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RESEARCH ARTICLE

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The New Progress in Chinese Arbitration Law

Abstract The Chinese Arbitration Law of 1995, together with the Civil Procedure Law and other sources of arbitration laws, is served as the legal bases for the Chinese arbitration system. Compared with advanced arbitration systems in the world, there still exist some defects of the Chinese Arbitration Law due to its lack of rich legislative experience and the conservative attitude toward arbitration. However, the Judicial Interpretation by the Supreme Court of China in 1995 makes a progress in Chinese Arbitration Law by strengthening the support to arbitration, but not playing the interventionist role of it.

Keywords Chinese Arbitration Law, arbitration system, judicial interpretation

The Chinese Arbitration Law (effective on September 1, 1995) unified the previous conflicting regulations governing arbitration in China to some extent, and marked a fundamental change in the Chinese arbitration system. It established basic requirements for the validity of arbitration agreements and the conduct of arbitrations, and dealt with other matters relating to domestic and international disputes. The Arbitration Law was formulated based on a number of guiding principles, including the principles of independence and impartiality, autonomy of the parties, uncomplicated and efficient arbitration and the use of conciliation.[1] The Arbitration Law has been applied to resolve both domestic and international commercial disputes for nearly 16 years and some birth-defects of this legislation have been unveiled gradually through its operation. Compared

[1] The Legislative Commission of the Standing Committee of the NPC of China (ed.), *Arbitration Laws in China*, Sweet & Maxwell Asia (Hong Kong), at 22–26 (1997).

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with the 1985 UNCITRAL Model Law (as amended in 2006)[2] and other advanced municipal arbitration laws (e.g., the US Arbitration Law, the English Arbitration Act of 1996.), the main defects of the Chinese Arbitration Law still exist.

1 Conflicts between Different Legislatures

The legal framework of the Chinese commercial arbitration law consists of two basic laws promulgated by the Standing Committee of the National People's Congress (NPC): the Arbitration Law of 1995 and the Civil Procedure Law (CPL) of 1991 (revised in 2007), more than 30 judicial interpretations made by the Supreme Court of China (SCC), international treaties,[3] regulations adopted by the State Council[4] and the Arbitration Rules of more than 200 arbitration institutions. Conflict remains among these different hierarchies of laws. For example, both the CPL and the Arbitration Law divide arbitration generally into a parallel system of domestic arbitration and foreign related arbitration. Under the legal system, arbitration agreement is divided into domestic arbitration agreement and foreign-related arbitration agreement; arbitration institution is divided into domestic arbitration institution and foreign related arbitration institution; arbitral award is divided into domestic arbitral award, foreign related arbitral award or foreign arbitral award, etc., all of which will be controlled or supervised by different courts under different rules. Generally speaking, the foreign-related arbitration agreement and the arbitral award will enjoy more favorable treatment than the domestic ones. Traditionally (before the year of 2000), CIETAC and the CMAC are the only Chinese foreign related arbitration institutions and both institutions can only hear international commercial disputes arising from economy and trade, they had no jurisdiction to any domestic issues. Meanwhile, the so-called domestic institutions rearranged in compliance with the Arbitration Law of 1995 can only accept the cases without any foreign elements. But according to the revised 2000 CIETAC arbitration rules and the 1996 Notice issued by the State Council, all arbitration institutions, whether domestic or

[2] *Model Law on Int'l Commercial Arbitration* (1985) was widely accepted by many countries in the world, having been adopted by more than 40 countries and regions. See CLOUT database, at www.uncitral.org (last visited December 9, 2010).

[3] E.g., *The New York Convention on Recognition and Enforcement of Foreign Arbitral Awards* of 1958 and more than 30 bilateral judicial assistance agreements on civil and commercial matters between China and other countries.

[4] E.g., *Notice on the Problems to Be Clarified Concerning the Thorough Implementation of the Arbitration Law of China* (June 8, 1996). The main duties of the reorganized arbitration commissions are to accept domestic arbitration cases, where the parties to a foreign-related arbitration case voluntarily select arbitration by a reorganized arbitration commission, it may accept the case.

foreign-related, possess the jurisdiction of both domestic and international disputes. As a result, the classification of domestic and international institution has become meaningless in China ever since. However, the CPL (revised) and the Arbitration Law of 1995 remain valid.

