DOI: 10.52028/rbadr.v5i9.ART12

Arbitration with Chinese Characteristics and Its Long Pathway towards International Standards

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Abstract: The Chinese Arbitration Law (aka "CAL") was adopted in 1994 and further amended in 2017. Currently, this law is considered a cornerstone in the development of arbitration legislation in China. It is worth adding, however, that CAL does not go along with the UNCITRAL Model Law on International Commercial Arbitration (adopted in 1985 and amended in 2006 respectively). There are numerous discrepancies between the UNCITRAL Model Law and the CAL. Nonetheless, the Draft amendments, which are currently under public consultation, seem to be a cornerstone in bringing Chinese arbitration closer to international standards worldwide. In addition, it should be stressed that the proposed Draft still includes many solutions that differ from the UNCITRAL Model Law and still underpin the arbitration with Chinese characteristics. It is too early to assess whether all these amendments will pass and change the Chinese landscape of international commercial arbitration, but it is certainly worth watching.

Keywords: China. Arbitration. Dispute Resolution.

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1 Introduction

The Chinese Arbitration Law (aka "CAL")[1] was adopted in 1994 and further amended in 2017. Currently, this law is considered a cornerstone in the development

[1] 中华人民共和国仲裁法 [Arbitration Law of the People's Republic of China], 2022.

of arbitration legislation in China. It is worth adding, however, that CAL does not go along with the UNCITRAL Model Law on International Commercial Arbitration[2] (adopted in 1985 and amended in 2006 respectively). There are numerous discrepancies between the UNCITRAL Model Law and the CAL. Indeed, Chinese legislation reflects the most substantial principles in terms of contemporary arbitration law, but at the same time, it also represents the so-called arbitration with Chinese characteristics. This study aims at setting forth the features of the CAL by confronting it with the UNCITRAL Model Law. Therefore, the paper outlines the discrepancies between the UNCITRAL Model Law and Chinese legislation. The article also sheds light on a draft amendment to the arbitration law issued in 2021. Lastly, it seeks to answer whether the draft amendment would significantly change the landscape of dispute resolution in China and thus have an impact on international commercial arbitration.

Overall, according to the binding provisions of the CAL, there is a considerable difference between domestic arbitration, foreign-related arbitration, foreign arbitration, and arbitration involving Special Administrative Regions (such as Hong Kong and Macau) and Taiwan. Given the multifarious types of arbitration cases, all domestic cases must be managed by a Chinese arbitral tribunal. Simultaneously, a judicial review process of domestic arbitral awards differs from foreign-related and foreign arbitral awards. To illustrate, a foreign-related arbitration case refers to a case with a foreign party, foreign subject matter or other foreign factors. In the case of this type of arbitration, the parties are allowed to choose the applicable law, institution, rules, and seat of arbitration. Foreign arbitration, in turn, is understood as an arbitration handled by a foreign arbitral tribunal or *ad hoc* arbitration beyond the territory of the People's Republic of China (PRC). Finally, disputes involving wholly foreign-owned enterprises (WFOEs) which have been registered within the Free Trade Zone (FTZ) can be carried out outside China, while others WFOEs, registered outside the FTZ, must be handled by a chosen Chinese arbitration commission.[3]

Recently, the Chinese lawmaker adopted a more pro-arbitration stance by creating a background for a new international commercial arbitration landscape across the country. It is also visible given the regulatory and policy documents confirming the need to strengthen and further improve the multifarious dispute resolution mechanism in the PRC. Therefore, the Chinese legislator realized that there was a need to amend the binding provisions of the CAL to attract more foreign parties to settle arbitration disputes in mainland China. Hence, the Ministry

[2] UNCITRAL, 2022.
[3] MIMI, 2020, p. 282-283.

of Justice issued a proposal to revise CAL (namely the Draft for Public Comments). Along with this draft, explanatory notes were also issued on 30 July 2021.[4] Briefly, compared to the actual binding provisions in China, the new ones will expand the scope of arbitration cases, incorporate *ad hoc* arbitration, and include that the selected arbitration institutions will be no longer a prerequisite of a valid arbitration agreement, among others.

