FOREIGN-RELATED ARBITRATION IN CHINA: DEVELOPMENT, INSTITUTIONAL INNOVATIONS AND CHALLENGES

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The Arbitration Law of the People's Republic of China, which came into effect as of March 1, 2026, represents the first comprehensive legislative amendment since its enactment in China more than three decades ago. Among other things, the amendments to the foreign-related arbitration system are particularly noteworthy. Through a series of institutional innovations, the new Law manifests a general trend of convergence with the prevailing international rules such as the UNCITRAL Model Law on International Commercial Arbitration and the New York Convention, which comprises an expanded scope of accepting foreign-related cases, limited recognition of ad hoc arbitration, the introduction of the concept on the seat of arbitration, the two-way opening of arbitration institutions, and express acknowledgement of international investment arbitration. Meanwhile, it can be seen that the Chinese legislature has retained a certain degree of caution alongside these innovations: The conditions for ad hoc arbitration are circumscribed; the competence-competence mode is adopted in a compromised form; judicial supervision exhibits a tension between relaxation and restriction; and the access system for foreign arbitral institutions remains under-elaborated. Such features are likely to translate into practical challenges as the new Law takes effect. This paper, starting from the institutional innovation of the Law, analyzes the key revisions and legislative intent, examines those potential challenges in practice, and proposes the paths for addressing those challenges through institutional refinement, which mainly seeks to offer insights for the improvement of the implementation of the Law in China.

I. INTRODUCTION

As a popular means of resolving civil and commercial disputes, arbitration plays an important constituent part in promoting a market-oriented and law-based business environment for the international community, which

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is characterized by party autonomy, procedural flexibility and efficiency,[1] as well as the final and binding force of arbitral awards. The promulgation of the *Arbitration Law of the People's Republic of China* in 1994 marked the formal establishment of a modern arbitration system in China, and provided a vital institutional safeguard for the resolution of civil and commercial disputes amid the country's economic development and progressive opening to the outside world. Since then and over the past three decades, Chinese arbitration institutions have steadily enhanced their service capacity, established a number of arbitral platforms with international influence, and seen a continuous growth in both the value of arbitral cases and the proportion of foreign-related disputes. In 2025, the Chinese mainland's 285 arbitration institutions accepted a total of 956,000 arbitration cases, an increase of 25% year-on-year, with the aggregate amount in dispute reaching approximately 1.44 trillion yuan, representing a year-on-year increase of 18.7%, and marking the third consecutive year in which the figure has exceeded 1 trillion yuan; the disputes handled covered such sectors as finance, e-commerce, construction, maritime, and marine affairs.[2] Turning to the caseload involving Hong Kong, Macao, and Taiwan region, and that related to foreign-related matters, 111 arbitration institutions nationwide accepted a total of 5,019 such cases in 2025, an increase of 14.8% year-on-year, with the aggregate amount in dispute reaching 208 billion yuan, a year-on-year increase of 5.2%.[3] In addition, Beijing, Shenzhen, and Shanghai have secured positions among the global top ten in several recent international rankings for preferred seats of arbitration.[4]

With the rapid social and economic development, and in particular with the booming of the digital economy and the advancing high-level opening up, the *Arbitration Law*, which only underwent minor amendments in 2009 and 2017, has gradually proved unable to meet the new demands. Accordingly, these emerging problems have become key constraints on the high-quality

1 Benjamin Hayward, *Being Arbitration Friendly, Pro-Arbitration, and Pro-Enforcement: Why the Ways in Which We Evaluate International Commercial Arbitration Need to Change*, 41(4) Arbitration International 795-817 (2025); Wang Chengjie, *Promoting High-Quality Development of Arbitration to Build the Foreign-Related Rule of Law System and Capacity*, 5 People's Tribune: Frontiers 74-80 (2026).

2 Shi Hong, *Background, Rationale, and Key Provisions of the Revision of the Arbitration Law*, 1 China Law Review 17 (2026); THE NATIONWIDE AGGREGATE AMOUNT IN DISPUTE IN ARBITRATION CASES HAS EXCEEDED 1 TRILLION YUAN FOR THREE CONSECUTIVE YEARS, AS INTERNATIONAL ARBITRATION CENTERS SHOW A TREND OF SHIFTING EASTWARD, at https://news.qq.com/rain/a/20260917A0DZBX00 (Last visited on September 19, 2026).

3 *Id.*

4 QUEEN MARY UNIVERSITY OF LONDON, 2025 INTERNATIONAL ARBITRATION SURVEY, at https://www.qmul.ac.uk/arbitration/research/2025-international-arbitration-survey/ (Last visited on May 4, 2026).

development of arbitration in China.[5] Inadequate integration between the rules of China's foreign-related arbitration and the prevailing international standards has hampered the recognition and enforcement of China's arbitral awards overseas, and undermined its competitiveness as a preferred seat of international arbitration.[6]

On September 12, 2025, the Seventeenth Session of the Standing Committee of the Fourteenth National People's Congress adopted the amended *Arbitration Law*, which entered into effect on March 1, 2026. This is the first comprehensive amendment of the Law in China since 1994. In terms of the textual scale, the *Arbitration Law of 2025* expands from the original 80 articles to 96, introducing systemic adjustments concerning the governance of arbitration institutions, foreign-related arbitration, as well as judicial support for and supervision over arbitration practices. Equally noteworthy is the temporal context behind this amendment.[7] From an international perspective, profound changes unseen in a century are gaining momentum. Meanwhile, the global commercial arbitration system is undergoing 'structural shifts amid the rise of some and decline of others, business-model adjustments driven by technological iteration, and institutional convergence within cultural diversity.'[8] Domestically, the Third Plenary Session of the Twentieth Central Committee of the Communist Party of China set forth the strategic development of 'deepening the reform of the arbitration system, improving the international commercial arbitration and mediation systems, and fostering world-class arbitration institutions', placing the international alignment of the arbitration system in a position of importance within the broader setting of constructing China's foreign-related rule of law.

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5 For detailed discussions, *see, e.g.*, Shen Wei & Lu Xinyue, *How to Make Arbitration Law More International: Investigating the Key Provisions in the Revised Arbitration Law*, 3 Journal of Hunan University (Social Sciences) 125-131 (2024); Gao Wei, *Challenges and Transformation in the Evolution of China's International Arbitration*, 1 Chinese Journal of Applied Jurisprudence 89-106 (2026); Shi Xianming & Zhang Yaoxuan, *The Nature of Arbitration, Distinctive Features of Foreign-Related Arbitration, and China's Legislative Reforms*, 3 Journal of Southwest University of Political Science and Law 23-37 (2025).

6 *See* Jiang Lili, *Major Controversial Issues in the Revision of the Arbitration Law and Its Theoretical Origins*, 3 China Law Review 165 (2024).

7 For detailed discussions on the *Arbitration Law of 2025*, *see, e.g.*, LEXCHINA, ANALYSIS OF CHINA'S ARBITRATION LAW AMENDMENT: IMPACT AND CHALLENGES, at https://lexchina.org/analysis-of-chinas-arbitration-law-amendment-impact-and-challenges/ (Last visited on May 5, 2026); SIMON HUI, JOHN TSO & SHAUN WU ET AL., AMENDED LAW EXPANDS ARBITRATION OPTIONS FOR BUSINESSES OPERATING IN CHINA, at https://www.paulhastings.com/insights/client-alerts/amended-law-expands-arbitration-options-for-businesses-operating-in-china (Last visited on May 6, 2026); TU GUANGJIAN & CHEN ZHI, 2025 NEW CHINESE ARBITRATION LAW: IMPROVEMENTS MADE AND TO BE FURTHER MADE, at https://conflictoflaws.net/2025/2025-new-chinese-arbitration-law-improvements-made-and-to-be-further-made/ (Last visited on May 6, 2026).

8 *See* Liu Xiaohong & Feng Shuo, *International Commercial Arbitration in the Context of Great Changes: Global Trends and China's Response*, 12 Social Sciences in China 63 (2024).

