



北京仲裁委员会  
Beijing Arbitration Commission  
北京国际仲裁中心  
Beijing International Arbitration Center



East Asia  
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**CI Arb**



**ACICA**

Australian Centre for  
International Commercial Arbitration

# 2017 HONG KONG SUMMIT ON COMMERCIAL DISPUTE RESOLUTION IN CHINA

## HAND BOOK

14 OCTOBER 2017 · HONG KONG

## 2017 Hong Kong Summit on Commercial Dispute Resolution in China

Last year the BAC/BIAC and the CIArb (EAB) successfully organized the Annual Summit together in Hong Kong for the first time during the HKArbWeek. This joint event is part of a series of Annual Summit on Commercial Dispute Resolution in China organized by the BAC/BIAC. Since 2013, the BAC/BIAC has begun to compile annual reviews on commercial disputes resolutions in China and has successfully hosted Summits in London, Paris, The Hague, Frankfurt, Cologne, Zurich and Vienna. This year, the Annual Summit reaches its fifth anniversary. The purpose of the Summit is to create a platform for arbitration practitioners and users to discuss and exchange views on the impact of the Belt and Road Initiative development strategy on the international dispute resolution in recent years. What impact does the Initiative have on commercial disputes resolutions in China? Is there any rules or experience that we can learn from it? The 2017 Hong Kong Summit on Commercial Dispute Resolution in China will provide a unique opportunity to both users and practitioners as how to face the challenges and capture the opportunities of the Initiative via dispute resolution. As usual, participants of the Summit will have opportunities to discuss relevant issues and exchange ideas with the panel members. As the BAC/BIAC is the exclusive diamond sponsor of ICCA 2018, there will be a roadshow for introduction of 2018 ICCA.

### SCHEDULE

09:00 – 09:30

Registration

09:30 – 09:45

Welcome Address

**Moderator:**

**Dr. Fuyong Chen**, Deputy Secretary General, BAC/BIAC

**Speakers:**

**Ms. Teresa Cheng, GBS, SC, JP**, Vice Chairperson, BAC/BIAC

**Ms. Mary Thomson**, Chairman, CIArb(EAB)

**Mr. Andrea Martignoni**, Vice President, ACICA

09:45 – 11:15

**Session One: Evolution and Adaptation – The Future of International Arbitration – ICCA, 2018**

**Moderator:**

**Mr. Jingzhou Tao**, Managing Partner in Charge of Business Development in Asia, Dechert LLP

**Speakers:**

**Dr. Helena H.C. Chen**, Chief Rep. of Beijing Office and Partner, Pinsent Masons LLP

**Ms. Caroline Kenny, QC**, President, Chartered Institute of Arbitrators (Australia)

**Commentators:**

**Ms. Louise Barrington**, Branch Committee Member of CIArb(EAB); Chartered Arbitrator, Accredited Mediator

**Ms. Kim M. Rooney**, Member of the Hong Kong Bar Association's Council; Barrister, International Arbitrator

11:15 – 11:30

COFFEE BREAK

11:30 – 12:45

**Session Two: The OBOR and Energy Transactions: Risk Management and Dispute Resolution**

**Moderator:**

**Mr. James Kwan**, Partner, Hogan Lovells International LLP

**Speakers:**

**Dr. Libin Zhang**, Partner, Broad & Bright Law Firm

**Mr. Weihua Zhang**, Vice president & General Counsel, United Energy Group Limited

**Commentators:**

**Mr. Andrea Martignoni**, Vice President, ACICA

**Mr. Wilson Wei Huo**, Partner, Zhong Lun Law Firm

12:45 – 13:45

Networking Lunch

13:45 – 15:15

**Session Three: Chinese Financial Investment Regulation and Practice - Impacts on the OBOR Financing Investment**

**Moderator:**

**Ms. Brenda Horrigan**, Director, ACICA

**Speakers:**

**Dr. Xiuming Tao**, Partner, JunZeJun Law Offices

**Mr. Zhi Bao**, Partner, FenXun Partners

**Commentators:**

**Mr. Lei Shi**, Consultant, Clifford Chance

**Mr. Jiaxing Zhou**, Managing Director and Head of Legal Department, CICC HK

**Mr. Yong Kai Wong**, Managing Director and General Counsel, CITIC Capital

15:15 – 15:30

COFFEE BREAK

15:30 – 16:45

**Session Four: The Opportunity and Risk in the OBOR Infrastructure Projects on the Perspective of the Development of Chinese PPP Practice**

**Moderator:**

**Ms. Sarah Grimmer**, Secretary General, HKIAC

**Speakers:**

**Mr. Zhonghua Zhu**, Partner, City Development Law Firm (Beijing)

**Mr. Jun Cui**, Managing Director, Eminent Consulting Limited

**Commentators:**

**Mr. Patrick Zheng**, Managing Partner, Clyde & Co LLP

**Mr. Thomas Walsh**, Consultant, Clifford Chance

16:45 – 18:00

**Session Five: Invigorating Trade and Developing Dispute Resolution in China – A Comparative Study**

**Moderator:**

**Dr. Colin Ong, QC**, President, Arbitration Association Brunei Darussalam; Barrister, International Arbitrator

**Speakers:**

**Dr. Xuehua Wang**, Partner, Beijing Huanzhong & Partners

**Mr. Stephan Guo**, The Director of the CACLO

**Commentators:**

**Mr. William M.F. Wong, SC**, The Chairman of the Arbitration Committee of the Hong Kong Bar Association

**Mr. Khory McCormick**, Vice President, ACICA

18:00 – 18:35

Closing Remark

**Moderator:**

**Mr. David Fong**, Vice Chairman, CIArb(EAB)

**Speakers:**

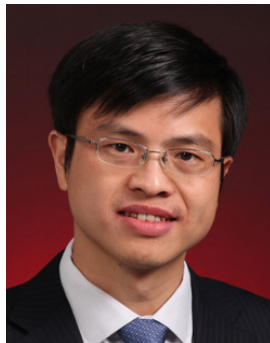
**Mr. Joao Ribeiro**, Head of UNCITRAL Regional Centre for Asia and the Pacific

**Mr. Rimsky Yuen Kwok-keung, GBM, SC, JP**, Secretary for Justice, Hong Kong SAR Government

18:35 – 20:00

COCKTAIL RECEPTION

## ABOUT THE SPEAKERS (IN ORDER OF APPEARANCE)



**Dr. Fuyong Chen**  
**Deputy Secretary General, BAC/BIAC**

Dr. Fuyong Chen is the deputy secretary-General of Beijing Arbitration Commission/ Beijing International Arbitration Center (BAC/BIAC) and the Vice-President of Asia Pacific Regional Arbitration Group (APRAG). He is a qualified PRC lawyer with a LLB from China University of Political Science and Law, a LLM from Peking University and a PhD from Tsinghua University. Dr. Chen was a visiting researcher (2007-08) at the Law School of UC-Berkeley and is a Research Fellow of the Center for the Study of Dispute Resolution at Renmin University of China. Dr. Chen is the General Editor of *Beijing Arbitration Quarterly* and has published over ten journal articles on commercial dispute resolution, including “*Striving for Independence, Competence and Fairness: A Case Study of Beijing Arbitration Commission*”, in *The American Review of International Arbitration*, v.18/no.3. His dissertation titled “*The Unfinished Transformation: An Empirical Analysis of the Current Status and Future Trends of China’s Arbitration Institutions*” was awarded 2010 Beijing Excellent Doctoral Dissertation. Dr. Chen is also the co-author of *Chinese Arbitration Law* (LexisNexis 2015), *China Arbitration Handbook* (Sweet & Maxwell 2011), and *International Commercial Arbitration Practice: 21st Century Perspectives* (LexisNexis 2016). He has extensive experience in handling various commercial disputes through arbitration and mediation and is a regular speaker at international conferences and seminars.



**Ms. Teresa Cheng, GBS, SC, JP**  
**Vice Chairperson, BAC/BIAC**

Teresa Cheng, GBS, SC, JP, FICE, FCIArb is a Senior Counsel, Chartered Engineer, Chartered Arbitrator and Accredited Mediator, with a distinguished record of public service in Hong Kong. Ms. Cheng specialises in areas of law in construction and international commercial contracts and investment arbitration, and is an experienced practitioner in international arbitration and mediation. She is frequently engaged as counsel or arbitrator in complex international commercial / investment disputes.

She is the Chairman of the Asian Academy of International Law (AAIL), Past Vice President of the International Council of Commercial Arbitration (ICCA), Past Vice President of the ICC International Court of Arbitration, and Past Chairperson of Hong Kong International Arbitration Centre (HKIAC). In 2008, she became the first Asian woman elected through a global election as President of the Chartered Institute of Arbitrators (CIArb). She was appointed as a Recorder in the Court of First Instance of the High Court of Hong Kong in 2014, and is currently a member of the International Centre for Settlement of Investment Disputes (ICSID) panel of Arbitrators (formerly designated by the Chairman of the ICSID Administrative Council of World Bank and since August 2017 by China), and an external IFC alternate member of the World Bank’s Sanctions Board.

Ms. Cheng is a Fellow of King’s College in London, and the Course Director of the International Arbitration and Dispute Settlement Course at the Law School of Tsinghua University in Beijing.



**Ms. Mary Thomson**  
**Chairman, CIArb(EAB)**

MARY THOMSON Chartered Arbitrator, Barrister, Mediator and Adjudicator, Former Solicitor Pacific Chambers, Hong Kong, St Philips Stone Chambers, London & Singapore.

Ms. Mary qualified as a barrister before moving to industry (shipping and insurance) and then requalified as a solicitor and practicing in London. She moved to Hong Kong in 1992 where she practised as a solicitor, including as partner at Hong Kong and international law firms, the last being SNR Dentons. In 2013, she joined the Hong Kong Bar and rejoined the English Bar to focus on her Arbitrator and Mediator practice.

Ms. Mary specialises in commercial dispute resolution. She has been appointed arbitrator since 1996 and sits as arbitrator on arbitrations seated in Hong Kong, Singapore, London and elsewhere, and is on the panel of a number of many arbitration centres and institutions. She is also on a number of mediator panels and has mediated large international commercial disputes in London, Singapore and Hong Kong.

Ms. Mary is the current Chair of the Chartered Institute of Arbitrators (East Asia Branch), Member of ICC Commission on Arbitration and Board member of ArbitralWomen. She is also spearheading the formation of ARIAS Asia for the arbitration of insurance and reinsurance disputes.



**Mr. Andrea Martignoni**  
**Vice President, ACICA**

Andrea has over 25 years’ experience in commercial litigation and arbitration, often acting in complex matters for clients in construction, energy, resources and infrastructure disputes. Andrea’s experience extends to a broad range of contractual disputes, including major projects disputes, joint venture disputes and commodity price arbitrations.

In addition to having acted in international and domestic arbitrations under various institutional and ad hoc rules, Andrea is involved in many major commercial litigation matters. Andrea is actively involved in the international arbitration community and is also a Vice President of the Australian Centre of International Commercial Arbitration (ACICA).



**Mr. Jingzhou Tao**  
**Managing Partner in Charge of Business Development in Asia, Dechert LLP**

Mr. Jingzhou Tao is the Managing Partner at Dechert LLP responsible for developing the firm's Asian practice. He has more than 30 years of experience advising Fortune 500 companies on China-related matters. He has acted as counsel, chief arbitrator or party-nominated arbitrator in over a hundred international arbitration proceedings. International arbitration related positions currently held by Jingzhou include:

- Member of the Court, ICC International Court of Arbitration;
- Member of the Advisory Committee of China International Economic and Trade Arbitration Commission (CIETAC);
- Member of Arbitration Advisory Board of Hong Kong International Arbitration Centre (HKIAC);
- Member of the Board of Trustee of Foundation International for Arbitration Advocacy;
- Member of the Editorial Board of Global Arbitration Review.

He is a listed arbitrator for arbitration institutions including AAA, HKIAC, SIAC, VIAC, KLRCA, CIETAC, SHIAC, BAC, as well as the Court of Arbitration for Sport.

Mr. Tao is a frequent speaker among the legal world and has also published many articles in Chinese and international legal and business publications. He is also an adjunct professor at Peking University Law School, East China University of Political Science and Law, China University of Political Science and Law for the MBA program, and a specially-invited professor of law for the International Arbitration Program at Tsinghua University School of Law.



**Dr. Helena H.C. Chen**  
**Chief Rep. of Beijing Office and Partner, Pinsent Masons LLP**

Dr. Helena H.C. Chen is a partner at Pinsent Masons LLP and the Chief Representative of its Beijing Office. She holds two doctorate degrees in law, respectively from National Taiwan University and Peking University, and is qualified to practice law in Mainland China, Taiwan and New York State. She is a Fellow of the Chartered Institute of Arbitrators and listed on the panels of arbitrators of CIETAC, SIAC, KLRCA, KCAB, ACICA, SCIA, SHIAC, BAC/BIAC, LCIA-MIAC Arbitration Centre etc. Dr Chen is a member of the SIAC Users Council. She is an accredited adjudicator with KLRCA and listed as one of the Recommended Experts of the Construction Dispute Board of BAC/BIAC. Helena is the Vice-Chairperson of the Mediation Center of Chinese Arbitration Association, Taipei (CAA), Associate Mediator of the Singapore Mediation Centre and listed on the panel of mediators of CCPIT/CCOIC Mediation Center. Dr Chen has been named to the International Who's Who of Leading Construction Lawyers for many years from 2011. She is one of the 32 legal experts listed in the Expert Database of the PPP Center of the Ministry of Finance of the PRC ("PPP Center") and led the Pinsent Masons team to prepare PPP Contract Guidelines, PPP case study reports and PPP sample contracts at the PPP Center's request. She is an international consultant for the Asian Development Bank (ADB) and invited by the World Bank to provide professional consultations for its preparation of the book, Benchmarking Public-Private Partnerships Procurement 2017. She is one of the founding Supervisors of Taiwan Construction Law Society and has served as a director thereof. She writes widely on arbitration, mediation, construction law and PPP topics and is frequently invited to give lectures on international forums, including IBA, ABA conferences.