2 Parallel Control Systems for Domestic and Foreign-Related Arbitration

Under the Chinese arbitration systems, there is a unique "parallel control mechanism" applied separately to domestic and foreign-related arbitration. As mentioned above, in China, the domestic arbitration agreements and the arbitral award are faced with more stringent judicial reviews than their foreign-related counterparts.

For example, according to the so-called "Pre-Report Mechanism" made by the SCC,[5] before the Court of First Instance (usually the Intermediate Court) decides to deny the validity of a foreign-related arbitration agreement, it has to firstly report to the High Court, and if the High Court made the same decision as the court of First Instance, it should further report to the SCC. However if the lower Court affirms the effectiveness of such foreign-related arbitration agreement, the "Pre-Report Mechanism" will be no longer effective.[6] However the so-called "Pre-Report Mechanism" cannot be used by the Court to review the validity of a purely domestic arbitration agreement.

Moreover, after the arbitral award is rendered, the domestic and foreign-related awards will confront different forms of judicial reviews. Before setting aside a foreign-related arbitral award, the competent Court will review only the procedural matters whereas the domestic award, the court not only will review the procedural matters but also the merits of the award. This parallel control system will also be adopted to recognize and enforce different kinds of arbitral awards.

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[5] The SCC, 最高人民法院关于人民法院处理与涉外仲裁及外国仲裁事项有关问题的通知 (Notice on the Issues Concerning Foreign-Related Arbitration and Arbitration in Foreign Countries), Fa Fa (1995) no. 18; 最高人民法院关于承认和执行外国仲裁裁决收费及审查期限问题的规定 (Regulations on the Fee and the Time Limit of Recognition and Enforcement of Foreign Arbitration Awards), Fa Shi (1998) no. 28; 最高人民法院关于人民法院撤销涉外仲裁裁决有关事项的通知 (Notice on the Issues Concerning Setting Aside Foreign-Related Arbitration Awards by the Courts), Fa Shi (1998) no. 40.

[6] A court shall give a report to the High Court in jurisdiction and ask for permission before it decides to accept a case relating to foreign countries or Hong Kong, Macao and Taiwan regions if it determines that the arbitration agreement concluded by parties is null and void, inoperative or incapable of being performed. The High Court shall give a report to the SCC if it also determines that the arbitration agreement is null and void, inoperative or incapable of being performed. Before the SCC replies officially, the court may not accept the case temporarily.

3 Prior Power of Local Courts to Decide the Jurisdiction of Arbitral Tribunal

The competence/competence doctrine has been recognized by many jurisdictions and it has two elements: (1) An arbitral tribunal itself (not the arbitration institution) can rule upon its own jurisdiction; (2) for this purpose, the arbitration clause is separate and independent from the substantive contract. The establishment of competence/competence doctrine can prevent any party from postponing the arbitration proceedings by submitting the case to the local court and authorize the tribunal to rule on its own jurisdiction whenever the validity or the existence of the main contract is challenged. The arbitration proceedings can continue, and normally the court cannot intervene until the award is finalized. Section 30 of the English Arbitration Act of 1996 is a typical provision concerning this doctrine.[7] It sets out the basic principle that, subject to the precise wording of the arbitration clause itself and to any other agreement between the parties, the arbitrators may determine their own substantive jurisdiction. This extends to the validity of the arbitration agreement (including existence and legality), the constitution of the tribunal and whether the issues referred to them fall within the purview of the arbitration agreement. The power of an arbitral tribunal to decide upon its own jurisdiction not only is recognized by many countries that adopt the UNCITRAL Model Law,[8] such as United Kingdom, but also most of the international arbitration bodies through their arbitration rules.

Nevertheless, the widely accepted doctrine of Competence/Competence has not been adopted in any Chinese legislation and practice. Instead of a tribunal, the arbitration institutions (e.g., CIETAC) or the competent Court has a final say on the existence and validity of an arbitration agreement and the jurisdiction of the arbitral tribunal over a case. The Court has the power to decide directly on a dispute over whether an arbitration agreement is valid, the way of which is not through judicial review after the decision is made by an arbitral tribunal but through the participation in solving the problem at an earlier stage. According to article 20 of the Chinese Arbitration Law,[9] if one party resorts to an arbitration

[7] Sect. 30 provides: Competence of tribunal to rule on its own jurisdiction: 1. Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, i.e., as to: (1) Whether there is a valid arbitration agreement; (2) whether a tribunal is properly constituted; (3) what matters have been submitted to arbitration in accordance with the arbitration agreement. 2. Any such ruling may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this part.

