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IBA ARBITRATION COMMITTEE

Arbitration Guide

CHINA

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

The use of arbitration is already fairly prevalent in the People's Republic of China (**PRC**) and is increasing in popularity. Although the PRC court system continues to improve, foreign companies dealing with China-related matters often prefer to use arbitration due to their lack of familiarity with the PRC court proceedings and the easier cross-border enforceability of arbitral awards as compared to court judgments. PRC courts (named People's Courts) have been supportive of the development of arbitration in recent years for the purpose of facilitating the development of Belt and Road Initiative and improving the diversified mechanism of resolution of international commercial disputes, particularly the one-stop diversified mechanism of resolution of international commercial disputes as initiated by the Supreme People's Court of the PRC (**SPC**, China's highest court) in June 2018.

The cross-border enforceability of arbitral awards is one of the main advantages of arbitration. While enforcement of foreign court judgments in the PRC will depend on bilateral or multilateral international treaties concluded by the PRC or the principle of reciprocity and is not a straight-forward process, enforcement of foreign arbitral awards is much easier because China is a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the 'New York Convention'. Enforcement of arbitral awards made in Hong Kong, Macao and Taiwan is also possible in the Chinese Mainland under mutual enforcement arrangements (for Hong Kong and Macao) or the judicial interpretation of the SPC (for Taiwan) similar to the New York Convention. Further, according to the Arrangement concluded between the SPC and Hong Kong in 2019 and Macao in 2022 respectively, the party to the arbitration seated in Hong Kong or Macao can seek interim measures issued by the PRC courts in aid of such overseas arbitration. Other advantages of arbitration over the courts include the privacy of the proceedings and the greater ability of arbitral tribunals to make use of professional expertise.

As for disadvantages of arbitration in China, local arbitration institutions often lack experience in dealing with international arbitration involving complex legal issues, particularly those involving foreign law issues. Arbitrations in China often proceed more quickly than those overseas. One of the reasons is that the procedures of document production and exchange of witness statements and expert reports are often absent from the arbitration proceedings. This might be considered either an advantage or a disadvantage.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

The PRC Arbitration Law (promulgated in 1994, revised in 2009 and 2017) (**Arbitration Law**) requires that all arbitrations in the PRC be administered by a PRC arbitration institution. Ad hoc arbitrations (including UNCITRAL arbitrations) have long been invalid and unenforceable within China, although arbitral awards obtained through foreign ad hoc arbitration proceedings are recognised and enforceable.

Despite this, in 2014, the Ningbo Intermediate People's Court held that an arbitration clause providing for arbitration at the China International Economic and Trade Arbitration Commission (**CIETAC**) under the UNCITRAL Arbitration Rules (**UNCITRAL Rules**) was valid. This is the first time that a PRC court has confirmed that PRC-seated arbitration proceedings can be conducted in accordance with the UNCITRAL Rules (though under the administration of a PRC arbitration institution). In December 2016, the Shenzhen Court of International Arbitration (**SCIA**) adopted Guidelines for the Administration of Arbitration under the UNCITRAL Arbitration Rules with the aim of facilitating the application of the UNCITRAL Rules in arbitrations administered by the SCIA.

On 30 December 2016, the SPC issued its Opinion on Providing Judicial Protection for the Development of Pilot Free Trade Zones (effective on 30 December 2016, **2016 SPC Opinion**). According to the 2016 SPC Opinion, a PRC court **may** uphold the validity of an arbitration agreement providing for ad hoc arbitration in the Chinese Mainland for disputes between enterprises registered within a Free Trade Zone (**FTZ**) in China.

A recent positive development in support of ad hoc arbitration in the Chinese Mainland is that in the long-waited Arbitration Law (Revised) (Draft for Comments) (**New Draft Arbitration Law**) published by the PRC Ministry of Justice on 30 July 2021, provisions of ad hoc arbitration applying to the foreign-related commercial disputes were included for

the first time. The New Draft Arbitration Law is expected to be further discussed, promulgated and implemented between 2024 and 2028 by the legislature of the PRC.

China makes a distinction between foreign, foreign-related (arbitration in China with a foreign element) and domestic (arbitration in China without a foreign element) arbitrations, and the domestic arbitration must be institutional (subject to the new development mentioned above).

CIETAC and the China Maritime Arbitration Commission (**CMAC**) have long been the two dominant foreign-related arbitration institutions in China. Since the promulgation of the Arbitration Law, however, there has been a remarkable growth in the number of domestic arbitration institutions, which totalled 277 by 2022. Further, a 1996 State Council Notice expressly allowed domestic arbitration institutions to accept foreign-related cases, meaning that the long-existing monopoly of CIETAC over foreign-related cases was broken long ago. The New Draft Arbitration Law does not distinguish between foreign-related arbitration institutions and domestic arbitration institutions any longer.

In addition, the central government and several local governments have issued various normative documents allowing foreign arbitration institutions to establish business agencies in the FTZ in, inter alia, Beijing, Shanghai, Hainan, Sichuan, Chongqing, Guangdong-Hong Kong-Macao Greater Bay Area to carry out arbitration business in respect of international commercial and investment disputes. Likewise, the New Draft Arbitration Law expressly allows foreign arbitration institutions to establish business agencies to carry out foreign-related arbitration business in China (without limiting the territory to the FTZ). In 2020, the World Intellectual Property Organisation established an Arbitration and Mediation Center in Shanghai. In December 2023, KCAB International of the Korean Commercial Arbitration Board established its Shanghai Centre, which is the first business agency of a foreign arbitration institution set up in China. Previously, KCAB International of the Korean Commercial Arbitration Board set up a representative office in Shanghai. Moreover, three international arbitration institutions, including the Hong Kong International Arbitration Centre (**HKIAC**), the International Court of Arbitration of International Chamber of Commerce (**ICC**) and the Singapore International Arbitration Centre (**SIAC**) have set up their representative offices in Shanghai.

CIETAC remains the most dominant arbitration institution in China and has established sub-commissions in 13 major cities in the Chinese Mainland, including Shanghai, Shenzhen, Chongqing, Hangzhou, Tianjin, Wuhan, Fuzhou, Xi'an, Nanjing, Chengdu, Jinan, Haikou and Xiong'an. In the meantime, CIETAC also set up its first overseas branch, the CIETAC Hong Kong Arbitration Centre, in Hong Kong in 2012, and North American Arbitration Center in Vancouver, Canada, and European Arbitration Center in Vienna, Austria in 2018. Several other domestic arbitration institutions such as the Beijing Arbitration Commission / Beijing International Arbitration Centre (**BAC**), SCIA and the Shanghai International Arbitration Centre (**SHIAC**) have undergone organisational reform and grown rapidly in recent years.

(iii) What types of disputes are typically arbitrated?

A wide range of disputes can be arbitrated. The exceptions include matters relating to marriage, adoption, custody of children and inheritance. Under the Arbitration Law, administrative disputes that must be handled by administrative authorities also may not be arbitrated. In this regard, there has been heated debate regarding whether disputes arising from Public-Private Partnership (**PPP**) contracts between government authorities and private entities fall within the scope of 'administrative disputes that must be handled by administrative authorities'. The key divergence lies in the position on the nature of a PPP contract, namely whether it is an administrative or a commercial contract. An administrative contract is in principle not arbitrable. However, according to the Chinese judicial practice, an arbitration clause under a contract having both the natures of an administrative contract and a commercial contract may be held as valid and enforceable. In addition: (a) copyright disputes, contractual and tort disputes relating to trademarks and patents can be arbitrated, while the ownership and validity of a trademark or a patent must be handled by the administrative authorities; and (b) security disputes are generally arbitrable. Further, the arbitration of labour disputes is subject to a different regulatory regime. By way of example, the major types of arbitrations administered by CIETAC in 2023 range from sale and purchase contracts, construction, company/enterprise governance, service contracts, finance, leasing, intellectual property, to cultural, sport and entertainment industry and other disputes.

SCIA introduced special provisions in its arbitration rules effective on 1 December 2016 (**2016 SCIA Rules**), making it the first arbitration institution in the Chinese Mainland to administer investor-state arbitrations under the UNCITRAL Rules. CIETAC also issued a full set of investment arbitration rules in October 2017 to support China's Belt and Road Initiative. In 2019, BAC issued its Rules for International Investment Arbitration. The SHIAC Arbitration Rules effective on 1 January 2024 (**2024 SHIAC Rules**) also extend its scope of application to international investment dispute arbitration. These new developments show that disputes with the government are understood to be arbitrable in China. The New Draft Arbitration Law deletes the previous limitation that only disputes between 'equal parties' could be submitted to

arbitration so as to provide the possibility for the conduct of investment arbitration and sports arbitration in the Chinese Mainland.

(iv) How long do arbitral proceedings usually last in your country?

This varies, but arbitration proceedings tend to be shorter in the Chinese Mainland than in many other jurisdictions. A total duration from commencement to issuance of the arbitral award of around a year is typical, although this very much depends on various factors such as the efficiency of the arbitrators, the complexity of the issues and the cooperation of the parties. The CIETAC Arbitration Rules (effective on 1 January 2024, **2024 CIETAC Rules**), the current BAC Arbitration Rules (effective on 1 February 2022, **2022 BAC Rules**), the current SCIA Arbitration Rules (effective on 21 February 2022, **2022 SCIA Rules**) and the 2024 SHIAC Rules all require the tribunal to render an arbitral award within six months as from the date on which the arbitral tribunal is constituted for the international or foreign-related disputes (except for the disputes applying summary procedure), which may nevertheless often be extended in practice.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

Foreign nationals may act as arbitrators in arbitrations in China. For example, there are approximately 591 foreign arbitrators from around 143 countries and regions (excluding the Chinese Mainland) registered on the CIETAC Panel of Arbitrators. Other notable arbitration institutions including BAC, SCIA and SHIAC also have a considerable number of foreign arbitrators on their panels.

Currently, for example, to act as arbitrator on a CIETAC arbitration, the appointee must be on the CIETAC Panel of Arbitrators unless the parties specifically agree in their arbitration agreement to dispense with this requirement. Nevertheless, the New Draft Arbitration Law clarifies that each arbitration institution is only legally obliged to formulate a panel of recommended arbitrators, which means that the parties are not likely to be restricted under PRC law from selecting arbitrators who are not on the panel of arbitrators of the arbitration institutions.

As for foreign nationals acting as legal counsel in arbitrations, the relevant State Council rules and PRC Ministry of Justice regulations provide that the representative offices of foreign law firms in China may only advise on matters that do not concern PRC law, such as the law of their own country or the law of international treaties. Specifically, these representative offices cannot comment on the application of PRC law when acting as counsel in arbitrations seated in the Chinese Mainland. In practice, this means that unless the arbitration only involves foreign law issues, foreign law firms will generally work together with PRC co-counsel.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

The Arbitration Law governs commercial arbitration proceedings conducted in China and applies to both domestic and foreign-related arbitrations, although there are differences in the specific provisions that apply to each type of arbitration. The Arbitration Law is not based on the UNCITRAL Model Law because the Arbitration Law is heavily institutional and designed to apply to the arbitration institutions established in China.

However, the New Draft Arbitration Law was drafted by making reference to the recent development of the UNCITRAL Model Law. For example, the New Draft Arbitration Law incorporates the concept of the seat of arbitration. It allows the parties to the foreign-related commercial disputes to agree to ad hoc arbitration conducted in the Chinese Mainland, and establishes the competence of the arbitral tribunal to rule on its jurisdiction (which power is currently vested in the arbitration institutions and local People's Courts) and the power of the arbitral tribunal to grant interim measures. The New Draft Arbitration Law also reduces the time limit for the parties to apply to the PRC courts for setting aside the awards from six months to three months.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

The Arbitration Law makes a distinction in terms of arbitral awards. As mentioned above, there are three main types of arbitral awards: foreign, foreign-related and domestic.

