COURT INTERVENTION IN INTERNATIONAL ARBITRATION: A CHINESE PERSPECTIVE ON THE NEW ARBITRATION LAW

KEQI WU* & YIJUN YUAN**

I. INTRODUCTION

* Keqi Wu is an LL.M. Candidate at the New York University School of Law, with a focus on international arbitration and cross-border dispute resolution. Keqi is a Graduate Editor of the N.Y.U. Journal of International Law and Politics and Research Assistant at the U.S.-Asia Law Institute. She holds an LL.B. degree from Southwest University of Political Science and Law and previously worked at the United Nations Commission on International Trade Law Regional Centre for Asia and the Pacific (UNCITRAL RCAP) and King & Wood Mallesons.
Email: keqi.wu@nyu.edu.

** Yijun Yuan is an LL.M. candidate, New York University School of Law, focusing on dispute resolution and international arbitration. Yijun is a Graduate Editor of the N.Y.U. Journal of International Law and Politics and an LL.M. Representative of the NYU Law International Arbitration Association. She holds an LL.B. degree from Shanghai Jiao Tong University in Shanghai, China. Email: yijun.yuan@nyu.edu

The People's Republic of China (hereinafter "China") has developed its own legal framework for international arbitration.[1] In 1986, China became a contracting or signatory state to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter "New York Convention"), and in 1994, the Chinese National People's Congress (hereinafter "NPC") enacted its first comprehensive Arbitration Law. This 1994 legislation marked the formal beginning of a systematic legal framework for arbitration in China.[2] After the implementation of the 1994 legislation, China's Arbitration Law was only marginally revised in 2009 and 2017 (hereinafter "Old Arbitration Law").

Since then, although the Supreme People's Court of China (hereinafter "SPC") has prompted a pro-arbitration policy,[3] it has not incorporated the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (hereinafter "UNCITRAL Model Law"). So far adopted by 93 states in a total of 127 jurisdictions, the UNCITRAL Model Law is a largely accepted international standard in the field of arbitration. Many scholars have recognized this discrepancy between the policy slogan and the legislation,[4] and they criticized China's legislation in arbitration for failing to align with international standards and lack of discretion to party autonomy.[5] In 2021, the Ministry of Justice released a Draft Amendment to the Arbitration Law (hereinafter "2021 Draft") that incorporated key rules set in the UNCITRAL Model Law, such as the competence-competence principle.[6] This legislative trajectory reflects a marked shift in China's approach from a relatively conservative stance to one that is increasingly aligned with international arbitration standards.[7] It also demonstrates China's attempt to reform and modernize

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1. Allison Goh, *Framework for the Resolution of Disputes Under the Belt and Road Initiative*, 87 Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 243-245 (2021).

2. Weixia Gu, *Piercing the Veil of Arbitration Reform in China: Promises, Pitfalls, Patterns, Prognoses, and Prospects*, 65 The American Journal of Comparative Law 800 (2017).

3. Yongping Xiao & Weidi Long, *Enforcement of International Arbitration Agreements in Chinese Courts*, 25 Arbitration International 588-589 (2009).

4. Jin Huang, 国际商事争议解决机制研究 [*Research Project on International Commercial Dispute Resolution Mechanism*] (2010).

5. Fan Kun, *Arbitration in China: Practice, Legal Obstacles and Reforms*, 19(2) ICC Int'l Ct. Arb. Bull. 25, 42 (2008).

6. Susan Finder, *What's New in SPC Support for Foreign-Related Rule of Law?*, Supreme People's Court Monitor (May 19, 2025), https://supremepeoplescourtmonitor.com/2025/05/; *Also see* Article 28 of the 2021 Draft.

7. China International Economic and Trade Arbitration Commission (CIETAC), *Annual report on international commercial arbitration in China* (2016).

its legal framework for arbitration, and its aim to enhance efficiency and maintain fairness and justice in arbitral proceedings.[8]

However, in order to ensure that China's market follows the Party's leadership, China's arbitration is characterized by a notable degree of state control.[9] Therefore, there has always been tension between the legislative tendencies to promote arbitration and to maintain state control. Against this background, after more than three years of silence, the First Draft Amendment of 2024 (hereinafter "First Draft") issued by the NPC removed many of the innovations intended to align the framework with international standards.[10] There have been debates about the negative effects of the First Draft despite improvements such as the concept of the "seat"[11] and ad hoc arbitration.[12] Following this, the Second Draft Amendment of 2025 (hereinafter "Second Draft") deleted the most contested Article 23(3), which entitled the judicial administrative department to fine arbitration institutions. Later, the Arbitration Law of China (2025) (hereinafter "New Arbitration Law") was enacted with minor changes.

