

Legislative Recognition and Judicial Coordination of Tribunal's Competence-Competence in China's Foreign-Related Arbitration: Under the New World Economic and Trade Landscape

Yuexuan Jia

Law School, Beihang University, Beijing, China

19991897339@163.com

Abstract. This paper examines China's legislative omission of explicit statutory recognition for arbitral tribunals' competence-competence—the authority to self-determine jurisdiction—and its consequential judicial inconsistencies, which collectively deviate from international arbitration norms. Amid anti-globalization pressures, the analysis identifies systemic challenges rooted in China's fragmented "foreign-related priority" legislative approach, historical administrative legacy undermining tribunal autonomy, premature judicial intervention in arbitration proceedings, and evolving conceptualization of arbitration from dispute resolution tool to strategic governance instrument. Following critical engagement with academic debates on dual-track legislation, judicial intervention timing, and substantive-procedural review boundaries, the study proposes a tripartite reform framework drawing on comparative insights from France's minimal judicial intervention principle and Singapore's mediation-arbitration integration. The roadmap advocates: legislative reconstruction through unified foundational laws supplemented by specialized foreign-related rules, local pilot reforms, and institutional rule harmonization; judicial coordination prioritizing ex ante tribunal authority with narrowly defined interim exceptions and ex post award scrutiny; and institutional innovation via mediation-arbitration-litigation coordination, regionally tailored pilots, and AI-enhanced procedural efficiency. Collectively, these measures aim to synchronize China's arbitration system with global standards while accommodating domestic sociolegal realities to bolster its trade governance competitiveness.

Keywords: Arbitration Tribunal, Competence-Competence, Judicial Review

1. Introduction

The doctrine of competence-competence, which grants arbitral tribunals primary authority to determine jurisdictional challenges, has become a vital point of core competition in international commercial dispute resolution seats. However, China's current legal framework notably lacks explicit statutory provisions governing the arbitral tribunal's competence-competence and its

judicial practices demonstrate insufficient clarity regarding the boundaries of court review over jurisdictional challenges raised against arbitral tribunals, resulting to institutional divergence from internationally accepted arbitration norms.

Against the backdrop of anti-globalization trends in economic and trade relations triggered by Sino-U.S. trade frictions and the disintegration of multilateral trading systems, it has become imperative to re-examine China's competence-competence regime and its corresponding judicial review mechanisms. This necessitates constructing an institutional framework that simultaneously incorporates international practices while remaining grounded in domestic rule-of-law, achieving coordinated development between institutions and mechanisms, to enhance the global competitiveness of China's international commercial dispute resolution system.

Commencing with practical challenges confronting China's competence-competence regime, this paper adopts a strategic imperative to strengthen China's comprehensive governance capacity in international dispute resolution, reviews the synergistic interplay between legislative recognition and judicial review of arbitral jurisdiction. The paper advances a conceptual framework characterized by functional complementarity, procedural cohesion, and coordinated development between these two mechanisms. Specifically, it proposes a three-dimensional roadmap for constructing China's legal framework on arbitral competence-competence in cross-border arbitration, encompassing legislative reconstruction, optimal timing of judicial intervention, and institutional innovation.

2. Practical challenges of arbitral competence-competence

Since the 1950s, China has progressively established a relatively comprehensive legal framework for foreign-related arbitration. However, the current system still faces critical challenges, including the absence of explicit legislative recognition of arbitral competence-competence and inadequate coordination mechanisms with judicial review. And its practical challenges are mainly manifested in following several aspects:

2.1. Legislative gaps from selective legal transplantation under “foreign-related legal system priority”

China's foreign-related arbitration system developed earlier than its domestic arbitration regime. In the 1950s, the Foreign Trade Arbitration Commission (predecessor to CIETAC) and Maritime Arbitration Commission were established under the China Council for the Promotion of International Trade (CCPIT). However, it was not until the 1990s that the Civil Procedure Law of People's Republic of China and Arbitration Law of People's Republic of China created a judicial review framework for arbitration. China's arbitration system originated from foreign-related commercial demands, adopting a government-led “top-down” approach that prioritized foreign-related development and transplanted foreign-related arbitration systems with an instrumentalist orientation to rapidly align with international rules. However, the Arbitration Law fails to expressly recognize arbitral tribunals' competence-competence, conflating jurisdictional challenges with objections to the validity of arbitration agreements and subjecting them to identical judicial review, resulting in legislative gaps.

