

Table of Contents

Acknowledgements	xv
About the Author	xvii
Foreword	xix
Abbreviations	xxiii
 Chapter I	
History of Arbitration in China	1
I Introduction	1
II Domestic Arbitration	2
A Pre-Arbitration Law	2
1 Lack of Independence	4
2 Lack of Party Autonomy	4
3 Arbitral Awards without Binding Force	4
B Post-Arbitration Law	4
1 Free-Establishment of Arbitration Commissions	5
2 Full Independence of Arbitration Commissions	6
3 Expanded Scope of Arbitral Subject Matter	6
4 Finality of the Arbitral Award	7
5 Establishing Jurisdiction via the Arbitration Agreement	7
III Foreign-Related Arbitration	8
A Development of Foreign-Related Arbitration	8
B Arbitration and Chinese Legislative Developments since 1978	11
C China's Accession to International Conventions	13

D	Bilateral Investment Treaties	15
E	The Support of the Supreme People's Court	17
IV	CIETAC and CMAC: The International Arbitration Institutions of the PRC	20
A	Historical Development of CIETAC and CMAC	20
B	Jurisdictional Development of the CIETAC	23
1	FTAC Arbitration Rules (1956)	23
2	CIETAC Arbitration Rules (1988)	23
3	CIETAC Rules (1994)	24
4	CIETAC Rules (1995)	27
5	CIETAC Rules (1998)	27
6	CIETAC Rules (2000)	29
7	CIETAC Rules (2005)	29
8	CIETAC Financial Arbitration Rules (2003/2005)	31
C	CIETAC: Foreign-Related Caseload 1990-2007	33
V	The CAA	36
VI	Relationship between Arbitration and the Courts	38

Chapter II

	Arbitration Agreement	41
I	Introduction	41
II	Form of the Arbitration Agreement	42
A	Written Form Requirement of the Arbitration Agreement	42
B	Types of Arbitration Agreements	43
1	Arbitration Clause or Independent Arbitration Agreement	43
2	Submission Agreement	43
3	Incorporation by Reference	44
III	Substantive Requirements of the Arbitration Agreement	45
A	Capacity Requirement	45
1	General Capacity Requirement of the Parties	45
2	Corporations	45
a	Group Companies	46
b	Mergers and Acquisitions	48
c	Contract Assignment	49
3	Capacity in the Context of Agency	52
a	Invalid Arbitration Agreement signed by an Agent	52
b	Different Types of Agency and the Binding Effect of an Arbitration Agreement on the Principal	54
B	Substantive Requirements Provided Directly by the Law	57
1	Expression of the Parties' Intention to Arbitrate	58
a	True Expression	58
b	Clear Expression	58

C	Arbitrable Disputes	59
1	Non-arbitrable Disputes as Specified by Law	59
a	Administrative Disputes	59
b	Disputes Concerning Personal Rights	62
c	Labour Disputes/Agricultural Projects	62
2	Scope of Arbitrable Disputes	62
D	Determining the Arbitration Commission Selected by the Parties	63
1	Selecting Two Arbitration Commissions	64
2	Arbitration Institution Incorrectly Recorded	65
a	Incorrect Name	65
b	Outdated Name	66
3	Selection of the Place of Arbitration	66
E	Ad Hoc Arbitration	68
IV	Determining Validity	70
A	Validity Considered on Two Separate Occasions	71
B	The Prior Reporting System	72
C	Supreme People's Court and the Issue of Determining Invalidity	73
D	Criteria for Setting Aside an Award	74
V	The Severability Doctrine	75
A	The Application of the Severability Doctrine in China	75
B	Effect of an Invalid Contract on an Arbitration Agreement	78
VI	Termination and Waiver of Arbitration Agreement	78
VII	Recommended Arbitration Clauses	80
A	CIETAC and BAC Recommended Arbitration Clauses	80
B	Ancillary Provisions to Arbitration Agreement	81
1	Place of Arbitration	81
2	Language of Arbitration	81
3	Arbitration Rules	82
4	Nationality of Arbitrators	83
5	Applicable Law Requirements	83
6	Appointment of Arbitrators	84

Chapter III

	Court and Arbitral Jurisdiction	85
I	Differences between Court and Arbitral Jurisdiction	85
II	Challenging Jurisdiction Prior to the Commencement of the Arbitration Procedure	86
III	Challenging Jurisdiction during the Arbitration Procedure	87
IV	Jurisdiction of CIETAC	89
V	Jurisdiction of CMAC	94
VI	Jurisdiction of Domestic Arbitration Commissions	95

