

## 前 言

刚刚过去的 2019 年，世界经济持续下行。我国商事争议解决行业则呈现增长性与复杂化等特点。无论是多元争议解决本身，还是建设工程、房地产、能源、国际贸易、投资、金融、知识产权、影视娱乐、民用航空、体育等专业领域，在法治建设和纠纷处理等方面都不乏热点和亮点。

在商事仲裁领域，行政监管部门及司法监督机构采取诸多有力措施，促进我国仲裁行业发展。例如，中共中央办公厅、国务院办公厅颁布《关于完善仲裁制度提高仲裁公信力的若干意见》，作为中央层面首次专门出台的仲裁行业指导性文件，其对于规范我国仲裁行业发展具有重大历史意义。又如，最高人民法院与香港特别行政区律政司签署《关于内地与香港特别行政区法院就仲裁程序相互协助保全的安排》，进一步建构和拓宽了两地在仲裁裁决执行、仲裁程序司法协助等方面的合作机制及空间。除外部助力之外，仲裁行业内部也不断改革创新。例如，北京仲裁委员会 / 北京国际仲裁中心（以下简称北仲）公布新的《北京仲裁委员会案件收费标准》，将仲裁费区分为仲裁员报酬和机构费用，开国内实践之先河，在推动我国仲裁国际化发展、促进仲裁员职业化等方面意义重大。

在另一重要多元化争议解决机制的调解领域，中国政府签署了《联合国关于调解所产生的国际和解协议公约》，这有利于推动我国调解行业与国际接轨，跃入新的发展阶段。

在各专业领域，行业的发展和监管日益精细化对于争议解决都产生了深远的影响。例如，在建设工程领域，《中华人民共和国建筑法》《政府投资条例》《保障农民工工资支付条例》等法律法规的修改或颁布，进一步明晰了相关市场主体的责任。《最高人民法院关于审理行政协议案件若干问题的规定》有关 PPP 合同可仲裁性的规定，对相关争议解决产生了重大影响。在房地产领域，围绕着中央提出的“房住不炒”的要求，一系列调控措施有序展开，为争议解决带来新的问题和挑战。在能源领域，一系列法规及政策的出台，促进了能源行业的公开化、多元

化及市场化。在投资领域，以《中华人民共和国外商投资法》为基础的新的外商投资法律体系得以构建，《全国法院民商事审判工作会议纪要》则对投资领域诸多热点争议问题的处理作了进一步界定。在国际贸易领域，中美第一阶段经贸协议的签订对国际贸易开展及相关争议解决将产生深刻影响。在金融领域，《全国法院民商事审判工作会议纪要》对包括票据贴现、越权担保、独立保函在内的诸多热点问题的裁判思路进行了统一，有利于提高市场预期性。在知识产权领域，《中华人民共和国商标法》《中华人民共和国反不正当竞争法》《中华人民共和国电子商务法》等重要法律的修订或出台，无疑是加强知识产权保护的重要举措。在影视娱乐领域，仍然处于深度调整期的行业争议不断，监管力度的加强将切实推进行业的调整和升级。在民用航空领域，无人机和通用航空产业法律体系的构建以及监管探索推进，将有利于促进整个行业有序发展。此外，随着2022年北京冬奥会的临近及引发广泛讨论的体育案件的发生，体育争议解决也成为行业前沿热点。

围绕前述专业领域，北仲组织行业资深实务人士，从年度行业概览、重点法规政策、典型案例分析、热点问题观察和行业来年展望等方面进行系统梳理和解读，汇编形成《中国商事争议解决年度观察（2020）》（以下简称《2020年度观察》）。“年度观察”项目自2013年启动，如今已是第八个年头。较之往年体例，《2020年度观察》最大的变化，便是增加了《中国体育争议解决年度观察（2020）》一章，并开创性地邀请中外作者联合撰稿，对我国目前现有的涉及体育的重要法律、法规、规范性文件进行了全面的梳理和分析，深入解读了孙杨案等热点案件，相信会对希望了解中国体育争议解决最新发展的读者朋友有所裨益。

我们希望，《2020年度观察》可以成为争议解决从业者系统了解行业动态、把握行业脉络的“钥匙”。“年度观察”项目力图通过对各专业领域商事争议解决的重要规范、典型案例、前沿热点的客观分析和专业解读，向从业者呈现系统的行业专业知识和裁判思路。