According to the SPC Provisions on Several Issues relating to the Hearing of Cases Involving Judicial Review of Arbitration (effective on 1 January 2018, the **2018 SPC Provisions**) and the SPC's first judicial interpretation of the Law on the Application of Law in Foreign-Related Civil Relations (effective on 7 January 2013 and revised on 23 December 2020), an arbitration agreement or arbitral award will be deemed to be foreign-related if any of the following circumstances exists:

- one or both parties to the contract are foreign nationals, stateless persons, or foreign legal persons or other organisations;
- the habitual residence of one or both parties is located outside the territory of the PRC;
- the subject matter of the contract is located outside the territory of the PRC;
- the legal fact which gives rise to, modifies, or extinguishes the rights and obligations under the contract takes place outside the territory of the PRC; or
- other circumstances that maybe considered as foreign-related civil relations.

The general position under current PRC law and judicial practice is that only foreign-related contracts may be governed by foreign law or arbitrated outside of the PRC. That said, the Shanghai No. 1 Intermediate People's Court issued a decision recognising and enforcing a foreign arbitral award that departs from this long-standing position in Siemens International Trading (Shanghai) Co., Ltd. v. Shanghai Golden Landmark Co., Ltd. in 2015. The court noted that the arbitration clause providing for SIAC arbitration for a dispute involving two wholly foreign-owned enterprises (WFOEs) registered in the Shanghai FTZ (ie, strictly speaking two PRC enterprises) was foreign-related and therefore a valid arbitration clause. Encouraging as the decision maybe, the unique nature of the dispute, namely both parties being WFOEs with registered offices in the Shanghai FTZ, and the court's special reference to the policy of the Shanghai FTZ in its decision, makes the decision itself easily distinguishable by other PRC courts if the activities underlying the relevant dispute have no connection with that FTZ. Another caveat about this decision is that the Shanghai court's affirmative decision to recognise and enforce the award did not require approval by the SPC under the reporting regime (see explanation below). Following the Shanghai court's decision, the 2016 SPC Opinion expanded the scope of foreign-related elements by providing that disputes between WFOEs registered in any FTZ may be submitted to arbitration outside of the Chinese Mainland.

In terms of foreign arbitrations (ie, those seated outside of the Chinese Mainland), the Arbitration Law only becomes relevant at the enforcement stage.

The regimes that apply to foreign-related and domestic arbitrations are in many ways similar, but there are some key distinctions reflected in a chapter in the Arbitration Law that especially addresses the procedural matters applicable to foreign-related arbitrations. For example, time limits for domestic arbitrations tend to be shorter and the hearing transcript has to be confirmed by the parties to domestic arbitrations. There are also different regimes that apply when it comes to the enforcement of arbitral awards. For domestic awards, there is a wider scope for review on the merits when the enforcement of the arbitral award is challenged.

The New Draft Arbitration Law has made efforts to reduce the differences between foreign-related and domestic arbitrations by way of, inter alia, removing the provisions specifically regulating the foreign-related arbitration institutions, unifying the grounds for setting aside the domestic and foreign-related arbitral awards and the standards to enforce the domestic and foreign-related arbitral awards. Nevertheless, special provisions are incorporated to regulate specifically the foreign-related arbitrations such as allowing the parties to foreign-related commercial disputes to submit the disputes to ad hoc arbitration (which is not available to the parties to the domestic commercial disputes), and providing for specific criteria for acting as arbitrators for foreign-related arbitration.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

China acceded to the New York Convention on 22 January 1987, with the reservation that it would only apply the convention to an award made in the territory of another contracting state and only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under PRC law, which is understood to exclude

investor-state disputes. China has ratified the Washington Convention, which entered into force for China on 6 February 1993.

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The PRC Civil Code (effective on 1 January 2021) and the Law on the Application of Law in Foreign-related Civil Relations provide guidance on the substantive law that should apply to the merits of the dispute submitted to arbitration. For domestic disputes, this must be PRC law. For foreign-related contracts, the parties may agree on the substantive law to apply to a dispute, failing which, the applicable substantive law will, according to Article 41 of the Law on the Application of Law in Foreign-related Civil Relations, be either the law of the habitual residence of the party whose performance of contractual obligations most closely reflects the essential characteristics of the contract, or another law most closely associated with the contract. However, there are certain circumstances where PRC law must apply even for foreign-related cases, for example, the contracts of Sino-foreign equity or contractual joint venture, contracts of Sino-foreign cooperation in the exploration and exploitation of natural resources which are to be performed within the territory of the PRC, and disputes relating to foreign investment within the territory of the PRC, involving, inter alia, foreign investors setting up foreign-invested enterprises within the territory of the PRC, foreign investors obtaining shares, equities, property shares or other similar rights and interests of enterprises within the territory of the PRC, and foreign investors investing in new projects within the territory of the PRC.

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

Article 16 of the Arbitration Law specifies that an arbitration agreement must contain an expression of an intention to arbitrate, the matters to be covered by the arbitration and the arbitration institution chosen.

Under PRC law, an arbitration agreement must also be in written form. The 2006 Interpretation on Several Issues in relation to the Application of the Arbitration Law (the **2006 SPC Interpretation**) specifies that contracts, correspondence and electronic forms (such as telegraph, telex, facsimile, electronic data exchange and electronic mail) qualify as legitimate written forms.

In *Daesung Industrial Gases Co., Ltd. and Daesung (Guangzhou) Gases Co., Ltd. v. Praxair (China) Investment Co., Ltd.* (2020), the Shanghai No. 1 Intermediate People's Court, following the SPC's landmark decision in *Longlide Packaging Co., Ltd. v. BP Agnati S.R.L.* (2013), recognised the validity of an arbitration agreement providing for 'arbitration in Shanghai by Singapore International Arbitration Center'. In particular, the court held that the respondents' allegation that foreign institutions were prohibited from managing arbitration proceedings in China lacked legal basis under PRC law, and was contradictory to the developing trend of international commercial arbitration in the PRC. Further, in *Brentwood Industries v. Guangdong Fa-anlong Mechanical Equipment Manufacture Co., Ltd. and others* (2020), the Guangzhou Intermediate People's Court held that an award rendered with the administration of ICC and the seat of arbitration being in Guangzhou could be considered as a domestic foreign-related award.

In line with international arbitration practice, the New Draft Arbitration Law adopts a different regime to regulate the validity of the arbitration agreements by way of (a) focusing on the parties' intention to arbitrate; and (b) removing the requirements for agreement on an arbitration institution and the matters to be covered by arbitration. It further provides that an arbitration agreement is deemed to exist where a party claims that an arbitration agreement exists and the other party does not deny such claim.

Although there are recommended arbitration provisions provided by institutions such as CIETAC or BAC, these are not compulsory. Individual law firms sometimes recommend arbitration clauses that contain additional provisions such as provisions regarding the language of arbitration, the nationality of the presiding arbitrator and an agreement to choose arbitrators outside of the arbitration institution's panel of arbitrators.

After some earlier PRC court decisions invalidating the clause providing for arbitration under the Rules of Arbitration of the International Chamber of Commerce (**ICC Rules**) in China, the ICC has revised its recommended clause to be used in China-related transactions, so that it now specifically refers to arbitrations administered by the ICC.

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

Generally speaking, PRC courts are increasingly supportive of arbitration and are unlikely to accept a case if there is a valid arbitration agreement.

The SPC Provisions on Issues relating to the Reporting and Review of Cases Involving Judicial Review of Arbitration (effective on 1 January 2018 and revised on 15 November 2021, **SPC Reporting and Review Provisions**) are the rules currently applicable to the PRC courts' review of the enforceability and validity of the agreements to arbitrate. According to the SPC Reporting and Review Provisions, the PRC court's decision to deny the validity of an agreement to arbitrate in respect of both the foreign-related disputes and domestic disputes is subject to the internal reporting mechanism. Specifically, if the competent People's Court (usually the Intermediate People's Court) intends to deny the validity of the foreign-related arbitration agreement, it shall submit its intended decision to the Higher People's Court for review. If the Higher People's Court agrees with the Intermediate People's Court that there is no valid arbitration agreement, it shall report its opinion to the SPC for approval before the Intermediate People's Court can be in a position to render its decision on this issue. Insofar as the domestic arbitration agreements are concerned, the Higher People's Court will conduct the final review without involving the SPC, unless the review concerns an application to refuse enforcement or to set aside the award rendered by the arbitration institutions in the Chinese Mainland on the grounds of violation of social and public interests.

An agreement for arbitration will be considered invalid under Article 17 of the Arbitration Law if the matters agreed for arbitration exceed the scope of arbitration provided by law, the agreement was concluded by persons who lacked capacity under the civil law, or the agreement was concluded by means of coercion.

If the arbitration agreement fails to specify or to specify clearly the matters covered by the arbitration or the chosen arbitration institution, the parties can enter into a supplementary agreement to remedy this, failing which the arbitration agreement will be considered invalid. However, as mentioned above, the New Draft Arbitration Law removes the requirements for agreement on an arbitration institution and the matters to be covered by arbitration.

As mentioned above, with the exception of WFOEs situated in FTZs, arbitration agreements providing for foreign arbitration will be deemed invalid if they contain no foreign-related elements. Nevertheless, PRC courts tend increasingly to adopt a liberal approach when interpreting whether an arbitration agreement has a foreign element, in the spirit of supporting as much as possible the parties' mutually agreed decision as to the seat of arbitration.

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

It is not uncommon to see arbitration clauses that require some sort of attempt at negotiation or amicable settlement before arbitration proceedings can be commenced. The Arbitration Law does not specifically provide for the consequences if one party fails to comply with the negotiation procedure before commencing arbitration proceedings.

The Minutes of the National Symposium on the Foreign-related Commercial and Maritime Trial Work of Courts issued by the SPC on 31 December 2021 (**2021 Trial Minutes**) have confirmed that the violation of the pre-arbitration negotiation requirement set out in an arbitration agreement cannot give rise to the refusal by the PRC courts of the recognition and enforcement of the foreign arbitral award on the ground that the arbitral procedure was not in accordance with the agreement of the parties under Article V(1)(d) of the New York Convention.

Further, in a recent decision rendered by the Beijing 4th Intermediate People's Court over a dispute to confirm the validity of a domestic arbitration agreement providing for prior-arbitration negotiation requirement in May 2023, the court held that such prior-arbitration negotiation requirement was not one of the grounds to deny the validity of the arbitration agreement under the Arbitration Law; and in other words, the failure to fulfil the prior-arbitration negotiation requirement would not invalidate an arbitration agreement.

In line with the same principle, the 2024 CIETAC Rules clarify for the first time that the failure to conduct the pre-arbitration negotiation or mediation agreed in an arbitration agreement does not render CIETAC unable to accept the arbitration claim made in reliance on such arbitration agreement, unless otherwise specified by the applicable law or the arbitration agreement itself.

(iv) What are the requirements for a valid multi-party arbitration agreement?

Under Article 4 of the Arbitration Law, an arbitration agreement must be entered into by all parties based on their free will. Therefore, if one of the parties to the contract was not involved in the conclusion of the arbitration agreement, the arbitration agreement could be deemed not binding on such party.

