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涉外仲裁

新仲裁法实施在即：涉外仲裁实践的重点解读

Key Implications of the New Arbitration Law for the Practice of Cross-Border Arbitration in China

2025 年 9 月，全国人大常委会通过新修订的《中华人民共和国仲裁法》（下称“新《仲裁法》”），自 2026 年 3 月 1 日起施行。本次修订是仲裁法自实施三十年来最为全面和系统的一次修订，在仲裁机构开放、仲裁地与临时仲裁制度、程序数字化以及投资仲裁等多方面均予以完善，标志着中国仲裁制度在国际化与法治化进程中迈出关键一步。本文将围绕新《仲裁法》的主要修订亮点，结合涉外和跨境争议解决的实务场景，分析其对当事人在中国参与仲裁的影响与应对要点，以期为在华仲裁实践提供参考与指引。

In September 2025, the Standing Committee of the National People's Congress adopted a substantially revised Arbitration Law of the People's Republic of China (the "New Arbitration Law"), which will take effect on 1 March 2026. This amendment constitutes the most comprehensive and systematic revision of the Arbitration Law in its thirty-year history. The revisions address multiple areas - including institutional openness, the seat of arbitration and temporary (ad hoc) arbitration, digitalization of procedures, and investment arbitration - and mark a significant advance in the internationalization and legal modernization of China's arbitration framework. This article reviews the principal amendments under the New Arbitration Law and, drawing on practical considerations in foreign-related and cross-border dispute resolution, analyzes their likely impact on parties and sets out key practical responses for arbitration practice in China.

I. 仲裁制度的国际化与机构开放

Internationalization of the Arbitration System and Institutional Opening

新《仲裁法》进一步明确中国在仲裁领域坚持国际合作和制度开放的政策导向。中国支持国内仲裁机构在境外设立业务机构，并允许境外仲裁机构在自由贸易试验区、海南自由贸易港等区域依法设立业务机构，开展涉外仲裁活动。目前，诸如新加坡国际仲裁中心、国际商会国际仲裁院等多家境外仲裁机构均已开始在中国设立代表处或业务办公室。

The New Arbitration Law reaffirms China's policy orientation toward international cooperation and institutional openness in arbitration. It encourages domestic arbitration

institutions to establish business presences overseas and permits foreign arbitration institutions to lawfully set up operational offices in designated zones such as pilot Free Trade Zones and the Hainan Free Trade Port to carry out foreign-related arbitration activities. Several well-known international institutions - for example, the Singapore International Arbitration Centre (SIAC) and the International Court of Arbitration (ICC) - have already begun establishing representative offices or business desks in China.

此外，中国亦鼓励涉外仲裁当事人选择中国仲裁机构，并约定中国作为仲裁地。这一系列举措显示，中国在全球仲裁体系中的角色正逐渐从“规则接受者”向“规则制定者”转变。伴随着仲裁程序的不断完善和制度保障的持续加强，中国正为境外企业在华选择仲裁提供一个更加可预期、透明且与国际接轨的争议解决环境。

China also encourages parties to foreign-related disputes to choose Chinese arbitration institutions and to designate China as the seat of arbitration. Together, these measures indicate China's evolving role in the global arbitration ecosystem - shifting from a "rule-taker" to a more active "rule-shaper". As procedural rules are refined and institutional safeguards strengthened, China is providing foreign enterprises with a more predictable, transparent, and internationally compatible forum for dispute resolution.

II. 在线仲裁制度落地

Institutionalization of Online Arbitration

新《仲裁法》明确，仲裁活动可以通过信息网络在线进行，并确认线上仲裁与线下仲裁具有同等法律效力。中国多家仲裁机构已建立完善的在线仲裁体系，实现案件立案、送达、庭审及裁决等环节的全流程数字化管理。尤其是对跨境仲裁而言，该制度的确立显著提升了程序效率，在确保程序公正的同时亦有效降低时间与差旅成本。

The New Arbitration Law expressly provides that arbitration may be conducted online via information networks and confirms that online proceedings have the same legal effect as in-person proceedings. Many Chinese arbitration institutions have already built comprehensive online systems enabling end-to-end digital case management - from filing and service to hearings and award issuance. For cross-border arbitration in particular, this recognition significantly improves procedural efficiency while preserving fairness and substantially reducing time and travel costs.

