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P. Hou¹

¹Partner at King & Wood Mallesons, Secretary-General of the Institute of International Law at Renmin University in China, Director of the Internet Litigation Law Committee of the Beijing Bar Association,

“CONTROLLED GLOBALISATION”: THE TENSION BETWEEN REFORM AND CONTROL IN CHINA'S ARBITRATION AND ITS IMPLICATIONS FOR COOPERATION WITH KAZAKHSTAN

Abstract

This article critically examines the evolution of China's arbitration system and its implications for future cooperation with Kazakhstan. It argues that China's arbitration reform is characterized by a distinct model of 'controlled globalisation' – a deliberate strategy that selectively adopts international norms (e.g., competence-competence, online arbitration) while retaining robust domestic oversight mechanisms to mitigate perceived risks (e.g., limiting ad hoc arbitration, combating fraud). Through a diachronic analysis of the 1994 Arbitration Law and its successive revision drafts (2021-2025), the study reveals a legislative preference for experimentalism over wholesale adoption, using free-trade zones as 'regulatory sandboxes.' It further analyses the institutional diversification of China's arbitral landscape and the legal challenges posed by digitalisation, particularly the 'enforcement gap' in online arbitral awards under the New York Convention. The article then assesses avenues for Sino-Kazakh arbitration cooperation, identifying both opportunities and political-legal hurdles. It concludes that while both nations share a strong legal foundation as signatories to the New York Convention and the Belt and Road Initiative, realising effective cooperation requires moving beyond rhetorical commitments towards operational transparency and bilateral procedural agreements. This analysis offers a lens through which to understand broader trends in Eurasian legal integration.

Keywords: globalization, Chinese arbitration reform, Sino-Kazakh cooperation, Online dispute resolution, New York Convention, Belt and Road Initiative.

Introduction

Arbitration serves as a cornerstone of modern commercial dispute resolution, offering efficiency, flexibility, and expertise that are often unavailable through traditional court litigation. The evolution of arbitration systems is a complex process, reflecting broader trends in economic development, legal reform, and international cooperation. This article provides a comprehensive analysis of the contemporary development of arbitration in China, examining its legislative reforms, institutional growth, and the emerging challenges posed by digitalisation. Furthermore, it explores the avenues for future cooperation between China and Kazakhstan, two jurisdictions increasingly interconnected through trade and the Belt and Road Initiative. By tracing the trajectory from foundational legal instruments to cutting-edge procedural innovations, this study aims to elucidate the current state of arbitration in the region and identify pathways for enhanced cross-

border dispute resolution. The research employs a comparative legal analysis methodology, drawing upon primary sources such as draft arbitration laws and institutional rules, as well as secondary academic literature and case law, to assess the alignment of national practices with international standards.

This article argues that while China's arbitration system has made significant strides toward internationalisation, its development is characterised by a distinct 'controlled globalisation' model. This model selectively adopts international norms (e.g., competence-competence, online arbitration) while retaining strong domestic oversight mechanisms to mitigate perceived risks (e.g., limiting ad hoc arbitration, combating fraud). Understanding this tension is crucial not only for comprehending China's current arbitral landscape but also for evaluating the prospects and potential pitfalls of Sino-Kazakh judicial cooperation, as Kazakhstan navigates its own path between its national legal traditions and the pull of international standards.

Materials and Methods

This study is based on a qualitative analysis of a wide range of primary and secondary sources. The primary legal materials include the Arbitration Law of the People's Republic of China (1994) and its subsequent revision drafts: the Arbitration Law (Revised) (Draft for Solicitation of Comments) of July 2021, the Arbitration Law (Revised Draft) adopted by the State Council in July 2024, and the Arbitration Law (Revised Draft) (Second Deliberation Draft) of April 2025. Institutional developments were analysed using official publications and statistical data from key Chinese arbitral bodies, such as the China International Economic and Trade Arbitration Commission (CIETAC), the Beijing Arbitration Commission, and the Guangzhou Arbitration Commission, as well as from Kazakhstan's International Arbitration Centre (IAC) and the Astana International Financial Centre (AIFC) Court. The analysis of online arbitration draws on the rules and procedural frameworks of platforms like the "Guangzhou APEC Online Dispute Resolution Platform" (APEC-ODR). Scholarly articles, reports from international organisations, and judicial decisions from Chinese and Kazakh courts regarding the recognition and enforcement of arbitral awards were also examined. The methodological approach combines doctrinal legal analysis, comparative law, and a review of institutional practices to assess the evolution, current challenges, and future prospects of arbitration in China and its cooperation with Kazakhstan.

