



北京仲裁委员会  
Beijing Arbitration Commission  
北京国际仲裁中心  
Beijing International Arbitration Center

# Recent Developments of Arbitration in Mainland China

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# Outline

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- I. Overview of Arbitration in Mainland China**
- II. Statistical Analysis on Judicial Supervision over Arbitration**
- III. Improvement of Chinese Institutional Arbitration Rules**
- IV. Conclusions**

# Overview of Arbitration in Mainland China

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**Arbitration Law**

**came into force in 1995**

**Arbitration Commissions**

**244**

**National Caseload (1995-2014)**

**1,056,738**

**Disputed Amount(1995-2014)**

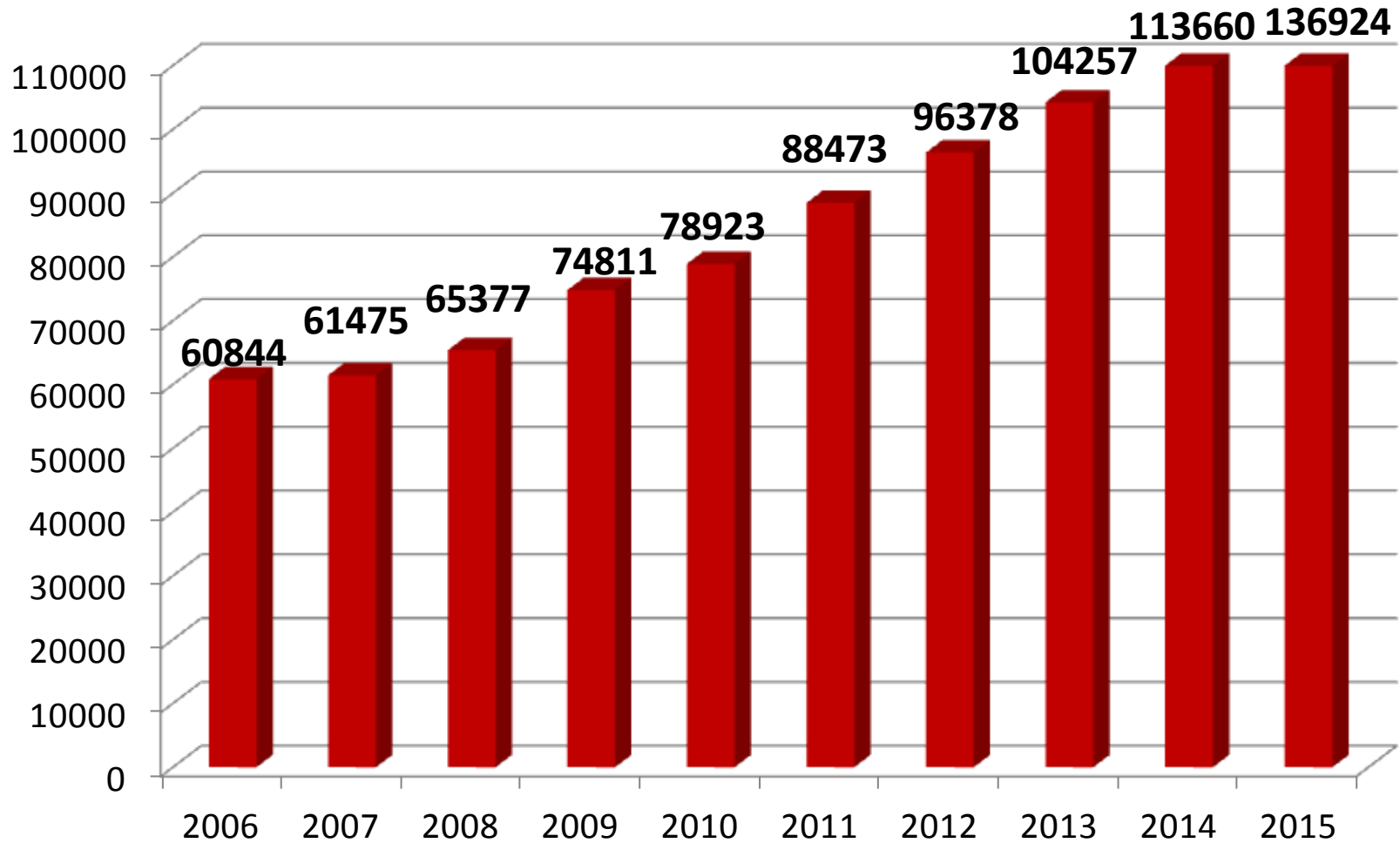
**1,820.1billion RMB**

\* Source: all national statistics are from the Legislative Affairs Office of the State Council