2.2. Administrative arbitration legacy undermines tribunal authority

China's arbitration system was established through a “top-down” approach. Arbitration institutions were initially affiliated with relevant administrative authorities that exercised comprehensive

oversight over arbitration proceedings. Factors including limited public recognition of arbitration, scarcity of professional arbitrators, and that fact that tribunals operating under institutional dominance collectively forged a “strong institution-weak tribunal” mode.

2.3. Economic foundations demand full judicial intervention

In the early stages of establishing the arbitration system, parties had limited autonomy in resolving civil and commercial disputes, relying primarily on the delegation of state judicial power to establish arbitration mechanisms. For the purpose of protecting state-owned economy, courts placed greater emphasis on judicial review when handling relationships with arbitration [1] The Arbitration Law and the Supreme People’s Court’s Reply on Several Issues Concerning the Determination of the Validity of Arbitration Agreements stipulated that when both parties simultaneously requested the arbitration commission and the court to rule on objections to the validity of the arbitration agreement before the first hearing of the arbitration tribunal, the court held priority in making the determination. If arbitral institution has not yet rendered decision regarding the objection to the validity of the arbitration agreement, the court shall accept parties’ application and notify the arbitration institution to terminate arbitration proceedings, allowing judicial intervention in the arbitration process at any time.

2.4. Divergent judicial practices arising from conceptual evolution: from dispute resolution tool to global governance instrument

The developmental trajectory of China’s arbitration system reflects an evolving conceptual understanding of arbitration. Especially, since the 21st century, China explicitly proposed to establish and improve a diversified “Belt and Road” international commercial dispute resolution mechanism, including arbitration. In April 2019, the General Office of the CPC Central Committee and State Council’s Several Opinions on Improving the Arbitration System and Enhancing Arbitration Credibility demanded integrating arbitration into grassroots social governance promoting industry collaboration and regional arbitration development to serve national opening-up and development strategies. China’s perception of arbitration system development has thus transformed from viewing it merely as an alternative dispute resolution tool for “diverting caseload from courts” to recognizing it as a crucial component of international governance systems at the national strategic level. This rapid conceptual advancement has outpaced legislative amendments, resulting in foreign-related arbitration provisions being scattered across various laws and judicial interpretations without systemic integration. Conflicts between old and new norms have created application dilemmas, leading different adjudicators to adopt divergent approaches in legal reasoning, factual determinations, and value judgments for similar cases, ultimately causing inconsistencies in judicial review standards.

3. The value prioritization and conceptual innovation in arbitral competence-competence

3.1. Three dimensions of value conflict in Chinese academic debates on arbitral competence-competence

3.1.1. Unified legislation vs. dual-track legislation: global integration vs. local adaptation

China’s Arbitration Law adopts a dual-track legislative model through separate chapters governing foreign-related arbitration, diverging from international norms. Scholarly opinions diverge

significantly on this matter. Some scholars advocate adopting the UNCITRAL Model Law and Arbitration Rules to enhance the credibility of Chinese arbitration internationally [2]. Others emphasize China's unique socio-legal context, opposing radical reforms and proposing gradual transitions - maintaining institutional arbitration as the mainstay for domestic cases while fully liberalizing international arbitration [3]. Another school of thought acknowledges the shortcomings of unified arbitration legislation and actively defends the dual-track model distinguishing domestic and international arbitration [4]. These conflicting viewpoints essentially reflect the fundamental tension between international convergence and local adaptation in value orientation.

3.1.2. Timing of judicial intervention: efficiency priority vs. justice priority

Regarding the appropriate timing for judicial review, scholars hold divergent views: Some argue that courts may intervene at various stages of arbitration proceedings, but should exercise such power with caution [5]; others advocate differentiated judicial intervention approaches based on procedural stages [2]; while a third perspective maintains that jurisdictional challenges should only be reviewed during the arbitration award setting-aside or enforcement phases [2]. These debates fundamentally reflect the underlying value conflict between prioritizing procedural efficiency versus substantive justice.