Under China's arbitration law and common practices, courts at the place of arbitration intervene in arbitration through supervision, support, and review of the arbitral award[13] The first way is to decide the validity of the arbitration agreement, based on the jurisdiction issue at the pre-award stage. The support is through assistance with evidence-taking.[14] The third approach refers to reviewing the arbitral

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8. Ricardo E Ugarte & Stephanie Wu, *International Arbitration in China: 2023 in Review*, 41 J. Int'l Arb. 577 (2024).

9. Weixia Gu, *The Changing Landscape of Arbitration Agreements in China: Has the SPC-led Pro-Arbitration Move Gone Far Enough?*, 22 N.Y. Int'l L. Rev. 47-48 (2009).

10. Standing Committee of the NPC, *关于《中华人民共和国仲裁法（修订草稿）》的说明* [Explanation on the "Arbitration Law of the PRC (Revision Draft)"] (Sept. 12, 2025), http://www.npc.gov.cn/npc/c2/c30834/202509/t20250912_447719.html.

11. In international arbitration, law of the seat of the arbitration (lex arbitri) governs the proceedings. The mandatory rules and supervisory jurisdiction of the courts at the seat apply to arbitration. The introduction of this crucial concept therefore clarifies the procedural framework and aligns China with mainstream international practice.

12. Anton A. Ware, Tereza Gao, Grace Yang & Lyuzhi Wang, *Reforming the PRC Arbitration Law: Implications to Foreign Parties*, Wolters Kluwer Arbitration Blog (Apr. 2, 2025).

13. João Ribeiro, Stephanie Teh, *The Time for a New Arbitration Law in China: Comparing the Arbitration Law in China with the UNCITRAL Model Law*, 34 J. Int'l Arb. 459, 464 (2017).

14. Adam Grant, Paul Kleist, Milo Molfa, Amy Wen Wei, *Challenges in the Taking of Evidence in Arbitrations Seated in Mainland Chin*a, 36 J. Int'l Arb. 315, 316 (2019).

award at the post-award stage.[15] The New Arbitration Law introduces significant revisions to all of these aspects. Therefore, this commentary seeks to examine and analyze the key changes introduced by the new legislation and how these reforms bring China's arbitration framework into closer alignment with international standards, particularly the UNCITRAL Model Law. It also aims to explore the areas in which the legislature has chosen to adopt a more cautious and incremental approach to reform.

II. JUDICIAL INTERVENTION IN THE PRE-AWARD STAGE

A. Formation and Validity of Arbitration Agreement

China imposes legislative restrictions on the form and substance of an arbitration agreement.[16] Most restrictions are extensively aligned with those found in other jurisdictions.[17] On paper, the New Arbitration Law is identical to the Old Arbitration Law with regard to the written-form and content requirement[18] of an arbitration agreement. In case of any ambiguity in the choice of an arbitration institution, the parties shall reach a supplementary agreement, failure of which leads to the invalidity of the arbitration agreement.[19] However, there are two noteworthy revisions in the New Arbitration Law.

The first is the implied consent to arbitration, as provided in Article 27 of the New Arbitration Law. Article 27 now consists of three paragraphs: the first defining an arbitration agreement, the second prescribing its required contents, and the third introducing a new deemed-consent mechanism. Under this rule, if one party claims the existence of an arbitration agreement, and the other party fails to deny it before the first hearing, then an arbitration agreement is assumed to exist. In comparison, the Old Arbitration Law contained only the first two paragraphs that define and specify the contents of an arbitration agreement. This "deemed consent" provision more closely aligns Chinese

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15. Weixia Gu, *Judicial Review Over Arbitration in China: Assessing the Extent of the Latest Pro-Arbitration Move by the Supreme People's Court in the People's Republic of China*, 27 Wisconsin Int'l L. J. 221 (2009).

16. Edward Lu et al., *Arbitration Versus Litigation in China - And the Winner Is?*, 26 Asian Disp. Rev. 87 (2024).

17. Lukáš Ryšavý, *Form of Arbitration Agreement in a Comparative Perspective*, 20 International and Comparative Law Review 38-72 (2020).