我们希望，《2020年度观察》可以成为商事企业防范法律风险、应对争议解决的“指针”。北仲通过招标遴选，确定“年度观察”项目撰稿人，并通过多层级的审稿机制，确保了报告内容的严谨性和专业性。“每年一度”对于商事争议解决发展动向的持续观察和梳理，致力于为企业识别法律风险、应对纠纷提供必要指引。

我们希望，《2020年度观察》可以成为境外主体了解我国商事争议解决现状及发展成果的“窗口”。“年度观察”项目以中文和英文两个版本发行和发布。在过去的连续几年中，英文版的“年度观察”和海外发布会，为境外主体了解中国

商事争议解决现状及发展提供了绝佳的机会。通过北仲搭建的专业平台，中外专业人士可以实现深度交流，助力我国争议解决行业国际化。

另有必要说明的是，席卷全球的新型冠状病毒肺炎疫情对世界经济发展造成了极大冲击，对于商事争议解决行业也将产生深刻影响。《2020 年度观察》若干篇目对于疫情所催生的法律问题及行业挑战进行了必要分析。因其影响未在 2019 年度得以完全展现，故对此的观察，我们还会在后续系列中跟进。

最后，“年度观察”项目一路走来，离不开各位行业专家和广大读者的支持，对于每一位关注和助力“年度观察”项目的朋友，我们均致以诚挚的感谢！编委会期待能够继续和业界同仁一道，推动“年度观察”项目不断进步，对中国商事争议解决行业发展有所裨益。

《中国商事争议解决年度观察》编委会

2020 年 4 月

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## Preface

In 2019, the world economic slowdowns already under way reflected common influence across the countries. The cyclical and structural slowdowns in China have fueled disputes in the market place and thus created a rising number in the statistics of commercial dispute resolution in China. Many developments in the field of arbitration and mediation mark the milestones of building the rule-based practice. Some of these developments have already brought positive effects in the dispute resolution industry amid the slowing down economy. To present an insightful understanding of the developments of commercial dispute resolution in China, the Beijing Arbitration Commission/Beijing International Arbitration Center (hereinafter referred to as the “BAC/BIAC”) continually invites experts to author 12 chapters of this book, namely, the chapters on commercial arbitration, commercial mediation, construction, real estate, energy, international trade, investment, finance, intellectual property, civil aviation, entertainment, and sports.

In the chapter on commercial arbitration, the authors believe many efforts in the regulatory and judicial directions have further promoted China as a viable choice of arbitration seat. In the direction of regulation, the *Several Opinions on Improving the Arbitration System to Strengthen the Creditability of Arbitration* issued by the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council, as the first central-level government’s policy for arbitration, has laid out an ambitious plan for the vigorous and competitive arbitration industry in China. In the direction of judicial policy, the Supreme People’s Court and the Hong Kong Special Administrative Region Department of Justice signed the *Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region*, as a symbolic cooperation between the mainland courts and courts in Hong Kong SAR, has bridged the gap in mechanisms of enforcing the interim measures resulting from the arbitration in the region. Breakthroughs in practice has also been recorded in 2019. For example, the BAC/BIAC has adopted its new arbitration rules which introduce a long-expected reform in the framework of arbitration fees. The transparency and the fee’s redistribution of the BAC/BIAC’s new rules are not only praised by the Chinese practitioners, but also regarded as a breakthrough of the internationalization of Chinese

arbitration industry and a guarantee of process of cultivating the professionalism among the Chinese arbitrators.

In the chapter on commercial mediation, the authors predict that the signing of the *United Nations Convention on International Settlement Agreements Resulting from Mediation* may align the mediation theories and practice in China to the international counterparts and safeguard the healthy development of commercial mediation in China.

