

VALIDITY OF ARBITRATION AGREEMENTS

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As outlined in previous chapters, one distinctive feature of the regulation of arbitration agreements in China is that parties are required to include a definite arbitration commission in their agreements.¹ The choice of the commission is a rigid substantial requirement for validity under the Arbitration Law. Moreover, there is a serious shortage of regulation with respect to the “written” form such as under what circumstances the parties’ consent to arbitrate can be recognised. 4.001

Chapter 4 first reviews the rigid regulation of validity under the Arbitration Law by outlining its gap with international arbitration norms such as jurisprudences of the UNCITRAL Model Law and English Arbitration Act 1996. It is important to note that from an international perspective, the requirements for validity in both form and substance have been very liberally construed in order to respect the parties’ drafting autonomy and the effect is given wherever possible. The second part of the chapter focuses on the judicial efforts by both the central and local judiciary on relaxing the legislative rigidity. The commitment made by the Supreme People’s Court (SPC) through its most recent judicial interpretation on arbitration in late 2006 is specifically examined. The third part provides a critical analysis of the continued institutional monopoly of Chinese arbitration before this chapter ends with some legislative proposal for gradually liberalising *ad hoc* arbitration in China. 4.002

1. CRITIQUE ON THE VALIDITY REGIME UNDER THE ARBITRATION LAW

(a) Overly rigid conditions

The crucial statutory provision that governs the validity of arbitration agreements in China is art.16 of the Arbitration Law, which stipulates: 4.003

“An arbitration agreement *shall* include arbitration clauses stipulated in the contract and agreement of submission to arbitration that are in *writing* before or after disputes arise.”²

Further,

“An arbitration agreement *shall* contain the following particulars: (1) an expression of intention to arbitrate; (2) matters for arbitration; and (3) a designated arbitration commission.”³

It is clear from the first paragraph of art.16 that parties’ agreement to arbitrate must be made in writing. The writing requirement tends to clarify the issue of whether parties 4.004

¹ Parties whose arbitration agreements involve foreign elements are entitled to choose foreign arbitration institutions. See also discussions below under the heading “Ad Hoc and ICC Arbitration Agreements in China”.
² First paragraph, art.16 of the Arbitration Law.
³ Second paragraph, art.16 of the Arbitration Law.

have actually consented to arbitration.⁴ That said, however, the Arbitration Law fails to define what constitutes a written form or to what extent the written form is sufficient.⁵ With respect to this issue, an indirect answer may be found by referring to art.11 of the Contract Law⁶ which stipulates that “written contracts” refer to “contracts signed in written instruments such as letters and electrically or electronically transmitted documents”.⁷ This jurisprudence, however, has been restricted to “signature-based consent” without taking up the scenario in which the consent to arbitrate could be manifested by other means. It is true that consent will be easily established if the arbitration agreement is signed by both parties. However, this may not always be the case in modern arbitration practice. According to a premier international arbitrator, Jingzhou Tao, the “written” requirement shall be stipulated dynamically in light of the rapid development of modern means of communications and for the convenience of transactions.⁸ Problematic situations often arise as to whether a non-signatory third party can be bound by the arbitration agreement, a situation that seen frequently with the rising use of arbitration in China;⁹ in particular, to what extent the “written form” can be upheld in cases of contract assignment, agency relationship, etc.¹⁰ The Arbitration Law is silent on all these issues and the vague regulation under art.16(1) could be interpreted to deny the validity of arbitration agreements when the consent is given in a different capacity, until the practice is later resolved by the SPC through a series of judicial replies and opinions.¹¹

4.005 In addition to the “written” requirement for consent, substantive requirements must be met for an arbitration agreement to be considered valid. As required by the second paragraph of art.16, the effectiveness of an arbitration agreement is dependant on the existence of three conditions: (1) an expression of intention to arbitrate; (2) matters for arbitration; and (3) a designated arbitration commission.¹² While there is not much dispute regarding the first two conditions, the third one, a “designated arbitration

⁴ The Legislative Affairs Commission of the NPCSC of PRC (ed.), *Arbitration Laws of China* (Hong Kong: Sweet & Maxwell Asia, 1997), 55.