3.1.3. Procedural review vs. substantive review: arbitral finality vs. judicial safeguard

Scholarly proposals diverge sharply on the scope of judicial review. Some scholars argue abolishing courts' substantive review authority over commercial arbitration, shifting entirely to procedural supervision [6]. Others advocate establishing substantive review mechanisms by people's courts [7]. While procedural review remains the fundamental principle, limited substantive review may apply in exceptional circumstances, such as conflicts with mandatory laws or public order, existence / validity of arbitration agreements, or ultra vires awards. International instruments like the New York Convention and UNCITRAL Model Law on International Commercial Arbitration (hereinafter the Model Law) permit reviews of arbitral procedure legality while avoiding substantive interference, yet do not comprehensively prohibit substantive review. "When parties choose arbitration, they seek not only efficient dispute resolution but also just adjudication. Efficiency divorced from justice neither reflects the parties' true intent nor aligns with the inherent values of arbitration" [7]. Consequently, courts' substantive review in certain cases remains indispensable for safeguarding societal fairness and justice.

3.2. Conceptual innovation in constructing arbitration legal system

Above traditional research often considers the relationship between arbitral competence-competence and judicial review within an "efficiency versus justice" or "autonomy versus intervention" framework, seeking dynamic equilibrium between competing values. However, both arbitration and judicial processes fundamentally share the common goals of fairness, efficiency, and rule of law. The distinction lies merely in their contextual prioritization of these interconnected values. This necessitates transcending the either-or adversarial mindset to construct arbitration legal frameworks through the lens of value congruence.

3.2.1. Coordinated development between arbitral autonomy and judicial review

While arbitral jurisdiction originates from party autonomy, modern arbitration systems fundamentally rely on the delegation of state judicial authority. Arbitration and judicial review mechanisms must be cohesively designed, creating a closed-loop system of “private remedy + public oversight” where both mechanisms functionally and procedurally reinforce and complement each other.

3.2.2. Harmonizing global integration with local adaptation

From a transnational perspective, arbitration systems pursue cross-border enforceability to ensure arbitral outcomes gain mutual trust among domestic and foreign parties while securing international recognition and enforcement. Regarding the arbitration system itself, jurisdictional determinations in foreign-related commercial disputes often involve sensitive considerations of state sovereignty, judicial cooperation, international treaties and established customs—factors demanding careful legislative deliberation. An effective international commercial dispute resolution mechanism must inherently acknowledge normative diversity in its institutional foundation, rather than pursuing formalistic uniformity in regulatory systems. As a major global trading nation, China should develop an arbitration framework better suited to its socioeconomic realities while adhering to the fundamental principle of balanced coordination between international standards and domestic needs.

3.2.3. Providing strategic support for the international trade governance system

Amid the Trump administration’s anti-globalization trade policies—particularly the implementation of “reciprocal tariffs” and industry-specific tariffs—the global economic architecture is shifting toward regional or bilateral trade agreements. China must therefore accelerate cooperation with Belt and Road nations to rebuild international cooperation and inclusive rules. This entails China constructing a “pluralistic” international trade dispute resolution and governance mechanism integrating mediation, arbitration, and litigation and reconstructing arbitral competence-competence and judicial review mechanisms from a national strategic perspective.

4. Extraterritorial experiences in arbitral competence-competence

To reconstruct arbitral tribunals’ competence-competence and achieve coordinated development with corresponding judicial review mechanisms, assimilation of comparative legal experiences is imperative.

4.1. Dual-track legislation advancing internationalization of foreign-related arbitration

France implements a dual-track legislative model, dedicating a specific section to domestic arbitration in its Code of Civil Procedure. Its foreign-related arbitration adopts a “functionalist” approach, implementing radical reforms for rapid alignment with international standards, while domestic arbitration maintains gradual evolution to preserve legal traditions and social acceptance. Singapore has enacted separate Domestic Arbitration Act (AA) and International Arbitration Act (IAA), creating a distinctive dual-track model that achieves full international convergence in international arbitration rules while preserving local characteristics in domestic arbitration. This framework successfully reconciles internationalization with localization in competence-competence systems.