The foreign-related rule of law is, in essence, an outward extension of the domestic rule of law, and one of the concrete pathways for advancing the two in a coordinated manner is to strengthen the construction of the foreign-related rule-of-law system as a whole.[9] Against this backdrop, China's amendments to the arbitration law in 2025 concerning foreign-related arbitration are of particular research value. On the one hand, foreign-related arbitration constitutes the frontier on which China's arbitration system interfaces with the prevailing international rules, and its institutional design directly bears upon whether China can become a preferred forum for the resolution of international commercial disputes. On the other hand, the renewal of the foreign-related arbitration system most clearly reflects the legislature's value trade-off between the alignment with international standards and the retention of distinctive Chinese characteristics. Taking the foreign-related arbitration system under the *Arbitration Law of 2025* as its study object, this paper starts from the standpoint of institutional innovation, systematically maps out the principal contents of the new arbitration system, examines the practical challenges that lie behind those innovations, and proposes the paths for addressing those challenges through institutional refinement.

II. THREE LOGICS UNDERLYING THE REFORM OF THE FOREIGN-RELATED ARBITRATION SYSTEM IN CHINA

Reforms of any legal system rarely owe to a single cause. There is no exception for the amendment of the *Arbitration Law of 2025*, and its legislative drafting process was driven by three distinct but mutually reinforcing logics: (1) the shifting pattern of international arbitration; (2) practical demands for China's transition toward institutional opening; and (3) modernized transformation of China's arbitration system. Examining these three logics in turn will provide an analytical foundation against which the substance of the legal reform, and the limits of such reform, can be properly assessed as discussed below.

A. The Shifting Pattern of International Arbitration

The century-long development of international commercial arbitration has long been dominated by Western states, and the imprint of that

9 Huang Jin, *On the Coordinated Advancement of the Domestic and Foreign-Related Rule of Law*, 12 Social Sciences in China 84 (2022).

dominance is visible in both the normative aspect and the institutional pattern of the arbitration. At the normative level, the global arbitration framework, anchored in the *New York Convention* and patterned upon the *UNCITRAL Model Law on International Commercial Arbitration* (hereinafter referred to as the UNCITRAL Model Law), was essentially shaped within the framework of Western legal civilization. At the institutional level, the principal international commercial arbitration bodies, including the International Chamber of Commerce (ICC), the London Court of International Arbitration, and the Stockholm Chamber of Commerce, are all based in Europe or North America. However, such a pattern over the past decades has changed, resulting in the fact that the Asia-Pacific region has rapidly enhanced its standing in the global arbitration market, and several seats within the region have, according to practitioner surveys, joined and at times displaced the traditional centers of preference.

This shift has placed objective pressures upon Chinese legislation on arbitration. On the one hand, the modernization and internationalization of arbitral legislation in jurisdictions such as Singapore have proceeded apace, listing themselves into the ranks of the world's most preferred seats of arbitration.[10] By contrast, the prevailing international arbitration practice has evolved markedly since China's enactment of the arbitration law in 1994, and continued reliance upon the older rules would inevitably weaken its competitiveness in international arbitration. On the other hand, the international arbitration system itself has been adjusting in response to the broader shifts of the times, and exhibits new tendencies such as 'the pursuit of efficiency on the premise of safeguarding fundamental fairness, the easing of public-policy constraints amid the interweaving of public and private interests, and the rise of arbitral institutions' authority on the foundation of party autonomy.'[11] At the same time, guided by the strategy of institutional opening, China's arbitration system has steadily aligned itself with prevailing international rules, while sharing institutional experience with distinct Chinese characteristics. The Belt and Road Initiative, for instance, has been described as offering a unique opportunity to contemplate the regional harmonization of international commercial arbitration rules in Asia,[12] and there are ever clearer signs that China's role is shifting from that of a passive follower of rules to that of an active participant in rule making.

10 *Supra* note 4.

11 Liu Xiaohong & Feng Shuo, *supra* note 8.

12 *See* Gu Weixia, *China's Belt and Road Development and a New International Commercial Arbitration Initiative in Asia*, 51(5) Vanderbilt Journal of Transnational Law 1305 (2021).

B. Practical Demands for China's Transition Toward Institutional Opening

As a key component of the foreign-related rule of law, the development of international commercial arbitration is closely intertwined with institutional opening-up. From the standpoint of institutional supply, the *Arbitration Law of 1994* diverged from the prevailing international rules in several pivotal respects, thereby impeding the internationalization of China's arbitration system.[13] First, the *Arbitration Law of 1994* adopted the seat of the arbitration institution rather than the seat of arbitration as the criterion for determining the nationality of an arbitral award, and vested the power to set aside arbitral awards in the people's court of the place where the arbitration institution was located. Consequently, a series of tensions in the determination of jurisdiction and the applicable law left the nationality of awards rendered by foreign arbitral institutions in the Chinese mainland unsettled for a long time.[14] Second, the lack of an *ad hoc* arbitration mechanism is inconsistent with the coexistence of *ad hoc* and institutional arbitration under the *New York Convention*. Third, it failed to explicitly recognize the arbitral tribunal's competence-competence, leaving a long-standing gap in China concerning this internationally prevailing principle.[15] Fourth, interim measures were exclusively administered by courts, and arbitral tribunals have no authority to issue such measures, which stands in marked contrast to the provisions of the 2006 amendment to the UNCITRAL Model Law.

Such divergences not only undermined the international credibility of China's arbitration system, but also constituted potential obstacles for commercial parties when considering selecting China as the seat of arbitration. The amendments to the foreign-related arbitration system under the *Arbitration Law of 2025* respond to the demands in a timely and practical manner. For example, the number of provisions set in a special chapter on foreign-related arbitration has grown notably compared with the Law enacted in 1994; the introduction of the seat of arbitration, limited recognition of *ad hoc* arbitration, and the partial codification of competence-competence all reflect the legislative intent to align with the prevailing international rules, thereby advancing China's institutional opening-up through a two-way interaction between international and domestic rule of law in terms of arbitration.

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13 Luo Fuzhong & Zhao Yun, *Reflections on the Implications and Pathways for the 'Internationalization' of China's Arbitration System*, 2 Nanjing University Law Journal 42 (2026).

14 *See* Fredrik O. Lindmark, *China's Draft Amended Arbitration Law: A Step Forward, But Is the Step Big Enough?*, 14(1) Tsinghua China Law Review 175 (2022).

15 Fu Panfeng, *The Doctrine of Kompetenz-Kompetenz: A Sino-French Comparative Perspective*, 52(1) Hong Kong Law Journal 257 (2022).

C. Modernized Transformation of China's Arbitration System

The modernization of China's arbitration system serves as an internal driver of the legal reform in 2025. When the first *Arbitration Law* was enacted in 1994, China was still at the early stage of establishing the socialist market economy, and the design of the arbitration system bore a marked administrative imprint. To be specific, arbitration institutions were positioned as government-organized entities of a public-institution character, and administrative authorities may exercise multiple forms of control over arbitration activities through the powers in relation to the organization, personnel appointment, and financial support, etc.[16] Meanwhile, an 'institution-centered approach' predominated, and the autonomy of arbitral tribunals was subject to extensive constraints by the institutions concerned. Although the principle of arbitral independence had been formally recognized by law, arbitration institutions remained far from meeting the standards of genuine independence that parties of international commercial disputes have come to expect.[17]

Such an institutional design is no longer commensurate with the present stage of China's economic development. Over the past three decades, the market demand for the resolution of civil and commercial disputes has undergone profound change. Commercial actors now expect significantly greater autonomy, expertise, and efficiency from arbitration, and their expectations regarding the enforceability of arbitral awards have grown increasingly internationalized. At the same time, China's arbitration market has itself made leaping progress, and this dual transformation in scale and quality objectively calls for a corresponding modernization of the arbitration system. The express designation of arbitration institutions as 'public-interest, non-profit legal persons' specified in the *Arbitration Law of 2025* constitutes a critical step in this modernization process through transformation.[18] This definition severs not only the institutional tie of subordination between arbitration institutions and administrative authorities, but also provides the legal basis for the market-oriented operation of those institutions. By attenuating administrative interference, it furthers the marketization

16 Regarding the discussions of the *Arbitration Law of 1994*, *see, e.g.*, Xiao Yongping & Hu Yongqing, *Accession to the WTO and the Reform of China's Arbitration Legal System*, 2 Chinese Journal of Law 14-20 (2001); Song Chaowu, *China's Arbitration System: Deficiencies and Their Remedies*, 6 Tribune of Political Science and Law 92-99 (2002).

