



TianTong Dispute Resolution Review

About Tiantong

TianTong Law Firm was founded in 2002. As one of the leading Chinese law firms, it is solely dedicated to complex civil and commercial dispute resolution. Headquartered in Beijing, Tiantong has approximately 150 people nationwide, many of whom had served as senior judges for years at different levels of Chinese courts, including the Supreme People's Court and high courts of China. In the recent years, it has established 6 branch offices in Shenzhen, Nanjing, Chongqing, Shenyang, Xi'an and Zhengzhou, where the 6 circuit courts and 2 international commercial courts under the auspice of the Supreme People's Court are seated.

In the past decade, Tiantong has been keeping one of the highest winning rates among all Chinese law firms before the Supreme People's Court and various high courts of China. Over 30 cases won by Tiantong have been publicized as landmark guiding cases for national trial work on some of the most authoritative law journals in China.

Tiantong advises on all types of commercial disputes, including but not limited to litigation, arbitration, contentious bankruptcy and enforcement proceedings with its most impressive achievements in banking and finance, construction and engineering, corporate and M&A disputes etc. Its clients range from foreign governments such as the US Department of Justice, multinational corporations such as RBS to large Chinese companies such as Bank of China, China Construction Bank, Agriculture Bank of China, Sinopec, Sinochem, China Datang Corporation and Ping An Insurance etc.

In addition to its traditional advantages in litigation before Chinese courts, Tiantong has extensive experience in representing clients before domestic and international commercial arbitration proceedings. Tiantong lawyers previously worked for leading arbitration institutions as case manager (e.g. the Permanent Court of Arbitration in Hague, Netherland and Hong Kong International Arbitration Centre in Hong Kong) or clerked with the Justice of the UN International Court of Justice in Hague, Netherland. Some of them once worked at leading international law firms on international arbitration matters conducted before CIETAC, HKIAC, SIAC, ICC, SCC and LCIA, where the seats of arbitration include Beijing, Shanghai, Hong Kong, Singapore, Stockholm and London.

Tiantong is also specialized in advising clients for recognition and enforcement of foreign arbitral awards and judgments before Chinese courts, and is capable of effectively working together with leading international law firms and local counsel overseas to handle multi-jurisdiction disputes.

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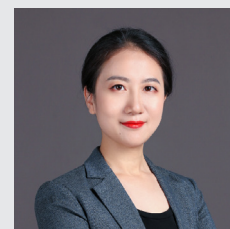
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Featured Article

Recognition and Enforcement of Foreign Arbitral Awards in China

1. INTRODUCTION

China is a signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (hereinafter referred to as the “**New York Convention**”).¹ Where a foreign arbitral award is brought in front of a Chinese court, normally the court would intend to have the award enforced. According to data from Shanghai International Arbitration Center, among all applications for recognition and enforcement of foreign arbitral awards in China between 2013 and 2017, only 12.32% of them were dismissed.

In respect of recognition and enforcement of foreign arbitral awards in Chinese courts, the Supreme People’s Court (hereinafter referred to as the “**SPC**”) promulgated four judicial interpretations:

- a) *Notice of the SPC on Implementation of the New York Convention Acceded to By China* (effective since 10 April 1987) sets forth the applicability of the *New York Convention* in China, the commercial

¹ On 2 December 1986 the Standing Committee of the National People’s Congress ratified the New York Convention which becomes effective since 22 April 1987 in China.

reservation declared by China, the jurisdiction of Chinese courts and standard of review;

b) *Notice of the SPC on the Handling of Issues Concerning Foreign-related Arbitration and Foreign Arbitration by People's Court* (amended as effective since 16 December 2008 according to the provisions in the *PRC Civil Procedure Law*) prescribes the reporting system;

c) *Measures on the Payment of Litigation Cost* (effective since 01 April 2007) and *Civil Procedure Law of the PRC* (amended as effective since 1 July 2017) touched upon court fees for applying to recognise and enforce foreign arbitral awards in Chinese courts; and

d) *Relevant Provisions of the Supreme People's Court on Issues Concerning Applications for Verification of Arbitration Cases under Judicial Review* (effective since 1 January 2018) confirms the existing reporting system in relation to foreign-related and foreign arbitral awards.