The selection of the 2021 Consultation Draft, the 2024 Revised Draft, and the 2025 Second Deliberation Draft for close analysis is deliberate. Examining these three documents in succession allows for a diachronic analysis of the legislative mindset, revealing not just the final policy choices but the very process of negotiation and compromise between progressive and conservative factions within China's legal-policymaking establishment. This methodological focus on legislative drafts, rather than solely on enacted law, provides unique insight into the 'living' dynamics of Chinese arbitration reform.

Results and Discussion

1. The Legislative Revision of China's Arbitration Law

The development of China's arbitration system is a narrative of gradual institutionalisation and alignment with international norms. Prior to the landmark 1994 Arbitration Law, the system was characterised by legislative fragmentation and administrative dependency, rendering arbitration largely ineffective [1]. The adoption of the Arbitration Law of the People's Republic of China

on 31 August 1994¹, effective from 1 September 1995, was a pivotal moment. It formally severed arbitration from administrative control, establishing it as an independent statutory mechanism for dispute resolution.

However, the 1994 Law was not without its shortcomings. It reflected a cautious approach, granting courts significant supervisory powers while limiting party autonomy and the authority of arbitral tribunals [2]. Key deficiencies included the explicit prohibition of ad hoc arbitration, the absence of the internationally recognised concept of the "seat of arbitration," a lack of clarity on the validity criteria for arbitration agreements, and the failure to vest arbitral tribunals with the competence-competence principle – the power to rule on their own jurisdiction. Subsequent amendments in 2009 and 2017 were merely cosmetic, leaving these core issues unaddressed. These deficiencies were not mere oversights; they were a logical product of the era's legislative philosophy, which prioritised judicial supervision over party autonomy. By retaining significant court intervention, the 1994 Law reflected a deep-seated suspicion of extra-judicial dispute resolution and a desire to maintain the judiciary's ultimate control. This created a fundamental paradox at the heart of Chinese arbitration: a system designed to be independent was, in practice, tethered to the courts.

A genuine modernisation process commenced with the issuance of the Arbitration Law (Revised) (Draft for Solicitation of Comments) by the Ministry of Justice in July 2021 (the "Consultation Draft"). This draft represented a paradigm shift by:

- Removing the "equal-subject status" requirement, thereby creating legal space for specialised arbitration types like investment and sports arbitration.
- Clarifying the legal status of arbitral institutions as public-interest, non-profit legal persons.
- Introducing the concept of the "seat of arbitration".
- Adopting the competence-competence principle.
- Incorporating modern procedural tools such as interim measures and emergency arbitrator mechanisms.

Explicitly recognising online arbitration and electronic service, reflecting the demands of the digital economy [3]. The 2021 Consultation Draft can be interpreted as a direct challenge to the 1994 paradigm. Its bold adoption of international standards signalled an ambition for China to compete as a global arbitral seat. However, it

1 Arbitration Law of the People's Republic of China on 31 August 1994. URL: https://www.newyorkconvention.org/media/uploads/pdf/5/3/532_1994-arbitration-law.pdf (accessed: 25.04.2025)

also sparked an internal debate: could such rapid liberalisation be reconciled with China's socialist legal system and its emphasis on social stability? The draft represented a 'maximalist' pro-arbitration vision, setting the stage for a subsequent conservative backlash.