[8] See art. 16 of the 1985 UNCITRAL Model Law (revised in 2006).

[9] If a party challenges the validity of an arbitration agreement, he/she may request an arbitration commission to make a decision or a court to give a ruling. If one party requests an arbitration commission to make a decision and the other party requests a court to give a ruling, the court shall offer a ruling.

commission, but the other resorts to a court proceeding to determine the validity of an agreement, the court's jurisdiction prevails. Article 26 of the Arbitration Law states as below:

> **Article 26** If the parties have concluded an arbitration agreement and one party has instituted an action in a Court without declaring the existence of the arbitration agreement and, after the Court has accepted the case, the other party submits the arbitration agreement prior to the first hearing, the Court shall dismiss the case unless the arbitration agreement is null and void. If, prior to the first hearing, the other party has not raised an objection to the Court's acceptance of the case, it shall be deemed to have renounced the arbitration agreement and the Court shall continue to try the case.

Furthermore, in the *Reply on the Issues Relating to Adjudication of the Validity of Arbitration Agreements*,[10] the SCC emphasizes the prior power of the Court. The Judicial Interpretation stipulates that if the parties disputed the validity of an arbitration agreement, and one party has submitted to the arbitration commission to adjudicate the validity of the arbitration agreement while the other party has instituted an action in a court to avoid the arbitration agreement. If the arbitration commission has accepted this application and has made a decision, the court shall dismiss the case. If the arbitration commission has accepted this application but has not made a decision, the court shall accept this case and announce arbitration commission to suspend the application.

4 Ad Hoc Arbitration Is Unrecognized by the Chinese Arbitration Law

The expression "ad hoc arbitration" is the antonym of the expression "institutional arbitration," which refers to any type of arbitration that is not performed by an institution. Only administered arbitration exists in China. There is no provision regarding ad hoc arbitration in the Arbitration Law of 1995. In actual practice, an arbitration agreement submitting a dispute to ad hoc arbitration in China is not valid under article 16 of the Arbitration Law, and an award made in ad hoc arbitration will not be enforceable because it will be set aside or rejected under articles 58, 63, 70 and 71 of the Arbitration Law. Consequently, it can be concluded that use of ad hoc arbitration is at the risk of the parties in dispute. However, ad hoc arbitration awards made in other

[10] The Supreme Court, 最高人民法院关于确认仲裁协议效力几个问题的批复 (Reply on the Issues Relating to Adjudication of the Validity of Arbitration Agreements), Fa Shi (1998) no. 27.

countries that are contracting members of the 1958 New York Convention are recognized and can be enforced in the Mainland of China according to articles 1–3 of the New York Convention. In *Ocean Shipping Company Ltd. of Guangdong v. Marships of Connecticut* case,[11] the applicant, Ocean Shipping Company Ltd. of Guangdong, requested the Maritime Court of Guangzhou to enforce three awards of ad hoc arbitration rendered in London in 1990. The court examined the validity of the awards under English law and granted the request of the applicant. This case represents the position taken by Chinese courts to awards of ad hoc arbitration made outside China. The absence of ad hoc arbitration in China will inevitably reduce the opportunities for the parties in disputes to choose China as the place of arbitration, it will overburden China with more responsibilities than other members of the New York Convention.[12]

5 Too Rigid and Specific Requirements for a Valid Arbitration Agreement

Arbitration agreement is the cornerstone of arbitration, which empowers an arbitral tribunal with the authority to accept and examine cases. A valid arbitration agreement also deprives jurisdiction of the court over the same dispute. However, the attitudes towards the validity of the arbitration agreement of different countries are totally different, some are more flexible and some more stringent. According to article 16 of the Chinese Arbitration Law, an arbitration agreement must include the following elements: (1) an expression of intention to apply for arbitration; (2) matters for arbitration; (3) a designated arbitration commission.

In actual practice, the parties in dispute are both merchants, they usually are not professionals who are knowledgeable about arbitration law and as a result, it is not realistic for them to know the arbitration laws of different countries. Accordingly, it is not unusual for the parties to draft a defective or ambiguous arbitration agreement. Sometimes they neglected to specify the arbitration institution or they just wanted an ad hoc arbitration in the Mainland of China. In a dispute between a German company (Züblin Company) and a Chinese registered company (Wuxi Woke Company), the two parties concluded a construction contract, the arbitration clause in the contract states: "Arbitration: ICC Rules, Shanghai shall apply." When it comes to the execution of the contract,

[11] See the Database of Chinese Law.