新法同样尊重当事人的程序选择权，在一方明确不同意在线开庭时，仲裁应在线下进行。尤其是在案情复杂、证据众多的情况下，各方应谨慎选择仲裁庭审的方式，以期实现最佳庭审效果。

The law also respects party autonomy regarding procedural mode: if one party expressly objects to an online hearing, the proceedings should be conducted offline. Particularly in complex cases involving extensive evidence, parties should carefully consider whether an in-person hearing is likely to produce the best evidentiary and advocacy outcome.

III. 仲裁协议认定更灵活

Greater Flexibility in the Determination of Arbitration Agreements

在仲裁协议的有效性认定方面，新《仲裁法》增加“默示认可”机制：一方当事人在申请仲裁时主张存在仲裁协议，另一方在首次开庭前不予否认的，经仲裁庭提示并记录，即视为双方之间存在仲裁协议。

The New Arbitration Law introduces a "tacit recognition" mechanism regarding the validity of arbitration agreements: if a claimant alleges the existence of an arbitration agreement when filing for arbitration and the respondent does not deny that allegation prior to the first hearing, the tribunal - after drawing attention to and recording the respondent's silence - may deem that an arbitration agreement exists between the parties.

这一规定在实践中有助于减少程序性争议，避免当事人以仲裁协议形式瑕疵为由阻挠仲裁程序，从而提升仲裁效率与裁决的稳定性。

This provision helps to reduce procedural disputes and prevents parties from derailing arbitration on the basis of formal defects in the arbitration clause, thereby enhancing procedural efficiency and the stability of arbitral awards.

IV. 仲裁前保全机制的强化

Strengthening of Pre-Arbitration Interim Measures

新《仲裁法》明确“仲裁前”保全的可行性，赋予当事人在仲裁立案前即可向法院申请保全的权利，有效防止资产被转移、证据被销毁或重要商业秘密泄露等情形的发生，增强仲裁程序的前置保护功能。

The New Arbitration Law clarifies the availability of pre-arbitration interim measures, enabling parties to apply to the courts for preservation relief before arbitration proceedings are formally instituted. This allows early judicial intervention to prevent asset dissipation, destruction of evidence, or disclosure of trade secrets, thereby strengthening the protective function available prior to arbitration.

同时，新法将“行为保全”纳入可保全的范围，赋予法院根据案件需要，命令当事人停止或履行特定行为，为跨境知识产权、不正当竞争等类型的仲裁案件提供了更加灵活的临时救济手段。例如，当企业在中国市场遭遇商业秘密泄露时，可申请行为保全，请求法院责令侵权方停止使用或披露涉密信息，并采取必要的证据保全措施，从而在仲裁或后续诉讼启动前有效控制风险。

The law also expressly includes "behavior preservation" (orders requiring a party to cease or to perform specific acts) within the scope of preservable measures, giving courts the flexibility to tailor interim relief according to case needs. This is particularly useful in cross-border IP or unfair competition disputes. For example, a company facing trade-secret leakage in the Chinese market may seek a behavior-preservation order requiring the alleged infringer to stop using or disclosing the confidential information and to preserve evidence, thereby containing risk before arbitration or any subsequent litigation commences.

V. 完善程序保障，强化仲裁公信

Enhancing Procedural Safeguards and Strengthening the Credibility of Arbitration

为确保仲裁程序的独立、公正，新《仲裁法》明确仲裁员应履行主动披露义务，及时向仲裁机

构说明可能使当事人“产生合理怀疑的情形”。在本次修订前，中国多家仲裁机构已将披露义务纳入其仲裁规则中，以作为保障仲裁独立性和公正性的基础。

To safeguard the independence and impartiality of arbitration, the New Arbitration Law codifies an arbitrator's duty of disclosure: arbitrators must promptly disclose to the administering institution any circumstances that may give rise to reasonable doubts as to their impartiality. Prior to this revision, many Chinese arbitration institutions had already incorporated disclosure obligations into their arbitration rules as a foundational safeguard for arbitral independence and impartiality.