The subsequent drafts reveal a dynamic tension between innovation and caution. The Arbitration Law (Revised Draft) of July 2024 tempered some of the Consultation Draft's more ambitious provisions. It restricted ad hoc arbitration to foreign-related maritime disputes and disputes involving foreign-related enterprises in free-trade zones, and confined the seat of arbitration concept to the chapter on foreign-related arbitration. This rollback suggests a legislative preference for a phased and controlled liberalisation [4]. The most recent iteration, the Arbitration Law (Revised Draft) (Second Deliberation Draft) of April 2025, demonstrates a continued focus on integrity and practical expansion. It introduces stronger measures against fraudulent arbitration, includes the Hainan Free Trade Port in the ad hoc arbitration pilot, and elevates the protection of commercial secrets and personal privacy. This iterative process highlights a legislative strategy that seeks to balance international best practices with domestic legal stability and the need to safeguard against procedural abuse. The retreat from the 2021 draft's ambition in the 2024 and 2025 versions is highly instructive. The decision to geographically and substantively confine ad hoc arbitration reveals a legislative preference for experimentalism over wholesale adoption. By treating free-trade zones and Hainan as 'regulatory sandboxes,' the Chinese legislature is effectively conducting a controlled experiment to gather data on the risks and benefits of ad hoc arbitration before considering nationwide application. This cautious, iterative approach is a hallmark of Chinese legal reform and suggests that full internationalisation will be a gradual, rather than revolutionary, process.

2. The Development of Arbitration Institutions in China

The institutional landscape of Chinese arbitration has expanded in tandem with legislative reforms, driven initially by the needs of foreign trade. The establishment of the Foreign Trade Arbitration Commission (now CIETAC) in 1956 marked the inception of a dedicated, professional body for international commercial arbitration in China [5].

The 1994 Arbitration Law catalysed the institutionalisation of arbitration across the country. From a concentration in major economic hubs, arbitral institutions have proliferated nationwide. By 2024, China hosted 282 arbitral institutions, employing over 80,000 arbitrators and staff. These institutions have handled more than five million

cases, with disputed amounts exceeding RMB 8 trillion, involving parties from over one hundred countries. This quantitative growth underscores the increasing reliance on arbitration as a primary mechanism for commercial dispute resolution.

A significant qualitative development was the 2022 central government directive to pilot the establishment of international commercial arbitration centres in Beijing, Shanghai, Guangdong, and Hainan. This initiative aims to create a world-oriented network of arbitral seats, each with distinct characteristics:

Beijing leverages its status as the birthplace of Chinese arbitration, hosting leading institutions like CIETAC and the Beijing Arbitration Commission. The recent establishment of the Hong Kong International Arbitration Centre's (HKIAC) representative office in Beijing signifies its growing openness to international arbitration providers.

Shanghai has successfully positioned itself as a top-ten global arbitral seat, capitalising on its financial centre status. It hosts both prominent local institutions (e.g., Shanghai International Arbitration Centre) and representative offices of major foreign bodies like the ICC, SIAC, and HKIAC, fostering a competitive and diverse arbitral ecosystem.

Guangdong utilises the unique "one country, two systems, three jurisdictions" framework of the Greater Bay Area to pioneer cross-border procedural innovations, particularly in areas like internet arbitration and the coordination of arbitral rules.

Hainan is leveraging its Free Trade Port policies to build an internationally oriented arbitration service system, with its inclusion in the ad hoc arbitration pilot further enhancing its attractiveness. The strategy of developing four distinct pilot centres reveals a sophisticated understanding of competitive federalism in arbitration. Rather than creating a single, monolithic national centre, China is fostering internal competition. Each centre leverages its unique geographical and policy advantages: Shanghai its financial muscle, Guangdong its cross-jurisdictional complexity, and Hainan its special trade privileges. This not only caters to diverse user needs but also creates a dynamic ecosystem where institutions learn from each other's innovations, accelerating the overall modernisation of Chinese arbitration practice.

Parallel to institutional growth, the supervisory framework has evolved from administrative control to a judicial model focused on procedural regularity. The shift from oversight by the State Council's Legislative Affairs Office to a unified administrative filing system under the Ministry of Justice reflects a move towards post-event supervision, which strengthens the independence and finality of arbitral awards [6].

3. The Development and Legal Challenges of Online Arbitration

The digital transformation has profoundly impacted arbitration practice in both China and Kazakhstan. Chinese institutions have been at the forefront of developing online dispute resolution (ODR) platforms. The Guangzhou Arbitration Commission's APEC-ODR platform, which integrates negotiation, mediation, and arbitration, is a prime example of a "three-in-one" online model. Similarly, CIETAC's "Intelligent Platform" and the Shenzhen Court of International Arbitration's "Intelligent Arbitration System" incorporate AI-assisted tools for case management, evidence preservation, and even draft award generation. In Kazakhstan, the "Digital Kazakhstan" strategy has spurred similar developments, with the IAC's "e-Justice" system enabling electronic filing and remote hearings, a practice widely adopted by the AIFC Court and IAC during the pandemic.