# Overview of Arbitration in Mainland China

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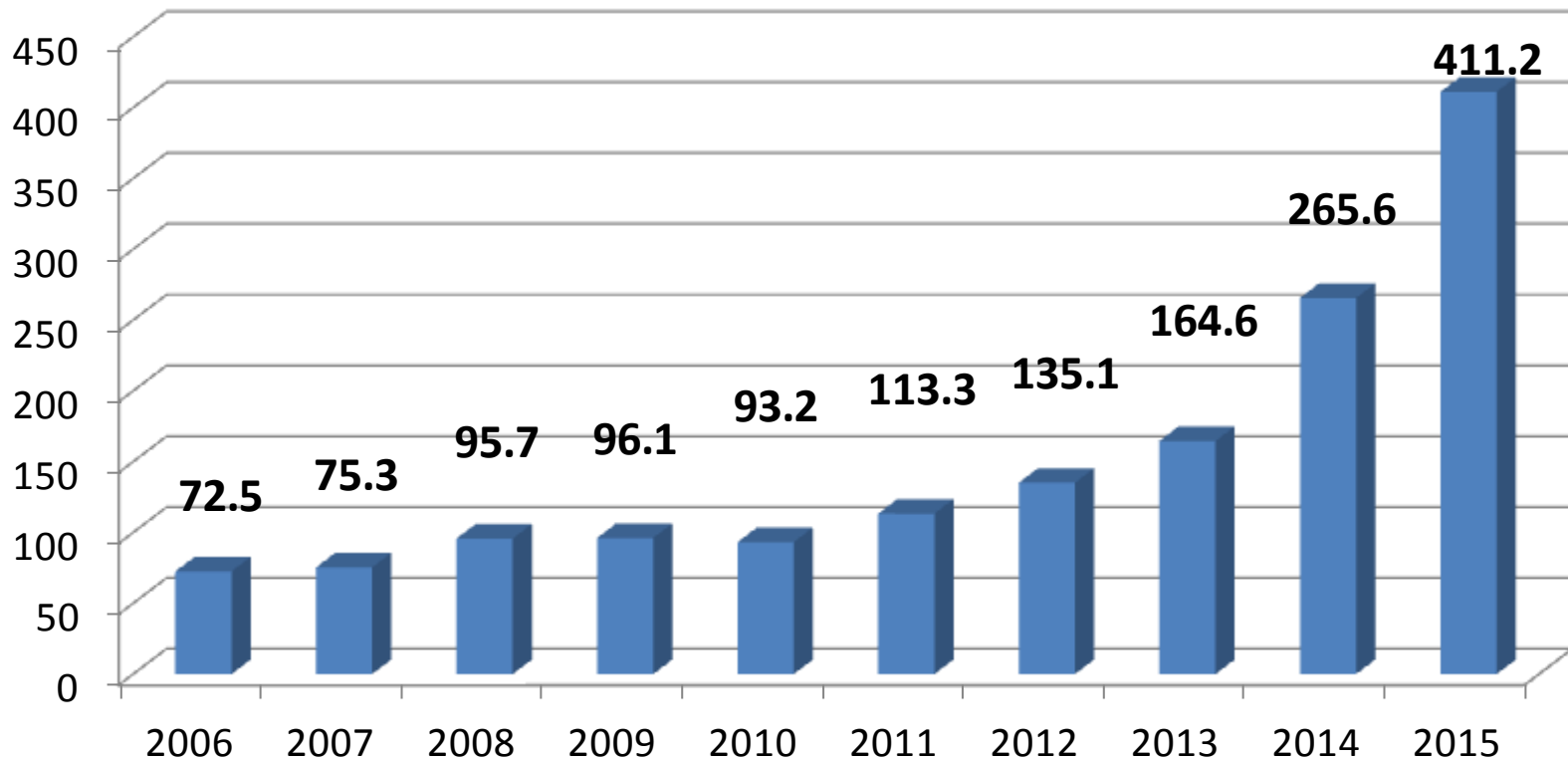
## National Annual Caseload of Arbitration



# Overview of Arbitration in Mainland China

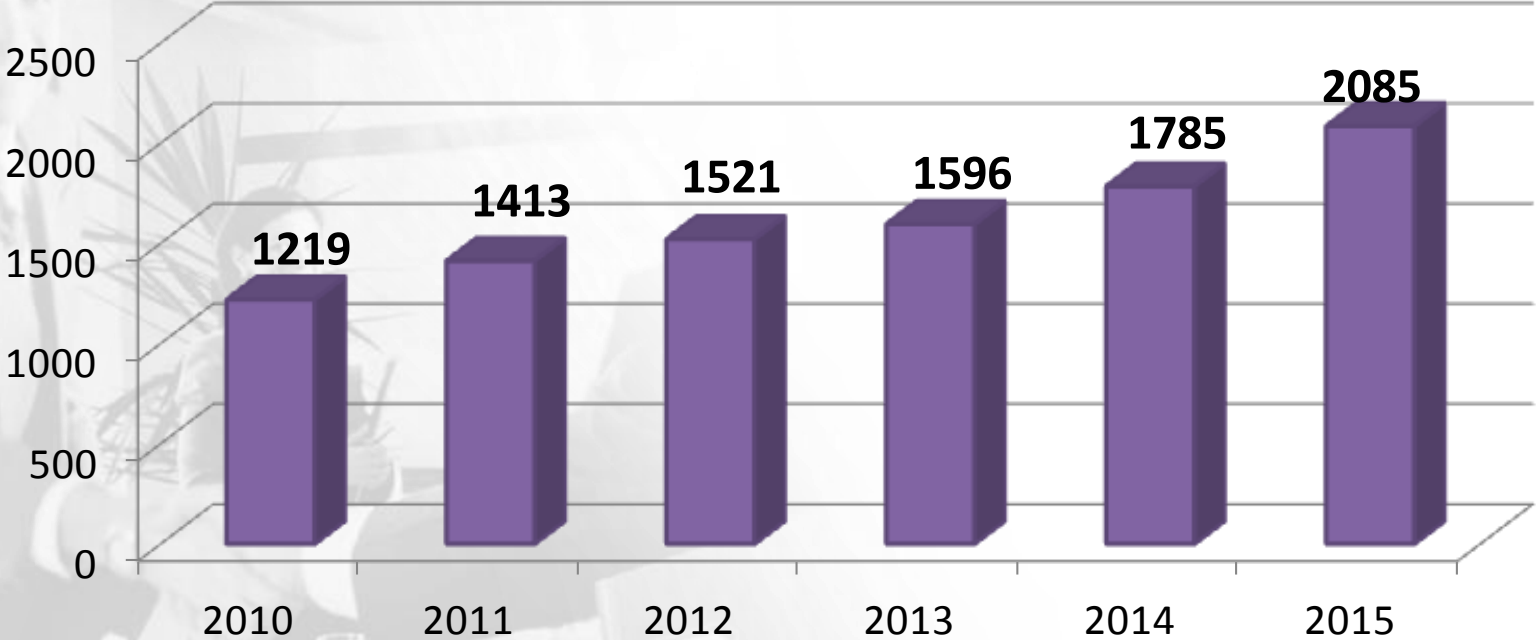
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**National Total Amount in Dispute**  
(in billions of RMB, by year)