18. That includes: "(1) An expression of intent to submit to arbitration; (2) The matters to be arbitrated; (3) The selected arbitration institution"; See Article 27 of the New Arbitration Law; *Also see* Article 16 of the Old Arbitration Law.

19. *See* Article 29 of the New Arbitration Law; *Also see* Article 18 of the Old Arbitration Law.

arbitration practice with Article 7(1) of the UNCITRAL Model Law, which allows an arbitration agreement to be evidenced by "an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by the other." However, the New Arbitration Law still retains a higher standard for proving implied consent by requiring the tribunal's notice and record as evidence. Further, by referring to "the first hearing," it remains unclear whether there is implied consent in document-only arbitration.

A second major development is China's gradual shift from a strictly institutional arbitration system toward a cautiously limited recognition of ad hoc arbitration. Under the Old Arbitration Law, arbitration in China must be conducted by a registered arbitration commission, as Article 18 of the Old Arbitration Law requires all arbitration to be conducted by an "arbitration commission" established by law.[20] This mandatory requirement is retained in Article 29 of the New Arbitration Law.[21] The traditional non-recognition of ad hoc arbitration reflects China's intervention in arbitration[22] and concern that without institutional supervision, ad hoc proceedings may be more susceptible to fraudulent practices such as collusion.

However, certain Pilot Free Trade Zones in China have explored ad hoc arbitration mechanisms since 2016.[23] Parties that meet certain requirements in this area can agree to determine the procedural rules without the involvement of an arbitration institution.[24] Article 82 of the New Arbitration Law now elevates these pilot practices into statutory law by permitting ad hoc arbitration in two categories of disputes: (1) foreign-related maritime disputes; or (2) foreign-related commercial disputes between enterprises registered in the Pilot Free Trade Zone, Hainan Free Trade Port, or other districts permitted by relevant regulations. Even so, the tribunal in an ad hoc arbitration must still file the

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20. *See* supra note 23, art. 18.

21. *See* supra note 23, art. 29.

22. Liu Xiaohong & Feng shuo, *Three Points of View on the Amendment to the Arbitration Law – The Draft of the Arbitration Law as Reference*, 36 J. Shanghai Inst. Pol. Sci. & L. 54-63 (2021). Weiyao Han, *Ad Hoc Arbitration Reform in China: A Step Forward*, 18 Asian Int'l Arb. J. 144 (2022).

23. Opinions of the Supreme People's Court on Providing Judicial Safeguards for the Construction of Pilot Free Trade Zones (No. 34 of 2016, Notice of the Ministry of Justice) states that "where enterprises registered in the Pilot Free Trade Zone agree to arbitrate the relevant disputes at a specific place in China, in accordance with specific arbitration rules and by specific persons, the arbitration agreement may be recognized as valid."

24. Panfeng Fu, *The Complex and Evolving Legal Status of Ad Hoc Arbitration in China*, 40 J. Int'l Arb. 46 (2023); Weiyao Han, *Ad Hoc Arbitration Reform in China: A Step Forward*, 18 Asian Int'l Arb. J. 144 (2022).

names of parties, the seat of arbitration, and the composition of the tribunal to the arbitration association. Taken together, these changes signal China's cautious yet progressive move toward liberalizing its arbitration framework while maintaining regulatory oversight.

B. Separability Doctrine

The doctrine of separability has been fully embraced in the Old Arbitration Law. Although it does not explicitly use the term "separability," the New Arbitration Law stipulates that "the formation, modification, ineffectiveness, termination, rescission, or invalidity of the contract shall not affect the validity of the arbitration agreement. It thereby incorporates the term '*formation*', a concept not included in the Old Arbitration Law.[25]

This principle has already been recognized in case practices but is now reinforced in the New Arbitration Law. For example, the *SPC Guiding Case No. 196* held that "[t]he arbitration agreement and the main contract are separable and independent from each other; their existence, validity, and governing laws are separate. The validity of the arbitration clause remains unaffected even though the main contract is not established."[26] Taken together, the evolution from judicial practice to legislative refinement demonstrates China's effort to consolidate a robust separability doctrine that ensures the autonomy and stability of arbitration agreements

C. Competence-competence

The competence-competence principle refers to an arbitral tribunal's authority to decide its own jurisdiction,[27] which includes two concepts. Its positive effect lies in the arbitral tribunal's competence to decide on its own competence, which is frequently referred to as one of the few "universally accepted transnational principles of law".[28] The negative effect, on the other hand, encompasses situations where one party sues in a state court, while the other party argues that their dispute should be resolved by arbitration.[29] The UNCITRAL Model Law is

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25. *See* Article 30 of the New Arbitration Law; *Also see* Article 19 of the Old Arbitration Law.

