

仲裁与法律

ARBITRATION AND LAW

第137辑

《中国国际商事仲裁年度报告(2015)》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

我国的国际商事仲裁始于1956年在中国国际贸易促进委员会内设立的对外贸易仲裁委员会,也就是现在的中国国际经济贸易仲裁委员会(以下简称贸仲委),迄今已走过了一个甲子的春秋。随着国家改革开放的不断深化和对外贸易与投资的迅猛增长,我国的仲裁事业蓬勃发展,我国的国际商事仲裁也跨上了一个新的台阶。当前,我国正从贸易大国向贸易强国过渡,“一带一路”倡议稳步推进,这给中国国际商事仲裁创造了历史上最好的发展机遇。但也应当认识到,国际商事仲裁是一个全球化的市场,国际上主要商事仲裁机构之间的竞争十分激烈,我国国际商事仲裁和国际相比仍有差距,也面临很大的挑战。

2015年9月22日,中国仲裁法学研究会在北京首次发布《中国国际商事仲裁年度报告(2014)》,这是国内第一次针对中国国际商事仲裁(即通常意义上的中国涉外仲裁)的发展所做的年度总结。2014年度报告在发布后受到了我国仲裁界、法律界和媒体界的广泛关注,目前已正式出版发行。为进一步总结中国国际商事仲裁年度发展和国际商事仲裁法治建设情况,推动我国国际商事仲裁制度完善,同时为域内外国际商事仲裁实务界和理论界搭建信息交流平台,提升我国在国际商事仲裁舞台上的影响力,并为我国进一步发展国际商事仲裁事业提供建议参考,中国仲裁法学研究会决定继续编写并发布《中国国际商事仲裁年度报告(2015)》。

《中国国际商事仲裁年度报告(2015)》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2015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法律制度的发展,观察中国国际商事仲裁机构在推进国际商事仲裁方面所作的努力,探讨中国国际商事仲裁司法审查情况,并以《联合国国际货物销售合同公约》(以下简称CISG)在中国国际商事仲裁中的适用作为2015年度的特别观察。

《中国国际商事仲裁年度报告(2015)》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”,概述2015年度有关中国国际商事仲裁法制的发展情况,全国仲裁案件的数据分析情况,中国最高人民法院对于国际商事仲裁案件的司法协助与监督情况,以及中国国际商事仲裁理论研究进展情况。第二章“中国国际商事仲裁实践观察”,从律师、仲裁用户的角度进行观察评述,对中国代表性国际仲裁机构与国外的主要仲裁机构进行相关数据比较分析。同时,评述贸仲委的《证据指引》,并与《国际律师协会关于国际商事仲裁的取证规则》(以下简称《取证规则》)进行比较分析。第三章“中国国际商事仲裁特别观察”,以2008~2015年贸仲委涉CISG的81篇裁决书为研究素材,一定程度上揭示中国国际商事仲裁中适用CISG的经验与问题。第四章“中国国际商事仲裁司法审查”,主要探讨中国国际商事仲裁中的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审查情况。

2015年度报告由中国仲裁法学研究会委托中国人民大学组成课题组编写。课题组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,课题组主要成员有中国政法大学国际法学院宋连斌教授、最高人民法院民事审判第四庭沈红雨法官、安杰律师事务所合伙人董箫律师和中国国际经济贸易仲裁委员会仲裁研究所杨帆副主任。具体任务分工如下:前言和年度小结由杜焕芳教授撰写;第一章由宋连斌教授团队完成,其中“三、中国国际商事仲裁司法审查”部分由沈红雨法官撰写;第二章由董箫律师团队完成;第三章是在清华大学法学院韩世远教授团队的研究成果的基础上,杜焕芳教授根据近几年的数据情况修正、调整而成;第四章由沈红雨法官牵头完成。年度报告初稿完成后,由杜焕芳教授、岳洁主任和杨

帆副主任对报告全文进行了整理和统稿。

《中国国际商事仲裁年度报告(2015)》的编写,得到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、安杰律师事务所、中国人民大学、清华大学、中国政法大学等单位在资料提供、初稿撰写、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。在此一并表示由衷感谢!