4.2. Explicit recognition of arbitral tribunal's autonomous jurisdiction

France's revised Code of Civil Procedure (2011) explicitly grants arbitral tribunals the power to make preliminary rulings on their own jurisdiction under Article 1465. For instance, in the 2022 landmark case *Société Allianz Global et als. v. Société Marioff et als.* (Pourvoi n° 20-21.572), the French Supreme Court upheld the tribunal's competence-competence, ruling that none of the exceptions under Article 1448 (where an arbitration agreement is "manifestly null or inapplicable") applied [8]. Similarly, Singapore's IAA confers final decision-making authority on jurisdictional matters to arbitral tribunals. The IAA largely incorporates the UNCITRAL Model Law, which is annexed to the statute, ensuring alignment with globally recognized arbitration standards.

4.3. Establishment the principle of minimal judicial intervention in arbitration proceedings

The French Code of Civil Procedure strictly limits court review of jurisdictional challenges in international arbitration to cases where the arbitration agreement is "manifestly null or inapplicable." Similarly, Hong Kong's Arbitration Ordinance expressly prohibits judicial interference in matters governed by the Ordinance under Section 12, restricting court intervention to only two categories. First, courts may intervene in supportive or supervisory capacities, such as when determining arbitrator challenges, making jurisdictional rulings, or setting aside awards. Second, judicial assistance remains available for evidence collection or enforcement of interim measures where arbitral tribunals lack compulsory powers [9]. Hong Kong courts operationalize this principle through the prima facie test, requiring merely preliminary evidence of a valid arbitration agreement before mandatory referral to arbitration

4.4. Constructing "mediation-arbitration" procedural interface mechanisms

Singapore has developed a multiple dispute resolution framework through its "mediation-arbitration" hybrid model and diversified Alternative Dispute Resolution (ADR) system, establishing a regionally distinctive ADR paradigm. In commercial disputes, parties first attempt to resolve their dispute through court of mediation. If unsuccessful, the case automatically transitions to arbitration, where arbitrators issue interim awards that may subsequently be converted into mediated settlements. Should mediation fail, interim awards become final and binding [10].

Above practices provide a lesson for China's arbitration reform. First is dual-track legislation. China should develop differentiated legal frameworks for international and domestic arbitration needs, accelerating alignment with global standards to enhance credibility. Second is legislative empowerment. Tribunals' competence-competence needs to be statutorily codified and judicial intervention boundaries to be delineated through coordinated operational mechanisms. Third is to build an integrated dispute resolution mechanism. Strengthening procedural linkages among "mediation-arbitration-litigation" will improve arbitration efficiency.

5. Institutional reconstruction from three dimensions: coordinated innovation in legislation, judiciary and governance system

5.1. Legislative reconstruction: a regulatory framework integrating foundational systems + special provisions + local regulations + arbitral rules

In March 2023, the newly amended Legislation Law of the People's Republic of China replaced the term "arbitration systems" with "fundamental arbitration systems" among matters subject to

statutory reservation, creating space for reconstructing China's arbitration legislation framework. China should establish a multi-tiered regulatory architecture comprising foundational arbitration systems, foreign-related special rules, local regulatory provisions and arbitral institutional rules.

5.1.1. Unification of foundational arbitral systems

The revised Arbitration Law must codify core principles universally applicable to domestic and foreign-related arbitration, including explicit statutory recognition of tribunal competence-competence, establishment of the principle of jurisdictional priority for arbitral tribunals, thereby eliminating the current conflation between jurisdictional determinations and validity assessments of arbitration agreements.

5.1.2. Specialized foreign-related procedural rules

The Arbitration Law should include a "Special Procedures for Foreign-Related Arbitration" chapter, featuring detailed exercise procedures for tribunal competence-competence, court intervention exceptions, timelines for judicial reviews, aiming to eliminate regulatory fragmentation

5.1.3. Differentiated pilot reforms through local legislation

Within the framework of unified national legislation, free trade zones and special economic districts should be authorized to implement localized regulatory innovations through experimental adoption of ad hoc arbitration mechanisms and liberalized access for foreign arbitral institutions. A "negative list" supervisory framework should be established to ensure local innovations do not violate core boundaries such as public policy reservations or non-arbitrable matters.

