



**The Latest Developments of International Arbitration in China: Focus
on SINO-US Commercial Dispute Resolution**

MCLE: 1.5 Hours

Wednesday, March 13, 2024

Speakers:

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Guoyong Huang

Peter Neumann

SUN Wei

Conference Reference Materials

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California International Arbitration Week

March 11-14, 2024

LITIGATION

CALIFORNIA
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CA California
Arbitration

SCIA

深圳国际仲裁院

Shenzhen Court of International Arbitration

Recent Development of International Arbitration in China —— From the Perspectives of SCIA's Reform

Dr. LIU Xiaochun

President of the Shenzhen Court of International Arbitration

March 13, 2024

SCIA and International Arbitration in China

Shenzhen Court of International Arbitration

Established in 1983

Based in Shenzhen and Hong Kong

Worldwide Main Concerns on International Arbitration

Efficiency

Costs

Enforceability

Independence

- **Independence: the basis of impartiality**

Administrative Intervention?

Local Protectionism?

Insider Control?

Neutrality?

How to Enhance Independence?

SCIA Approaches:

- Reforming the Governance Structure
- Globalizing the Panel of Arbitrators

SCIA

深圳国际仲裁院

Shenzhen Court of International Arbitration

SCIA Approach 1

Reforming the Governance Structure



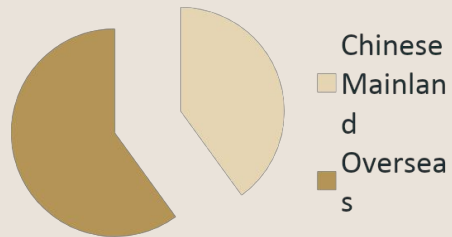
Reforming the Governance Structure

- **Statutory body**, by a unique legislation, *Ordinance on the SCIA*, in 2012
 - The first legislation in China, probably in the world, for a specific arbitration institution.
- **Corporate Governance Structure**, according to *Ordinance on the SCIA*
 - Article 8 - The Council of SCIA shall be the decision-making body.
 - Article 9 - At least 1/3 of the Council members shall be from overseas jurisdictions.

Reforming the Governance Structure



SCIA Council Members



9 out of 15 Council Members from overseas jurisdictions



Prof. Peter Malanczuk

- Member of Academic Advisory Council of University Heidelberg
- Professor of University of Hong Kong
- Former Dean of City University of Hong Kong School of Law



Anthony Neoh, SC

- Former Chairman of the Hong Kong Securities and Future Commission
- Co-Chairman of Asian Academy of International Law

- **SCIA Approach 1**
Statutory Body with a Corporate Governance Structure
centered on International Council:
Enhancing the **Independence**

Administrative Intervention ✘

Local Protectionism ✘

Insider Control ✘

SCIA

深圳国际仲裁院
Shenzhen Court of International Arbitration

SCIA Approach 2

Globalizing the Panel of Arbitrators



Globalizing the Panel of Arbitrators

The **1st** Chinese arbitration institution to include panel arbitrators from outside jurisdictions.

8 out of 15 arbitrators were from **overseas**.

1984

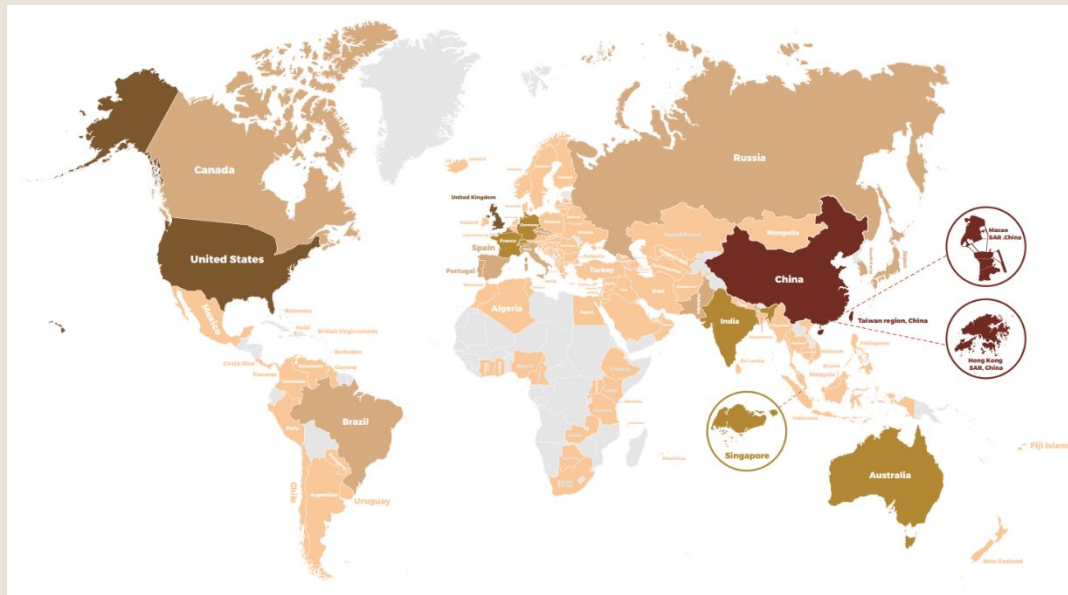
Ordinance on the SCIA requires no less than **1/3** of the panel arbitrators shall be from **overseas** jurisdictions.

2012

?

2024

Globalizing the Panel of Arbitrators



The United States of America (63)	
ALI Shahla F.	Assistant Professor, University of Hong Kong Faculty of Law
ALEXANDROV, Stanimir	Owner, Founder and Principal of Stanimir A Alexandrov PLLC
ANDRIOTIS, Tony	Counsel, Hughes Hubbard & Reed LLP
BACCHUS, James	Professor, Global Affairs, University of Central Florida
BAO, Chiann	Member, Arbitration Chambers
BASRI, Carole	Professor, Fordham University Law School and Peking University School of Transnational Law
BENTON, Gary L.	Arbitrator, Founder of Silicon Valley Arbitration & Mediation Center
BENZ, Jeffrey	Arbitrator, JAMS
BERMANN, George	Professor, Columbia Law School
BJORKLUND, Andrea Kay	Full Professor, McGill University Faculty of Law
BORN, Gary Brian	Partner, Counsel and Arbitrator, Wilmer Cutler Pickering Hale and Dorr LLP
CARLOS, Concepcion	Senior Partner, Shook Hardy and Bacon LLP
CELNIKER, Craig Israel	Partner, Morrison Foerster
CHEN, Xiaomin	Managing Partner, DeHeng Law Offices
CHERNICK, Richard	Vice President, JAMS
CLAXTON, James	Professor, Kobe University Faculty of Law
DAVIDSON, Robert B.	Arbitrator & Mediator, JAMS
DONOVAN, Donald Francis	Arbitrator, Former President of International Council for Commercial Arbitration, American Institute of International Law and the Transnational Arbitration Association
FELDMAN, Mark Ellis	Assistant Professor, Peking University School of Transnational Law
FINDER, Susan Ann	Professor, Peking University School of Transnational Law
FRISBIE, Teresa F.	Professor and Director, Dispute Resolution Program at Loyola University of Chicago
GARY, Richard	Former Partner, Milbank, Tweed, Hadley&McCloy LLP
CRECO, Michael	Commercial Litigator, Arbitrator and Mediator, K&L Gates LLP
HARPOLE, Sally	Arbitrator and Mediator, Self-employed
HODGSON, Mérida Narcisca	Partner, Foley Hoag LLP
HOLINER, Drew	Barrister, Monckton Chambers
HUEBNER, David	Arbitrator and Counsel, JAMS
HUCHES, Benjamin	Arbitrator, Fountain Court Chambers
KAYE, Aharon S.	Partner, Head of Litigation and Dispute Resolution, Gutnicki Law Firm
KREIDER, David Laurence	Lead Counsel, Vodafone New Zealand, Ltd.
LEVENE, Douglas B.	Professor, Peking University School of Transnational Law
MAN Yun Long Thomas	Professor, Peking University School of Transnational Law
MASON, Paul Eric	Director General, Silicon Valley Arbitration & Mediation Center
MCCONNAUGHAY, Philip J.	Vice Chancellor, Peking University School of Transnational Law

MCLIN, Alexander	Executive Director, Swiss Arbitration Association
MILLS, Karen	Founder and International Legal Advisor, KarimSyah Law Firm
MORTON, Robert B.	Arbitrator, Law Office of Robert B. Morton
NEUMANN, Peter	Independent Arbitrator, Adjunct Professor of Law, Pepperdine Caruso School of Law, Straus Institute for Dispute Resolution
NORTON, Patrick M.	Independent Arbitrator
OTERO, Hernando	Fellow and Adjunct Professor, Washington College of Law Center on International Commercial Arbitration
PARK, William W.	Professor of Law, Boston University
PARAGUACUTO-MAHEO, Diana	Partner, FOLEY HOAG LLP
QIAO, Gang Liang	VP & General Counsel, High Growth Markets at Danaher Corporation
RAMEAU, Rose	Partner, Rameau International Law
RANA, Sajjad Ahmad	Partner, Rana Ijaz & Partners
REEVES, Barbara A	Arbitrator, JAMS
ROONEY, John H.Jr	Independent Arbitrator
FARHAD, Sami	Senior director, Alibaba Group Legal Department
SCHEPARD, Richard Paul	Professor, Peking University School of Transnational Law
SCHIEFELBEIN, Lester	Founding Member & Chair of Board of Directors, Silicon Valley Arbitration & Mediation Center
SUCHARITKUL, Vanina	Counsel, Rajah & Tann Singapore LLP
SUSSMAN, Edna	Principal, Sussman ADR LLC
TAO, Peng	Partner, DLA Piper
VON KUMBERG, Wolf	Independent Arbitrator
WANG, Tong	Attorney, Rosensteel Law (New York)
WANG, Yonggang	Associate Vice President, University of Arizona, China & East Asia Affair
WARE, Anton Abraham	Partner, Arnold & Porter Kaye Scholer LLP
WILKOF, Neil	Partner, Dr. Eyal Bressler & Co., Ltd.
XU, Gang	Legal Director, VERISIGN
YANDLE, Stephen Thomas	Professor, Peking University School of Transnational Law
IRVIN, Brent	General Counsel, Tencent Holdings
CHIU, Arthur	Professor, University of International Business & Economics School of Law
LUO, Zhen Dong	Senior Counsel, Gaoyi Consulting (Shenzhen) Co., Ltd.