[12] Art. 1(2) of the New York Convention provides that: "The term 'arbitral awards' shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted." This means that arbitration is divided into categories of ad hoc and institutional under the New York Convention.

disputes arose on the validity of the arbitration clause. The China's SCC eventually decided that the arbitral award is invalid for the reason of the absence of an appointed arbitration institution that is required by the law of the place of arbitration.

In order to counterbalance the defects and to fill the loopholes of the Arbitration Law, since 1995 the SCC has issued more than 30 judicial interpretations to implement the CPL and the Arbitration Law, among which is the important Judicial Interpretation to the Chinese Arbitration Law.[13] The Interpretation has fixed the loopholes of the Arbitration Law to a considerable degree and has demonstrated a strong pro-arbitration bias.

5.1 Strong Pro-Arbitration Bias towards the Validity of the Arbitration Agreement

Articles 16 and 18 of the Arbitration Law illustrated some rigid criterion on adjudicating the validity of an arbitration agreement which is intended to be implemented in the Mainland of China, and it is generally acknowledged that ad hoc arbitration is not permitted under these provisions. In addition, an ambiguous arbitration agreement may be interpreted as null and void, yet the Interpretation, based on some judicial practices, suggests that the court may take a more flexible approach to interpret the validity of an arbitration agreement through articles 3–7.

> **Article 3** Where the name of an arbitration institution as stipulated in the agreement for arbitration is inaccurate, but the specific arbitration institution can be determined, it shall be ascertained that the arbitration institution has been selected.
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> **Article 4** Where an agreement for arbitration only stipulates the arbitration rules applicable to the dispute, it shall be deemed that the arbitration institution is not stipulated, unless the parties concerned reach a supplementary agreement or may determine the arbitration institution according to the arbitration rules agreed upon between them.
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> **Article 5** Where an agreement for arbitration stipulates two or more arbitration institutions, the parties concerned may choose either arbitration institution upon agreement when applying for arbitration. If the parties concerned cannot agree upon the choice of the arbitration institution, the agreement for arbitration shall be ineffective.
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> **Article 6** Where an agreement for arbitration stipulates that the disputes

[13] 最高人民法院《关于适用中华人民共和国仲裁法若干问题的解释》 (The Interpretation of the SCC Concerning the Issues on Application of the Arbitration Law of the People's Republic of China), Fa Shi [2006] no.7.

shall be arbitrated by the arbitration institution at a certain locality and there is one arbitration institution in this locality, the arbitration institution shall be deemed as the stipulated arbitration institution. If there are two or more arbitration institutions, the parties concerned may choose one arbitration institution for arbitration upon agreement. If the parties concerned fail to agree upon the choice of the arbitration institution, the agreement for arbitration shall be ineffective.

Article 7 Where the parties concerned agree that they may either apply for the arbitration institution for arbitration or bring a lawsuit to the court for settlement of dispute, the agreement for arbitration shall be ineffective, unless after one party applies for the arbitration institution for arbitration, the other party fails to propose any objection within the period prescribed in paragraph 2 of article 20 of the Arbitration Law.

It is anticipated that the pro-arbitration view taken by the SCC will be much appreciated by the parties to establish their confidence in arbitration.

5.2 Extending the Severability Doctrine to the Non-Existence of the Principal Contract

Article 19 of the Arbitration Law undoubtedly recognizes the doctrine of severability: "An arbitration clause shall exist independently, the amendment, rescission, termination or invalidity of a contract shall not affect the validity of the arbitration clause." But issues arise when one party denies ever entering into the agreement: is the separation principle also accepted if it is alleged that the contract is non-existed (as apposed to invalidity)? One may argue that there is no arbitration clause at all, there is no contract in which the arbitration clause is allegedly embedded and under this circumstance, the severability doctrine would not be applicable. This issue is not being addressed by the Chinese Arbitration Law. However, the Judicial Interpretation confirms the severability doctrine even if the contract in question is alleged to be non-existent. Article 10(2) of the Interpretation states: Where the parties concerned reach an agreement for arbitration regarding a dispute when concluding the contract, the effectiveness of the agreement for arbitration shall not be impacted if the contract is not formed. As a result, the Judicial Interpretation tends to leave the issue as to whether the contract in question is really void to the arbitrators to decide.

