

PRC Supreme People's Court Releases Its Inaugural Annual Report of Judicial Review of Arbitration in China


On December 23, 2020, the PRC Supreme People's Court (SPC) held a press conference to announce the release of a Chinese-English bilingual version of its 2019 Annual Report on Judicial Review of Arbitration in China (Report). This marks the first time the SPC has released such a Report on the judicial review of arbitration, let alone as a bilingual document. It follows a push from the 4th and 5th CPC Plenums, each of which built on directives from PRC President Xi Jinping to continue to improve China's system of arbitration and the public trust in arbitration as a dispute-resolution mechanism, particularly for disputes involving international elements.



The Report consists of three parts. The first part discusses the general developments of China's judicial review mechanism for arbitral awards. It summarizes the formulation and implementation of the policy framework surrounding the arbitration judicial review mechanisms, and discusses the improved system through three phases of "exploration, innovation, and advancement." In particular, it highlights the Chinese judiciary's use of several regulations (such as the SPC Regulations on Several Issues Concerning Arbitration Judicial Review), as well as judicial interpretations and normative documents, to create a more unified system of arbitration judicial review standards, advance beneficial innovation in the system, and create effective safeguards for the implementation and application of the arbitration judicial review system. It also outlines new developments related to arbitration connected to the "Belt and Road Initiative," such as improving international commercial arbitration and dispute-resolution mechanisms, supporting international arbitration in free-trade zones, and working toward establishing a mutual-assistance mechanism between mainland China and Hong Kong with respect to the preservation of property, evidence, and assets.


The second part provides a summary of arbitration judicial review case statistics in 2019. Statistics show that arbitration judicial review cases in 2019 totaled 480,000, which constituted a drop from 2018 (540,000), but still marked a significant increase from 2017 (230,000). Additionally, in 2019, PRC courts concluded 32 cases for application of recognition and enforcement of foreign arbitral awards; and the PRC courts only supported a defendant's challenge to such recognition and enforcement in one case. Moreover, statistics showed a decrease in the rate in which PRC courts granted full or partial cancellation of arbitration awards. Of 11,029 applications for full or partial cancellation, PRC courts only granted full or partial cancellation in 637 cases, a cancellation rate of 5.8% (in 2018, the rate was 10.8%). Lastly, after the Arrangement on Mutual Legal Assistance between the Courts of Mainland China and Hong Kong SAR for Arbitration Procedure went into effect on October 1, 2019, PRC courts handled 11 cases of assisting Hong Kong arbitration procedures, mostly granting interim measures such as preserving assets, evidence, or property.

The third part provides an overview of the adjudication rationale and criteria behind judicial review of both



domestic and international arbitration. These rationales and criteria are based on arbitration judicial review cases heard by the SPC in 2019, as well as several representative cases recommended by provincial-level high courts. The third part also identifies several principles on which PRC courts will build their arbitration judicial review system in the future. Some principles worthy of identification include accurately identifying applicable law, and even foreign laws for foreign-related and international arbitration agreements; respecting international treaties (such as the New York Convention and others providing for mutual legal assistance in international arbitration); and recognizing and enforcing foreign arbitral awards in order to create an “arbitration-friendly” environment for international arbitration in China. Another worthy principle is optimizing inter-regional judicial assistance to facilitate cross-border arbitration, particularly related to arbitration in Hong Kong, Macau, and Taiwan, or involving elements of these areas.

The Report demonstrates several significant trends in PRC judicial review of arbitration, particularly international arbitrations. The first is that it can be expected that there will continue to be changes to the judicial review system of arbitration awards. These changes will account for global trends, will likely be based on recognized international principles and international agreements, and be designed to accommodate the increase of international arbitration, especially to encourage such arbitrations to take place in mainland China. In that sense, the environment for international arbitration in China may become more friendly. Second, PRC courts appear more willing to hear arbitration judicial review cases involving foreign arbitration, and take more serious consideration of applicable foreign laws and international treaties in adjudicating these matters. Third, it appears that PRC courts have become less inclined to exercise their authority to cancel, in full or in part, arbitral awards, including international arbitration awards. Instead, especially with respect to international arbitral awards, the trend appears to be toward increased enforcement and recognition of such international awards. Lastly, increased cooperation between Hong Kong and mainland China courts and arbitral tribunals demonstrates increased integration, recognition, and assistance for international arbitration at key arbitral institutions – the China International Trade and Economic Arbitration Commission and Hong Kong International Arbitration Center.



For companies and individuals engaged in disputes that may require a) arbitration in China, b) judicial review or assistance with respect to an international arbitration in China, or c) enforcement of a foreign arbitral award in China, they may look to this Report to inform how a future arbitration strategy could be used to take advantage of these trends. For instance, companies and individuals may consider how to establish a clearer and more-effective strategy on enforcing a foreign arbitral award through PRC courts, or even how to design arguments with PRC courts on the application of foreign laws and treaties. Additionally, when engaging in transactions that may require dispute resolution or enforcement in the PRC, these trends can help these companies and individuals design arbitration clauses and agreements that can maximize the positive impacts of these trends, while avoiding pitfalls identified in the Report.

Winston & Strawn LLP and Yuanda China Law Offices have a team with in-depth experience in all aspects of international arbitration, and can assist clients with any arbitration or dispute-resolution matter that may arise in Hong Kong, mainland China, or anywhere in the Asia Pacific region and throughout the world. With offices in Hong Kong and Shanghai, combined with the strategic alliance and locally licensed PRC law firm Yuanda, the YuandaWinston team stands ready for our clients.