

仲裁与法律

ARBITRATION AND LAW

第**133**辑

《中国国际商事仲裁年度报告（2014）》特辑
（中英文）



主办

中国国际经济贸易仲裁委员会
中国海事仲裁委员会
中国国际商会仲裁研究所



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前 言

为反映中国国际商事仲裁的发展现状,总结历史经验,推动中国国际商事仲裁的理论研究和实践发展;为国家立法司法部门提供参考;为国内外仲裁界搭建信息交流平台,提升中国在国际仲裁界的影响力和竞争力,促进中国国际商事仲裁制度的完善和仲裁事业的进一步发展,中国仲裁法学研究会决定自2015年起开展专项课题研究,编写发布《中国国际商事仲裁年度报告》。

《中国国际商事仲裁年度报告(2014)》为该研究项目的首次年度报告。报告从宏观、中观和微观的三维角度,采用实证分析与理论研究相结合的研究方法,忠实于中国国际商事仲裁发展状况,展现中国国际商事仲裁实践亮点。具体言之,在分析2014年度中国国际商事仲裁案件数据的基础上,跟踪中国国际商事仲裁的法制发展,观察中国国际商事仲裁机构在推进国际商事仲裁规则与实践方面所作的努力,探讨中国国际商事仲裁领域的司法协助与监督情况,力求全面、深入、系统地对中国国际商事仲裁的发展现状进行分析报告。

《中国国际商事仲裁年度报告(2014)》除前言和年度小结外,共分为四章。第一章“中国国际商事仲裁发展概况”,介绍中国国际商事仲裁发展的历史与现状,并对2014年中国国际商事仲裁发展数据进行分析。第二章“中国国际商事仲裁法制发展”,介绍中国国际商事仲裁相关立法、司法解释及相关制度,尤其是仲裁与司法之间相互关系的完善与发展。第三章“中国国际商事仲裁实践观察”,主要选择在中国国际商事仲裁实践方面历史最悠久、最具有代表性和影响力的中国国际经济贸易仲裁委员会以及专门审理海事案件的中国海事仲裁委员会为观察对象,分析上述仲裁机构涉外涉港澳台仲裁案件的数据和特

点,以及仲裁规则和仲裁实践的发展与特色,从而反映中国国际商事仲裁实践的最新发展趋势。第四章“中国国际商事仲裁司法协助与监督”,主要探讨中国国际商事仲裁中的证据保全、财产保全,仲裁条款效力的确认、裁决的撤销、裁决的执行等方面的司法协助与监督情况,并对存在的问题进行反思。本报告末附有 2014 年度中国国际商事仲裁发展大事记。

《中国国际商事仲裁年度报告(2014)》由中国仲裁法学研究会委托中国人民大学组成课题组,课题组的负责人为中国人民大学法学院副院长杜焕芳教授和中国国际经济贸易仲裁委员会仲裁研究所岳洁主任,课题组的主要成员包括来自高校、仲裁机构、最高人民法院和律师事务所的专家和实务工作者。具体任务分工如下:第一章由中国人民大学法学院副院长杜焕芳教授牵头完成,硕士研究生何崭然参与了部分内容撰写;第二章由中国政法大学国际法学院宋连斌教授牵头完成,博士研究生黄保持参与了部分内容撰写;第三章由中国国际经济贸易仲裁委员会仲裁研究所杨帆副主任牵头完成;第四章由最高人民法院民事审判第四庭沈红雨法官牵头完成。安杰律师事务所合伙人董箫律师参与了部分内容的撰写。中国国际经济贸易仲裁委员会仲裁研究所副主任杨帆、中国海事仲裁委员会仲裁院案件经办秘书邓纯、广州仲裁委员会发展部部长钟晓东、深圳仲裁委员会办公室主任胡大伟、上海仲裁委员会发展部姚琰钢提供了各自仲裁机构的相关资料和数据。

《中国国际商事仲裁年度报告(2014)》的编写,得到了国务院法制办公室政府法制协调司、最高人民法院民事审判第四庭、中国国际经济贸易仲裁委员会、中国海事仲裁委员会、广州仲裁委员会、深圳仲裁委员会、上海仲裁委员会、安杰律师事务所、中国人民大学国际仲裁研究所、中国政法大学国际法学院等单位在资料提供、报告撰写、中期评审等方面给予的便利条件和大力协助。中国国际经济贸易仲裁委员会仲裁员顾华宁女士负责本报告的英文翻译。在此一并致谢!

《中国国际商事仲裁年度报告(2014)》课题组
2015 年 9 月 8 日

Introduction

From 2015 onwards, China Academy of Arbitration Law has been carrying out special research for the preparation and publication of annual reports on International Commercial Arbitration in China in order to reflect its development, to learn from its past, to promote theoretical researches and to develop arbitral practice, to provide a reference for China's legislative and judicial authorities, to enhance cooperation and exchanges between domestic and foreign arbitration circles, to enhance China's influence and competitiveness in the field of international arbitration as well as to promote the improvement and further development of international commercial arbitration system in China.

The 2014 Annual Report on International Arbitration in China is the first annual report of the above-mentioned research program. It reflects the highlights of China's international commercial arbitration practice from macro, meso and micro perspectives both through empirical analysis and theoretical research. The purpose of the present Report is to make a comprehensive, in-depth and systematical analysis of the development of international commercial arbitration in China, based on the analysis of the data of international commercial arbitration cases in 2014, following up the developments of the legal system on international commercial arbitration in China, observing the efforts of Chinese international commercial arbitration institutions in order to update international commercial arbitration rules and practice, and discussing the judicial support and supervision in the field of international commercial arbitration in China.