⁵ See Wang Shengchang, *Resolving Disputes in the PRC: A Practical Guide to Arbitration and Conciliation in China* (Beijing: China Law Press, 1997), 78; see also Li Hu, “Setting Aside an Arbitral Award in the People’s Republic of China” (2001) 12 *American Review of International Arbitration*, 10.

⁶ The Contract Law came into effect in 1999, which supersedes and unifies the now abolished Economic Contract Law, Foreign Economic Contract Law and Technology Contract Law.

⁷ Article 11 of the Contract Law.

⁸ See Jingzhou Tao, *Arbitration Law and Practice in China* (The Hague: Kluwer Law International, 2004), 96.

⁹ See Kun Liang, “The Comparative Analysis of the Existing Chinese and English Arbitration Systems from Arbitration Agreement Perspectives”, (1999) 13 *Columbia Journal of Asian Law*, 35 (noting that there are still unanswered questions concerning the amount of force to be given to an arbitration agreement’s effect on a non-signatory); see also Nanping Liu, “A Vulnerable Justice: Finality of Civil Judgments in China”, (1999) 13 *Columbia Journal of Asian Law*, 94 (stating that for a non-signatory, it is important to assess the nature of a Chinese judgment in terms of recognition and enforcement).

¹⁰ See Wang Liming, “An Inquiry into Several Difficult Problems in Enhancing China’s Uniform Contract Law” (Keith Hand translates), (1999) 8 *Pacific Rim Law & Policy Journal*, 381.

¹¹ See Kun Liang, see fn 9 above, 35 (observing that while strict written requirement exists in the statute, there is no need for the agreement to be signed by the parties).

¹² According to Qiao Xin, to establish the effectiveness, the three particulars must be ascertained together, if not clearly spelt out together in the arbitration agreement. See Qiao Xin, *Comparative Commercial Arbitration (Bijiao Shangshi Zhongcai)* (Beijing: China Law Press, 2004), 173.

commission”, has raised considerable concern and criticism for being overly rigid.¹³ Pursuant to art.18 of the Arbitration Law:

“If an arbitration agreement has failed to set forth the arbitration commission to hear the matter or has failed to define it clearly, the parties may remedy the defect by a supplementary agreement. In the absence of a valid supplementary agreement, the arbitration agreement is invalid.”¹⁴

By virtue of this provision, the choice of the arbitration commission must be specified (which excludes the possibility of *ad hoc* arbitration).¹⁵ Moreover, it must be clearly specified or at least made clear in a supplementary submission; otherwise the arbitration agreement will be void. As such, the most typical defects in concluding the arbitration agreement in China would be incorrect or inconclusive references to the choice of arbitral commission, which has been referred to as “defective or pathological arbitration clauses” in Tao’s commentary on the Chinese arbitration practice.¹⁶ The following case may provide an illustration on how the stringent requirement of “specificity of an arbitration commission” has worked in real life:

“The claimant and respondent signed a cooperation contract in 1996. Article 39 of the contract read that ‘any dispute under the contract should be arbitrated under the Shanghai International Trade Promotion Commission Foreign-related Arbitration Commission’. After the dispute arose, the parties resorted to the CIETAC Shanghai sub-commission, but the commission ruled that ‘since the arbitration commission agreed does not exist, and no subsequent supplementary submissions are available, the arbitration clause has to be voided under arts.16 and 18 of the Arbitration Law, and thus the jurisdiction cannot be entertained’.”¹⁷

4.007 Indeed, there have been many reports that not only the China International Economic and Trade Arbitration Commission (CIETAC) but also local arbitration commissions suffered greatly from the “killing provisions” (arts.16 and 18)¹⁸ and that the parties’ arbitral desires can be defeated if the arbitration agreements failed to clearly provide the institutional identity.¹⁹ These defects and pathologies may involve the situations such as selecting two arbitration commissions together, providing merely the place of arbitration or institutional rules without nominating the arbitration commission,

¹³ See discussions below.