Under Article 18 of the 2024 CIETAC Rules, joinder of an additional party to the arbitration proceedings may be applied for to the Arbitration Commission on the basis that the additional party is prima facie bound by the invoked arbitration agreement. Article 14 of the 2022 BAC Rules, nevertheless, requires that the party shall rely on the *same* arbitration agreement when applying to the Arbitration Commission for the joinder of an additional party and the application should be in principle filed before the constitution of the arbitral tribunal, otherwise the application would not be accepted after the constitution of the arbitral tribunal unless all the parties including the additional party to be joined are agreeable to the joinder.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

Neither the Arbitration Law nor the 2006 SPC Interpretation specifically addresses this situation. However, the Arbitration Law provides that in order for an arbitration agreement to be valid, there must be an intention to arbitrate and, in the case of an arbitration agreement giving one of the parties a unilateral right to arbitrate, such an intention is very likely to be found lacking by the PRC courts.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

Generally no, except in certain situations such as agency, assignment of rights or mergers. If an agent signs a contract containing an arbitration agreement on behalf of the principal, the principal will be bound even if it did not sign the contract. As for an assignment of rights, arguably this also includes the right to arbitrate. In merger situations, the company taking over the other company will also inherit its contractual rights and obligations, including the right to arbitrate unless otherwise expressly agreed by the parties.

The New Draft Arbitration Law clarifies that if a subordinated contract does not provide for an arbitration agreement, the arbitration agreement agreed in the principal contract shall bind the parties to the subordinated contract; and if there is any difference in the arbitration agreement agreed under the subordinated contract and the principal contract, the arbitration agreement provided for in the principal contract shall prevail. This is different from the rule set out in the 2021 Trial Minutes that where the principal contract provides for arbitration but there is no dispute resolution clause agreed in the subordinated contract, the arbitration agreement in the principal contract cannot bind the parties to the subordinated contract unless the parties to both contracts are the same.

Further, the New Draft Arbitration Law provides that where a shareholder to a company or a limited partner to a limited partnership intends to make a claim against a counterparty in his/her/its own name pursuant to the relevant laws, the arbitration agreement entered into by the company or the limited partnership and such counterparty shall apply.

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

According to the Law on the Application of Law in Foreign-related Civil Relations, the parties may agree on the laws applicable to the foreign-related arbitration agreement; and if the parties did not reach an agreement on this, the laws of the place where the arbitration institution is located or the laws of the seat of arbitration shall apply.

The 2018 SPC Provisions further stipulate that if the parties did not choose the applicable law and the law of the place of the arbitral institution and the law of the seat of arbitration will lead to different outcomes on the issue of validity of the arbitration agreement, then the PRC courts shall apply the law upholding the validity of the arbitration agreement.

On the basis of the above provisions, the New Draft Arbitration Law provides that the validity of the foreign-related arbitration agreement is governed by the laws agreed by the parties, in the absence of which the laws of the seat of arbitration shall apply. If there is no agreement or no express agreement between the parties on the governing law and the seat of arbitration, the PRC courts may apply the PRC laws.

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

The concept of the seat of arbitration is incorporated for the first time in the New Draft Arbitration Law, in which it is provided that the parties may agree on the seat of arbitration in the arbitration agreement, failing which, the seat of arbitration will be the place where the arbitration institution administering the case is located. According to the New Draft Arbitration Law, the seat of arbitration decides the place where the arbitral award is rendered.

The New Draft Arbitration Law further makes it clear that the seat of arbitration does not affect the determination of the venue of meetings/hearings at a different place.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

There is no legal provision under Chinese law excluding blockchain- and NFT-related disputes from those which are arbitrable. We are aware that in practice, the Guangzhou Arbitration Commission accepted and decided on an arbitration case involving a tort dispute relating to the copyright of NFT digital collectibles in 2022.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

This issue may arise in the case of a 'hybrid arbitration agreement', which commonly mixes the administering arbitration institution and the arbitration rules.

In *Alstom Technology Ltd. ('Alstom') v. Insigma Technology Co., Ltd.*, the arbitration agreement at issue provided for arbitration by SIAC under the ICC Rules. The SIAC accepted the case and rendered an arbitral award in favour of Alstom. However, the Hangzhou Intermediate People's Court, with approval by the SPC, rejected Alstom's request for recognition and enforcement of the SIAC award on the ground that the constitution of the tribunal according to the SIAC arbitration rules did not comfort to the parties' agreement on the ICC arbitration rules.

In this regard, the 2024 CIETAC Rules allow the parties to agree on CIETAC arbitration under the arbitration rules other than the CIETAC arbitration rules, unless, inter alia, such agreed-upon rules are inoperable.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

According to Article 3 of the Arbitration Law, certain matters such as marriage, adoption, custody, inheritance issues and administrative disputes cannot be arbitrated.

The New Draft Arbitration Law incorporates an exception provision allowing other laws to further provide for the arbitrability of certain specific categories of dispute.

A party objecting to the effectiveness of an arbitration agreement may request that the arbitration institution or People's Court make a decision on this, with the People's Court making the decision if both the arbitration institution and People's Court have been requested to do so. However, if a party would like the People's Court to make the decision, it must make

its objection to the tribunal's jurisdiction before the first hearing held by the tribunal. Further, if the arbitral tribunal has already made a decision as to arbitrability, the People's Court will follow this decision and not accept the case (see Article 13 of the 2006 SPC Interpretation).

The lack of arbitrability tends to be a matter of jurisdiction rather than admissibility. Admissibility is a common law concept and does not have its counterpart under PRC law.

It is noted that the New Draft Arbitration Law adopts an entirely different approach in terms of the determination of the arbitrability of a given dispute by way of, inter alia, (a) first, granting the power to decide the tribunal's competence to arbitrate a dispute to the tribunal itself (ie 'competence-competence'); (b) second, providing that the People's Court is only empowered to review the decision rendered by the arbitral tribunal as to its competence. Further, the New Draft Arbitration Law requests that an objection to the effectiveness of an arbitration agreement be made to the tribunal by no later than the deadline to file the Statement of Defence as provided for by the applicable arbitration rules. If the objection is made before the constitution of the arbitral tribunal, the arbitration institution is empowered to decide whether the arbitration proceedings may proceed based on prima facie evidence.

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

Article 5 of the Arbitration Law specifies that a People's Court shall not accept a claim brought at the court by a party where there is an arbitration agreement unless the arbitration agreement is invalid.

If a party brings a claim at a People's Court without informing the court that there is a valid arbitration agreement, the court shall reject the case if the other party submits the arbitration agreement to the court before the first hearing. However, if the other party fails to object to the acceptance of the case by the court before the first hearing, that party shall be regarded as having forfeited the agreement for arbitration and the court will, according to Article 26 of the Arbitration Law and Article 13 of the 2006 SPC Interpretation, continue with its hearing.

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

Pursuant to Article 20 of the Arbitration Law, the jurisdiction of the tribunal will be determined by the arbitration institution or the People's Court. If both the arbitration institution and the People's Court have been requested to rule on the effectiveness of an arbitration agreement, the People's Court will make the decision. Pursuant to Article 13 of the 2006 SPC Interpretation, if an arbitration institution has already made a decision on the validity of the arbitration agreement, the People's Court should follow that decision and dismiss any application to the People's Court by a party for a ruling on the effectiveness of the arbitration agreement.

That said, both CIETAC and BAC do allow for the possibility of CIETAC or BAC delegating the power to determine the jurisdiction of the tribunal to the arbitrators themselves. Under the 2024 CIETAC Rules and the 2022 BAC Rules, the tribunal has clearer powers to decide on its own jurisdiction, either during the arbitration proceedings or in the final award.

As a further step, the New Draft Arbitration Law adopts the principle of competence-competence by providing that any objection to the tribunal's jurisdiction should be made within the period for filing the Statement of Defence as set out in the applicable arbitration rules and then be decided by the tribunal itself. If the objection is made before the constitution of the arbitral tribunal, the arbitration institution is empowered to decide whether the arbitration proceedings may proceed based on prima facie evidence.

The New Draft Arbitration Law goes on to provide that the Intermediate People's Court of the seat of arbitration is empowered (and only empowered) to review the decision rendered by the tribunal as to its competence. In addition, should a party object to the ruling made by the Intermediate People's Court that the arbitration agreement is invalid or that the tribunal does not have jurisdiction over the dispute submitted for arbitration, such party can request review of the ruling by the People's Court at the next higher level, which shall in return render its decision within one month. However, the review by the People's Court shall not affect the conduct of the arbitration proceedings.

If the above-mentioned regime adopted in the New Draft Arbitration Law comes into force, it would remain to be seen how the review of the Intermediate People's Court's ruling by the Higher People's Court works in the context of the 'internal reporting regime'.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

Where the tribunal is composed of three arbitrators, each party shall choose an arbitrator or entrust the appointment of the arbitrator to the chairman of the arbitration institution. The third presiding arbitrator shall be jointly appointed by the parties or the chairman of the arbitration institution. Where the tribunal consists of only one arbitrator, the arbitrator shall either be jointly appointed by the parties or by the chairman of the arbitration institution. People's Courts do not play any role in the arbitrator selection process.

Such rules are changed slightly in the New Draft Arbitration Law, according to which, where the tribunal is composed of three arbitrators, each party shall choose an arbitrator, failing which, such arbitrator should then be appointed by the arbitration institution.

Under the 2024 CIETAC Rules, where the tribunal is to be composed of three arbitrators, each party will be given the opportunity to recommend up to five arbitrators as presiding arbitrator. In multi-party arbitration, unless the parties on the claimant's side or the respondent's side agree jointly on the choice of the arbitrator, all three arbitrators shall be appointed by the Chairman of CIETAC. By contrast, under the 2024 SHIAC Rules, according to the parties' agreement or upon the parties' joint written application, the secretariat can recommend more than five arbitrators from the SHIAC Panel of Arbitrators as presiding arbitrator candidates of a three-member tribunal for the parties' choice. In multi-party arbitration, in the event that the parties on one side cannot jointly agree on the choice of an arbitrator, such arbitrator shall be appointed by the Chairman of SHIAC.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

There are detailed requirements in the relevant rules and regulations of Chinese arbitration institutions regarding the disclosure of conflicts. For example, the CIETAC Code of Ethics for Arbitrators (revised in 2021) states that arbitrators shall make disclosures to CIETAC of any conflict or other relationship with the dispute that may give rise to reasonable doubt as to the arbitrator's impartiality and independence. If such disclosures are not made and a party later challenges the arbitrator, the chairman of the arbitration institution may ask the arbitrator to withdraw if the conflict is serious enough. The chairman of the arbitration institution has the authority to make the decision to disqualify the arbitrator from the proceeding. The Arbitration Law does not empower the People's Court to review the decision of the chairman of the arbitration institution.

The New Draft Arbitration Law has made efforts to fill in the gap in the existing legal framework on the disclosure obligations of the arbitrators and the rules for recusal by the arbitrators. Specifically, it expressly stipulates that (a) the arbitrators shall sign a declaration of independence and impartiality, (b) the arbitrators shall disclose in writing any circumstance that may give rise to reasonable doubts as to his/her independence or impartiality by the parties. However, it also provides that a party shall make an objection to the arbitrator on the ground of his/her disclosure within ten days upon receipt of the disclosure; failing which, no objection based on this same disclosure could be make afterwards.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

The Arbitration Law requires that those acting as arbitrators have at least eight years of experience either in arbitration work with PRC legal professional qualification obtained, as a lawyer, as a judge, or are senior academics with equal level of professional qualification.

Under Article 34 of the Arbitration Law, an arbitrator may not serve as an arbitrator and may be forced to withdraw on the request of a party where:

- the arbitrator is a party involved in the case or a blood relative of the parties concerned or their legal counsel;
- the arbitrator has personal interests in the case;
- the arbitrator has relationships with the parties or their legal counsel such that the fairness of the decision in the case may be affected; or
- the arbitrator meets with the parties or their legal counsel in private or has accepted gifts or attended banquets hosted by the parties or their legal counsel.

The CIETAC Code of Ethics for Arbitrators (revised in 2021) sets out various principles about the importance of arbitrators maintaining independence, impartiality and fairness and provides guidance on the situations where arbitrators should not accept appointment, situations where they should make disclosures or apply for withdrawal and situations where the arbitration institution will have the right to replace the arbitrator.