26. *See* in *Yunyu Ltd. v. Zhongyuan City Corp.*, (2019) Zui Gao Fa Min Te No.1 (SPC Guiding Case No. 196).

27. Franco Ferrari et al., *International Commercial Arbitration* 47 (2021).

28. Stefan Kröll and Elian Keller, *The Competence-Competence Principle's Positive Effect*, *in* Cambridge Compendium of International Commercial and Investment Arbitration1, 772 (S. Kröll et al., ed., 2023).

29. Id., 807.

inconclusive whether state courts should review jurisdiction *prima facie* or *de novo* under such circumstances.[30] Pro-arbitration countries like France take the prima facie approach, which leaves the question of jurisdiction to arbitral tribunals.[31]

The Old Arbitration Law fails to recognize both the positive and negative effects of the competence-competence principle by stipulating that disputes over the validity of the arbitration agreement should be settled by an arbitration commission or the People's Courts.[32] However, there has been well established arbitral practice of the positive effect of the competence-competence principle in China.[33] For example, the China International Economic and Trade Arbitration Commission has delegated the power to determine jurisdiction to the arbitral tribunal once it is formed since its 2006 Arbitration Rules. These provisions illustrate that Chinese arbitration institutions have been adopting the positive effect through "authorization" while respecting the Old Arbitration Law.[34]Rules. Similar rules can be found in other arbitration commissions in China.[35]

In terms of the positive effect, the New Arbitration Law codified this practice.[36] The evolution of the negative effect clause during the legislative process, shows how China is exploring a localized application of the competence-competence doctrine. The 2021 Draft adopted an explicitly pro-arbitration approach by requiring parties to first seek a decision from the arbitral tribunal before asking a court to rule on the existence or validity of an arbitration agreement.[37] However, this pro-arbitration stance was subsequently rolled back. Both the First Draft and the New Arbitration Law dropped the negative effect and reverted to the more conservative formulation found in the Old Arbitration Law. Pursuant to Article 31 of the New Arbitration Law, where one party requests an award on the validity of an arbitration agreement to be made by the arbitration commission and the other party requests a judgment from the court, then the case shall be decided by the

30. Id., 814.

31. Id., 816.

32. *See* Art. 20 of the Old Arbitration Law.

33. Chungang Dong & Ruotong Liu, *中国《仲裁法》引入仲裁庭自裁管辖权原则* [China's Arbitration Law Introduces the Principle of Autonomous Jurisdiction of Arbitral Tribunals] (Wolters Kluwer, Sept. 25, 2025).

34. Id.

35. *See* Article 14(4) of the Shanghai Arbitration Commission Arbitration Rules (2018 version); Article 10(2) of the Beijing Arbitration Commission Arbitration Rules (2001 version).

36. *See* Article 31 of the New Arbitration Law.

37. *See* Article 28 of the 2021 Draft.

court.[38] Such a request shall be filed before the first hearing in the form of an "application for confirmation of validity of an arbitration agreement,"[39] otherwise the party waives the right to raise any jurisdictional objection at the pre-award stage.[40] However, the law and jurisdictional interpretation remain silent on the scope of review at this stage, leading to excessive and inconsistent court intervention in arbitration proceedings.[41] Given that parties still have access to a *de novo* judicial review on jurisdiction at the post-award stage,[42] it follows logically that the court should review jurisdiction *prima facie* at the pre-award stage. Some judicial practices also reflect this scope of review at the pre-award stage.[43]

Indeed, China's "court-first" approach is not in line with the practice of the most pro-arbitration countries like France.[44] However, because neither the New York Convention nor the UNCITRAL Model Law provides a clear interpretation of the negative effect of the principle, states have developed their own domestic approaches to this issue.[45] Accordingly, although China's position is not among the most arbitration-friendly in this respect, it cannot be regarded as inconsistent with international practice; the core challenge instead lies in the absence of a clearly defined standard distinguishing the scope of pre-award judicial review from that of post-award review. Through the legislative history, however, we can see that China is exploring its own Chinese-style competence-competence principle.[46]

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38. *See* Article 31 of the New Arbitration Law.

