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The Chinese Experience of Institutional Arbitration

Hongsong Wang*

✉ Arbitrators; China; Commercial arbitration; International commercial arbitration

1. The unique role of institutional arbitration under the Chinese arbitration regime

The Arbitration Law of the People's Republic of China was enacted on August 31, 1994. The Arbitration Law adopts most of the common practices of international arbitration, such as establishing party autonomy as a basic principle of arbitration, holding the hearing in private, and making the arbitration award final and binding. However, the Chinese arbitration régime still maintains several unique characteristics, one of which is that only institutional arbitration is recognised and ad hoc arbitration is temporarily not allowed. The reasoning underlying this régime is that arbitration is a new legal system transplanted into China without much public recognition. The legislature was concerned that permitting ad hoc arbitration at this stage could probably diminish the quality of arbitration service and undermine public trust in arbitration.

Since 1995, more than 200 arbitration institutions have been established in China, all of which can accept both domestic and international commercial arbitration cases. As shown in the table below, these arbitration institutions have been developing at a rapid pace, and their caseload has risen steeply in recent years.

Caseload growth: 2000–2008

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total cases	8,928	11,380	17,261	28,098	36,418	47,314	60,844	61,016	65,074

During the process of tackling the problems and challenges exposed in China's social background, China's arbitration institutions have had many valuable experiences. A summary of these experiences will provide the international arbitration community with a better understanding of China's international arbitration practice, and could even provide some inspiration for arbitration institutions outside China to better improve their services.

* Secretary-General of Beijing Arbitration Commission. This article was first delivered as a paper at a conference on international dispute resolution held at Trinity Hall, Cambridge on March 19, 2010 and sponsored by the Chartered Institute of Arbitrators, London Branch and SICA-FICA.

2. A typical case study from China's arbitration institutions: The Beijing Arbitration Commission

A good approach to observing China's arbitration institutions and discussing their experience is to look at several case studies from typical organisations. The Beijing Arbitration Commission (BAC) is a good case for this purpose. In China, the BAC's development is considered a model for arbitration development.

In 1995, the BAC accepted seven cases representing a total disputed amount of RMB 44 million. In 2008, the BAC accepted 2,057 cases representing a total disputed amount of RMB 8.67 billion. Typically, each year's case acceptance rate and total disputed amount increase by more than 10 per cent. It took the BAC only three years after its establishment to become completely self-funded and therefore totally independent from government or other organisations.

In recent years, there has been a significant increase in the number of foreign parties utilising the services of the BAC. Since its inception, the BAC has handled 387 international cases, 259 of which have been handled since 2005.

3. The main lessons to be drawn from BAC practices

(1) Core mechanisms that encourage independence and impartiality

Independence and impartiality are the first and foremost characteristics that a dispute resolution service provider must possess. To ensure the organisation's independence and fairness, the BAC has implemented several special regulations. First, the Chair and staff members shall not be arbitrators. Vice-Chairs and Commissioners can only be arbitrators if appointed by both parties. This practice ensures transparency and fairness in the hiring and management of arbitrators. Secondly, the BAC's arbitrators cannot act as legal representatives in other cases before the BAC. Such restriction inevitably leads to the losses of substantial numbers of cases. However, as BAC prioritises independence and fairness as its fundamental values, such losses are a necessary evil. Thirdly, arbitrators who do not agree or refuse to sign the arbitral award must submit their dissenting opinions to both parties along with the arbitral award. This device is to increase the transparency of the arbitration proceedings and to enhance the credibility of the awards.

(2) Measures that improve the efficiency of arbitration

As everyone knows, justice delayed is justice denied. Therefore, efficiency is another key goal of arbitration users. To avoid inefficiency and delay in handling cases, the BAC has specially formulated the "Selected provisions pertaining to strengthening control over arbitration hearing duration" to strengthen control over the time management of the arbitration process, since 2002. In 2003, the BAC revised the "Selected provisions", clearly stipulating the time limits on hearing cases and rendering of arbitral awards and requiring each stage of the process to proceed as scheduled so as to ensure the efficient and smooth progress of the entire proceedings.

The BAC also took several innovative technical measures to improve the efficiency of arbitration. First of all, the BAC has developed and designed a case-management system to monitor the whole process of arbitration cases. The case-management system also has other functions, such as booking arbitration rooms, automatically calculating the arbitration fees and searching the arbitrators' information. With the help of this system, the BAC case managers could easily handle every aspect of the case management with high efficiency. Secondly, the BAC has developed an online office for arbitrators so as to improve the efficiency of information exchange and communication among members of arbitral tribunals and the case managers. For example, the arbitrators could mark the dates that they are available in the calendar so that the case manager could easily find a hearing date that is suitable for every member of the arbitral tribunal. Thirdly, the BAC gives the arbitrating parties access to an information inquiry system, which includes information about arbitrators such as educational background, experience, the number of cases they have heard, and the record of delay in the past. This information effectively helps the parties to choose the right arbitrators to handle cases in a highly efficient way.

(3) Raising selection standards to increase the quality of arbitrators

Considering that arbitration is only as good as the arbitrator, the BAC has constantly raised the standards for its arbitrators while emphasising impartiality and independence. Arbitrators must meet a number of requirements set out in the "Administrative Measures for the Engagement of Arbitrators of the BAC". This includes that an arbitrator must have eight years of experience working in the legal or commercial field, with an abundance of experience in arbitration; arbitrators must be of good character, honest, conscientious and diligent and act in good faith. In addition, they must be able to hold and manage a case effectively and efficiently.

Among BAC arbitrators, 36 per cent hold doctorates, 39 per cent hold masters degrees, and 25 per cent hold bachelors' degrees. The arbitrators come from a wide range of occupations and regions throughout the world. In terms of profession, 24 per cent are attorneys (14.8 per cent are Chinese attorneys and 9.2 per cent are foreign attorneys), 26 per cent are scholars in law and economics, 31 per cent are experts in economy and trade (14.4 per cent are corporate legal personnel and 16.6 per cent are accountants, engineers and other professionals), and 13 per cent are professionals in government administrative agencies. In terms of location, 293 arbitrators are from the Chinese mainland, 18 from Hong Kong or Taiwan, and 60 from foreign countries (29 from Europe, 15 from Asia, 13 from America and 3 from the Pacific Islands).

The BAC provides each arbitrator with opportunities to handle cases whenever possible and evaluates arbitrators based on their performance in handling cases. From 2002 to 2008, arbitrators handling cases accounted for about 70 per cent of the total number of arbitrators. The BAC currently has 371 arbitrators, and the standards for engagement of arbitrators have been continuously improved. The Commission does not renew engagement contracts of those whose evaluations are

unsatisfactory. In the 14 years since its establishment, the BAC has reviewed the contracts of arbitrators five times. The BAC has engaged a total of 679 arbitrators, 308 of whom did not have their contracts renewed.

4. Conclusion

Over the past years, the BAC is proud of its independence and efficiency and its stringent selection standards of qualified arbitrators. There has been a continuous effort towards innovation and development to better fulfil the duties of the institution. The BAC is a pioneer in the scenario of Chinese modern commercial arbitrations. Its rules serve as a model toward other arbitration institutions in China, and its achievements deserve further appraisal from the international arbitration community.

Notes for Contributors

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2. The preferred length for articles is around 5,000 words. However, shorter contributions will be welcomed and longer articles may be considered for publication.
3. Submission of articles will be held to imply that they contain original unpublished work and are not being submitted for publication elsewhere. No liability is accepted for loss or damage to material submitted.
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