**Ms. Caroline Kenny, QC**  
**President, Chartered Institute of Arbitrators (Australia)**

Caroline is the President of the Australian branch of the Chartered Institute of Arbitrators. She has over 30 years' experience as a barrister, arbitrator and mediator. She has practised in Australia, New York and London and is admitted to practice in all three jurisdictions. She was appointed Queen's Counsel in 2008.

A member of leading arbitral institution, the London Court of International Arbitration, panellist for nominating authorities in Singapore, Hong Kong, China, Vietnam, Malaysia and Australia, Ms Kenny has been appointed Chairman and sole arbitrator in international arbitrations. Her ruling on jurisdiction was upheld by the Singapore High Court and led to new law on an arbitrator's right to determine jurisdiction even when the validity of the arbitration agreement was in dispute: *Malini Ventura v Knight Capital Pte Ltd [2015] SGHC*. A Master of Laws/Bachelor of Laws from the University of Melbourne, Ms Kenny is also a Member of the Approved Faculty List of the London branch of the Chartered Institute of Arbitrators and is the Course Director for and has taught the Diploma Course (in international arbitration) at Oxford, Singapore, Australia and Hong Kong. She is also the Course Director for the Award Writing Course and the Accelerated Route to Fellowship Course which she teaches annually.



**Ms. Louise Barrington**  
**Branch Committee Member of CIArb(EAB); Chartered Arbitrator, Accredited Mediator**

Louise Barrington is a dispute resolver with 30 years of experience. Her career includes private practice, teaching, consulting and sitting as an arbitrator and accredited mediator. She is legally qualified in Ontario, New York and England with a Maitrise in European Law from the University of Paris II (Assas). A Canadian, she also holds a British passport, speaks fluent French and has a working knowledge of Spanish.

She has acted as sole arbitrator, co-arbitrator named by parties and institutions, and as tribunal president, in both ad hoc and institutional cases in Asia, Europe and America. In her approximately 100 arbitration cases she has resolved cases involving sales, construction, banking, franchises, wrongful dismissal, intellectual property, agency and shareholder disputes. She is a panel member for ICC, HKIAC, CIArb, ICDR, VIAC, CIETAC, DIAC, BCCIA and a number of other regional arbitration institutions.

Over three decades she has combined arbitration practice with academic work spanning four continents. Louise taught on the faculties of City University and Chinese University of Hong Kong. She directed the LLM Programme in Construction Law and Dispute Resolution at King's College London and is currently Director of the Dispute Resolution Module for the Swiss International Law School's LLM in International Commercial Law. She directs and delivers courses in Asia, Europe and South America, and regularly teaches at Osgoode Law School. She is a faculty member of the first TCAS arbitration course currently taking place in Toronto.

Louise is a member of the ICC Commission on Arbitration and Dispute Resolution, a member of the East Asia Branch Committee of the Chartered Institute, and formerly chaired the International Arbitration Committee of Lawasia. She founded and continues to direct the Vis East Moot International Arbitration Competition ([www.cisgmoot.org](http://www.cisgmoot.org)), and is a co-founder of ArbitralWomen ([www.arbitralwomen.org](http://www.arbitralwomen.org)).



**Ms. Kim M. Rooney**  
**Member of the Hong Kong Bar Association's Council; Barrister, International Arbitrator**

Kim Rooney is an international arbitrator and barrister, a member of the ICC International Court of Arbitration, and admitted to practise in Hong Kong, England & Wales and Australia. Before moving to become an arbitrator and barrister Kim was a partner of White & Case LLP heading its Hong Kong based Asian international dispute resolution practice. She is a member of the Hong Kong Bar Association's Council and chairs its Standing Committee on International Practice.

Kim's arbitration experience as arbitrator and counsel includes in disputes around the world (including many countries on the Belt & Road) in the banking and financial services, commercial, construction, infrastructure (including energy and power, mining, telecommunications and water), investment, IT and trade sectors, involving investors, state owned enterprises and states under ICSID, institutional and ad hoc arbitration rules.

Kim chaired the Hong Kong Law Reform Commission's Subcommittee on Third Party Funding for Arbitration. Its Final Report on Third Party Funding for Arbitration published in October 2016 annexed draft amendment legislation to the Arbitration Ordinance Cap 609 that formed the basis of the *Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016* that Hong Kong's Legislative Council passed in June 2017.



**Mr. James Kwan**  
**Partner, Hogan Lovells International LLP**

James Kwan is a Partner of Hogan Lovells. He is based in the Hong Kong office. He specialises in international commercial arbitration, with a focus on life sciences, chemicals, technology, infrastructure, and energy disputes. He has represented clients in arbitrations in Asia, the U.S., the Middle East, and Europe under the major institutional rules such as ICC, HKIAC, SIAC, CIETAC, AAA, LCIA, DIAC, CAS, and in ad hoc arbitrations.

James is widely recognised as a leading individual in International Arbitration by major legal directories, such as *Asia Pacific Legal 500*, *Chambers Asia Pacific and Global*, *Euromoney's Guide to the World's Leading Arbitration Lawyers*, *Practical Law Company's Which Lawyer?*, *Benchmark Asia Pacific: Arbitration*, *Global Law Expert* and named one of *Asian Legal Business' Hot 100 Lawyers* of 2008 and 2011. He is the author of a chapter in *The Hong Kong Arbitration Ordinance Commentary and Annotations*, Sweet & Maxwell, 2015 (2nd edition); *Arbitration in China: A Practical Guide*, Sweet & Maxwell, 2004; and co-editor of *Construction Arbitration in Hong Kong: A Practical Guide*, 2015, Wolters Kluwer.



**Dr. Libin Zhang**  
**Partner, Broad & Bright Law Firm**

Dr. Libin Zhang graduated from the University of International Business and Economics in 1987 with a BA in economics and graduated from the University of Texas at Austin School of Law with a J.D. degree in 1997. Mr. Zhang worked in many famous American law firms from 1997 to 2010 as an attorney or a partner. He worked in Siemens Ltd., China as the head of Legal M&A, Asia & Australia from 2011 to March 2015, and he later joined Broad & Bright as a partner in April 2015. Mr. Zhang focuses on foreign direct investment, M&A, overseas investment, energy, environment and arbitration. Having practiced for over 17 years, Mr. Zhang has accumulated significant experience in representing numerous domestic and foreign enterprises in cross-border investment and M&A. Mr. Zhang is an arbitrator at the China International Economic and Trade Arbitration Commission (CIETAC) and Beijing Arbitration Commission/Beijing International Arbitration Center, and he also served as the chief arbitrator or arbitrator in arbitration cases, especially on the energy side.



**Mr. Weihua Zhang**  
**Vice president & General Counsel, United Energy Group Limited**

Mr. Zhang has nearly two decades of legal experience. Before joining United Energy Group, he was the Director of the Project Management Division of the Legal Department of CNOOC Group. Other previous positions at CNOOC included Head of Consulting Team in the Legal Department and Acting Head of Merger/Acquisition Team in their Legal Department. He was a core member of legal team representing CNOOC on its USD15.1 billion acquisition of Nexen Inc.

He was recognized by Legal 500 and ALB as one of Asia Pacific's top General Counsels. He currently also serves as a Committee Member for AIPN Model Contracts Drafting Committee. Before CNOOC Mr Zhang held corporate counsel positions in both CITIC Resources and PetroChina.

Mr. Zhang has sophisticated work experience on large-scale cross-border transactions with multinational companies. He has delivered legal opinions to Board and Investment Committee on major transactions and investments, is familiar with international oil and gas industry practices and has sophisticated business negotiation skills. He received the honor of "Expert on outbound investments" from China SASAC.

Mr. Zhang, as the author of 'Cross-border mergers and acquisition: a legal and practical guide' and 'M&A: Great Era', is also a guest professor of Beijing Foreign Studies University.



**Mr. Wilson Wei Huo**  
**Partner, Zhong Lun Law Firm**

Wilson is a partner of Zhong Lun Law Firm based in the firm's Beijing headquarters. He received his LL.B. degree from the University of International Business & Economics in Beijing in 1994 and an LL. M. degree from the University of Iowa College of Law in the United States in 2001. He was licensed to practice in the PRC in 1998. Prior to joining Zhong Lun as a partner, Wilson worked in prestigious PRC and American law firms as senior associate for a number of years. He is fluent in using English as working language. His practice focus includes arbitration and commercial litigation (in particular, resolution of foreign-related/overseas disputes and banking/financing disputes). Wilson is an arbitrator of the Hong Kong International Arbitration Center (HKIAC), an arbitrator of the International Dispute Resolution Center (ICDR) of American Arbitration Association (AAA), and an arbitrator of the Kuala Lumpur Regional Centre for Arbitration (KLRCA). He has been recommended in the dispute resolution area by both Chambers Global and Chambers Asia as "Leaders in Their Field" and by Chambers Asia with high ranking for consecutive years. He has also been rated by the Legal Media Group of EuroMoney as the Benchmark Asia- Pacific Local Dispute Star, and by Acquisition International as the Best in Financial Service Disputes – China.

Wilson has backgrounds and expertise in both transactions and dispute resolution matters. Wilson has been representing arbitration cases before numerous domestic and overseas arbitration institutions and also has been representing clients in ad hoc arbitration cases. Except for arbitration cases, Wilson has been active to represent clients, mainly domestic and overseas financial institutions and investment/ financing institutions, MNCs and FIEs to litigate, take interim measures and initiate special procedures on various levels of the People's Court. In addition to civil proceedings including arbitration and litigation, Wilson also represents his clients to launch criminal proceedings when necessary. Based on his extensive practical experiences, Wilson has proposed his new ideologies of dispute resolution namely "Arbitration Plus", i.e., to have arbitration as the base while taking advantages of other remedies and to apply various resolution methods to resolve disputes systematically and efficiently.



**Ms. Brenda Horrigan**  
**Director, ACICA**

Brenda Horrigan is a partner with Herbert Smith Freehills, based in Sydney, and heads HSF's Australian arbitration practice. She specialises in international arbitration, with a particular focus on disputes involving emerging markets, and has worked from the US, Paris, Moscow and Shanghai prior to Sydney.

Brenda acts as counsel on complex international commercial and investment treaty arbitration matters conducted under a wide variety of arbitration rules, assists with enforcement of arbitral awards, and also sits as arbitrator.

Early in her career Brenda spent a number of years as a transactional lawyer, an experience that provides valuable insight for clients into the underlying commercial and contractual aspects of the disputes on which she advises.

Brenda has published numerous articles and spoken at many conferences and seminars on both arbitration and the challenges of investments in emerging markets. She is the past co-chair of the China Committee of the American Bar Association (ABA) Section of

International Law, and served for several years as Global Adjunct Professor of Law at New York University Law School (Shanghai campus). She currently serves on the Board of the Australian Centre for International Commercial Arbitration (ACICA). She is fluent in English, French and Russian, and speaks elementary Mandarin.



**Dr. Xiuming Tao**  
**Partner, JunZeJun Law Offices**

Dr. Xiuming Tao is the founding partner and managing partner of Beijing JunZeJun Law Offices. Mr. Tao has been practicing for over 25 years focusing on the financial and capital market. He is especially experienced in arbitration regarding finance-and-investment related disputes. He is currently arbitrator of China International Economic and Trade Arbitration Commission ("CIETAC") (and member of the Expert Advisory Committee of CIETAC as well) and Beijing Arbitration Commission, member of the ICC Commission on Arbitration and ADR (also member of the Task Force on Financial Institutions of the ICC) and member of ICC (China), also arbitrator of Hong Kong International Arbitration Centre (HKIAC), Shanghai International Economic and Trade Arbitration Commission (SHIAC), Chinese Arbitration Association (Taipei, CAA), Cross-Strait Arbitration Center, Kuala Lumpur Regional Centre for Arbitration (KLRCA) and some other arbitration institutions in China.



**Mr. Zhi Bao**  
**Partner, FenXun Partners**

Mr. Zhi Bao's practice focuses on mergers and acquisitions, private equity and anti-monopoly, all disciplines which he made his own during his over seven years with the Ministry of Commerce (MOFCOM) in Beijing and subsequently at a leading PRC law firm. He had worked for multinational, state-owned and private clients, such as Google, Apple, FedEx, EDF, IFC, Ericsson, Rockwell, Pola, Daiwa; CCB International, China Life, China Resources, CNOOC, COFCO; CITIC Capital, SAIF Capital, CDH Capital. At MOFCOM, he spearheaded examination of numerous foreign direct investments, cross-border mergers and acquisitions, and anti-monopoly filings for companies engaged in M&A transactions. He also was a principal draftsman of key regulations relating to restructuring of domestic and offshore companies and cross-border M&A transactions (for both unlisted and listed Chinese target companies, as well as both inbound and outbound transactions) and funds. As the partner of FenXun Partners, Mr. Bao has pioneered (and obtained approvals for) unique, tested transformations of offshore ownership transaction structures into onshore ownership structures for important clients. Mr. Bao has advised many multinational companies on the regulatory aspects, including but not limited to anti-trust filing and national security review of their cross-border M&A transactions as well as counselling them on the regulatory risks of their business behaviour.



**Mr. Lei Shi**  
**Consultant, Clifford Chance**

Mr. Lei Shi is a Consultant at Clifford Chance and based in Hong Kong. He is admitted in New York and Hong Kong and has also passed the PRC bar exam. He has also worked at Clifford Chance's New York office and prior to joining Clifford Chance, practised as a PRC attorney at Fangda Partners in Beijing. With qualifications and substantial practising experiences in three key jurisdictions, Lei is particularly recognized for his expertise in handling cross-border disputes with Chinese elements, including representing Chinese companies in offshore arbitration seated in Hong Kong, New York, London and Stockholm, and acting for international financial institutions and multinational companies in China-related disputes in both onshore and offshore arbitration proceedings under a variety of arbitration rules (ICC, HKIAC, CIETAC, SIAC, LCIA, UNCITRAL, SCC and AAA/ICDR). Shi Lei is especially experienced in handling arbitration proceedings in the banking & finance and private equity sectors and those relating to M&A and investments.