# Overview of Arbitration in Mainland China

## Annual Caseload of Foreign-Related Arbitration



## □ What does “foreign-related” mean under Chinese law?

A dispute will be treated as “foreign-related” if **at least one** of the following three criteria is satisfied:

1. at least one of the parties is “foreign”
2. the subject matter of the contract is outside of China
3. there are other, legally relevant facts as to the occurrence, modification or termination of civil rights and obligations which occurred outside of China

## □ What are the crucial differences between domestic arbitration and foreign-related arbitration?

1. Different legal basis for setting aside an award
2. Different legal basis for non-enforcement of an award
3. Different procedural flexibility in some arbitration rules
  - In foreign-related cases, parties can choose an arbitrator from outside the BAC panel
  - Furthermore, should a Med-Arb process (with the consent of parties as prerequisite) prove unsuccessful, parties are allowed to change arbitrators midway through.



# Overview of Arbitration in Mainland China

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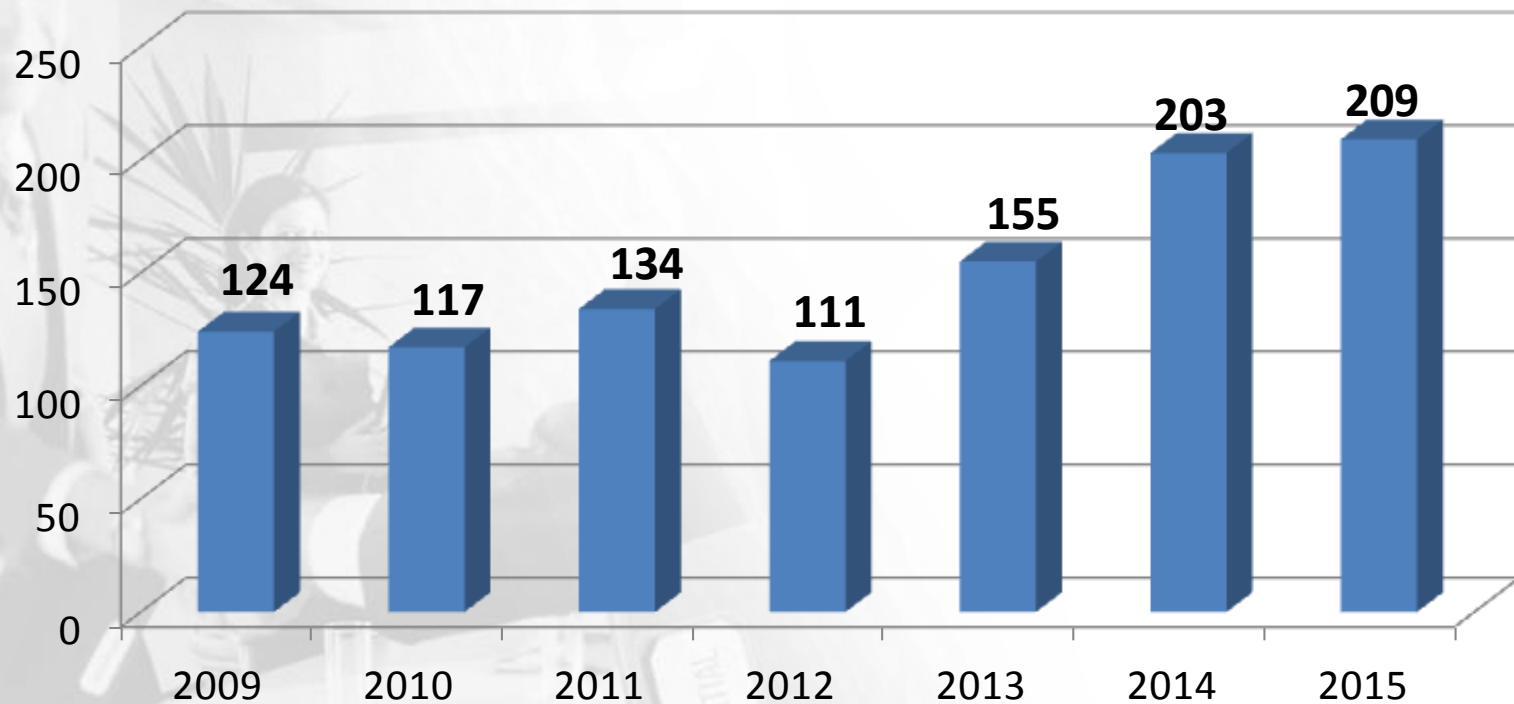
## □ Why should a foreign professional know about domestic arbitration in China?