Also, some provisions in *Civil Procedure Law of the PRC* (amended as effective since 1 July 2017) and *Interpretation of the Supreme People's Court on the Application of Civil Procedure Law of the PRC* (effective since 4 February 2015) are also relevant and applicable to the instant matter.



2. JURISDICTION

According to Article 283 of *Civil Procedure Law of the PRC*, an application for recognition and enforcement of a foreign arbitral award must be made to an intermediate people's court where the Respondent is domiciled or the Respondent's assets are located. (Emphasis Added)

It is worth noticing that where the Respondent has neither its domicile nor assets located in Mainland, a foreign arbitral award may still be recognized in Mainland so long as this award is related to another case which is tried by a Chinese court or an arbitration commission in China.² Nevertheless, the SPC has not elaborated how to identify such “related case”.

3. FEES

When the Chinese court accepts and registers the application, fees for applying recognition and enforcement will be charged at the following rates³:

- i. From RMB 50 to 500 for each application if no monetary amount or price is involved in the enforcement;



² Article 3 of Relevant Provisions of the Supreme People's Court on Issues Concerning Applications for Verification of Arbitration Cases under Judicial Review.

³ Article 14 of Measures for the Payment of Court Fees (Effective since 1 April 2007).

ii. RMB 50 for each application if the amount or price involved therein does not exceed RMB 10,000; if the amount or price involved therein exceeds RMB 10,000, the application fee shall be paid on an accumulation basis at 1.5% for the portion exceeding RMB10,000 but not exceeding RMB 500,000, 1% for the portion exceeding RMB 500,000 but not exceeding RMB five million, 0.5% for the portion exceeding RMB five million but not exceeding RMB ten million and 0.1% for the portion exceeding RMB ten million.

The Chinese court must not charge fees respectively for recognition and enforcement of a foreign arbitral award.⁴

4. DOCUMENTATION

Chinese courts may recognise and enforce only a final arbitral award on merits other than any interim awards. In order to commence the proceeding for recognising and enforcing a foreign arbitral award in the Chinese court, an applicant must submit the following documents:

- i. an application in writing;
- ii. any documentation of the applicant's identity and power of attorney for the applicant's *agent ad litem*;
- iii. the original copy of an arbitral award or any copy of the arbitral award that is certified as authentic;
- iv. the original copy of an arbitration agreement or any copy of the arbitration agreement that is certified as authentic; and
- v. the certified Chinese translation for the arbitral award and the arbitration agreement.

The Chinese translation of the arbitral award outside the territory of China must be certified by the PRC Embassy



⁴ Article 3, Id.

or Consulate or be notarised by a Chinese public notary.⁵ In China, an application may be rejected by the Chinese court simply because the submission does not strictly comply with the formality requirements, particularly pertinent to translation, certification, notarisation and other legalisation measures.

Nevertheless, the SPC has become more lenient in the formality of filed documentation. The SPC is of the view that even if an applicant's submission is not perfectly in compliance with the formality requirements, the Chinese court should accept the application and notify the applicant to supplement other documents so as to perfect the filing, and as long as the submission in the first place is made within the time limit (as set out below), the Chinese court should not reject the application simply because the supplemental submission is made beyond the time limit.⁶