The impact of economic slowing down also projects profound changes in each different specialized sector. More detailed and targeted legislation and regulations have emerged in 2019 as the response to the changing climate of business environment. In the chapter on construction, numerous legislations and regulations have been referred to. The *Construction Law of the People's Republic of China*, the *Regulation on Government Investment and the Regulation on Ensuring Wage Payment to Migrant Workers*, and other laws and regulations have been revised, reflecting the liability rearrangement among the relevant parties. The arbitrability of a PPP contract provided in the *Provisions on Several Issues Concerning the Trial of Administrative Agreement Cases* touched on the controversial matters in the dispute resolution of PPP contracts, triggering even more controversial arguments. In the chapter on real estate, a series of regulation and policies were recorded as the response to the Central Government's call for "Fang Zhu Bu Chao" (meaning, cooling down the real estate market). Rising disputes in this sector have already brought challenges to the industry. In the chapter on energy, the authors compliment the regulative efforts and progress to promote open-up of market and fair competition and to safeguard the role of the market force. In the chapter on investment, the authors observe an emerging mindset of a new framework of regulating foreign investment, which has been promoted by the *Law of the People's Republic of China on Foreign Investment*. Concurrently, the *Minutes of the National Conference for the Work of Courts in the Trial of Civil and Commercial Cases* makes clarification in some long-debated issues of dispute resolution. In the chapter on international trade, the signing of the phase I of Sino-US trade agreements will have a profound impact on the development of international trade and the settlement of related disputes, thus being recorded by the authors. In the chapter on finance, the authors brief the *Minutes of the National Conference for the Work of Courts in the Trial of Civil and Commercial Cases* and look into various matters including bill discount, guarantees beyond authority, and independent guarantee. In the chapter on intellectual property, the authors highlighted the revision of the *Trademark Law of the People's Republic of China*, the *Law of the People's Republic of China against Unfair Competition*, the *Law of the People's Republic of China on E-commerce*, and other important legislations and pointed out the significance of these developments. In the chapter on entertainment, the authors explain

the regulatory measures and predict the upgrade and adjustments in the future as many unresolved disputes have projected the ongoing changes of balance of the entertainment industry. In the chapter on civil aviation, the authors highlight the development of UAV sectors and the reframing of the legislation in the general aviation, which has been regarded as the guarantee of future prosperity of the industry. In addition, as the 2022 Beijing Olympic Winter Games are approaching, the authors comment on many disputed cases in the sport industry.

In this book, experts from the front line gathered together and wrote each chapter as the reflection of their first-hand experience on the overview, updates of legislation and regulation, case studies, debated issues, and outlook of the industries. It is the eighth edition of the *Annual Review and Preview of the Commercial Dispute Resolution in China*. In this edition, for the first time, experts from in-and-out China co-authored one of the chapters, ie., the chapter on sport, which is a new creation of this book. The authors of this new chapter examine the Chinese legislation, regulation, and cases in the field of sport from different perspectives. For example, the athlete Yang Sun's arbitration case has been debriefed and may help readers gain the pulse of the dispute resolution of sport in China.

In general, the book presents to all stakeholders a reference of the commercial dispute resolution in China and unlocks intricacies of each different sectors. This book endeavors to record the development of rules, leading cases, and the pulse of the field. By reading this book, practitioners will understand what to look for when solving commercial disputes in China.

It is our sincere hope that this book will become a guide for the marketplace, helping different entities manage their commercial risks and disputes. BAC/BIAC's team invited authors' bids and conducted multi-layers review of the content for this book and will do the same in the future publication of this series. We spare no efforts to present the annual edition as an important reference and useful guide for readers who are keen to take a closer look at the commercial dispute resolution in China.

In return, we would like to invite all readers to share the information in this book and in other editions of this series, and to make it a platform for the knowledge exchange between Chinese practitioners and international counterparts. Towards this end, on one hand, we publish this book in both Chinese and English, in collaboration with the Chinese and English publishers, namely the China Legal Publishing House and Wolters Kluwer. On the other hand, the concurrent event, namely the Annual Summit of the Commercial Dispute Resolution in China, has been and will be continually organized in different cities around the globe. It is BAC/BIAC's mission to promote internationalization of Chinese theories and

practice on the commercial dispute resolution. We have been doing and will continue to exert all efforts to unite practitioners from different jurisdictions to help us achieve this mission.

Last but not least, BAC/BIAC notices the COVID – 19 pandemic has brought great uncertainties to the commercial field and its dispute resolution practice. Many constructive thoughts have been expressed in some chapters of this book, addressing issues amid the pandemic. Both BAC/BIAC and the authors keep eyes on the development of this pandemic and propose Chinese wisdom to overcome the uncertainties.

We sincerely thank all the authors, readers, and publishers to endorse our effort in the series publication of the *Annual Review and Preview of Commercial Dispute Resolution in China*. We welcome your continued support in the future and firmly believe in the brighter future of an open – minded, inclusive, and diversified commercial dispute resolution in China.

BAC/BIAC Editorial Committee



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