1. Disputes between two foreign investment entities (FIEs) are treated as domestic arbitration
2. Foreign attorneys could represent the domestic case independently or jointly with any local law firm
3. A foreign arbitrator could be appointed as a member of the tribunal in a domestic case

# Statistical Analysis on Judicial Supervision over Arbitration

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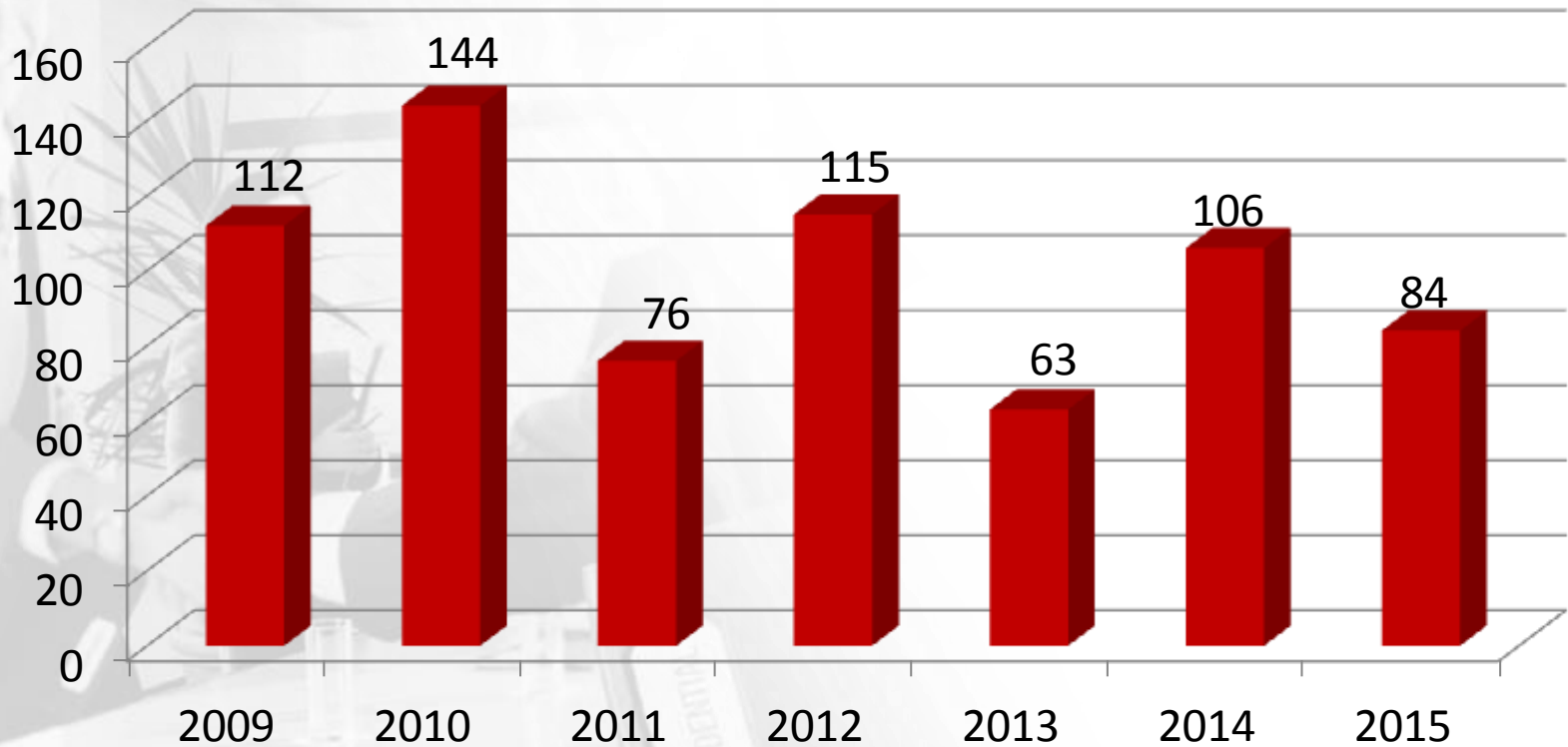
## National statistics on awards set aside



# Statistical Analysis on Judicial Supervision over Arbitration

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## National statistics on the non-enforcement of awards



# Statistical Analysis on Judicial Supervision over Arbitration



\* Source: the statistics regarding the non-enforcement of foreign or foreign-related awards are from *Guide on Foreign-related Commercial and Maritime Trial* (涉外商事海事审判指导, 2001-2014), published by the Forth Civil Tribunal of SPC and China Judgments Online (中国裁判文书网).

