on his impartiality in dispute involving Chinese party)

[18] *See* Swiss Private International Law Act (2021), Article 190a(1)(c), Article 180(1)(c).

the law in the ruling" as a ground for the annulment of an arbitral award reflecting the importance attached to the impartiality of arbitrators. This approach is in line with the national situation of China, as there have been numerous instances in practice where arbitrators have engaged in misconduct[19], accepted bribes, or been negligent.[20] Such judicial review towards arbitrators' conduct may impose positive effects on the quality and credibility of arbitration, especially if alongside provisions regarding arbitrator immunity.[21]

2. The Legality and Rationality of Including Substantive Grounds

As stated in subsection A above, New York Convention allows each jurisdiction to determine the grounds for annulment through its domestic arbitration legislation without breaching its international obligations under the New York Convention. The UNCITRAL Model Law, by contrast, provides a more detailed framework, specifying that the annulment of arbitral awards should be limited to narrowly defined preclusive grounds. Although the Model Law lacks binding authority, it serves as a model for national arbitration legislation worldwide.

Over the past several decades, a clear trend has emerged in arbitration practice: judicial review of the merits of arbitral awards has been increasingly abandoned. This development is evident both in the Model Law and in the practices of prominent arbitration jurisdictions. As Gary Born incisively observes, even in states allowing some judicial review of arbitral decisions, it is typically limited to addressing blatant legal errors. [22] This evolution signifies a profound shift toward upholding the finality and autonomy of arbitration, minimizing judicial intervention while maintaining adherence to procedural safeguards. Substantive judicial review, when restricted to issues of public policy and non-arbitrability, can effectively safeguard good faith and fairness

[19] *See* Henan Tonghui Zhiye Youxian Gongsi Shenqing Chexiao Zhongcai Caijue Minshi Caiding Shu (河南彤辉置业有限公司申请撤销仲裁裁决民事裁定书) [Henan Tonghui Zhiye Co., Ltd. v. Luoyang Shi Xingdian Jianzhu Anzhuang Gongcheng Co., Ltd.], (2023)豫03民特60号 (Luoyang Interm. People's Ct. 2023). The presiding arbitrator disregarded the majority opinion and issued an award based on their minority view without further clarification or the signatures of the other arbitrators, violating the deliberative system and statutory procedures, justifying annulment of the award.

[20] *See* SONG LIHUA v. LEE CHEE HON (FORMER NAME: QUE WENBIN) ([2023] HKCFI 2540). Arbitrator Q's lack of engagement during the online hearing was evident through a series of distractions. He frequently left his position, had conversations with others, and appeared to be absent for periods of time. At one point, he was observed in a car and later mentioned being on a high-speed train with weak signal. Despite being asked multiple times whether he could hear the proceedings, Arbitrator Q did neither respond nor acknowledge the questions by gestures.

[21] *See* Dario Alessi, *Enforcing Arbitrator's Obligations: Rethinking International Commercial Arbitrators' Liability*, 31 J. Int. Arbitr, 735, 746–48 (2014).

[22] *See* GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION, 3523 (3rd ed.2022).

without compromising these principles. The trajectory of the reform process of Chinese arbitration law is consistent with this trend.

However, the inclusion of limited substantive grounds for judicial review does not inherently contravene international obligations concerning the recognition and enforcement of arbitral awards. In fact, such provisions are aligned with arbitration rules in several jurisdictions, including some prestigious arbitral seats such as the United Kingdom and the United States. Hence, introducing narrowly tailored and carefully considered grounds for annulment, could still reflect a balanced approach to aligning domestic arbitration law with international standards and addressing unique national considerations.

B. The Swing between Single-Tier and Dual-Tier System of Arbitration Law

From the Draft for Comments to the Draft Revision, Article 70 in the 2017 Arbitration Law, and its counterpart, Article 80 in the 2024 Draft Revision, has been a focal point. At the heart of this discussion is whether the standards for reviewing international and domestic arbitral awards should be unified. The Draft for Comments marked a departure from the dual-tier approach traditionally embodied in China's arbitration legislation by removing Article 70 and adopting a single-tier framework for annulment. In contrast, the Draft Revision reinstates the dual-tier system with the inclusion of Article 80.

