Kluwer Arbitration Blog

California International Arbitration Week 2024: The Latest Developments of International Arbitration in China—Focus on Sino-U.S. Commercial Dispute Resolution

Anlin Ye (Pepperdine Caruso School of Law) · Friday, April 12th, 2024 · Young California Arbitration (Young CalArb)

During the California International Arbitration Week, held in San Francisco, California, on March 11-14, 2024 (full schedule), the Shenzhen Court of International Arbitration (SCIA) presented a panel on U.S.-China commercial dispute resolution. The panelists included Dr. Liu Xiaochun (President, SCIA), Guoyong Huang (Director of the International Cooperation and Development Department, SCIA), Peter Neumann (Arbitrator; Adjunct Professor, Straus Institute, Pepperdine Caruso School of Law), and Wei Sun (Managing Partner, Zhong Lun Law Firm). Mylene Chan (Adjunct Professor, Peking University School of Transnational Law) moderated the panel. This post presents some highlights from the program and additional thematic remarks.

History of the SCIA

Dr. Liu Xiaochun kicked off the panel with an introduction to the SCIA. Established in 1983, the SCIA was formerly known as the China International Economic and Trade Arbitration Commission-South China/Shenzhen (CIETAC) and referred to as South China International Arbitration and the Greater Bay Area International Arbitration Center. In 2019, the SCIA established its Hong Kong branch (SCIA-HK), achieving a dual-jurisdictional presence. Liu shared that for foreign parties, independence was the greatest concern to overcome when choosing to use the SCIA's services. To address parties' apprehension about protectionism, interference from the government, insider control, and the adjudicator's lack of neutrality, the SCIA has taken a two-part approach to enhance independence and impartiality.

The first approach taken by the SCIA is to reform the governance structure around international arbitration, namely the governing statute. A piece of unique legislation, the *Ordinance on the SCIA*, enacted by the Shenzhen Municipal Government in 2012, was drafted by SCIA's founding council members. Nine out of 15 of the founding SCIA council members represent 8 foreign nationalities, including former diplomats and policy experts, among them are Roberto Azevedo, William Blair, Peter Malanczuk, and Anthony Neoh. To Liu's point, the drafting of the governing legislation of the SCIA showed that it enjoyed autonomy and independence since its founding.

The second approach taken by the SCIA is to achieve a global panel of arbitrators. The *Ordinance*

requires a third of the panel arbitrators to be appointed from outside jurisdictions. Currently, according to Liu, the SCIA panel includes 1541 arbitrators representing 114 nationalities, 569 of whom reside overseas and 64 are based in the U.S. The SCIA's increasing international caseload also reflects its success in achieving independence. In 2023, the total amount in dispute of the cases was 19.2 billion dollars. The cases came from 140 jurisdictions, and many were from North America.

Wrapping up his presentation with the recent development of the SCIA, Liu gave the example of a case with the largest amount in dispute of $2 billion between a Chinese and a U.S. party. The case took only 13 days to resolve, including 6 days in mediation and 7 days in arbitration, and the parties settled at the rendering of an award. Rory McAlpine, lead counsel representing the U.S. party, was cited to note the SCIA's independence and international expertise, the enforceability of the agreement, once reached by the parties in the Mediation-Arbitration model, and efficiency, as the advantages of choosing the SCIA in the absence of an arbitration agreement between the parties.

In conclusion, Liu emphasized the core values of the SCIA, which he branded as "the triple I"—independence, impartiality, and innovation. When asked about why U.S. companies would arbitrate in China, Liu referred again to independence being at the heart of the SCIA.

SCIA's Technology-Assisted Arbitration System

Guoyang Huang continued with an introduction to the use of technology in the SCIA's online arbitration platform. The system termed "SMART Arbitration" reflects the SCIA's continued improvement of its mode over the past 20 years. "SMART" stands for safe, mobile internet and mass data, artificial intelligence, revolutionary, and transparency. Huang believes that these characteristics allow the online platform to carry out the benefits of international arbitration: confidentiality, convenience, efficiency, professionalism, and service across borders. Version 1.0 of SMART Arbitration was a stand-alone case management software. In 2001, the SCIA developed its first arbitration case-management network; in 2008, it created an online commercial dispute resolution platform in cooperation with the Alibaba Group, which was implemented in online marketplaces. Version 2.0 of SMART Arbitration was marked by the integration of the online case management software with intelligent hearing hardware. In 2016, SMART Arb achieved a PC-based system as well as a mobile-based system to support remote hearings. In 2017, an AI robot was first used to provide legal consultation services to parties, and the SCIA's fully encrypted wireless hardware was adapted to online case handling and remote hearings. Version 3.0 features an entirely remote arbitration process, including remote filing and electronic signatures. In 2023, 8,727 remote filings were made, making up 72.7% of all filings, and more than 100,000 electronic deliveries, more than 20,000 electronic signatures, and nearly 3,000 remote hearings were made in the same year.