在仲裁庭组成方面，新法增设由边裁共同选定首裁的程序。即，首席仲裁员除由当事人共同选定以及由当事人共同委托仲裁机构主任制定外，亦可由其各自选定的仲裁员共同选定，在保障当事人的自主权的同时亦兼顾仲裁庭运作的专业性和公正性。

With respect to tribunal composition, the law adds an option whereby the co-arbitrators may jointly appoint the presiding arbitrator - supplementing the existing methods of joint party appointment or appointment by the institution. This approach preserves party autonomy while promoting the tribunal's professional functioning and impartiality.

同时，新《仲裁法》进一步完善了仲裁文件送达制度，明确尊重当事人的意思自治；在没有约定或约定不明时则按照仲裁规则进行送达，以提升程序透明度和操作便利性。

The New Arbitration Law further refines the rules on service of arbitral documents, explicitly respecting party autonomy; where parties have not agreed on service methods or their agreement is unclear, service shall follow the applicable arbitration rules - enhancing procedural transparency and operational convenience.

对于恶意仲裁行为，新法亦作出严格规制：当仲裁庭发现当事人捏造事实或串通仲裁时，应直接驳回其仲裁请求，强化仲裁监督，节约司法资源，为各方提供了更可靠的争议解决环境。

The law also imposes strict measures against abusive arbitration conduct: if a tribunal determines that a party has fabricated facts or colluded in arbitration, it must dismiss the claim. This strengthens oversight, conserves judicial and arbitral resources, and promotes a more reliable dispute-resolution environment.

VI. 撤销裁决期限的统一

Unified Time Limit for Applications to Set Aside Awards

新《仲裁法》将当事人申请撤销仲裁裁决的期限统一缩短为自收到裁决书之日起三个月，无论国内案件还是涉外案件均适用。期限的统一和缩短，有助于当事人更清晰地把握司法救济时限，降低程序不确定性。

The New Arbitration Law shortens and standardizes the time limit for parties to apply for the setting aside of an arbitral award to three months from the date of receipt of the award, applying to both domestic and foreign-related cases. This uniform and shortened period helps parties better understand the timeframe for judicial remedies and reduces procedural uncertainty.

在参与中国仲裁案件时，应在收到裁决书后立即评估裁决是否存在撤销事由，并在三个月期限内作出是否提起撤销申请的决定，避免因错过期限而失去司法救济机会。

Parties involved in arbitrations seated in China should promptly assess, upon receipt of an award, whether grounds for annulment exist and decide within the three-month period whether to initiate a setting-aside application, lest they forfeit their opportunity for judicial relief.

VII. 仲裁地制度的确立：与国际规则全面接轨

Formal Adoption of the “Seat of Arbitration” Doctrine: Alignment with International Practice

“仲裁地”是国际仲裁普遍采用的核心制度，仲裁地是指仲裁裁决作出的地点，决定仲裁裁决的国籍问题。新法首次引入“仲裁地”概念，规定当事人可以书面约定仲裁地。除非当事人另有约定，仲裁程序的适用法、司法管辖法院的确定，均以仲裁地为依据。在仲裁裁决作出后，只有仲裁地法院有权撤销仲裁裁决。

The "seat of arbitration" is a fundamental concept widely adopted in international arbitration. It refers to the place where the arbitral award is made and determines the procedural law applicable to the arbitration (*lex arbitri*) as well as the courts having supervisory jurisdiction. The New Arbitration Law introduces the concept of the seat of arbitration for the first time, providing that parties may designate the seat by written agreement. Unless otherwise agreed by the parties, the procedural law governing the arbitration and the courts with jurisdiction shall be determined by the seat. Once an award is rendered, only the courts at the seat have the authority to set it aside.

涉外合同当事人可以根据商业安排、争议性质等因素，事先选择具备成熟仲裁和司法体系的地区作为仲裁地，以享有更稳定和透明的程序保障。

Parties to foreign-related contracts should consider, based on commercial arrangements and the nature of potential disputes, selecting a seat that has a mature arbitral and judicial system in order to secure greater stability and procedural transparency.

VIII. 临时仲裁机制的引入：为当事人提供更灵活的选择

Introduction of Temporary (Ad Hoc) Arbitration: Greater Flexibility for Parties

新《仲裁法》增设“临时仲裁”制度，允许涉外海事纠纷或特定区域内注册企业之间的纠纷，可书面约定以中国为仲裁地，由符合条件的人员组成仲裁庭，按照约定的仲裁规则进行仲裁。仲裁庭组建后三个工作日内，应将相关信息向仲裁协会备案。

The New Arbitration Law establishes a “temporary arbitration” mechanism, under which certain foreign-related maritime disputes or disputes between enterprises registered within designated areas may be submitted to ad hoc arbitration seated in China by written agreement. The tribunal should be constituted by qualified arbitrators and proceed under the parties’ agreed rules, and the tribunal’s formation must be reported to the arbitration association within three working days.