# Statistical Analysis on Judicial Supervision over Arbitration

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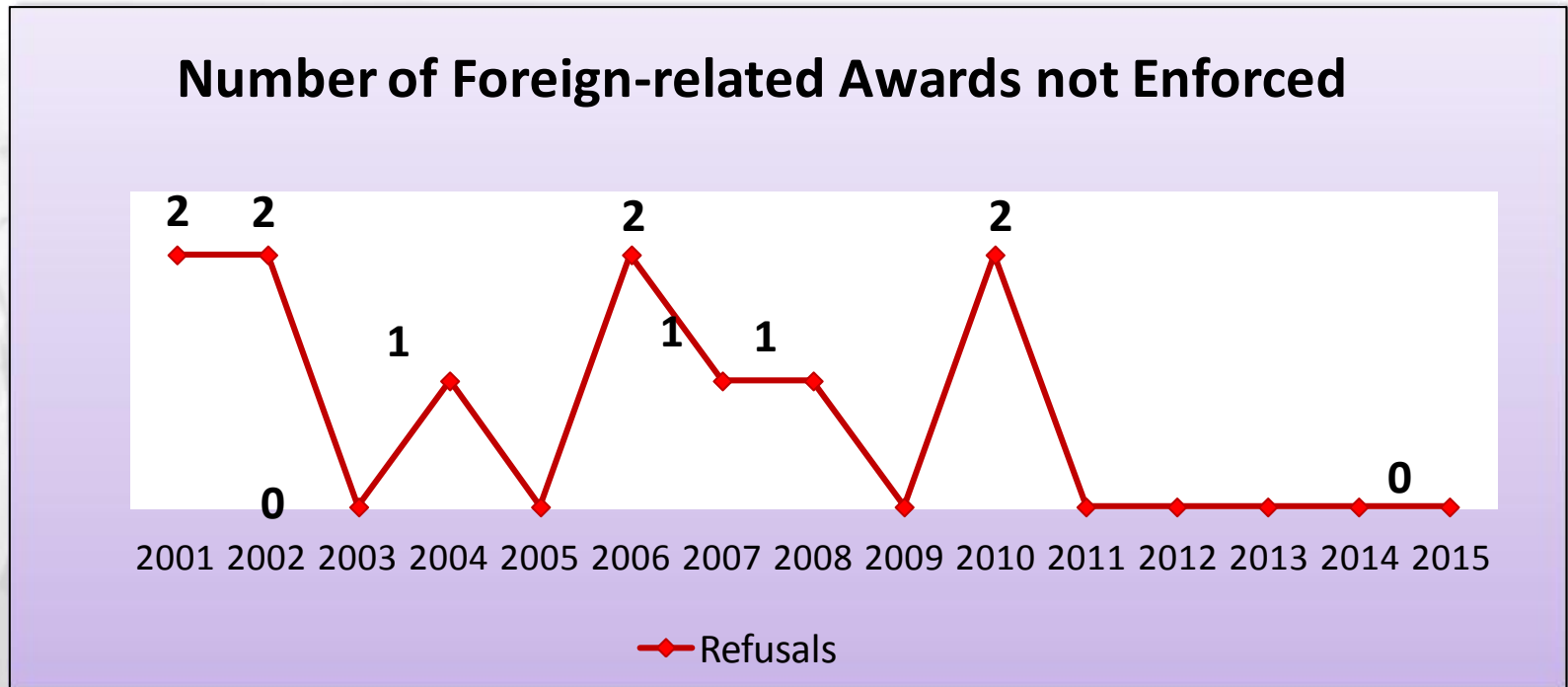
## Grounds for the Non-enforcement of Foreign Awards

Grounds	Number of cases involved	Percentage of total refusals
1. Lack of valid arbitration agreement	12	37.5%
2. Lack of civil capacity of a party	0	0%
3. Lack of due process	5	15.6%
4. Excess of the arbitration scope	3	9.4%
5. Irregularity in the arbitration proceedings	10	31.3%
6. Lack of arbitrability	1	3.1%
7. Contrary to public policy	1	3.1%
8. Expiration of applicable time limits	3	9.4%

\* 3 cases have cited 2 grounds for non-enforcement.

# Statistical Analysis on Judicial Supervision over Arbitration

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# Statistical Analysis on Judicial Supervision over Arbitration

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## Grounds for the Non-enforcement of Foreign-related Awards

Grounds	Number of cases involved	Percentage of total refusals
1. No valid arbitration agreement	4	33.3%
2. Lack of due process	1	8.3%
3. Irregularity in the arbitration proceedings	3	25%
4. Excess of the arbitration scope	3	25%
5. Lack of arbitrability	0	0
6. Contrary to social and public interest	1	8.3%