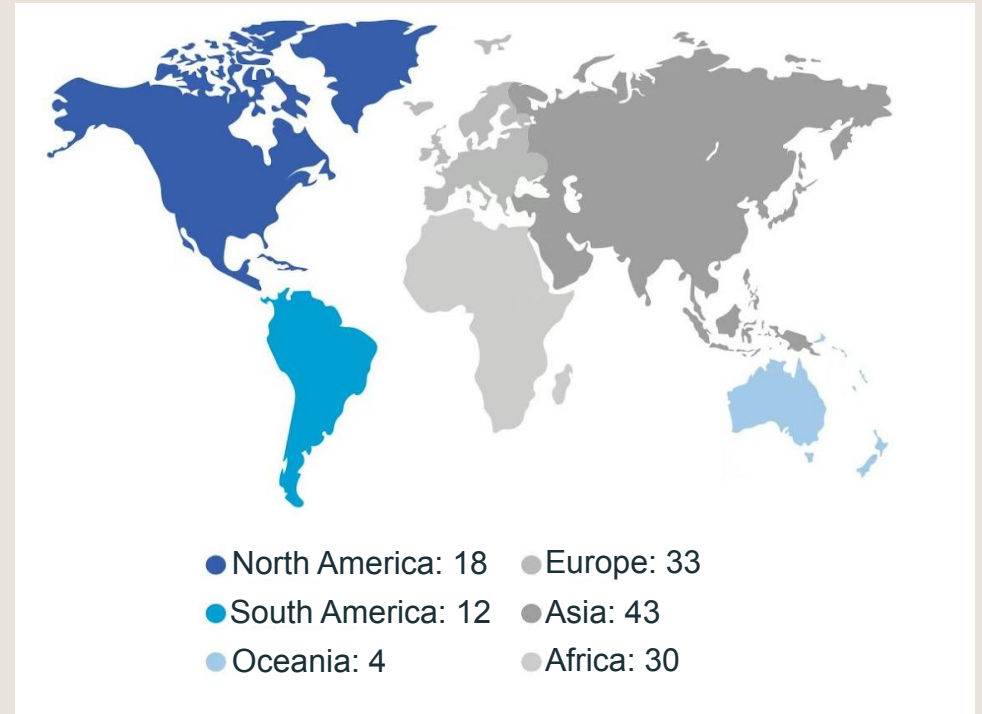
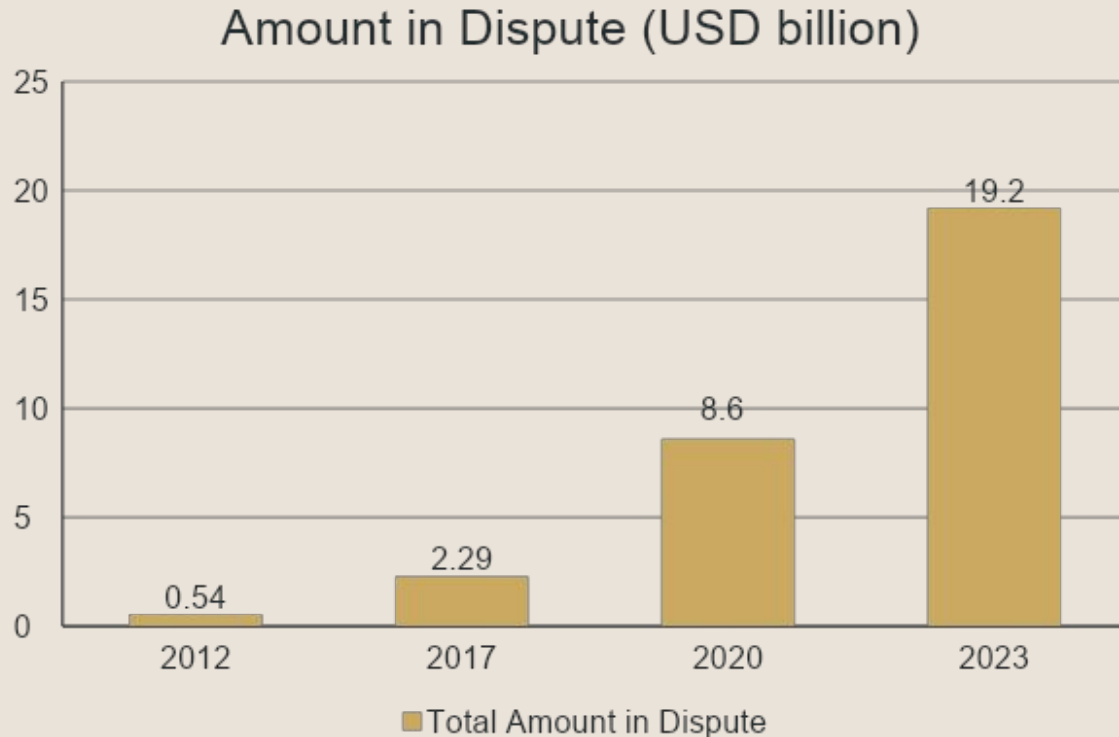
- 1,541 arbitrators from 114 countries and regions
- 569 overseas arbitrators: 36.92% of the Panel

63 arbitrators from the US

- **SCIA Approach 2**
International Panel of Arbitrators:
Enhancing the **Independence**

Neutrality ✓

SCIA's Independence and Increasing International Caseload



So far, SCIA's arbitration and mediation services have been extended to 140 countries and regions

Case Study: SCIA's Independence and the Largest Arbitration Case

- Case concluded with the largest amount in dispute in China: RMB 13.4 billion (**USD 2 billion**)
- 3 parties: from **China** and the **U.S.**
- Representatives: from **5** jurisdictions
- The contract in dispute did not have an arbitration clause
- After investigations on SCIA and based on the confidence in the independence and impartiality, 3 parties entered into an arbitration agreement and chose SCIA to settle the dispute, by the way of Med-Arb

Rory McAlphine, the attorney of the US party in the case



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Independence · Impartiality ·
Innovation

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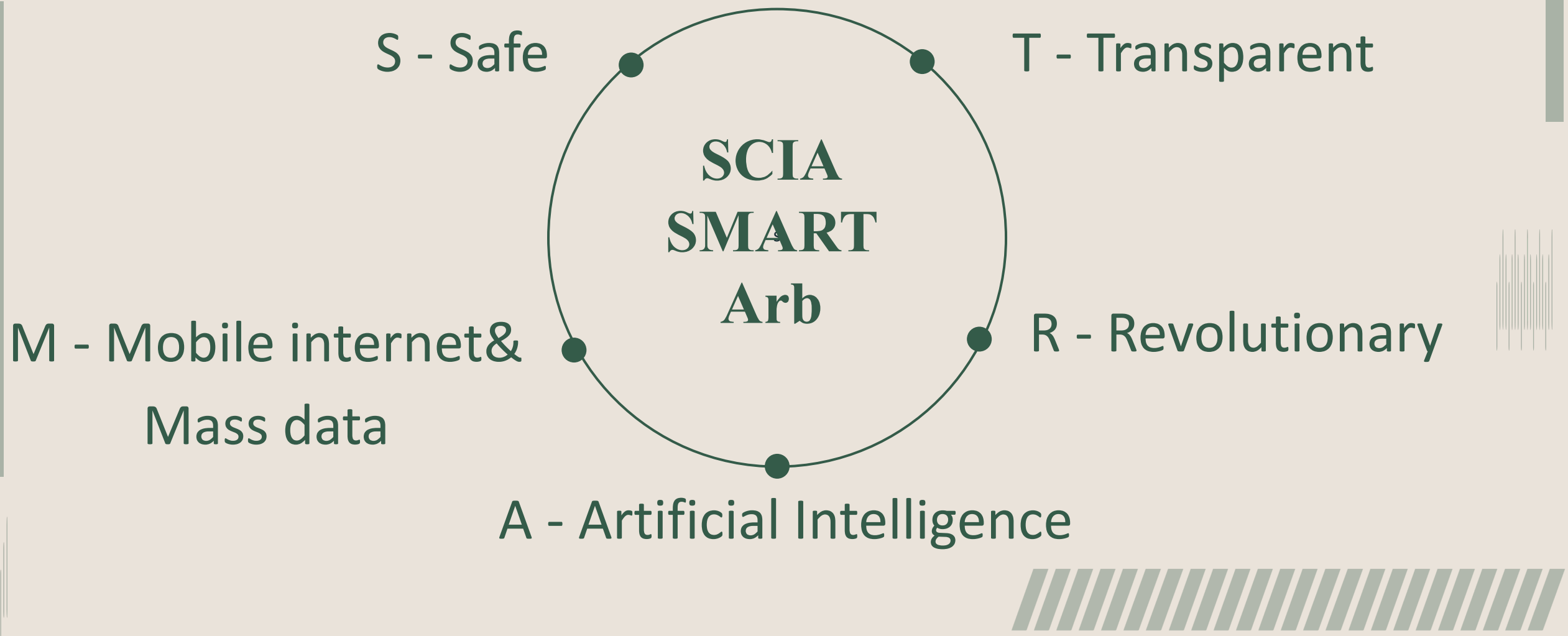
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CA California
Arbitration