5.1.4. Harmonization of institutional arbitration rules

Arbitration institutions should enhance tribunal support services by improving award scrutiny systems and expert consultation mechanisms while strengthening internal oversight. The development of detailed rules for emergency arbitrators and fast-track procedures should be prioritized to facilitate alignment with evolving international arbitration standards while maintaining domestic applicability.

5.2. Timing of judicial intervention: establishing a systematic three-tier review standard

Judicial review should be triggered only upon the issuance of an arbitral award. Prior to the award, courts should respect the tribunal's competence-competence and refrain from intervention. Post-award, jurisdictional challenges shall fall within the court's exclusive purview.

5.2.1. Ex ante blocking: prioritizing arbitral competence-competence

From case acceptance by arbitral institutions until tribunals render jurisdictional determinations, courts shall abstain from intervention, granting tribunals exclusive authority to adjudicate jurisdictional matters. Judicial review may occur only if the tribunal determines the arbitration agreement is "manifestly invalid", to prevent procedural delays and safeguard arbitration efficiency.

5.2.2. Interim restraint: codifying a limited exception list

During arbitration proceedings, judicial intervention must be strictly confined to statutory exceptions. Supreme People's Court interpretations should delineate permissible review scenarios, including enforcement of interim measures, public policy implications and grave procedural defects. Crucially, courts should avoid suspending arbitration when handling preservation requests.

5.2.3. Ex post scrutiny: comprehensive review at enforcement stage

Post-arbitration, parties shall retain judicial recourse options. Courts must accept challenges to tribunals' jurisdictional decisions, applying either prima facie review or full examination based on the circumstances.

5.3. Institutional innovation: diversified coordination and technological empowerment

Empirical research indicates a strong preference for diversified dispute resolution mechanisms, with 59% of respondents favoring "Arbitration + ADR" while 31% opted for arbitration exclusively [11]. The global emphasis on cross-border diversified resolution frameworks continues intensifying. To enhance China's foreign-related arbitration system necessitates coordinated planning, combination and development with diversified resolution mechanisms.

5.3.1. Establishing coordination mechanisms among mediation, arbitration, and litigation

China should actively develop international commercial arbitration hubs by designing interconnected institutional frameworks that synergize arbitration, mediation, and litigation. This will create a mutually supportive, collaborative, and integrated dispute resolution system, offering international commercial entities "one-stop" diversified resolution services.

5.3.2. Strengthening regional rule coordination pilots

Guangdong-Hong Kong-Macao Greater Bay Area integrates the "seat of arbitration" regime with Hong Kong's procedural economy principles to model cross-border dispute resolution. Hainan Free Trade Port & Shanghai Lingang New Area deepens pilot reforms on ad hoc arbitration to harmonize domestic law with international practices. International commercial dispute prevention and resolution organizations should be established through collaboration with chambers of commerce and legal service institutions across Belt and Road countries, forming bilateral/multilateral cooperation mechanisms.

5.3.3. Enhancing technological empowerment

Online arbitration platforms should utilize cloud computing and intelligent technologies to enable data sharing with mediation institutions and courts. AI systems should automatically identify jurisdictional issues for preliminary review while standardizing remote hearings and electronic document service procedures to facilitate coordination with other legal service providers.

5.3.4. Strengthening judicial coordination

Specialized international commercial arbitration judicial review tribunals should be established to centralize recognition and enforcement of foreign-related awards, improving review efficiency and

expertise. Judicial authorities should enhance support for arbitration institutions by assisting in tribunal constitution and arbitral proceedings, making determinations regarding arbitrator challenges and arbitration timeline extensions, and providing judicial assistance for ad hoc arbitration.

