

Research on the Reform and Development of International Commercial Arbitration in China

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Abstract: International commercial arbitration is the preferred way to resolve cross-border commercial disputes. Facing new situations and challenges, the government should strengthen the training of international commercial arbitration talents, actively participate in international arbitration rule-making, promote the integration of modern technology with commercial arbitration, improve the laws and regulations on international commercial arbitration, and enhance the publicity to raise the awareness of arbitration. Hence, this can establish a sound international commercial arbitration system in line with China's national conditions and international standards to further optimize the business environment in China and better promote international economic and trade exchanges.

Keywords: International commercial arbitration; Dispute resolution, Reform; Development

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1. Introduction

International commercial arbitration is regarded as the common law of nations for dealing with cross-border commercial disputes, which is of great significance to maintaining global business cooperation and investment environment, promoting international economic and trade exchanges, and protecting the legitimate rights and interests of the parties of various countries. In this new global era, China regards expanding opening up as the only way to promote high-quality development by constantly improving the top-level design of international commercial arbitration, gradually integrating with advanced international standards, further optimizing the business environment, and promoting international trade ^[1].

2. The concept and important role of international commercial arbitration

International commercial arbitration refers to a non-litigation dispute resolution system in which the parties submit their disputes of an international commercial nature to an arbitration institution for hearing and make a binding resolution according to the arbitration agreement they have signed. The trading merchants of medieval Europe formed the practice of using customary law to deal with disputes, and international commercial

arbitration developed from this onwards. From the end of the 19th century to the beginning of the 20th century, especially after the end of World War II, cross-border business exchanges became more and more frequent with the progress of science and technology and the rapid development of international economy and trade. As a relatively established dispute resolution system with unique advantages such as high autonomy, professional service, strong confidentiality, high trial efficiency, finality of adjudication, and necessary compulsion, it has been developing and improving continuously. The important value of international commercial arbitration has gradually been fully recognized by the international legal community, especially in June 1958, when the United Nations Conference on International Commercial Arbitration adopted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. With the accession of East Timor on January 17, 2023, the number of contracting parties has reached 172, making the arbitration law more significant in international law.

3. The development history and present situation of international commercial arbitration in China

Compared with the developed countries in Europe and the United States, modern commercial arbitration in China started late, and its origin can be traced back to the Charter of the Commercial Arbitration Office and the Administrative Rules of the Commercial Arbitration Office issued by the Ministry of Justice and Industry and Commerce of the Beiyang Government in 1912.

After the founding of China, the Chinese government decided to establish the Foreign Trade Arbitration Commission in 1954. In 1956, China promulgated the first foreign-related Arbitration Rules, establishing an arbitration system consistent with international practice. In 1959, the China Maritime Arbitration Commission was formally established. After the reform and opening up, China has gradually established the domestic arbitration system and the arbitration industry has entered the track of rapid development with the rising economy. In 1981, the Economic Contract Law of the People's Republic of China established the status of arbitration independent of court proceedings. In 1986, China acceded to the New York Convention to safeguard the authority of arbitral awards. In 1994, the Arbitration Law of the People's Republic of China was promulgated and the reform of de-administration was carried out. The Decision of the Central Committee of the Communist Party of China on Several Major Issues concerning Comprehensively Promoting the Rule of Law in October 2014 clearly put forward the requirements for improving the arbitration system and enhancing the credibility of arbitration ^[2]. In April 2019, the State Office of the Central Government issued Several Opinions on Improving the Arbitration System and Enhancing the Credibility of Arbitration, pointing out that the people must unswervingly follow the path of socialist arbitration with Chinese characteristics. In October 2019, the CPC Central Committee's Decision on Several Major Issues on Upholding and Improving the Socialist System with Chinese Characteristics and Promoting the modernization of the National Governance System and Governance Capacity called for strengthening the study and application of international law and improving the rule of law in foreign-related work, making strategic arrangements for foreign-related rule of law work from the perspective of national governance.