¹⁴ Article 18 of the Arbitration Law.

¹⁵ See discussions below.

¹⁶ See Jingzhou Tao, *Arbitration Law and Practice in China* (2004), 34, 51.

¹⁷ *Re Contract for the Sale of Cold-Rolled Steel Plate* (Case No. 2), compiled in CIETAC (ed.), *Selected Jurisdictional Decisions of the CIETAC (Zhongguo Guoji Jingji Maoyi Zhongcaiweiyuanhui Guanxiaquan Jueding Xuanbian)* (Beijing: China Commercial Publishing, 2004), 318-319.

¹⁸ See Song Lianbin, “From Ideology to Legislation: Several Issues to Pay Attention to for Reforming the Arbitration Law (Linian Zouxiang Guize: Zhongcaifa Xiuding Yinggai Zhuyi de Jige Wenti)”, (2005) 52 *Arbitration in Beijing (Beijing Zhongcai)*, 2.

¹⁹ See Zhao Jian, “Looking Back and Looking Ahead: China’s International Commercial Arbitration Crossing Centuries (Huigu yu Zhanwang: Shijinzhihao de Zhongguo Guoji Shangshi Zhongcai)”, (2001) 51 *Arbitration and Law (Zhongcai yu Falu)*, 105; see also Jun Ge, “Mediation, Arbitration and Litigation: dispute Resolution in the People’s Republic of China”, (1996) 15 *UCLA Pacific Basin Law Journal*, 130.

CONCLUSION AND DIRECTION FOR FUTURE REFORM

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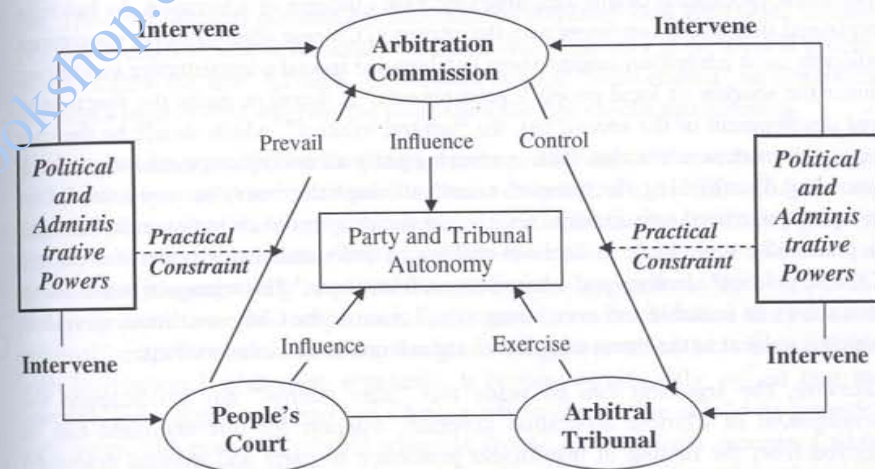
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Chapter 8 will first summarise the main findings of the study, namely practical constraints of the Chinese arbitration system. The second part then lists some proposals for prospective arbitration reforms in China. Specific reforms for tackling the practical constraints will be featured in this part, particularly with respect to the restructuring of Chinese arbitration commissions, emphasising China Arbitration Association in regulating arbitrators and, finally, empowering people's courts for effective judicial review over arbitration. Given the common cultural background and close economic ties between Hong Kong and China, Hong Kong's arbitration experience will also be discussed to draw immediate lessons to the improvement of the Chinese arbitration system. The third part ends the discussion with a general observation of the Chinese arbitration development in the future.

8.001

1. PRACTICAL CONSTRAINTS TO CHINESE ARBITRATION

Diagram 1: *Practical constraints of Chinese arbitration system*



The author has argued earlier (in Chapter 3) that claims with respect to restricted party and tribunal autonomy in Chinese arbitration on the mere basis of its regulatory deficiency might be premature, particularly because a significant gap exists between the written law and law in practice in China during its market transitions.¹ Verification into this argument has now been reflected in the diagram above (Diagram 1) regarding the *practical constraints* of the Chinese arbitration system by political and administrative powers intervening into the functioning and development of the key role players (arbitration commission, arbitral tribunal, and people's court).