# Relevant Statistics on the BAC

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## BAC Profile

Year of establishment

1995

Total caseload

26,991

International caseload

633

Total amount in dispute

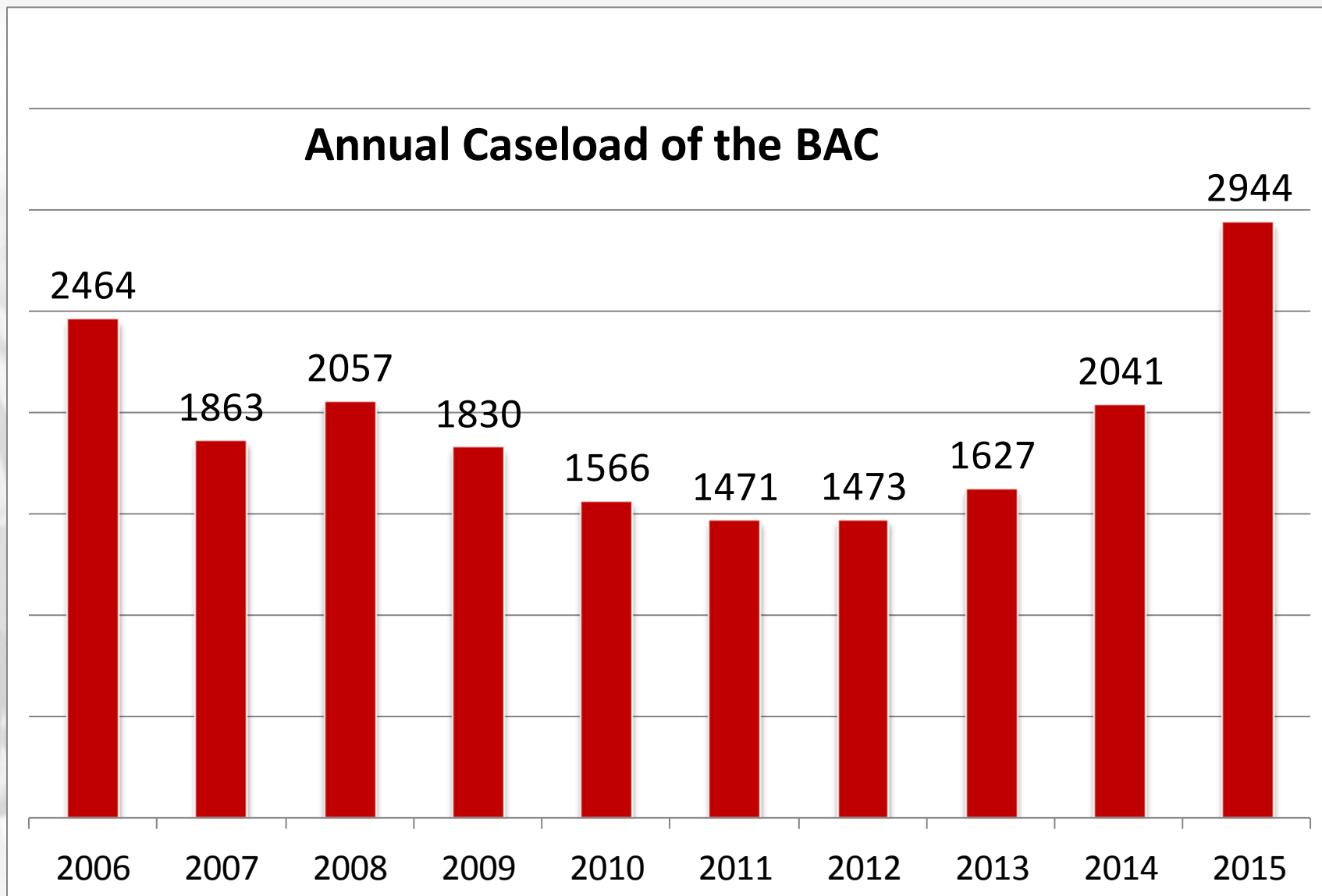
163.58 billion RMB

As of the end of 2015



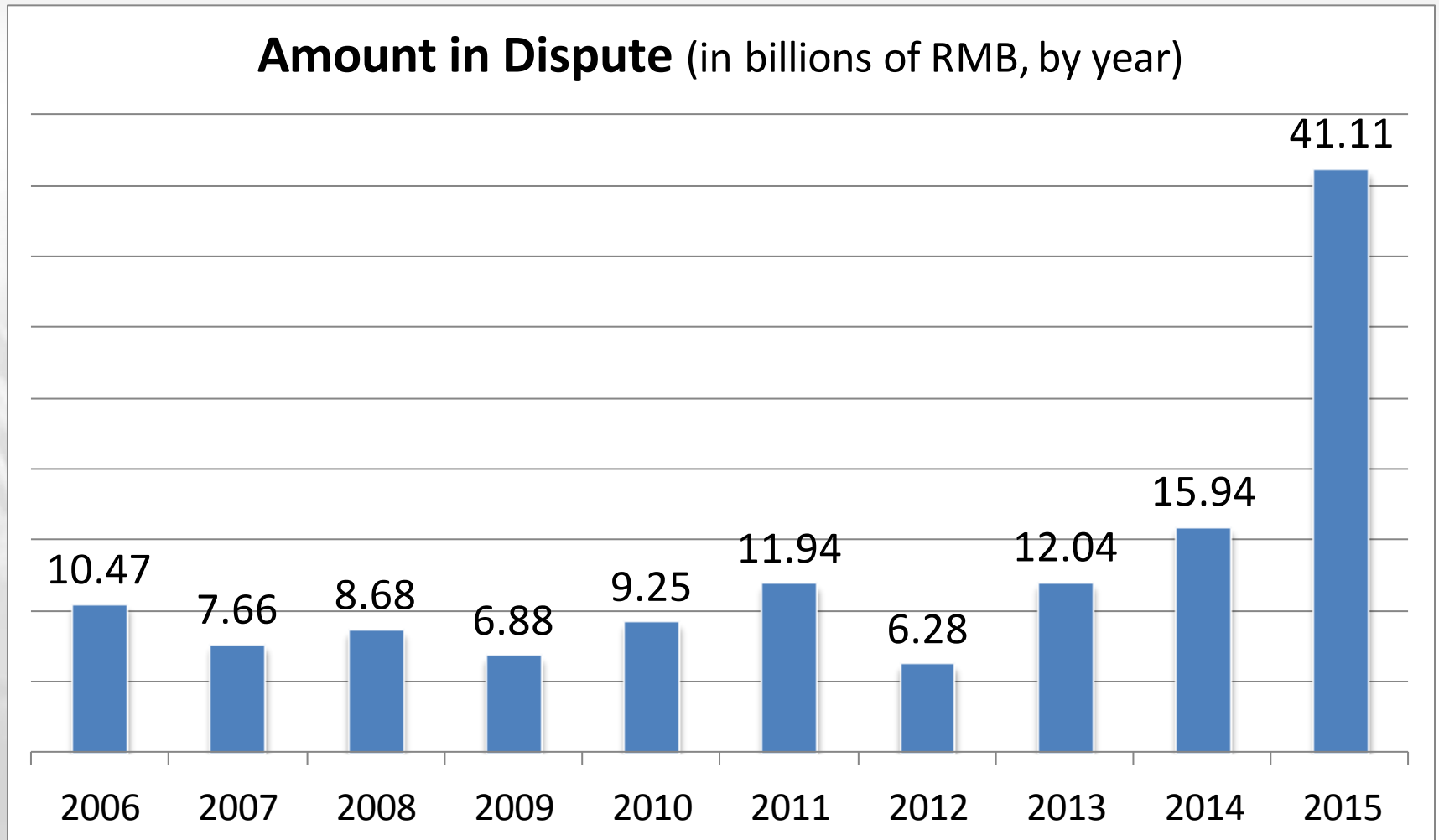
# Relevant Statistics on the BAC

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# Relevant Statistics on the BAC