The New Draft Arbitration Law incorporates a negative list of circumstances where a person cannot serve as an arbitrator, including, inter alia, that (a) the person does not have a full civil capacity; (b) the person has been sentenced to criminal punishments (except for as a result of criminal negligence); and (c) the person(s) in charge of the decision-making or enforcement departments of the arbitration institutions cannot serve as the arbitrator of the arbitration institution he/she works with during his/her term of office.

Insofar as foreign-related arbitration is concerned, the New Draft Arbitration Law stipulates that the arbitrator may be selected from Chinese or foreigners who have expertise in, inter alia, foreign-related law, arbitration, economy and trade, and science and technology.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

The IBA Guidelines on Conflicts of Interest in International Arbitration (**IBA Guidelines**) do not automatically apply in China. However, the general principles related to impartiality, independence and disclosure of conflicts contained in the IBA Guidelines are reflected in the ethical codes of various local arbitration institutions, albeit in a less detailed fashion. For example, the CIETAC Code of Ethics for Arbitrators (revised in 2021) contains separate provisions addressing situations where arbitrators should not accept appointment and situations where they should apply for withdrawal or make disclosures. For example, an arbitrator who is a near relative of a party, has any property and monetary relations, or has business and commercial cooperation with the parties shall recuse himself/herself. These circumstances to some extent resemble the Red List and the Orange List of the IBA Guidelines. If the parties agree on the application of the IBA Guidelines, such agreement should be respected in the PRC.

VI. Interim Measures and Emergency Arbitration

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

The Arbitration Law only specifically provides for two types of interim measures; property preservation and evidence preservation measures. The PRC Civil Procedure Law (revised in 2023 and effective on 1 January 2024, **CPL**) further provides that parties may also apply for orders to require the opposite party to take or refrain from taking certain actions, also known as 'behaviour preservation' measures, which are similar to the interim injunctions in English law. Neither type can be granted by arbitral tribunals or arbitral institutions. Instead, the arbitration institution must pass requests for these types of relief on to the relevant PRC courts. If interim measures are sought prior to the commencement of arbitration proceedings, the parties will need to apply directly to the competent People's Court.

However, PRC law does not prevent tribunals from issuing other forms of preliminary relief, for example preliminary injunctions, nor does it restrict the form of the tribunal's decision in respect of such relief. In practice, it is rare for tribunals to issue any interim relief. The 2024 CIETAC Rules expressly state that the arbitral tribunal, according to applicable law or the parties' agreement, may order preliminary measures when the tribunal considers them necessary or appropriate. This usually applies to the CIETAC arbitration seated in Hong Kong (as administered by the CIETAC Hong Kong Arbitration Centre). The 2022 BAC Rules allow the interim measures to be ordered by the tribunal in the form of a decision, an interim award, or any other form permitted by applicable law. It should be noted, however, that interim measures issued by arbitrators are not generally enforceable in the PRC courts. Nevertheless, major PRC arbitration institutions such as CIETAC, BAC, SCIA and SHIAC have incorporated the mechanism of emergency arbitrator into their most recent arbitration rules, empowering the emergency arbitrator to order interim measures as they consider appropriate prior to the constitution of the arbitral tribunal. Since around 2018, such mechanism of emergency arbitrator has been used in practice in the Chinese Mainland.

The most recent development is that the New Draft Arbitration Law expressly incorporates the mechanism for the arbitral tribunals to grant interim measures during the conduct of the arbitration proceedings, and provides that the decision made by the arbitral tribunal granting the interim measures can be enforceable by the People's Court. The New Draft Arbitration Law only permits a party to seek interim measures from an emergency arbitrator before the constitution of the tribunal if such mechanism is available under the applicable arbitration rules.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

The PRC courts will grant provisional relief in support of arbitrations where the arbitration institution has transferred the application to the relevant court and the court deems the relief necessary. For example, courts may grant preservation of property orders or require one party to take or refrain from taking certain actions where they consider that the actions of one party will make the enforcement of the arbitral award difficult or impossible. The PRC courts will grant preservation of evidence orders where they consider that the relevant evidence is likely to be destroyed or become difficult to retrieve. These measures are decided entirely at the discretion of the courts. They can be granted immediately either prior to (applicable to pre-arbitration interim measures) or after the application for arbitration has been filed and the effectiveness of these measures is not affected by the constitution of the arbitral tribunal.

According to the Arrangement concluded between the SPC and Hong Kong in 2019 and Macao in 2022 respectively, the party to the arbitration seated in Hong Kong or Macao can also seek interim measures issued by the PRC courts in aid of such overseas arbitration in accordance with the said provisions under PRC law.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

The power to grant provisional relief lies with the PRC courts. The tribunal's consent is not required for the granting of evidentiary assistance/provisional relief by the courts. The arbitration institution may pass the application for provisional relief on to the courts but the courts have sole discretion as to whether to grant such measures. According to the Annual Report on Judicial Review of Arbitration in China (2019) published by the SPC, among the total 3,959 applications for provisional relief in the PRC courts in the year 2019, 3,428 applications were granted with the success rate of 86.6 per cent. This demonstrates the PRC courts' supportive attitude towards the granting of provisional relief in aid of arbitration.

(iv) Are decisions by emergency arbitrators enforceable in your country?

Under the current Arbitration Law, there is no specific mechanism available to enforce decisions by emergency arbitrators.

The New Draft Arbitration Law permits a party to seek interim measures from an emergency arbitrator before the constitution of the tribunal if such mechanism is available under the applicable arbitration rules. However, it does not address whether the decision rendered by the emergency arbitrator is enforceable by the PRC courts.

However, it is worth noting that in 2021, the Beijing 4th Intermediate People's Court respected and enforced an emergency order made by an arbitrator appointed by the Swiss Chamber of Commerce International Arbitration Institute

by way of staying the original enforcement proceedings of the arbitral award. This is believed to be the first case where the PRC courts enforced the decision of an emergency arbitrator rendered in a foreign arbitration despite that this was not made directly in the proceedings for recognition and enforcement of such decision made by the emergency arbitrator.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

The PRC courts have issued anti-suit injunctions in litigations involving maritime or intellectual property right disputes. The legal basis is the Civil Procedure Law (ie the CPL) which grants the People's Courts power to issue interim measures to take or refrain from taking certain actions, ie 'behaviour preservation'.

However, there is no legal basis for the People's Courts to enforce the anti-suit injunction issued by arbitrators. The parties to the arbitration need to be cautious about requesting an anti-suit injunction by the tribunal as a part of the awards because this may affect the enforcement of the arbitral award if the anti-suit injunction cannot be separated from other awarded items.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

The assistance is now only available for arbitration seated in Hong Kong and Macao. According to the Arrangement concluded between the SPC and Hong Kong in 2019 and Macao in 2022, respectively, parties to arbitrations seated in Hong Kong or Macao can seek interim measures issued by the People's Courts in aid of such overseas arbitration in accordance with the provisions of the civil procedure laws of the PRC. In particular, the interim measures include preservation of evidence where the evidence at issue may be extinguished or may be hard to obtain at a later time and if the circumstance is urgent.

In relation to this, the arbitration rules of many Chinese arbitration institutions usually accord the tribunals with the power to investigate into facts and collect evidence. In December 2023, upon the request by the Shanghai Arbitration Commission based on the necessity for the tribunal to decide the dispute, the Shanghai Minhang District People's Court issued an investigation order in favour of the Shanghai Arbitration Commission allowing it to conduct investigation of facts with a third party. This is believed to be the first investigation order issued by the People's Court to and upon the request by an arbitration institution in the Chinese Mainland.

The New Draft Arbitration Law also provides that tribunals can take the initiative to collect evidence where necessary, and for this purpose seek assistance from the People's Courts if and where necessary.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

There is no established procedure for disclosure or discovery in PRC arbitrations. This conforms to the basic principle in Chinese civil proceedings, as reflected in Article 64 of the CPL, that a party shall be responsible for adducing evidence in support of its claims.

However, a party is entitled to request that the other party provide specific documents or types of documents to support its claim. Such requests are becoming increasingly common, particularly in foreign-related arbitrations. If the other party does not comply with a request for disclosure, the arbitral tribunal may draw adverse inferences. Furthermore, pursuant to Article 43 of the Arbitration Law, arbitral tribunals are also empowered to collect evidence on their own volition if they consider it necessary to do so.

CIETAC has adopted its own evidence guidelines (with the new version becoming effective on 1 January 2024, **CIETAC Evidence Guidelines**), which are based on CIETAC's arbitration practice and the IBA Rules on the Taking of Evidence in International Arbitration (**IBA Rules**). Article 7 of the CIETAC Evidence Guidelines allows either party to request the

tribunal to order the other party to disclose certain documents. The request shall be specific and limited in scope, and must explain the relevance and importance of the documents identified. This practice is largely in line with international practice as reflected in the IBA Rules.

It bears mentioning that the CIETAC Evidence Guidelines are not part of the 2024 CIETAC Rules and are only applicable to an arbitration upon the parties' agreement or the tribunal's decision (unless otherwise agreed by the parties).

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

As there is no formal disclosure process, there are also very few detailed rules regarding the scope of disclosure or discovery. To provide detailed guidelines for discovery procedures, the parties are recommended to refer to the CIETAC Evidence Guidelines and/or the IBA Rules in their arbitration agreement. The arbitral tribunal also has the power to carry out its own investigation of the evidence, but in practice this rarely happens unless a party can effectively demonstrate that it is practically difficult for the party to obtain such evidence by itself.

Article 7.3 of the CIETAC Evidence Guidelines provides that the tribunal may reject the request for disclosure on one of the following grounds:

- the document(s) requested lacks sufficient relevance to the case or materiality to its outcome;
- production of the document(s) may result in violation of applicable laws or professional ethics;
- production of the document(s) may impose an unreasonable burden on the producing party;
- the requested document(s) is not in the possession, custody or control of the producing party, or is likely to have been lost or destroyed;
- production of the document(s) may result in the divulgence of state secrets, trade secrets or technological secrets; or
- considerations of procedural economy, fairness or equality of the parties.

(iii) Are there special rules for handling electronically stored information?

Electronically stored information is a form of evidence permitted by the CPL.

The SPC's Interpretation on the Application of the CPL (revised in 2022) defines electronic data as information formed or stored in electronic media in the form of e-mails, electronic data interchange, online chat records, blogs, microblogs, short messages, electronic signatures and domain names. The relevant provisions on electronic data shall also apply to audio materials and video materials stored in electronic media. In practice, the party that presents such evidence must show, either by notarisation or otherwise, the authenticity of the sources where the information is stored electronically in order to demonstrate that the information has not been changed or edited.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

Article 40 of the Arbitration Law states that the tribunal shall not hear a case in open session, except with the agreement of the parties (unless the case involves state secrets, in which case the case cannot be held in open session regardless of any agreement by the parties to the contrary).

The 2024 CIETAC Rules and 2022 BAC Rules have similar provisions. Arguably this might not cover confidentiality of the proceedings or documents exchanged. By contrast, the 2022 SCIA Rules explicitly provide that arbitration proceedings shall not be open to the public. The 2024 SHIAC Rules further provide that, upon the party's request, the tribunal may request the parties and their affiliates to keep confidential the proceedings or any other matters relevant to the proceedings, or may decide to take necessary measures to protect trade secrets, personal privacy or other confidential

information, if the tribunal considers it necessary to do so. In any event, if confidentiality is likely to be an important issue for the parties, they should address this in the arbitration agreement.