There are four chapters besides the Introduction and the Annual Summary in the Report. Chapter one refers to the overview of the development of international commercial arbitration in China and contains an introduction of the history and current situation of China's international commercial arbitration as well as analysis of the 2014 data. Chapter two covers the development of the legal system related to international commercial arbitration in China by introducing the applicable legislation and judicial interpretations in the field, especially those relating to the improvement and development of the relations between arbitration and the judiciary. Chapter three deals with international commercial arbitration practice in China and reflects its latest trends through analyzing the data and characteristics of foreign-related, Hong Kong-related, Macau-related and Taiwan-related (HMT-related) cases handled by China International Economic and Trade Arbitration Commission (CIETAC), which is the oldest, the most influential and the most representative international commercial arbitration institution in China, and China Maritime Arbitration Commission (CMAC), which specializes in hearing maritime cases, and the development and features of their arbitration rules and practice. Chapter four focuses on the judicial support and supervision of international commercial arbitration in China, including preservation of evidence and property, confirmation of validity of arbitration agreements, annulment and enforcement of awards, and discusses issues and reflections. A timeline of important events related to China's international commercial arbitration in 2014 can also be found at the end of this Report.

The 2014 Annual Report on International Commercial Arbitration in China was undertaken by a research team of Renmin University of China, commissioned by the China Academy of Arbitration Law. Professor Du Huanfang, Vice President of the Law School of the Renmin University of China, and Ms. Yue Jie, Director of the Arbitration Research Institute of CIETAC, are the team leaders. Other team members are professionals and practitioners from universities, arbitration commissions, the Supreme People's Court (SPC) and law firms. The division of

task is as follows: Chapter one was led by Professor Du Huanfang, Vice President of the Law School of the Renmin University of China, with the contribution of Mr. He Zhanran, a postgraduate. Chapter two was led by Professor Song Lianbin, from the International Law School of China University of Political Science and Law, together with Mr. Huang Baochi, a Ph. D. candidate. Chapter three was led by Ms. Yang Fan, Deputy Director of the Arbitration Research Institute of CIETAC. Ms. Shen Hongyu, Judge of the 4th Civil Division of the SPC was in charge of chapter four. Mr. Dong Xiao, Partner of Anjie Law Firm, also made contributions to this chapter. Relevant reference and data of arbitration commissions are from Ms. Yang Fan, Deputy Director of the Arbitration Research Institute of CIETAC, Ms. Deng Chun, case manager of the Arbitration Court of CMAC, Mr. Zhong Xiaodong, Head of the Development Department of Guangzhou Arbitration Commission, Mr. Hu Dawei, Office Director of Shenzhen Arbitration Commission, and Mr. Yao Yangang from the Development Department of Shanghai Arbitration Commission.

We hereby acknowledge the kind support and generous assistance from the Legal System Coordination Department of the Office of Legislative Affairs of the State Council, the Fourth Civil Division of the SPC, CIETAC, CMAC, Guangzhou Arbitration Commission, Shenzhen Arbitration Commission, Shanghai Arbitration Commission, Anjie Law Firm, the International Arbitration Research Institute of Renmin University of China, International Law School of China University of Political Science and Law, etc. for providing information, making written contributions and providing advise and assessment for this Report, and extend our gratitude to Ms. Gu Huaning, a CIETAC arbitrator, who translated this Report into English.

The Research Team of 2014 Annual Report on International Commercial Arbitration in China

8 September 2015

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第一章 中国国际商事仲裁发展概况

国际商事仲裁是通过仲裁解决国际商事纠纷的一种争议解决方式。由于国际商事仲裁具有当事人自治、独立公正、专业高效、程序较为灵活、费用较为经济以及司法适当支持等特性,故这种争议解决方法作为一种行之有效的解决国际商事争议的手段,已被广泛用于解决国际商事交往中的各种争议。^①

国际商事仲裁对于一国而言,又可称为涉外商事仲裁,即指含有涉外因素或国际因素的商事仲裁。不同国家对于何谓“涉外或国际”、何谓“商事”会有不同的理解,各国的规定也有所不同,但一般认为应对“涉外或国际”作广义的解释。^② 在中国,国际商事仲裁通常被称为涉外商事仲裁或简称涉外仲裁。本报告中,“中国国际商事仲裁”和“涉外商事仲裁或涉外仲裁”交叉使用,如无特别说明,两者为同一含义。

根据自2013年1月7日起施行的《最高人民法院关于适用〈中华人民共和国民事诉讼法涉外民事关系法律适用法〉若干问题的解释(一)》(法释[2012]24号)第1条的规定,民事关系具有下列情形之一的,人民法院可以认定为涉外民事关系:

- (一)当事人一方或双方是外国公民、外国法人或者其他组织、无国籍人;
- (二)当事人一方或双方的经常居所地在中华人民共和国领域外;
- (三)标的物在中华人民共和国领域外;
- (四)产生、变更或者消灭民事关系的法律事实发生在中华人民共和国领域外;

^① 韩德培、黄进:《国际商事仲裁丛书》总序,载赵健:《国际商事仲裁的司法监督》,法律出版社2000年版,第1~2页。

^② 黄进、宋连斌、徐前权:《仲裁法学》,中国政法大学出版社2002年修订版,第165~166页。