Mr. Lei Shi was the Representative (for China) at the Regional Coordinating Committee of the ICC YAF and a member of the HK45 News Committee. He regularly speaks on international arbitration topics at seminars and conferences, and has also published articles on the Asian Dispute Review and the Kluwer Arbitration Blog. He is also an author for the China section of the Kluwer Arbitration Smart Chart.



**Mr. Jiaxing Zhou**  
**Managing Director and Head of Legal Department, CICC HK**

Mr. Jiaxing Zhou is a Managing Director and Head of Legal Department of China International Capital Corporation (Hong Kong) Limited ("CICC HK"). He also serves as the Joint Company Secretary of China International Capital Corporation Limited ("CICC").

Mr. Zhou is sitting in CICC's Risk Management Committee, Capital Contribution Committee, New Products Review Committee and New Entity Establishment Committee.

The Legal Department under his leadership was voted as the Investment Banking In-House Team of the Year by Thomson Reuters in 2016.

Mr. Zhou is a Board Director of Asian Securities Industry & Financial Market Association ("ASIFMA") as well as the Co-Chair of ASIFMA China Capital Market Committee. He is also a member of ASIFMA-IOSCO Advisory Group.

Mr. Zhou is a qualified solicitor in China, England and Wales and Hong Kong. He is sitting in the executive committee of Hong Kong Corporate Counsel Association. He is also on the panel of arbitrators of South China International Economic and Trade Arbitration Commission.



**Mr. Yong Kai Wong**  
**Managing Director and General Counsel, CITIC Capital**

Mr. Yong Kai Wong is the General Counsel and Company Secretary of CITIC Capital. He is responsible for overall legal and execution coverage for CITIC Capital's investment activities, as well as all aspects of CITIC Capital's general corporate, company secretarial and legal functions.

Mr. Wong has over 10 years of experience in alternative investments with broad experience across U.S., Europe and Asia Pacific in a whole range of transactions ranging from complex debt financings/restructurings, capital markets, structured/securitized products, corporate M&A transactions including corporate real estate/special situations, private equity and hedge fund formations. Prior to joining CITIC Capital, he worked as the Associate General Counsel for APG Asset Management Asia, one of the world's largest institutional investors. Prior to that, he has worked in various reputable international law firms in the U.S., London, Hong Kong and Singapore.

Mr. Wong has dual qualifications in law and finance. He holds an MBA from the University Of Chicago Booth School Of Business and an LL.M. (First Class Honors) from the University of Cambridge.



**Ms. Sarah Grimmer**  
**Secretary General, HKIAC**

Sarah Grimmer is Secretary-General of Hong Kong International Arbitration Centre. She was formerly Senior Legal Counsel at the PCA where she served as tribunal secretary in multiple investor-State arbitrations and was appointed registrar in several inter-State arbitrations. Prior to joining the PCA, Sarah served for three years as Assistant Counsel at the ICC International Court of Arbitration in Paris. She was also a member of the international arbitration group at Shearman & Sterling LLP in Paris, prior to which she worked in private practice in Auckland. In 2015, Sarah was appointed to the Special Tribunal for Lebanon Disciplinary Board. She is a member of the ICCA-ASIL Task Force on Damages (2016), ICCA Publications Committee (2015), the IBA Investment Arbitration Subcommittee (2014), New Zealand ICC Arbitration Committee (2014), and the IBA Arb40 Steering Committee (2013). She has an LL.M from Cambridge University and an LLB/BA (Criminology) from Victoria University of Wellington. She is admitted to practice law in New Zealand.



**Mr. Zhonghua Zhu**  
**Partner, City Development Law Firm (Beijing)**

**General Data**

- Deputy Director and Senior Partner  
Shanghai Jianwei (Beijing) City Development Law Firm
- LLM in Maritime law at University of Southampton in U.K. (2001)  
LLM at East China University of Politics and Law (1996)
- An expert in domestic and international construction law and practice (One of the drafting experts of *National Standard Form of Contract for Construction* (GF-2013-0201))
- A Part-time Tutor for postgraduates in Shanghai University of Finance and Economics  
A Part-time Lecturer of Continuing Education school, Tsinghua University  
A member of Expert Committee of China Association of International Engineering Consultants (CAIEC)  
A senior fellow of Phoenix International Think Tank  
An arbitrator of "One Belt One Road" Arbitration Court
- Having work experience in Ministry of Justice of China;  
Having been the vice director and director of legal affairs department successively in China National Machinery Industry Corporation Ltd (SINOMACH), China State International Construction & Engineering Ltd (CSCI) and Overseas Operations of China State Construction and Engineering Ltd (CSCEC).
- Provided legal service for many major international projects and domestic projects, construction claims, contract negotiations and arbitration cases
- Working Languages: Madarin Chinese and English

**Practice Areas**

- Domestic and international construction
- Project finance and PPP projects
- Tendering and bidding, public procurement
- Contract negotiation, construction claim, domestic and international dispute resolution

**Publications**

- *A Practical Guide to China Tendering and Bidding Law* by Zhu Zhonghua, China Legal Publishing House on March 1, 2014
- *A Practical Guide to FIDIC EPC Contract: Explanation, Comparison, Advice and Cases* by Zhu Zhonghua, China Architecture & Building Press on January 1, 2013



**Mr. Jun Cui**  
**Managing Director, Eminent Consulting Limited**

His experience includes contract drafting, contract negotiation, construction claim for international projects as well as arbitration and disputes settlement.

He regularly advises some of the China's international major contractors and his current caseload involves projects in Asia, Africa, Middle East, Latin America and Europe.

Since 1989, he has worked abroad for more than 20 years in Middle East, Asia, Africa and Europe.

He is the author of *Principle and Practice of FIDIC Contract*, *Principle and Practice of FIDIC Subcontract* and the others and many articles and papers dealing with aspects of international construction contracts.



**Mr. Patrick Zheng**  
**Managing Partner, Clyde & Co LLP**

Mr. Patrick Zheng is the Managing Partner of the Beijing office. He specialises in international arbitration, China-related litigation (both onshore and offshore) and other China-related contentious matters. As a Chinese national, Patrick has been a member of China's international arbitration community for almost 20 years and is a well-known and highly regarded disputes lawyer in China. Up to now, he has represented hundreds of international and domestic disputes.

Patrick's primary focus is representing Chinese clients in front of international venues such as SIAC, ICC, HKIAC and courts of various jurisdictions. He also represents international companies before Chinese arbitration tribunals such as CIETAC (China International Economic and Trade Arbitration Commission) and the Chinese courts. He represented the government of Yemen against a Chinese investor in an ICSID arbitration. He also represented ZTE the leading Chinese telecommunication giant in its ground breaking US sanctions case. He also frequently represents leading Chinese clients such as Sinopec, PetroChina, CMEC and others. He is regularly ranked as a leading individual in the Chambers and Legal 500 legal directories, and is fluent in Mandarin, English and Korean, with proficiency in Japanese.



**Mr. Thomas Walsh**  
**Consultant, Clifford Chance**

Thomas Walsh is a Consultant at Clifford Chance and based in Hong Kong. He was previously based in Seoul where he was the head of Clifford Chance's Korean office. He remains the head of Clifford Chance's Korean disputes practice and a senior member of the Greater China International Arbitration practice. He is admitted in Hong Kong (2011) and England & Wales (2007).

Chambers & Partners Asia Pacific (2016) ranked him as an 'Outstanding Younger Partner' across Asia Pacific and noted that "he is especially experienced in disputes in the energy and construction sectors". Chambers & Partners Global (2016) also ranked him as 'Up and Coming' and commented that "Thomas Walsh of Clifford Chance offers substantial capabilities in construction disputes. Who's Who Future Leaders – Arbitration (2017) recently included him as one of its 'Future Leaders' and commented that "the "charming" Thomas Walsh, who splits his time between the firm's Hong Kong and Seoul offices and described as "exceptional; one of the best [...]".

Thomas is especially experienced in construction disputes having previously spent time on secondment to one of the world's largest contractor firms and having since represented clients in numerous arbitrations relating to onshore and offshore construction disputes.

Thomas is a Fellow of the Chartered Institute of Arbitrators (CIArb) and the International Dispute Resolution Academy (IDRA) and regularly teaches and lectures on international arbitration. He is currently helping launch HK45's advocacy initiative to improve advocacy in Hong Kong.





**Dr. Colin Ong, QC**  
**President, Arbitration Association Brunei Darussalam; Barrister, International Arbitrator**

Senior Partner at Dr Colin Ong Legal Services(Brunei); Counsel at Eldan Law LLP(Singapore) and Associate Member Barrister at St Philips Stone Chambers(London). Dr. Ong is regularly instructed as lead counsel or appointed as arbitrator and has been involved in over 300 arbitrations conducted under most rules including AAA, BANI, CIETAC, HKIAC, ICC, LCIA, LMAA, KLRCA, SCMA; SIAC, TAI; UNCITRAL and WIPO rules under many applicable laws including English, Indian, Indonesian, Malaysian, Hong Kong, PRC, Singapore and Thai law. Broad experiences in banking, construction projects, IP, IT, mining disputes, energy disputes, and international trade disputes.

In 2010, he became the first non senior judge from ASEAN to be elected as a Master of the Bench of the Inner Temple. First ASEAN national lawyer appointed English Queen's Counsel. Chartered Arbitrator; FCIArb; FMIArb; FSIArb; Ph.D; LL.M; DipICArb; LLB (Hons). President, AABD(Brunei); V-P (Appointments) THAC(Thailand); Advisor, Governing Council, BANI(Indonesia); Council, NCAC (Cambodia); Advisor,China-ASEAN Legal Research Center; Task Force, ICC Commission; ICCA-Queen Mary Task Force(Costs), V-P(Arb), IPBA; V-P, APRAG. Visiting Professor in several Civil law jurisdictions.

Recognised in legal directories including Who's Who Legal: Thought Leaders(Arbitration). One of the top 30 by Expert Guides: Best of the Best 2017 (Arbitration). GAR 45 under 45 (2006). Former Consultant, ASEAN Centre for Energy; Panellist, ASEAN Protocol EDSM. Core drafter, Malaysian PAM 2006 Standard Building Contract. Languages include English, Bahasa Indonesia/Malay and Chinese.



**Dr. Xuehua Wang**  
**Partner, Beijing Huanzhong & Partners**

Dr. Xuehua Wang is the Chief Partner of Beijing Huanzhong & Partners. He graduated from University of International Business and Economics (UIBE) with a PhD in Law. Dr. Wang used to be the Associate Dean of the Law School of the University of International Business & Economics (UIBE), the Director of the Committee of International and WTO legal affairs of All China Lawyers' Association, the director of the Anti-Dumping and Anti-Monopoly Committee and the director of the International Trade and Investment Committee of Beijing Bar Association. Dr. Wang is listed on the panels of arbitrators of Arbitration Centers such as Beijing Arbitration Commission/Beijing International Arbitration Center, China International Economic and Trade Arbitration Commission, Shanghai International Arbitration Center, Shenzhen Court of International Arbitration, and Hainan Arbitration Commission. Dr. Wang is also a visiting professor of UIBE, standing council member of WTO Law Research Society of China Law Society and China Academy of Arbitration Law, and council member of Chinese Society of International Law. Dr. Wang has acted as counsel, arbitrator or Chinese law expert witness in different international arbitration cases, thus accumulating vast experiences. He published many papers on international commercial law and anti-dumping law, among which the Theory and Practice of Remedy Measures for Breach of Contract in CISG and the Comparison of Antidumping Law between PRC and USA are the masterpieces in the field of international commercial law and antidumping law. Besides, Dr. Wang is the editor-in-chief of the very influential Huanzhong Commercial Arbitration WeChat Subscription Account.



**Mr. Stephan Guo**  
**The Director of the CACLO**

Ph.D./Adjunct professor/Director of CACLO  
Deputy to Shenzhen Municipal People's Congress  
Vice -chairman of Chinese Patent Association  
Vice-chairman of Business Ethics Committee of Commercial Culture Association of China  
Arbitrator of CIETEC  
Arbitrator of SCIA  
Arbitrator of Shenzhen Arbitration Commission



**Mr. William M.F. Wong, SC**  
**The Chairman of the Arbitration Committee of the Hong Kong Bar Association**

Dr. Wong has been in practice in Hong Kong since 1998. In 2010, he was also called to the Bar of the British Virgin Islands. In 2013, Dr. Wong was appointed as a Senior Counsel in Hong Kong. He is also presently a Non-Executive Director of the Securities and Futures Committee and one of the Vice Chairmen of the Board of Review of the Inland Revenue. He is also the Chairman of the Arbitration Committee of the Hong Kong Bar Association.

Dr. Wong's practice covers a wide spectrum of contentious commercial litigation. He has a special focus and substantial experience in the areas of commercial company, insolvency and securities law. He frequently represents clients in contentious shareholders and investment disputes and disputes in liquidation. He is the first Hong Kong barrister to be admitted, on ad hoc basis, in the Bermudian courts to conduct trials and appeals. He is experienced in offshore litigation. He has also acted as an expert witness on HK company law in the Peoples' Republic of China, and in international arbitration. Dr. Wong also sits as an arbitrator in international commercial arbitration.



**Mr. Khory McCormick**  
**Vice President, ACICA**

A formidable strategist, negotiator and litigator across multiple legal disciplines, Khory provides wide-ranging issues management and conflict advice to corporate and government decision makers at the highest levels. Khory is Professor of Strategic Law at Griffith University.

Khory currently represents Australia in UNCITRAL Working Group II: Arbitration and Conciliation, working on the possibility of a model law and or convention on the recognition and enforcement of conciliated settlements. He is also an ICC Australia Board Member and active across a broad range of national Chambers of Commerce in the Australian market. He is a Vice President of the Australian Centre for International Commercial Arbitration (ACICA).

He has been an institutional representative for entry into cooperation agreements in the ADR and arbitration spaces with both ICADR (India) and BANI (Indonesia) as well as spoken throughout the region in Korea, Taiwan, China, India, Indonesia and elsewhere. He is regularly a speaker on panels including judicial officer such as at RAIF.

He is believed to be the only Australian practitioner listed both in Chambers Asia Arbitration (Australia) and in the International Who's Who ranking for International Commercial Mediators.