As for breaches of confidentiality, theoretically damages and injunctive relief are available. As in other jurisdictions, however, in practice it can be difficult to assess damages and enforce penalties.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

There are no specific provisions in the Arbitration Law addressing the arbitral tribunal's power to protect trade secrets and confidential information. In practice, all evidence used in arbitration proceedings shall be subject to cross-examination, regardless of whether that evidence involves a state secret, trade secret or a matter of personal privacy. Thus, any document used in arbitration proceedings should be given to the opposing party for comments. If one party wishes to avoid disclosure of certain information to the opposing party, it can choose to have such information properly deleted from the relevant document or make the opposing party sign a confidentiality agreement (however, such party is not legally entitled to withhold disclosure).

(iii) Are there any provisions in your arbitration law as to rules of privilege?

Although lawyers in China owe confidentiality obligations towards their clients, under PRC law there is no separate concept of legal professional privilege which protects from the authorities and the PRC courts confidential communications between lawyers, including in-house counsel and clients. This means that the confidentiality obligation of lawyers does not override the PRC courts' or other authorities' power to compel disclosure of information. However, privilege is seldom a problematic issue in China due to the lack of general disclosure requirements in civil court and arbitration proceedings. Further, the PRC courts rarely exercise their power to ask for disclosure of information by lawyers or law firms, except in politically sensitive cases.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

No, although Chinese major arbitration institutions, such as CIETAC, and the tribunals will probably accept the parties' wishes if the IBA Rules are specifically referred to in the arbitration agreement, it is unlikely that a tribunal would adopt such rules on its own initiative. As stated above, subject to the parties' agreement or the tribunal's decision, the tribunal may apply the CIETAC Evidence Guidelines as a whole or in part in deciding issues relating to evidence.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

Major arbitration institutions, such as CIETAC and BAC, grant arbitral tribunals the discretion to decide how the hearing should be conducted, including, for example, whether to adopt an adversarial or an inquisitorial approach. Unless otherwise agreed by the parties, a tribunal also has the discretion to issue procedural directions and lists of questions, hold pre-hearing meetings and preliminary hearings and produce terms of reference.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

Arbitration in China tends to rely more heavily on written than oral evidence. As such, oral direct examination and cross-examination are much less common than in other jurisdictions. Nevertheless, there has been an increasing trend towards

the use of witness testimony in domestic arbitrations and parties are being presented with more opportunities to question the opposing side's witnesses, as Chinese lawyers become more familiar with cross-examination skills.

By way of example, the CIETAC Evidence Guidelines require that written testimony be submitted prior to the hearing, together with a detailed explanation of the facts in dispute and the sources of the facts identified. The witness giving the testimony is required to appear before the tribunal and be examined by both parties. Any failure to appear without good cause will mean that the witness statement cannot be relied upon by the tribunal as the sole means of establishing the facts. The CIETAC Evidence Guidelines empower the tribunal to control the witness examination proceedings and the arbitrators can also question the witnesses.

No statistics are currently available indicating the extent to which the CIETAC Evidence Guidelines have in practice been adopted in PRC-seated arbitrations.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

The parties may decide who they call as a factual witness and how many witnesses they will call. It is not compulsory for witnesses to appear at the hearing, although if a witness does not appear, this may have some impact on the weight given to his or her written witness statement.

There are no formal statutes requiring the taking of oaths or affirmations, although in practice it is common for witnesses to include declarations that they have given their witness statements truthfully and to the best of their knowledge. Further, the 2022 SCIA Rules make it clear that the tribunal has the power to reject claims or counterclaims if the relevant party is shown to have submitted forged evidence.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?

There are no specific limitations on the witnesses that may be called. In fact, the CIETAC Evidence Guidelines expressly provide that any person capable of proving the relevant facts of the case may appear as a witness, including a party's employee, representative or agent.

The benefit of calling a witness who is specially connected with a party (eg, legal representative, agent or employee) is that he or she may have more firsthand knowledge of the facts than an unrelated witness. However, the tribunal may also choose to give less weight to the testimony of that witness if it considers that the witness's testimony may be affected by his or her connection with one of the parties.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

The CIETAC Evidence Guidelines require that expert testimony be submitted in written form and the expert shall in principle appear at the hearing in person or via video conference in order to be examined by both sides and the tribunal. It is further provided that expert witnesses shall not participate in the hearing before giving their testimony, unless otherwise agreed by the parties.

There are no formal requirements regarding the independence and/or impartiality of expert witnesses. However, in practice, the expert generally will confirm that he has no conflict of interest in acting for the party that appointed him, and that he understands his duties, including the duty to act independently and impartially. The parties are free to decide whether they wish to present experts. The arbitral tribunal will then decide the admissibility and weight of such expert evidence.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

Both the tribunal and the parties have the right to appoint experts. Even if none of the parties has appointed an expert, the tribunal sometimes appoints an expert if it considers it necessary. For example, the CIETAC Evidence Guidelines allow for tribunal-appointed experts and require that the parties provide assistance to the tribunal-appointed experts by providing documents and information requested. The tribunal shall ensure that the parties are given an opportunity to examine the tribunal-appointed experts. In practice, it is not uncommon for CIETAC tribunals to take the initiative to appoint an expert to opine on issues of a technical nature. Under the 2024 SHIAC Rules and the 2022 SCIA Rules, the expert so appointed shall be appointed jointly by the parties, failing which, the expert shall be appointed by the tribunal.

Although there are no statistics on this, the evidence provided by the tribunal- appointed expert might be given more weight than the evidence provided by a party-appointed expert. There are no formal requirements regarding selection of experts, nor is there a list of experts maintained by each of the major arbitration institutions in China. But as a matter of practice experts should have expertise in their field, should act impartially and should not have a conflict of interest in acting in the case. For example, the 2024 SHIAC Rules provide that an expert shall disclose any matters that may give rise to his impartiality and independence. Expert reports must be provided to the parties for comments. If the tribunal considers it necessary or if a party so requests, the expert needs to attend the oral hearing to explain his or her expert report.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

'Hot-tubbing' is not common in PRC arbitration because the PRC arbitration process tends to focus on written statements rather than oral examination of experts. Questions may be posed by the parties or the tribunal to the expert, but it is uncommon to see experts debating with each other during the hearing process. The CIETAC Evidence Guidelines indicate a willingness to consider hot-tubbing by providing that experts or witnesses may debate with each other if so arranged by the parties and the tribunal. Nevertheless, it may take some time before hot-tubbing evolves as a common practice in PRC arbitrations.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

Chinese arbitration institutions maintain well-staffed secretariats and will assign a secretary to the arbitral tribunal to assist it with procedural matters. In some cases, arbitrators bring their own assistant to the hearing, provided that the parties consent to such an arrangement.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

Some major Chinese arbitration institutions maintain ethical codes, or codes of conduct for arbitrators, such as the CIETAC Code of Conduct for Arbitrators and Codes for Arbitrators issued by BAC. These codes set out the general principles requesting the arbitrators to hear the cases independently, impartially, diligently and prudently.

Insofar as counsel are concerned, although there are no ethical codes or professional standards specifically applicable to arbitration proceedings, there are various ethical duties and professional standards scattered in the PRC Lawyers' Law and codes of conduct for lawyers regulating counsel's behaviour in the practice of law in a general sense.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

Such rules are not commonly seen in the rules of the Chinese arbitration institutions. In the 2022 SCIA Rules, it is provided that a party cannot challenge the arbitrator on the ground of conflicts of interest that arise from his/her own change of counsel. However, the right of the other party to challenge the arbitrator is not adversely affected as a result.

The latest amendments to the arbitration rules of CIETAC and SHIAC, effective from 1 January 2024, touch upon this practical issue. The 2024 CIETAC Rules provide for the first time that the President of the Arbitration Court (rather than the arbitral tribunal) is empowered to take necessary measures to prevent any conflict of interest of the arbitrators that may arise from the change of parties' counsel, including, to exclude the new counsel from participating in the arbitration proceedings. The 2024 SHIAC Rules go further to grant the arbitral tribunals the power to decide whether to agree to the parties' request for change of counsel in light of a possible conflict of interest.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

Due to the Covid-2019 pandemic, the PRC courts and arbitration institutions in China have taken steps to increasingly allow and facilitate hearings conducted remotely. The latest versions of the arbitration rules of Chinese arbitration institutions permit the tribunals to decide to conduct all or part of the hearings remotely after consulting with the parties and taking into account all circumstances of the case. The SHIAC has also recently issued the Guidelines on Online Arbitration to regulate the conduct of the arbitration or hearing remotely.

There have been many PRC court decisions recording that hearings in litigation cases were conducted remotely. Specifically, it is noted that there have been a few PRC court decisions recording that in some cases, the parties attempted to seek to set aside the arbitral awards on the grounds that the remote hearing prevented the parties from examining the originals of the exhibits, or violated the rules that the hearing shall be held in camera, or that the hearing conducted remotely was not agreed by the parties. Yet none of such grounds were supported by the PRC courts.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

Under Article 54 of the Arbitration Law, an award shall set out the arbitration claim, the facts in dispute, the tribunal's decision and grounds for that decision, the apportionment of arbitration costs and the date of the award. The New Draft Arbitration Law also requires that the award set out the place of arbitration. Also, an award shall be signed by the arbitrators and affixed with the seal of the arbitration institution. Arbitrators with dissenting opinions may choose not to sign the award. CIETAC, SHIAC, BAC, and SCIA have similar formal requirements. PRC law does not expressly limit the types of permissible relief.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

If a party has made a claim for damages, including interest, the tribunal can award interest if it finds in favour of that party. The Regulation on RMB Interest Rate issued by the People's Bank of China in 1999 permits compound interest on unpaid interest for short, medium and long-term loans. By applying that regulation, the SPC has in certain cases upheld a party's claim for compound interest when such interest was explicitly agreed between the parties to the loan contracts.

Further, in practice, we have seen cases where the losing party sought to set aside an unfavourable arbitral award on the ground that the tribunal's ordering of a compound interest on the contractually agreed penalty interest (within the ceiling as permitted by Chinese law) was in contradiction with the principle against double recovery and principle of fairness,

thereby having violated social and public interests. Such ground was rejected by the PRC courts with the validity of the award upheld.

Chinese law allows punitive damages to be awarded where the laws so provide or allow, for example in the case of fraudulent conduct (such as certain categories of tort acts). In practice, punitive damages are unlikely to be granted and the tribunal only awards compensation for actual loss suffered in contract disputes in a general sense. Under Article 585 of the PRC Civil Code, the arbitration institution has the power to reduce the amount of liquidated damages if the non-complying party contends that such amount is excessive as compared to the actual loss suffered by the complying party.

(iii) Are interim or partial awards enforceable?

Under the current legal regime in China, an interim award is not final and so is not enforceable by the PRC courts. On the contrary, there have been decisions of the PRC courts upholding that a partial award may be enforceable by the PRC courts. Article 74 of the New Draft Arbitration Law has seemingly shed some light on this issue by providing that if a party fails to perform its obligation awarded under a partial award (without mentioning the interim measures), the opposing party may apply for compulsory enforcement before the PRC courts. However, the specific differences between an interim award and a partial award remain to be identified in practice.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Yes, arbitrators are allowed to issue dissenting opinions, although the arbitration award shall be made in accordance with the opinion of the majority of the arbitrators. The dissenting opinion will be entered in the records or the transcripts. Under the 2024 CIETAC Rules, the 2022 BAC Rules, the 2024 SHIAC Rules and the 2022 SCIA Rules, it may be attached to, but will not be considered part of, the award. In practice, dissenting opinions are normally attached to the award or made available to the parties.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Awards by consent are permitted under the Arbitration Law. After the request for arbitration has been filed, the parties may settle the dispute by themselves, and the tribunal may assist in this process. The tribunal may also render an award recording the settlement terms based on the parties' application after the settlement agreement of the parties has been concluded. Alternatively, following settlement, the party may terminate the arbitration proceedings by withdrawing the claims (and counterclaims). The arbitration proceedings will also be deemed terminated if the claimant is absent from the hearing or fails to attend or complete the hearing without justification, but the tribunal shall proceed with the hearing of the counterclaim in the circumstance where the respondent has also filed a counterclaim.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Arbitrators can correct typographical or calculation errors in the award and can also supplement the award in relation to matters which were arbitrated but were omitted from the award. If the party wants the tribunal to make corrections or supplements, it must request this within 30 days after receipt of the award.