17 *See* Li Qian & Yuan Faqiang, *Reflection on the Role of Ad Hoc Arbitration in the Construction of International Commercial Arbitration* Centers, 3 Wuhan University International Law Review 22 (2026).

18 *See* article 13 of the *Arbitration Law of 2025.* For detailed discussions in this regard, *see* Hu Shixue, *China's New Arbitration Law: Friendly to International Investment Arbitration?*, 40(1) ICSID Review: Foreign Investment Law Journal 42 (2025).

reform of arbitration activities. Moreover, the *Arbitration Law of 2025* also further clarifies the responsibilities, powers, and procedures for arbitration institutions in terms of arbitral decision-making, execution of arbitral awards, and supervision over arbitration activities, and thereby safeguards the standardization of their operations.[19] From the perspective of foreign-related arbitration, the de-administrativisation of arbitration institutions, together with sound internal governance structures and multi-level mechanisms of supervision, is the precondition for Chinese arbitration institutions to genuinely participate in international competition.

III. MAJOR INSTITUTIONAL INNOVATIONS OF THE ARBITRATION LAW OF 2025 ON FOREIGN-RELATED ARBITRATION

Driven by the three logics outlined above, the *Arbitration Law of 2025* has effected a series of institutional innovations of considerable substantive weight. These innovations include the introduction of internationally prevailing rules and the localized exploration rooted in China's practical experience.

A. Expanded Scope of Foreign-Related Arbitration Cases

The scope of foreign-related arbitration cases directly determines which disputes may enter the foreign-related arbitration channel. The *Arbitration Law of 1994* confined foreign-related arbitration cases to 'disputes arising from foreign-related economic, trade, transport, and maritime matters,'[20] a formulation that bore the marks of its times and could no longer encompass the diverse types of foreign-related disputes that have emerged with the deepening of the reform and opening-up policy.

The *Arbitration Law of 2025* has made an important adjustment in this respect. The first draft for review released in November 2024 had sought to broaden the scope to 'disputes with foreign-related elements', but the term was considered vague apart from the absence of clear criteria. The Law finally defines the scope as 'foreign-related economic, trade, transport, and maritime disputes, as well as other foreign-related disputes.'[21] The expression 'other foreign-related disputes' has been added with the

19 *See* Song Chunlong, *Professionalization of Arbitration in the Context of Amendment of China's Arbitration Law*, 4 Journal of Southwest University of Political Science and Law 31 (2025).

20 *See* article 65 of the *Arbitration Law of 1994.*

21 *See* article 78 of the *Arbitration Law of 2025*.

practical effect of substantively expanding the scope of foreign-related arbitration. This drafting technique, namely 'enumeration combined with a catch-all term', operates on two levels and serves two complementary purposes. By retaining the enumeration of 'economic, trade, transport, and maritime disputes', it preserves alignment with the substantive coverage of the *New York Convention* in terms of commercial reservation. On the other hand, by adding the catch-all term 'other foreign-related disputes', it brings those disputes with foreign-related elements, which are traditionally outside the above-mentioned fields, within the potential reach of foreign-related arbitration. Foreign-related intellectual property disputes, foreign-related equity disputes, and foreign-related financial-derivatives disputes, for example, may all enter the foreign-related arbitration channel through this catch-all clause.

More striking is that the supplementary provisions of the *Arbitration Law of 2025* expressly stipulate that 'arbitration institutions and arbitral tribunals may, in accordance with relevant international investment treaties or agreements concerning the submission of investment disputes to arbitration, handle international investment arbitration cases under the arbitration rules agreed upon by the disputing parties.'[22] This provision, recognizing for the first time the legality of domestic arbitration institutions handling international investment arbitration in China, constitutes another significant feature of the new Law. They had previously lacked an explicit legal basis for accepting international investment arbitration concerning disputes between sovereign states and foreign investors, because such cases had long been infused with public-law characteristics. This breakthrough under the new Law provides a legal foundation for institutions such as the China International Economic and Trade Arbitration Commission (CIETAC) to handle international investment arbitration cases. In addition, it corresponds, against the backdrop of the rapid growth of China's outbound investment and the emerging challenges (such as unilateral economic sanctions) now confronting the international investment arbitration system itself,[23] to the practical need to use the domestic arbitration system as an alternative forum for investment-dispute resolution.

22 *Id*., article 94.

23 *See* Huo Zhengxin & Chen Jing, *International Solutions to Curb the Impact of Unilateral Economic Sanctions on International Commercial Arbitration*, 1 Chinese Review of International Law 44 (2024); Zhang Sheng, *The Revision of the Arbitration Law and the Institutional Integration of International Investment Arbitration in China*, 4 Local Legislation Journal 73 (2026).

B. Limited Recognition of Ad Hoc Arbitration

Ad hoc arbitration is one of the two basic forms of international commercial arbitration. The UNCITRAL Model Law and its successive revisions place *ad hoc* arbitration on a par with institutional arbitration, and the *New York Convention* likewise draws no distinction between the two. However, article 16 of the *Arbitration Law of 1994* required that an arbitration agreement contain a 'designated arbitration commission', which in effect excluded *ad hoc* arbitration from China's arbitration system.

In recent years, China has gradually relaxed its stance on *ad hoc* arbitration. For example, the *Opinions of the Supreme People's Court on Providing Judicial Safeguards for the Construction of Pilot Free Trade Zones* (hereinafter referred to as the Opinions of 2016) were issued, recognizing the validity of 'three specific arbitration agreements', namely, agreements between enterprises registered in pilot free trade zones to arbitrate at a specific place, under specific arbitration rules, and by specific persons. Although the term *ad hoc* arbitration was not used in the Opinions of 2016, this development was widely viewed as the ice-breaking moment for the wider acceptance of such practice. Scholars have already conducted relatively systematic inquiries into the inner logic of innovation in the free trade zone on *ad hoc* arbitration and the way in which it can be reconciled with the existing *Arbitration Law* framework, and the institutional proposals so generated have provided theoretical support for subsequent local legislation and the drafting of the new Law.[24] In 2022, the Central Commission of the Communist Party of China for Law-Based Governance deployed pilot programs for the construction of international commercial arbitration centers in four cities (Beijing, Shanghai, Guangzhou, and Shenzhen) and one province (Hainan). Moreover, the *Regulations of Shanghai City on Promoting the Construction of an International Commercial Arbitration Centre* and the *Measures of Shanghai City for Promoting Foreign-Related Commercial and Maritime Ad Hoc Arbitration (for Trial Implementation)* promulgated in November 2023 and June 2024 respectively, refined the *ad hoc* arbitration system at the local level. In addition, the *Several Provisions on the Development of International Commercial Arbitration in the Hainan Free Trade Port* and the accompanying *Ad Hoc Arbitration Rules of Hainan Free Trade Port* came into effect in July 2024. Local pilots have accumulated considerable experience, creating the possibility for incorporating *ad hoc*

24 Zhang Shengcui & Fu Zhijun, *A Study on the Innovative Legal System for Ad Hoc Arbitration in China's Free Trade Zones*, 2 Journal of Shanghai University of Finance and Economics 140 (2019).

arbitration into legislation.[25]

The *Arbitration Law of 2025* has built upon these foundations to grant *ad hoc* arbitration a measure of recognition. Under article 82 of the Law, the disputes for which *ad hoc* arbitration may be chosen are confined to two categories: (i) foreign-related maritime disputes, and (ii) foreign-related disputes between enterprises registered in pilot free trade zones approved by the State Council, the Hainan Free Trade Port, and other areas designated by the State. The *ad hoc* arbitral tribunal is required to file the relevant information with the arbitration association within three working days of its constitution. The arrangement exhibits three notable features. First, the scope of application is limited, with constraints both on the type of dispute and on the identity of the parties; *ad hoc* arbitration is, in other words, open to a defined set of users rather than to commercial parties at large. Second, *ad hoc* arbitration adopts a record filing system rather than an approval system, which reflects respect for the flexibility inherent in *ad hoc* arbitration: The tribunal need not seek prior authorization before commencing its work. Third, arbitrators conducting *ad hoc* proceedings are required to satisfy the qualifications stipulated in article 22 of the Law, which are in line with those applicable to arbitrators in institutional arbitration, with the consequence that the gateway to the practice has been narrowed at the level of personnel as well as at the level of disputes.

