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A Legal System of "Highly Relying on Niche Users' Mutual Trust" - On the Legal Coordinates of China's *Ad hoc* Arbitration

Du Wen

Civil, Commercial, and Economic Law School, China University of Political Science and Law (CUPL), Beijing, China
Email: wend@cupl.edu.cn

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Abstract

The new Arbitration Law of China, which came into effect on March 1, 2026, established localized *ad hoc* arbitration. *Ad hoc* arbitration in China is quintessentially a legal system with dual characteristics of "appealing to niche users and demanding their mutual trust". The meaning of "appealing to niche users" is that compared with Western countries, *ad hoc* arbitration in China is extremely limited in terms of its applicable parties, subject matter(s), and the geographical scope. Meanwhile, the so-called "demanding users' mutual trust" refers to the mutual familiarity and faith between the *ad hoc* arbitrator and the disputing parties. Among these two traits, "appealing to niche users" is the predominant one, while "demanding users' mutual trust" is the secondary feature. The former has a decisive impact on the latter. Overall, China's *ad hoc* arbitration has a hallmark structure of "one body with two wings". The so-called "one body" refers to the dual characteristics of "highly relying on niche users' mutual trust" in China's *ad hoc* arbitration. The "first wing" in the so-called "two wings" refers to the five peculiarities endowed by China's unique national conditions, polity and supporting legal culture. The "second wing" refers to the unique functions of *ad hoc* arbitration in China, which plays a pivotal role in resolving disputes within designated regions such as free trade zones and the free trade port, thereby providing assistance for China's deepening reform, opening-up and attracting foreign investment. This unique structure and its roles are missing in Western *ad hoc* arbitration. The application of *ad hoc* arbitration in China will have the following two effects: firstly, in the foreseeable future, *ad hoc* arbitration is unlikely to be widely promoted and universally used within China. Secondly, in the near future, *ad hoc* arbitration will not become a strong competitor to China's existing arbitration institutions.

Keywords

China's *Ad hoc* Arbitration, Analyses on Its Legal Positioning, The Quintessence of "Highly Relying on Niche Users' Mutual Trust", The Structure of "One Body with Two Wings"

1. Overview of *Ad hoc* Arbitration in China

The academic community generally believes that "an *ad hoc* arbitration agency, also known as a special arbitral institution, refers to an arbitral organization formed by arbitrators selected by the parties concerned in accordance with an arbitration agreement reached before or after the dispute arises, responsible for hearing the dispute between the said parties, and dissolved immediately after the hearing is concluded and an award is rendered."(Wang, 2007: p. 180) In theory, *ad hoc* arbitration is also known as "the specialized arbitration". By comparison, "a permanent arbitration agency refers to an arbitral organization established in accordance with international treaties or domestic laws, with a fixed name, address, organizational form, articles of association, arbitral rules, list of selectable arbitrators, and with a complete office and sound administrative management system, so as to handle international commercial legal disputes." (Wang, 2007: p. 181)

The first paragraph under Article 82 of *the new Arbitration Law*, which came into effect on March 1, 2026, established *ad hoc* arbitration in China. This provision states: "Where the parties agree in writing to refer to arbitrate a foreign-related maritime dispute or a foreign-related dispute arising between enterprises formed and registered in a pilot free trade zone created with the approval of the State Council, the Hainan Free Trade Port, or other areas designated by the State, they may choose to refer the dispute to an arbitral institution or select the People's Republic of China as the seat of arbitration and refer the dispute to an arbitral tribunal consisting of persons who meet the conditions prescribed in *this Law* for arbitration in accordance with the agreed arbitration rules, and the arbitration tribunal shall, within 3 working days of its formation, under recordation with the arbitration association regarding the names of the parties, the seat of arbitration, the composition of the arbitration tribunal, and the rules of arbitration." Due to the fact that China has only had permanent institutions for arbitration in the past 30 plus years, the creation of this legal system has a groundbreaking milestone significance.

In any nation or region, there are many mechanisms that can be utilized to legally handle civil and commercial disputes. "The main reasons why merchants are willing to choose the arbitral system for this job can be summarized into three folds: first, the high efficiency of the proceedings; second, compared to the complexity of substantive laws (mainly case laws), applying 'commercial practices' to settle commercial controversies is more in line with the needs of businessmen;

Thirdly, the development of the industry and its self-governing organizations has facilitated a stable trade order that is sufficient to break through the control of the regional forces and the trade-power-monopolized industrial order." (Wu & Yang, 2025: p. 12)

Compared with the somewhat rigid and formal proceedings conducted by China's permanent arbitral institutions, *ad hoc* arbitration that always highlights the adaptability of individual cases can give full and free rein to the three core advantages of the aforesaid dispute resolution system.

From the promulgation of *the old Arbitration Law* in 1995 to 2016, traditional institutional arbitration reigned the field of civil and commercial arbitration in China. In the past 20 years, there have indeed been some isolated instances of *ad hoc* arbitration operations in China. (Kang, 2003: p. 509, 514)[1] However, due to the lack of legal authorization and support, these handful operations are destined to be a "flash in the pan", and their effectiveness and influence are difficult to rival the "deeply rooted" permanent institution arbitration. Furthermore, due to the lack of supporting legal rules, *ad hoc* arbitration conducted on the soils of China is undoubtedly illegal and invalid. In contrast, overseas *ad hoc* arbitral awards can be recognized and further enforced by Chinese courts based on *the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, Article 304 of *the Civil Procedure Law*, as well as Article 543 of *SPC Interpretations on the Civil Procedure Law* (Fa Shi [2015] No. 5, revised by Fa Shi [2020] No. 20, and further revised by Fa Shi [2022] No. 11). In terms of *ad hoc* arbitral affairs, this has virtually created an awkward situation where Chinese laws give overseas arbitration awards "super national treatment". In addition, "Chinese enterprises' 'Going Global Strategy' has also been hampered by the absence of the *ad hoc* arbitration system for a long time. In the process of conducting cross-border commercial activities, Chinese enterprises are often required to resolve disputes through *ad hoc* arbitration, but *China's old Arbitration Law* fails to recognize *ad hoc* arbitration, and thereby force Chinese enterprises to choose overseas *ad hoc* arbitration unwillingly. Obviously, this is time-consuming, laborious and costly choice for Chinese enterprises [....] In the context of the Belt and Road Initiative and the establishment of free trade pilot zones (the free trade port), and the elevation of the level of opening-up to the outside world, foreign-related trade has accelerated its developing paces both at home and abroad. When commercial disputes arise, it is still not possible to conduct *ad hoc* arbitration at home, which further aggravates the plight of Chinese enterprises." (Xiao, 2022: p. 157)

[1]For instance, an essay noted: "In mid-September 2000, the author led a delegation from China Maritime Law Association (the CMLA) to attend a maritime law seminar in Spain, jointly organized by Comité Maritime International (CMI) and the Spanish Maritime Law Association (the SMLA). During the meeting, the author had the privilege of interacting with professor Hu Zhengliang from Dalian Maritime University, who participated in that colloquium, and gained valuable insights from him. When discussing arbitration, professor Hu mentioned his personal experience as an *ad hoc* arbitrator in a charterparty dispute. […] The author also learned from professor Hu Zhengliang that, with the successful experience of the above-mentioned *ad hoc* arbitrated case, he is currently handling another economic dispute through *ad hoc* arbitration."

In 2014, the situation began to turn around. "The '2014 case of Zhejiang Yisheng Petrochemical Co., Ltd.' is a landmark decision in which the Chinese court upheld the legal effect of the hybrid arbitration agreement for the first time. In this case, the court explicitly allowed the parties to submit their disputes to an arbitration institution in China for settlement based on their written agreement, but could also consent to the notion that the related arbitral tribunal should apply *UNCITRAL Arbitration Rules* instead of the institutional arbitral rules formulated by the arbitration institution that accepted the case itself. [...] The '2014 case of Zhejiang Yisheng Petrochemical Co., Ltd.' was listed as a typical case in which the Supreme People's Court provided judicial services and guarantees for the construction of 'The Belt and Road Initiative'." (Huang, 2019: pp. 191-193)

Two years later, the situation improved further. In order to fully implement the judicial measures both to support the institutional innovations happened in the pilot free trade zones, and to ensure the smooth progress of the reform concerning the foreign investment approval system, the filing system, and the commercial system, etc., *SPC Opinions on Providing Judicial Assistances for the Construction of Pilot Free Trade Zones* (Fa Fa [2016] No. 34) (hereinafter referred to as '*the SPC Opinions*') was publicized and implemented on December 30 of that year. Paragraph 3 under Article 9 of *the SPC Opinions* clearly stipulates: "If enterprises registered in the pilot free trade zones agree to arbitrate relevant disputes in a specific location in Chinese mainland, by observing specific arbitration rules, and being handled by specific persons, the arbitration agreement may be judicially deemed valid." Many domestic scholars hail 'the tenet of three specified requirements' provided by paragraph 3 under this Article 9 as the embryonic form of China's *ad hoc* arbitration system. Although 'the tenet of three specified requirements' in *the SPC Opinions* temporarily eases the embarrassing situation caused by the lack of domestic *ad hoc* arbitration system in China, its legal status is too low because *the SPC Opinions* is merely a national judicial normative document. In addition, the corresponding content of *the SPC Opinions* is too cursory and vague, which has not only been criticized by Chinese jurists, but also has had a certain negative impact caused by its implementations. (Tang, 2020: pp. 50-51, 54) (Ning & Zhang, 2025: p. 38) (Sun, 2017: pp. 85-86) (Li, 2020: p. 41)[2]

The author believes that the above-quoted paragraph 1 under Article 82 of *the new Arbitration Law* fills the long-standing legal loophole. Next, Chinese arbitration professionals can track and analyze the *ad hoc* arbitration operations conducted by abiding this rule in China. The accumulated experience in domestic *ad hoc* arbitration and the "sublimated and crystalized" theory that has emerged from relevant academic research will then provide "beneficial feedback" for the future legislative optimization and improvement of *ad hoc* arbitration in China.

The Chinese government believes that an important purpose of the promulgation and implementation of *the new Arbitration Law* is to "enhance the openness,

[2]Please refer to the literature mentioned here for the critical opinions expressed by Chinese scholars against "the tenet of three specified requirements".

inclusiveness, and adaptability of China's foreign-related arbitration system, and thus increase 'the special arbitration system with Chinese characteristics.'" (Zhang, 2025) So, what is "the special arbitration system with Chinese characteristics"? This requires a systematic analysis of the components of that concept. The author believes that exploring the meaning of "the special arbitration system with Chinese characteristics" is synonymous with interpreting the unique legal positioning of China's *ad hoc* arbitration. This research topic includes three branches of work: One is to systematically compare the commonalities and differences between China's *ad hoc* arbitration system and its counterparts in the West. Then, uncover the reasons behind these distinctions. The second is to systematically analyze the meanings of various legal terms closely-linked to China's *ad hoc* arbitration mentioned by paragraph 1 under Article 82 of *the new Arbitration Law*; The third is to further clarify the idiosyncrasies of "the special arbitration with Chinese characteristics" based on the completion of the first two tasks. The discussion of the following Parts and their sub-sections will be carried out in the order of this framework, which is hereby explained.

2. Analyses of the Commonalities and Individualities of *Ad hoc* Arbitration in China and the West

2.1. The Commonly Shared Features of *Ad hoc* Arbitration in China and the West

As mentioned earlier, paragraph 1 under Article 82 of *the new Arbitration Law* pioneered China's *ad hoc* arbitration system. The author believes that both China's *ad hoc* arbitration and its Western counterparts belong to the internationally recognized category of *ad hoc* arbitration. On the whole, the two do share the following commonalities:

Firstly, *ad hoc* arbitral tribunals are independently established by the written consensus reached by both sides or multiple sides in dispute. After the award of the case is rendered, the *ad hoc* arbitral tribunal shall be dissolved in no time. In this regard, both *ad hoc* arbitration in China and the West are outside the jurisdiction of permanent arbitral institutions. For example, Article 3 (Notice of Arbitration) of *the Ad hoc* Arbitration *Rules of the China Maritime Law Association (2022)* and Article 3 (Notice of arbitration) of *the UNCITRAL Arbitration Rules (2021)* both demonstrate: Neither Chinese nor foreign *ad hoc* arbitrations are affiliated with any arbitration institution.

Secondly, the application of both is based on fully respecting the autonomy of the parties involved. Specifically, in both Chinese and Western *ad hoc* arbitration, the parties concerned are free to choose their own arbitrators, agree on arbitral rules and the case-hearing methods. In terms of *ad hoc* arbitration in both China and the West, the flexibility of its procedural operations is much higher than that of permanent institution arbitration. For example, Article 1 (Application of these Rules) of *the ad hoc* Arbitration *Rules of the China Maritime Law Association (2022)* and Article 1 (Scope of application) of *the UNCITRAL Arbitration Rules*

(2021) can both serve as the proof of the respect shown by both Chinese and foreign *ad hoc* arbitrations for the autonomy of parties.

Thirdly, both Chinese and Western *ad hoc* arbitration have the characteristics of simplified procedures, high efficiency in reaching settlement, no need to pay the management fees of permanent arbitral institution, lower costs, and stronger confidentiality, especially suitable for civil and commercial disputes with sensitive time requirements such as maritime and foreign-related trade issues. For example, Articles 16 to 31 of *the ad hoc* Arbitration *Rules of the China Maritime Law Association (2022)* and Articles 17 to 32 of *the UNCITRAL Arbitration Rules (2021)* can all vindicate this commonly-shared feature.