The terms "single-tier" and "dual-tier" refer to classifications of national arbitration systems based on whether they separately regulate international and domestic arbitration. A dual-tier system distinguishes between the two, while a single-tier system applies uniform rules to both. Under the 2017 Arbitration Law and the current Civil Procedure Law, China adhered to a dual-tier framework, treating international arbitration differently from domestic arbitration in terms of institutional structure and regulatory scope. As previously discussed, international arbitral awards were subject to limited judicial review, focusing on issues such as public policy, non-arbitrability, exceeding authority, or the absence of a valid arbitration agreement, thereby bolstering their enforceability. The Draft for Comments shifted to a single-tier approach by removing Article 70 and unifying the grounds for annulment across domestic and international arbitration. However, the recently released Draft Revision reverts to the original dual-tier practice, reintroducing Article 80 to maintain the distinction.

The choice between a dual-tier system and a single-tier system is not merely a technical detail but a fundamental design consideration for arbitration legislation. It reflects a jurisdiction's stance on international arbitration, its approach to the relationship between domestic and international arbitration, and its alignment with global arbitration norms.

Therefore, even though the two primary substantive grounds for annulment in the Draft for Comments, namely public policy and non-arbitrability, are widely accepted and practically necessary, the attempt to unify the review standards remains a topic of significant debate.

1. Comparative Law

A review of major arbitration jurisdictions may offer some insights towards the two approaches in arbitration legislation regime. Most of the developed arbitral seats have adopted a dual-tier system in arbitration rules, as seen in Hong Kong, France, Switzerland, Singapore, Netherland, and Australia. Hong Kong initially did not distinguish between domestic and international arbitration. However, with the introduction of the second arbitration ordinance, a dual-system approach was adopted, categorizing arbitration into domestic and international types. In France, arbitration is primarily governed by Chapter IV of the French Code of Civil Procedure, but international arbitration is subject to additional provisions found in Title II of Chapter IV. Switzerland maintains a dual system with the 2021 revision of the Swiss Private International Law Act (PILA), which introduced a dedicated section for international arbitration in Chapter 12. Singapore has distinct regulations for international and domestic arbitration, with the International Arbitration Act (1994) and the Arbitration Act (2001), based on the UNCITRAL Model Law. In Netherland, the Dutch Code of Civil Procedure divides arbitration regulations into those for domestic arbitration (Title 1) and international arbitration (Title 2). Australia's International Arbitration Act (1974) also separately set provisions for international arbitration. These countries have opted for dual-tier system in recognition of the need for a separate and specialized framework for international arbitration according to the complexity and global nature of international disputes.

In contrast, countries such as the the United Kingdom, the United States, and Belgium, have adopted a single-tier system. These jurisdictions do not distinguish between domestic and international arbitration, instead regulating them under a unified framework. It is worth noting that several countries with long-standing arbitration histories, such as the United States and the United Kingdom, did not separate international arbitration from domestic arbitration.[23] These jurisdictions have relatively mature arbitration practices, and their decision to regulate both domestic and international arbitration together was driven by considerations of legal stability and

[23] Federal Arbitration Act of the United States was firstly enacted at 1925, while UK Arbitration Act enacted at 1950. Both came into effect even before the establishment of the 1958 New York Convention and the 1985 UNCITRAL Model Law.

predictability.[24] In fact, these countries have significantly influenced the development of modern arbitration systems, with many of the principles and provisions of the UNCITRAL Model Law being drawn from their own legal traditions. Consequently, adopting a single-tier system that does not separate domestic and international arbitration would possibly not produce unanticipated or unmanageable outcomes in these jurisdictions.