2 Chinese Arbitration Law in View of the UNCITRAL Model Law

2.1 Discrepancies between the 1985 UNCITRAL Model Law and Chinese Arbitration Law

Along with the proclamation of the People's Republic of China (PRC), the significance of arbitration as an alternative dispute resolution mechanism has increased. To start with, the Chinese arbitration system is institution-monopolized which means that merely institutional arbitration is permitted according to the binding provisions of the 1994 Arbitration Law of the PRC (aka Chinese Arbitration Law, CAL).[5] This legal act is widely considered a cornerstone in the development of arbitration in Mainland China. The National People's Congress Standing Committee adopted the aforementioned provisions on 31 August 1994 which entered into force on 1 September 1995.[6]

At the outset, it should be stressed that CAL does not reflect fully the UNCITRAL Model Law on International Commercial Arbitration (hereinafter 'UNCITRAL Model Law') which was adopted in 1985 and amended in 2006. Even though Chinese legislation reflects the most substantial principles of contemporary arbitration law, there are still many differences which result in existing the so-called arbitration with Chinese characteristics.[7]

The adoption of the CAL is a result of the increasing popularity of commercial arbitration as the primary means of dispute settlement flowing from the economic reforms introduced in the 1980s. This law applies to arbitrations based upon voluntary agreements, concluded between the parties, which explicitly express their will to arbitrate. Therefore, the CAL includes both procedural and substantive rules and principles regarding the entire arbitral proceedings from the establishment of arbitral tribunals to the enforcement of arbitral awards.[8]

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[4] KUN, 2021, p. 21.

[5] 中华人民共和国仲裁法. Available at: http://www.npc.gov.cn/npc/c30834/201709/c8ca14070ead4c6d904610eea0f535fb.shtml. Accessed on: 7 Dec. 2022.

[6] WEIXIA, 2017, p. 261.

[7] ŁĄGIEWSKA, 2020, p. 42.

[8] WEIXIA, 2021, p. 92.

The binding provisions of the CAL differ domestic arbitration from foreign-related arbitration, foreign arbitration and arbitration involving Special Administrative Regions (such as Hong Kong and Macau) and Taiwan. National arbitration cases must be held by the domestic arbitral tribunal. Considering a foreign-related arbitration, this type applies while dealing with a case including a foreign party, foreign subject matter or other foreign factors. Therefore, the parties can freely choose the applicable law, institution, and rules as well as the seat of arbitration. Foreign arbitration refers to arbitration proceedings handled by a foreign arbitral tribunal or the so-called *ad hoc* arbitration beyond mainland China. Lastly, the cases of wholly foreign-owned enterprises (WFOEs) which were registered within the Free Trade Zone (FTZ) can be settled even outside of the territory of the PRC, whereas cases of other WFOEs have to be handled merely by the Chinese arbitral institutions.[9] Following the aforementioned classification, many different regulations apply depending on whether the case concerns domestic arbitration or foreign and foreign-related.

In addition, the aforementioned monopolized institution system functioning in China stems from Articles 16 and 18 of CAL which stipulate the necessary conditions to conclude a binding arbitration agreement under Chinese law.[10] This entails that an arbitration agreement must include a designated institution to handle the proceedings, otherwise such an agreement is invalid. Accordingly, the institutional monopoly still exists in China and has not been changed thus far. Interestingly, Chinese arbitration law does not explicitly forbid *ad hoc* arbitration. Nonetheless, there are two chief impediments that the *ad hoc* arbitration is not fully protected and thus allowed under the binding provisions in China. Firstly, an arbitration agreement must designate an "arbitration agreement" to be valid. Hence, an arbitration agreement providing the submission of a dispute to *ad hoc* arbitration is not valid. Secondly, in the case of arbitral awards rendered by the *ad hoc* arbitration institution, such an award cannot be enforced under Articles 58, 63, 70 and 71 of the 1994 Arbitration Law.[11]

