KILPATRICK TOWNSEND

6 KEY TAKEAWAYS

Doing Business in China: Six Thoughts on Proposed Changes to China's Arbitration Law

On 30 July 2021, China's Ministry of Justice published a public comment draft of proposed revisions to China's national Arbitration Law. Kilpatrick Townsend international disputes partner Thomas G. Allen offers the following observations on the scope and impact of the proposed law.

1 Arbitration is preferable for most companies doing business in China because of the mixed reputation of Chinese courts and the considerable advantages arbitration offers for cross-border enforcement, neutrality, choice of counsel, confidentiality, and procedural control.

2 Many international lawyers are reluctant to recommend arbitrating in China or utilizing Chinese arbitral institutions because of the perception that the risk of political and local favortism and corruption of arbitrators is intolerably high.

3 The government of China is aware of these perceptions. The proposed law is designed to strengthen China's arbitration laws, enhance international cooperation, keep China competative as an arbitral seat, protect legitimate party rights, and codify current best practices. *Source: China Ministry of Justice*

4 The proposed law would clear past confusion and bring China on par with the UNCITRAL model law. Key features include: (1) ad hoc arbitration for foreign related disputes, (2) failure to designate an arbitral institution not a reason for invalidity, (3) registration system for foreign arbitral institutions, (4) recognition of kompetenz-kompetenz of arbitrators, (5) procedures for interim measures, (6) limitations on institutional control of arbitrator selection process and (7) disclosure requirements and certification of independence of arbitrators.

5 We take a "wait and see" approach. When negotiating with PRC counter-parties, we recommend a series of options and potential compromises to enhance the chances for a successful result.

6 Winning a dispute starts with the careful drafting of disputes clauses. A small investment of time at the transactional phase can help to avoid a host of problems should a dispute later arise between the parties.

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