

Contents

1	Introduction to Chinese Arbitration Law	1
1.1	Why Choose Arbitration for Business Disputes in China?	1
1.2	Legal Sources Governing Arbitration in China	1
1.3	Types of Dispute, Types of Arbitration and Types of Award in the Chinese Legal System	3
1.4	The Distinction Between “Domestic Arbitration Institutions” and “Foreign-Related Arbitration Institutions”	5
2	The Arbitration Agreement	7
2.1	Definition	7
2.2	Conditions for the Existence and Validity of an Arbitration Agreement	7
2.2.1	Conditions for the Arbitration Agreement to Be Deemed <i>Existing</i>	8
2.2.2	Circumstances Making an Arbitration Agreement <i>Invalid</i> (Article 17 AL)	9
2.2.3	Formal Requirements	10
2.3	Autonomy or Severability of the Arbitration Agreement	11
2.4	Scope of the Binding Force of the Arbitration Agreement	12
2.5	The Choice of Arbitrators	13
2.6	The Choice of the Seat of Arbitration	14
2.7	The Choice of the Substantive Law Applicable to the Dispute	15
2.8	Arbitration <i>ex aequo et bono</i>	16
2.9	The Choice of the Language of Arbitration Proceedings	17
3	Jurisdiction	19
4	Procedural Rules of Arbitration	21
4.1	Sources Governing Arbitration Procedure	21
4.2	Application for Arbitration	22

4.3	Acceptance of the Application for Arbitration (Articles 24–25 AL; Articles 13 and 15 CIETAC; Article 12 SHIAC; Article 17 SCIA; Articles 8–9 BAC)	22
4.4	Statement of Defence and Counterclaims	22
4.5	Representatives of the Parties for Arbitration Proceedings	23
4.6	Interim Measures	23
4.7	Formation of the Arbitral Tribunal (Articles 30–33 AL; Articles 24–31 CIETAC; Articles 19–25 SHIAC; Articles 26–31 SCIA; Articles 18–20 BAC)	24
4.8	Withdrawal of Arbitrators and Challenge to Arbitrators.	25
4.8.1	Provisions of the Arbitration Law (Articles 34–37).	25
4.8.2	Provisions of Arbitration Rules (Articles 31–33 CIETAC; Articles 25–27 SHIAC; Articles 31–33 SCIA; Articles 21–23 BAC)	25
4.9	Hearings (Articles 39–48 AL; Articles 35–47 CIETAC; Articles 29–43 SHIAC; Articles 34–47 SCIA; Articles 24–30 BAC)	26
4.10	Multi-party Arbitration	26
4.11	Evidence.	27
4.12	Default of the Parties (Art. 25, 42 AL; Art. 15, 39 CIETAC; Art. 13, 35 SHIAC; Art. 18, 39 SCIA).	27
4.13	Withdrawal of the Application for Arbitration and Termination of Arbitration Proceedings; New Application for Arbitration (Art. 46 CIETAC; Art. 43 SHIAC; Art. 47 SCIA)	28
4.14	The Award (Articles 53–57 AL; Articles 48–55 CIETAC; Articles 44–51 SHIAC; Articles 50–56 SCIA; Articles 46–52 BAC)	28
4.15	Summary Procedure (Articles 56–64 CIETAC; Articles 52–59 SHIAC; Articles 57–64 SCIA; Articles 53–59 BAC)	29
4.16	Combination of Arbitration with Conciliation or Mediation (Articles 49–52 AL; Article 47 CIETAC; Article 41 SHIAC; Articles 48–49 SCIA; Articles 42–43 BAC)	30
4.17	Arbitration Under the SHIAC Shanghai Pilot Free Trade Zone Arbitration Rules	31
4.18	Costs of Proceedings and Trial Expenses	32
4.18.1	Arbitration Fees	32
4.18.2	Trial Expenses and Allocation of Arbitration Fees (Article 52 CIETAC; Article 47 SHIAC; Article 66 SCIA; Article 51 BAC)	33

5 Recognition and Enforcement of the Arbitral Award	35
5.1 Application for Setting Aside of the Award.	35
5.1.1 Awards Resulting from Domestic Arbitration.	36
5.1.2 Awards Resulting from Foreign-Related Arbitration	36
5.2 Application for Recognition and Enforcement of the Award.	37
5.2.1 Awards Resulting from Domestic Arbitration (Article 237(2) CPL)	37
5.2.2 Awards Resulting from Foreign-Related Arbitration (Art. 274 CPL)	38
5.2.3 Foreign Awards.	39
5.2.4 Foreign Arbitral Awards Rendered in China	41
5.3 Fraudulent Measures Put into Effect by the Losing Party in Order to Prevent the Enforcement of the Award.	43
5.4 Obligations of Intermediate People's Courts in the Case of Refusal of Enforcement of a Foreign or Foreign-Related Award: The So-called <i>Report System</i>	44
5.5 Coordination of Proceedings for Setting Aside an Award and Proceedings for its Enforcement.	45
6 A Recent Cause of Turmoil in the Landscape of Chinese Arbitration: The So-called "CIETAC Split"	47
7 Sample Arbitration Proceedings	51
7.1 Commencing Arbitration Proceedings in China: Filing a Notice of Arbitration	51
7.2 Jurisdiction Challenge by the Respondent	52
7.3 Reply by the Respondent to the Notice of Arbitration.	53
7.4 Tribunal Order for Direction No. 1.	53
7.5 Tribunal Order for Direction No. 2.	53
7.6 Tribunal Order for Direction No. 3—Producing Documents	54
7.7 Tribunal Order for Direction No. 4—Hearing Notice	54
7.8 Tribunal Order for Direction No. 5—Final Award (Quantum of Costs)	54
7.9 Applying Enforcement of Arbitration Tribunal's Final Award	54
8 Arbitration in China—Questions and Answers	55
Appendix I: Arbitration Rules	65
Appendix II: Model Arbitration Clauses	209
Bibliography	211