

ARBITRATION IN CHINA

Each day more often, enterprises all around the world want to work and build commercial relationships with other companies in China. Doing Business relationships, disputes may sometimes arise. One way to solve out these possible conflicts is arbitration. Do you know the keys on how it works in China?

First of all, we have to know that a dispute can only be submitted to arbitration when the underlying contract or a separate agreement expressly provides that disputes will be settled through arbitration. Under Chinese law, a valid arbitration agreement or clause must display a clear intention that arbitration be used and specify the exact arbitration body agreed by the parties. In the absence of a specific arbitration clause, the dispute will be settled by Chinese courts or other competent courts.

Main advantages of arbitration in China

When talking about China, it is important to know that there are more advantages to using arbitration than submitting disputes to litigation. One of the main advantages is the appeal, **litigation may last for a long period of time** (we could be speaking in some cases of even years). Another issue is that Chinese judges are often **not well qualified or lack appropriate experience**, mainly due to the fact that the appointment of professional judges is a recent development.

In this panorama would you risk not to consider arbitration as an option? Since arbitration involves arbitrators who are experts and highly qualified in their fields, the quality of the award will usually be higher than an ordinary judicial decision. We must also bear in mind that arbitration is a more confidential and flexible procedure and, in particular, is susceptible to be influenced by local governments of Chinese party to the dispute.

On the basis of the criterion of “foreign-related”, any dispute with a foreign-related component can be submitted to a foreign arbitration body or a Chinese arbitration tribunal. Otherwise, the dispute can only be submitted to a Chinese arbitration body.

Major arbitration bodies in China

There are three major arbitration bodies in China:

- The China International Economic and Trade Arbitration Commission, known as CIETAC.
- The China Maritime Arbitration Commission, or CMAC.
- And local arbitration commissions.

The **CIETAC** is the most well recognized Chinese arbitration body. Although Chinese arbitration bodies in China were founded and developed by the Chinese government, the CIETAC has now evolved into an independent body with a high reputation among foreign investors. Furthermore, Chinese companies accept the CIETAC far more easily than foreign arbitration bodies. According to the rankings of the International Chamber of Commerce (ICC), the CIETAC is one of the world's busiest arbitration bodies based on the annual number disputes handled.

Since the CIETAC changed its rules in 2005, it has moved much closer to international arbitration practice, providing more flexibility to foreign investors. According to the current CIETAC rules, the specifications or requirements of the arbitration panel can be agreed on and determined by the parties in advance and qualified individuals of any nationality (rather than exclusively those on the CIETAC's list) can be appointed as arbitrators. The arbitration can be held in English at a place agreed by the parties involved and it is also possible for the winning party to recover 100% of the costs.

And, what about fees? CIETAC'S arbitration fees include fees for accepting and processing a case. The fees for accepting a cases are used to pay the arbitrators and cover the necessary expenditure associated with the normal operation of the arbitration proceeding. The fees for processing a case include expenses for carrying out necessary activities during the hearing of an arbitration case and accommodation and transportation expenses for the arbitrators, witnesses, translators and other activities which require costs.

It is essential for foreign investors to **engage experienced counsel to assist them** from the very beginning of any arbitration proceeding in order to properly assess the arbitrator's qualifications and prepare the documents to be submitted to the arbitration tribunal, etc.

In addition to the CIETAC and the CMAC, there are **local arbitration commissions** that have been established in the major cities of China. Although originally created for hearing domestic disputes, these commissions also hear foreign-related disputes. However, and by comparison with the CIETAC, they are still very close to the government and in some cases, jurisdiction is given to the Chinese courts to settle issues that arise during arbitration proceedings before the local commissions. Unlike the CIETAC, foreign arbitrators do not have place in these commissions.



All our [chinese contracts](#) include an arbitration clause adapted to the People's Republic of China Contract Law.

CONTRACTS FOR THE INTERNATIONAL COMPANY

INTERNATIONAL CONTRACTS (ENGLISH, SPANISH, FRENCH & GERMAN)

- International Sale Contract
- International Distribution Contract
- International Commercial Agency Contract
- International Sales Representative Agreement
- Intermediary Contract for Trade Operations
- International Joint Venture Contract
- International Franchise Contract
- International Services Agreement
- International Consulting Agreement
- International License Contract
- International Supply Contract
- International Manufacturing Contract
- Expatriate Contract of Employment
- Pack 5 International Contracts English (Basic)
- Pack 12 International Contracts English (Premium)

COMMERCIAL CONTRACTS (ENGLISH, SPANISH, FRENCH & GERMAN)

- Distribution Contract
- Commercial Agency Contract
- Sales Representative Agreement
- Commission Contract
- Joint Venture Contract
- Services Contract
- Consulting Contract
- Technology Transfer Agreement
- Franchise Contract
- Supply Contract
- Manufacturing Contract
- Confidentiality Agreement
- Pack 5 Commercial Contract English (Basic)
- Pack 12 Commercial Contracts English (Premium)

CHINA CONTRACTS (ENGLISH-CHINESE DUAL VERSION)

- Distribution Contract China
- Agency Contract China
- Commission Contract China
- Supply Contract China
- OEM Manufacturing Contract China
- Confidentiality Contract China
- Memorandum of Understanding for Distribution Contract China
- Memorandum of Understanding for Joint Venture China

CONTRACTUAL LETTERS

- Letter Enclosing Contract for Signature
- Letter Proposing Amendments to Contract
- Letter Proposing Variation of Contract
- Letter Terminating Contract on Breach
- Letter Terminating Contract on Notice
- Letter Terminating Contract on Breach
- Pack 5 Contractual Letters

LETTERS OF INTENTS

- Letter of Intent for International Sale
- Letter of Intent for International Distribution
- Letter of Intent for International Joint Venture
- Pack 3 Letters of Intent