SCIA SMART Arbitration

Huang Guoyong

13 March 2024





Part One



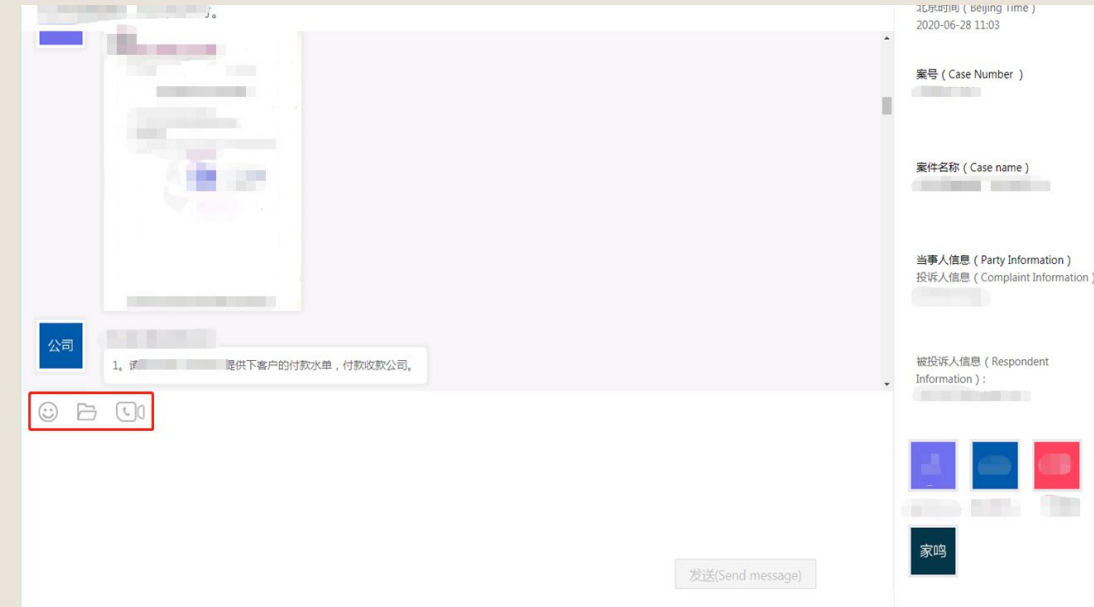
Upgrade and
Iteration

The Beginning of SMART Arb 1.0 ...

In 2001, SCIA completed the construction of the arbitration dedicated network, and developed the case management system. This realized the electronic management of arbitration cases. It was also the starting point to the exploration of online arbitration cases.

In 2008, SCIA co-created an Online Commercial Dispute Resolution Platform with Alibaba Group.

This was SCIA's start on creating the Online Arbitration System 'SMART Arb 1.0.'



The Development of SMART Arb 2.0...

2016, SCIA released a PC-based “Cloud Arbitration” system and internet-based “We-Arbitration” system. Actualizing remote services for most arbitration procedures.

2017, SCIA released its first intelligent robot in the international arbitration field.

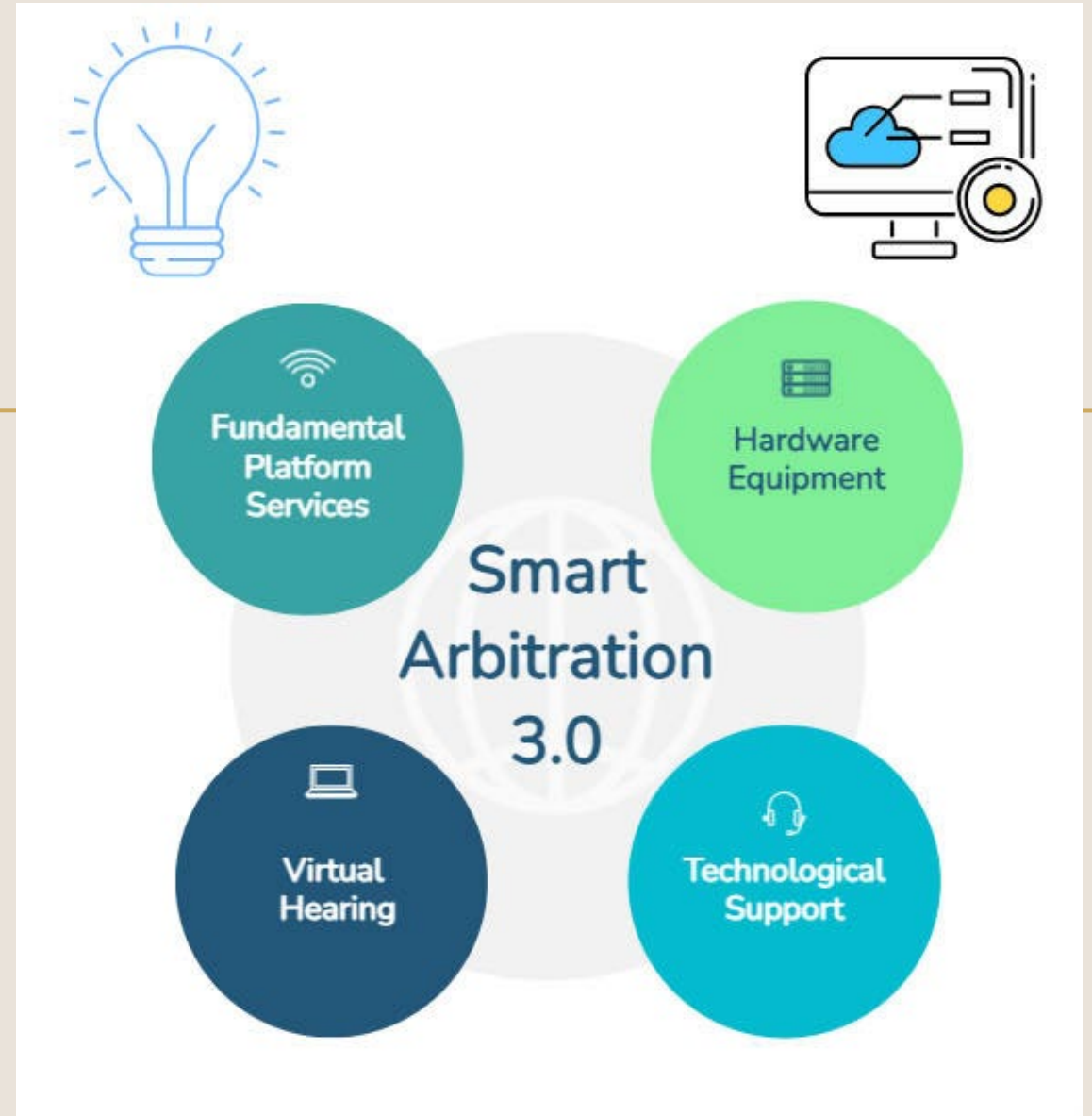
SMART Arb 2.0 developed by combining fundamental platform services with hardware equipment. All arbitration documents were transferred online, and all tribunal rooms initiated virtual hearing functions.



The Advancement of SMART Arb 3.0 ...

SMART Arb 3.0 advanced itself from SMART Arb (fundamental platform services + hardware equipment), by implementing virtual hearing procedures to its arbitration rules, and incorporating technological support. This allowed the entire arbitration process to become remote.

We also aim to adjust the rules accordingly and introduce more suitable technology in creating a more efficient, effective and equal Online Arbitration System.



SCIA

Part Two



Specialty 1- Comprehensive: Multi-Platform System

- Paperless Case Handling System
- E-Services Platform
- Virtual Deliberation Platform
- We-Arbitration Platform

Specialty 1- Comprehensive: Multi-Platform System

Paperless Case Handling System

- Paperless Case Handling System (PCHS) incorporated Big Data, and AI technologies, to **generate, manage and archive** electronic files synchronously with the case.
- PCHS allows participants to manage their electronic files in all aspects, including filing, trial, deliberation, delivering of awards and archiving.

Specialty 1- Comprehensive: Multi-Platform System

E-Services Platform

- E-Service Platform has two main functions:

- 1) Parties can serve each other with the arbitration documents and evidence.
- 2) The E-Service Platform also provides services for SCIA to send arbitration documents, notices and materials to the parties or their agents.

送达记录详情

[预览]

Case Number 受案号 (2021) 深国仲涉外受

Delivered Content 送达内容 Delivery of Final Transcript

Sender 发送人

Status 状态 送达成功

Delivered Time 送达成功时间 2021/11/19 10:00

电子送达 [全部发送] [添加送达对象]

Recipient	Delivery Address	Delivery Status	Operation	Reading Status
<input type="checkbox"/> 送达对象	送达地址	送达情况	操作	读取情况
<input type="checkbox"/> (申请人代理人)	短信送达: 13510	2021/11/19 10:00 - 已通过短信送达至 13510	重发	2021/11/22 10:14 - 来自 58.63.254.92 的用户通过电子邮箱阅读了本次送达内容 The user 'read' the delivered content through email on 22/11/2021, at 10:14am
Claimant	Email送达: kelawyer.com	2021/11/19 10:00 - 已通过Email送达至	重发	
<input type="checkbox"/> (申请人代理人)	短信送达: 15338	2021/11/19 10:00 - 已通过短信送达至 15338	重发	
Claimant	Email送达: lawyer.com	2021/11/19 10:00 - 已通过Email送达至	重发	
<input type="checkbox"/> (被申请人代理人)	短信送达: 1392	2021/11/19 10:00 - 已通过短信送达至 1392384	重发	2021/11/19 15:54 - 来自 113.89.32.83 的用户通过电子邮箱阅读了本次送达内容 The user 'read' the delivered content through email on 19/11/2021, at 15:54am
Respondent	Email送达: lo.com.cn	2021/11/19 10:00 - 已通过Email送达至	重发	

Specialty 1- Comprehensive: Multi-Platform System

E-Services Platform

- SCIA utilizes computer and mobile devices to deliver documents electronically.
- This is achieved through e-mails, instant messaging on the SCIA We-Arbitration Platform, or through SCIA SMS notification.
- The Time and content of these E-Services are recorded in real-time on the platform.
- Parties and arbitrators can view these e-documents, and its relevant delivery information, including when this delivery was received and read. Ensuring the documents are properly served.

Method 1: SCIA Delivery

Unless otherwise agreed by the parties involved, documents, notices, materials, etc., related to arbitration can be delivered in person or by mail, fax, email, other electronic data exchange methods that can provide records, or other methods deemed appropriate by the arbitration institution.