2. Assessment on "Single-tier" and "Dual-tier" System of Arbitration Rules

i. Dual-tier System

The dual-tier system has been a consistent feature of China's arbitration practice since the enactment of the Arbitration Law in 1995. Thirty years ago, domestic arbitration in China bore a strong administrative character, with arbitration commissions relying heavily on local government support and their directors often being government officials. In contrast, foreign-related arbitration was designed to align with international standards, making the differentiation in review standards between domestic and international arbitration a natural choice at the time. Scholars also have noted that the dichotomy in arbitration reflects a judicial policy of differentiated intervention: domestic arbitral awards are subjected to stricter scrutiny, with annulment grounds including substantive issues such as arbitrators' misconduct, forgery of evidence, and concealment of evidence; by contrast, international arbitral awards face less intervention, with annulment powers centralized at the national level through the reporting and review mechanism.[25] Other scholars further argue that based on the significant economic and social development, the dual-track system should be critically inherited and gradually unified.[26]

However, the advantages of the dual-tier system should not be overlooked. First, arbitration in China remains a relatively new mechanism. Despite 30 years of development, it still lags behind the established practices of historically mature arbitration jurisdictions. The

[24] Wang Hui (王徽), <Guoji Shangshi Zhongcai Shifanfa> De Chuangshe, Yingxiang ji Qishi (〈国际商事仲裁示范法〉的创设、影响及启示) [Model Law on International Commercial Arbitration: Creation, Influence and Inspiration], WUDA GUOJIFA PINGLUN (武大国际法评论) [WUHAN UNIVERSITY INTERNATIONAL LAW REVIEW] 104, 112-13 (2019).

[25] Jiang Lili (姜丽丽), <Zhongcaifa> Xiuding Zhongda Zhengyi Wenti Jiqi Lilun Suyuan (〈仲裁法〉修订重大争议问题及其理论溯源) [Major Controversial Issues in the Revision of the Arbitration Law and its Theoretical Origins], ZHONGGUO FALÜ PINGLUN (中国法律评论) [CHINA LAW REVIEW] 165, 169 (2024).

[26] He Xiaoyi (贺晓翊), Cong Shuanggui Zouxiang Binggui: Woguo Guonei Zhongcai yu Shewai Zhongcai Sifashencha Zhidu zhi Fansi yu Chonggou (从双轨走向并轨：我国国内仲裁与涉外仲裁司法审查制度之反思与重构) [From Dual-Tier to Unified System: Reflection and Reconstruction of the Judicial Review System for Domestic and Foreign-Related Arbitration in China], RENMIN SIFA (人民司法) [PEOPLE'S JUDICATURE] 4, 6-7 (2013).

dual-tier system mitigates the risk of unpredictable or startling judicial rulings on international arbitral awards, which could undermine confidence in China as a reliable arbitral seat. Some scholars further contend that while domestic arbitration may still necessitate substantive judicial review under current circumstances, such review should remain confined to domestic cases and not be extended to foreign-related arbitration under the guise of unification. [27] Second, China's socioeconomic development is still highly uneven across regions, leading to significant disparities in the understanding and acceptance of arbitration. The quality of purely domestic arbitration also varies widely thereby. Retaining the dual-tier arbitration rule system allows substantive judicial review of domestic arbitral awards, safeguarding the parties' interests.

Furthermore, practitioners have proposed a pragmatic approach: maintaining the dual-track system while incorporating the UNCITRAL Model Law into the international arbitration section, supplemented by necessary adaptations.[28] Therefore, it is accepted that such an approach could leverage the benefits of the dual-tier system while aligning more closely with international norms.

ii. Single-tier System

Scholars proposed the idea of unifying the review standards for domestic and international arbitration when the Arbitration Law was first enacted in 1995. One perspective argued for integrating international arbitration into domestic arbitration to strengthen judicial review of international arbitral awards. [29] The opposing view suggested integrating domestic arbitration into international arbitration, gradually reducing the scope of judicial oversight of arbitral awards.[30] Nowadays, it should not be controversial to reduce the power of judicial review of arbitral awards by domestic courts, which is more in line with the mainstream view of support for arbitration in the international context.

[27] Liu Xiaohong, Feng Shuo (刘晓红, 冯硕), Dui Zhongcaifa Xiuding de Sandian Sikao - Yi Zhongcaifa Xiuding Zhengqiu Yijiangao Wei Canzhao (对〈仲裁法〉修订的"三点"思考——以〈仲裁法(修订)(征求意见稿)〉为参照) [Three Points of View on the Amendment to the Arbitration Law - The Draft of the Arbitration Law as Reference], SHANGHAI ZHENGFA XUEYUAN XUEBAO (上海政法学院学报) [JOURNAL OF SHANGHAI UNIVERSITY OF POLITICAL SCIENCE AND LAW] 54, 59(2021).