**Mr. David Fong**  
**Vice Chairman, CIArb(EAB)**

Mr. David Fong is a member of the Harcourt Chambers and was called to the Hong Kong Bar in 2013. He was awarded a Master of Laws (Transportation and Maritime Law) degree with distinction by the City University of Hong Kong in 2012 and is a LLD candidate in arbitration of the East China University of Political Science and Law.

David maintains an exclusive civil practice with practice focus in arbitration, mediation and commercial litigation. He has been instructed as counsel, and appointed as arbitrator/mediator in drying shipping disputes as well as commercial matters (both ad hoc and administrated arbitration). He is a Fellow of the Chartered Institute of Arbitrators, Singapore Institute of Arbitrators and a Supporting Member of the London Maritime Arbitrators' Association. He is on the panel list of arbitrator of the HKIAC, KLRCA, Shanghai Arbitration Commission, Shanghai Arbitration Court of International Shipping, Hong Kong Bar Association, Hong Kong Maritime Arbitration Group, CMAC, SHIAC, Qingdao Arbitration Commission, CAA and CIETAC.

David contributes regularly to journals in the area of alternative dispute resolution. He is also a regular speaker about mediation and arbitration in Hong Kong and China. He is a contributing author of Transport Law in Hong Kong (Kluwer Law & International 2013) and Maritime Law and Practice in Hong Kong (Sweet and Maxwell 2015)

He has served the Chartered Institute of Arbitrators (East Asia Branch) as a committee member since 2011 and is its Vice Chairman at present.



**Mr. Joao Ribeiro**  
**Head of UNCITRAL Regional Centre for Asia and the Pacific**

João Ribeiro-Bidaoui is currently Head of the UNCITRAL Regional Centre for Asia and the Pacific, managing technical assistance and capacity building programming available to over 50 States in Asia and the Pacific, namely least developed, landlocked developing and small islands developing States. In that capacity, he coordinates with Governments and international and regional organizations with respect to trade law reform activities. He also manages programmes to promote the rule of law in commerce in the context of UN Partnership Framework Agreements with Lao PDR and Papua New Guinea, aimed at achieving the Sustainable Development Goals. He presents regularly at major conferences in the region on key topics of international trade law, including investment and commercial arbitration. He has been involved in reviewing, commenting or drafting legislation on international commercial arbitration from China, Fiji, India, Kazakhstan, Lao PDR, Macau SAR, Myanmar, Mongolia, Papua New Guinea, Qatar, Republic of Korea, Saudi Arabia and UAE. During his career, he was Head of International Affairs of the Ministry of Justice of Portugal, Deputy Secretary General of the Conferences of Ministers of Justice, both of the Iberian-American countries and of the Portuguese Speaking countries, member of the Portuguese National Commission for Human Rights and member of the Portuguese Permanent Bilateral Cooperation Commissions with the USA and Macau. In that period, he was in charge of the Ministry's development cooperation policies, namely several technical assistance projects for law reform in Africa, Timor Leste and Eastern Europe. In that capacity, he led bilateral and multilateral treaty negotiations and national delegations to GRECO, several Committees of the Council of the European Union, OECD's working group on Bribery in International Business Transactions (becoming a member of its Management

Group in 2011). During his first experience in Asia (2002-2008) he was legal counsel of the Government of the Macau SAR and lectured at the Faculties of Law, Management and of Social and Human Sciences of the University of Macau where he taught International Law, International Business Law, Business Law, Economic Integration Law, Constitutional Law and Chinese Political System. Mr Ribeiro has also extensive experience as legal counsel and manager of international multisport events such as the 4th East Asian Games – Macau 2005 (Chief Operating Officer), the 2nd Asian Indoor Games – Macau 2007 and the 1st and 2nd Lusophone Games – Macau 2006 & Lisbon 2009 (Chief Executive Officer). He was legal and policy adviser of the Deputy-Prime Minister (2001-2002) and of the Minister of Justice of Portugal (2009). He holds a Law Degree from the University of Coimbra and Master's Degrees from the Universities of Coimbra and Macau.



**Mr. Rimsky Yuen Kwok-keung, GBM, SC, JP**  
**Secretary for Justice, Hong Kong SAR Government**

Mr. Rimsky Yuen, SC, was appointed Secretary for Justice on July 1, 2012. He was a barrister in private practice before joining the Government, specialising in commercial disputes. He also served as arbitrator in international arbitration and mediator in commercial disputes.

Mr. Yuen was appointed Senior Counsel in 2003 and a Recorder of the Court of First Instance of the High Court in 2006.

Mr. Yuen has also served in various public duties, including as Member of the Judicial Officers Recommendation Commission (which Mr. Yuen continues to serve in his current capacity as Secretary for Justice), Non-Official Member of the Independent Commission against Corruption Advisory Committee on Corruption, Chairman of the Transport Advisory Committee, Non-executive Director of Mandatory Provident Fund Schemes Authority and Council Member of the Hong Kong Institute of Education.

# LOCAL ROOTS GLOBAL IMPACT

"The only local arbitration commission which meets or surpasses global standards" - The Economist Intelligence Unit  
"The runner up for the up-and-coming regional arbitral institution of the year (2014)" - Global Arbitration Review



## History and background

Established in 1995 as an independent and non-governmental institution, the Beijing Arbitration Commission, also known as the Beijing International Arbitration Center (the "BAC/BIAC"), has become the first self-funded arbitration institution in China and is widely accepted as one of the primary arbitration institutions internationally.

With the aim of delivering trusted professional services, the BAC/BIAC endeavors to promote and encourage the resolution of disputes through efficacious arbitration and a comprehensive understanding of Chinese arbitration practices. Towards this end, the BAC/BIAC actively organizes the Annual Summit on Commercial Dispute Resolution in China, sponsors the Biennial ICCA Conference, and contributes constructively to the UNCITRAL Working Group II's deliberations, as an observer.



Beijing Arbitration Commission  
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## Structure and Service

- \* The BAC/BIAC is run by a Committee comprising of a Chairman and 14 members.
- \* The BAC/BIAC's office, headed by the Secretary General, has 30+ case managers.
- \* The BAC/BIAC has 500+ arbitrators, including 130+ international arbitrators in its Panel. Nominating arbitrators from outside the BAC/BIAC's Panel are permissible in international cases.
- \* The BAC/BIAC has served clients from more than 30 countries, and has facilities to conduct arbitrations not only in Chinese and English but also in other languages.
- \* There has been an exponential increase in the number of Arbitration cases filed with BAC/BIAC, from 7 in 1995 to over 30,000 in 2016.
- \* Since 2012, the numbers of cases filed with the BAC/BIAC, on average per year, are 2,200+ in domestic cases, and 50+ in International cases.
- \* Since 2012, the disputed value, on average per arbitrated case, was 1.5+ million USD, and in 2015, the highest disputed value went up to 1.7+ billion USD!



Hearing Room

## Recommended BAC/BIAC Model Clause:

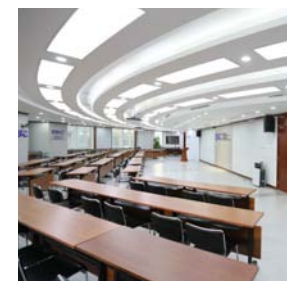
All disputes arising from or in connection with this contract shall be submitted to Beijing Arbitration Commission / Beijing International Arbitration Center for arbitration in accordance with its rules of arbitration in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.



Hearing Room



Case Filing Area



International Conference Hall (Seating 50 - 200)

## Advantages and Fees

- \* The BAC/BIAC is financially independent and is not subject to governmental interference.
- \* Foreign lawyers are allowed to represent cases without any restriction of numbers.
- \* The BAC/BIAC Arbitral Awards are final and binding, and are enforceable under the 1958 New York Convention.
- \* Strict confidentiality of the Arbitration process is ensured for a just and fair result and Award.
- \* The BAC/BIAC's Arbitration fees are comparatively lower than other international arbitration institutions.
- \* Fixed Arbitration fees are provided under the BAC/BIAC fee schedule, but, the parties can agree on a different set of computation for arbitrators' fees in international cases.

## Up-in-front Practice

- \* Parties have a higher degree of autonomy to conduct arbitration more efficaciously by applying, whenever necessary, for joinders of additional parties, claims between multiple parties or Consolidations of Arbitrations as provided by Articles 13, 14, 19.6, 29 of the Arbitration Rules.
- \* Interim measures, emergency arbitrator and preservation measures are available, if permitted by applicable law, to multinational and international corporations as provided for by Articles 16, 62, 63 of the Arbitration Rules.
- \* More flexibility in determining the applicable law, arbitration languages and the replacement of arbitrator especially after unsuccessful Med-Arb efforts. These provisions address the concerns and needs of the parties and are provided for by Articles 67, 69, 72 of the Arbitration Rules.

## BAC/BIAC Facilities

- \* 12 hearing rooms equipped with technical assistance and simultaneous translations.
- \* 3 conference rooms for up to 200 people.
- \* Tele- and video- conferencing facilities.
- \* Online Case Management System and Date & Notification App.
- \* Self-service filing and enquiries system.
- \* 70 free parking lots.

## Looking Beyond Rules — An Analysing Insight into the Competitive Attractions of BAC

### 1. Introduction

From its humble start to a well-known name in the international arbitral community, the Beijing Arbitration Commission (BAC) is one of the great growth arbitration institutions of our times. People working on dispute resolution are paying more and more attention to this emerging organisation. While parts of BAC's history, features and achievements have already been reported on in a number of publications, far too little has been analysed on precisely why and how the BAC made a difference in over 200 arbitration institutions in the mainland – and in so doing, won the recognition for and respect to the idea and practice of arbitration in China. Such a study will precisely help answer why an increasing number of foreign parties have started to choose the BAC for resolving their disputes. The key to this article is to offer an analysing insight into some key principles and values which are the foundation of the BAC's expertise, as well as some practical tips under the BAC Arbitration Rules.

### 2. Independence does matter

From the UNCITRAL Model Law to national legislation, principles like impartiality and equal treatment have been recognized worldwide as the basic requirements of arbitration. These requirements are deeply rooted in and highly rely on the value of independence. Independence reflects the core value of arbitration. In some arbitration institutions of developing countries, independence would only be hanging on the wall at the office. At the BAC, however, it comes to life. It has been fully endorsed by the leadership team and well integrated into the BAC's practice.

#### 2.1. How is the BAC organized?

The BAC was founded in 1995, following the

promulgation of China's Arbitration Law. Despite the funding from the Beijing municipal government at the beginning, the BAC developed a definite power for its own decision-making and a scientific structure for its management to address any possible concerns about the Chinese government's influence and local-protectionism. The decision-making body of the BAC is a committee including one chairman and fourteen committee members. These committee members are well-respected experts and scholars on law or economic and trade. For all affairs, including personnel, finance, as well as other significant matters, the BAC will clearly and simply determine by itself what to do and where to go, without any outside interference at all. Under the committee, the BAC secretariat takes care of the case management and other daily routines. In this way, the BAC has well kept its independence.

#### 2.2. Who is leading the BAC?

The BAC has achieved its award-winning values and culture in large part through the decisions that have been made by its leadership team. Indeed, for any organisation, it would be almost impossible to soar with the eagles if you are led by a flock of turkeys. Consisting of China's top experts on law and economics, the BAC committee has been proven as a group of true elites. From the 1st to the 5th session, Professor Jiang Ping has been elected as the Chairman of the committee (and is now the Honorary Chairman), and Madame Wang Hongsong has been appointed as the Secretary General. In China's legal arena, Professor Jiang is undoubtedly a "national treasure". His motto, "I bow my head to the truth only" symbolises the courage and conscience of Chinese intellectuals, and inspires generations of Chinese legal scholars and practitioners. Madame Wang, currently the BAC Vice Chairperson, raised the idea of "casting credibility", not only for the BAC, but also for, and respected by, all Chinese arbitration institutions. The current Chairman of the committee is Professor Liang



In-depth Exploration of Cooperation between Arbitration Institutions, Joint Promotion of Belt and Road Arbitration—Signing Ceremony of Belt and Road Arbitration Initiative & Legal Issues on Investment Climate and Dispute Resolution in Malaysia and Egypt

Huixing, a renowned civil law expert from the Chinese Academy of Social Sciences. Meanwhile, other committee members are from prestigious colleges and institutes such as Peking University, Tsinghua University, Renmin University of China, and so on. The strong feature of the scholars reinforces the free thinking and the independent decision-making of the BAC.

#### 2.3. How is the BAC financed?

With continuous collaboration and hard work, the BAC was rewarded with a sharp increase in its caseload and the disputed amounts. In 1995, only seven cases were filed with the BAC, with a total disputed amount of 44 million RMB. By the end of 2012, the BAC had registered 20,407 cases, with the total value in dispute of 94.74 billion RMB. During this process, the BAC acquired its financial independence with its case management income. Established in 1995, it became financially independent in 1999. Using its own funds, the BAC purchased nearly 7,000 square metres of office space and 70 parking lots in Beijing's central business district. Every visitor to the BAC will be impressed by its high-tech and fully equipped hearing rooms and elaborately developed online case handling system. Except for covering all its expenses and arbitrators remunerations, the BAC pays taxes, an odd phenomenon during the transitional period

of China's society. But by paying taxes, it achieved even greater independence in its organisational management. By the end of 2012, the BAC had paid 129 million RMB in taxes - 29 times more than its initial government funding at its establishment.

#### 2.4. Arbitrators impartial and fair?

Professor Jiang used to comment that "the life of arbitration will hinge on quality services, and quality services will hinge on quality arbitrators". Despite the preeminence of the institution as a whole, the BAC fully understands the key role of arbitrators in individual cases, in particular their impartiality and fairness. It engages criteria to continuously improve, and the selection process is to ensure fair competition. Once arbitrators are listed on the panel, there will be a performance assessment, and those of high performance will get their contracts renewed. Thus far, the total number of appointed arbitrators is 810,410 of which have not been invited back.

Under the BAC Arbitration Rules, the arbitral award shall be signed by each member of the arbitral tribunal. The dissenting arbitrator may choose not to sign the award. And if so, this dissenting arbitrator shall issue a dissenting opinion, which shall be sent to the parties together with the award but does not form part of

the award. If the dissenting arbitrator does not issue a statement of his/her personal opinion, the arbitrator shall be deemed to have refused to sign the award without any justifiable reason.