5. TIME LIMITS

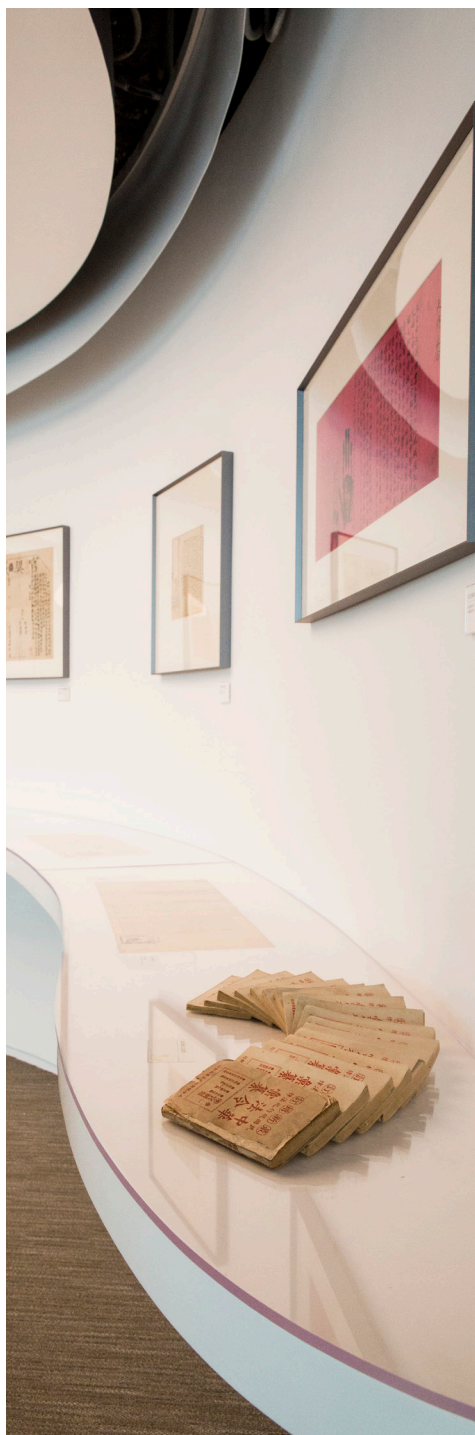
According to Article 239 of *Civil Procedure Law*, the time limit of applying for enforcement is two years (Emphasis Added), starting from the last day of fulfilment of the obligations specified in the Award.

If the arbitration parties reach a settlement agreement on the fulfilment period but subsequently do not perform pursuant to the agreement while the time limit for making an application has elapsed, the time limit will be treated as having stopped



⁵ Article 21 of SPC's Rules on Several Enforcement Matters by People's Courts (Tentative and amended as effective since 16 December 2008).)

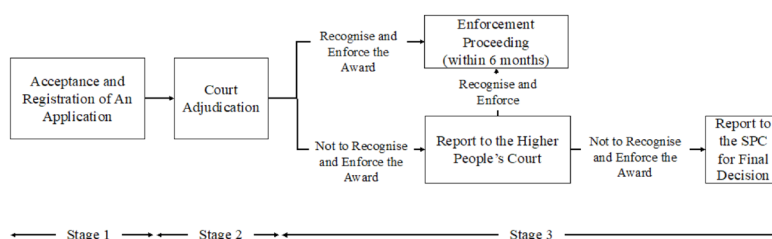
⁶ The SPC's Reply to the Recognition and Enforcement Application from MacorNeptun GmbH, Fa Min Er [2001] No. 32 dated 23 April 2001.



running since such agreement is reached and will run anew when the fulfilment period elapses.⁷

6. COURTS PROCEDURES

Generally, an application to enforce a foreign arbitral award in China may go through the court procedures as summarized below.



It is worth noticing that the third stage, which is “reporting to higher courts”, is an internal judicial proceeding among Chinese courts. In the course of reporting, the applicant and the respondent cannot formally plead to the High People’s Court and/or to the SPC by written submissions and attending oral hearings there. In addition, no time limit is prescribed under PRC law for each stage of reporting. The timetable for managing this process is unpredictable. Likewise, an experienced local counsel may help to accelerate the reporting process based on his knowledge of the operation of courts and his experience of persuading Chinese judges to take the application seriously and efficiently.

⁷ The Xia’ Men Intermediate People’s Court recognized and enforced an arbitral award submitted by a German food trading company in [2001] Xia Xing Zhi Zi No. 3.



Chinese Law Updates

ICC and HKIAC Respectively Publish Practice Notes on Mainland China-Hong Kong Interim Measures Arrangement

On 1 October 2019, the *Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and the Hong Kong Special Administrative Region* (the “**Arrangement**”) came into effect in Mainland and Hong Kong. According to the Arrangement, parties to arbitral proceedings seated in Hong Kong and administered by qualified institutions may seek interim measures from courts in Mainland. As designated by the Department of Justice of HKSAR and confirmed by the Supreme People’s Court, the Hong Kong International Arbitration Centre (“**HKIAC**”) and the International Court of Arbitration of the International Chamber of Commerce Asia Office (“**ICC Asia**”) are, among others, the first set of approved institutions under the Arrangement. Recently, the two institutions have respectively published their practice notes which provide arbitration users with further guidance on the application of interim measures under the Arrangement.