该机制的设立, 为当事人在中国境内解决争议提供更加多元的选择方式: 既可以约定机构仲裁, 选择成熟的管理程序和规则体系; 也可以约定临时仲裁, 更加自主、灵活地处理跨境争议。

This mechanism offers parties a more diverse set of options for resolving disputes in China: they may opt for institutional arbitration to benefit from standardized case management and administrative support, or choose ad hoc arbitration for greater procedural autonomy and flexibility in dealing with cross-border disputes.

IX. 投资仲裁规则纳入立法

Inclusion of Investment Arbitration within the Statutory Framework

新《仲裁法》首次将国际投资仲裁纳入仲裁机构的受案范围, 为中国仲裁机构受理投资者与东道国之间的国际投资争议提供了明确的国内法依据。由此, 境外投资者将有更多元的选择, 可以直接在中国寻求仲裁救济, 节省跨境程序成本。

For the first time, the New Arbitration Law explicitly includes international investment arbitration within the remit of Chinese arbitration institutions, providing a clear domestic legal basis for the administration of investor – state disputes by such institutions. As a result, foreign investors will have additional options to pursue arbitral relief directly in China, potentially reducing the costs and complexity associated with cross-border procedures.

随着中国企业“走出去”步伐的加快, 对外投资领域的争议数量与复杂程度持续上升。在本次修订前, 国内多家仲裁机构已陆续制定并实施投资仲裁规则, 积累了相应的制度基础与实践经验。在此背景下, 境外企业在参与与中国相关的投资项目时, 可结合具体投资结构与潜在争端类型, 综合仲裁机构的专业能力、国际化程度、案件管理机制及既有裁决经验, 选择具备成熟经验与国际竞争力的仲裁机构作为争端解决平台。

As Chinese enterprises accelerate their international expansion, disputes in the field of foreign investment have grown in both frequency and complexity. Prior to this revision, several domestic arbitration institutions had already developed and implemented investment-arbitration rules, thereby accumulating institutional foundations and practical experience. In that context, foreign investors engaging in China-related projects should assess factors such as an institution's substantive expertise, degree of internationalization, case-management capabilities, and track record of awards when selecting an arbitration forum with seasoned experience and international competitiveness.

结语: 抓住制度升级的机遇

Conclusion: Seizing the Opportunities from Institutional Reform

新《仲裁法》的修订, 既是对过去三十年仲裁实践经验的系统总结, 也是中国仲裁制度全面对接国际规则的重要一步。其在程序数字化、仲裁前保全、临时仲裁、投资仲裁等各方面的完善, 为境外企业在华投资与争议解决提供了更具效率与确定性的制度框架。

The revision of the Arbitration Law both systematizes three decades of arbitration practice and represents an important step in fully aligning China's arbitration regime with international norms. Improvements across procedural digitalization, pre-arbitration interim measures, temporary/ad hoc arbitration, and investment arbitration together provide a more

efficient and certain framework for foreign enterprises investing and resolving disputes in China.

对于境外企业而言，理解并善用新法带来的制度革新至关重要。在合同的制定、履行及争议处理各环节，应充分评估仲裁地、仲裁机构及适用规则的差异，合理运用在线仲裁、仲裁前保全及投资仲裁机制，以实现程序效率与权利保障的平衡。总体而言，新法的实施将进一步提升中国仲裁的国际化与公信力，为跨境商业活动营造更加透明、稳定与可预期的法律环境。

For foreign enterprises, it is essential to understand and effectively leverage the institutional innovations introduced by the New Arbitration Law. At all stages of contract drafting, performance, and dispute management, parties should carefully evaluate the choice of seat, the arbitration institution, and the applicable rules, and make strategic use of mechanisms to balance procedural efficiency with the protection of rights. Overall, the implementation of the New Arbitration Law is expected to enhance the international credibility of Chinese arbitration and foster a more transparent, stable, and predictable legal environment for cross-border commercial activity.

如您对本文有任何问题，请联系：

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