Furthermore, the doctrine of competence-competence is not fully recognized under Chinese law. According to this concept, the arbitral tribunal is competent to review and assess the effectiveness of an arbitration agreement. Hence, it has the power to decide on its jurisdiction. Such competence stems from the theory of autonomy and focuses on both the independence and competence of the arbitral tribunal itself. Even if such a doctrine is widely recognized under the UNCITRAL Model Law, Chinese lawmaker does not embrace this concept. Under Article 20 of the

[9] MIMI, 2020, p. 282-283.
[10] ŁĄGIEWSKA, 2022, p. 218.
[11] WEIXIA, 2017, p. 262.

CAL, where the parties challenge the validity of an arbitration agreement, a request can be submitted to the arbitration commission or the people's court. In the case when both parties take some actions, that is one party requests the arbitration commission to issue a decision and the other requests the people's court, the arbitration commission should be silent. This entails that the people's court has jurisdiction over the validity of the arbitration agreement. Scholars emphasize the deficiencies and disadvantages of such a solution. First, the arbitration institution itself should be responsible for deciding on its jurisdiction. Currently, it merely fulfils its role as an administration and case management body. Nonetheless, it does not have any power or even expertise to decide on the effectiveness of an arbitration agreement. Second, along with the submission of a case to the people's court, the question concerning time and cost efficiency arise.[12]

Although China endeavours to resemble the solutions in force in international commercial arbitration, namely solutions adopted in the 1985 UNCITRAL Model Law, it cannot be considered a UNCITRAL Model Law country. There are peculiarities in Chinese arbitration law which result in arbitration with Chinese characteristics.

2.2 *Ad hoc* Arbitration within the Pilot Zones

Some innovative solutions linked to *ad hoc* arbitration are introduced in China through pilot programs launched in the Free Trade Zones (FTZ). These pioneering developments are based on SPC's 'Opinions on Providing Judicial Safeguards for the Construction of Pilot Free Trade Zones'[13] issued on 30 December 2016. According to Article 9 (s) of this Opinion, it is possible to handle *ad hoc* arbitration under certain conditions that should be met. Hence, this Article stipulates that "If two enterprises registered in FTZ agree that relevant disputes shall be submitted to arbitration at a specific place in mainland China, according to specific arbitration rules, or by specific personnel, the arbitration agreement may be determined as valid. If the people's court holds that the arbitration agreement is null and void, it shall request the court at the next higher level for review. If the superior court consents to the opinions of the subordinate court, the former shall report its review opinions to the Supreme People's Court level by level and render a ruling after the Supreme People's Court makes a reply." Given that, the *ad hoc* arbitration agreement is valid when two conditions are met. First, both parties are already registered within the FTZ; and second, the arbitration agreement fulfils the so-called "three specific conditions", that is specifies the place of arbitration

[12] WEIXIA, 2017,p. 268.
[13] 最高人民法院关于为自由贸易试验区建设提供司法保障的意见. Available at: https://www.court.gov.cn/zixun-xiangqing-34502.html. Accessed on: 15 Jan. 2023.

in mainland China, arbitration rules and arbitrators. It is worth adding, however, that even if the aforementioned requirements are met, the Chinese people's court still has the power to decide on the validity of the arbitration agreement. Such a conclusion stems from the provision providing that "the arbitration agreement may be determined as valid". The wording "may" emphasizes that the court enjoys the discretion to decide on its validity.[14]