To guarantee and further the arbitrators' impartiality and fairness, the BAC made special internal rules. The BAC chairman and staff members are not permitted to be arbitrators. Arbitrators are required to disclose any interest conflicts and the parties are provided with a computer system to search for background information of the arbitrators. In addition, the BAC arbitrators may not represent disputing parties in any case at the BAC. Such rules, although tough, distinguished the BAC from other arbitration institutions; for independence does matter.

### 3. Make it globalised

From the early history of arbitration to the New York Convention, arbitration is always believed to be an ideal mechanism for resolving transnational disputes. Living in a flattened world and a new era, with the boost of internet economy, free trade, and cross-border investment, the BAC was never satisfied to be just a leading domestic institution. Shortly after becoming self-funding, the BAC started to step forward to the outside world. It demonstrates being globalised in many ways, and the following facts will unveil the truth.

#### 3.1. The facts show

Some foreign parties have mistaken the BAC as an institution for local disputes only, partly because of "Beijing" being in its name. Pursuant to the Arbitration Law of China, however, the BAC is free to accept and handle foreign-related or international cases, with its awards enforceable internationally. By the end of 2012, the BAC had already handled more than 500 international cases, serving parties from various jurisdictions including the United States, United Kingdom, Germany, Australia, Japan, South Korea, Singapore, Hong Kong and Taiwan, and so on. (Even in its domestic caseload, roughly 50% of cases involving one party or both parties from outside Beijing.) To make its Arbitration Rules more welcoming to foreign parties and foreign counsels, the BAC set special stipulations on international commercial cases in Chapter

8. When appointing arbitrators, parties in international cases may select arbitrators outside the BAC panel (Art.60 (1), BAC Arbitration Rules). To address the foreign parties' concerns about the impartiality and confidentiality of the arbitral tribunal in Arbitration-Mediation, or, the conciliation conducted by the tribunal during the arbitral proceeding, the Rules allow the parties to request a replacement of any arbitrator upon the termination of an unsuccessful conciliation (Art.58, BAC Arbitration Rules). When rendering the arbitral award, the tribunal is also required to take into account any relevant international trade usages (Art.60 (3), BAC Arbitration Rules).

#### 3.2. The team prepared

When speaking of service, the human element always remains a cornerstone of the BAC's success. To ensure a quality service for its foreign clients as well as its Chinese clients, the BAC has carefully built its "international team" of arbitrators and staffs. Among the 391 arbitrators in its panel, 98 are from foreign jurisdictions, comprising of 18 from North America, one from South America, 39 from Europe, three from Oceania, and 17 from Hong Kong and Taiwan. These arbitrators not only guarantee best quality service for parties from different countries, but also bring cutting edge ideas and solid foreign experience to the BAC. Accordingly, the BAC engaged China's topranking case managers, mostly graduates from top law schools in China, and some even with overseas legal study and working experience. Language is usually an important factor to consider in crossborder arbitration cases. With such a prepared team, however, language is not really a problem at the BAC. Today, English is mostly chosen in international arbitration, and so it is at the BAC. In case of any other language, it will be easily handled by an interpreter utilising the BAC's simultaneous interpretation equipment.

#### 3.3. Colloquia and trainings excelled

Since human resources play a significant role at the BAC, the exchange of ideas and further studies are understandably indispensable and essential, especially in its continual globalisation process. Arbitration theories and practices develop fast both in China and abroad. On the one hand, the BAC thirsts for up-to-date information from the international arbitral community,

and therefore proactively holds high-profile colloquia and trainings, not only for its arbitrators and staff, but also for arbitration scholars and practitioners. A number of world top arbitration experts have given lectures at the BAC, including Gary Born from Wilmer Hale, Loukas Mistelis from Queen Mary University, Teresa Cheng from the HKIAC, Thomas Stipanowich from Pepperdine University, Philip Yang, and others. On the other hand, the BAC works hard to introduce the status quo and any progress in Chinese dispute resolution to the outside world. In 2013, the BAC started to produce an annual report of the commercial dispute resolutions in China, providing a review of and preview for the year, which is now being published by LexisNexis. Based on this report, the BAC held a legal forum, "Unlocking the Intricacies of Commercial Dispute Resolution in China" jointly with the Institute of Advanced Legal Studies in London, which has attracted key politicians and elites from the United Kingdom's judicial circles, and worldwide attention.

### 4. Embracing the trends

Superior services always come from a genuine desire and effort to exceed what the clients expect and meet what the trends require. The BAC not only discovers the needs and the trends, more importantly, it acts on what it learns – and its internationalisation makes that easier than ever.

#### 4.1. Why the revision?

Recently, the BAC published the revision draft of its Arbitration Rules for comments, purporting to replace the existing version, which became effective as of 1 April 2008. Changes have been brought to quite a few provisions in order to keep in consistency with clients' expectations and international practices as far as possible. With the revision of its Arbitration Rules, the BAC will further improve its competence in providing tailored dispute resolution services for both Chinese and foreign clients. The following paragraphs will tell what to expect from this revision.

#### 4.2. Arbitration's advantages strengthened

To highlight the ideas and features of modern commercial arbitration, the revision strengthened the arbitral tribunal's discretion during the arbitral proceedings. In all matters not expressly provided for in the Rules, the BAC or the arbitral tribunal shall have the power to proceed with the arbitral proceedings in a way it considers appropriate, in order to facilitate the efficient and fair resolution of the dispute (Art.2 of the draft). When hearing a case, the arbitral tribunal shall have the power to, on a case-by-case basis, determine the agenda of a case hearing and take such various hearing measures, including, but not limited to, issuing question lists, holding pre-hearing conferences, or producing terms of references; the presiding arbitrator may accept an entrustment from the arbitral tribunal to take such hearing measures (Art.34 of the draft). In case of a truncated tribunal after the conclusion of the last oral hearing, with the consent of both parties and the Chairman of the BAC, the remaining two arbitrators may continue the arbitral proceedings and make decisions or the award (Art. 44 of the draft). Also, the arbitral tribunal will enjoy a free hand in the assessment of evidence. Rather than being rigidly bound by the evidence rules in litigation, the tribunal is required to take into consideration all factors and practices of the relevant specific industry, realizing a professional and fair dispute resolution.

#### 4.3. Transparency and predictability furthered

The creditability of arbitration lies not merely in a just result; a transparent and predictable procedure is of the same importance, or even more so. To absorb some of the feedback from the clients, the revision draft further streamlined the proceedings in this regard. In the event a party raises a jurisdictional objection, the arbitral proceedings shall not be suspended (Art.6 (3) of the draft). When deciding whether or not to accept the counterclaim submitted after the expiry of the stipulated time limit, the BAC or the arbitral tribunal shall take into account factors like the necessity for consolidating the counterclaim and claim into a single case, the time period exceeded, whether such late submission will cause unnecessary delays and so forth (Art. 11 (2) of the draft). Where a party's application for an amendment to a claim or counterclaim is submitted so late that it may affect the normal progress of the arbitral proceedings, the BAC or

the arbitral tribunal shall have the power to reject such an application (Art. 12 (2) of the draft). To better meet the clients' needs for a more detailed and accurate recording of oral hearings, the parties may request the BAC to appoint a stenographer or stenographers to record the hearing (Art. 39 (5) of the draft). During the arbitral proceeding, the Summary Procedure may be turned into an Ordinary Procedure upon a unanimous request by both parties or upon request by one party with the consent of the other party. In case of such a change, the parties shall determine through consultation their respective proportions of deposit of an advance in the additional arbitration costs; failing this, the BAC shall make a determination thereon (Art.56 (3) of the draft).

#### 4.4. Internationally integrated

In recent years, the BAC paid close attention to the newly arising arbitration theories and practices, and found some of them both thoughtful and useful. As a part of its globalisation, the BAC absorbs the best of them in the revision draft, to better meet the expectations of international clients. While the "in writing" stipulation in the New York Convention and the UNCITRAL Model Law did cause some difficulties in handling cases involving nonsignatory, the BAC has made a breakthrough by enlarging the scope of such a requirement. Where, in the exchange of the Application for Arbitration and the Statement of Defence, one party claims the existence of the arbitration agreement whereas the other party does not deny such existence, it shall be deemed that there exist a written arbitration agreement (Art.4 (3) of the draft). Consolidation of arbitrations and multi-parties claims are other two focuses of attention. At the application of a party and where all the parties concerned consent, or the BAC considers necessary and where all the parties concerned consent, the BAC may decide to consolidate two or more arbitrations pending into a single arbitration; unless otherwise agreed by the parties, the said cases shall be consolidated to the case commenced first (Art.72 (1) of the draft). Where there are more than two parties in an arbitration case, any party may raise claims against any other party according to the same arbitration agreement; the arbitral tribunal shall decide whether or not to accept any such claim (Art.13 (1), (3) of the draft). In a multi-parties case, the arbitral tribunal may either render a unified award, or render multiple awards respectively

according to the claims between different parties (Art.47 (4) of the draft). For international cases, if the parties have not agreed on the seat or language of arbitration, the BAC may make the determination by taking into account the circumstances of the case and choose any jurisdiction, including one outside of China, or any language it deems proper (Art.60 (1) and Art.70 (2) of the draft). Where Chinese law does not apply, the tribunal may have the power to grant interim measures, either in the form of a decision or an interim award (Art.61 of the draft).

### 5. Tips under the BAC rules

Notwithstanding the revision of its Arbitration Rules or any other change it has made or will make, the BAC never intends to simply copy. It embraces the trends, but is not a mere follower. From the very beginning, the BAC was ambitious to build up its own system based on its practices. A "BAC mode" is always the starting point and the final aim of all its endeavors. In view of this, some practical tips have been to be helpful for attorneys and legal counsels unfamiliar with BAC rules.

#### 5.1. Proper case filing

A successful arbitration usually begins with a proper case filing. Yet claimants or their counsels, especially those residing outside Beijing, are not required to come to the BAC in person. The BAC provides a free case filing consultation service; a telephone call or fax or email will be enough to find the answers to their questions. The submission of documents could be done by post or courier. Materials expected to be submitted include not only a request for arbitration and the arbitration agreement, but also the statement of claims, evidence and the source of those evidence (attached with a list thereof), and the name and address of its witness if any, and proof of the claimant's identity (e.g. Business License, Certification of Legal Representative, Power of Attorney).

As for the language of the submissions, Chinese is not a must although it is the official language of the BAC. If the parties have agreed otherwise, their agreement shall prevail. If translation services are required by the parties or their counsels or witnesses during oral hearings, translators may be provided either by the BAC or by the

parties themselves. The parties shall bear the cost of translation.

Different from litigation in China, there is no restriction on the number of representatives under the BAC Arbitration Rules, and a foreign attorney will be acceptable as well to represent the case. A Power of Attorney should be submitted to set out the matters specifically entrusted and the scope of the authorised representatives' authority.

The BAC shall register the case within five days of its receipt if it finds that the requisite requirements for acceptance are met. Within 10 days of the registration, the BAC shall send to the Respondent a Request for Submission of Defence, as well as a copy of the Application for Arbitration, attachments thereto, if any, a set of Arbitration Rules, and BAC's Panel of Arbitrators. Despite the time period for case registration, claimants could apply for property preservation prior to an arbitration case that has been registered, pursuant to the Civil Procedure Law of China newly revised in 2012. Besides its own rules, the BAC could also administer arbitration cases under a different set of rules if so agreed by the parties, as long as it complies with the mandatory law of the seat of arbitration and is enforceable.

#### 5.2. Strategic defence

To the respondent, on the contrary, a strategic defence should be carefully designed. Some people probably regard "doing nothing" as a useful weapon in international practice. Nevertheless, they are recommended to reconsider whether it is advisable to reject to sign for the arbitration documents. Under the BAC rules, if, despite reasonable inquiries, the addressee's place of business, place of habitual residence, or other mailing address cannot be found, service shall be deemed to have been effected if the documents, notice or material are delivered to the addressee's last known place of business, place of habitual residence, or other mailing address by mail, courier, or by any other means of delivery with proof of attempt to deliver. Accordingly, "doing nothing" will bring possible risks.

What is the respondent expected to do then? Under the Ordinary Procedure in an international case,

the respondent should, within 45 days of the receipt of the Request for Submission of Defence, submit to the BAC a Statement of Defence, evidence and the source of the evidence (together with a list thereof), and the name and address of its witness if any; and proof of the respondent's identity. If the respondent finds the time limit for preparing the required documents not enough, timely communication with the BAC for an extension will be strongly recommended. Failing this, the progress of the arbitration shall proceed anyway.

If the respondent objects to the existence or the validity of an arbitration agreement or the jurisdiction over the case, it may raise a jurisdictional objection. It should be kept in mind that such an objection should be raised in writing before the first oral hearing, or prior to the expiry of the time limit for the submission of the first round of defence in a documents-only arbitration. Otherwise, it shall be deemed to have accepted that the arbitration agreement is valid and that the BAC has jurisdiction over the case. The written objection may be submitted either to the BAC or to the relevant court for a decision thereon. If one party makes an objection to the BAC with the other party to the court, then it shall be decided upon by the court. The BAC may authorise the arbitral tribunal to rule on jurisdictional objections, and the tribunal may deliver its decision either in an interim award or a final award.

The respondent in an international case shall also submit its counterclaim within 45 days of the receipt of the Request for Submission of Defence according to the Ordinary Procedure. In case of an overdue submission, the arbitral tribunal, or if the tribunal has not been constituted, the BAC shall decide whether to accept the counterclaim.

#### 5.3. Your suitable arbitrator(s)

The appointment of arbitrators is understandably a crucial step in arbitration. In domestic cases, arbitrators shall be chosen by the parties from the Panel of Arbitrators maintained by the BAC. There is no restriction on appointing foreign arbitrators in domestic cases, if the parties think a foreign arbitrator should be suitable for the dispute. This did happen in practice where the parties had special agreements (e.g. a foreign language was agreed as the language of arbitration), or where there are special



From 20th to 24th June 2016, BAC had travelled to London, Frankfurt and The Hague to organize the “2016 Annual Summit on Commercial Dispute Resolution in China”.

factors in specific cases (e.g. a dispute between two Foreign Invested Enterprises, which is usually deemed to be a domestic case under the Chinese law).