Despite these advances, online arbitration faces substantial legal and practical hurdles that threaten the validity and enforceability of its outcomes [7]. Key challenges identified in this study include:

Formal Validity of Electronic Arbitration Agreements: While many jurisdictions have adopted laws based on the UNCITRAL Model Law on Electronic Commerce, practical issues persist. Verifying a party's identity and ensuring the authenticity of an electronic agreement remain technically and legally complex, potentially undermining the consent that is fundamental to arbitration.

The "Virtualisation of the Seat": The concept of a legal seat is crucial for determining the procedural law governing the arbitration and the nationality of the award for enforcement under the New York Convention. In a fully online process where parties, counsel, and arbitrators are in different locations, the seat can become a mere legal construct, disconnected from any physical reality. This can create uncertainty regarding which courts have supervisory jurisdiction and which law governs procedural matters.

Due Process and Procedural Fairness: Safeguarding the parties' right to be heard in a virtual environment is paramount. Issues such as ensuring the confidentiality of proceedings, managing time-zone differences, assessing witness credibility via video-link, and maintaining the transparency and integrity of hearings require careful procedural design and judicial oversight.

Recognition and Enforcement of Online Arbitral Awards: This is perhaps the most significant obstacle. The New York Convention, drafted in 1958, presupposes a paper-based award with original signatures. Although many contracting States now accept awards in electronic form, there is no uniform global standard. The study

notes that only about 60% of Convention States accept electronically signed awards. The lack of cross-border mutual recognition of electronic authentication methods creates significant uncertainty and complexity in enforcement proceedings, potentially frustrating the efficiency gains of online arbitration.

4. Future Cooperation between China and Kazakhstan in Arbitration

As neighbouring countries with deepening economic ties, China and Kazakhstan have significant potential for enhanced arbitration cooperation. The existing legal basis is strong, as both are signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Furthermore, practical cooperation is already underway, exemplified by the 2019 cooperation agreement between CIETAC and the IAC, and similar initiatives involving the Wuhan Arbitration Commission, the AIFC Court, and the IAC. These collaborations have focused on joint seminars, rule alignment, and arbitrator exchanges.

To build on this foundation, future cooperation should be strategically advanced in three key areas:

A. Deepening Institutional and Regulatory Cooperation

Beyond existing memoranda of understanding, institutions and regulatory bodies should establish more structured and sustained dialogue. This could involve regular bilateral forums to discuss emerging legal issues, share best practices in case administration, and work towards the mutual recognition of procedural standards. Joint training programmes for arbitrators and practitioners from both countries would foster a shared professional culture and deepen mutual understanding of each other's legal systems, building trust and facilitating smoother cross-border proceedings.

B. Enhancing Awareness and Confidence Among Enterprises

A significant barrier to the use of foreign arbitration is a lack of familiarity with the partner country's legal environment. To address this, the two sides could jointly develop a bilingual online platform providing comprehensive, accessible information on the arbitration laws, leading arbitral institutions, and relevant case law of both China and Kazakhstan. This would reduce information asymmetry and help enterprises make informed choices when drafting arbitration clauses. Regularly held bilateral seminars and industry-specific workshops would further demystify the arbitration process and build confidence in its reliability and fairness.