[28] *See supra* text accompanying note 22.

[29] Chen An (陈安), Zhongguo Shewai Zhongcai Jiandu Jizhi Pingxi (中国涉外仲裁监督机制评析) [Analysis of the Supervision Mechanism for Foreign-Related Arbitration in China], ZHONGGUO SHEHUI KEXUE (中国社会科学) [SOCIAL SCIENCES IN CHINA] 19, 27-30(1995).

[30] Xiao Yongping (肖永平), Yetan Woguo Fayuan Dui Zhongcai de Jiandu Fanwei - Yu Chenan Xiansheng Shangque (也谈我国法院对仲裁的监督范围——与陈安先生商榷) [Discussing the Scope of Judicial Supervision over Arbitration in China — A Discussion with Mr. Chen An], FAXUE PINGLUN (法学评论) [LAW REVIEW] 42, 43-44(1998).

Adopting a single-tier system offers significant advantages. First, it eliminates difficulties in identifying foreign-related factors and mismatches in review standards. Second, the advanced practices of international commercial arbitration can be beneficial to domestic arbitration. For example, the earlier lack of the concept of "arbitral seat" in China's Arbitration Law has now been addressed by the unification, which will gradually lead to a clearer distinction between the arbitral seat, the location of the arbitral tribunal, and the seat of the arbitration institution in domestic arbitration.[31]

However, even proponents of unification caution that full integration of judicial review mechanisms of the domestic and international arbitral award should only occur once the domestic arbitration system has sufficiently matured.[32] It is also undeniable that, due to the constraints of the New York Convention and the global nature of arbitration as a dispute resolution mechanism, the review standards for international arbitration must not be overly stringent or arbitrary, as such actions would undermine the parties' trust in the finality of arbitration. This would be fundamentally detrimental to the development of arbitration in China. Yet, given the existing issues within China's domestic arbitration system, which has not yet reached full maturity, maintaining the right to substantive review for domestic arbitral awards remains necessary. Premature unification may either impose excessive judicial review on international arbitral awards or lower the review standards for domestic arbitral awards too drastically.

C. The Introduction and Rejection of "Arbitral Seat"

The absence of the "arbitral seat" concept has long been a significant gap in Chinese arbitration law, prompting sustained calls for its adoption from both practitioners and scholars.[33] The Draft for Comments addressed this issue by successfully introducing the concept, representing a substantial advancement for China's arbitration framework. This progress was subsequently promoted by the Draft Revision, which concentrates and centralizes the concept within the legal text, increasing its clarity and significance.[34]

[31] *See supra* II. The annulment of international arbitral award, B. The authorized body of annulment.

[32] *See supra* note 28.

[33] Gao Xiaoli (高晓力), Sifa Yingyi Zhongcaidi Erfei Zhongcai Jigou Suozaidi Queding Zhongcai Caijue Jishu (司法应依仲裁地而非仲裁机构所在地确定仲裁裁决籍属) [Judicial Jurisdiction Should Be Determined by the Location of the Arbitration, Not the Location of the Arbitration Institution], RENMIN SIFA (ANLI) (人民司法(案例)) [PEOPLE'S JUDICATURE] 68, 69 (2017).

[34] Draft Revision, Article 78 and 84, in the chapter of special provisions for foreign-related arbitration.

Generally, "arbitral seat" plays a fundamental role in defining the legal framework governing international arbitration proceedings and has far-reaching legal and practical implications in international arbitration. According to the consensus in international arbitration, the seat of arbitration should be expressly designated by the parties in their arbitration agreement. Based on this designation, the procedural law of the arbitration, the relationship between the arbitration and domestic courts, and the court with jurisdiction to annul the arbitral award are determined.[35]

The absence of such a concept in Chinese arbitration law has long been out of step with international practice, leading to accumulated issues.[36] One significant aspect is the determination of the place of the award (also referred as the nationality of the award) in international arbitration. China adopts an "institution-based standard," which contrasts sharply with the internationally recognized "seat-based standard," resulting in disputes over the seat of arbitration for awards rendered in China by foreign arbitral institutions. The legal basis of such a view could be found in Article 289 of China's 2023 Civil Procedure Law. This provision stipulates that courts should handle the recognition and enforcement of awards made by foreign arbitral institutions in accordance with international treaties concluded or acceded to by China, or based on the principle of reciprocity. Under this provision, awards rendered in New York Convention member states should be recognized and enforced pursuant to the Convention, while awards made in non-member states are subject to recognition and enforcement under the principle of reciprocity. This effectively equates awards made by foreign arbitral institutions with foreign arbitral awards.