Chapter IV

Applicable Law	97
I Introduction	97
II The Law Governing the Arbitration: The Lex Arbitri	97
A Lex Arbitri	97
B The Role of the Place Where the Award Is Rendered	99
III The Law Applicable to the Substance	100
A Limited Party Autonomy	100
B Conflict of Law Rules and the Applicable Law Thereunder	102
C The Law <i>Ex Aequo et Bono</i>	105

Chapter V

Arbitration Procedure	107
I Domestic Arbitration, Foreign-Related Arbitration and Foreign Arbitration	107
II Domestic Arbitration Procedure	108
A Arbitrators and the Arbitral Tribunal	108
1 Appointment to the Panels of Arbitrators in Domestic Arbitration	108
2 Formation of the Arbitral Tribunal	110
B The Place of Arbitration	111
C Cost Schedules	112
D Preservation Measures	116
1 Preservation of Evidence	116
2 Property Preservation Measures and Advanced Execution	116
3 No Further Preservation Measures	118
III Foreign-Related Arbitration Procedure	118
A Arbitrators and the Arbitral Tribunal	118
1 Appointment to the CIETAC Panel of Arbitrators	118
2 Notification to the Parties	121
3 Tribunal Formation	122
4 Choice of Arbitral Rules and Party Autonomy	124
B The Place of Arbitration	125
C Language of the Arbitration	126
D Cost Schedules: CIETAC and CMAC	127
1 CIETAC Fee Schedule for Foreign-related Arbitration Cases	127
2 CMAC Handling Fees Schedule	128
E Preservation Measures	129
IV General Principles of Procedure for Arbitration in China	130
A Application and Acceptance	130
1 Prerequisites in Applying for Arbitration in China	130
2 Application for Arbitration and Acceptance	130
B Challenging Arbitrators and the Withdrawal of Arbitrators	131
C Arbitral Hearing	134

D	Evidence	135
1	The Collection and Presentation of Evidence	135
2	Cross-Examination	136
3	Examination and Identification of Evidence	138
E	The Combination of Conciliation and Arbitration	140
1	Introduction	140
2	Court Conciliation	141
3	Institutional Conciliation	142
4	Conciliation within the Arbitration Process	144
F	Rendering the Arbitral Award	149
1	Time Limit and Content of Arbitral Award	149
2	Correction and Supplement to the Arbitral Award	151
G	Summary Proceedings	152
H	Statutory Limitation Periods	152
I	Confidentiality of the Arbitration Hearing	153

Chapter VI

Enforcement of Arbitral Awards in China 155

I	Legal Basis for the Enforcement of Arbitral Awards	156
A	Legal Basis for the Enforcement of Domestic Arbitral Awards	156
B	Legal Basis for the Enforcement of Foreign-Related Arbitral Awards	157
C	Legal Basis for the Enforcement of Foreign Arbitral Award	160
1	Legislation Prior to China's Accession to the <i>New York Convention</i>	160
2	Accession to the New York Convention	161
II	The Enforcement of Arbitral Awards in China	161
A	Time Limit for Initiation and Determination of Enforcement Proceedings	162
B	Challenging an Arbitral Award	164
C	Enforcement of Domestic Arbitral Awards in China	166
1	Jurisdiction over Enforcement	166
2	Article 215 of the <i>Civil Procedure Law</i>	167
3	China's Experience in the Enforcement of Domestic Arbitral Awards	169
D	Enforcement of Foreign-Related Arbitral Awards	171
1	Article 258 of the <i>Civil Procedure Law</i>	171
2	The Prior Reporting System: Enforcement	174
3	The Prior Reporting System: Challenge	175
4	The Prior Reporting System: Scope of Application	176
5	Enforcement Following Removal of Arbitrator from Panel of Arbitrators	176
6	Domestic Institutions and Foreign-Related Arbitral Awards	177