This limited recognition of *ad hoc* arbitration under the *Arbitration Law of 2025* mirrors the balance struck by China between openness and regulatory control. By introducing *ad hoc* arbitration into its statutory framework, China's arbitration system takes a substantive step toward the prevailing international rules and offers institutional convenience to foreign-related parties choosing China as the seat of arbitration. Meanwhile, the confinement on the scope of application and the requirement of record filing seeks to guard against the procedural disorder and the risks of fictitious arbitration that *ad hoc* arbitration may bring in some circumstances. This 'small steps, swift pace' legislative strategy is not only pragmatically rational, but also reserves room for further institutional opening-up in due course. Even so, limited recognition of *ad hoc* arbitration may give rise to some operating difficulties in reality.

25 *See* Deng Jie, *Introducing Ad Hoc Arbitration in China: Practical Explorations, Underlying Logic, and Institutional Choices*, 4 Journal of Gansu University of Political Science and Law 36 (2026).

C. Formal Introduction of the Seat of Arbitration

The seat of arbitration is one of the foundational concepts of modern international commercial arbitration and a term of art peculiar to the arbitration field.[26] Under a framework built upon the seat, the law of the seat governs the validity of the arbitration agreement, the law applicable to the arbitral procedure, and the nationality of the award. China, however, has long taken the seat of the arbitration institution as the standard for determining the nationality of an award, an approach which is often described as the 'institution standard', markedly different from the prevailing criterion on the seat of arbitration.[27] The disjunction between the two approaches generated practical difficulties in cases where a foreign arbitral institution administered proceedings in the Chinese mainland.

In 2020, the Guangzhou Intermediate People's Court, for the first time, recognized an arbitral award rendered in the Chinese mainland by the ICC International Court of Arbitration as a Chinese foreign-related arbitral award.[28] This signals the Chinese judiciary's gradual recognition of the seat standard. In 2023, the Beijing No. 4 Intermediate People's Court went a step further in the case where China First Heavy Industries applied to have the ICC arbitration ruling revoked, applying the seat standard directly to characterize an award rendered by the ICC in the Chinese mainland as a Chinese foreign-related award and exercising jurisdiction over its award annulment.[29] This stance has been broadly endorsed in the academic literature.[30] The *Draft Amendment of the Arbitration Law (for Public Consultation)* released in 2021 distinguished the seat of arbitration from places of arbitration activities (such as the place of deliberation or the place of hearing), bringing greater conceptual clarity. Its rule for determining the seat, however, diverged from article 20 of the UNCITRAL Model

26 Sang Yuanke, *Systemic Construction Routes of the Legal System of the Seat of Arbitration in China*, 1 Chinese Review of International Law 47 (2026). For example, in India, the *Draft Arbitration and Conciliation (Amendment) Bill of 2024* marks a significant step towards improving the Indian arbitration framework by identifying and giving a legislative backing to practices, some of which had already been adopted by way of judicial precedents and widespread acceptance. *See* ABHISAAR BAIRAGI, MILIND SHARMA & AUSAF AYYUB, FUTURE OF ARBITRATION IN INDIA: DECODING THE DRAFT ARBITRATION AND CONCILIATION (AMENDMENT) BILL OF 2024, at https://www.scconline.com/blog/post/2024/12/10/future-of-arbitration-in-india-decoding-the-draft-arbitration-and-conciliation-amendment-bill-2024/ (Last visited on May 6, 2026).

27 Fredrik O. Lindmark, *supra* note 14.

28 *See* No. 62 First-Instance Civil Ruling of the Guangzhou Intermediate People's Court of 2015. The case *Brentwood Industries, Inc. v. Guangdong Faanlong Machinery Complete Set Equipment Engineering Co., Ltd. and Others* involved the application for recognition and enforcement of an ICC arbitration award.

29 *See* No. 726 Civil Ruling (Special Procedure) of the Beijing No. 4 Intermediate People's Court of 2021.

30 *See* Li Hong & Maciej Zenkiewicz, *The 2025 Chinese Arbitration Law Revision: Advantages and Pitfalls*, 11(2) Behavior & Law Journal 148 (2025).

Law: Under article 27 of the Draft, the seat of the arbitration institution administering the case would be deemed the seat of arbitration in the absence of an agreement of the parties, or where the agreement was unclear; whereas the UNCITRAL Model Law leaves this determination to the arbitral tribunal in light of the circumstances of the case.[31] The amendment to the *Civil Procedure Law of the People's Republic of China of 2023* replaced the previous reference to 'awards rendered by foreign arbitration institutions' with 'arbitral awards that have entered into legal force and have been rendered outside the territory of the People's Republic of China',[32] thereby paving the way for the formal introduction of the concept of the seat of arbitration.

In addition, article 81 of the *Arbitration Law of 2025* formally defines the seat of arbitration, stipulating that it shall be determined in the following order: first by the parties' agreement; then by the applicable arbitration rules if such agreement is absent; and lastly by the arbitral tribunal in light of the principle of facilitating dispute resolution in the absence of such rules or agreement. The Law clarifies that the concept of the seat carries three legal consequences in China: (i) determination of the law governing the arbitral procedure; (ii) determination of the court that has jurisdiction over the validity of arbitration and/or an arbitral award; and (iii) determination of the nationality of an arbitral award. The introduction of this seat concept is of considerable importance for foreign-related arbitration in China, and may be regarded as one of the more consequential reforms within the Law. First, it removes the legal obstacle to foreign arbitral institutions conducting arbitration in the Chinese mainland. Under the arbitration institution standard, the nationality of arbitral awards rendered by foreign institutions in the mainland was indeterminate; whereas under the seat standard, an award shall be deemed as a Chinese arbitral award so long as the parties have agreed on the mainland as the seat. Second, it brings determination of the nationality of Chinese arbitral awards into line with the prevailing international practice, and thereby facilitates the cross-border recognition and enforcement of those awards. Third, it creates institutional space for the operation of party autonomy on questions of nationality, since the parties may freely choose the seat of arbitration even when they have selected an arbitration institution, and the two need not necessarily coincide.

31 Mao Xiaofei, *Revision of the Arbitration Law from the Perspective of Empirical Legal Research: Consensus and Differences*, 6 Chinese Review of International Law 110 (2021).

32 *See* article 304 of the *Civil Procedure Law of the People's Republic of China of 2023*.

D. Two-Way Opening of Arbitration Institutions and the Change of the Dual-Track System

One of the core elements of building international commercial arbitration centers is the opening of arbitration institutions, and article 86 of the *Arbitration Law of 2025* establishes a two-way opening arrangement in China. On the one hand, this provision supports Chinese arbitration institutions in setting up business offices outside the territory of the People's Republic of China to conduct arbitration activities. On the other hand, in accordance with the needs of economic and social development and of the reform and opening-up, it allows foreign arbitral institutions to establish business offices in pilot free trade zones, the Hainan Free Trade Port and other regions that are approved by the State Council, in conformity with the relevant national regulations, to conduct foreign-related arbitration activities. From the going-out perspective, China's leading arbitration institutions such as the CIETAC, the Beijing Arbitration Commission, and the Shenzhen Court of International Arbitration have, in recent years, progressively established offices or arbitration centers abroad, yet the legal status of those overseas branches and the operational mechanism that govern these institutions have long lacked explicit support at the level of national legislation, and the resulting uncertainty had real costs both for the institutions themselves and for the foreign users with whom they sought to engage.