8.002

¹ See discussions above under the heading "Pervasive state control over arbitration" of Chapter 3.

(a) Political and administrative interventions

- 8.003 As the major argument of this book, the fundamental problem of the Chinese arbitration system is that state control over arbitration is still very pervasive. Formally, the Arbitration Law is overly rigid. Empirically, state control has been expressed in the way of controlling the *outcome* of arbitration, by way of political and administrative powers intervening with respect to the formation of the arbitral tribunal, and infrastructure of both arbitration commissions and people's courts. Hence, the state continues to significantly affect decision-making processes of arbitral tribunals, arbitration commissions, and people's courts.
- 8.004 "State control" has constituted a hidden but serious obstacle to the *functioning* of the entire Chinese arbitration system. If we put the Chinese arbitration system into a triangular relationship with three legs, and each leg represents one of its key role players (as shown in Diagram 1), it is observed that, in China, however, the leg of "arbitration commission" has been too long. The arbitration commission has controlled almost all the arbitral matters covering jurisdiction, arbitrator qualification, tribunal formation, procedural details and, probably, final outcome of arbitration. As has been explained, doing so is consistent with the interest of Chinese administrative governance whereby most arbitration commissions in China are indeed administrative institutions under the shadow of local people's governments.² It therefore curbs the functioning and development of the second leg, the "arbitral tribunal", which should be the core leg in the modern arbitration system ensuring party autonomy and exercising arbitral autonomy. The third leg, the "people's court", although claimed to be very powerful for enjoying prioritised jurisdictional review and deciding upon arbitration enforcement, is practically very weak in decision-making of individual cases under the current Chinese political ideology and administrative framework.⁴ This triangular relationship thus shows an unstable and even "dangerous" chair of the Chinese arbitration system which is subject to the threat of political and administrative interventions.
- 8.005 Likewise, the argument can be made that "state control" has handicapped the *development* of Chinese arbitration generally. Support for this argument can be derived from the finding of insufficient protection of party and tribunal autonomy despite the vigorous progress of arbitral regulations issued by the China International Economic and Trade Arbitration Commission (CIETAC) and Supreme People's Court (SPC) over the past couple of years. First, the new rules introduced by CIETAC in 2005 have not been followed by corresponding changes in most local arbitration commissions (LACs). As has been demonstrated, the reluctance of the reform of LACs is because many of them suffer distorting reliance on the local people's governments for survival and development which have left the institutional endeavors many political challenges.⁵ Secondly, while there is validity in the argument that the SPC has been working hard to pay more judicial respect to parties' autonomy and interest in arbitration, one can see that people's courts at the lower level may not be.

² See discussions above under the heading "Problems of the arbitration commission infrastructure" of Chapters 5.

³ See discussions above under the heading "Prioritised judicial review under the Arbitration Law and Supreme People's Court interpretations" of Chapter 7.

⁴ See discussions above under the heading "Analysis of enforcement divergences and difficulties" of Chapter 7.

⁵ See discussions above under the heading "Reform suggestions and administrative challenges" of Chapter 5 and "Inherent defects under the institutional framework" of Chapter 6.

Due to uncertainty at the local level (i.e. local protectionism and lack of competence in handling arbitration case), the level of cooperation by the local judiciary has not been encouraging, thereby possibly negating the advantages gained by the SPC's pro-arbitration initiatives.⁶ This could be explained by the fact that most of the local judiciary suffers local political and administrative pressures in decision-making processes.⁷ Their institutional incapacity (including incapacity of judicial personnel) has thus subjected the enforcement, i.e. outcome of arbitration, to political and administrative interferences. The Chinese *guanxi* culture influence only aggravates political and administrative interventions from a "software" perspective, because the Party, government, judiciary, and finally, arbitration commissions, all belong to the same family under the top-down administrative governance, exerting cross impacts with intertwining relationships.