Fourthly, in terms of the *ad hoc* arbitration in both China and the West, the effectiveness of their awards is the same. To be precise, the corresponding awards are final and effective upon the completion their drafting, and cannot neither be appealed nor to be petitioned for case-reopening. The effective *ad hoc* arbitral award will have binding forces under public law, such as the effect of *non bis in idem* and the enforceability. For example, Articles 32 to 34 of *the ad hoc* Arbitration *Rules of the China Maritime Law Association (2022)* and Articles 33 to 43 of *the UNCITRAL Arbitration Rules (2021)* can all confirm this commonly-shared trait.[3]

2.2. Deconstructing the Peculiarities of Chinese *Ad hoc* Arbitration

Although there are four commonalities between *ad hoc* arbitration in China and the West, there are still significant differences between the two. The author believes that these differences and their causes mainly exist in the following five areas:

First, compared with "the bottom-up development path" of Western *ad hoc* arbitration and institutional arbitration, China's *ad hoc* arbitration and institutional arbitration take the opposite approach - both are the results of the top-level design. Its specific manifestation is that, unlike the Occidental world where the *ad hoc* arbitration flourished at the initial stage for long time, and then institutional arbitration was gradually evolved on the base of it, China first had institutional arbitration and then created its *ad hoc* version to accompany the former. Domestic scholars also agree with this observation. For example, a jurist has pointed out that "international commercial arbitral activities fully reflect 'autonomy of the parties' will', and generally construct the credibility of arbitration through the effect of '*ad hoc* arbitration'. In the West, the arbitral system originated from *ad hoc* arbitration and has gone through a bottom-up developing process, while in China, the arbitral system originated from administrative arbitration established by the

[3]For the *ad hoc* arbitral rules quoted in this paragraph, readers are suggested to refer to the following literature: (1) *the Ad hoc Arbitration Rules of the China Maritime Law Association (2022)*, the official website of the China Maritime Law Association: https://www.cmla.org.cn/data/upload/image/20220621/1655801025341715.pdf. (2) *UNCITRAL Arbitration Rules (2021)*, the official website of United Nations Commission on International Trade Law: https://uncitral.un.org/sites/default/files/media-documents/uncitral/zh/arb-rules-revised-c.pdf.

government from top to bottom, and then transitioned from administrative arbitration to civil arbitration. This has also led to the implementation of an arbitral system led by institutional arbitration in China, where the credibility of arbitral institutions determines the vitality of arbitration." (Tang, 2020: p. 53) (Shi, 2021) (Zhang & Wang, 2026: p. 54)

There are three main causes related to the Chinese idiosyncrasy mentioned in the preceding paragraph:

(1) In Chinese society, the administrative power has long been in an undisputed dominant position. "Due to the fact that the arbitral system in China has not undergone the development and evolution of civil autonomy, and the lack of perfect intrinsic conditions for the occurrence of commercial self-discipline and private remedies in China's economic development history, which are vital for the evolution of arbitration, people's economic activities still require the intervention of administrative forces. Therefore, there has long been a mindset of 'turning to the organization or the government whenever problems arise' in China. For a considerable period of time, people's market awareness was still lacking, and they habitually believed that disputes resolved through organizations were easier to obey, and the parties' performance was also better guaranteed." (Tang, 2020: p. 53)

(2) The influence of the deeply-rooted obsessive respect for bureaucratic official ranks. Its specific meaning is: "Due to the long-standing bureaucratic ideology and collectivist culture in history, people tend to seek formal rulings from authoritative institutions such as the government when resorting to dispute resolving mechanisms beyond private settlement. Moreover, even if the parties choose informal civil dispute resolving methods such as mediation, their predictions of the possible ruling results could be rendered by official institutions in line with national laws will still affect the results of these selected informal resolution methods. Professor Huang Zongzhi (Philip C. C. Huang) dubbed it with the 'third realm' in traditional Chinese law. In essence, formal official trial results will affect the results of non-governmental mediation and arbitration, thereby reflecting the high degree of state power intervention in civil dispute resolution, which is different from the parties' autonomy and flexibility always emphasized in Western arbitration culture." (Wu & Yang, 2025: p. 13)

(3) The victorious achievements of China's modern national salvation revolutionary movements - the influence of the unique national polity of New China. The specific manifestation here is that compared with Western countries, China's top decision-makers have a greater degree of intervention in legislation, law enforcement, and legal supervision affairs. For instance, *Decisions of the Central Committee of the Communist Party of China on Several Major Issues Concerning the Comprehensive Promotion of Rule of Law* (adopted at the Fourth Plenary Session of the 18th Central Committee of the CPC on October 23, 2014) points out that, "(2) Improve the legislative system. Strengthen the Party's leadership over legislative work and improve the Party's decision-making process on major issues in legislative work. Any legislation involving major system and policy adjustments

must be reported to the Party Central Committee for discussion and decision. The Party Central Committee has the empowerment to propose constitutional amendments to the National People's Congress and carry out constitutional amendments in accordance with the procedures stipulated in *the Constitution of China*. Major issues related to the formulation and amendment of laws shall be reported to the Party Central Committee by the Party Group of the Standing Committee of the National People's Congress."[4] *The Rule of Law in China Construction Plan (2020-2025)* issued by the Central Committee of the Communist Party of China further emphasizes: "Adhere to the centralized and unified leadership of the Party. Firmly grasp the Party's leadership is the most fundamental guarantee of socialist rule of law, adhere to the Party's leadership in legislation, ensure law enforcement, support the judiciary, and take the lead in abiding by the law [...] Strengthen the Party's leadership over legislative work, improve the legislative work pattern in which the Party committee exercises leadership, the people's congress takes the leading role, the government provides support, and all stakeholders participate in. The Party Central Committee leads the national legislative work, studies and decides major issues in the national legislative work, and the regional Party committees with the legislative empowerment lead the local legislative work in their respective regions by following the Party Central Committee's major policies [...] For the comprehensive law-based governance of China, strengthen the Party's unified leadership, unified deployment, and overall coordination."[5] Based on the above premise and background, it is easy to appreciate the following differences between civil and commercial arbitration in China and the West: "The development of the Western arbitral system is 'bottom-up' and spontaneous, responding to the needs of commercial entities in practice. Commercial entities prefer the flexibility of *ad hoc* arbitration, which is an advantage that institutional arbitration cannot compare to. On the contrary, the development of China's arbitration system has been 'from the top to the bottom'. The system initially represented the will of the State and did not undergo a spontaneous process of improvement. Instead, it was seen as a parallel institutional construction to litigation, thus reflecting the State's guidance, supervision, and intervention in arbitration activities. (Wu & Yang, 2025: pp. 14-15) In addition, as a jurist has pointed out, "China only recognizes institutional arbitration and does not recognize *ad hoc* arbitration. Objectively, it is the legislators who have made the determination that institutional arbitration is superior to *ad hoc* arbitration on behalf of civil and commercial entities." (Wu & Yang, 2025: p. 14)

Second, due to its unique modern political self-salvation movement and the supporting legal reform background, the Chinese people generally trust govern-

[4] *Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning Comprehensively Advancing the Rule of Law*, the official website of the Central People's Government of the People's Republic of China: https://www.gov.cn/zhengce/2014-10/28/content_2771946.htm.

[5] *Rule of Law in China Construction Plan (2020-2025) issued by the Central Committee of the Communist Party of China*, the official website of the Central People's Government of the People's Republic of China: https://www.gov.cn/zhengce/2021-01/10/content_5578659.htm.

ment institutions (including permanent arbitration institutions approved and endorsed by the government), but instinctively have doubts and distrust towards non-governmental legal mechanisms such as *ad hoc* arbitration. For example, a domestic literature argues that "the long-standing negative attitude towards *ad hoc* arbitration in Chinese mainland is rooted in people's excessive reliance on government agencies or public sectors, as well as their distrust of alternative dispute resolution methods (ADRs)." (Huang, 2019: p. 189) "Among the general public, the complex of dependence on institutions and official signets is deeply-grained. The role of witness testimony in arbitral proceedings and civil litigation is significantly lower than these in Western countries. These phenomena to some extent illustrate our society's distrust of individuals and pursuit of institutional authority. This powerful ideology undoubtedly has a huge resistance to the development of *ad hoc* arbitration. For example, in the arbitrated case concerning South China Sea, public opinion satirically ridiculed the related arbitral tribunal as 'a ragtag amateurish team for a specific case and disbanded upon its conclusion'. Although these comments have its specific political significance, it is not difficult to perceive that most Chinese people and even many scholars still only praise the authority of institutional arbitration (more extreme views even only acclaim the authority and legality of the court). Meanwhile, they are full of unfamiliarity and the consequent misgiving towards *ad hoc* arbitration." (Sun, 2017: p. 87)

The author believes that the emergence of the aforementioned unique situation should be closely linked to the social change pattern described in the following Japanese literature: In terms of the transformation from the traditional dynastic societies to the modern countries, "the more 'backward' a country is, the more it has a sense of purpose. A modernization model was established in advance, and thus the modernization was only promoted by taking it as the set goal. Due to its 'purpose-oriented awareness', it naturally carries a strong ideological character, that is, a modernization guided by a specific ideology." (Maruyama, 2018: pp. 174-175) From this perspective, we can draw the following interim conclusion: China's *ad hoc* arbitral system is a specific arbitral system constructed based on China's unique national system, which naturally carries strong ideological characteristics and features of modern China.

Third, the *ad hoc* arbitration system established by *the new Arbitration Law* is a concrete manifestation and implementation of the Chinese government's policy of making good use of both domestic and international markets and their respective resources to construct a new development pattern. *The Report to the 20th National Congress of the Communist Party of China* (October 16th, 2022) has provided a comprehensive analysis of the relationship between the domestic market and overseas markets. In this regard, the report states that: "We will leverage the strengths of China's enormous market, attract global resources and production factors with our strong domestic economy, and amplify the interplay between domestic and international markets and resources. This will position us to im-

prove the level and quality of trade and investment cooperation. We will steadily expand institutional opening-up with regard to rules, regulations, management, and standards. We will upgrade trade in goods, develop new mechanisms for trade in services, and promote digital trade, in order to accelerate China's transformation into a trader of quality. We will make appropriate reductions to the negative list for foreign investment, protect the rights and interests of foreign investors in accordance with the law, and foster a world-class business environment that is market-oriented, law-based, and internationalized. We will promote the high-quality development of the Belt and Road Initiative." (Xi, 2022)

As a concrete manifestation of the basic policies of the Governing Party in the legal and judicial fields, "coordinating the advancement of domestic and foreign-related rule of law is one of the core tenets of Xi Jinping's legal thoughts, and foreign-related arbitral law constitutes a significant component of foreign-related rule of law in the field of dispute resolution. The rule of law is not only a primary means of governing the country, but also an internationally recognized approach to global governance. the great rejuvenation of the Chinese nation and the building of a community with a shared future for humanity require not only advancing domestic rule of law to gain broad public support within the country, but also promoting foreign-related rule of law to earn widespread recognition from the international community." (Xiao, 2022: pp. 155-156)

This paper holds the belief that the aforementioned official stance will inevitably be reflected in the reform and optimization of China's civil and commercial arbitration system. For instance, since its enactment and implementation in 1995, *the old Arbitration Law* "adopted a distinct legislative approach for foreign-related and non-foreign-related arbitration cases, whereby the extent of judicial review by courts over foreign-related arbitral awards was narrower than that over non-foreign-related arbitral awards." (Shi, 2021: p. 2) Likewise, *the new Arbitration Law*, which came into force on March 1, 2026, also inherits the legislative approach of the civil and commercial arbitration system - characterized by "the legislative pattern that treats domestic and foreign-related subjects differently with appropriate distinction". From a macro perspective, Chapter VII of *the new Arbitration Law* contains systematic and special provisions concerning matters related to overseas arbitration and the arbitral cases of China with foreign elements. From a micro-level perspective, many of the legal mechanisms stipulated in *the new Arbitration Law* are specially tailored to China's foreign-related arbitration practice but are not applicable in domestic civil and commercial arbitration proceedings. For example, the recordation requirement for *ad hoc* arbitration as stipulated in paragraph 1 under Article 82 mandates that "the *ad hoc* arbitration tribunal shall, within three days of its formation, file four types of information with the Arbitration Association (i.e., the names and addresses of the parties, the seat of the arbitration, the composition of the arbitral tribunal, and the arbitral rules); in contrast, there is no such a requirement for pure domestic arbitral cases, thereby giving rise to a management strategy of 'divided governance for domestic

and foreign-related scenarios'. This rule is, in fact, a trailblazing creation of China." (Wu & Yang, 2025: p. 20) As yet another illustration, Article 81 of *the new Arbitration Law* establishes a system of the seat of arbitration that applies solely to foreign-related maritime disputes and to foreign-related civil and commercial disputes meeting specific preconditions. Furthermore, a special preservation mechanism for *ad hoc* arbitration has also been introduced; it stipulates that "where a party applies for property preservation, evidence preservation, or requests the arbitral tribunal to order the opposing party to perform specific acts or refrain from performing specific acts, the arbitral tribunal shall submit such application to the people's court in accordance with the law, and the people's court shall handle the application promptly in line with the law."[6] Last but not least, in light of paragraph 2 under Article 25 and paragraph 1 under Article 82 of the new Law, China's lawmakers have hand-picked the Arbitration Association to exercise professional disciplinary oversight over the professional misconducts of *ad hoc* arbitrators. This also differs significantly from the existing mechanism employed by permanent arbitration institutions for the routine operational supervision against their appointed arbitrators. In terms of this innovation, two scholars have noted it in their writings: "The Arbitration Association is a social organization with legal person status. Through the analytical framework of the 'third realm' concept, it combines both professional self-regulatory and administrative extension functions - resembling the intermediary role of '*Xiangbao* (rural quasi-official under the *Baojia* system during the dynastic era of China)' - in bridging the gap between self-regulation and public authority. While formally aligning with international rules (by respecting parties' autonomy), it also exerts substantive control through information supervision, thereby strengthening the oversight and management of the arbitral proceedings, with endemic characteristics." (Wu & Yang, 2025: p. 20)

Fourth, the newly established *ad hoc* arbitration mechanism is a concrete achievement of "the reform path featuring gradual advancement and small-scale trial for error-testing", which is consistently adopted in China's judicial reform. Unlike the rationalist traditions of Western Romano-Germanic Law System, the empiricist traditions, deeply-rooted in the context of the Chinese agrarian society, holds a predominant position in China. Familiar folk proverbs such as "crossing the river by feeling the stones" and "a good cat is one that catches mice, regardless of its color" are iconic examples of this empirical approach. In addition, the adage "governing a giant country is like cooking a small fish" (Chapter 60 of *the Tao Te Ching* by Laozi) is widely understood and cherished by Chinese people.