39. *See* Notice of the Supreme People's Court on Promulgation of the Revised Regulations on Causes of Action for Civil Cases (2020), 444. [Indicating that there is a difference between a "dispute" over substantive issues and "application" of procedural issues.]

40. Anton A Ware et al., *Reforming the PRC Arbitration Law: Implications to Foreign Parties*, Kluwer Arbitration Blog (Apr. 2, 2025), https://legalblogs.wolterskluwer.com/arbitration-blog/reforming-the-prc-arbitration-law-implications-to-foreign-parties/.

41. Manjiao Chi & Jun Zheng, *论我国仲裁庭自裁管辖权的完善——以区分"管辖权问题"和"可受理性问题"为视角* [On the Improvement of Competence-Competence in China—Distinguishing Between "Jurisdictional Issues" and "Admissibility Issues"], 5 Bus. & Econ. L. Rev. 91 (2024).

42. Id.; *See* Article 71(1) of the New Arbitration Law.

43. *See* in (2023) Jing 04 Min Te No.348 (Beijing 4th Intermediate People's Ct.); (2023) Jing 04 Min Te No.137 (Beijing 4th Intermediate People's Ct.).

44. John Barcelo III, *The Competence-Competence Principle's Negative Effect*, *in* Cambridge Compendium of International Commercial and Investment Arbitration 807, 816-21 (S. Kröll et al., ed., 2023).

45. Id., at 812-816.

46. Guangjian Tu, *2025 New Chinese Arbitration Law: Improvements Made and To Be Further Made*, Conflict of Laws - Views and News in Private International Law (Sep.

III. JUDICIAL INTERVENTION DURING THE ARBITRAL PROCEEDINGS

A. Assistance in Taking Evidence

Obtaining evidence in an arbitration can be a challenge because the arbitral tribunals lack enforcement power.[47] To address this, Article 27 of the UNCITRAL Model Law provides that the arbitral tribunal, or a party authorized by it, may seek the court's assistance in taking evidence, which the court may carry out under its own procedural rules. China's Old Arbitration Law, by contrast, does not contain an equivalent provision[48] and the People's Courts are not obligated to provide assistance in taking evidence.[49] However, in practice, several Chinese courts including the High People's Courts in Shanghai and Guangdong have issued judicial guidance to facilitate arbitral evidence-taking. Under these guidance, arbitral tribunals may request the court to issue an "investigation order" (*diao cha ling*) to obtain evidence from parties who are otherwise unwilling to cooperate. Building on these local experiments, the New Arbitration Law court-assisted evidence-taking by providing, in Article 55(2), that arbitral tribunals may request "relevant parties" (*you guan fang mian*) to assist in taking evidence. According to the interpretation given by the official in charge of the Civil Law Department of the Legislative Affairs Commission of the NPC, the term "relevant parties" includes the People's Courts.[50] However, since the New Arbitration Law does not specify which other entities are encompassed by the term "relevant parties," nor does it clarify the specific procedures through which the courts may assist in evidence-taking, the implementation of this provision remains subject to further clarification by judicial interpretation.[51] Nevertheless, it reflects China's

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19, 2025), https://conflictoflaws.net/2025/2025-new-chinese-arbitration-law-improvements-made-and-to-be-further-made/.

47. Adam Grant et al., *Challenges in the Taking of Evidence in Arbitrations Seated in Mainland China*, 36 J. Int'l Arb. 316 (2019).

48. *See* Article 43 of the Old Arbitration Law.

49. Grant et al., *supra* note 38, at 322.; Ke Mu, *A Comparative Study on Obtaining Third Party Evidence in Civil and Commercial Arbitration: Taking England and China for Example*, 15 Contemp. Asia Arb. J. 313 (2022).

50. Jingxuan Kang, *发挥化解经济纠纷作用，营造良好营商环境* [Play the Role of Resolving Economic Disputes and Create a Good Business Environment], *Legal Daily*, Sept. 13, 2025.

51. Xiaosong Xie, *新仲裁法下的仲裁制度变革——亮点与缺憾* [Reform of the Arbitration System Under the New Arbitration Law—Highlights and Shortcomings], Beijing DHH Law Firm, Sept. 22, 2025.

intention to improve the mechanism for evidence collection and judicial assistance in arbitration.