The *Arbitration Law of 2025* affirms this practice and provides legal protection for Chinese arbitration institutions to compete in the international arbitration market. The change also echoes the policy call of China to foster world-class international arbitration institutions. From the bringing-in perspective, the underlying premise is straightforward: since arbitration is a means of voluntarily resolving disputes, the parties should logically be entitled to agree to administration by a foreign arbitral institution.[33] In 2019, for example, the *Overall Plan for the Lingang New Area of the China (Shanghai) Pilot Free Trade Zone* became the first in the Chinese mainland to permit well-known foreign arbitration and dispute resolution institutions, upon registration and filing, to set up business offices in the Lingang New Area, and then Beijing, Hainan, and other localities subsequently issued similar policies. The Law elevates these local practices to the level of statute and clarifies both the substantive limits (foreign-related arbitration activities only) and the procedural requirements (in conformity

33 *See* Zhao Xiuwen, *A Study on the Opening of the Chinese Arbitration Market to the Outside World*, 6 Tribune of Political Science and Law 69 (2009).

with relevant national regulations) for foreign institutions to conduct arbitration in the mainland. The two-way opening arrangement reflects respect for the rules of market competition in arbitration and constitutes the bilateral institutional design of the Law in the dimension of the foreign-related rule of law. The entry of foreign arbitral institutions into the Chinese mainland market provides foreign-related parties with a more diverse range of options, and through competitive pressures, encourages domestic institutions to enhance the quality of their services and their professional standards.

In addition, the *Arbitration Law of 1994* made a distinction between foreign-related arbitration commissions and ordinary arbitration commissions, and the two differed in the scope of cases accepted and the required qualifications of arbitrators. The *Arbitration Law of 2025* abolishes this dual-track mechanism, adopts the unified term 'arbitration institution', and formally ends the special status of foreign-related arbitration commissions.[34] Correspondingly, article 85 of the Law replaces the prior reference to 'arbitral awards that have entered into legal force, made by foreign-related arbitration commissions' with 'arbitral awards that have entered into legal force, made within the territory of the People's Republic of China'. This forms an internal correspondence with the seat-of-arbitration concept established under article 81 and dovetails with the prevailing standard of the *New York Convention*. More importantly, article 88 introduces the rules for the recognition and enforcement of foreign arbitral awards in China, which connects with article 304 of the *Civil Procedure Law of the People's Republic of China of 2023* and provides the space of application, at the enforcement stage, for the principle of reciprocity. These ostensibly technical refinements bring China's rules on the nationality of arbitral awards and on the cross-border recognition and enforcement into harmony with the framework of the *New York Convention*, which removes the conceptual confusion in the past and provides a clearer legal basis for the recognition and enforcement of foreign arbitral awards in China.

IV. CHALLENGES BEHIND INSTITUTIONAL INNOVATIONS

Institutional innovations of the *Arbitration Law of 2025* in relation to foreign-related arbitration are substantial in China, yet several issues remain unresolved. They arise in part from the legislative compromises through which the reform was secured, and in part, from the legislature's

34 Hu Shixue, *supra* note 18.

cautious posture on a number of frontier themes. They are likely to translate, in the course of implementation, into practical challenges of considerable consequence.

A. The Reform Dilemma of Ad Hoc Arbitration

Limited recognition of *ad hoc* arbitration in the *Arbitration Law of 2025* is a development of considerable importance in China, but the limitations themselves give rise to several challenges in practice. The first question concerns the narrow scope of application, which threatens to sap the *ad hoc* arbitration system of vitality. Under article 82, *ad hoc* arbitration in non-maritime foreign-related disputes is confined to disputes 'between enterprises registered in pilot free trade zones, the Hainan Free Trade Port, and other areas designated by the State.' This scope is narrower than the wider 'foreign-related disputes' contained in the 2021 draft for public consultation. China currently retains a binary distinction between domestic and foreign-related arbitration, and the inner irrationality of that binary distinction is pronounced in the context of *ad hoc* arbitration, where the case for differential treatment is harder to articulate than in the institutional context.[35] Confining the parties to enterprises registered in specific areas has considerably narrowed the operational space for *ad hoc* arbitration and may impair the effectiveness of this system since a foreign-funded enterprise registered outside a pilot free trade zone but engaging in cross-border transactions may find itself outside the door that article 82 has opened.

It is worthy of our noting that the weakening of the courts' supportive function may cause procedural deadlocks. Lacking institutional support, *ad hoc* arbitration is liable to come to a standstill when, for example, the parties cannot agree on the appointment of arbitrators, and an external force is needed to break the impasse. Article 11(3) of the UNCITRAL Model Law confers upon the court of the seat the authority to step in and make appointments where the parties are unable to reach agreement on the selection of arbitrators, and that mechanism is a key feature of the prevailing international model of *ad hoc* arbitration. Some scholars have systematically compared the 'centralized handling and professional division of labor' mechanism under the UNCITRAL Model Law, the French *juge d'appui* regime, and China's experience of converting *ad hoc* arbitration into institutional arbitration in the free trade zones, and have advocated a parallel approach combining judicial assistance and institutional intervention

35 *See* Fredrik O. Lindmark, *supra* note 14; Deng Jie, *supra* note 25.

in resolving impasses in the constitution of *ad hoc* tribunals.[36] Article 92 of the first draft for review in 2024 set forth the courts' supporting function in *ad hoc* arbitration, including the appointment of arbitrators, but the provision was removed from the final version. Consequently, where a party proves uncooperative on the appointment of arbitrators, *ad hoc* arbitral proceedings may face difficulties. The *Arbitration Law of 2025* requires only that *ad hoc* tribunals file with the China Arbitration Association, but the filing function of the Association is fundamentally different in character from the court's power of appointment: The former is a procedural record, while the latter involves substantive intervention. This omission may directly undermine the practical operability of the *ad hoc* arbitration system, and is made more consequential by the fact that the China Arbitration Association itself only completed its registration in October 2022 and has yet to commence substantive operations.[37]

B. The Compromised Character of Competence-Competence

Competence-competence is one of the cardinal principles of international commercial arbitration, and in essence, holds that the arbitral tribunal has the authority to rule on its own jurisdiction. According to article 16(3) of the UNCITRAL Model Law, the arbitral tribunal may rule on a plea concerning its jurisdiction either as a preliminary question or in the final award, and a party may apply to the court for review within thirty days of the tribunal's ruling. The mechanism gives expression to the negative effect of competence-competence: before the tribunal has ruled, the court shall not intervene in the question of jurisdiction.[38] Article 31 of the *Arbitration Law of 2025* provides that arbitration institutions or arbitral tribunals may, upon the request of one party, rule on jurisdictional matters. The provision recognizes the tribunal's competence-competence to a degree, but such arrangement remains substantively different from that of the UNCITRAL Model Law as follows.

The first difference is the priority given to the institution responsible for dispute resolution. Article 31 of the *Arbitration Law of 2025* adopts a compromised approach in China under which the arbitral tribunal, the arbitration institution, and the court hold parallel powers, with the priority given to the court, in dispute resolution.[39] This arrangement does not adopt the

36 *See* Xu Kai & Zhu Yueqing, *Pathways for Resolving Constitution Impasses in Ad Hoc* Arbitration, 2 Rule-of-Law Practice Series: A Collection of Studies on Arbitration Work 71 (2023).

37 Li Qian & Yuan Faqiang, *supra* note 17.

38 Fu Panfeng, *supra* note 15.

39 *See* article 31 of the *Arbitration Law of 2025*.

priority of the arbitral tribunal established under the UNCITRAL Model Law. Judicial practice in the past has likewise treated the courts' decision as taking precedence: Where a party simultaneously applies to both an arbitration institution and a court, and if the institution has not yet rendered its decision, the court shall accept the case and notify the institution of terminating the arbitral proceedings. This means that, only after the institution has rendered its decision can the court decline to take the matter. Such priority arrangement runs against the rationale of arbitration law and undermines both the credibility and international standing of China's judiciary.[40]

The second difference concerns the negative effect of competence-competence. The principle as generally applied in international practice grants the tribunal not only the positive power to rule on its own jurisdiction but also a negative effect that restrains the court from intervening in jurisdictional questions before the ruling of the arbitral tribunal. This negative effect has been established in such jurisdictions as Singapore, France, and the United Kingdom. By contrast, the *Arbitration Law of 2025* imposes no comparable restriction on judicial intervention prior to the tribunal's ruling, and leaves the negative effect of competence-competence substantively unestablished in China. Such arrangement may run afoul of the prevailing 'principle of minimal judicial intervention' and weaken the international credibility of China's arbitration system.