C. Promoting the Recognition and Enforcement of Arbitral Awards

While the New York Convention provides the foundational framework, practical obstacles to

enforcement remain. The study highlights positive examples of mutual enforcement, such as the recognition of CIETAC awards by Kazakh courts and Kazakh awards by Chinese courts (e.g., Beijing Fourth Intermediate People's Court). To build on this success, the two countries should work to strengthen the interface between their domestic procedural laws and the Convention's requirements. A critical area for improvement is cross-border service of process. Negotiating a bilateral agreement on judicial cooperation in the service of documents, potentially drawing on the standards of the Hague Service Convention, would create a more efficient, clear, and reliable mechanism. Such an agreement would remove a significant procedural hurdle and further enhance the predictability and attractiveness of arbitration as a method for resolving cross-border disputes. While these proposals offer a clear roadmap, their implementation is contingent upon overcoming significant political and legal hurdles. A bilateral agreement on service of documents, for instance, would require navigating the complex interplay between Kazakhstan's civil law system, China's socialist legal framework, and the international standards of the Hague Conference. Furthermore, fostering mutual trust in arbitral institutions requires moving beyond symbolic memoranda of understanding towards deeper, more transparent collaboration, such as joint observer programs where Kazakh and Chinese arbitrators attend each other's hearings. The real test of cooperation will be the willingness of both sides to move from rhetorical commitment to operational transparency.

Conclusion

The arbitration landscape in China has undergone a remarkable transformation, evolving from a fragmented and administratively dependent system into a sophisticated and increasingly internationalised framework for dispute resolution. The ongoing legislative revisions, from the foundational 1994 Law to the progressive 2021 Consultation Draft and the subsequent, more measured revision drafts, illustrate a deliberate and cau-

tious alignment with global best practices while addressing domestic priorities such as combating fraud. This legal evolution has been paralleled by the robust growth and specialisation of arbitral institutions, with key cities like Beijing, Shanghai, and Hainan emerging as competitive international arbitral seats. Simultaneously, the embrace of digitalisation, while offering unprecedented efficiency, presents fundamental challenges to established legal doctrines concerning the form of agreements, the arbitral seat, due process, and the international enforcement of awards under the New York Convention.

Looking forward, the partnership between China and Kazakhstan in arbitration is not merely an option but a necessity for facilitating the growing economic interdependence in the region. By deepening institutional ties, enhancing enterprise awareness through shared informational resources, and, most critically, by forging practical agreements to streamline cross-border procedures like service of documents, the two nations can significantly strengthen the rule of law in their commercial relations. Such cooperation will build a more resilient, fair, and efficient dispute resolution ecosystem, reinforcing the vital role of arbitration in supporting sustainable economic development and integration between Central Asia and East Asia.

Ultimately, the evolution of arbitration in China and its potential synergy with Kazakhstan is a microcosm of a larger global shift. It reflects the struggle to reconcile the borderless nature of modern commerce with the territorially bound nature of national legal systems. China's journey of 'controlled globalisation' offers a valuable case study for other emerging economies, including Kazakhstan, on how to harness the efficiency of international arbitration without ceding sovereign control. The success of Sino-Kazakh cooperation in this field will serve as a bellwether for the broader integration of legal systems across Eurasia, determining whether arbitration becomes a seamless facilitator of trade or another point of friction in an increasingly complex geopolitical landscape.

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Р. Ню¹

¹King & Wood Mallesons серіктесі, Қытайдағы Жэньмин университетінің Халықаралық құқық институтының Бас хатшысы, Бейжің адвокаттар алқасының Интернет-даулар құқығы комитетінің директоры

«БАҚЫЛАНАТЫН ЖАҢАНДАНУ»: ҚЫТАЙДАҒЫ АРБИТРАЖДАҒЫ ЖҮЙЕНІ БАҚЫЛАУ МЕН РЕФОРМА АРАСЫНДАҒЫ ШИЕЛЕНІС ЖӘНЕ ОНЫҢ ҚАЗАҚСТАНМЕН ҰНТЫМАҚТАСТЫҚҚА ӘСЕРІ

Аңдатпа

Мақала Қытайдың арбитраж жүйесінің эволюциясын және оның Қазақстанмен болашақ ынтымақтастыққа ықпалын сыни тұрғыдан талданды. Автор Қытайдағы арбитраж реформасы «бақыланатын жаһандану» деп сипатталатын ерекше модельге негізделгенін дәлелдейді. Бұл модель халықаралық нормаларды іріктеп қабылдаумен қатар, ықтимал тәуекелдерді азайту мақсатында (мысалы, ad hoc арбитражды шектеу, алаяқтықпен күрес) ішкі бақылау тетіктерін сақтауды көздейді.