The Chinese system of "state control", however, contrasts drastically with that of the modern Western arbitration model. The Western model first recognises the effective and efficient arbitral tribunal as the core of modern arbitration. Western governments support the authority of arbitral tribunals by providing a liberal modern arbitration law. Then, the Western government maintains its influence over arbitration through effective judicial review as exercised by the powerful judiciary if the arbitral process fails to follow the law.⁸ As such, the Western style of "state control" on arbitration works in a legal system whereby the court takes the real checks and balances.

It might thus be arguable that the Chinese system, although attempts to walk a legal path,⁹ has been restricted with administrative minds and eyes. The study on the practical constraints of Chinese arbitration hence reflects systematic problems in China. However, the problem seriously affects the quality of Chinese arbitration as a whole and has negatively impacted China's business reputation. Moreover, China will very much lose the competition in the international arbitration market to its regional competitors such as Hong Kong and Singapore which have been aligned with international arbitration standards. It is thus significantly argued that the unstable and dangerous "chair" of Chinese arbitration system should be amended right away. The power of arbitral tribunals should be essentially *increased* while that of the arbitration commission be significantly *decreased*. Meanwhile, the power of the people's court should be *maintained*, but its quality needs to be *improved* to exercise real checks and balances over arbitration. It is further argued that Chinese state control should be *decoupled* from the arbitration system for any future reform.

2. PROSPECTIVE REFORMS FOR CHINESE ARBITRATION

The fact that there are practical constraints to the Chinese arbitration system does not mean that there is no room for improvement or change. The following discussions will focus on proposals for change with regard to the Arbitration Law, arbitration

⁶ See discussions above under the headings "Enforcement of "non-signatory third party" and "Enforcement of "ambiguous arbitration commission" of Chapter 7.

⁷ See discussions above under the heading "Analysis of enforcement divergences and difficulties" of Chapter 7.

⁸ For example, United Kingdom and Hong Kong.

⁹ The PRC Constitution is amended in 1999 to incorporate "rule-of-law" as one of its basic principles.

APPENDIX E

Interpretation of the Supreme People's Court on Several Issues Concerning Application of the Arbitration Law of the People's Republic of China

The "Interpretation of the Supreme People's Court on Several Issues Concerning Application of the Arbitration Law of the People's Republic of China" was adopted at the 1375th Session of the Judicial Committee of the Supreme People's Court on 23 August 2006. This Interpretation is hereby promulgated and shall come into effect as of 8 September 2006.

According to the provisions of the "Arbitration Law of the People's Republic of China" and the "Civil Procedure Law of the People's Republic of China", several issues concerning the application of law by the people's courts in hearing arbitration cases are hereby interpreted as follows:

Article 1

The arbitral agreement "in other written forms" as prescribed by art.16 of the Arbitration Law shall include the agreements on request for arbitration that are concluded in the forms of contract, letter and data teletext (inclusive of telegraph, telex, facsimile, electronic data interchange and electronic mail).

Article 2

Where the parties concerned intend to agree on general contractual disputed matters to be subject to arbitration, the disputes arising from formation, validity, alteration, transfer, performance, liabilities for breach, interpretation and rescission of contracts may also be regarded as matters subject to arbitration.

Article 3

Where the name of the arbitration institution agreed in the arbitration agreement is inaccurate, but such particular arbitration institution can be ascertained, such arbitration institution shall be regarded as the chosen arbitration institution.

Article 4

Where the arbitration clause has only agreed on the arbitration rules applied in disputes, it shall be deemed that the arbitration institution has not been ascertained unless the parties concerned are able to ascertain the arbitration institution by reaching a supplementary agreement or through the agreed arbitration rules.

Article 5

Where the arbitration agreement has stipulated two or more arbitration institutions, the parties concerned may apply for arbitration by choosing either one of the arbitration institutions. However, if the parties concerned fail to reach a unanimous agreement concerning the choice of arbitration institution, the arbitration agreement shall be null and void.