On 9 December 2019, ICC issued a six-page Note pertaining to the Arrangement.⁸ The Note comprises three parts, including (1) introduction to the Arrangement; (2) conditions of applications (i.e. time and subject matter conditions, place of arbitration, and eligible ICC arbitrations), and (3) procedure to apply before a Mainland court.

⁸ ICC Note on Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in Aid of ICC Arbitrations seated in Hong Kong and Administered by the Secretariat Asia Office.

On 16 December 2019, HKIAC published an Information to furnish the details of the application method.⁹ The Information sets forth the procedure to apply under the Arrangement, including (1) the methods of submitting an application to a Mainland court, (2) the process for requesting a letter from HKIAC certifying its acceptance of an arbitration (i.e. Letter of Acceptance), and (3) HKIAC's methods of issuing a Letter of Acceptance.

Beijing Fourth Intermediate People's Court Issues the Trial Guidelines on Standards of Handling Judicial Review of Arbitration Cases

Designated by the Supreme People's Court in 2018, the Beijing Fourth Intermediate People's Court (the "**Court**") has since then had exclusive jurisdiction over arbitration judicial review cases in Beijing, where China International Economic and Trade Arbitration Commission and Beijing Arbitration Commission are located.



⁹ HKIAC Information on its Practice and Experience under the Hong Kong-Mainland Arrangement on Interim Measures



On 10 December 2019, the Court published its case statistics of the judicial review cases for the past five years. According to the publication, the Court accepted a total of 1,278 arbitration-related judicial review cases from January 2015 to October 2019, 242 of which are foreign-related, including 64 applications for confirming the validity of the arbitration agreement and 178 applications for setting aside the arbitral award. Among all these cases, 99.2% of them were decided in favor of arbitration.