With the rapid development of the economy of China, the international commercial arbitration system in China is playing an increasingly important role on the international stage. The system is also constantly being adjusted and improved, gradually integrated with international advanced standards, toward modernization, specialization, and industrialization, and has made remarkable achievements. It is reported that in 2022, the number of dispute cases accepted reached a new high of 126.9 billion yuan, exceeding 100 billion yuan for five consecutive years, ranking at the forefront of international arbitration institutions. The 20th National Congress of the Communist Party of China stressed the need to adhere to the comprehensive rule of law, promote the

construction of the law in China, and strengthen the rule of law involving foreign affairs, which provided the fundamental guidelines and prospects for the development of international commercial arbitration in China^[3].

4. Thoughts on promoting the reform and development of China's international commercial arbitration

As a leading promoter of an open world economy, China is opening up on a wider scale in more areas. With the continuous improvement of trading between China and foreign countries, international economic and trade exchanges are becoming more frequent, and various commercial disputes are gradually increasing, which puts forward higher requirements for China's international commercial arbitration.

4.1. Improve the modernization of the governance capacity of the arbitration personnel training service governance system

China is in the critical period of realizing the great rejuvenation of the Chinese nation and accelerating the construction of a powerful trade country. To adapt to the strategic needs of opening up to the outside world, and improve the modernization level of the governance system and governance capacity, there is an urgent need for a large number of high-quality professional foreign arbitration talents familiar with international rules that are good at handling international commercial disputes^[4]. First, it is necessary to fully understand the strategic and leading status and role of foreign-related legal personnel training to form a top-level design and development plan for the construction of arbitration personnel and strive to establish and improve the introduction, training, selection, and incentive systems for international commercial arbitration talents. Secondly, it is necessary to close the ties among universities, law firms, enterprises, government agencies, and arbitration institutions to optimize personnel training programs, innovate personnel training mechanisms, strengthen practical teaching links, and establish interdisciplinary and composite personnel training models, so that application-oriented, innovative and international specialized personnel can be cultivated. Thirdly, it is necessary to improve the establishment of a standardized and systematic training system, emphasize the positive role of the newly established China Arbitration Association, strengthen the construction of professional ethics and professional training of arbitrators, carry out regular, multi-channel and practical business training on foreign-related laws and regulations, to improve the level of international commercial law and professional service capabilities. The application of international arbitration rules to solve practical problems can promote the healthy development of China's arbitration industry^[5].

4.2. Participation in international rule-making has shifted from passive compliance to active policymaking

The formulation of international rules has been dominated by powerful countries for a long time, with the current international arbitration system monopolized by Europe and the United States. This shows that a relatively complete international commercial arbitration system has been established, which mainly reflects the interests of Western countries. With the continuous improvement of China's comprehensive national strength and influence, more and more enterprises and citizens go to the world to participate in international competition and cooperation. While national interests continue to extend outwardly, the risk uncertainty of foreign trade and investment is rising, so the protection of overseas interests has become a top priority. This has also created a new historical opportunity for the better use of international law to safeguard national interests and create a new order of international commercial arbitration. As the second-largest economy and an important player in the global economy, more Chinese experts should be encouraged to join international organizations such

as the International Chamber of Commerce and the United Nations Commission on International Trade and Law, to make China's voice heard in the formulation of international commercial arbitration rules by putting forward practical suggestions and actively participating in the formulation of international rules from passive compliance to active makers. The people can contribute Chinese wisdom and promote institutional reform and rule innovation. The people should strive to build a fairer and more reasonable international governance system, and make full use of international rules to safeguard national sovereignty, security, and development interests, thus serving China's higher level of opening up and global economic and trade development ^[6].