B. Interim Measures

Interim or preliminary measures are intended to preserve a factual or legal situation in order to safeguard rights.[52] The primary purpose of these measures is to prevent parties from dissipating assets, continuing infringement, or destroying evidence.[53] Article 17 of the UNCITRAL Model Law authorizes arbitral tribunals to order interim measures concerning property and evidence, as well as to require a party to undertake specific actions.[54] The 2021 Draft mirrored this approach, by proposing a chapter on "Interim Measures" (*lin shi cuo shi*), which empowered arbitral tribunals to order preservation measures.[55] Yet, the First Draft and the New Arbitration Law diverged from this model, retaining such authority in the People's Courts.[56] This provision confirms that preservation measures in arbitrations seated in China remain subject to the jurisdiction of the People's Courts.[57] Additionally, judicial precedent has shown that arbitral decisions on interim measures rendered in arbitrations seated outside China cannot be recognized or enforced in China under the New York Convention.[58] As the New Arbitration Law does not alter the jurisdictional framework for interim measures, the *status quo* concerning their recognition and enforcement remains intact.

While the authority to grant interim measures continues to rest with the courts, the New Arbitration Law nevertheless makes meaningful progress in another respect. It includes evidence-preservation and requests to take actions in Article 39,[59] which is more in line with the UNCITRAL Model Law and international practices. This improvement partially overcomes the criticisms that China's preservation

52. Ajar Rab, *Interim Measures in International Commercial Arbitration: A Comparative Review of the Indian Experience* 9-10 (2022).

53. Ira M Schwartz, *Interim and Emergency Relief in Arbitration Proceedings - Dispute Resolution Journal*, 63 Dispute Resolution Journal 58 (2008).

54. *See* Article 17 of the UNCITRAL Model Law.

55. *See* Article 43 of the 2021 Draft.

56. *See* Article 36 of the First Draft and Article 39 of the New Arbitration Law.

57. Jing Wang, & Weisheng Wang, *The interim measures mechanism in international arbitration in China: Law and recent developments*, in Commercial and maritime law in China and Europe 137, 140-141 (Shengnan Jia & Lijun L. Zhao ed., 2022)

58. Hemofarn DD v. Jinan Yongning Pharm. Co., [2008] Min Si Ta Zi No.11 (Supreme People's Court).

59. *See* Article 39 of the New Arbitration Law.

measures are restricted.[60] From the legislative history to the final revision, it is evident that while the Chinese Arbitration Law seeks to align with internationally accepted standards, it simultaneously intends to retain jurisdiction over preservation measures within the courts.

IV. JUDICIAL INTERVENTION IN THE POST-AWARD STAGE

In the post-award stage, the New Arbitration Law establishes a legal framework that emphasizes the finality and binding force of arbitral awards. This principle reflects the legislative intent to minimize judicial interference and enhance the autonomy of arbitration institutions. However, for purposes including preserving the legal status of arbitration and preventing local judicial deviations the national courts are continuing to actively intervene in the recognition and enforcement of arbitral awards.

The New Arbitration Law distinguishes domestic arbitral awards from foreign-related arbitral awards.[61] Foreign-related arbitral awards refer to awards issued inside China but involving a foreign element (such as a foreign party, foreign subject matter, or facts occurring abroad). They are legally distinct from purely foreign awards (awards rendered outside China). A dual system is therefore applied, with different procedures and standards for judicial review of domestic and foreign-related arbitral awards.[62] With regard to foreign-related arbitral awards, the SPC establishes the Report and Approval System (*bao he zhi du*) to mitigate the negative effect of court inconsistency and local protectionism. Under the Report and Approval System, if an Intermediate People's Court (hereinafter the "IPC") intends to refuse recognition or enforcement of a foreign-related arbitral award, it must first submit the case to the Higher People's Court (hereinafter the "HPC") for judicial review.[63] Only after the HPC agrees with the IPC's view will the matter be forwarded to the SPC for final consideration.[64] No lower court may render a decision of non-enforcement until the SPC

60. MengXin & Mohd Shahril Nizam Md Radzi, *The Optimization Paths of China's International Commercial Arbitration Interim Measures System*, 4 J. Ecohumanism 4272-4273 (2025).

61. The foreign-related arbitral award in this context refers to Chinese arbitral awards involving foreign parties and purely foreign awards that are made outside China.