Pursuant to the New Draft Arbitration Law, if the PRC court considers that the relief granted in the award is not sufficiently clear to be enforceable at the enforcement stage, the tribunal is entitled to, upon written notice by the court, make corrections, supplements or explanations. Obviously, this will facilitate the enforcement of arbitral awards. Nevertheless, it is clarified by the New Draft Arbitration Law that the tribunal's explanations are not part of the arbitral award.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

The parties may agree to the allocation of arbitration costs between them, but usually the unsuccessful party bears the costs. Where the tribunal only decides in favour of some, but not all, of a party's claims, the tribunal may allocate the costs between the parties in proportion to their respective liabilities.

(ii) What are the elements of costs that are typically awarded?

Costs typically awarded include (a) arbitration fees and other expenses payable to the arbitration institution by the parties and (b) fees, charges and expenses incurred by the parties for engaging legal counsel and other professional advisers. There is no cap on the amount of costs that can be allocated by the tribunal, but the fees awarded typically reflect the nature and complexity of the case.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

Arbitrators' costs and expenses are usually included in the arbitration fees collected by the arbitration institution. Normally, the costs and expenses of arbitrators will be determined by the arbitration institution based on its formula for calculating the fees according to the amount in dispute. Under the 2022 SCIA Rules and 2024 SHIAC Rules, it is provided that the remuneration of the arbitrators are decided by the arbitration institution taking into account factors such as the time spent by the arbitrators, the amount in dispute, the complexity of the case and the diligence and efficiency of the arbitrators.

In recent years, some Chinese major arbitration institutions have attempted to allow the tribunals to charge their costs based on hourly rates subject to, inter alia, the parties' agreement. Under the CIETAC Arbitration Rules effective on 1 January 2015 (**2015 CIETAC Rules**), arbitrators' fees in arbitrations administered by the CIETAC Hong Kong Arbitration Centre can be calculated either on an hourly rate basis or according to the amount in dispute. The 2024 CIETAC Rules go a step further to provide that the arbitrators' special remuneration can be agreed upon by the parties or determined by reference to an hourly rate. The 2022 BAC Rules also permit that the arbitrators' fees can be calculated on an hourly rate basis if so agreed by the parties (subject to the ceiling rate of the hourly fee prescribed by the arbitration rules).

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

Arbitration fees are usually borne by the losing party, although if a party only succeeds in some of its claims or counterclaims, the tribunal can allocate the costs in accordance with the liabilities apportioned between the parties or otherwise as it sees fit.

In case of any breach of the arbitration rules or failure to comply with a tribunal's decisions that causes delay in the arbitration proceedings, the tribunal may depart from the usual 'costs follow the event' practice when making decisions on the allocation of costs. Parties may also be held liable for the costs incurred or increased due to any consequent delay in the arbitration proceedings.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

The PRC courts do not have the power to review the tribunal's decisions and this includes the decision on costs.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

A losing party seeking to set aside an award can apply to the Intermediate People's Court of the place where the arbitration institution resides (while under the New Draft Arbitration Law, the competent court is the Intermediate People's Court of the seat of arbitration).

Under the current legal regime, rules applicable for setting aside domestic awards and foreign-related awards are different in that the PRC court's review of domestic awards will not be restricted to procedural matters as it is with foreign-related awards.

Article 58 of the Arbitration Law sets out the following grounds for setting aside a domestic arbitral award:

1. There is no agreement for arbitration;
2. The matters ruled on are outside of the scope of the agreement for arbitration or the scope of authority of an arbitration institution;
3. The composition of the arbitration tribunal or the arbitration proceedings violates lawful procedures;
4. The evidence on which the ruling was based is forged;
5. Matters that have an impact on the impartiality of the ruling have been found to have been concealed by the opposite party; and
6. Arbitrators have accepted bribes, resorted to deception for personal gain or perverted the law in the ruling.

Further, if a People's Court establishes that an arbitral award goes against the social and public interests, it shall set aside the award.

In relation to setting aside a foreign-related award, the same grounds that are applicable for refusing the enforcement of such awards will apply. These grounds, as set out in Article 291 of the CPL, are:

1. There is neither an arbitration clause in the contract nor a written arbitration agreement concluded after the occurrence of a dispute;
2. The party against whom the arbitration is filed was not notified to appoint the arbitrator or of the conduct of the arbitration proceedings or failed to present its case due to reasons which were not attributable to the respondent;
3. The formation of the arbitration tribunal or the arbitration procedure is not consistent with the arbitration rules; or
4. The matters dealt within the award fall outside the scope of arbitration agreement or are not within the jurisdiction of the arbitration institution.

The grounds for setting aside a foreign-related award are much narrower than those for setting aside a domestic award, as the People's Court does not have explicit power to set aside a foreign-related award on the grounds of malpractice by the arbitrators, forged evidence or concealment of evidence. A violation of social and public interests, similar to public policy under the New York Convention (see explanation below), can also be a ground for setting aside a foreign-related award. It is worth noting that in 2020 the SPC set aside a domestic award which awarded that the respondent shall pay the claimant fiat currency (RMB) equivalent of the value of the Bitcoins at issue. The SPC opined that the PRC authorities had clarified that the Bitcoins do not have the legal status of a currency and therefore shall not be circulated or used in the market as such. As a result, the award, if enforced, would violate the said rule, and therefore disrupt the integrity and security of the finance system and in turn, the social and public interests of the PRC.

The New Draft Arbitration Law has sought to unify the rules for setting aside domestic awards and foreign-related awards. In particular, the New Draft Arbitration Law adds the circumstances where an award may be set aside, including that (a) the respondent was not given a notice of appointing the arbitrator or the conduct of the arbitration proceedings, or the respondent failed to present his/her case as a result of the reasons not attributable to the respondent; and (b) the award was obtained by way of fraudulent acts (such as malicious collusion, fabrication of evidence, etc.).

Article 59 of the Arbitration Law stipulates that any application to set aside an arbitral award shall be made within six months after receipt of the award. This timeframe has been shortened to three months under the New Draft Arbitration Law. Article 9 of the 2018 SPC Provisions provides that the People's Court shall decide whether to accept an application for setting aside the award within seven days after receipt of the application. If it decides to accept the application, the People's Court must notify the parties within five days after that decision. Article 60 of the Arbitration Law further provides that the People's Court shall render its decision either to set aside the award or reject the application within two months after receiving the application. However, in practice, the duration of challenge proceedings can be much longer, especially in foreign-related cases. Further, the New Draft Arbitration Law clarifies that if the application to set aside an award concerns only part of the awarded items, the People's Court can decide to set aside such items only unless such items cannot be separated from other awarded items.

The SPC's 1998 Notice of Issues Concerning the Setting Aside of Foreign-related Arbitral Awards by the People's Court (as adjusted in 2018) makes it clear that the ruling of the Intermediate People's Court to set aside a foreign-related arbitral award or send the case back to the tribunal for re-trial is subject to review and approval by the Higher People's Court. If the Higher People's Court agrees with the Intermediate People's Court, it must report its findings to the SPC for final approval.

In addition, in accordance with the SPC Reporting and Review Provisions, domestic arbitral awards shall also be subject to the reporting mechanism. Nevertheless, as noted above, domestic awards are subject to final review by the Higher People's Court, except that if the Higher People's Court is intended to agree to set aside the award on the ground of violation of social and public interests, the application will be reported up to the SPC. While the reporting mechanism helps to minimise the chances of having arbitral awards set aside, the unavoidable side-effect is that the challenge proceedings (and enforcement of the award itself) can suffer from further delay.

In addition to the internal reporting mechanism, the New Draft Arbitration Law also incorporates a review mechanism, according to which, if a party is not satisfied with the People's Court's ruling to set aside an award, he/she may request within ten days upon receipt of the ruling the review of such ruling by the People's Court at the next higher level and such higher People's Court shall render its ruling within one month upon acceptance of the application for review.

Article 25 of the 2006 SPC Interpretation makes it clear that a pending application to set aside an award will suspend the enforcement proceedings. Generally, it is not possible to obtain leave to enforce in such circumstances, but according to the SPC's Provisions on Several Issues Concerning the Handling of Cases by People's Courts to Enforce Arbitration Awards (effective on 1 March 2018, **SPC Enforcement Provisions**), if a party seeking enforcement of a domestic award provides a valid and sufficient guarantee, enforcement proceedings may go ahead.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

There are no express rules under PRC law about waiving the right to challenge an arbitral award, but it is generally understood that the right to sue cannot be waived by consent. We are not aware of any cases in which waiver to challenge an arbitral award has been tested before the PRC courts. However, we have seen cases where a party seeking to set aside an award was challenged by the other side on the ground that the underlying reasons to set aside an award themselves (for example, the reason that the conduct of the proceedings violated the legal procedures) had been waived by the applicant in the arbitration proceedings. In this regard, the New Draft Arbitration Law incorporates a clause dealing with the waiver of right to challenge, according to which, a party shall be considered to have waived his/her right to make a challenge where such party knows or should have known the fact that the arbitration proceedings or the arbitration agreement has not been complied with, but elects to continue to participate in the arbitration proceedings without making any written objection in time.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

No, an arbitral award cannot be appealed in China.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

Yes. According to Article 61 of the Arbitration Law, the PRC court has the discretion to stay the setting aside procedure and remand the award to the tribunal where, inter alia, the evidence on which the award is based is false, or the opposing party concealed the evidence that is sufficient to affect the impartiality of the award. The New Draft Arbitration Law adds the circumstances in which the award could be remanded to the tribunal, including (a) where the respondent was not given a notice of appointing the arbitrator or the conduct of the arbitration proceedings, or failed to present his/her case due to reasons which are not attributable to him/her, or (b) where the composition of the arbitral tribunal or the arbitration proceedings violated the legal procedures or the parties' agreement and such violation has seriously jeopardised the parties' rights, provided that such circumstance (a) or (b) can be remedied by remand of the arbitration.

If the award is remanded to the tribunal, the same tribunal will generally conduct a hearing to re-examine the case. If the tribunal refuses to re-examine the case within the given period of time, Article 61 of the Arbitration Law provides that the People's Court shall resume the setting aside proceedings.

The 2006 SPC Interpretation further provides that if any party is not satisfied with the arbitral award re-rendered, such party may seek to set aside the award in accordance with the PRC law regarding the setting aside of an arbitral award.

(v) Is there a specialist arbitration court in your jurisdiction?

No, there is no specialist arbitration court in China. Nevertheless, in 2018, the SPC set up the China International Commercial Court with a view to establishing a one-stop mechanism (including mediation, arbitration and litigation) for resolving international commercial disputes. To this end, the China International Commercial Court may handle the requests for interim measures in aid of arbitration administered by the international arbitration institutions endorsed by the SPC (such as CIETAC, SHIAC, BAC, SCIA and HKIAC) or handle the application for setting aside or enforcing the arbitral awards rendered by the said international arbitration institutions.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

It is absent under PRC law that the arbitrators may amend and/or replace wrongly invoked law or the law not invoked by the parties. Nor are there any provisions on setting aside of an award on such grounds. However, in practice, it is expected that issue as to the law wrongly invoked or not involved may come into the picture if and when such issue likely gives rise to other grounds stipulated justifying the setting aside of an award or revision of an award. For example, if the application of law concerns the determination of the validity of the arbitration agreement, this issue may become relevant when a party seeks to set aside the award on the ground of lack of a valid arbitration agreement.

XIII. Arbitrator Liability

(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?