4.3. Promote technology to enhance the digital and intelligent level of arbitration

With the rapid development of the scientific and technological revolution, mankind has entered the era of a digital economy. The application of technologies such as the Internet, blockchain, big data, and artificial intelligence is changing the implementation of dispute resolution systems and providing more diverse and convenient choices for parties. The promotion of technology that strives to improve the digital intelligence level of arbitration and meet the growing demand for high-efficiency, low-cost, and more convenient arbitration has become inevitable. The technological advancements include remote court hearings, online arbitration, digital evidence, electronic delivery, and so on. The application of new scientific and technological means has reduced unnecessary document printing and international and domestic travel and improved the digital and intelligent level of arbitration, thus greatly improving the efficiency of arbitration. However, it should also be noted that at present, digital arbitration still has the limitations of lagging legal rules and low user recognition, and the standardization of the construction of online platforms for dispute resolution and the security of network information and data are also trending issues of concern. In short, it is a systematic and long-term project to continuously integrate commercial arbitration with science and technology, by fully utilizing new technologies and improving the digital intelligent level of international commercial arbitration that meets the diversified dispute resolution needs of the current era ^[7].

4.4. Continuous improvement of arbitration regulations to achieve commercial arbitration rules in line with international standards

The recently held Central Economic Work Conference pointed out that people should adhere to promoting a high level of opening up to the outside world and steadily expand the institutional opening up of rules, regulations, management, and standards to achieve further institutional innovation. With the promotion of China's economic status and the frequent economic and trade exchanges with other countries in the world, it is necessary to improve the international commercial arbitration system from the following three aspects to achieve international standards. First, the government should comprehensively promote the reform of the arbitration institution systems, establish and improve the management and operation of non-profit independent legal persons, and implement the operation mode of corporatization and marketization. The government should provide support in taxation, foreign exchange, immigration, and other aspects, improve judicial support and supervision of arbitration, and create a friendly environment for arbitration. Second, the government should adhere to the unity of Chinese characteristics and international rules, earnestly study, deeply understand, and fully absorb the basic principles and main contents of international rule-making to introduce arbitration rules such as ad hoc arbitration, which have been widely recognized in the world, and gradually integrate with international standards in the identification of arbitration awards and the selection of arbitrators. The third is to strengthen exchanges and cooperation between China and foreign countries in international commercial arbitration. Chinese commercial arbitration should go global together with Chinese enterprises to protect their participation in international market competition. However, it is necessary to enhance the openness of domestic

arbitration, create conditions to attract well-known foreign arbitration institutions and professionals to conduct business in China, to realize mutual learning and healthy competition between Chinese and foreign arbitration institutions and arbitrators.

4.5. Strengthen publicity and raise awareness to better promote international economic and trade exchanges

The current popularity of arbitration in China is not high, so people's understanding of the concept of arbitration and the cognition of arbitration as a dispute resolution method is not widespread. The uncertain understanding of arbitration might even result in some misunderstanding, conflict, and fear. There is a long way to go to improve the publicity and promotion of international commercial arbitration, expand the popularization of international commercial arbitration practice in the country, and actively promote the construction of an arbitration-friendly society. It is necessary to fully recognize the advantages of international commercial arbitration in preventing and resolving international commercial risks under any situation to create a market-oriented, legalized, and internationalized business environment. The third revision of the Arbitration Law should be used to further strengthen the publicity and promotion of arbitration, popularize the arbitration laws and regulations, and improve social awareness. Enterprises can learn and master the rules of international commercial arbitration through lectures on arbitration knowledge, simulated arbitration competitions, and business guidance. This can encourage enterprises to resolve disputes through arbitration and effectively safeguard their legitimate rights and interests. China can strengthen theoretical research on arbitration, increase international cooperation and exchanges in arbitration, study international best practices, and improve the construction of arbitration infrastructure to further the development of the international commercial arbitration of China.

The 20th National Congress of the CPC called for comprehensively promoting the great rejuvenation of the Chinese nation through Chinese-style modernization and will build an open economic system at a higher level to provide a strong motivation for world economic development. In the face of the new situation and challenges, it is necessary to incorporate international commercial arbitration into the overall strategic pattern of national development by continuing to carry out reform, innovation, and improvement. This can establish and improve an international commercial arbitration system that conforms to China's national conditions and is in line with international standards, thus better safeguarding and promoting international economic and trade exchanges in the new era, that contributes to the realization of the Chinese dream of the great rejuvenation of the Chinese nation.

Disclosure statement

The authors declare no conflict of interest.

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