5.3 Broader Explanation to the Written Forms of the Arbitration Agreement

It is widely accepted that an arbitration agreement must be concluded in writing.

Article 16 recognizes writing as the valid form of an arbitration agreement and rejects oral agreement to be a valid arbitration agreement. Nevertheless, it fails to precisely define writing in a broad manner. The phrase of "other written forms" not only is ambiguous but also leaves plenty of space to the interpretation of law. In view of the development of electronic communication, the Judicial Interpretation made a broad interpretation to "other forms as prescribed in article 16 of the Arbitration Law." Article 1 of the Interpretation provides that "agreements for arbitration in other written forms as prescribed in article 16 of the Arbitration Law should include the agreements on resorting to arbitration which are reached in the forms of contracts, letters or data message (including telegraph, telefax, fax, electronic data interchange and email), etc."

5.4 Providing the Governing Law Applied to the Arbitration Agreement

Due to the different requirements of arbitration agreement in different countries, the applicable law for the validity or interpretation of an arbitration agreement is very important to a foreign-related arbitration agreement. The Chinese Arbitration Law contains no provision on this important issue, which used to result in conflicting adjudications by the Court on this matter. In a 1999 case, the parties in dispute concluded a contract on sale of goods, the arbitration clause of which contained in the contract states: "Arbitration: ICC Rules, the place of arbitration is London." When disputes later arose, the Chinese party submitted the case directly to Haikou Intermediate Court. The other party (a foreign legal entity) challenged the jurisdiction of the Court and asked the court to terminate its hearing and to order the parties to resolve this dispute through arbitration. According to the "Pre-Report Mechanism," the SCC eventually decided that the arbitration clause contained in the contract was null and void for the reason of lacking clearly appointed arbitration commission according to article 16 of the Chinese Arbitration Law. Although the SCC did not mention the applicable law to the effectiveness of the arbitration clause, it actually applied the Chinese law of the court as the governing law to the arbitration clause. But in a similar case occurred in 2002, the SCC confirmed that in the absence of parties' choice of law, the applicable law to the validity of an arbitration agreement should be the law of the place of arbitration chosen by the parties, which is the Hong Kong arbitration law.

Article 16 of the Interpretation provides for the first time that the applicable law to the arbitration agreement. It shall be the law chosen by the parties in dispute, in the absence of such choice, the governing law shall be the law of the place of arbitration, if the parties do not designate the place of arbitration in the arbitration agreement, the governing law shall be the law of the forum.

5.5 Limiting the Power of the Court in the Jurisdiction of Arbitral Tribunal

Article 13 of the Judicial Interpretation re-allocates the power between the arbitral institution and the Court on the jurisdiction of the arbitral tribunal through the rule of Waiver of Right. An allegation of waiver may arise in the emergence of following conditions. If a party becomes aware of the circumstances before or during the proceedings that may be grounds for complaint to the arbitral tribunal but chooses to remain silent until after the award is delivered, then arguably the party should not be allowed to challenge the award on that ground. By its inaction, the party may be considered to have waived the objection and so later cannot raise it as a ground of challenge. This principle of Waiver of Right is found in a number of national arbitration laws,[14] and is important in preserving fairness between the parties and avoiding waste of time and expense.

Article 13 of the Judicial Interpretation confirms this principle: A plea that the arbitration agreement is invalid shall be raised no later than the first hearing of the arbitral tribunal, the People's court will not accept any plea concerning the effectiveness of arbitration agreement after that time. If the validity of an arbitration agreement has been determined by an arbitration institution, the party who is dissatisfied with the determination without raising the challenge before the first hearing of the arbitral tribunal will lose the right of challenge and the right to resort to the procedures for setting aside the award made by the Arbitration Commission.

5.6 Establishing Partial Vacation of the Arbitral Award and Rebuild Remission System

There are two judicial remedies for the challenging of an award: (1) setting aside by a court, or (2) remission by the court to the arbitration tribunal for amendment. The consequence of an award being set aside is very serious, which will result the rendered award void and unenforceable in the country of rendition as well as in any other country that is a party to the New York Convention.[15] The claimant

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[14] Art. 4 of UNCITRAL Model Law; sect. 73(1) of the English Arbitration Act; art. 1065(4) of the Netherlands Arbitration Act.