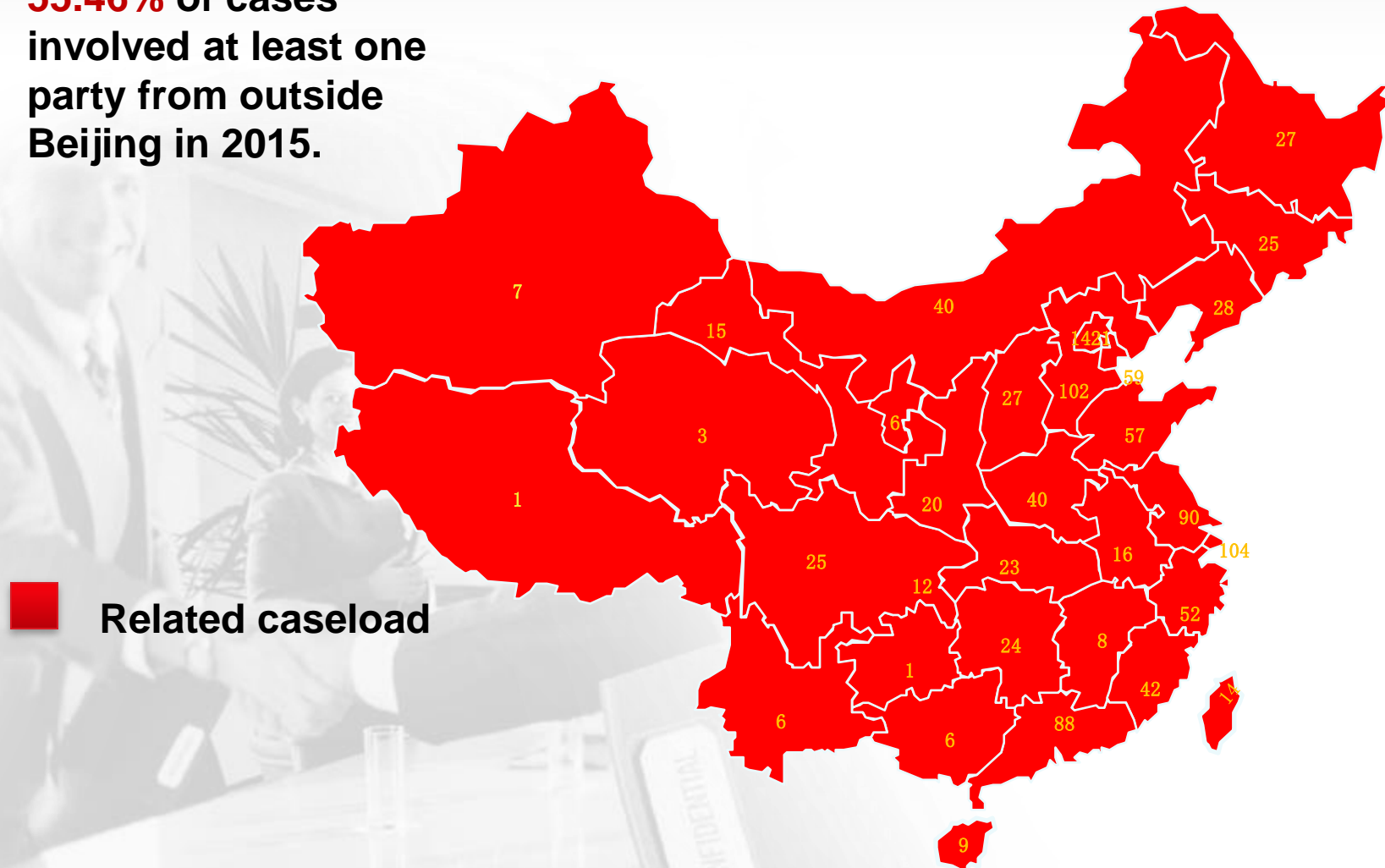
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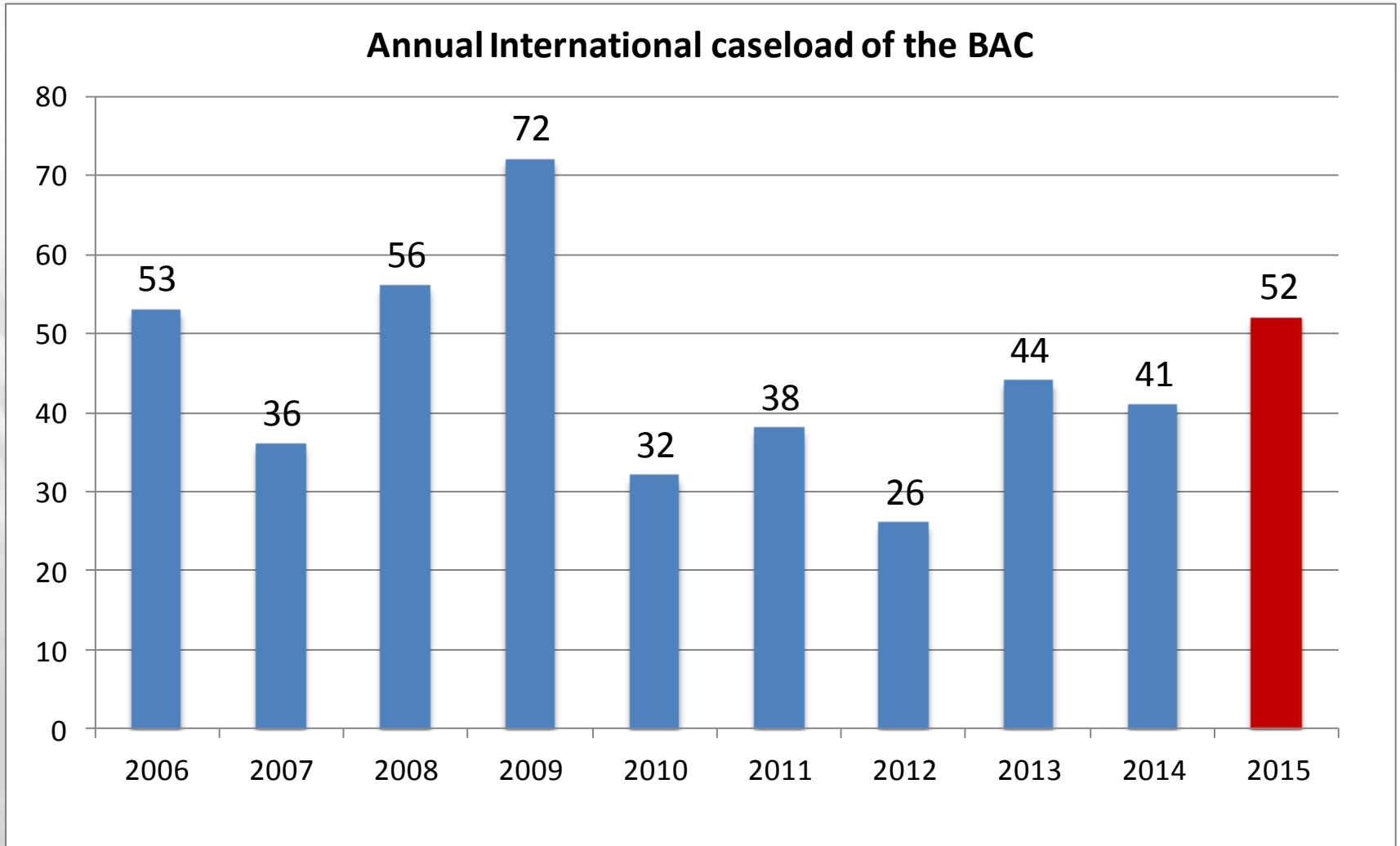
# Relevant Statistics on the BAC