As a giant country, China frequently encounters an array of exceptionally complex and diverse large-scale challenges. This has led Chinese policymakers to generally adopt a cautious, small-scale trial-and-error approach toward issues of re-

[6] *Legal Daily Online | Head of the Civil Law Office of the Legislative Affairs Commission of the NPC Standing Committee Interprets the Newly Revised Arbitration Law*, the official website of China International Commercial Court of the Supreme People's Court: https://cicc.court.gov.cn/html/1/218/149/156/12618.html.

form and innovation. When addressing major institutional reforms, Chinese decision-makers often consciously select one or more locations for pilot trials. Once this institutional reform initiative has demonstrated its values and positive outcomes, it should be gradually expanded to larger regions based on a thorough review of the experience thereof gained. In this regard, China's free trade zone system serves as a typical example. The Chinese government believes that one of the important roles and significance of establishing and operating free trade zones is to "pioneer high-end opening-up to the outside world". Its specific meaning is: "China's pilot free trade zones serve as both a testing ground for reform and a window to further opening-up. On this fertile soil, various institutional innovations emerge in an endless stream."[7]

The aforesaid thinking paradigm is also prominently reflected in the context of judicial reform in China. For example, *the Rule of Law in China Construction Plan (2020-2025)* issued by the Central Committee of the Communist Party of China explicitly states: "Where the conditions for legislation are not yet ripe and thus preliminary trials shall be conducted before full implementation, their authorization or reform decisions shall be made in a timely manner by observing the law. Where the reform measures involved in such authorization or reform decisions have been proven feasible in practice, the relevant laws and regulations shall be formulated or amended without delay in accordance with established procedures."[8] For another example, the article "*Judicial Reform in China*" written and publicized by the Information Office of the State Council, also points out: "China's judicial reform has always been grounded in the country's actual conditions [...] it keeps pace with the times without taking rash or blind steps; [...] it adheres to the principles of overall coordination, comprehensive planning, gradual progression, and step-by-step advancement."[9] Still another case in point, the article "*Concepts, Systems, and Methods of Judicial System Reform*" published in *the People's Daily* also employs a similar formulation: China's judicial system reform "requires adhering to the principles of being proactive yet prudent, lawful and orderly, comprehensively coordinated, gradual and step-by-step, as well as being progressed scientifically [...] and a 'gradual approach' to judicial system reform shall be explored."[10]

The author believes that "this reform path featuring gradual advancement and small-scale trial for error-testing" can generate four significant benefits: (1) it drastically reduces the risks associated with trial and error; (2) it enables the real-

[7] *Xinhua News Agency: Over an Extraordinary Decade, the Reform Dividends of China's Pilot Free Trade Zones Benefit the Whole World*, the official website of the Central People's Government of the People's Republic of China: https://www.gov.cn/yaowen/liebiao/202310/content_6907569.htm.

[8] *Rule of Law in China Construction Plan (2020-2025) issued by the Central Committee of the Communist Party of China*, the official website of the Central People's Government of the People's Republic of China: https://www.gov.cn/zhengce/2021-01/10/content_5578659.htm.

[9] *Judicial Reform in China*, the official website of the National People's Congress of China: http://www.npc.gov.cn/zgrdw/npc/xinwen/rdlt/fzjs/2012-10/16/content_1739490.htm.

[10] *People's Daily: Concepts, Systems, and Methods of Judicial System Reform,* People's Daily Online: http://cpc.people.com.cn/pinglun/n/2014/0108/c78779-24057989.html.

ization of long-term values through steady, cumulative effort; (3) it helps maintain calm and rational decision-making; and (4) it ensures adherence to principles and related bottom lines.

This "progressive and small-scale trial-and-error path" will inevitably exert a direct impact on the reform and improvement of China's civil and commercial arbitration system. For instance, *the new Arbitration Law* clearly confines the objective applicable scope of the newly-created *ad hoc* arbitration to "a foreign-related maritime dispute or a foreign-related dispute arising between enterprises formed and registered in a pilot free trade zone created with the approval of the State Council, the Hainan Free Trade Port, or other areas designated by the State".

Chinese policymakers aim to designate every pilot free trade zone and the free trade port as the "test field" for the ongoing innovation of China's legal framework, so as to carry out in-depth but limited experiments and pilot applications against new ideas like *ad hoc* arbitration, upgraded economic and trade institutions, the promotion of sci-tech innovations, brand-new management systems, as well as novel enterprise management mechanisms, etc. For example, "President Xi once remarked: 'The core task of the pilot free trade zones is institutional innovation. We shall thoroughly improve and perfect the basic systems, break through bottlenecks, clear blockages, activate the overall situation, focus on issues like commercial systems, trade supervision systems, innovated systems of financial further opening-up, as well as the in-process and post-event supervision systems, so as to take the lead in fostering a law-based, internationalized and business-friendly trade environment, and also accelerate the formation of a fair, unified and efficient market setting.'" (Zhang, 2017: p. 166)

Fifth, compared with Western countries, China currently lacks a group of seasoned legal professionals who are proficient in *ad hoc* arbitration. In fact, Chinese policymakers have long been aware of this chronical sticking-point that urgently needs to be addressed. For example, *the Rule of Law in China Construction Plan (2020-2025)* issued by the Central Committee of the Communist Party of China clearly states: "Accelerate the development of legal service teams such as lawyers, notarization, forensic appraisal, arbitration, and mediation. Improve professional ethics codes and practice norms, and refine the professional ethics evaluation mechanism."[11] At the same time, domestic academia has also recognized this "short board" that shall be tackled promptly. For instance, a published article points out that, in China, "there is a lack of professional proficiency in the rules related to *ad hoc* arbitration both among enterprise in-house attorneys and among other domestic lawyers. The dispute resolution procedures are forced to be relinquished to foreign lawyers, so as to cause Chinese enterprises to lose the initiative in controversies' settlement." (Xiao, 2022: p. 157)

Some treatises argue that the root cause of the above problem lies in the lack of arbitrators' independence that has been permanently shaped by China's long-

[11] *Rule of Law in China Construction Plan (2020-2025)* issued by the Central Committee of the Communist Party of China, the official website of the Central People's Government of the People's Republic of China: https://www.gov.cn/zhengce/2021-01/10/content_5578659.htm.

standing institutional arbitration practice, or in other words, the excessive reliance of Chinese arbitrators on the assistance provided by the related arbitration institutions. Its specific symptom is: "China is short of arbitrators with rich experience in *ad hoc* arbitration, or more precisely, China lacks arbitrators with experience in independently managing cases at hand. Domestic arbitrated cases have always been administered by related arbitral institutions, and all trivial case-managing work is outsourced to specially assigned secretariat teams. As a result, arbitrators are highly dependent on the assistance of the arbitration commission and case secretaries, and rarely have the opportunity to accumulate experience in case management. However, different from institutional arbitration, there are usually only the disputants and arbitrators in *ad hoc* arbitration. Under this circumstance, whether Chinese arbitrators who are accustomed to institutional arbitration are competent for independent case managing or not is not a hard issue to predict." (Sun, 2017: pp. 87-88)

Apart from the reason specified in the above paragraph, another important incentive leading to this quandary is that *the old Arbitration Law* and its supporting laws, regulations and judicial interpretations have never made any provision on *ad hoc* arbitration. In the absence of the corresponding systems, after more than 30 years of accumulation of pure institutional arbitration practice, this has gradually evolved into a gaping loophole in the arbitration system that imperatively needs to be patched.

To sum up, there are indeed some commonalities between the *ad hoc* arbitration systems in China and Western countries, while five core differences also exist between them. This paper argues that these five major differences are essentially a reflect of the unique national conditions, national polity and supporting legal culture of modern China. It is precisely based on an accurate grasp of these particularities that Chinese policymakers have created "the special arbitration with Chinese characteristics". Although this legal system currently is still in its infancy, with the boost of supporting policies from governments at all levels and the joint efforts of China's arbitration community, it is believed that this *ad hoc* arbitration system will have promising development prospects in the future.

3. A Reflect of Chinese *Ad hoc* Arbitration's Idiosyncrasies - the Purposefully Restricted Interpretation of Relevant Legal Terms

Even though *China's new Arbitration Law* only uses a quite limited space of paragraph 1 under its Article 82 to stipulate *ad hoc* arbitration, this legal provision carries extremely rich connotations and covers multiple interrelated legal terms. To make better use of this provision to conduct *ad hoc* arbitration in China, it is necessary to provide relatively accurate interpretation and elucidation against the meanings of the multiple legal jargons mentioned therein. These legal terms mainly include the following five: "foreign-related", "foreign-related maritime disputes", "foreign-related civil and commercial disputes", "enterprises formed

and registered in a pilot free trade zone or in Hainan free trade port", and "other regions designated by the State". The following sub-sections will anatomically analyze the respective meanings of these legal jargons by turns.

3.1. Interpreting the Meaning of the Term "Foreign-Related"

In pursuance of paragraph 1 under Article 82 of *the new Arbitration Law*, only "foreign-related" maritime disputes and civil and commercial disputes arising between or among specific parties can agree to hold *ad hoc* arbitration in China. Therefore, it is necessary to clarify the specific meaning of the term "foreign-related". Since *the new Arbitration Law* and the relevant judicial interpretations lack corresponding provisions directly applicable to identify the "foreign-related factors" in arbitration, the author suggests that this issue can be resolved by comprehensively referencing the following provisions concerning both the determination of foreign-relatedness in civil litigation and the determination of foreign-relatedness in civil and commercial legal relationships:

(1) Article 520 of *SPC Interpretations on the Civil Procedure Law*: Under any of the following circumstances, the competent people's court may determine a civil case as a foreign-related civil case: (a) Where one or both parties to the civil case are foreigners, stateless persons, or foreign enterprises or organizations; (b) Where the habitual residence of one or both parties to the civil case is outside the territory of the People's Republic of China; (c) Where the subject matter is located outside the territory of the People's Republic of China; (d) Where the legal facts that give rise to, change or extinguish civil relations occur outside the territory of the People's Republic of China; or (e) Where the civil case falls under any other circumstance under which it may be determined as a foreign-related civil case.

(2) Article 1 of *SPC Interpretations on Issues Concerning the Application of the Law of China on Application of Laws to Foreign-Related Civil Relations (Part 1)* (Fa Shi [2012] No. 24, as revised by Fa Shi [2020] No. 18): Under any of the following circumstances, the competent people's court may determine a civil relationship as a foreign-related one: (a) Where one or both parties to the civil relationship are foreigners, stateless persons, or foreign enterprises or organizations; (b) Where the habitual residence of one or both parties to the civil relationship is outside the territory of the People's Republic of China; (c) Where the subject matter is located outside the territory of the People's Republic of China; (d) Where the legal facts that give rise to, change or extinguish civil relations occur outside the territory of the People's Republic of China; or (e) Where the civil relationship falls under any other circumstance under which it may be determined as a foreign-related civil one.

From their wording, the above two legal rules are basically identical. In addition, when referring to the application of these two rules to determine whether civil and commercial disputes have foreign-related factors, the following nine relevant details should also be noted:

(1) Due to the abstract and cursory depiction of the foreign elements in these

two quoted legal provisions, it is necessary to further investigate the existence of foreign-related factors in detail from the aspects of the parties, subject matter(s), and contents involved in the case at hand. Its specific meaning is:

"Firstly, regarding the foreign-related factors concerning the civil parties, in addition to formally examining the conventional connecting points such as their nationality, their habitual residences, and main place of business of the parties, the treatment of wholly foreign-owned enterprises as subjects with foreign-related elements is currently limited to the scope of free trade zones. Whether to promote its application scope remains to be further clarified through legislative revisions and judicial practice. Secondly, regarding the foreign-related aspects of the involved subject matter(s), it has traditionally been limited to the key stages of contract performance, namely whether the final delivery of the subject matter has foreign elements. However, in fact, the performance of a contract not only includes the delivery of the related subject matter(s), but various activities after the parties sign the contract, including but not limited to selecting raw materials, processing and production, loading, transportation, etc., may also involve foreign elements. Where there are foreign-related aspects in these stages, by referring to the validation principle (*ut res magis valeat quam pereat*) observed by *SPC Interpretations on the Application of the Arbitration Law of China* (Fa Shi [2006] No. 7) for handling unclear arbitral agreements, the case should also be recognized as foreign-related. Thirdly, regarding foreign-related contents, when examining the entire process of the generation, alteration and extinction of the related legal facts, it is advisable to consider whether the contract has a practical impact on more than one interregional jurisdiction (or more than one transnational jurisdiction), flexibly consider various factors such as the time range for the occurrence of legal facts, the transaction habits of the parties, the format text used in the contract, and the applicable law of the contract agreed by the parties to make a comprehensive determination." (Xiao, 2022: p. 161)

(2) In terms of civil and commercial arbitration, as long as one of the parties, the subject matter(s), or contents has foreign-related factors, the relevant case shall be identified as an arbitral case with foreign elements. In other words, there is no need for all three aspects to be foreign-related. This reflects the subjective intention of Chinese legislators to strive for consistency with international practices in arbitration cases involving foreign-related elements. In contrast with this, the application of the principle of forum *non conveniens* stipulated in Article 282 of *the Civil Procedure Law* requires differently. Specifically, only when all five prerequisites set by Article 282 are met, can the relevant Chinese courts yield their parallel jurisdiction over a specific case to their relevant foreign counterparts. This reflects the intention of Chinese lawmakers to make every effort to protect the jurisdiction of Chinese courts over individual cases. This intention is clearly dissimilar from the goal of judging the foreign-related nature of civil and commercial arbitration cases mentioned above.