Nonetheless, it is possible to handle *ad hoc* proceedings within the pilot zones. To illustrate, the Hengqin Free Trade Zone adopted the first "Ad hoc Arbitration Rules" (横琴自由贸易试验区临时仲裁规则) on 23 March 2017. These rules entered into force on 15 April 2017 and follow the Zhuhai Arbitration Commission (ZAC) Rules and the UNCITRAL Arbitration Rules with some modifications. In addition, they reflect the competence-competence principle. Hence, the arbitral tribunal is competent to decide on its jurisdiction over the disputed case. The parties can also freely appoint arbitrators, agree on how to appoint them or even agree on an appointing authority. It is noteworthy, however, that the ZAC is a default authority. Furthermore, the appointing authority can also decide on the withdrawal or replacement of arbitrators, if necessary. In terms of qualifications of arbitrators, the "Ad Hoc Arbitration Rules" provide the same criteria as for the institutional arbitrators. In other words, they should fulfil the criteria stipulated in the Chinese Arbitration Law. Nonetheless, whereas the ZAC is considered the appointing authority, the arbitrators would be appointed according to the list of arbitrators.

Considering the fees and costs, the "Ad Hoc Arbitration Rules" are likewise the UNCITRAL Rules. Therefore, the fees are calculated by mutual agreement between the parties and the tribunal. If the consensus cannot be achieved, the appointing authority makes a decision. It is noteworthy, however, that there are no specific provisions on how to determine arbitration fees in such *ad hoc* arbitration proceedings. Interestingly, the Rules stipulate as well that upon the parties' consent, the arbitral tribunal can benefit from third-party services such as financial management, tribunal secretaries and lease of venues. Finally, in terms of the arbitral award, the ZAC should confirm such an *ad hoc* award. Therefore, if the arbitral tribunal renders an award, each party can directly apply to ZAC to confirm the award. Throughout the confirmation, such an award is considered to be an institutional one.[15]

Overall, the introduction of *ad hoc* arbitration within the FTZ can be seen as a foothold for this type of dispute settlement. Some scholars point out, however,

[14] JINGZHOU; ZHONG, 2021, p. 62-63.
[15] SUN, 2017.

two chief defects regarding the *ad hoc* arbitration reform in China. First, these regulations are not consistent with the currently binding provisions of Chinese Arbitration Law. Second, due to a lack of independence in terms of administrative processes, the parties cannot freely apply proper administration procedures. Given that, to overcome the aforementioned pitfalls, more open and liberalized reform is needed.[16]

2.3 Arb-Med-Arb Mechanism in China

Both mediation and arbitration belong to the most popular forms of alternative dispute resolution mechanisms applied in the case of commercial disputes. Mediation can be thus defined as a voluntary dispute settlement process where the parties can reach a consensus which is not obligatory.[17] Given its features and voluntary nature, mediation is a kind of negotiation held by a mediator. Arbitration, in turn, is a dispute settlement process held by an arbitrator or a panel of arbitrators who hear a case and render an arbitral award in favour of one of the parties involved.[18] The med-arb mechanism combines both of these dispute resolution methods and thus an arbitrator serves as well as a mediator.[19]

Gu Weixia emphasizes that the med-arb process is of an "international" nature. Even if mediation itself can be regarded merely as a "local" product linked to the specific legal culture within a specified jurisdiction, its character changes through arbitration and most notably the enforcement of arbitral awards abroad.[20]

In the case of China, the concept of med-arb (*tiaojie – zhongcai* 调解仲裁) should be understood as any process combining mediation with arbitration.[21] Therefore, the Chinese approach does not differ two situations: 1. where the arbitrator or arbitral tribunal decides to mediate by itself; 2. where an arbitrator is simultaneously a mediator in the course of the same proceedings. Given the Chinese med-arb process, the arbitrators and mediators perform both roles. To improve efficiency, it is a common practice that the mediation is conducted by the same arbitrator who previously handled arbitration proceedings. Chinese officials explain that the arbitrator acting as a mediator has already been acquainted with the case and thus can fully perform its new role. According to this concept, if the parties do not reach a consensus through mediation, the entire arbitration