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**55.46%** of cases involved at least one party from outside Beijing in 2015.



# Relevant Statistics on the BAC



# Significant Changes in the BAC's New Arbitration Rules 2015

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## □ To better enhance BAC's international image:

1. BAC now has an alternate title: "Beijing International Arbitration Center".
2. Where an arbitration agreement provides for arbitration by the Beijing International Arbitration Center, the parties shall be deemed to have agreed that arbitration shall be administered by the BAC.

# Significant Changes in the BAC's New Arbitration Rules 2015

BAC

## □ To better meet the expectations of international users:

- a. Seat of arbitration: if parties have not agreed upon a seat of arbitration, the BAC may make the determination by taking into account the circumstances of the case and choose any jurisdiction, including one outside of China.
- b. Language of arbitration: if parties cannot agree on the language of arbitration, the BAC may, in appropriate circumstances, designate a language other than Chinese.
- c. Applicable law: In the absence of an agreed choice of law, the Arbitral Tribunal may determine the applicable law according to the specific circumstances of the case. The arbitral tribunal may decide *ex aequo et bono* or as *amiable compositeur* if the parties have expressly authorized it to do so.

# Significant Changes in the BAC's New Arbitration Rules 2015

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## □ To better meet the expectations of international users:

- d. Interim measures: where PRC law does not apply, tribunals may have power to grant interim measures.
- e. Emergency arbitrator: any party, who intends to apply for interim measure during the period between the acceptance of a case and the constitution of the tribunal, may apply for an emergency tribunal.
- f. Calculation method of arbitrator's fees: arbitral tribunal's fees may be calculated separately with the administrative fees and could be based on hourly rates or sum in dispute.

# Significant Changes in the BAC's New Arbitration Rules 2015

BAC

## □ To better meet the needs of handling complex disputes:

- a. Claims between multiple parties: any party can make claims against any other party in arbitrations with multiple parties.
- b. Joinder of additional parties: a party may apply to join an additional party to the arbitration at any stage before the constitution of arbitral tribunal.
- c. Consolidation: a mechanism for parallel proceedings to be consolidated into a single arbitration.



# Conclusions

- ❑ The growing number of arbitration cases and amounts in dispute reflected in the statistics point to a clear increasing demand for arbitration in mainland China.
- ❑ The Chinese judiciary has assumed a highly supportive position on arbitration and created an arbitration-friendly environment.

# Conclusions

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- With the revision of Arbitration Rules, top Chinese arbitration institutions such as BAC will further improve their ability to provide dispute resolution services that meet and surpass international standards.



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# Thank you!

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