送达给	内容类别	送达时间	状态
申请人	受理通知书、仲裁规则、仲裁员名单、收费指引、指定仲裁员指引	2023-10-27 10:00:00	送达成功
被申请人	仲裁通知书、仲裁规则、仲裁员名单、仲裁申请书、证据材料、选定仲裁员指引	2023-10-27 10:00:00	送达成功
申请人	仲裁庭组成通知书	2023-10-27 10:00:00	送达成功
被申请人	仲裁庭组成通知书	2023-10-27 10:00:00	送达成功
申请人	裁决书	2023-10-27 10:00:00	送达成功
被申请人	裁决书	2023-10-27 10:00:00	送达成功
申请人	仲裁裁决发生法律效力证明书	2023-10-27 10:00:00	送达成功

Method 2: Parties Delivery

With the consent of the parties involved, the arbitration institution or the arbitration tribunal may decide that the parties can directly send arbitration documents and evidentiary materials to the other party through SMART Arbitration Platform, and submit the delivery record to the arbitration institution. The time of delivery is determined by the arbitration institution or arbitration tribunal based on the delivery record.

提交到仲裁院

在线存储系统设置

启用相互送达

保存 返回

Specialty 1- Comprehensive: Multi-Platform System

Virtual Deliberation Platform

- The SCIA case deliberation platform can be accessed through PC and mobile devices; it supports text, images, audio and video files.
- The arbitral tribunal completes deliberation through this platform, and the records will be preserved on SCIA's server.
- This platform ensures convenience, confidentiality and enhances the tribunal's deliberation efficiency.

Specialty 1- Comprehensive: Multi-Platform System

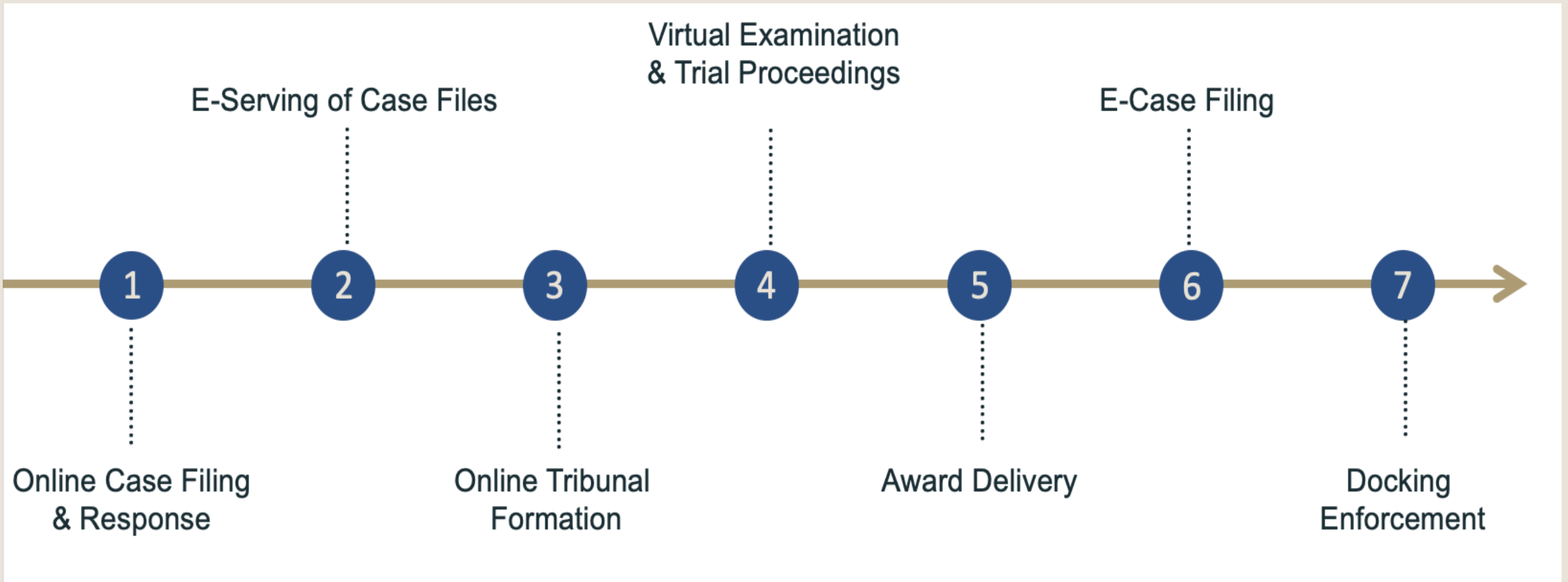


We-Arbitration Platform

- The SCIA Online Arbitration Service can be accessed through WeChat mini-program (We-Arbitration Platform).
- The We-Arbitration Platform integrates over twenty functions, including identity authentication, electronic signatures, and instant messaging.
- It provides parties with services like online case filing, case inquiry, electronic document delivery.
- Parties can also participate in online mediation, virtual trials, evidence exchange and online cross-examination.
- As WeChat is one of the most popular App in China, and has a growing popularity amongst foreign countries, this We-Arbitration Platform minimizes the obstacles in filing a case, and provides a smoother experience to dispute resolution.

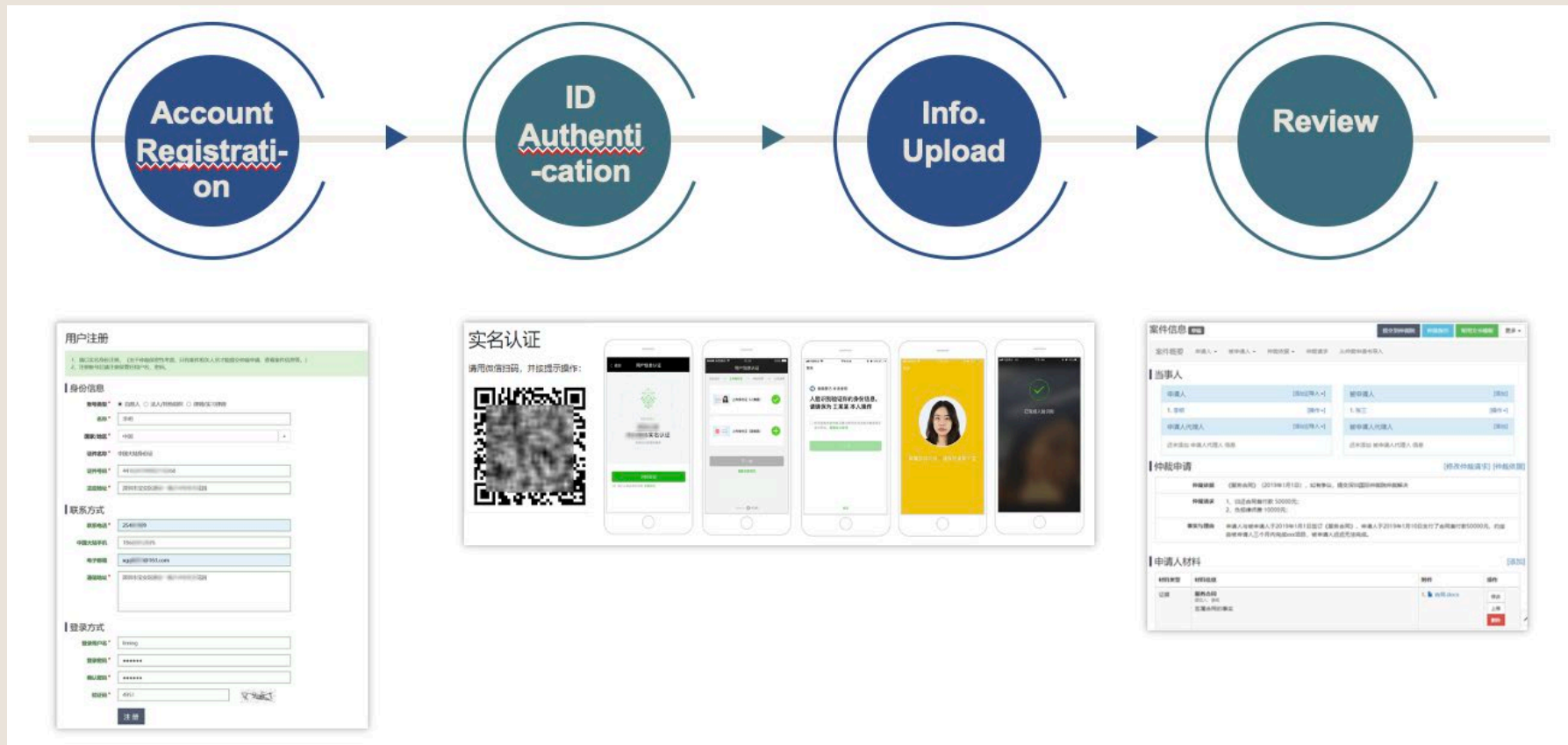
Specialty 2- Convenient: Full Online Procedure

Full Online procedure



Specialty 2- Convenient: Full Online Procedure

Online Case Filing



Specialty 2- Convenient: Full Online Procedure

Online-Hearing



Specialty 2- Convenient: Full Online Procedure

E-Signature: Parties' view

状态 **启动中** (到期时间: 2024/1/3)



参加庭审人员扫码后, 访问签字页, 查看待签名文件, 确认签字内容后进行签字。

一些分享二维码的方法:

1. 在线开庭时, 可共享屏幕进行扫码;
2. 可以右击二维码保存后发给参加庭审人员;
3. 使用微信扫码后转发给参加庭审人员;

[撤回](#)

扫描二维码 (可点击放大), [查看签字页](#)

签名记录 (签名人数: 0/5)

 当前数据为空

电子签

(2022) 深国仲受28号 待签名文件

1 / 10

SCIA | 深圳国际仲裁院
SHENZHEN COURT OF INTERNATIONAL ARBITRATION

庭审笔录

(温馨提醒: 此笔录模板中出现的“X”为自由编辑项, 内容、格式及字体标书下载模板之后自由编辑修改。)