Article 6

Where the arbitration agreement has agreed that the arbitration shall be conducted by an arbitration institution in a certain area and there is only one arbitration institution in such area, the arbitral institution therein shall be deemed to be the agreed arbitration institution. Where there are two or more arbitration institutions in such area, the parties concerned may apply for the arbitration at either arbitration institution. Where the parties concerned fail to reach to an agreement concerning the choice of arbitration institution, the arbitral clause shall be null and void.

Article 7

If the parties concerned agree to make an application to the arbitral institution or institute a lawsuit to the people's court in case of dispute, the arbitral clause shall be null and void except that one side has applied for arbitration but the other side has not raise any objection within the time limit as prescribed in para 2 of art.20 of the Arbitration Law.

Article 8

Where the parties concerned merge or split after concluding an arbitral agreement, the arbitral agreement shall be binding on the inheritor of the rights and obligations thereof.

Where the parties concerned died after concluding an arbitral agreement, the arbitral agreement shall be binding on the inheritor to the rights and obligations in the arbitration matters thereof.

The circumstances as prescribed in the two preceding paragraphs shall be followed unless otherwise separately agreed by the parties concerned concluding the arbitration agreement.

Article 9

Where the creditor's right and debt have been completely or partially transferred, the arbitral agreement shall be binding on the transferee, unless otherwise separately agreed by the parties concerned, or clearly objected by the transferee in transferring the creditor's right and debt or having no knowledge of the separate arbitral agreement.

Article 10

Where the contract fails to come into effect or being set aside after the conclusion, the provisions of para 1 in art.19 of the Arbitration Laws shall apply to the determination of the effectiveness of the arbitral agreement.

Where the parties concerned have reached an arbitral agreement in respect of any dispute arising from concluding the contract, the contract which has not yet been concluded shall not affect the arbitral agreement.

Article 11

Where the valid arbitration clauses in other contracts or documents applicable to dispute resolution have been agreed on the contract, the parties concerned shall request for the arbitration under the arbitration clauses in case of dispute over the contract occurred.

If there is any arbitration provision in the relevant international treaties applicable to the foreign-related contracts, the parties concerned shall request for the arbitration under the arbitration clauses in the international treaties in case of dispute over the contract occurred.

Article 12

Regarding the case in which the party concerned makes an application to the people's court to confirm the validity of an arbitral agreement, it shall be within the jurisdiction of the intermediate people's court at the place where the arbitration institution designated under the arbitral agreement is located. Where the arbitral institution stipulated by an arbitral agreement is unclear, the case shall be within the jurisdiction of the intermediate people's court of the place where the arbitration agreement is signed, or of the place of domicile of the applicant or the party against whom the application is filed.

Cases in which an application for confirmation of validity of foreign-related arbitration agreement shall be within the jurisdiction of the intermediate people's court at the place where the arbitration institution designated under an arbitration agreement is located, or of the place where the arbitration agreement is signed, or of the place of domicile of the applicant or the party against whom the application is filed.

Cases concerning the validity of the arbitration agreement for maritime disputes shall be within the jurisdiction of the maritime court of the place of the arbitration institution stipulated by an arbitration agreement, or of the place where the arbitration agreement is signed, or of the place of domicile of the applicant or the party against whom the application is filed. If there has no maritime court in the above prescribed places, the case shall be within the jurisdiction of the maritime court nearby.

Article 13

Where a party concerned has not raised objection to the validity of the arbitration agreement before the first hearing of the arbitration tribunal, but applied to the people's court for confirmation of nullity of the arbitration agreement thereafter, the people's court shall not entertain such application according to the provisions of para 2 of art.20 of the Arbitration Law.

A people's court shall not entertain the application of a party concerned for confirmation of validity of an arbitration agreement or setting aside an arbitral award after the arbitration institution has made a decision to the validity of the arbitration agreement.

Article 14

The "first hearing" as prescribed in art.26 of the Arbitration Law shall mean the first hearing for judgment organised by the people's court after the closing of the defence, and shall not include all the activities in the pre-trial procedure.