7	China's Experience in the Enforcement of Foreign-Related Arbitral Awards	177
E	Recognition and Enforcement of Foreign Arbitral Awards	187
1	Implementation of New York Convention in China	188
a	Two Reservations	188
b	Non-Enforcement on Grounds of Public Policy	189
c	The Application Documents	189
2	Comparative Analysis of the Grounds for Non-enforcement under the <i>Civil Procedure Law</i> and the <i>New York Convention</i>	189
3	China's Experience in the Enforcement of Foreign Arbitral Awards	192
F	Special Issues on the Enforcement of Hong Kong Arbitral Awards	199
1	Mutual Enforcement Arrangement: Main Contents	200
2	Competent Court and Venue	201
3	Application Documents	201
4	Time Limit and Procedures	201
5	Refusing Recognition and Enforcement	201
G	Special Issues on the Enforcement of Macao Arbitral Awards	204
1	Main Contents	205
2	Competent Courts	205
3	Suspension, Termination and Resumption of Enforcement	205
4	Exemption of Document Authentication Procedure	206
H	Special Issues on the Enforcement of Taiwanese Arbitral Awards	206
1	Competent Court and Venue	206
2	Application Documents	207
3	Time Limit for Application	207
4	Refusal to Enforce	207
III	Several Issues Concerning Non-Enforcement	208
A	Partial Enforcement	208
B	Partial Cancellation of an Arbitral Award	209
 Chapter VII		
Developments in Domain Name Disputes		211
I	Disputes Relating to Domain Names	211
A	Introduction	211
B	Solution Centre for the Resolution of Domain Names Disputes	212
C	The ADNDRC	213
II	Online Arbitration	216
A	Electronic Arbitration Agreements and the Writing Requirement of the <i>New York Convention</i>	217
B	Conducting Electronic Arbitration	218

C	The Enforcement of Arbitral Awards Issued in Online Proceedings	218
III	Procedures and Guidelines for Submitting Complaints at the Asia Domain Name Dispute Resolution Centre (Based on the Uniform Domain Name Resolution)	220
Appendix A	Arbitration Law of the People's Republic of China	221
Appendix B	Civil Procedure Law of the People's Republic of China	233
Appendix C	CIETAC Arbitration Rules (2005)	281
Appendix D	CIETAC Financial Arbitration Rules (2005)	305
Appendix E	CMAC Arbitration Rules (2004)	311
Appendix F	BAC Arbitration Rules (2007)	317
Appendix G	Ethical Rules for Arbitrators	339
Appendix H	Conciliation Centres of China Council for the Promotion of International Trade (CCPIT)/China Chamber of International Commerce (CCOIC)	341
Appendix I	Conciliation Rules of China Council for the Promotion of International Trade (CCPIT)/China Chamber of International Commerce (CCOIC) (2005)	343

Appendix J

Notice of the Supreme People's Court on Certain Issues Relating to the Revocation by the People's Courts of Foreign-related Arbitration Awards ('Notice on Prior Reporting System 1998')	349
---	------------

Appendix K

Supreme People's Court: Notice on Certain Questions concerning the Implementation of the Arbitration Law of People's Republic of China	351
---	------------

Appendix L

Regulation of the Supreme People's Court regarding the problems of collecting fees and time limits for review of recognition and enforcement of foreign arbitral awards of 1998 & Provisions of the Supreme People's Court on Some Time limits For Handling Enforcement Cases of 2006	353
--	------------

Appendix M

Supreme People's Court Reply to Certain Issues Pertaining to the Hearing of a Motion for the Revocation of an Arbitration Award	357
--	------------

Appendix N

The Supreme People's Court's Interpretations of Certain Issues Concerning the Application of the Arbitration Law of the People's Republic of China	359
---	------------

Appendix O

Supreme People's Court's Interpretations of Certain Issues Concerning the Application of the Arbitration Law of the People's Republic of China (September 8, 2006)	365
---	------------

Appendix P

Notice of the Supreme People's Court Regarding the Implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Acceded to by China ('New York Convention Implementation Notice')	371
--	------------

Appendix Q Arrangement between the Mainland and Hong Kong SAR Concerning the Mutual Recognition and Enforcement of Arbitration Awards ('Mutual Enforcement Arrangement')	377
Appendix R Regulations of the Supreme People's Court Regarding the Recognition by the People's Courts of Civil Judgments Rendered by Relevant Courts of Taiwan Region ('Taiwan Provisions')	381
Appendix S Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned	387
Appendix T Arrangement Between Mainland and Macau SAR on Reciprocal Recognition and Enforcement of Arbitration Awards Of December 12, 2007	393
Bibliography	397
Table of Cases	401
Table of Laws and Regulations	407
Index	427