时间: 2022年7月19日 XX:XX
地点: 深圳仲裁委员会X仲裁庭
案号: (2017)深国仲字第2473号

案由: 股权转让合同纠纷
仲裁庭成员: 刘中(首席)、周三军、李平宇
仲裁员秘书: 刘成博
申请人: 申请人1
被申请人: 被申请人1、被申请人2
鉴定机构: XXX

申请人出庭人员: XXX (XX 律师事务所律师, 一般/特别授权)
XXX (公司员工, 一般/特别授权)
被申请人出庭人员: XXX (XX 律师事务所律师, 一般/特别授权)
XXX (公司员工, 一般/特别授权)
鉴定机构出庭代表: XXX (身份证号码、职务)
被申请人证人: XXX (身份证号码)
旁听人员: XXX (身份证号码)

当事人姓名 (最后一页加注日期):

I have read the transcript and confirm

我已阅读待签名文件内容, 并确认无误。

[开始签名](#) start to sign

content of transcript

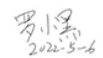
(2022) 深国仲受28号 电话: 0755-
0, 邮箱:

1 / 10

申请人: 申请人1
被申请人: 被申请人1、被申请人2
鉴定机构: XXX

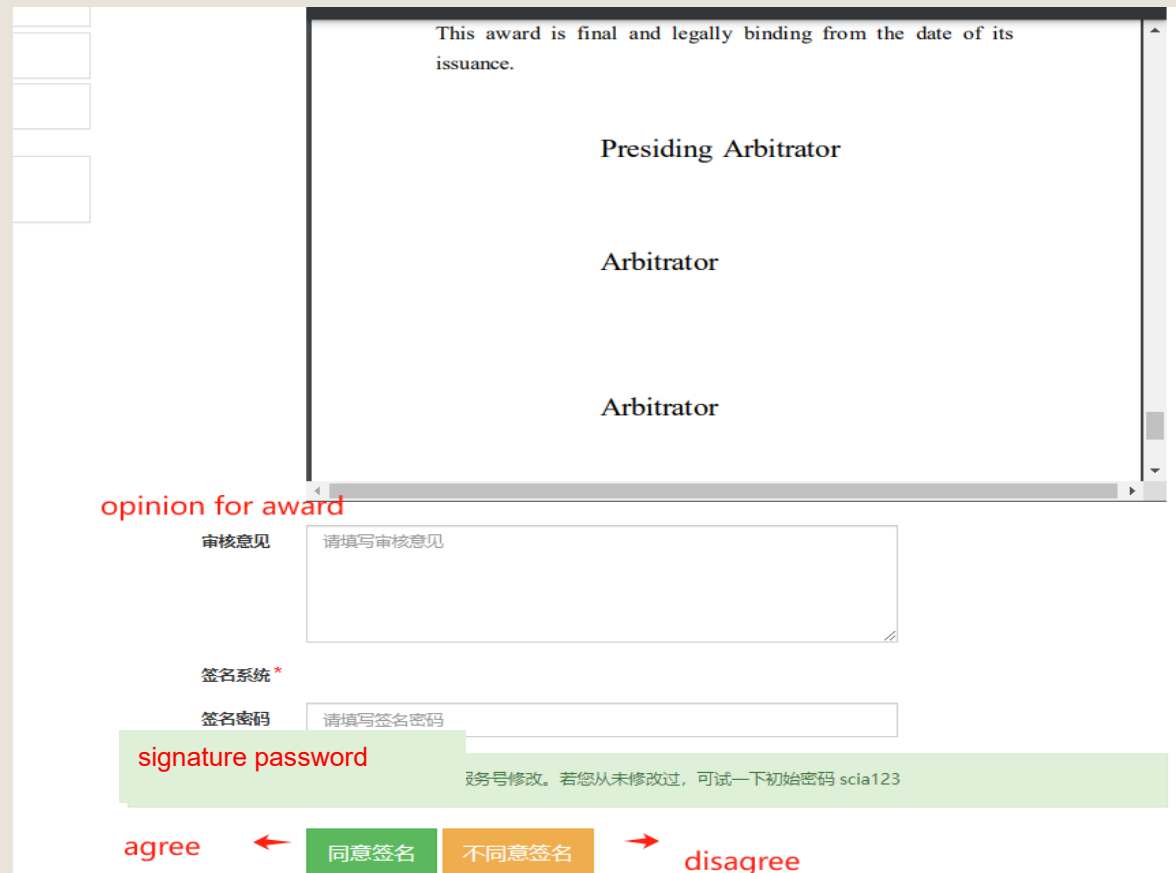
申请人出庭人员: XXX (XX 律师事务所律师)
XXX (公司员工, 一般/特别授权)
被申请人出庭人员: XXX (XX 律师事务所律师)
XXX (公司员工, 一般/特别授权)
鉴定机构出庭代表: XXX (身份证号码、职务)
被申请人证人: XXX (身份证号码)
旁听人员: XXX (身份证号码)

当事人签名 (最后一页加注日期):


2022-8-6

Specialty 2- Convenient: Full Online Procedure

E-Signature: Arbitrator's View



This award is final and legally binding from the date of its issuance.

Presiding Arbitrator

Arbitrator

Arbitrator

opinion for award

审核意见 请填写审核意见

签名系统*

签名密码 请填写签名密码

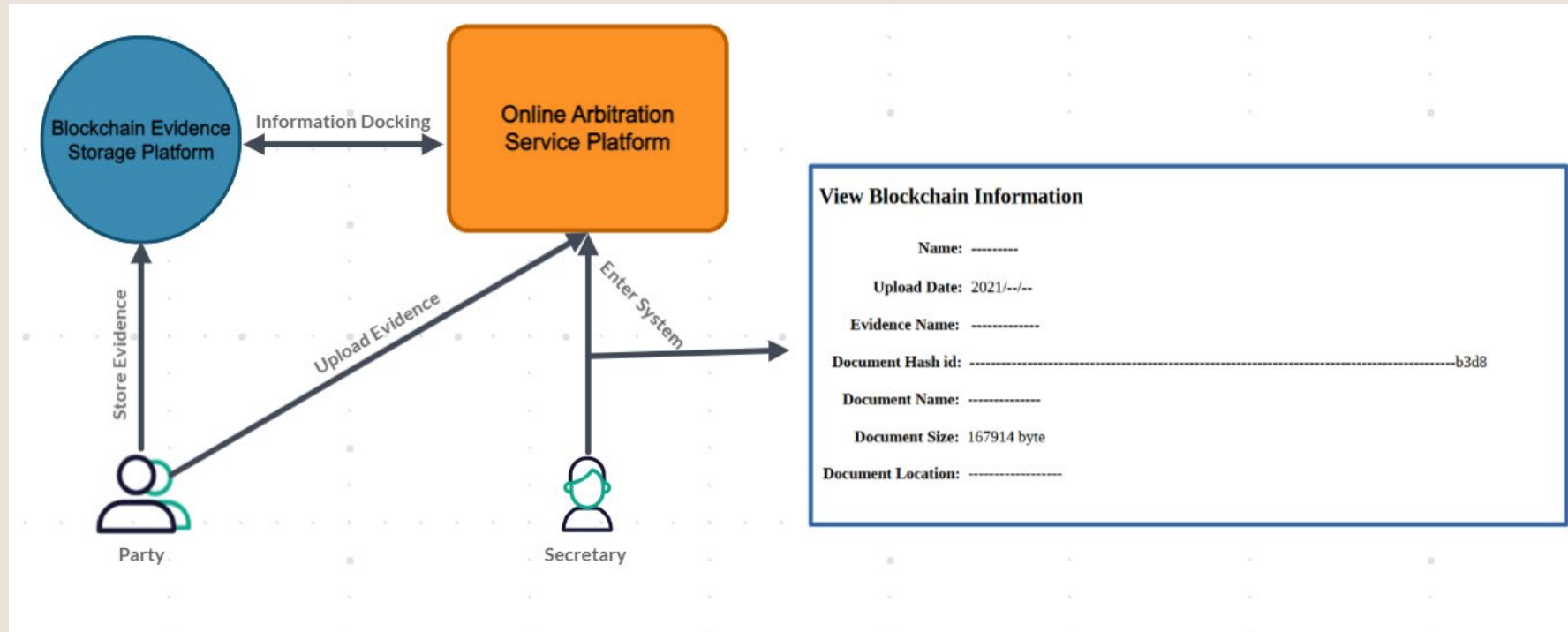
signature password

任务号修改。若您从未修改过，可试一下初始密码 scia123

agree ← 同意签名 不同意签名 → disagree

Specialty 3- Leading: High-Tech Support

Blockchain



Specialty 4- Confidential: High Security Insured

- Cloud Storage – Ensuring material confidentiality
- Independent Deliberation Platform – Ensuring communication confidentiality
- Utility of Specially-Designed Tribunal Software – Ensuring trial procedure confidentiality

Specialty 5- Professional: Interaction between Rules and Technology

Updated SCIA Rules: Article 6(5) on Service

5. With the consent of the parties, the SCIA or an arbitral tribunal may permit a party to directly send arbitral documents and evidentiary materials to the other party at the same time as the submission thereof to the SCIA or arbitral tribunal, or to send them directly to the online storage system provided by the online arbitration platform of the SCIA, and then submit the record of delivery to the SCIA. The time of delivery will be determined by the SCIA or the arbitral tribunal according to the record of delivery.

Old

5. Unless otherwise agreed by the parties, the SCIA or the arbitral tribunal may permit a party to directly send arbitral documents and evidentiary materials to the other party at the same time as the submission thereof to the SCIA or the arbitral tribunal, or to send them directly to the online arbitration platform of the SCIA, and then submit the record of delivery to the SCIA. The time of delivery will be determined by the SCIA or the arbitral tribunal according to the record of delivery.

New

Specialty 5- Professional: Interaction between Rules and Technology

Updated SCIA Rules:

Article 67: Application of Information Technology

Article 67 Application of Information Technology

Unless otherwise agreed by the parties, the SCIA or the arbitral tribunal may decide to conduct all or part of the arbitral proceedings by virtue of information technology, including but not limited to online registration, service, oral hearing, and examination of evidence.