[16] ZUO, 2020, Vol. 5, p. 107-108.
[17] On multiparty mediation in Brazil see FERREIRA; SEVERO, 2021. See also: FARIAS, 2020. On mediation in Palestine see SHAAT, 2020.
[18] On arbitration in Brazil see: MUNIZ, 2020.
[19] CHUYANG (Alexis), 2015, p. 1297.
[20] WEIXIA, 2021, p. 221.
[21] On hybrid and multi-tiered clauses in the Brazilian and international sphere see: FERREIRA, 2021. See also: FERREIRA; GIOVANNINI, 2020.

proceedings would be sped up and shortened till the issuance of the arbitral award.[22] Hence, those who advocate for the arb-med mechanism emphasize that such a solution should be regarded as an advantage to the parties. The dispute can be thus resolved faster. Nonetheless, this begs the question of whether the arbitrator-turned-mediator will be neutral towards the parties and will not impose its thoughts on the parties involved. As such, a possible conflict and a question of impartiality stem from the dual roles of arbitrator changing into a mediator.

It is worth adding, however, that there is a significant discrepancy between these two different roles undertaken by the same person. An arbitrator is deemed to assess the merits of a disputed case and render an arbitral award, whereas a mediator is responsible for smoothing communication between the involved parties to reach a consensus. Hence, while an arbitrator performs his duties as a mediator, he will also be potentially exposed to some privy information that would not be accessible to him in the course of arbitral proceedings. This means that if the mediation fails, the arbitrator can lose his impartiality given the confidential information previously disclosed during the mediation process. It leads to an apparent bias concerning the part of the arbitrator. Such a bias concerns mostly the so-called "evaluative mediation" based on an assessment of the weaknesses and strengths of both parties. During such a mediation process, the mediator takes part in the substantive discussion concerning the merits of a case which is an unusual situation in arbitration proceedings. He can thus form his own view or preferences on the disputed case throughout the conducted discussion prior to the arbitration proceedings.[23]

To sum up, the med-arb process should be defined as hybrid proceedings combining mediation with arbitration. Whereas mediation is widely considered a "local" product linked to the specific legal culture of a certain jurisdiction, while being combined with arbitration, it becomes of an "international" nature. Hence, such a med-arb mechanism commences being enforced even overseas.

3 Shanghai Pilot Free Trade Zone: Halfway to Total Liberalization

The SHFTZ Rules are widely recognized as much more open-minded and innovative compared to the CAL. In fact, if parties agreed to submit their disputes to SHIAC and handled their case, the said Rules apply to both the parties, substantial issues or subject of dispute or "where the parties have agreed to refer disputes to

[22] WEIXIA, 2016, p. 85-86.
[23] WEIXIA, 2016, p. 90.

the FTZ Arbitration Court or have referred disputes to SHIAC to be conducted by the FTZ Arbitration Court unless the parties agree otherwise”.[24]

The SHFTZ Arbitration Rules include separate provisions on interim measures. In fact, they apply for the sake of protecting property or evidence from being transferred or damaged: “(a) property preservation measures; (b) evidence preservation measures; and (c) measures requiring a party to perform certain acts or prohibiting a party from performing certain acts; (d) pre-arbitration interim measures; (e) emergency arbitrator procedures; and (f) procedures for changes of interim measures”.[25] In addition, there are specific time limits which apply in the case of interim measures. Therefore, “if a party applies for preservation before or during the arbitration, such application shall be immediately accepted,” and that “in urgent cases, if the corresponding requirements provided in laws are satisfied, a decision shall be made within 24 hours and then transferred for enforcement immediately”.[26]

The SHFTZ Arbitration Rules allow the so-called emergency procedures. Under these Rules, a party can apply for interim relief from a provisional arbitrator. Considering the time, this option is available between the acceptance of a case and the constitution of the tribunal. Practically, this means that the provisional arbitrator may issue a decision within 20 days after being appointed. The arbitral tribunal benefits from the same competences.[27]

