

Arbitration in People's Republic of China

People's Republic of China (PRC) has developed a unique arbitration system which is closely monitored by the People's Supreme Court (SPC), the highest Court of China. Even though PRC is a signatory to New York Convention¹, PRC is not a Model Law² country. PRC has understood that foreign investors won't make high value investments if the dispute resolution and contract enforcement is not effective in country and hence PRC courts goal out to prove that PRC is an arbitration friendly Jurisdiction. All the provisions contained in the Model law are incorporated in the said Arbitration Act³ and hence the said procedural law is international friendly. In addition to the above said law, People's Supreme Court (Supreme Court of PRC), by its judgments, its notifications and directives continue to strengthen the law relating to arbitration.

The above said law recognizes only Institutional Arbitrations and adhoc arbitrations are not recognized if an is a China seated arbitration. But at the same time Foreign Arbitral Institutions are not allowed to administer the arbitrations seated in China. Even Arbitral Institutions like International Chamber of Commerce (ICC) and Singapore International Arbitration Centre (SIAC) have only their liaison offices in Shanghai Special Economic Zone but they are not allowed to administer arbitrations seated in China. Only Chinese arbitral institutions can administer arbitrations seated in PRC. There are about 600 arbitral institutions in China and they handled about 5,00,000 arbitration cases last year. The Most popular arbitral institutions include China International Economic Trade Arbitration Centre (CIETAC), Beijing International Arbitration Centre(BIAC), Shanghai International Arbitration Centre(SHIAC) etc., CIETAC has a branch in Hong Kong with different Arbitration rules based on the Hong Kong Procedural law, Hong Kong Arbitration Ordinance.

¹ New York Convention on Recognition and Enforcement of a Foreign Arbitration Award, 1956.

² UNCITRAL Model Law on International commercial Arbitration.

³ The Arbitration Law of People's Republic of China 1994

Chinese Arbitration system is unique in various aspects. For example, Competence- Competence, which is a globally recognized practice of empowering arbitrators to rule on their jurisdiction, is not available under the said law. Hence, the jurisdiction of the arbitrators cannot be decided by the arbitrators themselves and such powers are given to courts and Arbitral Institutions in PRC. Arbitrators do not have the powers to grant interim orders in China and only the Courts have the powers to grant interim orders. Because of the above said restrictions in the powers of Arbitrators regarding interim orders, Emergency Arbitrator provision is also not enforceable in PRC. It is important to note that India also does not recognize and enforce Emergency arbitrator awards. But CIETAC Hong Kong has emergency arbitrator provision in its Rules.

But China fully respects Foreign seated international Arbitration awards. International Arbitration Awards arising out of a New York convention seat can be effortlessly enforced in China. In the year 2017, Supreme People's Court (SPC) issued a notice to all courts of PRC and directed that if any court wishes to invalidate an International Arbitration clause or setting aside of an International arbitration award or refusal of Enforcement of a foreign seated International Arbitration award should approach its immediate Higher Court and seek its permission to do so. Such a provision is only available in China and nowhere in the world. This directive demonstrates the special efforts taken by PRC to tell the world PRC is an international arbitration friendly country. This provision/directive of SPC is criticized by the Chinese companies since it undermines the rights of the Chinese Companies against whom those awards are enforced. It is also very important to note that PRC Courts enforce the arbitration agreements as per the procedural law of the seat. For example, even though PRC does not recognize an adhoc arbitration clause, it will enforce a clause providing for an adhoc arbitration if it is seated in India or in any other country that recognizes adhoc arbitration. The above said approach of PRC Courts prove that PRC Courts take special efforts to prove that PRC arbitration

system is mature enough to match with the popular seats of international arbitration.

In 2017 SPC also created Special Division Courts with trained judges to handle arbitration related litigations. It also created a common data Bank for those courts to share their views and orders and to ensure consistent orders and uniform procedures in the matters relating to Arbitration. In the year 2018 SPC expanded the same procedural safe guards that were available to the Foreign seated international arbitration awards to PRC seated domestic arbitration awards also. That means, if a Court is of the opinion that it should not enforce an arbitration clause or an arbitration award, it requires the concurrence of the Superior court. That means if People's Court wants to do a refusal of an enforcement of an arbitration award it requires the permission of People's High Court. If People's High Court would like to refuse an enforcement of an arbitration award it requires the concurrence of the Supreme People's Court. This directive of SPC to ensure finality to arbitral awards passed in India has created a big boost for China seated arbitrations also. SPC has also developed a Proposal of International Commercial Court (CICC) to cater the needs of the parties and countries that respect only Court systems and not the Arbitration systems. Hence, PRC is consistently taking efforts to prove that PRC is an arbitration friendly country.