(3) When determining the foreign-related nature of civil and commercial arbi-

tral cases, "for domestic disputes without foreign-related elements, the parties shall not intentionally fabricate foreign-related factors out of the thin air, so as to circumvent the application of Chinese laws."(Xu & Chen, 2014, p. 171) In other words, the existence of these foreign-related factors must be naturally formed by the related civil and commercial legal relationship between the two parties or among the multiple parties. Due to its involvement in safeguarding China's judicial sovereignty, this is also one of the mandatory provisions of Chinese laws. For example, Article 9 of *SPC Interpretations on Issues Concerning the Application of the Law of China on Application of Laws to Foreign-Related Civil Relations (Part 1)* clearly points out that, "If one party deliberately fabricates a connection point in a foreign-related civil relationship to circumvent the application of mandatory provisions of the laws and the administrative regulations of the People's Republic of China, the people's court shall consider that it does not have the effect of applying foreign laws." In this regard, the case below can corroborate this requirement:

"In *the reopened trial concerning contract dispute between Dalian Dongyang Real Estate Co., Ltd. v. Dalian Richuang Real Estate Co., Ltd.*, the court not only denied the validity of the contract terms that allow the parties to choose to apply foreign law while lacking foreign-related factors, but also rejected taking the parties' agreement on the application of foreign law as the basis for determining the foreign-related nature of the case at hand.

In the immediate case, Dalian Richuang Real Estate Co., Ltd. applied for case-reopening, alleging that the signing place and the performance site for payment obligation of the contract of mandate inked with Dongyang Company were all in Japan, and the authorized signatories of both sides were Japanese. The text of the contract was in Japanese, and it was agreed that the laws for resolving related disputes was Japanese laws. Viewed in this context, this case is a foreign-related civil case. In line with Article 242 (now Article 277) of *the Civil Procedure Law of the People's Republic of China*, parties to a foreign-related contract may agree in writing to choose the jurisdiction of a court in a place where the related dispute has actual existing connection. Article 13 of the contract in this case clearly stipulates that disputes shall be under the jurisdiction of the Tokyo District Court, and this case also does not fall under the exclusive jurisdiction of Chinese courts. Therefore, the jurisdiction clause in this contract does not violate the provisions of *the Civil Procedure Law of China*, and hence the primary people's court of Zhongshan District in Dalian has no jurisdiction over the case.

The High People's Court of Liaoning Province believes that the place of performance of the contract (i.e. the place of implementing the entrusted acts agreed in the contract) is within the territory of China, and the argument put forward by Richuang Company that the place of performance of the payment obligation is in Japan cannot be established, too. The language in which the contract text is drafted is not a constituent element for determining whether the case has foreign-related factors or not. Choosing a foreign law as the governing law itself does not

make the case acquire foreign elements, and the choice of governing law shall not affect the jurisdiction exercised by the court in question. In light of the above opinions, this Court is convinced that it is not possible to identify this case as a foreign-related civil and commercial case with the existing evidence."(He, 2023: pp. 30-31)

(4) In China, the determination of the foreign-related nature of civil and commercial arbitration cases falls exclusively within the jurisdiction of judges, and the parties concerned have no authority to strike deals on such issues. Regarding this, a Chinese jurist specifically notes: "The discernment of 'arbitral agreements with foreign elements' and 'foreign-related arbitral awards' under Chinese legal concepts does not depend on the parties' stipulations in the arbitration agreement. The factors listed in '*the SPC Interpretations on Issues Concerning the Application of the Law of China on Application of Laws to Foreign-Related Civil Relations (Part 1)*' for determining foreign-related civil legal relationships cannot be altered by the parties' consensuses, therefore, they are objective judgment conditions." (Shi, 2021: p. 20)

(5) From the perspective of geographical scope, in addition to the foreign-related maritime disputes or civil and commercial disputes involving foreign countries and regions, in line with the relevant judicial interpretations of the Supreme People's Court, the maritime disputes or civil and commercial disputes related to Hong Kong SAR, Macao SAR and Taiwan region of China should also be identified as possessing foreign-related factors in the legal sense of China. In this regard, the following details should also be noted: Civil and commercial arbitrated cases with foreign elements may be either foreign-related arbitration cases with Chinese nationality or overseas arbitration cases with foreign-related factors. Here, the so-called "overseas" means outside Chinese mainland, which includes foreign countries and regions, as well as Hong Kong region, Macao region and Taiwan region of China.

Based on the above assessment, the following judgment by a Chinese scholar is incorrect: "Given China's new practices in its free trade zones and the courts' relaxation of the criteria for determining whether a case involves foreign elements, enterprises operating within these free trade zones that possess foreign-related elements may agree to conduct *ad hoc* arbitration abroad; the nature of such an arbitral award shall be identified according to the standard of the selected seat of arbitration, and therefore, it shall be classified as a foreign-related arbitration award; if domestic enterprises within China's free trade zones agree to conduct *ad hoc* arbitration, the resulting award shall be considered a domestic arbitration award; if the parties agree to conduct *ad hoc* arbitration in Hong Kong, the award shall be classified as a Hong Kong arbitral award." (Tang, 2020: p. 56) The author believes that if "enterprises with foreign elements of the free trade zones" agree to conduct *ad hoc* arbitration outside of Chinese mainland, that arbitration should be identified as an overseas arbitration, rather than a foreign-related arbitration with Chinese nationality. Further, as one of the overseas arbitrations, where the

award of the arbitration involving Hong Kong SAR, Macao SAR and Taiwan region, if it thereafter needs to be recognized and enforced in Chinese mainland, the relevant application should be handled in line with the related normative documents concerning Chinese mainland and the interregional jurisdictions of Hong Kong SAR, Macao SAR and Taiwan region respectively.[12] As one of the said overseas arbitrations, if an award involving a foreign country or a foreign region needs to be recognized and enforced in Chinese mainland, the relevant applicant should apply to the intermediate people's court with jurisdiction for recognition and enforcement by observing the provisions of *the Convention on the Recognition and Enforcement of Foreign Arbitral Award*s, Article 304 of *the Civil Procedure Law* and Article 543 of *SPC Interpretations on the Civil Procedure Law*. In addition, if "*ad hoc* arbitration is agreed upon between domestic enterprises of China's free trade zones", then the parties of the case surely do not possess foreign elements. If the subject matter(s) and contents of the case also lack foreign-related elements, it should be identified as a pure domestic civil and commercial dispute or domestic maritime controversy. Under this circumstance, the parties concerned can only agree on institutional arbitration to be conducted in China. They shall not agree on conducting *ad hoc* arbitration in China, conducting institutional arbitration overseas, or conducting *ad hoc* arbitration overseas.

(6) As for the standard of "where the civil case falls under any other circumstance under which it may be determined as a foreign-related civil case", which is jointly provided by Article 520 of *SPC Interpretations on the Civil Procedure Law* and Article 1 of *SPC Interpretations on Issues Concerning the Application of the Law of China on Application of Laws to Foreign-Related Civil Relations (Part 1)*, in order to prevent courts at all levels from arbitrarily interpreting its obscure meaning, the application of this item (e) should be strictly restrained by the Supreme People's Court. The primary means of imposing such a restriction include: promulgating separate relevant judicial interpretations, or publicizing related guidance cases or typical cases at suitable moments. In this regard, the following situations are typical: "In recent years, under the background of the free trade

[12]For the bilateral interregional arrangements between the Chinese mainland and the Hong Kong SAR, please refer to the following normative documents: *SPC Arrangement on the Reciprocal Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region* (Fa Shi [2000] No. 3); *SPC Notice on Relevant Issues Concerning the Enforcement of Hong Kong Arbitration Awards in Chinese Mainland* (Fa [2009] No. 415); *SPC Supplementary Arrangements on the Mutual Enforcement of Arbitration Awards between the Mainland and the Hong Kong Special Administrative Region* (Fa Shi [2020] No. 13).

For the bilateral interregional arrangements between the Chinese mainland and the Macao SAR, please refer to the following normative documents: *SPC Arrangements on Mutual Recognition and Enforcement of Arbitral Awards between the Mainland and the Macao Special Administrative Region* (Fa Shi [2007] No. 17); *SPC Arrangements on Mutual Assistance on Preservations Concerning Arbitral Procedures between the Mainland and the Macao Special Administrative Region* (Fa Shi [2022] No. 7).

For the bilateral interregional arrangements between the Chinese mainland and Taiwan region of China, please refer to the following normative documents: *SPC Provisions on the Recognition and Enforcement of Arbitral Awards in Taiwan Region* (Fa Shi [2015] No. 14); "*the Act Governing Relations between the People of the Taiwan Area and the Mainland Area*", and "*the Enforcement Law*" of Taiwan region.

zones, the expansion of foreign elements has extended the scope of foreign-related elements from traditional parties, subject matter(s) and legal facts to the investors of the related legal persons. [...] For instance, in *the application filed by Beijing Chaolai Xinsheng Sports Co., Ltd. for recognition and enforcement of foreign arbitral awards* and *the application for recognition and enforcement of foreign arbitral award between Siemens International Trading (Shanghai) Co., Ltd. and Shanghai Golden Landmark Co., Ltd.*, the parties in these two cases were all wholly foreign-owned enterprises registered in China. However, since both parties in the latter-mentioned case have their places of registration in the China (Shanghai) Pilot Free Trade Zone, from the perspective of facilitating trade and investment, the overseas investors of these two companies in the latter-mentioned case have become prominent foreign-related factors, thereby belonging to 'any other circumstance under which it may be determined as a foreign-related civil case' stipulated by item (e) under Article 1 of *SPC Interpretations on Issues Concerning the Application of the Law of China on Application of Laws to Foreign-Related Civil Relations (Part 1)*. Therefore, in the follow-up determination of the foreign-related nature of *ad hoc* arbitral cases, on the basis of adhering to traditional identification standards, the method of expanding interpretation should be adopted, and moderate expansion should be carried out in combination with the practical needs of special areas such as pilot free trade zones." (Zhang & Wang, 2026: pp. 53-54)

(7) Based on the cases concluded by the Supreme People's Court as well as paragraph 1 under Article 82 of *the new Arbitration Law* mentioned above, although free trade zones and the free trade port are both within the territory of China, civil and commercial disputes or maritime disputes arising between enterprises registered in these two specific regions are also one of the situations where it is necessary to determine whether they possess "foreign-related factors" or not, by jointly referring to Article 520 of *SPC Interpretations on the Civil Procedure Law* and Article 1 of *SPC Interpretations on Issues Concerning the Application of the Law of China on Application of Laws to Foreign-Related Civil Relations (Part 1)*. After examination, if there are related "foreign elements", the parties involved can agree on *ad hoc* arbitration in China. However, if there is non-existence of any related "foreign factor", the parties concerned shall not agree on such type of arbitration.

(8) Article 279 of *the Civil Procedure Law* stipulates China's exclusive jurisdiction over cases with foreign elements. It shall be noted that for the three types of cases mentioned by this Article 279, if the relevant disputes deteriorate into litigation, it shall be under the exclusive jurisdiction of the people's court in Chinese mainland, thus excluding the parallel litigation jurisdiction could be exercised by overseas court(s). Although the legal binding force of Article 279 is quite strong, according to the overarching Chinese legal principle of "either arbitration or litigation", if these disputes do possess foreign-related factors, the parties concerned can agree on arbitration by overseas arbitral institutions, overseas *ad hoc* arbitration, or the institutional arbitration to be held on the soils of Chinese mainland.

At the same time, only when the three types of disputes provided by Article 279 of *the Civil Procedure Law* also meet the requirements expressed by paragraph 1 under Article 82 of *the new Arbitration Law*, can the related parties agree on its *ad hoc* arbitration within China.

(9) Another relevant technical issue that needs to be clarified here is that, in terms of paragraph 1 under Article 82 of *the new Arbitration Law*, the provision of "foreign-related maritime disputes" may concurrent and competing with "foreign-related disputes arising between enterprises formed and registered in a pilot free trade zone created with the approval of the State Council, the Hainan Free Trade Port, or other areas designated by the State". In this case, the two originally co-existing situations stipulated in paragraph 1 under Article 82 may lead to competition in the application of legal rules in individual cases. The paper holds the belief that this technical issue can be easily resolved. The very existence of this particular situation actually jointly empowers both sides to the dispute to agree on either *ad hoc* arbitration in China, or institutional arbitration in China, or even consider agreeing on *ad hoc* arbitration or institutional arbitration abroad.