In international cases, arbitrators could be chosen by the parties from or outside the Panel. In so doing, the parties shall submit the resume and means of contact of the candidate to the BAC. The candidate selected outside the Panel may act as an arbitrator with the confirmation of the BAC, and with a term to expire at the closing of the case, unless the BAC decides to list the arbitrator on its Panel. Another question is, could an international arbitrator ask for extra compensation? According to the Rules, as a party agrees to increase the compensation for international arbitrators, the party shall deposit an advance on the resulting additional costs as required by the BAC; if a party has not deposited the advance on costs, it shall be deemed not to have selected the arbitrator, and then the Chairman of the BAC could appoint the arbitrator for the party.

To make the listing procedure more effective, the parties may each nominate one to three arbitrators as the candidates for the presiding arbitrator. According to the application or agreement of parties, the BAC may also provide a list of five to seven candidates for the presiding arbitrator from which the parties shall select one to three as candidates. It is worth mentioning that the BAC is the only institution providing such a service in China, with additional respect to party autonomy, and has proved

a useful option for the appointment of the presiding arbitrator.

#### 5.4. What are pre-hearing preparations like?

Appropriate pre-hearing preparations will lead to an effective arbitral hearing. The BAC Rules leave it to the arbitral tribunal for a case-tailored arrangement. If the arbitral tribunal considers it necessary, it may, prior to the oral hearing, authorise the presiding arbitrator to summon the parties to exchange their evidence and jointly draw up a list of the disputed issues and define the scope of the oral hearing. Prior to the oral hearing or at any stage during the oral hearing, the arbitral tribunal also may, if necessary, require the parties to produce evidence and to respond to the tribunal's questions. Parties may negotiate hearing date(s) with arbitral tribunal, and the case manager will also take care of the relevant arrangements.

When preparing evidence, parties should not neglect that if a party can prove that the other party possesses evidence but refuses to disclose without any justifiable reason, and that such evidence would have had an adverse impact on the case of the party possessing the evidence, adverse inferences may be drawn from such refusal to disclose. In addition, a party may apply for an order for the preservation of evidence if the evidence may be destroyed or lost, or may subsequently be inaccessible.

### 5.5. What happens during a hearing?

Although China does not really have the tradition of cross-examining witnesses, it is not restricted in any way. Both parties are allowed to put questions to any witness.

The arbitral tribunal shall keep minutes of the hearing, except in relation to conciliation proceedings. The tribunal may also make an audio or video record of the hearing. The parties and other participants in the arbitration shall have a right to request a rectification of any error and omission in the minutes of their testimony. The request shall be recorded if the tribunal does not allow the rectification. The tribunal, the recorder, the parties, and other participants in the arbitration shall sign or affix their seals on the minutes.

The Arbitral tribunal may, on the application of any party and with the approval of all other parties concerned, order the consolidation of two or more related arbitrations or arbitrations involving a similar subject matter, if the compositions of the arbitral tribunals are the same.

### 5.6. What to expect on the arbitral award?

Needless to say, the arbitral award is of the greatest importance to the parties. Even before the case filing, the parties, or at least the claimant, will wonder when they will receive the award. As a leading institution famous for its efficiency, the BAC sets a relatively short time limit for making the award. The arbitral tribunal shall render its award within six months of its constitution. If there are special circumstances justifying an extension, the Secretary-General may, at the request of the presiding arbitrator, approve a suitable extension of the time limit.

Where the arbitral tribunal finds it necessary, or where a party so requests and the tribunal approves, it may render a partial award on any part of the claims before rendering the final award, or, an interim award on the procedural or substantive issues in dispute. At the request of any party, a rectification or a supplementary award shall be made to correct any computational, clerical or typographical error, or to supplement the decision on any missed claim, respectively.

The losing party is expected to perform the award according to the time limit specified therein. In the absence of such a time limit, it should be performed immediately. Otherwise, the winning party will be rightful to request for enforcement to the relevant court.

For the enforcement of international arbitral awards, a special reporting system has been implemented in China. Lower courts are unable to refuse enforcement of an international award without referring the case to the higher courts and ultimately the Supreme People's Court (SPC) in Beijing. According to SPC's statistics, the ratio of such non-enforcement was lower than the global average level. As for domestic awards, pursuant to the Civil Procedure Law of China revised in 2012, the courts will, at the application of the losing party, have a judicial supervision on the arbitral procedure only, not a “trial on appeal” at all. This background partly explains why more and more foreign parties or their counsel feel comfortable and confident in the BAC's arbitration.

## 6. A final word

One will harvest what he plowed. Eighteen years of striving has made the BAC “the only local arbitration commission which meets or surpasses global standards” (The Economist Intelligence Unit), and a leading Chinese arbitration institution of “professionalism, competence and transparency” (Global Arbitration Review). Arbitration in such a huge country is never an easy job, but the BAC will never forget its aspirations, nor will it ever lose its passion.

In September 2013, the BAC celebrated its 18th birthday; it is just like a young man at this age, full of vigor, ambition, and confidence. It always looks forward. It always marches on. It always prepares to turn the ordinary into something extraordinary.

## Beijing Arbitration Commission/ Beijing International Arbitration Center in the past 20 years

"In 2015, the steep rise in the number of arbitration cases has created practical difficulties for BAC as we have limited staff members. Nonetheless, with the joint efforts of our staffs and arbitrators, both the number of cases and the amount in dispute have hit a record high in 2015!" Mr. Lin Zhiwei, Secretary General of the Beijing Arbitration Commission/ Beijing International Arbitration Center ("BAC"), described the work of BAC in 2015 during an interview with us.

In 2015, BAC handled 2944 cases, representing an increase of 44.2% over 2014. The total sum of amount in dispute reached 41.11 billion Yuan (RMB ¥), an increase of 157.9% from 2014. BAC, as a Shiye Danwei (Institutional Unit) with only 43 staff, has a gross income of about 236.8 million Yuan in 2015 and contributed 51.11 million Yuan in taxes. From its establishment on the 28 September 1995 until the end of 2015, BAC has contributed a total sum of 222.5 million Yuan in taxes, which is 49.91 times the amount of start-up fiscal allocations in the early years of its establishment.

Following the enactment and implementation of Arbitration Law in 1995, the arbitration industry in China had made considerable progress. Under this trend towards growth and expansion, however, BAC remains to be one of the leaders in arbitration industry in China due to its credibility and quality of its services. Through BAC, we are able to see what competencies and core values are required for arbitral institutions to maintain a good reputation and degree of influence domestically and internationally.

### Highly specialized arbitrators

There is a well-known saying in the field of arbitration: "arbitration is as good as the arbitrators". At BAC, one of our greatest assets is the excellent team of arbitrators we have. They form the key guarantee for the healthy, rapid and future development of BAC. One of the

job duties of 孙君 (Sun Jun), a staff at the administrative department of BAC, is receiving arbitrators to the BAC at the front desk. Her main reflection of 2015 is that there is an apparent increase in the number of arbitrators attending hearings.

In 2015, there were 506 individuals listed on BAC's Panel of Arbitrators, 359 of which handled arbitration cases. 2425 cases were resolved through means of arbitral award, mediation and settlement negotiation. A point worth mentioning is that, in relation to forming the arbitral tribunal, 852 arbitrators were selected by the parties themselves, an increase compared to 2014.

Mr. Lin Zhiwei further explained: "on the one hand, we can see that the ratio of parties taking the initiative to select their own arbitrator/s in arbitration cases is on the rise. This demonstrates that the impartiality, professionalism and quality of service of BAC's arbitrators continue to receive better recognition. On the other hand, in relation to arbitrators appointed by BAC, we are also working to devise a scientific and systematic distribution for the appointment of arbitrators. We would like to take into consideration, not only the arbitrators' professional experience and the competition of their ongoing arbitration workload, but also the effectiveness and diversity in the composition of the arbitral tribunal. By combining the senior arbitrator with the less experienced, we create dynamic teams that give arbitrators enormous reciprocity in sharing expertise. We strive to ensure that we have the most suitable and professional arbitrators for each case."

One distinctive feature of BAC is the stringent requirement employed in the management of arbitrators. "If we find that an arbitrator is not sufficiently professional, we may cease his or her eligibility of being BAC's arbitrator. Although this may seem normal among the international arbitration community, such practice is in fact difficult to uphold in Chinese cultural background." Dr. Chen Fuyong, the Deputy Secretary-General of BAC, thinks



From 5th to 11th July 2015, BAC had travelled to London and Cologne to organize the "2015 Annual Summit on Commercial Dispute Resolution in China".

that such "perseverance" is of great value to BAC. All new arbitrators appointed by the BAC must go through 3 days of intensive trainings and examinations, which focus on practical skills and involve workshops such as arbitration moot.

Dr. Chen Fuyong's opening line for the trainings is always "we thank you for participating in this arbitrator's training." Such gratitude is expressed sincerely. Dr. Chen explained that many arbitrators who are experts in their specific fields were not fond of these trainings when they were first promoted. Besides, attending the trainings does not guarantee the attendants' a place as an arbitrator at BAC. Many individuals wonder why they have not been enrolled in BAC's panel despite having participated in the trainings for years. They were uncertain about the selection requirements. In fact, the requirements are simple and the details are contained in BAC's Administrative Measures for the Employment of Arbitrators. The requirements contained therein is already more stringent than those contained in the Arbitration Law, nevertheless the actual requirements adopted by BAC is even higher. Presently, we have had over 600 individuals on the waiting list of applying to become an arbitrator of BAC and they are all experts in their respective fields.

How can BAC say no to these experts and top-notch individuals? As Mr. Lin Zhiwei explained, arbitration fee is split into institutional management fee

and arbitration fee in international arbitrations, and the fees of the arbitrators are determined by the market. In China, however, the remuneration paid to the arbitrators are included in the arbitration fee and the arbitration institutions determine how much of the arbitration fee goes to the arbitrators. The ratio differs between different arbitration institutions and currently BAC has the highest ratio of arbitrators' fee to the total arbitration fee in China. "Of course, this is in return for our high requirements. We hope to respect knowledge and talented people.", Mr. Lin Zhiwei added.

In addition to the closed trainings, BAC frequently organizes activities such as arbitration salon, professional training courses and seminars, and invites experienced arbitrators or leading experts from different fields as speakers. It is an effort to encourage BAC's team of arbitrators to keep learning about the latest information across all areas and to further improve their expertise and services.

### Arbitrators at BAC

In China, there are often diverse views from arbitration institutions and arbitrators on who should be responsible for writing the arbitral award. However, BAC has all along requested the arbitrators to write the arbitral awards themselves and there are corresponding regimes in place to safeguard this practice. Dr. Chen Fuyong



said “for instance, when an arbitral tribunal is composed of three arbitrators, this requirement and BAC’s respect for arbitrators’ efforts are reflected in the distribution of arbitration fees.”. Mr. Lin Zhiwei further expressed that “arbitrators at BAC handle cases, they do not arbitrators in name only.”

## Independent and self-management

Not only does BAC have strict requirements for arbitrators, BAC also have high expectations for case managers. Case managers are in charge of the arbitration procedure and they act as the bridge between the arbitrators and the parties. Any confusions and hesitations a party might have regarding the arbitration proceedings are passed directly to the case managers and then communicated to the arbitral tribunal. Sometimes parties might even directly express their emotions feelings to the case managers. Mr. Lu Yang, BAC’s case managers, has experienced such situations many times. He thinks that “when a party questions a particular procedure of the proceedings, unless one can objectively and fairly put forward convincing and professional justifications, the party will lose faith in you and the arbitration proceedings and they will no longer cooperate actively.”

Another unique differentiation point of BAC is its management structure. Unlike the majority of arbitration institutions which have a clear separation of case management, R&D and market expansion, BAC has 3 operation divisions in addition to the administrative division. Although there is no stark differences between the 3 operation divisions in case management, there are specialized duties in both R&D and market expansion. BAC adopted this management structure because it will provide case managers with better development space. It allows them to improve their case management ability while ensuring that they can look into and develop their own forte in expertise.

In 2006, BAC established a regime for selecting the middle-level management team. Mr. Zhang Haoliang, the division chief of the 3rd division, admits that this regime is very attractive as it provides an opportunity for employees to climb up the ladder. “This provides incentives for both new and existing employees. It is a rare and special thing that BAC is not afraid to use such regime to promote

“productivity”.” When Mr. Zhang Haoliang was studying Master of Law at Tsinghua University, he already wanted to work in an open-minded environment and BAC’s administration style matched with his ambition.

In the existing hundreds of arbitration institutions in China, there aren’t many that can exist truly independently. As early as 2001, BAC has implemented the regime to effect administration in Institutional Units. Not only does this guarantee that BAC can be self-supported, it also means that BAC is able to pay taxes. This makes BAC a front runner in the arbitration industry reform in China. When BAC was first set up, it ought to be an Institutional Unit which the vacancies of employment are pre-set in government. However, all the employees were otherwise employed through contracts. All job recruitments were announced publicly and the staff recruiting process was merit-based. Within the institution, the competitions for promotion retain the best talents and promote staff mobility that results in a more motivated team. This is the inherent reason for BAC to keep pace with the times.

An advanced online system of arbitration case management mutually reinforce with the internal management system. Since its founding, BAC has used almost half of its fiscal allocation to develop the online case management system. Through the experience and expertise accumulated over the years, ensuring the quality of arbitration services through information based management has become a distinctive feature of BAC.

“In 2010, we held a demonstration on case management system and software management in London with other professionals in the field. At that time, an English judge specializing in construction and technology said that they have only just started using systems to manage their cases and was surprised that BAC has started developing it more than a decade ago.” Dr. Chen Fuyong felt proud about this.