The conceptual misalignment in Chinese arbitration law can be traced to the distinctive importance and centrality of arbitral institutions within its practice. Unlike Western arbitration systems, which evolved from ad hoc arbitration to institutional arbitration, Chinese arbitration has long exhibited a tendency toward "institutional centralism." For example, one perspective posits that awards issued by foreign arbitral institutions should be regarded as awards of the institution's home country, while another argues that awards rendered in China by foreign arbitral institutions should be classified as "non-

[35] *See* GARY B. BORN, *supra* note 22, 170.

[36] Feng Shuo (冯硕), Zhonghua Renmin Gongheguo Zhongcaifa Xiuding de Shewai Fazhi Zhiwei (〈中华人民共和国仲裁法〉修订的涉外法治之维) [Revision of the China's Arbitration Law from the Perspective of Foreign-related Rule of Law],SHANGHAI DAXUE XUEBAO (SHEHUI KEXUE BAN) (上海大学学报（社会科学版）) [JOURNAL OF SHANGHAI UNIVERSITY(SOCIAL SCIENCES EDITION)] 13, 17 (2024).

domestic awards" under the New York Convention.[37] This institutional centralism is frequently cited as a core distinction between Chinese arbitration law and the UNCITRAL Model Law or other jurisdictions that adhere to its principles.[38]

D. The Reduced Time Limit for Applying Annulment

Time efficiency is a fundamental feature of arbitration, and the period for seeking annulment of an arbitral award plays a crucial role in maintaining this advantage.[39] According to Article 34(3) of the UNCITRAL Model Law and some featured national arbitration legislations, a time frame of 3 to 6 months is generally considered sufficient to strike a balance between ensuring procedural efficiency and safeguarding the parties' opportunity to seek legal remedies. This approach is further reflected in the arbitration laws of several leading jurisdictions, such as the UK Arbitration Act 1996 and the Belgian Judicial Code, which adopt similar timeframes to uphold arbitration's efficiency.

IV. CONCLUSION

The Draft for Comments represents a commendable step toward modernizing China's arbitration framework, drawing closer to international standards. The UNCITRAL Model Law, renowned for its clarity and consistency, offers a strong foundation for harmonizing China's arbitration practices with global norms. By addressing issues such as procedural ambiguities and inconsistent standards, China could significantly enhance the credibility and predictability of its arbitration regime. However, the final Draft Revision disappointingly excludes many of these progressive reforms, retaining much of the original arbitration law. While this approach avoids subjecting international arbitral awards to substantive judicial review, it still diverges from widely accepted international norms and leaves considerable room for improvement.

Moving forward, it is imperative to advocate for further revisions that align China's arbitration framework with international best practices. Calls for adopting the principles of the UNCITRAL Model Law should be amplified, emphasizing the importance of consistency, procedural autonomy, and efficiency in arbitration. By moving closer to a Model Law jurisdiction, reforms would significantly boost China's

[37] Li Qingming (李庆明), Jingwai Zhongcai Jigou Zai Zhongguo Neidi Zhongcai de Falü Wenti Yanjiu (境外仲裁机构在中国内地仲裁的法律问题研究) [Legal Issues Arising Out of Arbitration Seated in the Mainland of China but Administrated by Overseas Arbitration Institutions], HUANQIU FALÜ PINGLUN (环球法律评论) [GLOBAL LAW REVIEW],181, 187-189 (2016).

[38] *See supra* note 23.

[39] *See* GARY B. BORN, supra note 22, 3500.

appeal as a reliable seat for arbitration, fostering deeper integration with the international arbitration community.