The third difference lies in the institution that enjoys the power to rule on jurisdiction. Article 31 of the *Arbitration Law of 2025* confers the power to rule on jurisdiction upon both the arbitration institution and the arbitral tribunal, but they differ fundamentally in nature. The arbitration institution is a service agency with the administrative nature, whose role is to provide procedural and administrative support to the arbitral process; while the arbitral tribunal is the adjudicatory body that hears the case and renders the award. Under the prevailing international rules, competence-competence is the exclusive prerogative of the arbitral tribunal, and such allocation of powers conforms to the 'principle of natural justice' and forestalls the excessive expansion of institutional power. The parallel allocation under the new Law may give rise to role confusion in practice, weaken institutional safeguards for the tribunal's independent exercise of adjudicatory power, and force the tribunal into reliance upon the arbitration institution.[41]

40 Luo Fuzhong, *Standard Innovation and Theoretical Deepening of Court Jurisdiction over Cases Involving Arbitration Agreements*, 10 Law Science 177 (2025).

41 *See* Du Huanfang, *On the Inclusiveness, Openness and Compatibility Required for Arbitration Law*, 1 Tribune of Political Science and Law 71 (2025); Luo Guoqiang, *The Development of China's Arbitration Law After Its Revision and the Improvement of the International Commercial Arbitration Mechanism*, 1 Journal of Foreign-Related Law 75 (2026).

C. Tensions Between 'Relaxation and Restriction' of Arbitration Activities in Terms of Judicial Supervision

Judicial supervision constitutes an essential component of the arbitration system, and its scope and intensity may directly affect the operational efficiency and credibility of arbitration. The *Arbitration Law of 2025* manifests a tension between relaxation and restriction in terms of judicial supervision. On the one hand, the time limit for canceling an arbitral award has been tightened from six months to three months, which is in line with article 34(3) of the UNCITRAL Model Law. This change moves China's arbitration practice unambiguously in the direction of efficient finality. On the other hand, at the level of grounds, no provisions have been removed and the scope has even been somewhat enlarged by law. The *Arbitration Law of 1994* adopted a dual-track approach to judicial supervision, permitting review on the merits for domestic awards while limiting review of foreign-related awards to procedural grounds.[42] The 2021 draft for public consultation attempted an approach of internal-external integration in the standards for annulling the awards by removing the difference between domestic and foreign-related awards in the grounds for such review. The integration found a measure of support among the Chinese academic community, but also met counter-pressures linked to the practical needs of curbing fictitious arbitration.[43] Other commentators have argued that the dual-track mechanism of making a distinction between domestic and foreign-related arbitration should still be retained at the present stage, and that a single-track legislation on international arbitration should be adopted only at a later stage in the deepening of the reform and opening-up.[44] While abolishing the dual-track approach for arbitration institutions, the *Arbitration Law of 2025* preserves the dual-track arrangement on the grounds for award annulment: foreign-related awards are subject to article 291 of the *Civil*

42 *See* articles 58 and 70 of the *Arbitration Law of 1994*. For detailed discussions, *see, e.g.*, Chen An, *A Critical Analysis of China's Supervisory Mechanism over Foreign-Related Arbitration*, 4 Social Sciences in China 19-30 (1995); Xiao Yongping, *Further Reflections on the Scope of Chinese Court Supervision over Arbitration: A Rejoinder to Mr. Chen An*, 1 Law Review 42-49 (1998).

43 *See* Chen Simin, *Interpretation of the Highlights of the Arbitration Law of the People's Republic of China (Revision) (Draft for Comments) and Relevant Suggestions*, 2 Arbitration Research 1-5 (2021); Yang Shiyu, *The Annulment of International Arbitral Awards in the Revision of Chinese Arbitration Law*, 17(1) Tsinghua China Law Review 197-215 (2025). In Indonesia, an arbitral award may be filed for annulment on the following grounds: (1) after the award is rendered, a letter or document submitted in evidence is admitted or is declared to have been forged; (2) after the award is rendered, documents of a decisive nature hidden by the opposing party are discovered; or (3) the award was rendered as a result of deception by one of the parties to the dispute proceedings. *See* Setyawati Fitrianggraeni, Eva F. Fauziah & Sri Purnama, *Dealing with Unsatisfactory Arbitral Awards: Observing the Grounds of Annulment of Arbitral Awards in Indonesia*, 40(6) Journal of International Arbitration 735, 740-741 (2023).

44 Du Huanfang, *supra* note 41.

Procedure Law, broadly aligned with the framework of the UNCITRAL Model Law. This arrangement of 'unified institutions with divergent supervision' is not without practical reasonableness, and may to a certain extent address the need to curb fictitious arbitration in China. Nevertheless, two questions remain worthy of attention:

The first is the existence of the grounds of merits-based review and the cross-border risk of arbitral awards in terms of validity. The 2021 draft for public consultation sought to unify the grounds for annulling domestic and foreign-related arbitral awards and foreclose review on the merits for both types of awards, but the proposal was abandoned in the first draft for review in 2024. Regarding the grounds for judicial review of arbitration and its awards, the path of public policy interpretation directly affects the scope for merits-based review of domestic and foreign-related awards. Existing scholarship has advocated a 'balance theory', which calls for establishing a balanced analytical framework between the restriction and expansion of public policy, so as to prevent the excessive expansion of merits-based grounds from eroding the credibility of arbitration.[45] On the other side, the grounds for refusing recognition and enforcement of arbitral awards under article V of the *New York Convention* do not encompass review on the merits. Where Chinese courts annul foreign-related awards on substantive grounds, it remains uncertain, within the framework of the *New York Convention*, whether foreign courts examining applications for recognition and enforcement of those awards will follow Chinese courts' decisions of annulment, and the resulting uncertainty operates as a real cost for foreign-related parties to consider the Chinese mainland as a seat.

The second is the arrangement of issuance of interim measures. The UNCITRAL Model Law sets a dedicated chapter on interim measures and establishes a dual-track mechanism by which both arbitral tribunals and courts may issue those measures.[46] Article 39(1) of the *Arbitration Law of 2025* adds provisions on conduct preservation, and article 39(2) introduces the system of pre-arbitration preservation, resulting in a more complete typology of interim measures available in China. However, departing from the dual-track scheme under article 43 of the 2021 draft for public

45 Feng Shuo, *The Balance of Public Policy in Arbitration Judicial Review: From the Perspective of the Guiding Case No. 199 Decided by the Supreme People's Court of the People's Republic of China*, 3 Chinese Review of International Law 146 (2024). *See also* Kris Wagner, *Public Policy Incompatibility as Grounds for Annulment: Not a Shortcut to Merits Review of Arbitral Awards*, 41(4) Arbitration International 869-880 (2025); William Blair, Judy Fu & Yang Zhao et al., *Evolution of Dispute Resolution Clauses and Mechanisms in the International Business Contracts of China's Enterprises: A Forward Look*, 41 Arbitration International 743-765 (2025).

46 *See* Stephen Benz, *Strengthening Interim Measures in International Arbitration*, 50 Georgetown Journal of International Law 143 (2018).

consultation, the *Arbitration Law of 2025* preserves the unitary arrangement in which only the court may issue interim measures. It must be conceded that the unitary arrangement has a degree of practical reasonableness in the Chinese context. When examining applications for interim measures, courts will generally apply a relatively lenient formal standard, focusing on whether there is a request letter from the arbitration institution or a guarantee letter from an insurance company, rather than the substantive criteria (such as the risk of irreparable harm, proportionality, and urgency) employed by international arbitral tribunals. This lower threshold renders interim relief comparatively accessible in China and meets, to a degree, the practical needs of parties to commercial disputes. The limitations of the unitary arrangement are nonetheless visible in the foreign-related context. Meanwhile, the cross-border enforceability of interim measures abroad is fundamentally constrained.