《中国国际商事仲裁年度报告(2015)》课题组

2016年9月8日

Introduction

China's international commercial arbitration, since the establishment of the China International Economic and Trade Arbitration Commission (the CIETAC), formerly known as the Foreign Trade Arbitration Commission, under the China Council for the Promotion of International Trade in 1956, has undergone sixty-year development. China, with the deepening of reform and opening up and the rapid growth of foreign trade and investment, has improved international commercial arbitration in China to a new level with the booming of arbitration. International commercial arbitration in China is now being provided with the best opportunities along with the transformation of China from a trader of quantity to a trader of quality and the steady advancement of the "Belt and Road" Initiative. However, China's international commercial arbitration is also facing great challenge with improvement needed comparing with international practice due to the globalization of the international commercial arbitration market and the fierce competition among major international commercial arbitration institutions.

On 22 September 2015, China Academy of Arbitration Law released the 2014 Annual Report on International Commercial Arbitration in China. This is the first annual report on the development of international commercial arbitration in China which is normally called the foreign-related arbitration in China. The 2014 Annual Report has attracted extensive attention in China's arbitration community, legal profession and the media since its release and been formally published. The China

Academy of Arbitration Law decided to carry out its preparation and publication of the 2015 Annual Report as an effort to sum up the annual development of international commercial arbitration in China and the improvement of arbitration legal system, promote the perfection of China's international commercial arbitration system, build information exchange platform for domestic and foreign commercial arbitration practitioners and theorists, enhance China's influence in international commercial arbitration arena, and provide suggestions and references for future developments of China's international commercial arbitration cause.

The 2015 Annual Report on International Arbitration in China, through empirical analysis and theoretical research, reflects the development status of international commercial arbitration in China and highlights relevant practice. Specifically, based on the analysis of the data of international commercial arbitration cases in 2015 based on the analysis of the data of international commercial arbitration cases in 2015, the 2015 Annual Report on International Arbitration in China follows up the developments of the legal system on international commercial arbitration in China, observes the efforts of Chinese international commercial arbitration institutions to promote the development of international commercial arbitration, discusses the judicial supervision in the field of international commercial arbitration in China, and makes special observation on the application of CISG in such field.

There are four chapters besides the Introduction and the Annual Summary in the 2015 Annual Report on International Arbitration in China. Chapter one refers to the overview of the development of international commercial arbitration, the analysis of data regarding arbitration cases in China, judicial support and supervision of international commercial arbitration cases by the Supreme People's Court (SPC), and the development of theoretical research on international commercial arbitration in China in 2015. Chapter two covers the observation on the

practice of international commercial arbitration in China from the perspectives of attorneys and arbitration clients and through comparative analysis of relevant data from representative international arbitration institutions in China and major foreign arbitration institutions. It also comments on the CIETAC Guidelines on Evidence with a comparative analysis to the IBA Rules on the Taking of Evidence. Chapter three deals with the special observation on international commercial arbitration in China through analysis of 81 awards of CIETAC from 2008 to 2015 in which the application of CISG is involved, summarizing experience and issues in such application. Chapter four focuses on the judicial supervision of international commercial arbitration in China, including confirmation of validity of arbitration agreements, annulment and enforcement of arbitration awards, etc.

The 2015 Annual Report on International Commercial Arbitration in China was undertaken by the 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 Renmin University of China, and Ms. Yue Jie, Director of the Arbitration Research Institute of the CIETAC, lead the team. Main team members are Professor Song Lianbin from the International Law School of China University of Political Science and Law, Ms. Shen Hongyu, judge of the 4th Civil Division of the SPC, Mr. Dong Xiao, Partner of Anjie Law Firm and Ms. Yang Fan, Deputy Director of the Arbitration Research Institute of the CIETAC. The division of task is as follows: Introduction and Annual Summary were composed by Professor Du Huanfang. Chapter one was accomplished by Professor Song Lianbin's team with Part III, Judicial Supervision of International Commercial Arbitration in China, composed by Ms. Shen Hongyu. Chapter two was accomplished by Mr. Dong Xiao's team. Chapter three was modified and finalized by Professor Du Huanfang according to recent data based on the research result of Professor Han Shiyuan's team from Tsinghua University School of Law. Chapter four was led by Ms. Shen

Hongyu. Professor Du Huanfang, Director Yue Jie and Vice Director Yang Fan compiled and edited this Report after the completion of the draft.

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, the CIETAC, Anjie Law Firm, Renmin University of China, Tsinghua University, China University of Political Science and Law, etc. for providing information, drafting 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 2015 Annual Report
on International Commercial Arbitration in China

8 September 2016

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