There is no provision under PRC arbitration laws dealing with the immunity of arbitrators or other participants in the arbitration proceedings from civil liability in connection with their mandate. Instead, Article 38 of the Arbitration Law provides for the circumstances where the arbitrators shall be held liable for their misconducts, including, where the arbitrators privately meet with a party or its representatives or accept an invitation to entertainment or gift from a party or his/her representatives, or where the arbitrators solicit or accept bribes, engage in malpractices for personal benefits, or misuse the law in hearing the cases. Article 38 further provides that the arbitration institution shall remove such arbitrators from its panel of arbitrators in such circumstances.

(ii) Does this immunity, if any, extend to criminal liability?

As stated above, there is no express provision under PRC law that provides for the immunity of arbitrators or other participants in the arbitration proceedings from legal liability in connection with their mandate. It is further worth noting that there is an express provision under the PRC Criminal Law which stipulates that the arbitrators who make any wrongful award intentionally in violation of the facts and laws in the arbitration shall be subject to criminal liability where the circumstances are serious.

XIV. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

The process for enforcement of arbitral awards in the PRC depends on the type of the arbitral award sought to be enforced, that is, whether it is a foreign award, foreign-related award or domestic award. In all circumstances, a collegiate panel (usually comprised of three persons) will be constituted to hear an application for recognition and/or enforcement of the award.

Firstly, pursuant to Article 304 of the CPL and the Circular of the SPC on Implementing the New York Convention (issued on 10 April 1987, **1987 SPC Notice**), a Chinese court may deny recognition and enforcement of foreign arbitral awards if one or more of the grounds set out in Article V of the New York Convention are met.

Secondly, the grounds for refusing enforcement of foreign-related awards are set out in Article 291 of the CPL, and are very similar to those for refusing enforcement of a foreign award under the New York Convention. One slight difference is that the CPL uses the term 'social and public interests' as compared to 'public policy' under the New York Convention. The slightly broader wording of the CPL is unlikely to have any real practical impact on any consideration to refuse enforcement based on violation of 'public policy'.

The grounds for refusing enforcement of a domestic award are set out in Article 248 of the CPL, and are almost the same (except for several differences in wording) as those for setting aside a domestic award as provided for in Article 58 of the Arbitration Law. The SPC Enforcement Provisions provide for specific guidance for the PRC courts when deciding whether to deny enforcement of domestic award on the grounds set out in Article 248 of the CPL.

Refusing enforcement of an award on the ground that it would be against public policy or 'social and public interests' rarely occurs. The power to refuse enforcement of an award on such ground is vested in the SPC by way of the internal reporting mechanism. To our knowledge, there have only been four reported cases where Chinese courts have refused enforcement of foreign awards on this ground. In the most recent case, **Automotive Gate FZCO, Automotive Gate Egypt for Car Manufacturing v. Hebei Zhongxing Automobile Manufacturing Co., Ltd,** where a PRC court refused to enforce a partial arbitral award made in Hong Kong, the Yichang Intermediate People's Court of Hubei Province noted that enforcement of a foreign arbitral award, on the basis of the tribunal's determination that there was a valid arbitration clause in the relevant agreement between the parties, would be contradictory to a prior PRC court decision which rendered the arbitration clause invalid. The recognition and enforcement of the arbitral award based on the said invalid arbitration clause, according to the Yichang Intermediate People's Court of Hubei Province, would be in violation of the social and public interests of the Chinese Mainland. This ruling has been included in the 2021 Trial Minutes issued by the SPC as important guidance to the PRC courts in dealing with such issues in practice.

As to the competent court which handles enforcement cases, where a party has applied for the enforcement of an arbitration award, the Intermediate People's Court, (a) of the place where the person against whom the judgment is being executed is domiciled or (b) of the place where the property against which enforcement is to be carried out is located, shall have jurisdiction. Pursuant to the SPC Enforcement Provisions, the Intermediate People's Court may also designate a Basic People's Court to handle the enforcement of domestic awards when certain requirements are met.

To apply for recognition and enforcement, the applicant must provide the award, a copy of the contract containing the arbitration clause, a written application for recognition and enforcement and the applicant's incorporation documents

and power of attorney. Any foreign language originals must be translated into Chinese. Any foreign awards must be notarised (and legalised, insofar as awards seated in Hong Kong, Macao or Taiwan province of China are concerned) by agencies recognised by the Chinese courts.

Pursuant to the SPC Enforcement Provisions and 2006 SPC Interpretation, where the person subject to enforcement files an application to set aside a domestic award and the application has been accepted by the People's Court, or an application refusing the enforcement of a domestic award has been filed with appropriate security, the enforcement court shall stay the enforcement. Insofar as an opposition to enforcing a foreign award is concerned, such an opposition will not officially stay the enforcement. However, the court will first decide on such opposition before taking any execution actions.

Further, the PRC courts must decide on an application to oppose enforcement of a domestic award within two months, which can be extended for one more month if so approved by the president of the court. In a general sense, in the absence of any exceptional circumstances, the enforcement proceedings should be completed within six months. In practice, the process may take longer due to the internal reporting system and the difficulty of calculating the time it will take to obtain a final decision through that system.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

Under PRC law, an applicant may apply for recognising, or recognising and enforcing, an arbitral award made abroad at the People's Courts. After obtaining a ruling recognising, or recognising and enforcing, the award, the applicant can move to the enforcement stage to resort to the competent court to execute the award in accordance with the rules for enforcing domestic judgments by reference.

(iii) Are conservatory measures available pending enforcement of the award?

The CPL, various SPC enforcement notices and other relevant regulations provide for a variety of measures to preserve assets pending enforcement of the award. For example, the PRC courts have the power to grant property preservation, behaviour preservation and evidence preservation measures to aid arbitration proceedings. Interim measures granted in domestic arbitration proceedings will be automatically converted into enforcement measures once the ruling in favour of enforcement has been issued. At the enforcement stage, the PRC courts have further power to freeze bank accounts or attach property of the party subject to enforcement. The PRC courts also have the power to request information regarding property or make their own investigations in that regard.

Regarding enforcement of a foreign award, the law is not entirely clear on whether the award creditor will be able to obtain interim measures at the same time as or before it applies for recognition and enforcement. In terms of enforcement of awards rendered in Macao or Taiwan, the relevant arrangements issued by the SPC clearly provide that a People's Court can grant interim measures 'before or after' accepting an application for recognition and enforcement. According to the SPC, these provisions are drafted based on the principle of treating foreign awards no less favourably than domestic awards. However, without express legal provisions on applications for interim measures, it is uncertain whether and to what extent different Chinese courts will follow this approach for foreign awards and awards rendered in Hong Kong. In our experience, People's Courts are reluctant to grant conservatory measures before they decide whether to accept an application for recognition and enforcement. However, to avoid the uncertainty and increase the enforceability of the potential arbitral awards rendered in Hong Kong or Macao, the party is entitled to seek interim measures granted by the PRC courts in aid of arbitration during the conduct of the arbitration proceedings.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The SPC has issued a series of opinions over the past several years aiming at tackling problems with enforcement of effective legal documents, and PRC courts have become increasingly supportive of the enforcement of arbitral awards. Notably, the SPC has started to publish a list of dishonest debtors since 2013, in which the debtor's refusal to repay any debts or resolve any liabilities established by effective legal documents is made known to the public. The ability of those debtors to conduct business or make spending decisions will also be restricted. By way of the application of the internal reporting regime, the PRC courts have been prudent and cautious in respect of refusing to enforce the awards by

centralising the final decision-making right to refuse enforcement of the awards to the SPC (or the Higher People's Courts in terms of domestic awards in general cases).

If an arbitral award has already been set aside in the place of arbitration, the award will not be enforced in China. The 1987 SPC Notice clearly provides that if the conditions under Article V(1) of the New York Convention are met (ie, where the award is finally set aside or annulled), the Chinese court 'shall' dismiss the application and deny recognition and enforcement, whereas Article V of the New York Convention itself uses the word 'may'.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

Enforcement procedures should be completed by the enforcement court within six months from the date of acceptance of the application for enforcement, subject to any extensions granted by the chief justice of the relevant court. It is, however, often the case that enforcement cannot in practice be completed within six months due to, inter alia, lack of identified assets of the award debtor available for full enforcement.

The CPL stipulates that if a People's Court fails to carry out execution within the prescribed six months, the applicant for execution may apply to the People's Court at the next higher level for execution. The People's Court at the next high level may order the original People's Court to carry out execution within a specified period of time, or may carry out the execution itself, or may order another People's Court to carry out the execution.

As with the setting aside of foreign-related awards, any decision to refuse enforcement of foreign-related awards or to refuse recognition and enforcement of foreign awards is subject to the internal reporting system that leads to the SPC making the ultimate decision on whether the award should be enforced. As noted above, the SPC Reporting and Review Provisions further require that the decision by an Intermediate People's Court to deny enforcement of domestic awards shall also be subject to the SPC's approval in the circumstance where the decision to refuse enforcement of the domestic award is intended to be made on the basis that enforcement would violate the 'social and public interests' of the PRC. In other cases, refusal to enforce such domestic awards shall be reviewed and finally decided by the Higher People's Court. By introducing several layers of checks and balances, the internal reporting system is designed to minimise potential risks of lack of impartiality and local bias.

Taking all these factors into account, it is difficult to predict the exact time that will be needed to successfully enforce an award in full.

Under PRC law, an application for enforcement of the award must be made within two years from the last day for compliance under the award or, if the award is silent on that point, from the effective date of the award.

XV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

PRC law has traditionally entailed absolute immunity for a state and its property. In the Hong Kong case of *Democratic Republic of the Congo v. FG Hemisphere Associates LLC,* a 3:2 majority of the Court of Final Appeal held that state immunity covered not only sovereign acts but also the state's commercial activities, which has been confirmed by an interpretation of the Standing Committee of the PRC National People's Congress.

On 1 September 2023, China promulgated the Law of the People's Republic of China on Foreign State Immunity (effective on 1 January 2024, the **Law on Foreign State Immunity**), which is its first comprehensive law on foreign state immunity. The Law on Foreign State Immunity reflects to a large extent a number of rules adopted in the United Nations Convention on Jurisdictional Immunities of States and Their Property 2004 (the **CJISTP**) that recognises the relative immunity of foreign sovereign states. The CJISTP has not yet come into force. China is a signatory to the CJISTP but has not ratified it.

Under the Law on Foreign State Immunity, the fundamental principle is that a foreign state and its property shall enjoy immunity from adjudication and enforcement in the PRC courts. However, this law also expressly provides for some exceptions to the said fundamental principle. For example, this law for the first time specifies the specific circumstances

whereby the PRC courts can exercise jurisdiction over disputes involving a foreign state and its property. The circumstances involve, for example, the commercial activities, employment contracts, compensation for torts, commercial arbitration and investment treaty arbitration. The principle of reciprocity is adopted in the law to the effect that where the immunity treatment granted by a foreign state to the PRC and its property is lower than that provided for in the Law on Foreign State Immunity, China will apply the principle of reciprocity.

The new Law on Foreign State Immunity does not prescribe explicitly whether it applies to Hong Kong and Macao. However, given that foreign affairs are administered by China's Central Government, Hong Kong and Macao are expected to adopt the same rules and policies of sovereign immunity as embodied in the PRC Law on Foreign State Immunity in accordance with the Basic Law of Hong Kong and Macao respectively and the relevant interpretations of the Standing Committee of the National People's Congress.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

China's first specific law concerning state immunity, the Law on Exemption of Foreign Central Banks' Properties in China from Judicial Enforcement (effective on 25 October 2005, the **Central Bank Immunity Law**) grants, on a reciprocal basis, special protection to the property of foreign central banks in the PRC, including Hong Kong and Macao. This law limits the immunity from enforcement only to those assets of foreign central banks and is silent on the immunity of other state assets.