## Internationalization

Starting from 2013, BAC has begun gathering leading industry experts in China to write “An Annual Review and Preview of Commercial Dispute Resolution in China” and it was disseminated and publicized internationally. From 5th to 11th July 2015, BAC had

travelled to London and Cologne to organize the “2015 Annual Summit on Commercial Dispute Resolution in China”. In 2015, BAC was awarded the runner up for the Up-and-Coming Regional Arbitral Institution of the Year (2014) by the Global Arbitration Review. On 24 November 2015, the Third International Arbitration Conference co-organized by the Australian Centre for International Commercial Arbitration, the Business Law Section and CIArb Australia were held at Sydney. BAC, as the only arbitration institution in Mainland China that was invited, attended the event.

In the previous two years, BAC has worked hard on the international stage, demonstrating to the world the highest quality of arbitration and dispute resolution in China. Accordingly, BAC can be found in many more international conferences and meetings and BAC has strengthened its voice in international forums. In 2016, BAC will be holding “The Annual Review and Preview of Commercial Dispute Resolution in China” in Frankfurt, the Netherlands and The Hague. Additionally, it is privileged to be the gold sponsor of ICCA Congress in 2016.

“There are an increasing number of international cases in recent years, and more and more arbitration proceedings are conducted in English.” Ms. Wu Wendi, case manager at BAC thinks that her background studying in England does not necessary gives her a linguistic advantage. “All case managers here have decent English language proficiency as they have all been through many rounds of selections before they were invited to join the team”, she added.

“The Annual Review and Preview of Commercial Dispute Resolution in China” is a major focus of Ms. Wang Ruihua, BAC’s senior knowledge manager. The limited preparation time stands in stark contrast to the grand international release. Every year there are tons of works to be completed within just a few months. These include framework design, examination, verification, translation and publication of articles on different professional fields. This poses a challenge to all staff involved and Ms. Wang Ruihua, as the person in charge of knowledge management, has a heightened sense of responsibilities.

“This project provides a platform for the commercial dispute resolution sector in China to shine in the global

arena. It is also an important endeavour for China to have greater voice in international dispute resolution or even in the international trade and investment rules,” Ms. Wang Ruihua mentioned. In each year’s “Annual Review and Preview of Commercial Dispute Resolution in China”, BAC invites leading experts from 11 specialized fields to conduct in-depth analysis into the status of dispute resolution in their respective fields. This is a big challenge to staff and experts who have been invited. “On average, each of us handles more than a hundred cases. On top of that, we need to reach out to the experts for drafted articles and we must perform quality assurance on the professionalism of the articles. Every draft must go through three reviews before they are finalized. Once the Chinese version is published, we must immediately work on the English version.” Ms. Wang Ruihua almost did not rest in the recent Chinese New Year; this reflects the complexities of the work involved. However, Ms. Wang Ruihua had not complained at all. Her hard work, modesty and positive attitude are attributes that are commonly found in BAC’S case managers.

High levels of expertise only form the basic requirement of staff at BAC. Without passion for the arbitration industry, it would unthinkable to expect every staff to pursue excellence and perfection. Throughout the hearing of the case, every case manager seeks to enlighten them with affection and motivate them with reason. They are fully aware of the legal principle: “justice delayer is justice denied”. Their professional competence and excellent communication skills ensure that all parties involved in cases handled by BAC will experience the most efficient ADR services.

“We need to further improve and study if we want to ensure that the services provided by our case managers and our service mechanisms are of international standard,” Mr. Lin Zhiwei said. He acknowledges that under the current development of the international arbitration industry, a pool of talented case managers is a fundamental component that must not be overlooked.

As one of the “gold labels” of Beijing’s legal services industry, the development of BAC has been given a lot of attention by the Beijing municipal government. On 17 October 2015, Mr. Guo Jinlong, party secretary of Beijing municipality, and Mr. Wang Anshun, the Mayor of

Beijing visited BAC. Mr. Guo Jinlong, after hearing the introduction and reports given by the BAC, expressed his wish for the development of BAC. He wishes that BAC, as a leader in the arbitration industry in China, can become a new name card for Beijing.

The development of BAC is a miniature of the development of Chinese Arbitration in over two decades. The establishment of the legal professional community in the arbitration industry is beginning to take shape. Under the joint efforts of all parties, dispute resolution in China has made considerable development. Arbitration, as one of the most important dispute resolution method, not only realized the concretization of legal principles in real life, but also enabled the emergence of values of legal persons of China on the world scene. Such achievement is obvious to all, but the ability to plan ahead is more

remarkable.

“The real competition in the arbitration industry is an international one. It is an indispensable responsibility of BAC to safeguard and support PRC companies going abroad. We continue to study and explore, and at the same time adopt a pragmatic approach. Last year, we began to use the title “Beijing International Arbitration Center” which shows that we are proactively engaging in the challenges ahead. Mr. Lin Zhiwei said firmly. In the future, be it the development of BAC or the arbitration industry in China, there remains a long path. The rapid development of BAC over the past 20 years has undoubtedly laid down a good foundation for BAC, “and now is the time to pause for a moment and take a look at where we are at, only then are we able to implement leap-forward developments.”

## Lin Zhiwei: Believing in the marketization of BAC

Compared with internationally renowned arbitration institutions, or even just institutions within China, twenty years of history is not long. Meanwhile, the Beijing Arbitration Commission/ Beijing International Arbitration Center (“BAC”) has experienced many difficulties as it continues to strive for growth and development.

The implementation of the non-governmental reformation of BAC in the 1990s required a huge amount of courage. It was an adventure to become totally self-supported and financially self-sufficient, and behind the scene is the courage to be fearless. “The loose external policy environment has contributed to the development of BAC. When BAC was first established, the Legal Affairs Office of the People’s Government of Beijing Municipality clearly stated that the biggest support offered by the government to arbitration is non-interference. The successive leaders of the Legal Affairs Office have since upheld such philosophy,” said Mr. Lin Zhiwei, Secretary General of BAC, as one of the members who was involved in the establishment of BAC. BAC has always emphasized to the outside world that the success of the development of BAC should be attributed to external environment created by the government, and this has, to a certain extent, brought about the government’s own initiative to uphold this philosophy.

Today, when Mr. Lin Zhiwei looks back at all the major decisions which BAC has made, he feel obliged to say that BAC has always managed to do the right thing at the right time.

### Arbitration should respond to the need of marketization

Mr. Lin Zhiwei has worked in the Legal Affairs Office of the people’s Government of Beijing Municipality for 17 years. Against such background, Mr. Lin has a strong sense of rule and overall consciousness. He is able to put more time and effort into building a solid foundation. This includes improving and developing the internal standard,

the echelon construction of talents and the internal hardware and software.

“First is the concept of marketization. The essence of arbitration is to deliver dispute resolution services in a professional manner and it is a type of dispute resolution where both parties agree to exclude the jurisdiction of the courts. In practice, there are some institutions that prefer to treat arbitration as a form of judicial activity, nevertheless, ever since our establishment, BAC has positioned itself as an arbitration institution that serves the market economy. We place heavy emphasis on services instead of regulations. Consequently, we do not have a rigid management model that specifies vacancies, fiscal allocations and the number of staffs. We decide on the institution framework, staff and relevant regimes of BAC according to the demands of the market.” Mr. Lin Zhiwei explained, by using the essence of arbitration, the reasons for the marketization of BAC.

“Second is the system of marketization.” BAC was found in the 1990s and at a very early stage, BAC has begun the reform of its administration style and effected business administration in Shiye Danwei (Institutional Units). Not only does this guarantee that BAC can be self-supported, it also means that BAC is able to pay taxes. We have since become a leader in the reforms of the arbitration industry. BAC has used just over 3 years to become self-supported and it has rapidly established a foothold in the CBD district, the most prosperous place in Beijing. In the existing hundreds of arbitration institutions in China, there aren’t many that can exist truly independently. In addition to that, BAC has made brilliant achievements in arbitration services.

“We also take a market-orientated approach in the appointment of people. Traditional Institutional Units has long and relatively formalized recruitment procedures such as recruitment applications and open recruitment examinations. Employees will not usually leave an organization once they are recruited. However, it is much



The 6th Arbitration forum in Great China Area was held in HKU on 6 May 2015.

more flexible at BAC. Our personnel management system is not as structured but we have very strict procedures." Mr. Lin Zhiwei revealed that BAC has recruited another 10 individuals to join their office at the end of last year. The new employees will commence work in the first half of 2016. In his opinion, determining the employment scale and standard according to the market demand is a very flexible approach that suits the development needs of BAC. "In recent years, there have been around 100 individuals shuttling in and out the role of case manager. There now remain 25 case managers. With the training they received at BAC, many have returned to the legal profession as corporate counsels or lawyers when they leave BAC." Mr. Lin Zhiwei believes that this approach guarantees the professionalism and efficiency of BAC's case managers.

Before the amendment of the Labour Law, BAC signed yearly contract with their employees. "Having an 'iron rice bowl' (meaning a stable, lifelong job) is totally different to maintaining a competitive mentality. We demand good service from our arbitrators and thus it must be the case that we must first provide proper service to our arbitrators. We need young and diligent individuals for the position of case managers and therefore at BAC, we have an 'eight year limited period' when we recruit. It means that if a staff has not entered a management position after eight years of work, he/ she will need to search for a new job. In practice, many of BAC's case managers are very outstanding, having received the excellent training at BAC, some go on to become partners

at law firms, heads of corporate legal departments or work for the government. Additionally, when they leave BAC, they can also become arbitrators. This creates a virtuous circle of the development of both institutions and its people." Mr. Lin Zhiwei strongly believes that BAC is not bureaucratic.

It is Mr. Lin Zhiwei's view that the quality of the case managers reflects the quality of service of the arbitration institution. The parties, their legal representative and arbitrators understand the culture, standard of service and development capacity of BAC mainly through BAC's case managers who they have the most direct and frequent dealings with. BAC's staffing model has received recognition from the society and job applicants. As BAC continue to raise the bar for the recruitment of case managers, the intensity of competition for a post at BAC has also increased accordingly. In 2005, there were over 1600 LL.M. graduates fighting for 4 positions at BAC.

### Respecting the independence of the arbitral tribunal

"The high quality handlings of over 27,000 arbitration cases form a good foundation for BAC's development, and high standard arbitrators and respect for the independence of the arbitral tribunal from institutions form the prerequisites for good handling of arbitration cases," said Mr. Lin Zhiwei.

Regarding the arbitrators, BAC has formulated a

scientific set of management and training system. For the management of the arbitrators, BAC's Arbitrator Employment Management Measures and Arbitration Rules check on strictly the professional ethics, moral standard, independence and impartiality of BAC's arbitrators. Furthermore, BAC has established a long-standing supervisory and complaints mechanism. Arbitrators, the parties and staff at the administrative department will all give evaluations and feedback. If an arbitrator is suspected to be in violation of the principle of justice or impartiality, he will be temporarily removed from the panel of arbitrators and this will not be restored unless there is reasonable justification. If the situation is serious, the arbitrator will be removed permanently. BAC will never condone any conduct that affects impartiality and professionalism. This is also an important weapon to BAC's team of arbitrators in maintaining integrity and honesty.

As for the selection of arbitrators, the minimum requirements are quite typical. Mr. Lin Zhiwei places more focus on the arbitrator's authority and influence in the arbitration industry because these factors enhance conviction. The journey continues even after an arbitrator has successfully joined BAC's panel of arbitrators. Salons, seminars, trainings and evaluations, BAC has clear vision for the specialization of its team of arbitrators. According to the introduction given by Mr. Lin Zhiwei, beside the monthly large-scale professional salon aimed at all arbitrators, BAC also frequently organizes mini open seminars on hot topics. For example, the legality of VIE structures became a hot topic in the industry two years ago. The BAC promptly organized a professional seminar on this topic and invited eminent personalities in the field and arbitrators in related fields to conduct an in-depth analysis and discussion on the validity of VIE agreements, the legal relationships between VIE agreements and existing laws and any potential legal risks. A high quality professional seminar with broad perspectives from participants have provided many arbitrators with extremely valuable opinions and recommendations on how to deal with related disputes prudently under the current legal environment. This not only shows the professionalism of BAC, but also provided guidelines for the actual handling of related disputes.

In relation to respecting the independence of the

arbitral tribunal in hearing cases, Mr. Lin Zhiwei revealed that BAC has a set of rules and regime and the main thrust is to allow arbitrators to adjudicate freely and independently. Of course, arbitrators should assume the corresponding responsibilities and obligations when they exercise their adjudication power. For instance, BAC was the first in China to introduce a disclosure system for arbitrators. BAC has also implemented other practices such as Med-Arb and Construction Dispute Review. In the process of handling cases, BAC places heavy emphasis on "reasoning". "Firstly, parties are given the opportunity to fully express their opinions during the hearings. Parties and their legal representatives are expecting this pattern because they are more respected and they do not get interrupted easily. Secondly, the arbitral award must give reasons for the judgment. Many arbitral awards discuss the evidence in-depth but only talk briefly about the decision. In contrast, BAC's arbitral award will respond to all submissions made, it will also explain, and even give reason to justify, the admission of evidence. Mr. Lin Zhiwei explained that when parties receive arbitral awards like these, they are genuinely convinced and it is rare for them to be in conflict for the second time.

### Maintaining the competitive edge

Faced with the fierce market competition, BAC constantly reflects on its system and way of working in order to meet the needs of the market and to maintain its competitive edge. For instance, pursuant to BAC's assessment on its development progress, it has set up some professional posts such as senior knowledge manager and senior brand manager. "The perfection of the management system of BAC will not occur overnight, it is an interactive process between an institution and the market. We have set up some senior management posts because we have entered into such a development stage. A decade ago, it was rare to study and analysis these issues since there are a vast amount of cases. However, the competitive pressure is intensifying. Especially since the WTO protection period ended, foreign arbitration institutions are starting to open offices in China. Along with the existing hundreds of arbitration institutions in China, BAC is put under enormous pressure to find a way to set itself apart and to keep its own competitive advantage." Mr. Lin Zhiwei thinks that this enable professionalism and culture to be passed on and it also help to maintain a

certain degree of stability.

