

Will China allow International arbitration institutions like ICC, SIAC, LCIA, DIAC, ICA, IDAC India to administer China seated arbitrations?

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Chinese Government and the courts have consistently making effort to prove that China is a pro-arbitration country. Even though there are apprehensions about the neutrality of the arbitrations in China particularly against the Public Sector Companies of China, those are wrong apprehensions and not supported by any proof. Like the other developed countries, China also has realized that the foreign investors expect, investment seeking countries to have a hassle free enforcement regime. China is the only country in which, it is mandatory for a court to refer the matter to a higher court and seek an approval, if that court decides to refuse the enforcement of a foreign arbitral award. The said system is part of their judiciary reporting system. That means if a People's court (court of first instance) decides to refuse the enforcement of a foreign arbitration award, it requires an approval of High People's court. Hence the refusal of enforcement a foreign award is almost impossible in China.

China has, very efficiently managed world class arbitration institutions like CIETAC (China International Economic Trade Arbitration Commission), BIAC (Beijing International Arbitration Commission), SHIAC (Shanghai International Arbitration Centre) etc., They handle thousands of arbitrations both domestic and international, every year. Since most of the law officers of these Institutions are, US or UK educated, language is not a problem. These institutions follow dual language policy Chinese and English for the convenience of international parties. China has also allowed foreign law firms to practice in China and hence the parties can get an international class legal support in China. The administration of cases by these institutions are in no way less than any international arbitration institution. The only limitation parties face while using any of these Chinese arbitration institutions is in the process of choosing of arbitrators. The parties are not allowed to choose arbitrators outside the panel of those institutions. Most of the international arbitration institutions like ICC, SIAC, LCIA, SCC etc., do not restrict parties from nominating arbitrators outside their panel. No international arbitration lawyer can under estimate the competence of China arbitration Institutions. But the Chinese arbitral institutions are not allowing arbitrators other than those who are in their panel but the positive aspect is that the panel of all these Chinese arbitral institutions have arbitrators from different countries.

But one of the reasons for the above said apprehension about China seated arbitrations in the minds of foreign parties is because China does not allow foreign arbitral institutions to administer an arbitration seated in China. The awards passed in a foreign seat (eg. Seated in India) can be enforced without any difficulty in China but China seated arbitrations could not be managed by any of the foreign arbitral institutions. Recently ICC and SIAC have opened their offices in a Special Economic Zone in China but they operate like Liaison offices or information centers. There has been a lot of efforts from various arbitration groups seeking Chinese Government to expressly permit foreign Arbitral institutions, to administer China seated international and domestic arbitrations.

But in a recent jurisdiction challenge case, challenging the validity of an arbitration award, which arose out of an arbitration clause entered into between an Italian company BP Agnati

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SRL and a Chinese company Anhui Longlide Packaging and Printing Co with ICC as administering Arbitral institution for an arbitration seated in Shanghai, the Supreme People's court (SPC is the highest court of China) confirmed the order of the High People's Court, which held the said arbitration clause valid. The Chinese party challenged the award on the ground that the administering institution does not comply with the requirements of an arbitral institution under the China Arbitration law, since ICC is not an arbitral institution affiliated under Article 10 of the arbitration Act, hence the award violates Article 16 as well. But the High People's Court held that the award and arbitral institution satisfies the requirements of Article 10 as well as 16 and upheld the award. The Chinese party challenged the award and Supreme People's court also upheld the decision of High People's Court. It is a great news for the international community because it opens up a lot of opportunities.

The said decision gives an impression that if Chinese Government delay the legislative process to allow the international arbitration institutions to handle China seated arbitrations, judiciary may interpret the existing Article 10 and 16 of the Arbitration law of China, which regulates the requirements of a recognized arbitral institution, in such a way, indirectly allowing the international institutions to handle China seated arbitrations. But we wish Chinese Government responds to the request of the international business community, with regard to this issue also as soon as possible.

Conclusion: China seated international arbitrations are safe, the Courts in China exercise their supervisory Jurisdiction efficiently. The China based arbitral institutions like CIETAC, BAC, SHIAC are world class institutions administering international arbitrations efficiently. But allowing international arbitration institutions to handle China seated arbitrations will increase the investor confidence in a big way.