The Law on Foreign State Immunity maintains the fundament principle that the foreign state's property enjoys the immunity from judicial compulsory measures. Despite that, the law expressly sets out certain exceptions to the immunity from the enforcement against a foreign state's property in the PRC courts, such as express waiver, specific allocation and designation of assets for enforcement or enforcement against a foreign state's assets located within the territory of the PRC, which are used for commercial activities and related to the litigation. Further, the principle of reciprocity also applies to the immunity from enforcement. The law also provides that in the absence of any provisions under this law, the provisions under the CPL governing the enforcement of an award shall apply.

(iii) Are there any requirements for arbitrations involving sovereign entities?

The Arbitration Law provides no basis for an arbitration to involve sovereign entities given that it requires that an arbitration be between citizens, legal persons and other organizations of equal status. A notable development of the New Draft Arbitration Law is the removal of the restriction of 'equal status' between the parties of arbitration, thus removing obstacles preventing China's arbitration institutions from accepting cases that involve sovereign entities, such as investor-state arbitration. Major arbitration institutions in China have either issued separate arbitration rules for administration of international investment arbitration cases, such as CIETAC, BAC, or incorporated provision in their arbitration rules clarifying its capacity of accepting investment arbitration cases, such as SCIA, SHIAC.

XVI. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Yes, China is a party to the Washington Convention, which entered into force for China on 6 February 1993. China is an observer to, but not a member of, the Energy Charter Treaty. China has also entered into the following multilateral treaties: (a) the Regional Comprehensive Economic Partnership Agreement in 2020 (in force since 2022) with the members of the Association of South-East Asian Nations, Australia, Japan, South Korea and New Zealand; (b) the Framework Agreement on the Promotion, Protection and Liberalisation of Investment in APTA Participating States with Bangladesh, India, the Republic of Korea, the Lao People's Democratic Republic and Sri Lanka in 2009; (c) the Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation with the member states of the Association of South-East Asian Nations in 2009; and (d) the Agreement among the Government of Japan,

the Government of the Republic of Korea and the Government of the People's Republic of China for the Promotion, Facilitation and Protection of Investments in 2012.

(ii) Has your country entered into bilateral investment treaties with other countries?

Yes, China has entered into approximately 146 bilateral investment treaties (*BITs)* with other countries, of which approximately 107 have already come into force. China has entered into approximately 15 Free Trade Agreements (including the updated versions, **FTAs**) containing provisions on the protection of investment.

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

There is no court decision in China in relation to intra-European investor-state arbitration to our knowledge.

XVII. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

The reference materials most frequently used by practitioners include arbitration guides, journals and textbooks, as well as educational seminars held by arbitration institutions. In particular, *Arbitration In China: A Practical Guide*, published by Sweet & Maxwell Asia in 2004, is a comprehensive reference covering essential aspects of Chinese arbitration, although some of its discussions and examples are now a little out of date. Tao Jingzhou's *Arbitration Law and Practice in China* and Yang Fan's *Foreign-related Arbitration in China: Commentary and Cases* also provide useful guidance and rules on arbitration in China. Arbitration practitioners may also refer to the Global Arbitration Review (**GAR**), a leading source of commercial arbitration news and events, for the latest practice guidance in China. GAR provides the following China-related know-how:

Commercial Arbitration (China)
https://globalarbitrationreview.com/insight/know-how/commercial-arbitration/report/china

Investment Treaty Arbitration: China
https://globalarbitrationreview.com/insight/know-how/investment-treaty-arbitration/report/china

The Asia-Pacific Arbitration Review 2019
https://globalarbitrationreview.com/edition/1001178/the-asia-pacific-arbitration- review-2019

You will also find from the above links two contributions made by Ms Huawei Sun, namely, GAR Know-how's *Investment Treaty Arbitration: China* and *Energy Arbitration in China in the Asia-Pacific Arbitration Review.*

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

CIETAC regularly holds arbitration seminars jointly with other major international organisations, for example, HKIAC, SIAC, the ICC and the International Centre for Dispute Resolution (**ICDR**). In particular, CIETAC has since 2013 organised each September a week-long national-wide arbitration event, China Arbitration Week, with arbitration seminars and conferences in major cities throughout China. Other Chinese arbitration institutions, such as BAC, SCIA and SHIAC, are also quite active in holding arbitration-related events, both in China and abroad. There are also seminars and speaker events held by other organisations such as local bar associations, chambers of commerce and law firms. In particular, the Beijing International Arbitration Forum (**BIAF**), an unofficial platform sponsored by law professor Mr Lu Song and several arbitration practitioners, holds a seminar every spring and autumn to promote awareness of international arbitration among young practitioners. CIAP30, another platform sponsored by leading arbitration practitioners in China,

is dedicated to promoting the exchanges of practice skills and experience among Chinese practitioners. BIAF and CIAP30 have joined forces to provide training courses on an annual basis.

XVIII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Yes. General awareness of the merits of arbitration as an alternative dispute resolution mechanism has increased, which is evidenced by the rapid growth in recent years in the number of arbitration institutions, in the caseload administered by those institutions and in the amounts in dispute. There is also an increasing trend of financial institutions shifting from litigation to arbitration, especially for derivatives transactions.

With the implementation of the Belt and Road Initiative, arbitration is likely to continue to play an increasingly important role in resolving China-related cross-border investment disputes in many countries participating in the initiative. The Several Opinions of the SPC on the Provision of Judicial Services and Safeguards by People's Courts for the Construction of the 'Belt and Road' issued in 2015 made it clear that the SPC will endeavour to promote the role of international commercial and maritime arbitration in the resolution of disputes arising out of Belt and Road projects. For this purpose, the SPC launched a one-stop diversified international commercial dispute resolution platform in 2021, which as discussed above integrates litigation, mediation and arbitration. To show the PRC courts' support to arbitration, in recent years, the SPC has also issued guiding or typical cases of judicial review of arbitration to unify and regulate the PRC courts' standards of adjudicating similar cases nationwide.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

In Chinese arbitrations, mediation and settlement are often encouraged. For example, arbitrators in CIETAC arbitration proceedings often attempt to mediate the dispute for the parties at sometime during the arbitration proceedings. The 2015 CIETAC Rules have formally endorsed the possibility that the parties appoint non-arbitrators to conciliate the case, which has been maintained in the 2024 CIETAC Rules. However, despite the existence of the Mediation Center of the China Council for the Promotion of International Trade / China Chamber of International Commerce since the 1980s and the establishment of BAC Mediation Center in 2011, mediation has not yet developed as a fully-fledged alternative to arbitration.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

In recent years, the number of China-related investment arbitrations has increased. According to the publicly available information, eight arbitrations have been filed against China at ICSID or under the UNCITRAL Rules with four still pending, whilst approximately 23 arbitrations have been filed by Chinese investors (including Hong Kong and Macao investors) against host States at ICSID or under the UNCITRAL Rules, which demonstrates an increasing willingness for Chinese investors to use investment arbitration as a tool to protect their investments in foreign countries. To accommodate this trend, the 2016 SCIA Rules grant the SCIA the power to administer investor-state arbitrations under the UNCITRAL Rules, and CIETAC has adopted investment arbitration rules specifically tailored to resolve disputes between investors and states, which came into effect on 1 October 2017. The 2024 SHIAC Rules also confirm the capacity of SHIAC to administer investment arbitration.

Another important development to note is that major international arbitration institutions, including the ICC, HKIAC and SIAC, have all set up representative offices in the Shanghai FTZ to promote their services generally and also in anticipation of a gradual opening up of the PRC arbitration market to international arbitration institutions. In December 2023, KCAB International of the Korean Commercial Arbitration Board established in Shanghai the first business agency of a foreign arbitration institution in China. According to the PRC law, this business agency is empowered to administer foreign-related arbitration involving disputes arising from, inter alia, international commercial, maritime or investment area.

In addition to the one-stop diversified international commercial dispute resolution platform launched by the SPC in 2021, the new changes in the New Draft Arbitration Law published in July 2021 have been welcomed by the arbitration practitioners in that those proposed changes have adopted and/or are consistent with the latest developments of

international arbitration worldwide. It remains to be seen whether, when and to what extent these changes could come into force.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

The PRC Ministry of Justice started the revision process of the Arbitration Law in 2018. On 30 July 2021, the New Draft Arbitration Law was published for public consultation. The revision of the Arbitration Law has been in the legislative plan of the Standing Committee of the Fourteenth National People's Congress (from 2023 to 2028) in China. As such, the New Draft Arbitration Law is expected to be further discussed, promulgated and implemented between 2024 and 2028. The proposed revisions are designed to improve the Arbitration Law by resolving existing problems and modernising China's arbitration regime.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

Currently, there is no express rule under PRC law governing third-party funding. However, major arbitration institutions in China have been seeking to incorporate rules regulating third-party funding in their own arbitration rules. For instance, the 2024 CIETAC Rules require the party receiving third-party funding to, without delay after signing the funding agreement, submit the facts of the third-party funding arrangement, the financial interest, and the name and address of the third-party funder to the Arbitration Court (which shall then relay the information to the tribunal). The BAC Rules for International Investment Arbitration (effective on 1 October 2019) also require the party under the third-party funding arrangement to file a written notice to the other party, the tribunal and the BAC and to disclose, inter alia, the identity of the third-party funder and its actual controller in sufficient detail.

In the small number of PRC courts' decisions concerning third-party funding arrangement in arbitration, the PRC courts have acknowledged the legality of the third-party funding agreements, taking into account the facts that the funded parties all voluntarily disclosed the third-party funding arrangements and that no evidence suggested the third-party funding arrangements affected the integrity and fairness of the outcome of the awards. However, the PRC courts held different views as to the legality of the third-party funding agreements in relation to litigations. Some courts were of the view that the third-party funding agreements for litigation are invalid given that their transaction model and content were contrary to public order and good customs; while other courts held that the third-party funding agreements for litigation should be deemed valid given that such agreements did not violate the mandatory provisions of laws and administrative regulations.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

China has been actively promoting anti-foreign sanctions legislation and regulations in recent years. On 10 June 2021, the Anti-Foreign Sanctions Law of the People's Republic of China (the **Anti-Foreign Sanctions Law**) was promulgated and came into effect. The Anti-Foreign Sanctions Law provides for high-level legal basis for the Chinese government to enact sanctions, counter-sanctions or restrictive measures in response to foreign sanctions. Specifically, the Anti-Foreign Sanctions Law provides that the PRC government may issue an anti-foreign sanction Counter List, and impose countermeasures on individuals and organisations included in the Counter List and their related persons. Further, PRC Ministry of Commerce (**MOFCOM**) also issued the Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures, and the Provisions on the Unreliable Entity List, with a view to pushing back against improper application of foreign sanctions.

So far, there is no court decision concerning whether international economic sanctions are considered as part of international public policy to our knowledge.

There is currently only one court decision dealing with the impact of sanctions on international arbitration that we are aware of. In *Macquarie Bank Limited v. Wanda Holdings Group Co., Ltd.,* which concerned an application for recognition

and enforcement of a SIAC award, the Shanghai Financial Court discussed whether the sanctions imposed by the Chinese government on Essex Court Chambers, which the presiding arbitrator worked for, constituted a ground for refusing to recognise and enforce the arbitral award. In this regard, the court held that the sanction did not affect the court's hearing of the case (and thus the recognition and enforcement of the award), taking into account the facts that (a) the sanction issued by the PRC Ministry of Foreign Affairs was against Essex Court Chambers itself, instead of the presiding arbitrator's capacity as an arbitrator, (b) the award was rendered earlier than the sanction was issued, (c) the sanction was not one of the grounds under Article V of the New York Convention for refusing to recognise and enforce a foreign award and (d) there was no impropriety in the procedure of the arbitration.