62. Kun Fan, *Supreme Courts and Arbitration: China*, 2019 b-Arbitra (Belg. Rev. Arb.) 587 (2019).

63. Fei Lanfang, *A Review of the Reporting Mechanism for International Arbitral Awards and Agreements in China*, 14 Asian Disp. Rev. 39 (2012).

64. Jessica Fei & Richard Hill, *The Enforcement of Arbitral Awards in Mainland China*, 12 Asian Disp. Rev. 93 (2010).

has issued its opinion. That is to say, in cases involving foreign arbitral awards under the New York Convention, the final approval authority rests with the SPC itself.

By applying the Report and Approval System, the national courts exercise a carefully limited form of judicial supervision over arbitral awards. Within this framework, the legal grounds upon which courts may set aside or refuse enforcement vary between domestic and foreign-related arbitral awards. For foreign-related arbitral awards, the legal basis for non-recognition and non-enforcement largely mirrors those enumerated in the New York Convention, emphasizing reviewal for procedural irregularities rather than substance. However, given the broad interpretive distinction left to national courts, especially regarding the vague interpretation of "public policy," Chinese judicial practice has developed several distinctive characteristics on these issues.

A. Annulment of Arbitral Awards

China adopts a notably restrained approach toward the annulment of foreign-related arbitral awards. This reflects a policy of minimal judicial interference and alignment with international standards under the New York Convention. The statutory basis for annulment lies primarily in Article 83 of the New Arbitration Law.[65] It strictly confines judicial review to procedural defects rather than substantive reconsideration of the merits—unlike the system for domestic awards.

Under Article 83 of the Civil Procedure Law of China (hereinafter "Civil Procedure Law"), a court may set aside a foreign-related arbitral award only if: (1) there is no valid arbitration agreement; (2) the respondent was not notified of the appointment of an arbitrator or the commencement of arbitral proceeding, or was unable to present its case for non- attributable reasons; (3) the composition of the tribunal or the arbitral proceeding is not in conformity with the arbitration rules; and (4) the matters fall outside the scope of the arbitration agreement, or the arbitration institution lacks jurisdiction to arbitrate.[66] In practice, this means that Chinese courts are prohibited from re-evaluating evidence, reassessing factual findings, or reconsidering the substantive correctness of the award. Instead, the courts focus solely on whether the arbitration process complied with fundamental procedural legality and due process requirements.

65. *See* Article 83 of the New Arbitration Law.

66. Id.

B. Enforcement of Arbitral Awards

Like the annulment of arbitral awards, the non-enforcement of foreign-related arbitral awards is based only on procedural grounds, while the non-enforcement of domestic awards is reviewed on both procedure and merits. Article 84 of the New Arbitration Law provides an equivalent standard for non-enforcement, including absence of an arbitration agreement, violation of due process, violation of the arbitration rules, and excess of the scope of the arbitration agreement and jurisdiction of an arbitration institution. If any of the above procedural defects can be established, the court shall refuse to enforce the arbitral award. The Chinese regime governing the recognition and enforcement of foreign arbitral awards aligns with Article V(1) of the New York Convention, under which courts are confined to a procedural examination and may refuse enforcement only on narrowly defined procedural grounds.[67]

China has experienced a discernible shift in its judicial approach to the recognition and enforcement of foreign-related arbitral awards from a traditionally cautious stance to a more pro-arbitration orientation. Since the Old Arbitration Law, the SPC has issued several judicial interpretations and policy documents reaffirming respect for the core principles of arbitration. Recent jurisprudence demonstrates that Chinese courts now adopt a measured and restrained attitude toward judicial oversight.[68] Cases of non-enforcement remain exceptional, with only a small number of cross-border awards being denied recognition or execution.[69]

C. Public Policy

Violation of public policy is regarded as the only quasi-substantive reason for annulment or non-enforcement.[70] According to Article 83 of the New Arbitration Law, a People's Court shall set aside an arbitral

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67. Herbert Kronke et al., *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention* (Kluwer L. Int'l 2010).

68. Sup. People's Ct. of the P.R.C., *Annual Report of the Supreme People's Court on Judicial Review of Commercial Arbitration (2020)* (Civil Adjudication Division IV ed., People's Ct. Press 2023).

69. Anqi Dong & Anqi Yuan, *An Empirical Study on Recognition and Enforcement of Foreign, Hong Kong, Macau, and Taiwan Arbitral Awards in Mainland China*, 39 J. Int'l Arb. 491 (2022).