D. Institutional Connection for the Access of Foreign Arbitral Institutions to the Chinese Market

Article 86 of the *Arbitration Law of 2025* permits foreign arbitral institutions to establish business offices in China's pilot free trade zones, the Hainan Free Trade Port, and similar areas to conduct foreign-related arbitration activities, which is an important manifestation of institutional opening. Yet, several questions of institutional connection remain in this opening arrangement, and the way they are resolved will shape the practical reach of the reform.

First of all, the boundary between foreign institutions' handling of purely domestic arbitration and other categories remains unclear. Article 86 of the *Arbitration Law of 2025* expressly limits foreign institutions in the Chinese mainland to foreign-related arbitration activities, and the choice of a foreign institution to arbitrate disputes lacking foreign-related elements still faces legal obstacles.[47] This restrictive clause has its own rationality, given that China still maintains its domestic regulation over purely domestic arbitration. With the introduction of the seat of arbitration, however, a latent tension has emerged between the test for foreign-related elements and the test for the nationality of the award: Under the seat standard, arbitral awards rendered by foreign arbitration institutions in the Chinese mainland are Chinese awards, while under the foreign-related-elements test the validity of an agreement

47 Liu Zhengquan & Niu Peng, *Recent Developments, Problems and Prospects of Arbitration in the Chinese Mainland by Overseas Arbitration Institutions*, 3 Journal of Nantong University (Social Sciences Edition) 119 (2022).

by purely domestic parties to arbitrate before a foreign institution remains contested. The Law needs to provide a clear answer, and leaves room for practical disputes in the future.

Moreover, the specific content of the relevant national regulations awaits clarification in China. Article 86 of the *Arbitration Law of 2025* conditions the establishment of foreign arbitral institutions on relevant national regulations, but no such regulations have yet been issued at the national level. Although Beijing, Shanghai, Hainan, and other localities have adopted local rules in this regard, the question of how those rules will connect with national regulations in the future remains unresolved. From the perspective of building arbitration credibility through full competition, the present geographic restriction, which confines foreign arbitral institutions to establishing business offices in the pilot free trade zones, may seem narrow.[48] In some cases, the specific procedures and conditions for foreign arbitral institutions to enter the market of the Chinese mainland remain uncertain before the promulgation of national regulations.

Furthermore, judicial supervision over foreign arbitral institutions operating in China remains unclear. The seat-of-arbitration system under article 81 of the *Arbitration Law of 2025* has decisive significance for both the nationality of foreign-related awards and for judicial supervision over such awards. Where a foreign institution conducts arbitration through a business office in the Chinese mainland, the questions of which court has supervisory jurisdiction over the resulting award and what channels of judicial support are available in China require concrete rules to be put in place, since the leading users of foreign arbitral institutions will reasonably expect to know in advance the courts to which they may turn and the standards by which any review will proceed.[49]

V. PATHWAYS FOR ADDRESSING THE INSTITUTIONAL CHALLENGES IN PRACTICE

The path forward, during the period between the Law adopted and any future legislative revision, involves the proceeding through judicial interpretation, supporting administrative regulations, local legislation, and the cumulative weight of practical experience. Such an incremental approach fits

48 Du Huanfang, *supra* note 41.

49 Regarding the discussions in this aspect, *see* the following writings: Zheng Jie & Maud Piers, *The Lin-Gang Framework Plan in the Shanghai Free-Trade Zone: A Stepping Stone for Reform of International Arbitration in China*, 32(3) American Review of International Arbitration 361-398 (2022); Tang Yi & Gu Weixia, *Research on Issues Concerning Foreign Arbitral Institutions Conducting Arbitration in the Chinese Mainland Against the Background of the Arbitration Law Revision*, 2 Rule-of-Law Practice Series: A Collection of Studies on Arbitration Work 124-137 (2023).

the realities of the early implementation period and accumulates experience for any future revision in China.

A. Clarifying the Operational Rules Through Judicial Interpretation

As the principal authority of exercising judicial supervision over arbitration activities, the Supreme People's Court should and can, in the implementation of the *Arbitration Law of 2025*, take up the responsibilities of clarifying institutional connection and unifying the standards of judicial review.

First, judicial interpretation should be employed to fill the procedural gaps surrounding *ad hoc* arbitration in China. Article 82 of the Law sets out only the scope and filing requirements of *ad hoc* arbitration in general terms; many of the operational details, such as auxiliary mechanisms for the appointment of arbitrators, channels of judicial support for *ad hoc* arbitration, and the review of annulling *ad hoc* awards, remain to be elaborated through judicial interpretation, drawing on local experience to formulate unified national guidance. Such guidance will both fill the gap left by the Law's inadequacy to enshrine the courts' supportive function and provide a foundational safeguard for the steady operation of the system.[50]

Second, judicial interpretation should be used to address the connection of the seat-of-arbitration system with the existing rules in China. The introduction of the seat system affects various aspects such as the determination of an award's nationality, the jurisdiction of supervising courts, and the validity review of arbitration agreements, and concrete supplementary interpretations should be promulgated to address the issues mentioned above: for example, the rules to apply where the seat agreed differs from that of the arbitration institution, the standards for annulling arbitral awards rendered by foreign institutions in the Chinese mainland, and the rules for determining the seat where it is unclearly designated. The clarification of these rules will directly affect the practical operation of the seat-of-arbitration system under the new Law.[51]

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50 For detailed discussions, *see also* the following writings: Chen Lei, *System Design of China's Ad Hoc Arbitration System Under the Background of Optimizing Business Environment: Centering on the Amendment of Arbitration Law*, 5 Social Sciences in Guangdong 235-243 (2020); Fu Panfeng, *The Complex and Evolving Legal Status of Ad Hoc Arbitration in China*, 40(1) Journal of International Arbitration 45-68 (2023); Xu Kai & Zhu Yueqing, *supra* note 36.

51 Similar discussions can also be found in the following writings: STEFANO PORCELLI, CHINA ARBITRATION LAW REFORM: AN OVERVIEW, at https://orgs.law.harvard.edu/hialsa/2026/02/10/china-arbitration-law-reform-an-overview/ (Last visited on May 5, 2026); Zhang Chunliang & Hou Zhongmin, *Codifying the Seat of Arbitration in the Context of China's Arbitration Law Revision*, 3 Journal of Southwest University of Political Science and Law 38-52 (2025).

Third, an arbitration-friendly judicial stance should be established in China's judicial practice. In reviewing the validity of an arbitration agreement, the courts should resolve doubts in favor of the operative reach of the arbitration agreement; and in the review of foreign-related awards, full international comity should be reflected in the deference accorded to the procedural choices of the parties and the substantive determinations of the tribunal. The existing reporting mechanism of the Supreme People's Court for judicial review of foreign-related arbitration has played a positive role in this regard, and its operating mechanism could be further refined after the Law takes effect.[52]

B. Refining Market Access Rules for Foreign Arbitration Institutions Through Administrative Regulations

Article 86 of the *Arbitration Law of 2025* leaves blank the specific procedures and conditions for foreign arbitration institutions to establish operational offices in the Chinese mainland, deferring to the 'relevant state regulations', yet no corresponding regulations have been promulgated at the national level. Moreover, dedicated rules connecting judicial supervision over the operations of foreign arbitration institutions in China also remain to be clarified.[53] In addition, a viable approach is to elaborate market access rules for foreign arbitration institutions in the form of administrative regulations, providing uniform clarifications on the following matters: (i) market access criteria, including threshold requirements for overseas institutions such as international reputation, years of establishment, and business scale; (ii) market access procedures, specifying the allocation of the approval authority and the relevant process, with unified oversight vested in the national judicial-administrative authority so as to avoid the uncertainty arising from decentralized local approval;[54] (iii) specific scope of business activities permitted, drawing clear interpretive boundaries around foreign-related arbitration activities and clarifying their relationship with associated activities such as consultation and training; and (iv) differentiated and equal treatment of foreign institutions *vis-à-vis* domestic institutions with respect to regulatory standards, fee rules, and information disclosure

52 For detailed discussions, *see also* Chen Mo, *The Chinese Approach to Arbitration Judicial Review: Empirical Perspectives and Practical Trends*, 31(1) International Journal of Conflict Management 40-57 (2020); Jiang Lili, *The Legal Nature of Chinese Arbitral Institution and Its Reform*, 3 Comparative Law Review 142-156 (2019).