Specialty 5- Professional: Interaction between Rules and Technology

SCIA Policy to promote SMART Arb

In March 2022, to effectively respond to the COVID-19 pandemic and its impacts, and to alleviate the burden of dispute resolution costs on market entities, if both parties agree and use the Shenzhen Court of International Arbitration's SMART Arb Service Platform to participate in the entire arbitration process (including but not limited to online filing, online service, online hearings, online evidence exchange, etc.), the arbitration fees will be directly reduced by 28%.

Specialty 6- Future: Vision of High Intelligence

Present: AI can support the formation of awards based on the digital submission of pertinent case materials: facts, procedural history, and personal information of the parties

Direction of Development:

- Analyze the case parties' opinion and arguments based on their submission materials
- Research on relevant cases and legislation based on the dispute/claim
- Rectify awards style and typos



California International Arbitration Week

March 11-14, 2024

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**THANK YOU
FOR JOINING US!**

California International Arbitration Week

March 11-14, 2024

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Arbitration

**The Latest Developments of
International Arbitration in China:
Focus on SINO-US Commercial
Dispute Resolution**

Wei SUN
March 13, 2024

Enforcement of Foreign Arbitral Awards in China

- Emergency Arbitrator
- Public Policy
- Foreign State Immunity Law



I. Enforcement of Emergency Arbitrator's Decision in China

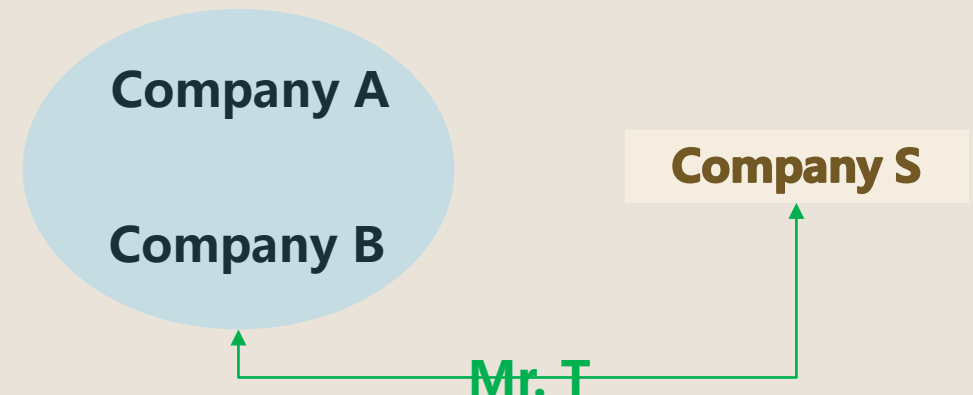
- No express law on the enforceability of emergency arbitrator decision (EA Decision) or interim measures by arbitral tribunal in China
- The power to grant interim measures rests solely on the court rather than the arbitral tribunal. Parties to **arbitration seated in China** can submit application for interim measures to the arbitration institution for the latter to forward to the court.
- Chinese courts tend to reject applications for interim measures from parties to arbitrations seated abroad. It is thus commonly held that interim measures or emergency arbitrator's decision made abroad cannot be enforced in China.
- In a 2021 case by Beijing Fourth Intermediate People's Court (The "S.D.N.Y" in China), the court **indirectly enforced** the EA Decision made by the emergency arbitrator appointed by Swiss Arbitration Centre

I. Enforcement of Emergency Arbitrator's Decision in China

Case of Indirect Enforcement of EA Decision by Chinese Court

➤ Factual Background

- ✓ Company A, Company B and Mr. T entered into a brokerage agreement, providing that Mr. T, as an intermediary, will help Company A and B to resolve their respective disputes with Company S.
- ✓ Company A and B reached settlement with Company S. In their view, Mr. T made no contribution in the settlement and therefore refused to pay any agency fees to Mr. T.
- ✓ Mr. T initiated an arbitration before Swiss Court of Arbitration Institute, claiming for agency fee of over 80 million USD against Company A and B and joint and several liability.



I. Enforcement of Emergency Arbitrator's Decision in China

Case of Indirect Enforcement of EA Decision by Chinese Court

➤ Factual Background

- ✓ The Final Award ordered “the Respondents pay” Mr. T about 40 million USD, without specifying “jointly and severally” or the allocation of liability.

X. FINAL AWARD

Based on the above considerations, the Arbitral Tribunal holds as follows:

- 1) Respondents shall pay Claimant the amount of USD 39,923,876.52.
- 2) In addition Respondents shall pay USD 801,249.97 to Claimant as compensation for incurred costs in these proceedings.
- 3) Except as stated hereinabove, any and all other or further requests, motions and prayers for relief by the Parties in these proceedings are dismissed.

I. Enforcement of Emergency Arbitrator's Decision in China

Case of Indirect Enforcement of EA Decision by Chinese Court

➤ Factual Background

- ✓ Enforcement of award: Mr. T applied to Beijing Fourth Intermediate People's Court for recognition and enforcement of the award, and requested that Company A pay all the awarded amount to Mr. T (Company B had been liquidated by then). The Court froze the bank account of Company A .
- ✓ Company A considered it most unfair for Company A to pay the entire awarded amount of 40 million USD while it only received 5% of the total settlement amount (about 50 million USD).
- ✓ Company A initiated a new arbitration before Swiss Arbitration Centre, requesting the arbitral tribunal to confirm that it shall not bear joint and several liability with Company B under the First Award.

I. Enforcement of Emergency Arbitrator's Decision in China

Case of Indirect Enforcement of EA Decision by Chinese Court

- EA Decision
- ✓ Company A also applied for emergency arbitrator relief to refrain Mr. T from advancing enforcement actions against Company A pending the award of the new arbitration.
- ✓ The emergency arbitrator upheld Company A's application, ordering Mr. T to "refrain from any acts of enforcement of the First Award or other restrictive measures based on the First Award".
- ✓ Mr. T did not comply with the EA Decision but continued to ask the court to compel Company A to perform the First Award.

I. Enforcement of Emergency Arbitrator's Decision in China

Case of Indirect Enforcement of EA Decision by Chinese Court

➤ Enforcement of EA Decision

- ✓ Company A submitted the EA Decision to the Court and requested for suspension of enforcement.
- ✓ The Court rendered a ruling on suspension. The Court did not expressly base its ruling on the EA Decision but mentioned the fact that Company A submitted the EA Decision. In reality, the EA Decision was the main factor that the Court decided to suspend enforcement.
- ✓ The Court published this case and included it in its “10 Influential Foreign-related Cases of the Year”.
- ✓ Commentators call this case as the first case where Chinese court (indirectly) gave effect to a foreign EA Decision.

security to this Court. On 6 August 2021 this Court froze the bank account held by [redacted] Corp. in accordance with the law. Now [redacted] Corp. submitted to the Court the Emergency Arbitrator's Order in case no. 300556-2021 and applies to the Court for suspension of enforcement.↵

In the Court's view, in the circumstances that the Party Subject to Enforcement has provided sufficient and effective security and requests for stopping corresponding measures of disposal, the Court may grant the request. Therefore, pursuant to Article

256(1)(vi) of the Civil Procedure Law of China and Article 9 of the Interpretation of the Supreme People's Court of Several Issues concerning the Enforcement Procedures in the Application of the Civil Procedure Law of China, it is ruled as follows:↵

Suspend the enforcement of the Civil Ruling No. (2020) Jing 04 Xie Wai Ren 3.↵

This ruling shall take legal effect upon service.↵

II. Interpretation of “Public Policy” in China

◆ “Public Policy Exception” - New York Convention

Article V

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

...

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

What is the definition of “public policy”?

- New York Convention does not contain such definition;
- Most member states do not define public policy in their domestic laws, leaving the determination of whether the public policy defense applies in specific cases to domestic courts.

II. Interpretation of “Public Policy” in China

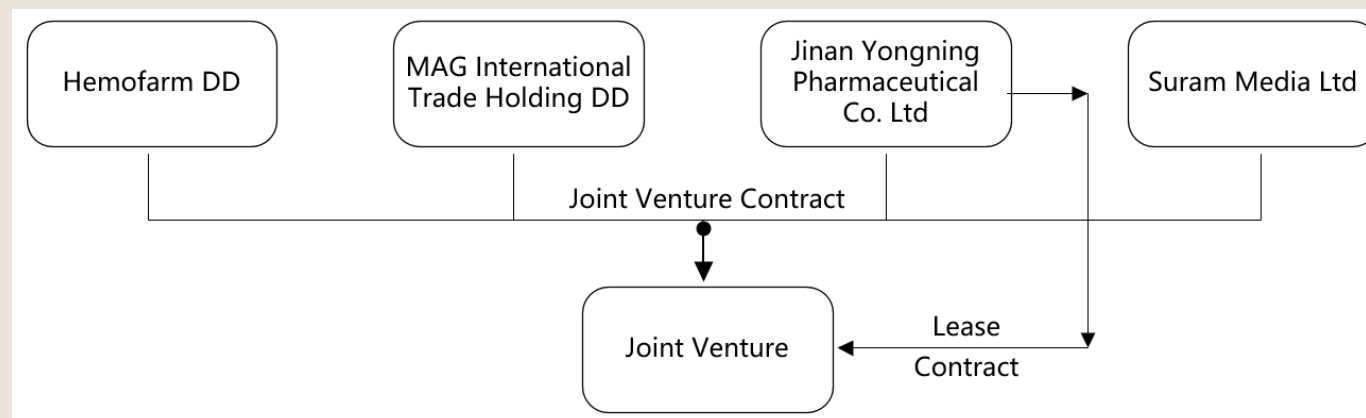
- ◆ Interpretation of “Public Policy” – Chinese courts have taken a **RESTRICTIVE** interpretation.
- General principle:
 - “Public Policy Exception” under New York Convention is limited to “*situations where the recognition and enforcement of a foreign arbitral award would result in violation of the fundamental principles of PRC laws, infringe upon PRC national sovereignty, endanger public security, violate good customs and other circumstances that would endanger the fundamental public interests of the PRC*”. (Supreme People’s Court’s Reply to Request for Instructions Re Weston Wacker’s Application for Recognition and Enforcement of an English Arbitral Award, [2012] Civil IV No. 12)

II. Interpretation of “Public Policy” in China

Case - Hemofarm DD et al. v. Yongning Pharmaceutical (2009)

➤ **Background:**

- ✓ Hemofarm DD (Hemofarm), MAG International Trade Holding DD (MAG), Suram Media Ltd. (Suram) and Jinan Yongning Pharmaceutical Co. Ltd. (Yongning) entered into a joint venture contract, which was subject to Chinese law and where any dispute related to the contract was to be resolved by arbitration under the arbitration rules of the International Chamber of Commerce (ICC).