In short, the SCIA employs a comprehensive multi-platform system that achieves paperless docketing, e-services, confidential and convenient virtual hearings, tribunal deliberation, and the rendering of arbitral awards. SMART Arb can even access and verify information stored in blockchains that are submitted by parties as evidence. The SCIA procedural rules were also amended to endorse the use of the SMART Arb system and the SCIA deducts 28% of its service fees when parties agree to employ the SMART Arb system.

Enforcement of China-Seated Awards in the U.S.

Peter Neumann followed with his presentation by citing empirical research on the enforcement of international awards in U.S. federal courts, especially awards rendered in China. The cited paper was "Challenging and Enforcing International Arbitral Awards in U.S. Federal Courts: An Empirical Study" by Drahozal et al., which reported from a review of U.S. federal court records that the rate of confirmation for foreign awards is around 90%, higher than what previous studies suggest. Of the study's database of arbitral awards, Neumann highlighted the ones rendered in Mainland China and Hong Kong. Out of the 31 awards rendered in Mainland China and the 15 awards rendered in Hong Kong, only 5 were vacated or denied (about 10%), only slightly higher than the total proportion of rejected awards rendered in all non-U.S. seats (about 9%). Neumann concluded that this showed U.S. federal courts are not particularly biased against enforcing awards rendered in Chinese seats. In the 5 cases that were denied enforcement, the grounds of denial were "no arbitration agreement," "lack of notice," "public policy—duress," and "procedural—failure to obtain counsel." Neumann suggested that these grounds were common grounds of denial and that awards rendered in Mainland China and Hong Kong are not treated differentially by U.S. federal courts.

Neumann also shared his views that the SCIA takes a hands-on approach, similar to the ICC, as opposed to merely acting as an information carrier. The approach aims to ensure the procedural validity of the award and the parties' ultimate compliance. In a recent arbitration where he was appointed as an arbitrator, the case manager asked whether the parties were satisfied with the arbitral procedure, in order to reflect the parties' responses in the record in case the arbitrator fails to follow such best practice. In the scrutiny process of one of the awards he rendered, his reference to the Meeting Minutes of the Supreme People's Court (judicial discussions on challenging issues) on the issue of divergence from the liquidated damage clause, which was the best legal source absent of clear statute, was removed to avoid challenges for relying on extralegal sources. Neumann praised the prudence of the case manager for such a detailed suggestion.

Enforcing Foreign Awards in China

Lastly, Wei Sun examined the recent developments in the enforcement of foreign awards in China. It has been widely held that interim measures and decisions rendered via emergency arbitration abroad are unenforceable in China, due to a lack of express law on emergency arbitration decisions and interim measures rendered by an arbitral tribunal and past cases where courts rejected applications for interim measures for arbitrations seated abroad. However, in 2021 the Beijing Fourth Intermediate People's Court (quipped as having a similar status to the U.S. District Court for the Southern District of New York in handling foreign legal issues) rendered a judgment indirectly enforcing the award by an emergency arbitration administered by the Swiss Arbitration Association.

Regarding the public policy ground of nonenforcement under Article 5 of the New York Convention, Sun explained that the public policy grounds under Chinese law are narrow, and courts restrictively apply them. (The grounds are violation of the fundamental principles of China's laws, infringement upon China's sovereignty, endangering public security, violating good customs,

and other circumstances endangering fundamental public interests.)

Addressing the perceived difficulty of enforcing foreign awards in China, Sun presented a few countering points. First, Chinese courts are required to ask for approval from the Supreme People's Court before refusing to recognize an award, resulting in one of the best records for recognizing foreign-seated arbitral awards. Second, courts that decided to enforce an award will collect information on the assets that can be seized, as opposed to relying on the parties to do so. Third, the CEO or legal representative of a company that defaulted on its debts will be listed as a credit defaulter, disqualifying them from future loans and prohibiting them from taking planes or high-speed rail and making high-value purchases.

Conclusion

The panel focused on two important aspects of Sino-U.S. commercial disputes resolution: the arbitral institution and the enforcement of foreign awards by U.S. and Chinese courts. Introducing the SCIA, the panelists gave both an organizational review and an introduction on the use of technology as the institution's hallmark trait. The overview of the enforcement of foreign awards in both countries featured quantitative analysis and legal review. The focus of the panel reflects California's importance in facilitating commercial dispute resolution between the U.S. and its largest trading partner.

Anlin Ye is a member of Young California Arbitration (Young CalArb), who assisted in the preparation of this blog post. Young CalArb believes that the future of international arbitration in California lies in the hands of our promising young professionals. Its mission is to provide a dynamic platform that nurtures their growth and strengthens their network within the arbitration community. Young CalArb is committed to advancing the cause of California Arbitration in developing and promoting California as a hub for international arbitration. Its vision is to shape a progressive future for international arbitration in California. Young CalArb is sponsored by California Arbitration.

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe here. To submit a proposal for a blog post, please consult our Editorial Guidelines.

2024 Summits on Commercial Dispute Resolution in China

17 June – Madrid
20 June – Geneva

Register Now →

This entry was posted on Friday, April 12th, 2024 at 8:30 am and is filed under California International Arbitration Week, China, Shanghai International Arbitration Center
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.