3.2. Decoding the Meaning of the Phrase "Foreign-Related Maritime Disputes"

In pursuance of paragraph 1 under Article 82 of *the new Arbitration Law*, when determining the objective targets for the application of *ad hoc* arbitration in China, the meaning and scope of the terminology "maritime" shall be clarified first. "In China, the term 'maritime' can be elucidated in the sense of narrow and broad senses. In the narrow perspective, "maritime" refers to maritime incidents, losses caused by marine accidents, accidents of shipwreck, maritime traffic accidents, or vessel traffic accidents; whereas in the broad sense, 'maritime' covers maritime industry, maritime affairs, maritime activities, etc. The latter's connotation includes 'maritime' in the narrow sense, but is not limited to it. Article 82 of *the Arbitration Law* stipulates that 'foreign-related maritime disputes' should refer to the 'maritime' in the broad sense. Defining it in this way, on the one hand, is conducive to expanding the application scope of *the Arbitration Law*, and thus enhancing the attractiveness of China's *ad hoc* arbitration to domestic and foreign parties; On the other hand, the main role of *ad hoc* arbitration is to promote the development of international commercial arbitration in China, that is, to use it to handle disputes arising from international commercial activities." (Zhang & Wang, 2026: p. 53)

According to the conclusion in the preceding paragraph, "the scope of 'maritime' in China's legal context is not limited to the scope regulated by *the Maritime Code of China* (revised by the 18th Meeting of the Standing Committee of the 14th National People's Congress on October 28, 2025). Specifically, the legal relationships governed by *the Maritime Code of China* include the real rights of vessels, legal relationships concerning crew members, contracts for the carriage of goods by sea, contracts for the transporting passengers by sea, ship rental con-

tracts, contracts for towing at sea, ship collisions, maritime salvage, shared marine damage, limitation of liability for maritime claims, maritime insurance contracts, and so on. However, the scope of the term 'maritime' referred to in *the Special Maritime Procedure Law of China* (approved by the 13th meeting of the Standing Committee of the National People's Congress on December 25, 1999) is greater than the legal relationships regulated by *the aforementioned Maritime Code of China*. The scope of cases accepted by China's maritime courts covers 78 types of maritime disputes, including maritime infringement, maritime contracts, disputes related to the development and utilization of marine and navigable waters, marine environmental protection, as well as other types of maritime controversies. The establishment of the scope of cases accepted by the maritime court mentioned above indicates that the scope of 'maritime' referred to in the civil proceeding laws of China can go beyond the scope of 'maritime commerce' and the term of 'maritime' in the narrow sense." (Shi, 2021: p. 27)

By this line of reasoning, it can be further deduced that the types of maritime disputes can be handled by both the institutional arbitration and the *ad hoc* arbitration in China should not be confined to the limited types of substantive legal relationships governed by *the Maritime Code of China*. Any foreign-related maritime disputes that comply with paragraph 1 under Article 82 of *the new Arbitration Law* may be subject to *ad hoc* arbitration in China.

Regarding the maritime disputes that can be handled by *ad hoc* arbitration in China, the following three relevant details shall also be noted here:

First, maritime disputes that can be *ad hoc* arbitrated in China also need to satisfy the "foreign-related" requirement. As subsection 1 under this third Part has already provided a systematic expounding of the meaning and related identification mechanism for the term "foreign-related", for the sake of avoiding verbosity and repetition, the relevant discussion will not be reiterated here.

Second, in light of *SPC Provisions on the Scope of Cases Shall be Accepted by the Maritime Courts* (Fa Shi [2016] No. 4), there are six categories of maritime cases that China's maritime courts are empowered to handle: (1) Disputes of maritime infringement; (2) maritime contract disputes; (3) disputes related to the development, utilization, and environmental protection of oceans and navigable waters; (4) other maritime and commercial disputes; (5) maritime administrative cases; (6) maritime noncontentious affairs. Based on the comprehensive understanding of Article 3, Article 78, and paragraph 1 under Article 82 of *the new Arbitration Law*, the relevant parties can only agree on *ad hoc* arbitration of China for the first four categories of cases mentioned above. In other words, the parties concerned shall not agree on *ad hoc* arbitration or institutional arbitration of China for maritime administrative cases and maritime noncontentious affairs (e.g. maritime affairs of the unowned assets, maritime affairs of due debt-paying orders, maritime affairs for public summons for exhortation, etc.).

Third, the ways to resolve maritime disputes include private settlement, mediation outside of litigation, maritime arbitration (including institutional arbitra-

tion and *ad hoc* arbitration), as well as maritime litigation. In China, the legal bases for handling and resolving maritime disputes mainly includes relevant bilateral or multilateral international treaties acceded by the Government of China (e.g. *1982 United Nations Convention on the Law of the Sea (UNCLOS)*, *1958 International Convention for the Unification of Certain Rules of Law Relating to Collision of Ships*, *1978 United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules)*, etc.), *the Maritime Code of China*, *the Special Maritime Procedure Law of China*, *the Civil Procedure Law*, *the new Arbitration Law*, and related judicial interpretations, and so on.

3.3. Explaining the Meaning of the Phrase "Foreign-Related Civil and Commercial Disputes"

As subsection 1 of this third Part has already systematically deconstructed the meaning of the term "foreign-related", in the interest of avoiding wordiness and tautology, it shall not be reiterated here. In addition, the specific types of "civil and commercial disputes" that can be arbitrated in China shall also not be elaborated in detail here, as the author has already published a paper on "*On the Objective Arbitrability of Civil and Commercial Disputes in China*" (Du, 2026a). If readers are interested, they can refer to this article.

3.4. Deciphering the Meaning of the Phrase "Enterprises Formed and Registered in a Pilot Free Trade Zone or in Hainan Free Trade Port"

As of April 14, 2026, the State Council of China has established a total of 23 pilot free trade zones plus Hainan Free Trade Port. They are: (1) China (Shanghai) Pilot Free Trade Zone; (2) China (Guangdong) Pilot Free Trade Zone; (3) China (Tianjin) Pilot Free Trade Zone; (4) China (Fujian) Pilot Free Trade Zone; (5) China (Liaoning) Pilot Free Trade Zone; (6) China (Zhejiang) Pilot Free Trade Zone; (7) China (Shandong) Pilot Free Trade Zone; (8) China (Henan) Pilot Free Trade Zone; (9) China (Hubei) Pilot Free Trade Zone; (10) China (Chongqing) Pilot Free Trade Zone; (11) China (Sichuan) Pilot Free Trade Zone; (12) China (Shaanxi) Pilot Free Trade Zone; (13) China (Hainan) Pilot Free Trade Zone; (14) China (Jiangsu) Pilot Free Trade Zone; (15) China (Guangxi) Pilot Free Trade Zone; (16) China (Hebei) Pilot Free Trade Zone; (17) China (Yunnan) Pilot Free Trade Zone; (18) China (Heilongjiang) Pilot Free Trade Zone; (19) China (Hunan) Pilot Free Trade Zone; (20) China (Anhui) Pilot Free Trade Zone; (21) China (Beijing) Pilot Free Trade Zone; (22) China (Xinjiang) Pilot Free Trade Zone; (23) China (Inner Mongolia) Pilot Free Trade Zone.[13] In accordance with paragraph 1 under Article 82 of *the new Arbitration Law*, in the event of a foreign-related

[13] *Overview of the Pilot Free Trade Zones*, the official website of Department of Free Trade Zone and Special Control Area of General Administration of Customs of China: http://zms.customs.gov.cn/zms/zmsyq/zmsyqgk/45d30546-1.html; *From 1 to 23: Pilot Free Trade Zones Form an Inclusive and Open Pattern of "Wild Goose Formation"*, the official website of China Trade Remedies Information: https://cacs.mofcom.gov.cn/article/flfwpt/jyjdy/cgal/202604/187778.html.

maritime or foreign-related civil and commercial dispute between enterprises registered in these 24 free trade zones (port) mentioned above, the relevant parties may agree in writing to an *ad hoc* arbitration within the territory of China.

For the purpose of applying paragraph 1 under Article 82 of *the new Arbitration Law* for *ad hoc* arbitration, it is necessary to clarify which commercial entities can voluntarily register in China's free trade zones and the free trade port. In this regard, *60 Core Policies* of Hainan Free Trade Port do not impose any restriction on the types of enterprises want to be registered there.[14] Meanwhile, *the Implementation Measures for the Registration Confirmation System of Commercial Entities in Xiamen Area of China (Fujian) Pilot Free Trade Zone* clearly point out that the following commercial entities can be registered in this free trade zone: limited liability companies, joint-stock limited companies (non-listed), non-corporate enterprise legal persons (such as state-owned enterprises, collectively owned enterprises, etc.), partnership enterprises, and branches of the above-mentioned commercial entities (enterprises).[15] In addition, "China's pilot free trade zones have already become a fertile ground for foreign investment and development",[16] therefore, various foreign-capital business corporations (e.g. legal entities of the Sino-foreign equity joint venture, legal persons of the Sino-foreign cooperative enterprise, and wholly foreign-owned enterprises) may also conduct voluntary registration in pilot free trade zones or the free trade port.

When the commercial entities mentioned in the above paragraph that have been registered in free trade zones or the free trade port encounter foreign-related maritime disputes or foreign-related civil and commercial disputes, they can reach a written agreement with the disputing party to submit these disputes to China's *ad hoc* arbitration for resolution. Due to the detailed analyses of terminologies such as "foreign-related", "foreign-related maritime disputes", and "foreign-related civil and commercial disputes" have been done in the previous text, these domains shall not be revisited here. For the elaboration of the meanings of these terms, readers can refer to the corresponding sub-sections in the previous text.

Synthesizing the above three paragraphs, we can draw the following detailed inferences arranged in 12 sub-groups:

(1) As long as the seat of arbitration is within the scope of Chinese mainland, all *ad hoc* arbitrated cases involving enterprises registered in the Free Trade Zones and the Free Trade Port shall have Chinese nationality. In other words, these are essentially all foreign-related arbitration cases of China;

(2) As long as the seat of arbitration is within the scope of Chinese mainland,

[14] *60 Core Policies*, the official website of Hainan Free Trade Port: https://www.hnftp.gov.cn/zczdtx/hxzc/.

[15] *[Policy Interpretation] Implementation Measures for the Registration Confirmation System of Commercial Entities in Xiamen Area of China (Fujian) Pilot Free Trade Zone*, the official website of Xiamen Area of China (Fujian) Pilot Free Trade Zone: http://ftz.xm.gov.cn/xxgk/zcjd/202502/t20250228_2919451.htm.

[16] *Xinhua News Agency: Over an Extraordinary Decade, the Reform Dividends of China's Pilot Free Trade Zones Benefit the Whole World*, the official website of the Central People's Government of the People's Republic of China: https://www.gov.cn/yaowen/liebiao/202310/content_6907569.htm.

China's *ad hoc* arbitration can be agreed between foreign-capital business corporations registered in the free trade zones and the free trade port, as well as between these foreign-capital business corporations and Chinese legal persons registered in the free trade zones and the free trade port;

(3) As long as the case does possess foreign-related factors, civil and commercial disputes between Chinese enterprises registered in the free trade zones or the free trade port can also be settled through China's *ad hoc* arbitration;

(4) Based on the respective scenarios mentioned in sub-groups (2) and (3) above, the *ad hoc* arbitration can also be applied to the situations where both disputes between two or more commercial entities registered within the same free trade zone or the same free trade port, as well as disputes between two or more commercial entities registered in different free trade zones or the free trade port of China;

(5) Foreign-related maritime disputes between enterprises registered in China's free trade zones and the free trade port can, of course, be settled through China's *ad hoc* arbitration. In addition, where one party to a foreign-related maritime dispute is a commercial entity registered in a free trade zone or a free trade port in China, and the other party is not, both parties are also entitled to agree to conduct *ad hoc* arbitration in China. Moreover, even if the relevant parties involved in foreign-related maritime disputes are not commercial entities registered in China's free trade zones or the free trade port, they can still agree to conduct *ad hoc* arbitration in China by observing paragraph 1 under Article 82 of *the new Arbitration Law*;

(6) Where a commercial entity registered either in a free trade zone or in the free trade port is one side of a civil and commercial dispute, while the opposing party of this dispute is an overseas commercial entity (including foreign countries, foreign regions, Hong Kong SAR, Macao SAR or Taiwan region of China), the parties concerned not only can agree on the institutional arbitration of China, but also can agree on overseas institutional arbitration, and also can consider agreeing on overseas *ad hoc* arbitration, but cannot agree on China's *ad hoc* arbitration;

(7) As long as the seat of arbitration is outside Chinese mainland, the arbitration case between the Chinese enterprises registered in the free trade zone or in the free trade port and the overseas commercial entity either shall be an overseas *ad hoc* arbitration case, or shall be an overseas institutional arbitral case [17], or shall

[17]In line with the arbitral rules of well-known foreign arbitral institutions, institutional arbitral cases likewise require the designation of the relevant seat of arbitration. For detailed information, please refer to the following websites:

(1) Article 19 (Place of Arbitration) of *2026 Arbitration Rules of the International Chamber of Commerce*:
https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2026-arbitration-rules/#block-accordion-20.

(2) Article 16 (Seat of Arbitration) of *LCIA Arbitration Rules 2020*:
https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx#Article%2016.