II. Interpretation of “Public Policy” in China

Case - Hemofarm DD et al. v. Yongning Pharmaceutical (2009)

➤ **Background:**

- ✓ A dispute arose between Yongning and the joint venture company, Jinan Hemofarm Pharmaceutical Company Limited (Jinan-Hemofarm), regarding its tenancy with Jinan-Hemofarm, which Yongning submitted for resolution before the Intermediate People’s Court of Jinan City of Shandong Province.
- ✓ The court rejected jurisdictional challenges raised by the other parties to the joint venture agreement, holding that Jinan-Hemofarm was not a party to the joint venture contract and thus the arbitration agreement did not apply. The court ruled in favour of Yongning in the actions it brought, including a property preservation measure.
- ✓ These rulings were upheld by the High People’s Court of Shandong Province.

II. Interpretation of “Public Policy” in China

Case - Hemofarm DD et al. v. Yongning Pharmaceutical (2009)

- **Background:**
- ✓ Hemofarm, MAG and Suram jointly filed an arbitration with the ICC against Yongning.
- ✓ Receiving an Award in favour of Hemofarm, MAG and Suram, Yongning applied to the Jinan Intermediate People’s Court of Shandong Province to refuse to recognize and enforce the Award.

II. Interpretation of “Public Policy” in China

Case - Hemofarm DD et al. v. Yongning Pharmaceutical (2009)

➤ Courts' opinion:

- ✓ Jinan Intermediate People's Court: By re-judging of issues already decided by the Chinese court and issuing the Award, the arbitral tribunal severely infringed on the jurisdiction of the Chinese Courts, the res judicata effect of Chinese court decisions, and the judicial sovereignty of China. These constitute violation of China's public policy.
- ✓ Shandong High People's Court & Supreme People's Court: Agreed with Jinan Intermediate People's Court,
- ✓ Therefore, the Jinan Intermediate People's Court refused to recognize and enforce the ICC award.

II. Interpretation of “Public Policy” in China

◆ Interpretation of “Public Policy” – Chinese courts have taken a RESTRICTIVE interpretation.

➤ Situations that do not fall within the scope of “Public Policy Exception”:

- Violations of compulsory provisions in the Chinese law do not naturally constitute a violation of the public policy of China;
- Unfairness of arbitration results does not amount to a violation of public policy;
- Arbitrator opined that there were obvious distinctions between legal provisions and their practical application. Court held that the above understanding was wrong, but such misunderstanding did not suffice as a breach of public policy. (Supreme People’s Court’s Reply to Request for Instructions Re Louis Dreyfus Commodities Asia Co., Ltd.’s Application for Recognition and Enforcement of the No. 1980 Arbitral Award Rendered by the International Federation of Oils, Seeds and Fats Associations, [2010] Civil IV No. 48→next page)

II. Interpretation of “Public Policy” in China

Case - Louis Dreyfus Commodities Asia v Guangdong Fuhong Edible Co, Ltd (2010)

- **Background:**
- ✓ The Award held that “there are obvious distinctions between the provisions of the Chinese laws and their application in practice, and this detail about the Chinese laws is ultimately not important. Whichever way you look at it, the Chinese laws are complex. And as is the case with any regulatory regime that can affect a particular international sales contract, what matters to the parties is not how those provisions, as the relevant local law, should be interpreted, but how they are applied in practice.”
- ✓ The Respondent argued that the above content seriously challenged the authority of the Chinese law and is contrary to China’s public policy, and on that basis applied to the Intermediate People’s Court of Zhanjiang City of Guangdong Province to refuse to recognize and enforce the Award.

II. Interpretation of “Public Policy” in China

Case - Louis Dreyfus Commodities Asia v Guangdong Fuhong Edible Co, Ltd (2010)

➤ Courts' Opinions:

- ✓ Intermediate People's Court of Zhanjiang City of Guangdong Province decided that the Award constituted a violation of public policy and therefore tended to grant the Respondent's application.
- ✓ High People's Court of Guangdong Province held the same opinion.
- ✓ Supreme People's Court, however, decided that “***The arbitrator in this case believed that there were obvious distinctions between the provisions of the Chinese laws and their application in practice. However, that misunderstanding did not lead to the recognition and enforcement of the arbitral award being contrary to China's public policy. Therefore, there is no sufficient basis to refuse to recognize and enforce the arbitral award on the grounds of public policy.***”

III. The Interplay between the Foreign State Immunity Law and the Recognition and Enforcement of Arbitral Awards

- A. Background – The Adoption of Restrictive Immunity in China
- B. Immunity from Suit and Arbitration Exemption
- C. Impact on Cross-Border Recognition and Enforcement

III. The Interplay between the Foreign State Immunity Law and the Recognition and Enforcement of Arbitral Awards

A. Background – The Adoption of Restrictive Immunity in China

The Law of the People's Republic of China on Foreign State Immunity (2024)

State immunity is the immunity that a State enjoys in respect of itself (jurisdictional immunity) and its property (enforcement immunity) from the jurisdiction of the courts of another State.

Max Planck Encyclopaedias of International Law

- There are two approaches to foreign state immunity: absolute and restrictive. Under the former, states enjoy absolute immunity from suit in foreign courts, whereas under the (now prevailing) restrictive approach, states lose that immunity when they are sued for non-sovereign acts, such as commercial transactions.
- Until recently, China had long adhered to the absolute theory. On September 1, 2023, China's top legislature, the Standing Committee of the National People's Congress (NPCSC), adopted the Foreign State Immunity Law (外国国家豁免法), which took effect on January 1, 2024. The Law marks a historic change in China's stance on foreign state immunity and brings China's practice in line with international norms.

III. The Interplay between the Foreign State Immunity Law and the Recognition and Enforcement of Arbitral Awards

B. Immunity from Suit and Arbitration Exemption

- Article 3 of the Foreign State Immunity Law lays down the general rule that foreign states and their property are immune from suit in Chinese courts, subject to the seven categories of exceptions.

Basic Principles	Exceptions
Article 3 Unless otherwise provided by this Law, a foreign State and its property enjoy immunity from the jurisdiction of the courts of the People's Republic of China.	Commercial Activities, Waiver, Employment Contracts, Torts, Property, Intellectual Property, and Arbitration

III. The Interplay between the Foreign State Immunity Law and the Recognition and Enforcement of Arbitral Awards

B. Immunity from Suit and Arbitration Exemption

Article 12

- If a foreign State
 - ❖ has entered into an **agreement in writing** according to which a dispute arising out of a **commercial activity** between the foreign State and an organization or an individual of another State, including the People's Republic of China, is **submitted to arbitration**; or
 - ❖ has agreed in an **international investment treaty or otherwise in writing** to submit an **investment dispute** between the foreign State and an organization or an individual of another State, including the People's Republic of China, to arbitration,
- the foreign State **shall not enjoy immunity from the jurisdiction of the courts** of the People's Republic of China in the following matters which are subject to review by the courts:
 - 1. the validity of the arbitration agreement;
 - 2. the **recognition and enforcement of the arbitration award**;
 - 3. setting aside of the arbitration award; or
 - 4. other matters related to arbitration which are subject to review by the courts of the People's Republic of China as provided by the law

III. The Interplay between the Foreign State Immunity Law and the Recognition and Enforcement of Arbitral Awards

C. Impact on Cross-Border Recognition and Enforcement

- According to Article 12 of the Foreign States Immunity Law, for arbitral awards rendered between a foreign state and an individual or an organization from another state, the State is not entitled to seek immunity from being enforced against before Chinese courts on the ground of its sovereignty.
- This applies to both investment arbitration and commercial arbitration. Therefore, the clarity brought by the Foreign State Immunity Law is likely to make China a more welcomed jurisdiction for arbitration and the recognition and enforcement of arbitral awards.

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Enforcement of International Awards in the United States

Peter Neumann March 13, 2024

Introduction

- Historical estimates suggest national courts give effect to about 90% of all awards
- However, various scholars have found significantly lower rates
- Latest empirical study draws on a more comprehensive data set – U.S. federal court case dockets – than legacy studies
- Expanded data set and improved methodology yield higher rates of support for international awards in the U.S. than anecdotal estimates
- This study also validates absence of bias against Chinese awards

NOTE: All information and tables contained herein are derived from Drahozal, *et al*, *infra*; percentage calculations are based on tables, and may differ slightly from those given in the article.