There are also truly innovative solutions concerning the appointment of arbitrators. This means that there is a dual mechanism model. Therefore, the parties “may either appoint arbitrators from the Panel of Arbitrators or recommend persons from outside of the Panel of Arbitrators as the arbitrator”. Interestingly, under Article 27 of the SHFTZ, parties are also allowed to “reach an agreement on the joint recommendation of a person who is outside of the Panel of Arbitrators as the presiding/sole arbitrator”. There are even more detailed provisions, namely the Judicial Review of Arbitrators Appointed outside of the Panel. According to Article 9 of these provisions, “where one party/parties recommends/jointly recommend arbitrators or the presiding (sole) arbitrator out of the Panel of Arbitrators, it shall be recognized under the judicial review, if the appointment has been affirmed by the Chairman of SHIAC, the appointed persons satisfy the criterion on the qualification provided in Article 13 of the Arbitration Law of PRC, and the proceedings of appointment are legitimate under the SPFTZ Arbitration Rules and relevant provisions of Chinese laws”.[28]

[24] BIN, 2017, p. 275.
[25] BIN, 2017, p. 277.
[26] BIN, 2017, p. 278.
[27] BIN, 2017, p. 277.
[28] BIN, 2017, p. 278.

Lastly, the SHFTZ Arbitration Rules allow issuing of award *ex aequo et bono*. Nonetheless, it is noteworthy that under Article 13 of the Opinions, "where the tribunal renders an award *ex aequo et bono*, the proceedings may be recognized in judicial review, if the proceeding is agreed to jointly by the parties in writing, does not violate mandatory provisions of Chinese laws, and the award rendered in the proceeding complies with the SHFTZ Arbitration Rules".[29]

To sum up, the SHFTZ differs significantly from the solutions adopted in the CAL and introduces international standards. Although these Rules are worth watching, currently they do not comply with the CAL. These differences need to be addressed in the future.[30]

4 Proposed Amendments to Chinese Arbitration Law and their Impact on Foreign Parties

The Ministry of Justice of the PRC issued draft amendments to Chinese arbitration law on 30 July 2021.[31] Those regulations are currently under public consultation. First and foremost, it is noteworthy that the proposed reform has the aim of approaching Chinese legislation to international standards. Hence, most of the changes comply with international practice. Nonetheless, there are still some differences with the UNCITRAL Model Law that need to be addressed.

Shu Zhang and Peng Guo emphasize that the aforementioned draft amendment should be regarded as a significant step forward in terms of compliance with international standards. Many issues have been addressed to be in line with international law and practice, however, some specific Chinese features still exist and have been maintained by the Chinese lawmaker. Interestingly, some distinctive features have been even more developed and thus resulted in furthering such non-compliance with international expectations.[32]

The most important changes concern the following aspects: the validity of arbitration agreements, the competence-competence principle, concept of the seat of arbitration and arbitration proceedings.

Considering the validity of arbitration agreements, as already mentioned, the binding provisions of the CAL reflect rather a rigid approach. Therefore, the designation of an "arbitration commission" is regarded as a necessary element to draft a valid arbitration agreement under Chinese law. The draft amendment abandons such restrictions and thus stipulates that the parties should merely

[29] BIN, 2017, pp. 278-279.
[30] BIN, 2017, p. 279.
[31] MINISTRY OF JUSTICE, 2021.
[32] ZHANG; GUO, 2021.

express their will to arbitrate. This solution complies with international standards and corresponds with Article 7 of the UNCITRAL Model Law. The aforementioned changes also impact foreign-party-related disputes. With this regard, the draft provisions endorse the applicable law while determining the validity of the arbitration agreements. First, the arbitral courts should apply the law chosen by the parties. If the parties did not choose it in the arbitration agreement, then the law of the seat of arbitration prevails. Finally, if the parties decided neither on the applicable law nor on the law of the seat of arbitration, the arbitral court may apply Chinese law in terms of the validity issues. Compared to the previous regulations, this solution abandons the concept of "the law of the place where the arbitration institution is located" (as provided under Article 18 of the Law of the Applicable Laws in Dealing with Foreign-related Civil Relationships).[33]