(3) Article 36 (Seat of the Arbitration) of *Arbitration Rules of the Singapore International Arbitration Centre (2025)*: https://siac.org.sg/siac-rules-2025.

be an overseas friendly arbitration (amiable compositeur) case (Yuan, 2024: p. 57)[18];

(8) As long as the seat of arbitration is outside Chinese mainland, the relevant arbitration cases between foreign-capital business corporations registered in the free trade zone or the free trade port either shall be overseas *ad hoc* arbitration cases, or shall be overseas institutional arbitral cases, or shall be overseas friendly arbitration cases;

(9) As long as the seat of arbitration is outside Chinese mainland, for the case where a foreign-funded enterprise legal person registered either in a free trade zone or in the free trade port, and the opposite party is an overseas commercial entity, it either shall be an overseas *ad hoc* arbitration case, or shall be an overseas institutional arbitral case, or shall be an overseas friendly arbitration case;

(10) In light of Articles 81 and 82 of *the new Arbitration Law*, if civil and commercial disputes between Chinese enterprises registered in the free trade zone or the free trade port lack foreign-related factors, they shall be assuredly deemed as domestic arbitration cases of China. As a result of it, such cases can either be arbitrated by arbitral institutions of China registered in the free trade zones or in the free trade port, or by other arbitration institutions of China outside of the free trade zones and the free trade port, and thereby cannot agree on *ad hoc* arbitration in China or abroad, let alone arbitration by overseas arbitral institutions. Under this situation, there is no need to agree on the seat of arbitration for such cases;

(11) On the basis of Articles 81 and 82 of *the new Arbitration Law*, for the civil and commercial disputes between a Chinese enterprise registered in the free trade zone and the free trade port and a Chinese commercial entity outside the free trade zones and the free trade port, if the required foreign elements are missing, the corresponding arbitration should naturally be a domestic arbitrated case of China. Then, such cases can either be arbitrated by arbitral institutions of China registered in the free trade zones or in the free trade port, or by other arbitral institutions of China outside of the free trade zones and the free trade port, and thereby cannot agree on *ad hoc* arbitration in China or abroad, let alone arbitration by overseas arbitral institutions. Under this situation, there is no need to agree on the seat of arbitration for such cases;

(12) For civil and commercial disputes with foreign elements mentioned by the above sub-groups (1) to (9), based on the written agreement reached by the disputing two sides, they may also choose to conduct institutional arbitration in China or outside China.

For the cases of China's *ad hoc* arbitrations concerning sub-groups (2), (3), (4)

[18]"The concept of friendly arbitration originated from the term '*amiable compositeur*'. In France in the second half of the 13th century, when a dispute arose between two parties, they could choose whether to entrust the dispute to a friendly arbiter according to their own wishes. Friendly arbitrators had great discretion in arbitral decisions and render determinations based on the doctrine of fairness and good faith. After the 18th century, the concept of friendly arbitration was included in the legal system. *The French Civil Procedure Code of 1806* stipulated that arbitrators, with the explicit authorization of the parties, acted as friendly arbiters in deciding cases based on the principles of *ex aequo et bono*, rather than strictly following legal rules."

and (5) mentioned in the preceding text, as well as the cases in the sub-group (12) where institutional arbitration in China is selected, the subsequent judicial review and enforcement shall be conducted by the competent people's courts by observing the corresponding provisions of Chinese laws on foreign-related cases (i.e. Article 291 of *the Civil Procedure Law*, Articles 83 and 84 of *the new Arbitration Law*). As for the aforementioned overseas *ad hoc* arbitrations concerning sub-groups (6), (7), (8) and (9), as well as the circumstances in the sub-group (12) where institutional arbitration outside Chinese mainland is chosen, the following five-branched handlings shall be applied respectively:

First, if the opposite party to the arbitration is the commercial entity of Hong Kong SAR, Macao SAR or Taiwan region of China, the abovementioned two-way interregional arrangements between Chinese mainland and Hong Kong region, Macao region or Taiwan region shall be applied for subsequent judicial review and enforcement respectively.

Second, for the arbitral awards rendered by the relevant overseas *ad hoc* arbitral tribunal or overseas arbitral institutions, *the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, Article 304 of *the Civil Procedure Law*, and Article 543 of *SPC Interpretations on the Civil Procedure Law* shall be applied for the subsequent judicial review and enforcement.

Third, when a foreign country or a foreign region, as the nationality of a foreign *ad hoc* arbitral award or a foreign institutional arbitral award, is not a signatory to *the Recognition and Enforcement of Foreign Arbitral Awards*, its subsequent judicial review and enforcement shall be handled by following the principle of reciprocity stipulated by Article 304 of *the Civil Procedure Law*.

Fourth, among the publicized judicial practice of China, there is no typical case where the parties explicitly apply to Chinese courts for recognition and enforcement on the grounds of "foreign arbitral tribunals applying friendly arbitration (amiable compositeur) rules to render awards". However, due to the strict adherence of Chinese courts to the examining boundaries set by Article 5 of *the Convention on the Recognition and Enforcement of Foreign Arbitral Awards* in this type of judicial review, they only examine issues such as lawfulness of the arbitral proceedings and the strictly-interpreted doctrine of public interests' reservation, and will not refuse to recognize and enforce on the grounds that "the arbitral bench did not strictly apply the substantive legal provisions of a foreign country, but declared a decision based on the principle of fairness and good faith". Therefore, overseas friendly arbitral awards may be recognized and further enforced by Chinese judiciary in the years to come. The specific assessment should be based on the different situations of each case, and the mechanisms of "first" to "third" mentioned above should be applied while conducting this type of assessment.

Fifth, regarding sub-groups (10) and (11) mentioned above, the corresponding subsequent judicial review and enforcement shall be carried out on the basis of the Chinese legal provisions for domestic cases (namely, Article 248 of *the Civil Procedure Law*, Articles 71 and 76 of *the new Arbitration Law*).

Lastly, as mentioned earlier, the Supreme People's Court issued *SPC Opinions* in 2016. In this case, consequently, what is the relationship between *the SPC Opinions* and *the new Arbitration Law* after the latter comes into effect? This is a question that needs clarification. In the views of this author, the relationship between the two is reflected by the following three points:

First, based on Articles 81 and 82 of *the new Arbitration Law*, compared with *the SPC Opinions* issued almost a decade ago, *the new Arbitration Law* significantly narrows the scope of application of the parties and subject matter(s) of China's *ad hoc* arbitration involving the free trade zones and the free trade port. The specific manifestation of it is that, as for the scenarios mentioned in the aforesaid sub-groups (10) and (11), the *ad hoc* arbitration system in China can no longer be applied.

Second, compared with *the SPC Opinions*, *the new Arbitration Law* has made expansions in certain fields. For example, Article 82 of the new law also includes foreign-related maritime disputes, which were previously omitted in *the SPC Opinions*, into the scope of application of China's *ad hoc* arbitral system.

Third, with regard to China's *ad hoc* arbitration, in light of Articles 22, Article 81 and paragraph 1 under Article 82 of *the new Arbitration Law*, *the new Arbitration Law* have completely replaced the corresponding contents of *the SPC Opinions*. There are two grounds to back up this assessment: (1) *The SPC Opinions* is merely a national judicial normative document, while *the new Arbitration Law* is a formal law revised by the Standing Committee of the National People's Congress. The legal rank of the former is significantly lower than that of the latter. When two have dissimilar regulations on the same issue, the latter will inevitably prevail over the former. (2) In line with the consistently upheld precept of the Supreme People's Court that "substantive laws follow the old norms, whereas procedural laws observe the new norms" [19], the aforementioned three articles in *the new Arbitration Law* have completely superseded the relevant contents in *the SPC Opinions* of 2016.

3.5. Demystifying the Meaning of the Phrase "Other Regions Designated by the State"

Besides the existing 23 free trade zones and one free trade port, paragraph 1 under Article 82 of *the new Arbitration Law* also mentions that enterprises registered in "other regions designated by the State" may agree on *ad hoc* arbitration in China. The three relevant technical questions that must be clarified here are: (1) What exactly does the term "other regions designated by the State" refer to? (2) Which State organs have the authority to designated the said "other regions"? (3) What normative documents can serve as the bases for the legitimate designation of the said "other regions"? In this regard, the explanations provided by Chinese jurists

[19]Compiled by the Leading Group for the Implementation of the Civil Code of China in the Supreme People's Court: *Understanding and Application of SPC Interpretations on the Civil Procedure Law (Part II)*, People's Court Press, 2022 edition, p.1223.

are excessively vague and fail to offer relatively clear answers. For instance, a domestic literature only points out in general terms that: "As for what exactly the 'other regions' in the phrase 'other regions designated by the State' include, the State shall make separate provisions on them at a later stage." (Wang, 2025)

This paper holds the belief that the legislative intention of creating this vague expression is for Chinese lawmakers to reserve legal space for the establishment of special regions that allow for the pilot of foreign-related *ad hoc* arbitration in line with the country's opening-up strategy, so as to maintain institutional flexibility for the coming days. Theoretically speaking, "other regions designated by the State" mentioned in paragraph 1 under Article 82 should refer to specific opening-up areas designated and allowed for foreign-related *ad hoc* arbitral activities by the State through formal national normative documents, in addition to the 24 free trade zones (port) already approved by the State Council and other State organs. Moreover, the so-called "other regions designated by the State" obviously do not include the Hong Kong SAR, the Macao SAR and Taiwan region of China.

Taking the contents of the preceding paragraph as the premise, the following seven detailed deconstructions can be expressed here:

(1) As the Governing Party of China, the Central Committee of the Communist Party of China definitely has the highest decision-making power in national affairs. Therefore, the Central Committee of the Communist Party of China has the authority to designate "other regions designated by the State". As the Central Committee of the Communist Party of China is an organ of the Governing Party of China, from the perspective of specific technical implementation, it often releases relevant pivotal policy documents together with other State organs. A specific example here is *the Overall Plan for the Construction of Hainan Free Trade Port* jointly - issued by the Central Committee of the Communist Party of China and the State Council on June 1, 2020.[20]

(2) In accordance with Articles 62 and Article 67 of *the Constitution of China*, as well as Article 10 of *the Legislation Law of China* (revised by the 2nd Session of the 14th National People's Congress on March 13, 2023), the National People's Congress and its Standing Committee may nominate "other regions designated by the State" mentioned in paragraph 1 under Article 82 of *the new Arbitration Law* by enacting or amending relevant laws. In addition, Article 1 of *the Resolution of the Standing Committee of the National People's Congress on Strengthening the Work of Legal Interpretation* (passed at the 19th meeting of the Standing Committee of the Fifth National People's Congress on June 10, 1981) states: "Any provision of laws and regulations that require further clarification of its applicable boundaries or to be added with supplementary provisions shall be interpreted or prescribed by the Standing Committee of the National People's Congress." From this perspective, the Standing Committee of the National People's Congress may

[20] *The Central Committee of the Communist Party of China and the State Council have issued the Overall Plan for the Construction of Hainan Free Trade Port*, the official website of the Central People's Government of the People's Republic of China: https://www.gov.cn/zhengce/2020-06/01/content_5516608.htm.

also designate the so-called "other regions prescribed by the State" mentioned in paragraph 1 under Article 82 of *the new Arbitration Law* either through its legislative interpretations or through the means of authorized legislation by the National People's Congress.

(3) Viewed from the practice in China, the State Council can establish free trade zones by formulating national administrative normative documents (commonly known as "red-letterhead documents/*Hong Tou Wen Jian*"). For instance, *the Notice of the State Council on Issuing the Overall Plan for China (Xinjiang) Pilot Free Trade Zone* (Guo Fa [2023] No. 17).[21] As another instance, *the Notice of the State Council on Issuing the Overall Plan for China (Inner Mongolia) Pilot Free Trade Zone* (Guo Fa [2026] No. 6).[22]

"In a narrow sense, normative documents (*Gui Fan Xing Wen Jian*) refer to, other than laws, regulations and rules, the documents formulated by administrative organs and organizations authorized by laws and regulations to manage public affairs within their scope of empowerment. These documents have universal binding force within their respective administrative regions or their management scope, and are repeatedly applied within a certain period of time."[23]"The formulation of administrative normative documents (hereinafter referred to as normative documents) is an important way for administrative organs or organizations authorized by laws and regulations to manage public affairs (hereinafter collectively referred to as administrative organs) to perform their functions in accordance with the law."[24] The Chinese national legislative body further pointed out that "besides *the Constitution of China* and laws, normative documents mentioned here refer to the following two types of documents: Firstly, administrative regulations, local regulations, autonomous regulations and separate regulations, departmental rules of the State Council, local government rules. These documents are the sources of China's law and are integral parts of China's legal system. Secondly, other documents like resolutions, decisions, orders, and judicial interpretations formulated by state organs other than the above-mentioned first group of documents. Although these documents are not the sources of China's law or integral parts of China's legal system, they are generally applicable in China."[25] Taken

[21] *Notice of the State Council on Issuing the Overall Plan for China (Xinjiang) Pilot Free Trade Zone*, the official website of the Central People's Government of the People's Republic of China: https://www.gov.cn/zhengce/zhengceku/202310/content_6912937.htm.

[22] *Notice of the State Council on Issuing the Overall Plan for China (Inner Mongolia) Pilot Free Trade Zone*, the official website of the Central People's Government of the People's Republic of China: https://www.gov.cn/gongbao/2026/issue_12686/202604/content_7066321.html.

[23] *Policy Interpretation | Definitions and Distinctions of "Laws", "Regulations", "Rules" and Other Normative Documents*, the official website of Hunan Provincial Government Offices Administration: http://jgswj.hunan.gov.cn/jgswj/xxgk/zcfg/202205/t20220531_24796678.html.