Previous Empirical Studies -- Limitations

- One previous study based on cases reported in the Kluwer Arbitration database found that courts worldwide (including the U.S) vacated or denied enforcement of international awards at the rate of to 23% to 27%
- This and other studies suffer from methodological shortcomings that have distorted results
- Primary methodological deficiency was reliance on under-inclusive commercial databases, such as Westlaw or kluwerarbitration.com
- These databases exist for legal research, not empirical research
- As a result, they do not contain or purport to contain either a comprehensive or a representative set of cases

Latest Empirical Study

- ***Challenging And Enforcing International Arbitral Awards In U.S. Federal Courts: An Empirical Study*** (draft 1/10/2024; available on SSRN, publication pending)
- **The Authors:**
 - Christopher R. Drahozal***, John M. Rounds Professor of Law, University of Kansas School of Law
 - Donald Earl Childress III**, Professor of Law, Pepperdine University Caruso School of Law
 - Jack J. Coe, Jr.***, Professor of Law, Pepperdine University Caruso School of Law
 - Catherine A. Rogers***, Professor of Law, Bocconi University; Affiliated Scholar at the Center for Negotiation and Dispute Resolution (“CNDP”), University of California, College of the Law, San Francisco.
- **Eminently Qualified:** 3 out of 4 authors are Associate Reporters* on the RESTATEMENT OF THE U.S. LAW OF INTERNATIONAL COMMERCIAL & INVESTOR-STATE ARBITRATION

Methodology

- Focus on petitions (“Petitions”) to vacate, confirm, or enforce international arbitral awards (frequently filed after initial case filing) filed in U.S. federal courts
- Encompasses both foreign awards and “non-domestic” U.S. awards
- Comprehensive search of US federal court records to identify Petitions docketed between January 1, 2011, and December 31, 2019
- Note that filing of Petition frequently trailed initial case filing
- Distinguishes contested and non-contested petitions
- Tracks procedural disposition, through appeal (if applicable)
- Tracks settled (and likely settled) cases
- Tracks administered (by institution) and ad hoc arbitrations
- Tracks seat of arbitration for each award

Data Set

- 960 cases in which Petitions were filed -- much larger than previous studies focusing on reported cases
- Very few are reported – missed by typical legal research
- Substantially broader coverage than leading data bases (Westlaw, Kluwer, etc.)
- Reflects petitions involving awards made at both US and non-US seats
- Includes cases that were settled prior to final court ruling, conveying a much fuller picture of outcomes

Figure 1. Number of Cases and Petitions in Dataset Filed per Year

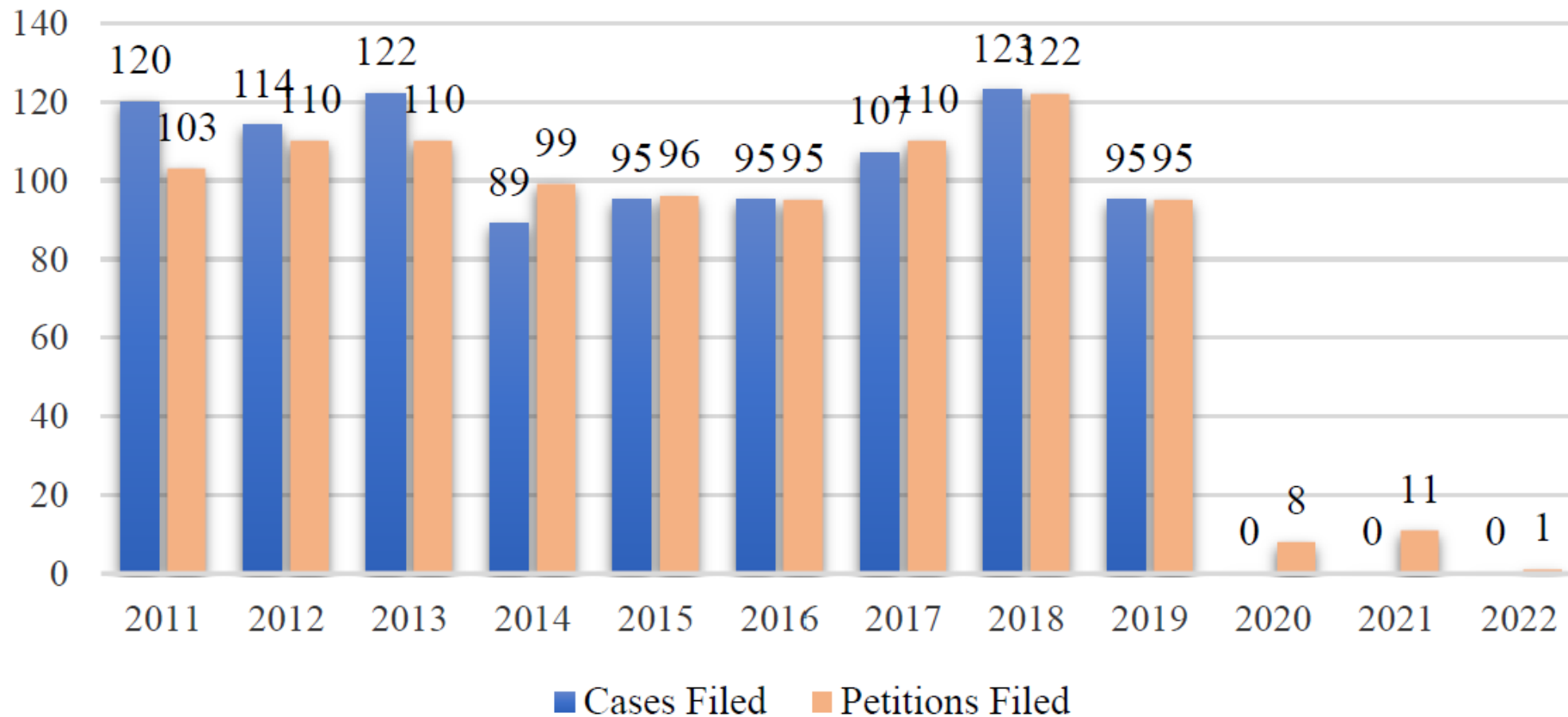


Table 1. Most Common Seats for Arbitrations in Dataset

U.S. Seat ¹⁶⁷	Number (%)	Non-U.S. Seat	Number (%)
New York	262 (27.3%)	London	99 (10.3%)
Los Angeles	43 (4.5%)	Paris	25 (2.6%)
Miami	42 (4.4%)	Geneva	16 (1.7%)
Washington DC	26 (2.7%)	Singapore	16 (1.7%)
San Francisco	23 (2.4%)	Hong Kong	15 (1.6%)
Chicago	17 (1.8%)	Beijing	14 (1.5%)
Houston	17 (1.8%)	Shanghai	9 (0.9%)
Dallas	12 (1.3%)	Moscow	8 (0.8%)
Atlanta	8 (0.8%)	Seoul	8 (0.8%)
Minneapolis	7 (0.8%)	Stockholm & Toronto	7 (0.7%) each

Table 3. Most Common Administering Institutions in Dataset

Institution	Number (%)
International Centre for Dispute Resolution (ICDR)	261 (27.2%)
International Chamber of Commerce (ICC)	133 (13.9%)
JAMS ¹⁷³	41 (4.3%)
American Arbitration Association (AAA)	38 (4.0%)
London Court of International Arbitration (LCIA)	28 (2.9%)
American Dispute Resolution Center (ADRC) ¹⁷⁴	22 (2.3%)
China International Economic and Trade Arbitration Commission (CIETAC)	19 (2.0%)
Financial Industry Regulatory Authority (FINRA)	18 (1.9%)
Independent Film & Television Alliance (IFTA)	12 (1.3%)
Hong Kong International Arbitration Centre (HKIAC)	11 (1.1%)

Table 4. Initial Filing for Petitions in Dataset

	Number (%)
Petition to Confirm Award (with U.S. Seat) ¹⁷⁸	453 (47.2%)
Petition to Enforce Award (with non-U.S. Seat)	348 (36.3%)
Petition to Confirm or Enforce (Seat Missing)	18 (1.9%)
Petition to Vacate	127 (13.2%)
Petition to Vacate in Part	7 (0.7%)
Declaratory Judgment of Nonenforceability	3 (0.3%)
Petition to Modify/Correct/Clarify	4 (0.4%)

Federal Courts in California Have Substantial Experience with International Awards (12.5% of petitions filed)

Table 5. Most Frequent Courts in which Petitions Were Filed in Dataset

U.S. District Court	Number (%)
Southern District of New York	301 (31.4%)
Central District of California	83 (8.6%)
Southern District of Florida	68 (7.1%)
District of District Columbia	63 (6.6%)
District of Connecticut ¹⁷⁹	51 (5.3%)
Southern District of Texas	42 (4.4%)
Northern District of California	37 (3.9%)
District of New Jersey	23 (2.4%)
Northern District of Illinois	18 (1.9%)
District of Delaware & Eastern District of New York	17 (1.8%) each

Outcomes

- Federal courts vacated or refused to confirm international awards
 - Overall: less than 5% of Petitions
 - U.S. seats: approximately 2%
 - Non-U.S. Seats: approximately 9%
- Settled or Likely Settled
 - Overall: approximately 13%
 - U.S. seats: approximately 10%
 - Non-U.S. Seats: approximately 19%

Table 10. Outcomes for Petitions with Contested and Uncontested Outcomes in Dataset

Petitions with Contested Outcomes	Number
Confirmed or Enforced/Vacatur Denied or Dismissed	327
Confirmed in Part	7
Vacated/Confirmation Denied	22
Confirmation or Enforcement Dismissed	21
Remanded to State Court	9
Remanded to Arbitrators	4
Petitions with Uncontested Outcomes	
Confirmed or Enforced—Unopposed	342
Vacated—Unopposed	2
Settled or Likely Settled	127
Voluntarily Dismissed/Other	99
TOTAL	960

Table 11. Outcomes for Petitions in Dataset Based on Arbitral Seat		
	U.S. Seat	Non-U.S. Seat
Petitions with Contested Outcomes		
Confirmed/Vacatur Denied or Dismissed	228	95
Confirmed in Part	5	2
Vacated/Confirmation Denied	8	14
Confirmation or Enforcement Dismissed	3	18
Remanded to State Court	4	3
Remanded to Arbitrators	3	0
Petitions with Uncontested Outcomes		
Confirmed or Enforced—Unopposed	219	114
Vacated—Unopposed	1	0
Settled or Likely Settled	57	67
Voluntarily Dismissed/Other	55	43
TOTAL	583	356

Petitions Involving Awards Rendered in Chinese Arbitral Seats

- 46 Petitions involving Chinese seats
 - 15 seated in Hong Kong
 - 31 seated in Mainland China
- About 10% vacated or denied (5/46)
 - Only slightly higher than rate for all non-U.S. seats (approx. 9%)
- Grounds relied on by court
 - No arbitration agreement (1)
 - Lack of notice (2)
 - Public policy – duress (1)
 - Procedural – failure to obtain counsel (1)

“

**Nothing to suggest U.S.
court bias against Chinese
awards during period
covered**

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