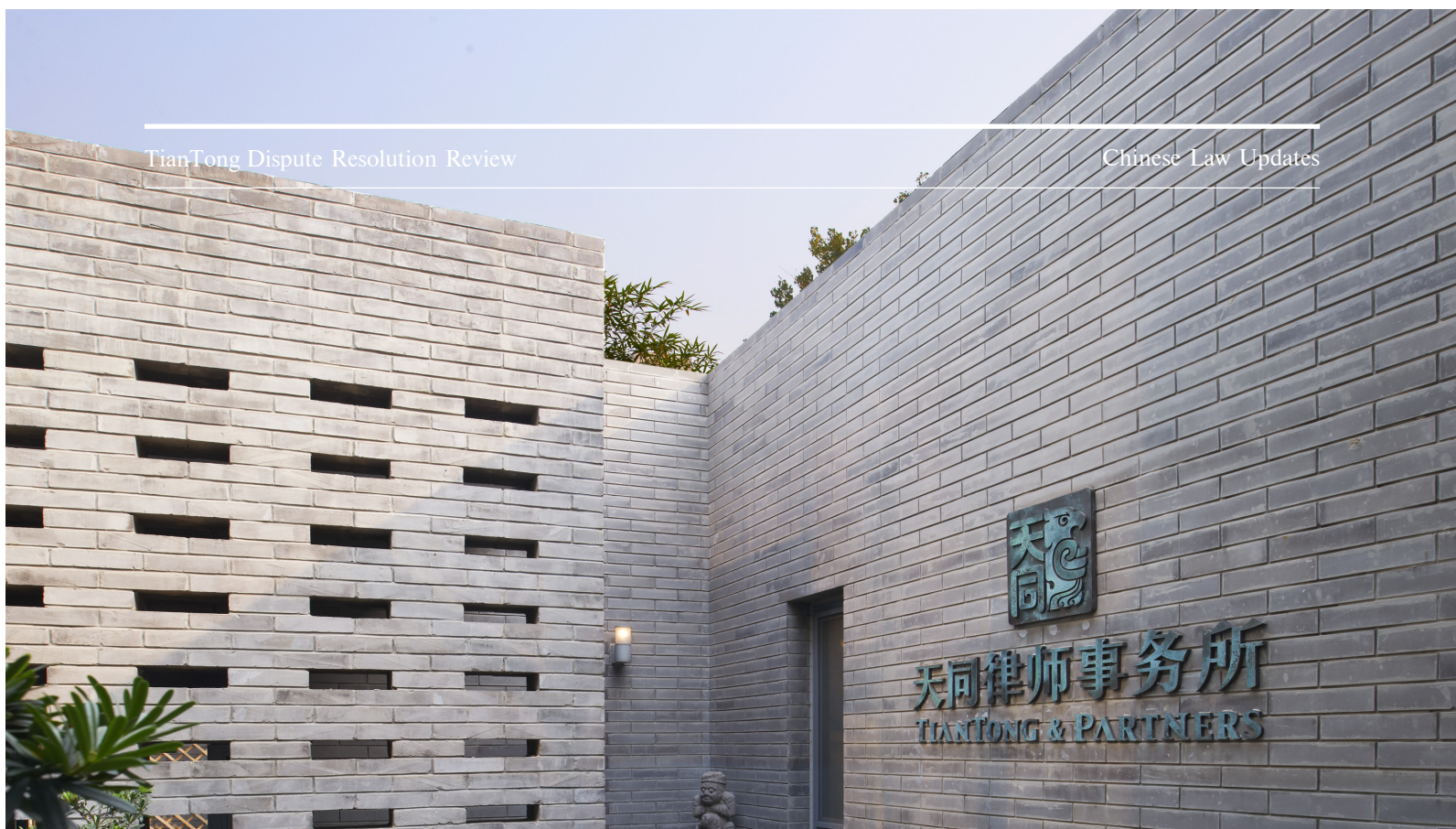
Meanwhile, the Court published the Trial Guidelines on Standards of Handling Judicial Review of Arbitration Cases (the "**Guidelines**"). The Guidelines addresses 43 crucial issues relating to the scope of judicial review, verification of the validity of arbitration agreements and set-aside of arbitral awards. The Guidelines provides each issue with a summary of the Court's adjudication approach and the corresponding legal basis, to unify the adjudication standards applied in Beijing.

The SPC Issues the First Judgment Clarifying the New Interest Calculation Method

On 20 August 2019, the People's Bank of China authorized the National Interbank Funding Center to announce the Loan Prime Rate (LPR, referring to the most preferential lending rate offered by a commercial bank to its prime clients) at 9:30 a.m. on the 20th of each month. This represents the reformation of China's interest rate mechanism. Prior to this reformation, the people's courts usually applied the benchmark interest rates set by the People's Bank of China when determining the interest.

On 9 December 2019, the SPC released the judgment (2019) SPC Min Zhong No. 1549¹⁰, which distinguishes the application of LPR and benchmark interest rates in different periods. Specifically, the SPC calculated the interest accrued before August 19 2019 based on the benchmark interest rate. As to interest accrued after 20 August 2019, the SPC applied the reformed LPR mechanism.

¹⁰ 陕西泾渭建设集团有限公司、武东建设工程施工合同纠纷，(2019)最高法民终1549号 ([2019] Zui Gao Fa Min Zhong No. 1549).



The SPC Issues Chinese Courts and Internet Judiciary (Whitepaper) on 4 Dec 2019

On 4 December 2019, the Supreme People's Court published a whitepaper titled “Chinese Courts and Internet Judiciary” (the “**Whitepaper**”). The Whitepaper introduces the online dispute resolution mechanism in China and the development of related regulations. It comprises seven sections, including overall development, trial system, convenience, online litigation mechanism, intelligent application, coordinated judicial governance, and adjudication rules.

China has set up three Internet courts in Beijing, Guangzhou and Hangzhou. The courts have taken various ways to promote the construction of online trial system and accepted 118,764 cases in total till 31 October 2019. The Whitepaper selected 10 leading cases to elaborate the current innovation of online trials in China.