53 *See also* Zhang Qianwen & Li Jiani, *The Validity of Arbitration Agreements Providing for Arbitration in the Chinese Mainland Administered by Overseas Arbitration Institutions*, 40(5) Journal of International Arbitration 633-656 (2023).

54 Li Qian & Yuan Faqiang, *supra* note 17.

requirements, paying particular attention to questions such as the attribution of annulment review jurisdiction and the channels for judicial assistance. Once uniform rules at the level of administrative regulations are established in China, they will not only provide the certainty necessary for orderly market access, but also forestall any regulatory vacuum that might otherwise emerge in the opening course.[55]

C. Expanding Reform Space Through Local Legislation and Pilot Programs

The *Legislation Law of the People's Republic of China* amended in 2023 replaced the term 'arbitration system' with 'basic arbitration system', which respects the realities of the Chinese arbitration market and constitutes an essential step toward advancing internationalization and marketization of the arbitration system through the parallel pursuit of the rule of law and the reform.[56] Within the framework of the *Arbitration Law of 2025*, local legislatures may engage in exploration of innovations in the following respects, each of which builds upon initiatives already under way in the major commercial centers.

First of all, the application of *ad hoc* arbitration may be explored in such areas as the pilot free trade zones and the Hainan Free Trade Port. The party-eligibility requirement, for example, could be expanded from 'enterprises registered in pilot free trade zones' to 'parties with substantive connections to the free trade zone'. Such a localized expansion fits the pilot free trade zones' function as 'stress-test fields' and accumulates experience for future national legislation, allowing observers to assess how the system performs in practice before it is generalized nationwide. Moreover, arbitral tribunals may explore and issue local rules of interim measures. Although the *Arbitration Law of 2025* preserves the unitary arrangement at the national level, local legislation may probe the feasibility of tribunal-issued interim measures in pilot free trade zones and similar areas. For example, in cases seated within a pilot free trade zone, the tribunal may, upon the parties' agreement, issue particular categories of interim measures, with the courts' cooperation at the execution stage. In addition, the reform of the de-administrative nature of local arbitration institutions should be furthered in China. The *Arbitration Law of 2025* has clarified that

55 For detailed discussions, *see also* Matthew S. Erie & Monika Prusinowska, *The Future of Foreign Arbitration in the People's Republic of China: Current Developments and Challenges Ahead*, 28(2) Asia Pacific Law Review 259-278 (2020).

56 Liu Xiaohong, *Local Arbitration Legislation in the Context of the Revision of the Arbitration Law*, 1 Tribune of Political Science and Law 60 (2025).

arbitration institutions are public-interest non-profit legal persons, but the concrete reform path requires local exploration. The reform experience of the Shenzhen Court of International Arbitration, the Shanghai International Arbitration Centre, and similar institutions in recent years, covering governance structures, decision-making procedures, and information disclosure, can be promoted on a wider scale,[57] with local legislation safeguarding the legal-person, and financial and operational independence of arbitration institutions.[58]

VI. CONCLUSION

Overall, the *Arbitration Law of 2025* carries weighty significance for China when facing profound changes unseen in a century. In terms of foreign-related arbitration, the Law provides some institutional innovations, which expands the scope of arbitrable disputes, grants limited recognition to *ad hoc* arbitration, introduces the concept of the seat of arbitration, advances the two-way opening of arbitration institutions, and clarifies the admissibility of international investment arbitration. Through this series of institutional adjustments, the Law brings China's arbitration system substantively closer to the prevailing international rules and lays the legal foundation for the competition in the international arbitration market.

On the other hand, as we can see, the revision of the arbitration law involves a complex systemic undertaking in China. The Law may also face a host of challenges in practice. These challenges not only affect the actual effectiveness of its institutional design, but also, to some extent, weaken China's appeal as a 'preferred forum for the resolution of international commercial disputes'. Addressing these challenges would require a gradual and incremental approach to remedying institutional deficiencies, with the sustained efforts spanning from conceptual reorientation to practical action, from the regulation of the arbitration industry to the professional development of arbitration practitioners, and from the arbitration services market to the enhancement of China's international voice in arbitration.

Last but not least, traditional commercial arbitration can no longer meet the demands of resolving novel international trade disputes in the digital

57 *See* Liu Songqi, *Research on the Current Situation and Countermeasures of International Commercial Arbitration in China*, 8(2) Economics, Law and Policy 162 (2025).

58 For detailed discussions, *see also* XIE DAN & HO WENGSI, CHINA'S GRADUAL EMBRACE OF AD HOC ARBITRATION: THE 2025 AMENDMENT AND REGIONAL EXPERIMENTS IN HAINAN AND BEYOND, at https://legalblogs.wolterskluwer.com/arbitration-blog/chinas-gradual-embrace-of-ad-hoc-arbitration-the-2025-amendment-and-regional-experiments-in-hainan-and-beyond/ (Last visited on May 4, 2026).

age.[59] The application of such technologies as ChatGPT and DeepSeek, Sora, KlingAI 3.0 and AtomoVideo can demonstrate the remarkable creativity of artificial intelligence in our life, which forms 'more rigid, highly frequent, ubiquitous, and profound connections with human society'.[60] In terms of foreign-related arbitration, for example, online arbitration set out in the *Arbitration Law of 2025* leaves regulatory space for the application of advanced digital technologies such as blockchain-based evidence preservation and AI-assisted adjudication. All these issues warrant research in the future.

(Edited by Gong Li)

我国涉外仲裁的立法发展、制度创新与现实挑战

内容提要 自 2026 年 3 月 1 日起施行的《中华人民共和国仲裁法》是该法 1994 年颁布以来的首次全面修订。新法在涉外仲裁方面的发展引人注目，通过拓宽涉外仲裁案件范围、有限承认临时仲裁制度、引入仲裁地概念、推动仲裁机构双向开放、明确国际投资仲裁可受理性等制度创新，在整体上呈现出与《国际商事仲裁示范法》《纽约公约》等国际通行规则对接的趋势。新法在推进制度创新的同时也保留着相当程度的审慎考量，例如临时仲裁适用条件被严格限制、自裁管辖权采取折中模式、司法监督面临收放矛盾、境外仲裁机构准入制度留有空白等。本文从新法有关涉外仲裁的制度创新切入，梳理了修法的规范内容与立法意图，对实践中可能引发的问题进行了剖析，并提出了有针对性的完善意见及未来的发展方向。

59 Huang Sirui, *The Applications, Dilemmas and Breakthrough Paths of Blockchain Enabling International Commercial Arbitration Acceptance*, 2 Chinese Yearbook of Private International Law and Comparative Law 278 (2023); Abir Al Mahdouri, *Public Policy and the Enforcement of AI-Generated Arbitral Awards*, 42(6) Journal of International Arbitration 759-790 (2025); Mikołaj Sienicki & Krzysztof Sienicki, *The Algorithmic Arbitrator: From the New York Convention to AI*, 43(2) Journal of International Arbitration 211-246 (2026).

60 Liu Yanhong, *On the Three Security Risks and Legal Regulation of Generative Artificial Intelligence*, 4 Oriental Law 29, 30 (2023); Paul De Hert & Georgios Bouchagiar, *AI Generated Evidence Brought Before European Courts: Further Activation of Evidence Law, Defence Rights, and Human Oversight Needed*, 7(1) Shimla Law Review 1-40 (2024).