Toward Internationalization: Recent Developments in Repeal and Non-enforcement of Arbitral Awards in China

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ABSTRACT

The supervision of arbitration in the administration of justice is embodied in the following: confirmation of the validity of arbitration agreements, and the repeal and enforcement of arbitration awards. Both repeal and non-enforcement of arbitral awards are fundamental approaches of the courts’ judicial review. In China, as well as in other countries, most of the arbitral awards are final and binding on the parties. However, there are several laws and regulations concerning the repeal and non-enforcement of arbitral awards, such as the Chinese Arbitration Law of 1995, and the Chinese Civil Procedure Law of 1991 (as amended in 2007). This paper not only introduces substantive provisions for repealing arbitral awards in general, but also outlines related procedural provisions on the basis of legislative development. Furthermore, it also points out the problems incurred by the Chinese legislation and analyzes this with reference to the New York Convention and other multinational legislation. Lastly, this paper proposes suggestions to solve these ongoing problems in the Chinese arbitration practice.

KEYWORDS: Repeal, Non-enforcement, Arbitral Award, Chinese Legislation, New York Convention, Judicial Supervision

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I. Preface

According to the provisions of the Chinese Arbitration Law (1995) (hereinafter, “CAL”)\(^1\), the courts have three primary roles in the supervision of arbitration: confirming the validity of arbitration agreements, repealing arbitral awards and enforcing arbitral awards. Repeal and non-enforcement of arbitral awards are the few fundamental approaches of the courts’ supervision.\(^2\) Generally speaking, Chinese courts are in favor of the development of arbitration, which promotes international investment and commerce as well as releases the parties from lengthy and uncertain litigations. From 2002 to 2007, only twelve foreign arbitral awards were refused recognition or enforcement.\(^3\) In the past ten years, there have been twelve cases of applications for recognition and enforcement of foreign arbitral awards in the Guangzhou Maritime Court, among which, five applications were granted and enforced, but six were refused. Applicants in these cases come from Switzerland, Greece, the Netherlands, Korea, Cyprus, Liberia, Hong Kong and Mainland China. Among the relevant twelve arbitral awards, ten were made in London, one in New York, and one in Hong Kong. Among the refused cases, four of

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\(^1\) Chinese Arbitration Law (promulgated by the 9th meeting of the Standing Comm. of the 8th Nat’l People’s Cong., Aug. 31, 1994, effective Sep. 1, 1995) (P.R.C.) [hereinafter CAL].