70. Ran Li et al., *Recognition and Enforcement of Foreign Arbitral Awards in China Between 2012–2022: Review and Remarks (Part II)*, Kluwer Arbitration Blog (Sep. 12, 2023); Roger P. Alford et al., *Empirical Analysis of National Courts' Vacatur and Enforcement of International Commercial Arbitration Awards*, 39 J. Int'l Arb. 299 (2022); Yanlin Lin, *Arbitral Awards and Decisions*, in *China Arbitration Yearbook (2021)* 167 (Springer 2022).

award if it finds that the award violates public interest.[71] In China, the concept of public policy is generally articulated as "social public interest" (*she hui gong gong li yi*).[72] In judicial practices, Chinese national courts define this notion in relevant judicial opinions and cases. According to the SPC's judicial reply in many cases, the "social public interest" refers to the fundamental values of the legal order, the core ethics of society, and matters affecting national or public security. It should be invoked only in exceptional circumstances where an award "harms the public order that transcends the rights and obligations of the parties themselves."[73] Domestic courts are cautious in citing public policy as a reason for non-enforcement, invoking it only in exceptional circumstances and under a narrowly construed standard.[74]

Judicial practice indicates that China has gradually developed both affirmative and restrictive benchmarks for determining when an award may be considered contrary to public interest. Although parties occasionally seek annulment or non-enforcement of arbitral awards on this basis, courts interpret the notion of public interest extremely narrowly.[75] Case law demonstrates that a violation arises only where an arbitral award undermines the fundamental principles of national law, offends public morality or social ethics, or endangers national or public security.[76] In contrast, a mere breach of mandatory statutory provisions does not necessarily constitute a violation of public policy.

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71. Article 83 of the New Arbitration Law.

72. Article 8 of the Interpretation of the Supreme People's Court on Certain Issues Concerning the Application of the Law on the Law Applicable to Foreign-Related Civil Relations (promulgated by the Sup. People's Ct., Dec. 28, 2012, effective Jan. 7, 2013) (P.R.C.).

73. *See* Brentwood Industries v. Guangdong Fa'anlong Co., (2013) Yue Min Zhong No. 45; Shanghai Jwell Machinery Co. Ltd. v. OAO Uralmash, (2006) Hu Yi Zhong Min Te Zi No. 56.

74. *See* in (2019) Jing 04 Min Te No. 157 (Beijing 4th Intermediate People's Ct.); (2018) Yue 01 Min Te No. 335 (Guangzhou Intermediate People's Ct.); (2018) Zui Gao Fa Min Shen No. 3879 (Sup. People's Ct. of the P.R.C.); *Gao Zheyu v. Yunsilu Corp.*, Sup. People's Ct. Guiding Case No. 199, (2018) Yue 03 Min Te No. 719.

75. Qian He, *Public Policy in Judicial Review of International Commercial Arbitration*, 14 Soc. Sci. China 143 (2014).

76. *See* in *China Sugar & Liquor Corp. v. ED&F Mann's (Hong Kong) Ltd.*, (2003) Min Si Ta Zi No. 3 (Sup. People's Ct. of the P.R.C.); *Gao Zheyu v. Yunsilu Corp.*, Sup. People's Ct. Guiding Case No. 199, (2018) Yue 03 Min Te No. 719; Jia Li & Xin Li, *Guiding Cases 196–198 Issued by the PRC Supreme People's Court – Further Steps Toward a Pro-Arbitration Regime*, Kluwer Arbitration Blog (Sep. 29, 2023).

V. CONCLUSION

To conclude, the New Arbitration Law reflects the continued effort to modernize the Chinese arbitration framework while preserving features rooted in its legal tradition. Chinese reforms introduce greater alignment with international norms under the UNCITRAL Model Law – particularly through codifying the doctrine of separability, recognizing the competence-competence principle, retaining a court-first approach, and simultaneously expanding avenues for judicial assistance and interim measures, and cautiously opening the door to ad hoc arbitration. At the post-award stage, China established the narrowly framed annulment and refusal of enforcement grounds under the Report and Approval System. The restrictive interpretation of public policy demonstrates a sustained commitment to limiting judicial interference and ensuring consistency. It signals China's incremental but steady movement toward a more predictable and internationally compatible arbitration regime.