Article 15

For ruling a case for confirmation of validity of an arbitration agreement, the people's court shall form a collegiate bench to conduct the examination, and shall inquire the parties concerned.

Article 16

The applicable law agreed by the parties concerned shall apply to the examination on the validity of foreign-related arbitration agreement. Where the parties concerned have failed to agree on the applicable law but have agreed on the arbitration place, the law of the arbitration place shall apply. Where the parties concerned have neither agreed on the applicable law nor the arbitration place, or the arbitration place is unclear, the law of the place where the court is located shall apply.

Article 17

The people's court shall not entertain the application of a party concerned for setting aside of the arbitral award on the ground that the matter does not fall within the provisions in art.58 of the Arbitration Law or art.260 of the Civil Procedure Law.

Article 18

"No arbitration agreement" as prescribed in Item 1 under para 1 of art.58 of the Arbitration Law shall mean the parties concerned has not concluded an arbitration agreement. Where an arbitration agreement was deemed as invalid or being set aside, it shall be regarded as the situation of no arbitration agreement.

Article 19

Where a party concerned applies for setting aside the arbitral award on the ground of the arbitral award matter exceeding the scope of arbitration agreement, the people's court shall set aside the exceeding part of the arbitral award upon examination. If the exceeding part is inalienable to other arbitral matters, the people's court shall set aside the arbitral award.

Article 20

"Not in conformity with the statutory procedure" as prescribed in art.58 of the Arbitration Law shall mean the circumstances that violating the arbitration procedure prescribed by the Arbitration Law and the arbitration rules chose by the parties concerned may affect the right judgment of the case.

Article 21

Where the case in which a party concerned applies for setting aside domestic arbitral award falls within one of the following circumstances, the people's court may notify the arbitration tribunal to conduct a fresh arbitration within a time limit according to the provisions in art.61 of the Arbitration Law:

1. the evidences on which the award is based are forged; or
2. the other party has withheld the evidence which is sufficient to affect the impartiality of the arbitration.

The people's court shall describe the specific reasons for re-arbitration in the notice.

Article 22

Where the arbitration tribunal starts to re-arbitrate within the time limit designated by the people's court, the people's court shall make a ruling to end the setting-aside procedure. Where the re-arbitration failed to be started, the people's court shall rule to resume the setting-aside procedure.

Article 23

If a party concerned does not satisfied with the re-arbitral award, he may apply to the people's court for setting aside within six months after receiving the re-arbitration award according to the provisions of art. 58 of the Arbitration Law.

Article 24

The people's court shall form a collegial bench to rule the case applied by a party concerned for setting aside the arbitral award, and inquire the parties concerned.

Article 25

If the people's court has entertained the application of a party concerned for setting aside the arbitral award before the other party concerned applied to enforce the identical arbitral award, the people's court which has entertained the enforcement application shall make a ruling to terminate the enforcement after entertaining the case.

Article 26

Where the application made by the party concerned to the people's court for setting aside the arbitral award was dismissed, and subsequently submitted a defence against the enforcement on the identical ground in the enforcement procedure, the people's court shall not rule in its favour.

Article 27

Where a party concerned fails to raise objection in respect of the validity of the arbitration agreement in the arbitration procedure, and insist to set aside the arbitral award or submit a defence against the enforcement by using the ground of the arbitration agreement to be invalid after the arbitral award has been made, the people's court shall not rule in its favour.

Where a party concerned raises objection in respect of the validity of the arbitration agreement in the arbitration procedure, and insist to set aside the arbitral award or submit a defence against the enforcement on the identical ground after the arbitral award has been made, the people's court shall support it upon verification to be in compliance with the provisions of art.58 of the Arbitration Law or art.217 and art.260 of the Civil Procedure Law.

Article 28

Where a party concerned applied for non-performance of the reconciliation document for arbitration or the arbitral award made according to the reconciliation agreement between the parties concerned, the people's court shall not rule in its favour.