[24] *Guiding Opinions of the General Office of the State Council on Fully Implementing the Legality Review Mechanism for Administrative Normative Documents* (Guo Ban Fa [2018] No. 115), the official website of the Central People's Government of the People's Republic of China: https://www.gov.cn/zhengce/content/2018-12/20/content_5350427.htm.

[25] *Recordation and Review of Normative Documents*, the official website of the National People's Congress of China: http://www.npc.gov.cn/npc/c2/c189/c220/201905/t20190522_31750.html.

together the three points above, normative documents issued by the State Council are distinct from its administrative regulations, and the two shall not be equated.[26]

In accordance with Article 89 of *the Constitution of China*, in addition to formulating the above-mentioned normative documents, the State Council also has the power to draft administrative regulations. So, the question here is: Can the State Council designated the "other regions designated by the State" mentioned in paragraph 1 under Article 82 of *the new Arbitration Law* by formulating administrative regulations? This paper believe that the answer is negative. There are four main reasons to back up this assessment:

First, Article 12 of *the Legislation Law of China* explicitly provides: "Where issues stipulated in Article 11 of *this Law* have not yet been codified into law, the National People's Congress and its Standing Committee shall have the authority to make a decision authorizing the State Council to formulate administrative regulations on certain of such issues as appropriate, with the exception of issues relating to crimes and penalties, the deprivation of citizens' political rights, coercive measures and punishments involving the restriction of personal freedom, as well as the judicial systems." Since *the new Arbitration Law* already stipulated *ad hoc* arbitration with Chinese characteristics, in such circumstances, should the State Council separately issue an administrative regulation to further designate the so-called "other regions as prescribed by the State" as expressed by paragraph 1 under Article 82 of *the new Arbitration Law*, such action would not only directly violate the aforementioned Article 12 of *the Legislation Law of China*, but also will violate Article 9 of *the new Arbitration Law*, which states that arbitration shall be carried out independently in accordance with the law and shall be free from interference of administrative agencies, social organizations or individuals.

Second, in light of China's practical experience, among the 24 established free trade zones, except for Hainan Free Trade Port, the setting-up mechanism of the other 23 free trade zones is as follows: Before each new free trade pilot zone is established, the Standing Committee of the National People's Congress will announce a special authorizing decision based on Article 13 of *the Legislation Law of China*, empowering the State Council to temporarily adjust special administrative measures for the approval or the market access in accordance with relevant laws and regulations in the corresponding newly created free trade pilot zone, clarify matters like the pilot period, in-process and post-event supervision requirements, etc. For instance, in order to establish China (Shanghai) Pilot Free Trade Zone, *the Decision of the Standing Committee of the National People's*

[26]In fact, the difference between the two can also be seen from the file number. The number of administrative regulations is "Decree No. XX of the State Council". Such as *the Regulations of the People's Republic of China on Disclosure of Government Information* (Decree No. 711 of the State Council) and *the Regulation on the Implementation of the Archives Law of the People's Republic of China* (Decree No. 772 of the State Council). By comparison, the administrative normative documents issued by the State Council are numbered as "Guo Fa[XXXX]No. XX" or "Guo Han[XXXX]No. XX". Accordingly, the previously quoted file numbers of the two normative documents concerning the establishment of the Xinjiang and Inner Mongolia Free Trade Zones are exactly this pattern in use. - the author's note.

Congress on Authorizing the State Council to Temporarily Adjust the Administrative Approval Prescribed by Relevant Laws in the China (Shanghai) Pilot Free Trade Zone was adopted on August 30, 2013.[27]

After obtaining the endorsement from the Standing Committee of the National People's Congress, the State Council will issue the corresponding decision (an administrative normative document, its file number is either "Guo Fa[XXXX]No. XX" or "Guo Han[XXXX]No. XX") based on that empowerment, hence temporarily adjust relevant administrative regulations, documents previously released by the State Council, and departmental rules approved by the State Council within the newly-created pilot free trade zone, as well as issue the corresponding "*Overall Plan*" for that pilot free trade zone, clarifying the strategic positioning, implementation scope, core tasks, and supporting institutional arrangements of that pilot free trade zone, thus completing the formation of this particular pilot free trade zone. Specifically, starting from the ground-breaking Shanghai Free Trade Zone (*the Notice of the State Council on Issuing the Overall Plan for China (Shanghai) Pilot Free Trade Zone* (Guo Fa [2013] No. 38)) [28], To the latest 24th Inner Mongolia Free Trade Zone (*the Notice of the State Council on Issuing the Overall Plan for China (Inner Mongolia) Pilot Free Trade Zone* (Guo Fa [2026] No. 6)), the corresponding legal bases declared by the State Council are all administrative normative documents, and none of them is the administrative regulations.

Third, Article 11 of *the Legislation Law* also clearly points out: "The following issues shall only be regulated by laws: [...] (10) litigation systems and basic arbitral systems." Does *ad hoc* arbitration therefore fall under the "basic arbitral systems" mentioned by this Article 11? In this regard, a domestic literature has noted that the basic arbitral systems include the system of arbitration agreement, the system of either arbitration or litigation, the arbitration verdict is final and thus cannot be appealed against, and the institutional arbitration system. Furthermore, that literature further remarks that: "The institutional arbitration system is an arbitral system that stands in contrast to the *ad hoc* arbitral system."[29] From a logical perspective, the notion of one system is in contrast to another implies that these two systems share similar functions, occupy equal legal statuses, and are juxtapositioned against each other. Viewed from this, *ad hoc* arbitration should also be regarded as one of the basic arbitral systems in China. The author believes that this conclusion can be corroborated by the official stance of China. As a related illustration, an article published on the official website of the Ministry of Justice of China remarks: "For instance, basic arbitral systems - such as institutional arbitration, *ad hoc* arbitration, revocation and enforcement of arbitral awards as well as other basic arbitral systems, along with fundamental arbitration principles

[27]The official website of the National People's Congress of China: http://www.npc.gov.cn/npc/c2/c12435/201905/t20190521_186529.html.

[28] The official website of the Central People's Government of the People's Republic of China: https://www.gov.cn/gongbao/content/2013/content_2509232.htm.

[29] *[Arbitration Tips] Basic Arbitral Systems of China*, the official website of Bengbu Arbitration Commission: https://www.bbzcw.cn/page225?article_id=969.

- like arbitration by written agreement, arbitration being held independently, arbitral verdict are final and thus cannot be appealed against - should all be prescribed by *the Arbitration Law*."[30]

Fourth, "administrative regulations are normative documents related to administrative management, being formulated by the highest administrative organ in China, namely the Central People's Government - the State Council, by observing *the Constitution of China* and laws or empowerment decisions rendered by the National People's Congress and its Standing Committee, and in line with statutory authority and procedures. Administrative regulations play an essential role in China's legislative system and are at an important legislative status second only to laws."[31] "In pursuance of *the Legislation Law of China*, administrative regulations may draft rules on the following matters: (1) Matters that require the formulation of administrative regulations for the implementation of legal provisions. [...] There are mainly three sub-types of administrative regulations in this regard: Comprehensive implementing rules, regulations and measures. [...] Specialized rules formulated for the implementation of a particular stipulation or system in the law. [...] Provisions decreed to facilitate the transition, connection, and relevant issues of legal implementation. [...] (2) Matters related to the management authority of the State Council as listed in *the Constitution of China*. [...] (3) Matters authorized by the National People's Congress and its Standing Committee."[32]

Viewed from the above paragraph, in terms of their functions and nature, it can be deduced that administrative regulations essentially are normative documents for the daily administrative managing and supervising, and therefore are not suitable for designating "the other regions prescribed by the State" as provided by paragraph 1 under Article 82 of *the new Arbitration Law*. Furthermore, among the various applicable objects of the administrative regulations mentioned in the preceding paragraph, only one of them (i.e., specialized rules formulated for the implementation of a particular stipulation or system in the law) is related to *the new Arbitration Law*. The reason for this is that paragraph 3 under Article 14 of *the new Arbitration Law* stipulates that "the specific measures for the registration and administration of arbitral institutions shall be developed by the State Council." Obviously, the "specific measures for the registration and administration of arbitral institutions" referred to in this quoted article should be the subject of the formulation and the subsequent application of administrative regulations. However, so far, the State Council has not issued the relevant administrative regulation

[30] *The Inclusiveness, Openness and Compatibility that the Arbitration Law Should Possess*, the official website of Ministry of Justice of China: https://www.moj.gov.cn/pub/sfbgwapp/fzgzapp/ggfzfwapp/ggfzfwapp2/202501/t20250115_513141.html.

[31] Compiled by the State Law Department of the Legislative Affairs Commission of the Standing Committee of the National People's Congress: *Interpretation of the Legislative Law of the People's Republic of China*, 2015 edition, Law Press • China, p. 199.

[32] Compiled by the State Law Department of the Legislative Affairs Commission of the Standing Committee of the National People's Congress: *Interpretation of the Legislative Law of the People's Republic of China*, 2015 edition, Law Press • China, pp. 202-205.

(namely the proposed "Regulations on the Registration and Management of Arbitral Institutions"), and has only included it in "*the Notice of the General Office of the State Council on Issuing the 'State Council 2026 Legislative Work Plan*'" (Guo Ban Fa No. [2026] 14).[33] Lastly, if the State Council intends to designate "other regions prescribed by the State" by resorting to administrative regulations, which in turn are the tangible results of "matters authorized by the National People's Congress and its Standing Committee", this approach will inevitably come into direct conflict with Article 12 of *the Legislation Law of China* mentioned earlier.

(4) As for other State organs stipulated by *the Constitution of China* - such as President of the People's Republic of China, the Central Military Commission of the People's Republic of China, the National Supervisory Commission of the People's Republic of China, etc. - since their functions and scope of empowerment are disparate from the subject matters of this research, these State organs obviously do not have the authority to further designated "other regions as prescribed by the State" as expressed by paragraph 1 under Article 82 of *the new Arbitration Law*.

(5) Paragraph 2 under Article 90 of *the Constitution of China* provides that: "Each ministry and Commission, as subordinate organs of the State Council, shall, in accordance with the laws as well as the administrative regulations, decisions, and orders issued by the State Council, formulates orders, directives, and rules within the scope of their respective empowerment." From the perspective of the legislative hierarchy, since the legal status of the said orders, directives, and rules issued by the various Ministries and Commissions under the State Council is too low, accordingly, these documents obviously cannot serve as the normative bases for designating "other regions prescribed by the State".

(6) Article 128 of *the Constitution of China* provides that courts at all levels in China are judicial organs of the state. Meanwhile, Article 134 of *the Constitution of China* further specifies that people's procuratorates at all levels serve as the state's legal supervision organs. In addition, paragraph 1 under Article 18 of *the Organic Law of People's Courts of the People's Republic of China* (revised at the 6th Meeting of the Standing Committee of the 13th National People's Congress on October 26, 2018) points out that: "The Supreme People's Court may formulate interpretations on issues related to the specific application of laws in judicial work." Similarly, paragraph 1 under Article 23 of *the Organic Law of the People's Procuratorates of the People's Republic of China* (revised at the 6th Meeting of the Standing Committee of the 13th National People's Congress on October 26, 2018) states that: "The Supreme People's Procuratorate may formulate interpretations on issues related to the specific application of laws in procuratorial work."

Under the premise of the legal rules mentioned in the preceding paragraph, the relevant doubt here is: Can the Supreme People's Court and the Supreme People's Procuratorate designate "other regions prescribed by the State" as expressed by

[33]The official website of the Central People's Government of the People's Republic of China: https://www.gov.cn/zhengce/content/202605/content_7068345.htm.

paragraph 1 under Article 82 of *the new Arbitration Law* through promulgating judicial interpretations? The author believes that the answer shall be negative. The grounds to boost this assessment are as follows:

Article 2 of *the Resolution of the Standing Committee of the National People's Congress on Strengthening the Work of Legal Interpretation* clearly provides that: "Any issues related to the specific application of laws and regulations in the trial work of the court shall be interpreted by the Supreme People's Court. Any issues related to the specific application of laws and regulations in the procuratorial work of the procuratorate shall be interpreted by the Supreme People's Procuratorate." This provision only authorizes the Supreme People's Court and the Supreme People's Procuratorate to further interpret the specific applicability of existing legal provisions, but does not authorize these two highest judicial organs to create pioneering interpretations in new fields beyond the meaning of existing legal provisions. From this perspective, the Supreme People's Court and the Supreme People's Procuratorate are not empowered to nominate "other regions designated by the State" through the respective judicial interpretations announced by them. Furthermore, regardless of whether the Supreme People's Court and the Supreme People's Procuratorate handle the issue by formulating judicial interpretations separately or jointly, since this act has clearly gone beyond the scope of functions and powers of the two supreme judicial organs, therefore, it shall definitely constitute an *ultra vires* act in the sense of China's legislative power.

(7) In Chinese mainland, since the local regulations, autonomous regulations and separate regulations, local government rules, as well as other local normative documents formulated by various provincial authorities and sub-provincial authorities are only binding in specific local regions, and cannot bind matters nationwide, these normative documents certainly cannot be used as legal bases to designated "other regions designated by the State".

Based on the contents of this Part, China's current legislation has imposed clear restrictions on the eligible parties, applicable subject matters, and applicable geographical scope of its *ad hoc* arbitration. From this perspective, *ad hoc* arbitration in China is not a legal system that can be widely and universally applied across the country. At the same time, this system is also tinged with the "experimental" hue of institutional innovation in specifically-selected regions of China. The author believes that these factors will have a significant combined impact on the essence of *ad hoc* arbitration in China.

