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CHINA'S REFORMS TO ITS ARBITRATION REGIME – AN EFFORT TO MATCH INTERNATIONAL STANDARDS

The People's Republic of China (hereinafter "PRC") has brought about its third amendment to its Arbitration Act, i.e. Arbitration Law of the People's Republic of China, on 12th September 2025, which will come into effect on 1st March 2026. The erstwhile Arbitration Law of the PRC had first been adopted on 31st August 1994 and came into effect on 1st September 1995. The law was first amended in 2009 and was subsequently amended in 2017 (effective from 1 January 2018). However, this recent amendment is by far the most significant in the context of bringing the PRC's regime up to global standards.

Before embarking on analysing the changes which this new Law brings to the Arbitration regime in PRC, it is imperative to point out that PRC has not adopted the UNCITRAL Model Law on International Commercial Arbitration ("UNCITRAL Model Law"), which is the backbone of India's Arbitration and Conciliation Act, 1996. The purport of the same is that arbitral tribunals seated in mainland PRC have not been empowered to grant interim measures, such as injunctions or evidence preservation. These powers continue to be exclusively vested in local courts, under both the 2017 and 2025 Arbitration Laws.

Significant reforms brought about through the 2025 Law:

- **Reduced Time Limits for Setting Aside Awards:** As per the 2017 Law, the time limit available for setting aside of arbitral awards was six months, pursuant to Article 59. The new Law has reduced this time-frame to three months under Article 72 with the aim of increasing finality of awards and enhancing the efficiency in dispute resolution.
- **Interim Measures:** The Arbitration Law of 2025 continues to follow the principle that only Chinese courts have the authority to grant interim measures in support of arbitration under Articles 39 and 58, as was also the case under the 2017 Arbitration Law under Articles 28 and 46.



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- While Article 39 gives primacy to interim relief applications to be submitted to the court by the arbitral institution, in urgent cases, the parties have been given the liberty to approach the court directly under Article 39, even prior to the commencement of the arbitration. The same principle has also been espoused for applications for the preservation of evidence under Article 58. However, it again pointed out that Arbitral Tribunals in mainland PRC have not been empowered to independently order interim measures, a stark contrast to the UNCITRAL Model Law, which has been adopted by various countries. The exclusive reservation of the power of granting interim relief to Chinese courts reflects a cautious, judiciary-centric regulatory approach, which lawyers and parties should be aware of before deciding on arbitrating in PRC.
- **Kompetenz-Kompetenz principle with Judicial Oversight:** The erstwhile Arbitration Law of 2017 did not recognise the principle of Kompetenz-Kompetenz, which was in contrast to the UNCITRAL Model Law, which has been widely adopted. However, the Arbitration Law of 2025 vide Article 31 has introduced this concept whereby arbitral tribunals or arbitration institutions have been empowered to rule on the validity of the arbitration agreement. However, parties retain the right to seek a ruling from a Chinese court on the same issue. Importantly, if concurrent applications are made both to the tribunal (or institution) and the court, the matter shall be determined by the court. This does not align the new Law with the UNCITRAL Model Law. Hence, it is a partial step in the right direction. Parties should be mindful of this dual pathway and potential for judicial interference when choosing PRC as the seat of arbitration.
- **Recognition of the concept of Seat in Foreign Arbitration:** The erstwhile Arbitration Law of 2017 did not formally acknowledge the concept of the seat of the arbitration, which created ambiguity. In mainland China, the equivalent of a seat is usually the place where the arbitration institution is located. However, in order to remedy this anomaly, the Arbitration Law of 2025 has explicitly recognised the concept of the seat of arbitration under Article 81, though only for foreign-related arbitrations.



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- In particular, Article 81 provides that, in foreign-related arbitrations, parties may agree in writing on the place of the arbitration, which shall serve as the basis for determining the governing law of the arbitration proceedings and the courts with supporting or supervisory powers, as has been the international best practice in force. Article 81 also stipulates that in the absence of an agreement between the parties, the seat shall be determined by the applicable arbitration rules, and if the applicable arbitration rules do not provide for this either, then it shall be determined by the arbitral tribunal in accordance with the principle of convenience.
- **Ad Hoc Arbitration introduced:** The erstwhile Arbitration Law of 2017 did not recognise the concept of Ad Hoc Arbitration. The Arbitration Law 2025, vide Article 82, has introduced the concept of Ad Hoc Arbitration, albeit in a limited manner, covering the following disputes: - foreign-related maritime disputes and foreign-related cases involving enterprises in designated free trade zones, reflecting a measured approach to flexibility.
- **Arbitrator Independence and Disclosure Requirements:** The Arbitration Law of 2025 has introduced the requirements of arbitrator to disclose any circumstances that might give rise to “reasonable doubts” regarding their independence or impartiality. Such a requirement was not present in the erstwhile Arbitration law of 2017. This is a step in the right direction, which aligns with international best practices under Article 12 of the UNCITRAL Model Law and General Standard 2 (Conflicts of Interest) of the IBA Guidelines on Conflicts of Interest in International Arbitration.



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- **Online Arbitration:** The Arbitration Law of 2025 vide Article 11 has expressly permitted arbitration proceedings to be conducted electronically, except where the parties expressly do not concur on the same. By offering an option for online arbitration, the law keeps pace with technological advancements in the digital age, enhancing the efficiency of arbitrations while also safeguarding party autonomy, which is a hallmark of the arbitration process.
- **Foreign Arbitral Institutions permitted to set up offices:** The erstwhile Arbitration Law of 2017 was restrictive in the sense that it limited foreign arbitral institutions to have representative offices in the PRC, but without the power to administer cases. The Arbitration Law of 2025 has brought about a significant change vide Article 86, whereby permitting foreign arbitral institutions to establish business offices in pilot free trade zones and Hainan Free Trade Port approved by the State Council to also conduct foreign-related arbitration activities in accordance with relevant national regulations.



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- The Arbitration Law of 2025 showcases a landmark shift in the PRC's Arbitration regime. It introduces significant amendments, which, with a few caveats, are generally leaning towards imbibing international best practices. For practitioners and parties looking to arbitrate their disputes in the PRC, this comes as a welcome step. However, the practical implications of court involvement and the limited scope of ad hoc arbitration remain to be seen over time.