Concerning the competence-competence principle, the draft amendment grants the power of determining the jurisdiction of the court and the validity of the arbitration agreement to the arbitral tribunal. In addition, the arbitration court is also competent to determine if the arbitration proceedings might be continued in the case of "lack of jurisdiction". Throughout the adoption of this solution, the Chinese arbitration law will fully reflect the competence-competence principle. Notably, the timeframe for the jurisdictional challenge is less strict under the draft provisions. Compared to the CAL stipulating that the jurisdictional challenge must be raised prior to the first hearing, the amendment provides that the arbitral tribunal should determine the timeframe for such a challenge to be raised.[34]

According to the currently binding provisions of the CAL, there is no reference to the concept of the 'seat of arbitration'. The draft, however, fulfils this loophole and recognizes the 'seat of arbitration'. Therefore, along with the adoption of this legal concept, there will be no doubt concerning the place where the arbitral award is rendered and which court is competent to supervise the relevant issues, *i.e.* the review based on the jurisdictional matters, or the annulment of arbitral awards. This change does not consider the location of the arbitration institution anymore, but, in turn, focuses on the parties' choice of the seat of arbitration. Such an approach fully complies with international practice in arbitration.[35]

Furthermore, the draft amendment also opts for *ad hoc* arbitration to be conducted in foreign-related commercial arbitration cases (Article 91 of the Draft provisions). Therefore, "The parties may designate an arbitration institution to assist with the issues relating to the establishment of the arbitral tribunal, or,

[33] 《中华人民共和国涉外民事关系法律适用法》[Law of the Applicable Laws in Dealing with Foreign-related Civil Relationships]; cf. ZHANG; GUO, 2021.
[34] ZHANG; GUO, 2021.
[35] ZHANG; GUO, 2021.

in the absence of an arbitration institution consented to by the parties, request a designated arbitration institution from the court of the seat, the place where the party is located, or the place having the closest connection with the dispute (article 92 of the Draft)".[36] Despite the "pilot projects" allowing to handle *ad hoc* arbitration to some extent in the selected special economic zones, such a concept has never been recognized and confirmed at the legislative level. Hence, the draft amendment should be regarded as a cornerstone legitimizing the *ad hoc* arbitration for foreign parties in China.

It is noteworthy that the draft provisions are more flexible in terms of arbitrator's appointment. This means that the parties can also select an arbitrator beyond the arbitrator's list approved by the arbitration institution. In addition, the parties can set specific requirements for arbitrators. Such a solution does not exist under the binding CAL provisions. Another change concerns the appointment of the presiding arbitrator. Currently, if the parties fail to jointly select the presiding arbitrator, the chairman of the arbitrator institutions appoints it. Nonetheless, the Draft stipulates that the other two arbitrators should first seek to appoint the presiding arbitrator. This means that, on the one hand, arbitration institution plays a less significant role in determining the panels of the arbitrator to handle a case. On the other hand, this change should be considered through the lens of increasing the autonomy of arbitral proceedings within the Chinese legal system.[37]

5 Conclusion

The CAL differs significantly from the UNCITRAL Model Law. The aforementioned Draft amendment has the aim to bring China closer to international standards in arbitration. Although the Draft is already innovative compared to binding provisions, it still does not fully comply with the UNCITRAL Model Law. Therefore, one could even say that arbitration with Chinese characteristics still exists in this country. No one could really predict whether all amendments would pass and put Chinese legislation closer to international commercial arbitration worldwide.

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[36] ZHANG; GUO, 2021.
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Informação bibliográfica deste texto, conforme a NBR 6023:2018 da Associação Brasileira de Normas Técnicas (ABNT):

ŁĄGIEWSKA, Magdalena. Arbitration with Chinese Characteristics and Its Long Pathway towards International Standards. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 05, n. 09, p. 191-204, jan./jun. 2023. DOI: 10.52028/rbadr.v5i9.ART12.