

An overview of
arbitration and
dispute resolution
in China

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Dispute Resolution Mechanisms

- Negotiation
- Non-binding ADR (e.g. mediation, conciliation, mini-trials)
- Expert Determination
- Litigation / Arbitration

General advantages of arbitration over litigation

- International Enforcement
 - New York Convention
 - Enforceable in over 130 signatory States
- Neutrality - a level playing field
- Confidentiality
- Expert Arbitrators selected by the parties
- Procedural flexibility
- Finality - no appeal (good or bad?)
- Speed and cost

And in the PRC context?

■ Enforcement

- PRC is signatory to the New York Convention
- Only limited number of treaties for enforcement of civil judgments

■ Neutrality

- Foreign courts unacceptable to PRC party and vice versa
- PRC party more likely to accept international arbitration
 - ideally in neutral venue
 - otherwise CIETAC

■ Civil Procedure Law

- E.g. Sino foreign JV disputes cannot be referred to foreign courts
- But, can be referred to arbitration

Overview of arbitration in China

- A popular method of dispute resolution in China
- May only be conducted by officially recognised arbitration institutions - ad hoc arbitration not recognised
- Arbitration clauses must specify arbitration institution
- Currently there are 176 arbitration institutions in China

In 2002, 17,595
arbitration cases
were heard in
China

Arbitrating foreign related disputes in China

- Former division between domestic and foreign-related disputes has been removed
- China International Economic and Trade Arbitration Commission (CIETAC) - China's premier arbitration body for foreign-related disputes
- Recent reforms allow most domestic arbitration bodies to hear foreign-related cases

CIETAC has the largest case load of any arbitration body world-wide

CIETAC arbitration procedures

- CIETAC is headquartered in Beijing with sub-commissions in Shanghai and Shenzhen
- Arbitration procedures revised in January 2005 to overcome the criticisms of the procedures contained in CIETAC rules issued in 2000
- Claimant must submit an application for arbitration accompanied by documentary evidence
- Respondent must submit defence within 45 days



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CIETAC arbitration procedures (cont)

- Parties may appoint arbitrators from a panel (not necessarily on CIETAC's panel) which includes both foreign and local nationals
- Oral hearings are usually held
- An arbitral award must be rendered within 6 months of the date of the arbitration tribunal being formed
- Parties must execute the arbitral award within the specified time limit

The fees for arbitration vary depending upon the amount of the claim

Ad hoc arbitration

- Not recognized by Chinese Law
 - all arbitrations must be conducted by “arbitration commission”
 - “arbitration commission” is required component of valid arbitration agreement
- Awards made pursuant to foreign ad hoc arbitration
 - should be enforced under New York Convention
 - provided agreement governed by law other than PRC law

Ad hoc arbitration....cont'd

- Draft Supreme People's Court Opinion on Arbitration Issues
 - ad hoc arbitration agreements invalid except when:
 - (1) all parties to contract are nationals of a New York Convention state
 - (2) local laws of the parties do not prohibit ad hoc arbitration

BUT

- PRC law prohibits ad hoc arbitration so does (2) mean any ad hoc arbitration agreement entered into by Chinese is invalid?
- Clarification required

Enforcement of awards

- The record of enforcement of awards in China is mixed
- If the respondent lacks significant assets overseas, enforcement must take place in China
- Supreme People's Court has increased control over enforcement of foreign-related awards
- Reporting requirements are imposed on courts hearing cases involving foreign-related awards



Arbitration of China Related Disputes Outside China: The Ideal Venue / Seat

■ Legal Environment

- enforce arbitration agreement
- support the arbitral process but not interfere unduly with it
- permits use of own lawyers
- respect finality of awards

■ Enforceability of Award

- New York Convention signatory

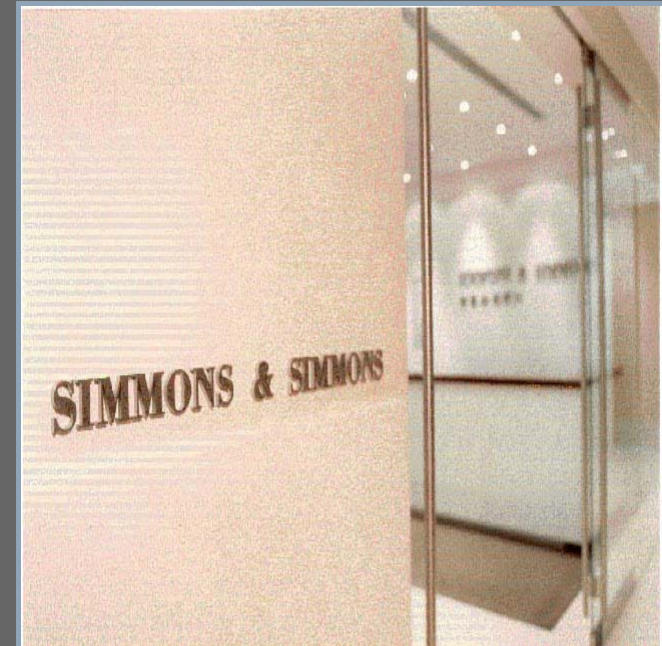
■ Practical considerations

- neutrality and convenience
- availability of support services
- availability of arbitrators

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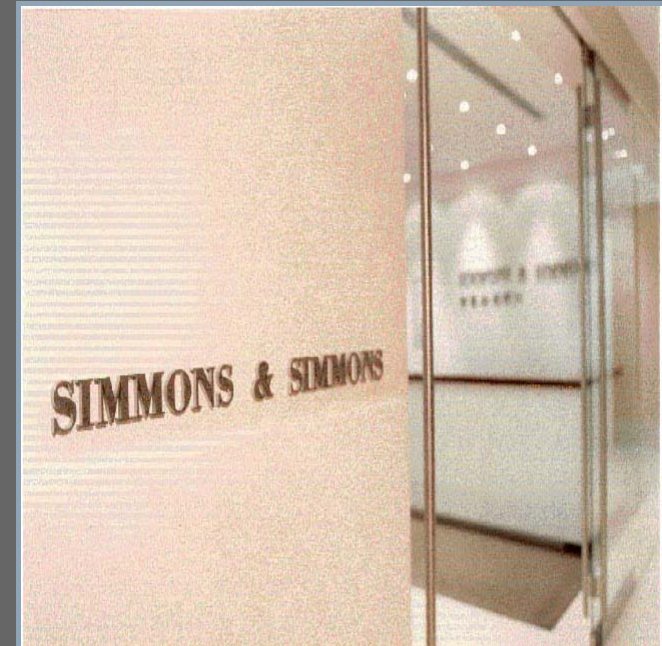
- Global top 10 international law firm
- Over 1,000 lawyers, including over 200 partners - total staff of over 1,850 world wide
- 20 offices globally, including Shanghai, Hong Kong, London, Paris, Tokyo and New York, plus Beijing soon opening
- Hong Kong and Shanghai - over 100 lawyers, including 24 partners



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- Michael Hickman is listed as one of the world's leading lawyers in his field - **International Financial Law Review 2006**
- Michael Hickman listed as a leading individual for corporate/FDI in China - **Asia Pacific Legal 500, 2005**



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