[15] Art. V.1(e) of 1958 New York Convention. However, in few cases, some courts recognized a foreign arbitral award even if it has been set aside by a foreign court. For instance, *Gotaverken v. Libyan General National Maritime Transport*, Int'l Legal Materials, 884 [1981]; *SEEE v. Yugoslavia*, Int'l Legal Materials, 377 [1987]; *Hilmarton Ltd. v. Omnium de Traitement et de Valorisation*, Court of Cassation [France], March 23, 1994; *Chromalloy Aeroservices Inc. v. Ministry of Defence of the Republic of Egypt*, 939 F. Supp. 907 (D.D.C. 1996).

must therefore return to the beginning and have the matter entirely re-heard, which is extremely time consuming and costly. So an exception to this consequence is when an arbitral tribunal is found to have exceeded its jurisdiction in making the award, but the "excess" can be severed from the other parts of the award, thereby leaving a certain part of the award intact. Article 19 of the Interpretation confirms this rule for the first time in the China's arbitration legal history.

Remission involves the court submitting an award back to the tribunal for amendment or clarification. It is a useful procedure when there is an error that can be fixed relatively easily since it does not result in the drastic consequences as setting aside the award will create.[16] Article 61 of the Arbitration Law stipulates the remission system, but it was too concise to be practically applied. Article 21–23 of the Judicial Interpretation affirms this rule and explained it more in detail which makes its implementation smoother.

5.7 Re-Allocating the Supervision Power of the Court in Setting Aside or Enforcing an Award

The bases for setting aside an award and non-enforcement of an award are more or less the same according to the Chinese Arbitration Law. It is very easy for the losing party to resort to both supervision mechanisms under the same bases in the same Court or different Courts. To avoid rendering conflicting adjudications from different courts, articles 25 and 26 of the Judicial Interpretation harmonize the relationship between setting aside an award and non-enforcement of an award, and provide that if the losing party challenges the award according to any reason listed by the Arbitration Law, he or she will be prohibited to claim the non-enforcement for the same reason.

6 Conclusion

A substantial advancement in Chinese Arbitration Law has been achieved since the enactment of the Judicial Interpretation by the SCC, but the innovation of the Judicial Interpretation to the Arbitration Law is still far from satisfactory due to its nature and status, for instance, (1) in terms of the hierarchy of norms, the legal effect of the Judicial Interpretation concerning arbitration issued by the SCC is inferior to the Arbitration Law and CPL enacted by the NPC; (2) the regulating scope of the Judicial Interpretation is limited to the relationships between arbitration and judiciary under the legal system. Moreover, some issues are left

[16] See art. 34(4) of the UNCITRAL Model Law, sect. 68(3)(a) and sect. 69(7)(c) of the English Arbitration of 1996.

untouched under the Judicial Interpretation, including: (1) a parallel legal system which applies to both domestic and foreign related arbitration still exists under the arbitration law; (2) whether ad hoc arbitration is permitted under the arbitration law is still ambiguous; (3) the nationality and legal status of an arbitral award rendered in China by a foreign arbitration institution (such as the ICC International Arbitration Commission) is still not clear;[17] (4) whether an award concerning two Chinese parties (without other foreign elements) rendered outside China can be recognized and enforced by the court is still arguable. These residual issues are important and can only be resolved by the fundamental reform of the Chinese Arbitration Law instead of the simple adoption of a judicial interpretation.

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[17] In 2009, the first ICC arbitral award in China was recognized and enforced as non–domestic arbitral award according to the 1958 New York Convention by the Ningbo Intermediate Court (*Duferco v. Ningbo Arts and Craft Import and Export Co.*). In this case the adjudication of Ningbo Intermediate Court has made wide controversies on the nationality and legal status of ICC arbitral award rendered in China. For details, see Peter Thorpe, *China: Duferco v. Ningbo Arts and Craft Import and Export Co.—First ICC Arbitral Award Enforced in China*, 12(6) Int'l Arb. L. Rev., at 69–70 (2009); see also Li Chen, ICC 国际仲裁院在我国作成仲裁裁决的承认与执行—兼论《纽约公约》视角下的"非内国裁决" (Recognition and Enforcement of ICC Arbitral Award in China: From the Perspective of Non-Domestic Arbitral Award under New York Convention), (6) 法商研究 (Studies in Law and Business) 80–89 (2010).