6. Conclusion

This study reveals that the legislative omission of arbitral competence-competence in China's foreign-related arbitration and the blurred boundaries of judicial review constitute structural bottlenecks constraining its international competitiveness. Confronting the restructuring of the global economic landscape amid "anti-globalization" pressures, systemic institutional innovation is imperative to bridge the gap between domestic practices and international norms:

Legislatively, the revision of the Arbitration Law must establish a unified framework integrating "harmonized foundational principles + specialized foreign-related procedural rules," explicitly codifying tribunals' priority in jurisdictional determinations, while exploring adaptive reform pathways through localized pilot initiatives (e.g., ad hoc arbitration in free trade zones).

Judicially, a three-tiered review framework should be implemented—pre-award tribunal priority (autonomous jurisdictional rulings), interim restraint (intervention limited to "manifest invalidity" exceptions), and post-award scrutiny (comprehensive review at enforcement)—to curb judicial overreach through procedural discipline.

Governance innovation requires synergy among "mediation-arbitration-litigation" mechanisms and regional rule coordination (e.g., procedural integration in the Guangdong-Hong Kong-Macao Greater Bay Area), augmented by AI-enabled cross-border data-sharing platforms to forge a closed-loop ecosystem for diversified dispute resolution.

The 2023 Legislation Law amendment—replacing "arbitration systems" with "fundamental arbitration systems"—has opened a critical reform window. However, three pivotal challenges demand further resolution: empirical assessment of cross-border award enforcement efficacy involving state-owned entities, long-term regulatory mechanisms for ad hoc arbitration pilots, and ethical boundaries for algorithmic jurisdictional review. Only through deep coordination of legislative empowerment, judicial deference, and technological enablement can China's arbitration system evolve from a "rule adapter" to a "governance standard-setter," offering a Chinese approach to the Belt and Road international commercial dispute governance framework.

References

- [1] Li Sitong; Han Jin, (2024) Analysis on the Arbitral Court's Competence-Competence System under the Background of Arbitration Law Revision, *Social Sciences in Heilongjiang*, 2: 65-66
- [2] Zhang Yuqing, (2018) Exploring the Present Competence-Competence of Commercial Arbitration and the Improvements in China, *Journal of International Economic Law*, 1: 127
- [3] Jin Xin: (2022) The Concept and Measures of Chinese Arbitration Reform: A Lesson from French Reform Approach, *Seeking Truth*, 06: 116
- [4] Sun Wei, (2022) Discussion on the Dualization Mode of Arbitration Legislation in China, *China Law Review*, 3
- [5] Sun Nanshen; Hu Di, (2017) An Analysis on the Doctrine of Competence-Competence and Judicial Review in International Commercial Arbitration, *Wuhan University International Law Review*, 3: 19
- [6] He Yun, (2024) Several Disputes Concerning Judicial Review of Foreign Arbitration in China: From the Perspective of Revising of Arbitration Law, Shantou Arbitration Commission. https://www.shantou.gov.cn/stszcwyyh/zcal/content/post_2346241.html.
- [7] Yang Limin, (2024) Reform and Development of China's Arbitration System in the Background of Trade Globalization. <https://www.hanspub.org/Journal/PaperInformation?paperID=86751>.
- [8] Beijing Institute of Technology _ Institute of International Dispute Prevention and Settlement official website. (2022) Unless Circumstances Involving Manifest Invalidity or Inapplicability of the Arbitration Agreement Exist,

Courts Shall Defer to Arbitral Tribunals' Competence-Competence. (French judicial practice). <https://iidps.bit.edu.cn/gatsw/8b29c243f1a64ac0896b72092f20dd3b.htm>.

- [9] Luo Fuzhong, (2024) The Institutional Pillars of Hong Kong's International Arbitration System and their Implications. *Hong Kong and Macao Journal*, 4: 5-16
- [10] Han Kun Law Offices official website. (2024) Innovation, Flexibility, Pragmatism----Quick Reviews of Singapore International Arbitration Center (SIAC) 2025 New Rule. <https://baijiahao.baidu.com/s?id=1818245360966676028&wfr=spider&for=pc>.
- [11] China Academy of Arbitration Law. (2021) 2021 International Arbitration Survey jointly published by Queen Mary University of London and White & Case LLP International Law Firm. <http://caal.chinalaw.org.cn/portal/article/index/id/1187/cid/5.html>.