Some people might question about the marketization of BAC: Doesn't the idea of marketization put money above everything else? Mr. Lin Zhiwei smiled, shook his head and further explained: "As a matter of fact, our goal has always been to serve the public. Marketization offers a mode of existence where we can better serve our clients without being government-dependent. We started off with a Chinese mode which was not recognized by the arbitration industry, since after-all administrative manner provided a point of reference for many arbitration institutions. However, BAC has earned more and more recognition in recent years. Particularly in the past few years, BAC has received about one to two dozens industry peers for in-depth exchanges. Faced with the surge in market demands and workload, the past Institutional Unit's arrangements are no longer suitable for the development situation in China. Thus, BAC also hopes to move forward in the structure of the organization and the marketization of staff management."

Mr. Lin Zhiwei told the journalist that under Arbitration Law, arbitration commissions may be established in cities divided into districts. However, many local governments treat arbitration commissions merely as additional Institutional Units and another channel for increasing staffing and its arrangements. That is the reason for there being hundreds of arbitration commissions in China. There are no other countries which use districts to decide where to set up arbitration commissions and such institutional framework is not healthy as it leads to waste of resources and disordered competitions. In order to reflect the required standard for a marketized arbitration industry, arbitration commissions must be allowed to compete freely, the number of arbitration commissions should correspond to the size of the arbitration market and arbitrations commissions should be set up in areas where there is demand.

From the perspective of Mr. Lin Zhiwei, the development of BAC has the advantage of "being in the right place, at the right time, with the right people". "Right people" because BAC has the best human resources in China. "Right place" because BAC is situated in Beijing, where many large law firms have their headquarters and are therefore willing to adopt a BAC arbitration clause in

their contracts. Today, BAC has managed to board on the ship of reform and the Beijing municipal government is very supportive of of BAC's reform. "We often joke that the biggest support we receive from the government is non-interference," said Mr. Lin Zhiwei.

"People at BAC realize social efficiency by managing the arbitration profession using the theory of enterprise management and we seek to strike a balance between economic efficiency and social efficiency. At least for now, I am confident to say that if one day I do leave the BAC, BAC's good development trend will remain. It is certain that there will not be frequent changes as some of the large institutional frameworks are already set in stones." Mr. Lin Zhiwei's eyes revealed a sense of accomplishment.

## Chen Fuyong: Arbitration as a career

"For me, it was a calling to engage in arbitration work. From my perspective, arbitration is not merely a job post or a rice bowl. It is a career, a life-long support." Dr. Chen Fuyong, the Deputy Secretary-General of Beijing Arbitration Commission/ Beijing International Arbitration Center ("BAC"), expressed the view that his passion for arbitration has enabled him to reach the current level step-by-step. Dr. Chen Fuyong has an in-depth understanding of arbitration as well as a unique viewpoint. The sense of "international mindedness" was shown repeatedly during the interview.

In 2005, Dr. Chen Fuyong joined BAC with the intention to study arbitration. He delved deep into the field of arbitration and his research results have been written into the book – "The Unfinished Transformation: An Empirical Study of the Current Status and Future Trends of China's Arbitration Institutions". Another unique characteristic of Dr. Chen Fuyong is that he is able to see arbitration from the perspective of an outsider. This is not easy for many researchers.

### Institutional change to be led by concept

When Dr. Chen Fuyong was studying in the United States in 2007, he visited the library regularly to read about the development of arbitration in the United States.

Owing to the long history, these books are placed in an inconspicuous corner where there is little attention. However, Dr. Chen Fuyong was very attracted to these books. "We have introduced the arbitration rules of the West into China, yet little is known about the development process of arbitration and how it all started from scratch. Tracing the development history of American arbitration institutions in the past century enabled me to learn about the practical experience of the U.S. in advancing, step-by-step, the role of arbitration in the society. This has imperceptibly created a frame of reference for me and gave me a clearer understanding of arbitration in China."

Perhaps it is during this time when Dr. Chen Fuyong acquired and consolidated the knowledge required for practice.

"With the development of the arbitration industry in China in the past two decades, there is now a basic market and an overall understanding of arbitration. Following this, constrains of the institutional mechanism will become increasingly prominent. In the field of arbitration, whether the market can have a decisive role in the allocation of resources depends on the flexibility of the regimes. When Dr. Chen Fuyong participated in international activities, he felt strongly that Chinese arbitration institutions are 'dancing with hand cuffs and fetters'. "When compared with other internationally renowned arbitration institutions, sometimes I feel that it is not that we are incapable, but the regimes have offered different degrees of flexibility."

BAC has grown out of nothing and from an unknown to a leading institution in China with a certain degree of influence internationally. In Dr. Chen Fuyong's opinion, this is not merely a formation process of a brand, but also a process of advancing reforms for the internal and external systems. Without the support of a regime, it is not possible for arbitration institutions to develop continuously and to have a real competitive edge.

It is of utmost importance that institutional changes are led by concept. One will find that arbitrations institutions that flourish are usually led by leaders who have very strong entrepreneurial spirit. This so-called entrepreneurial spirit refers to the ability to promote greater utilization and more efficient allocation of resources by making better integration of current resources under the guidance of correct ideas. The entrepreneurial spirit is reflected by the result of a more effective composition, thereafter it is conventional management.

"Whether an institution can promote system reforms



The 3rd International Arbitration Conference was held in Sydney on 24 November 2015.

tends to reflect the extent of its social responsibility. Arbitration is embedded in the Chinese society, thus it is inevitable that it will be subject to various constraints. There are some things that many people have doubts about before they are carried out. However, those in charge must be able to look at the issues with a clear mind as well as persuade others to follow along," Dr. Chen Fuyong reflects.

### Perfecting professionalism

In recent years, the question of how to improve the credibility of arbitration has become a hot topic. The answer from Dr. Chen Fuyong is that it depends on where this credibility comes from. If the arbitrators have adequate professional competence and professional integrity and at the same time the independence of the arbitral tribunal is respected, then credibility can be built up naturally. The field of arbitration relies heavily on reputation and reputation is built case by case.

"Being an arbitrator is different to doing other things. Arbitrators need to issue decisions and they must get to the core of the matter. For the arbitrators, it might just be another case. However, for the parties, it could be the only case in all their life." Dr. Chen Fuyong spoke with a seriousness, this perhaps explains the reason for

the stringent criteria for the admission to BAC's Panel of Arbitrators.

In practice, some people complain that arbitration is getting more litigation-like. So, what has caused such deviation? Dr. Chen Fuyong explained that besides some institutional factors, much of this is because there are people who engage in the work of arbitration without adequate understanding of the specific attributes of arbitration. They lack sufficient knowledge in the field of arbitration, subsequently, they are unable to respond to problems in the field of arbitration with an arbitration approach. Instead, they refer to the litigation approach.

In fact, arbitration, mediation and litigation all have their respective advantages and characteristics. It is only by realizing its full potential that arbitration can possess incomparable superiority relative to other methods of dispute resolution. In this sense, professionalism forms the foundation of arbitration.

Since the parties are free to choose any arbitration institution, competition between arbitration institutions is inevitable. However, Dr. Chen Fuyong is not concerned about BAC's case volume and he said with confidence: "It is fortunate that BAC has always had a good number of cases and disputed amount. In recent years, half of

our cases have at least one party which is from places other than Beijing and there are a large portion of our cases where both sides are from outside of Beijing." His confidence is largely based on the professionalism which the institution has accumulated. "In the past twenty years, BAC has handled over twenty thousand cases and we have dealt with most issues that may appear during arbitrations. Even if there are new issues, we are experienced enough to cope with it confidently."

The professional standard of case managers often affects the parties' perception towards arbitration services. BAC demands professionalism from its case managers. In addition to that, Dr. Chen Fuyong focuses on whether they have a passion for arbitration deep down. "In other words, there must be a burning passion. If they are willing to do the work at hand to the best of their abilities even when leaders and colleagues are not watching, this is a win-win situation for both the institution and the individual." Of course, BAC will also strive to provide adequate room for the development of each case manager. "The cultivation of talents is not simply measured by time, but also opportunities."

### Internationalization of arbitration is imperative

When Dr. Chen Fuyong was asked about his strongest emotion having worked in the field of arbitration for many years, he reflected for a few seconds then said: "First is to respect objective law. Actions in line with the objective law of the industrial development has vitality. Conversely, arrangements that do not conform to the objective law will not survive after all. Internationalization of arbitration in China is an effort to conform to objective law. Nowadays all fields are concerned about internationalization, and they are actively engaging in global activities. BAC following their path reflects the general trend."

Nevertheless, this inevitable trend does not mean that the process is easy. Dr. Chen Fuyong explained that internationalization of arbitration is in fact very difficult and has always been controversial. Some people are very realistic to think that there are not many international cases and it is not easy to attract international cases, therefore it is enough to fight for domestic ones. Why

must we internationalize?

In response, Dr. Chen Fuyong asserts that we must first understand what is internationalization. The essence of internationalization is that the standards of service and professionalism must reach an international level. Even if there are not many international arbitration cases, the Chinese parties are entitled to world-class dispute resolution services. Of course it is unfortunate to be in dispute, however, it is hoped that parties can feel that the process of dispute resolution is a civilized one. In fact, in the internationalization of BAC, a lot of effort is not seen by others. It is certainly not simply a matter of participating in a few international conferences.

The second reason given by Dr. Chen Fuyong for internationalization is the strategy of brand building. For arbitration institutions, as long as it establishes a high-end brand image, it is easy to expand its business to the middle-low end market. If China is unable to establish an international brand in the field of arbitration, it will always be in a passive state in the competitions of global dispute resolution practice. "In recent years, we have continuously held summits in places such as London and Paris. People have asked us why we do not hold the summits in Africa or the countries along the Belt and Road Initiative. The rationale is simple. If you cannot prove yourself in places where arbitration is well-developed and you go directly to countries where arbitration is not as well-developed, it is difficult to gain recognition from others."

The third reason for internationalization is the internationalization of cases. Dr. Chen Fuyong thinks that even from this point of view, BAC's performance is quite good. So far, BAC has handled over 600 international cases (some of which used English as the language of arbitration) and parties were from over 30 countries and regions. In addition, none of these arbitral awards have been revoked or non-enforced.

As to how to build an international arbitration institution, Dr. Chen Fuyong thinks that it is a system project. There needs to be an international outlook and an ability to configure and integrate resources globally. For example, one can consider appointing well-known international arbitration experts as committee members or increase the ratio of foreign arbitrators. "I look forward to

hiring a foreigner one day to help us enter the international market, just as some internationally renowned arbitration institutions hire Chinese nowadays to help them enter the Chinese market.”

“While some may see arbitration as slightly marginal, such marginal status provides greater room for exploration and trial and error. For example, from the perspective of management, arbitration institutions can strive to become a classic example of reform of Institutional Unit; from an operational perspective, arbitration institutions can be the first to deliver decisions independently, efficiently and professionally under the current social conditions; from the angle of

internationalization, the internationalization of arbitration institutions can simultaneously provide support for the internationalization of enterprises. Consequently, arbitration is catching up with modern times and it can fully enjoy being a front-runner. All of our little efforts and endeavors could be an epoch-making development.” Dr. Chen Fuyong has shown professionalism in the field and thoughtfulness in industrial understanding. Perhaps he is destined to go further.

## CO-ORGANIZERS

### Beijing Arbitration Commission/Beijing International Arbitration Center (BAC/BIAC)

The Beijing Arbitration Commission (BAC), also known as the Beijing International Arbitration Center (BIAC), was established in 1995 as a non-government arbitration institution, and it became the first self-funded Chinese arbitration institution in 1999. It provides institutional support as an independent and neutral venue for the conduct of domestic, international arbitration and other ADR proceedings. It is under the operation of a Secretariat headed by its Secretary General under the supervision of its Committee. The BAC Arbitration Rules 2015 were published on December 4th, 2014, and the Rule came into force on April 1st, 2015. The 2015 rules widely adopt UNCITRAL Arbitration Rules and further accept up-to-date international practice.

<http://www.bjac.org.cn>



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The objectives of the Branch are to provide a regional organisation for Members of the Institute (Fellows, Members and Associates) who are resident in East Asia generally. The purpose is to promote, encourage and facilitate the practice of settlement of disputes by arbitration and other means of dispute resolution, and to support and promote the status and interests of the Chartered Institute of Arbitrators.

<http://www.ciarbasia.org>



### The Australian Centre for International Commercial Arbitration (ACICA)

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Founded in Year 1949, the Hong Kong Bar Association is the professional organisation of barristers in Hong Kong and is registered under the Societies Ordinance. The objects of the Hong Kong Bar Association, as set out in its Rules and Regulations, are generally to consider and to take proper action on all matters affecting the legal profession and the administration of justice. These include among other things:

- the maintenance of the honour and independence of the Bar;
- the improvement of the administration of justice in Hong Kong;
- the prescribing of rules of professional conduct, discipline and etiquette;
- furtherance of good relations and understanding within the legal profession.

The principal officers of the Association, namely, the Chairman, the Vice-Chairman and the Honorary Secretary are all elected at its annual general meeting. The Bar Association is governed by an executive committee known as the Bar Council which consists of the Chairman, the Vice-Chairman, the Honorary Secretary, 11 elected members and, at most, 9 co-opted members representing different standings at the Bar. All matters of policy are decided by the Bar Council and Committees / Standing Committees are appointed from time to time to consider important matters such as professional discipline, future developments of the profession and law reforms. So far there are 38 such Committees and Standing Committees.

<http://www.hkba.org>



### Hong Kong International Arbitration Centre

The Hong Kong International Arbitration Centre (HKIAC) is a company limited by guarantee and a non-profit organisation established under Hong Kong law. It is one of the world's leading dispute resolution organisations, specialising in arbitration, mediation, adjudication and domain name disputes resolution. HKIAC also offers state-of-the-art hearing facilities, which have been ranked first worldwide for location, value for money, IT services and helpfulness of staff. According to the Queen Mary, University of London and White & Case's 2015 International Arbitration Survey, HKIAC is the third most preferred and used arbitral institution worldwide and the most favoured arbitral institution outside of Europe. Having received Global Arbitration Review's innovation award of 2014, HKIAC is constantly at the forefront of innovative arbitration practice.

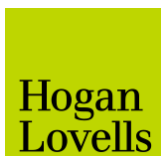
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