1994 жылғы Арбитраж туралы заң мен оның 2021-2025 жылдар аралығындағы түзету жобаларына жүргізілген диахрондық талдау заңнамалық саясаттың халықаралық үлгілерді толық көшіруден гөрі экспериментализмге басымдық беретінін көрсетеді; бұл ретте еркін сауда аймақтары «реттеушілік сынақ алаңдары» ретінде пайдаланылады.

Сонымен қатар, зерттеу Қытайдағы арбитраж институттарының әртараптандырылуын және цифрландыру үдерісінің құқықтық сын-қатерлерін, әсіресе Нью-Йорк конвенциясы шеңберінде онлайн-арбитраж шешімдерін орындауға қатысты «орындау алшақтығын» талдайды.

Мақалада Қытай мен Қазақстан арасындағы арбитраждық ынтымақтастықтың мүмкін бағыттары бағаланып, әлеуетті мүмкіндіктермен қатар саяси-құқықтық кедергілер де айқындалады. Қорытындыда екі мемлекет те Нью-Йорк конвенциясының қатысушылары әрі «Бір белдеу – бір жол» бастамасының серіктестері ретінде берік құқықтық негізге ие екендігі атап өтілді. Алайда тиімді ынтымақтастықты жүзеге асыру үшін декларативтік мәлімдемелерден гөрі іс жүзіндегі ашықтық пен екіжақты процессуалдық келісімдерге көшу қажет. Бұл зерттеу Еуразиялық кеңістіктегі құқықтық интеграцияның жалпы үрдістерін түсіндіруге мүмкіндік береді.

Түйінді сөздер: жаһандану, Қытайдағы арбитраж реформасы, Қытай–Қазақстан ынтымақтастығы, онлайн дауларды шешу, Нью-Йорк конвенциясы, «Бір белдеу – бір жол» бастамасы.

Р. Ню¹

¹Партнер King & Wood Mallesons, Генеральный секретарь Института международного права Китайского народного университета (Renmin University of China), директор Комитета по праву интернет-судопроизводства Пекинской ассоциации адвокатов

«КОНТРОЛИРУЕМАЯ ГЛОБАЛИЗАЦИЯ»: НАПРЯЖЕНИЕ МЕЖДУ РЕФОРМОЙ И КОНТРОЛЕМ В АРБИТРАЖНОЙ СИСТЕМЕ КИТАЯ И ЕГО ЗНАЧЕНИЕ ДЛЯ СОТРУДНИЧЕСТВА С КАЗАХСТАНОМ

Аннотация

В статье проводится критический анализ эволюции арбитражной системы Китая и ее значения для перспектив сотрудничества с Казахстаном. Обосновывается тезис о том, что реформа китайского арбитража характеризуется особой моделью «контролируемой глобализации» – осознанной стратегией селективного заимствования международных норм при одновременном сохранении жестких механизмов внутреннего контроля для минимизации предполагаемых рисков (в частности, ограничения ad hoc арбитража и противодействия мошенничеству).

Диахронный анализ Закона об арбитраже 1994 года и последующих проектов его реформирования (2021-2025 гг.) выявляет предпочтение законодателя экспериментальному подходу вместо полного заимствования международных моделей, при этом зоны свободной торговли используются в качестве «регуляторных песочниц».

Также исследуется институциональная диверсификация арбитражной системы Китая и правовые вызовы цифровизации, в особенности проблема «разрыва в исполнении» онлайн-арбитражных решений в контексте Нью-Йоркской конвенции.

Далее анализируются направления китайско-казахстанского арбитражного сотрудничества, выявляются как потенциальные возможности, так и политико-правовые барьеры. Делается вывод о том, что обе страны обладают прочной правовой базой как участники Нью-Йоркской конвенции и инициативы «Один пояс – один путь». Однако для достижения реальной эффективности взаимодействия необходимо перейти от декларативных заявлений к обеспечению институциональной прозрачности и заключению двусторонних процессуальных соглашений. Представленный анализ позволяет по-новому взглянуть на общие тенденции евразийской правовой интеграции.

Ключевые слова: глобализация, реформа арбитража в Китае, китайско-казахстанское сотрудничество, онлайн-разрешение споров, Нью-Йоркская конвенция, инициатива «Один пояс – один путь».