4. Defining the Essence of *Ad hoc* Arbitration in China (In Lieu of Conclusion)

To define the essence of *ad hoc* arbitration in China, it is necessary to first interpret the nature of civil and commercial arbitral power, which serves as its crucial foundation. As for this important academic issue, it has always been a subject of much controversy in domestic and international academia. In this regard, "the current mainstream view in China is that arbitral power is a quasi-judicial power,

which combines the theory of arbitral authority as a judicial power and the theory of arbitral power stemmed from the parties' agreement, but put more emphasis on its judicial nature side. It is believed that arbitration power is a necessary supplement and a modified quasi-judicial procedure to the national judicial system." (Chu & Shi, 2019: p. 109)

The author believes that the traditional institutional arbitration provided by *the new Arbitration Law* surely possesses the above twin features. Moreover, China's *ad hoc* arbitration system should also share these features. The reason is that, on the one hand, China's *ad hoc* arbitration is first established on the basis of clear legal authorization. If there is no such an unequivocal lawful authorization, *ad hoc* arbitration conducted within China will inevitably be illicit. This reflects the inherent "arbitration judicial power" of China's system of *ad hoc* arbitration. On the other hand, China's *ad hoc* arbitration is also a manifestation of the "the theory of arbitral power stemmed from the parties' agreement" mentioned above. Its specific demonstration is: "As the conduct of the *ad hoc* arbitration procedure depends on the good faith cooperation of the disputing parties, the mutual collaboration between the two sides is an important foundation for the *ad hoc* arbitral proceedings to avoid procedural stagnation or deadlock." (Lai, 2014: p. 86)

Based on the above three Parts of this treatise, it can be concluded that the newly established *ad hoc* arbitration in China has distinct properties. Its specific manifestation is: firstly, the relationship between China's *ad hoc* arbitration and similar Western systems is comparable to the intersection of two circles in geometry. The overlapping parts of the two are the four commonalities summarized in the subsection 1 of Part II of this article. The non-overlapping parts of the two are reflected by the five idiosyncrasies of China's *ad hoc* arbitration and their corresponding underlying causes. This can be seen as the first manifestation of the essence of *ad hoc* arbitration in China. Secondly, as can be seen from Part III of this paper, compared with Western countries, China's *ad hoc* arbitration is considerably limited in terms of the parties subject to its application, the subject matter(s) to its application, as well as the geographical scope of its application. Therefore, it can be inferred that China's *ad hoc* arbitral system is a legal framework specialized by "it's appealing to niche users". This is drastically different from the situation in some Western countries where *ad hoc* arbitration is well-matched in strength with institutional arbitration in terms of its status and influence. (Shi, 2021: p. 34) (Li & Chen, 2014: p. 116) (Zhang, 2017: pp. 160-161, 164)[34] This can be seen as the

[34]The following are three pieces of relevant evidence: (1) "Although arbitral institutions play an increasingly important role in the field of modern international commercial arbitration, the institutional arbitration model is indeed not the majority in the field of maritime arbitration."

(2) "According to a survey, in the sphere of international trade, 45% of trade exporters request to choose *ad hoc* arbitration to handle their disputes. […] Even in a few countries such as Portugal, *ad hoc* arbitration has become the main form of arbitration. Greece once abolished institutional arbitration and implemented an *ad hoc* arbitration system domestically."

(3) "Half of the arbitrated cases in Sweden involve *ad hoc* arbitration; in Switzerland, four out of ten domestic arbitrated cases involve *ad hoc* arbitration; whereas Spain completely rejects institutional arbitration and considers *ad hoc* arbitration as its sole legally permissible form of arbitration."

second manifestation of the essence of *ad hoc* arbitration in China.

Some domestic literature concurs with the view that *ad hoc* arbitration in China has a feature of "appealing to niche users". For example, an article points out that, in the design stage for the draft, China's *ad hoc* arbitration has already highlighted its feature of "appealing to niche users": According to the draft for soliciting opinions, the revised draft, as well as relevant explanatory documents issued by the Ministry of Justice, China tends to establish an *ad hoc* arbitral system with a limited applicable scope that is only targeted at commercial disputes with foreign elements (paragraph 1 under Article 91 of the draft for soliciting opinions states: 'Parties to commercial disputes with foreign-related factors may agree to arbitration by an arbitral institution or directly agree to arbitration by a provisionally established arbitral tribunal.) (Zang, 2025: p. 5) For another example, another essay points out: "One notable advantage of *ad hoc* arbitration is its considerable flexibility - it is tailored to the parties' preferences and the specific circumstances of the related dispute. As a result, it can sometimes be particularly well-suited for certain specialized fields or specific types of cases." (Kang, 2001: p. 705)

This paper argues that the triggering causes for the "appealing to niche users" trait of *ad hoc* arbitration in China can be divided into two layers: As fully expounded earlier, the surface-level cause is "the progressive and small-scale trial-and-error path" that China has consistently adopted for legal reform and innovation. At the same time, there are two underlying basic factors that has acted as the catalysts for the formation of this trait: (1) The overarching policies of Chinese decision makers to carry out institutional innovation experiments in "pilot free trade zones, the free trade port and other regions designated by the State", so as to support the long-term triple goals of deepening reform, expanding opening-up, and attract foreign investments. (2) The unique national conditions, national polity and supporting legal culture of modern China. By comparison, *ad hoc* arbitration in Western countries completely lacks these relevant contextual factors. (Arbitration Act, 1996)[35]

[35]Western countries' laws often regulate their *ad hoc* arbitration from a technical perspective, thereby lacking the policy orientation and legislative intention of Chinese decision makers to innovate their legal systems by designating specific regions of the country. For example, the UK Parliament explicitly stated in Article 1 (General Principles) of its *1996 Arbitration Act* that, the provisions of this Part are founded on the following principles, and shall be construed accordingly—(a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense; (b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest; (c) in matters governed by this Part the court should not intervene except as provided by this Part. *Arbitration Act 1996*, the official website of the United Kingdom Government: https://www.legislation.gov.uk/ukpga/1996/23/section/1.

Guided by the basic principles set forth in the above paragraph, "the entire *UK Arbitration Act* provides a fairly comprehensive set of legal provisions for conducting *ad hoc* arbitration that is 'seemingly no statutes to apply' or lacks procedural guidance. It also provides a mechanism for the court to intervene and balance in a timely manner once the arbitral process stagnates or related controversies arise, thus legally ensuring the effective conduct of the arbitral procedure. Although these provisions on arbitral procedures also apply to institutional arbitration, as arbitration institutions generally have their own arbitral rules to reduce some uncertainties, the detailed provisions on arbitral procedures in *the UK Arbitration Act* should be said to have more practical significance for *ad hoc* arbitration." *Ad*

Besides the said idiosyncrasy of "appealing to niche users", the *ad hoc* arbitral system in China also possesses a secondary intrinsic trait - "demanding users' mutual trust". Here, the so-called "demanding users' mutual trust" refers to the mutual familiarity and faith between the *ad hoc* arbitrator and the disputing parties. The author believes that the trait of "demanding users' mutual trust" is a reflect of the aforesaid "theory of arbitral power stemmed from the parties' agreement", which is one of the bifurcating components of the hallmark nature of civil and commercial arbitral power. Furthermore, on some extents, this type of inter-personal mutual trust resembles the intimate cooperative relationship among shareholders found in the concept of "a partnership company (an unlimited liability company)" as defined by corporate law jurisprudences. (Zhu, 2019: p.17)[36]

The author believes that when the relevant parties (the arbitrator and the parties to the dispute) lack mutual familiarity and trust, it is advisable to avoid resolving disputes through *ad hoc* arbitration. To put it more precisely, when applying China's *ad hoc* arbitration to resolve specific disputes with foreign elements, factors such as the amount at stake, the complexity of the dispute, the number of parties involved, or the variety of scientific and technological fields involve are not decisive; here, the key factor is that there must be a high degree of familiarity and mutual trust among the three sides of the process. Otherwise, resorting either to the institutional arbitration, or to the out-of-court mediation, or even to the civil litigation may be a more sensible and rational choice.

The trait of "demanding users' mutual trust" alleged by this paper is also supported by domestic scholarly literature. For example, an article points out that "when the parties submit a dispute to arbitration, they are often not merely hoping that the arbitrator will simply apply the law to the facts and determine which party is right or wrong; rather, in most cases, the arbitrator should place greater emphasis on maintaining the parties' business relationship and thus resolve the dispute from this perspective." (Bian, 2019: p. 113) Therefore, "some scholars, after conducting thorough research, conclude that for parties with extensive prior arbitration experience - and for these whose lawyers or the parties themselves demonstrate good faith - *ad hoc* arbitration is preferable and more appropriate, as it saves expenditures like time, arbitral institution service fees, etc." (Zhang & Fu, 2019: p. 141) Likewise, another article observes that: "the conduct of an *ad hoc* arbitral process depends on the good faith cooperation between the parties to the dispute; such mutual cooperation serves as an important foundation for preventing procedural stagnation or deadlocks in the *ad hoc* arbitration proceedings."(Lai, 2015: p. 158) To put it another way, "*ad hoc* arbitration is based on a hypothetical prem-

*Hoc Arbitration: The Institutional Deficiency in China's Arbitration System to be Aligned with International Standard*s, the official website of China Academy of Arbitration Law: https://caal.chinalaw.org.cn/portal/article/index/id/859.html.

[36]"In addition to describing the external credit of a company, the terms 'the inter-personal mutual trust (*Ren He*)' and 'the joint capitals (*Zi He*)' can also portray the cooperative relationship between or among the shareholders. Partners and shareholders of small companies often have a mutual-trusting and interdependent relationship among themselves. Enterprises or companies based on this trait are deemed as personal-trust oriented."

ise - that is to say, that the parties to the dispute, their lawyers, and the arbitrator(s) can coordinate with one another without the need for administrative or judicial oversight. Experience has shown that without such full collaboration, the theoretical advantages of *ad hoc* arbitration become mere fantasy, resulting in delays to or even the frustration of the arbitral proceedings." (Kang, 2001: p. 697)

In terms of the intrinsic trait of "demanding users' mutual trust" of China's *ad hoc* arbitration, it is worth noting the following two relevant details:

First, that feature of "demanding users' mutual trust" of China's *ad hoc* arbitration is also constrained by the two-tiered triggering causes mentioned earlier that have contributed to the formation of the "appealing to niche users" feature of China's *ad hoc* arbitration. In other words, where the explicit requirements set forth by paragraph 1 under Article 82 of *the new Arbitration Law* regarding specific parties, specific subject matter(s), and specific geographical regions cannot be all satisfied, even though parties to a civil or commercial controversy who fully possess the trait of "demanding users' mutual trust" are not entitled to agree on the adoption of *ad hoc* arbitration under Chinese law.

Second, this article argues that the so-called idiosyncrasy of "highly depend on niche users' mutual trust" consists of two following parts: The *bona fide* cooperation of the parties to the arbitration, and the familiarity of the parties with the *ad hoc* arbitrator. The so-called *bona fide* cooperation between the parties in arbitration is embodied by a code of conducts in arbitral proceedings that is centered on the principle of good faith and consequently requires the parties and their agents to uphold sincerity and collaborate with each other throughout the process, and is thus an extended obligation of the contractual nature of the arbitral agreement. Its specific meaning has two ramifications: (1) On the proceeding law level, it is manifested as: The parties shall not *mala fide* delay or obstruct the arbitral process, and shall coordinate with the arbitral tribunal and the other parties to seamlessly accomplish tasks such as document service, evidence exchange, and court hearing, so as to avoid unnecessary procedural delays and resource wastes. (2) On the substantive law level, it is manifested as: Prohibiting the introduction of false evidence, uttering false statements, and not harming the interests of the outsiders or evading legal obligations via concealing key facts, colluding to create false disputes, and other malicious means. At the same time, the familiarity of the parties with the *ad hoc* arbitrator refers to the degree of knowledge of the professional competence, industry experience, professional ethics, and other information of the arbitrator candidate during the selection process based on the principle of party autonomy under the *ad hoc* arbitration system. It is one of the core features that sets *ad hoc* arbitration apart from institutional arbitration.

From the definitions mentioned in the above paragraph, it can be inferred that the *bona fide* cooperation of the parties in arbitration is different from their familiarity with the *ad hoc* arbitrator. This distinction is displayed on two levels: (1) The content of these two concepts is obviously different. (2) The basic principles that support these two concepts are different. The principle of good faith in arbi-

tration proceedings boosts up the parties' *bona fide* cooperation, whereas the parties' familiarity with the *ad hoc* arbitrator is endorsed by the doctrine of parties' autonomy. However, it should also be noted that these two concepts are virtually interlinked. Its main demonstration is the correlation between the basic principles behind these two. Specifically, they are two core tenets that complement each other and are dynamically balanced. That is to say, parties' autonomy is the bedrock of the parties' freedom in the sense of the private laws, which delineates the boundaries of the autonomous activities of the parties to *ad hoc* arbitration; meanwhile, the principle of good faith in arbitration proceedings constitutes the maximum legitimate extends of the exercise of parties' freedom, which avoids absolute freedom from deteriorating into an abused entitlement by imposing suitable *bona fide* constraints. In terms of *ad hoc* arbitration, these two principles jointly achieve the unity of individual will and social fairness.

On the whole, "the special arbitration with Chinese characteristics" has an iconic structure of "one body with two wings". The so-called "one body" refers to the dual hallmarks of "highly relying on niche users' mutual trust" in China's *ad hoc* arbitration. The "first wing" in the so-called "two wings" refers to the five individualities endowed by modern China's unique national conditions, national polity and supporting legal culture. The "second wing" refers to the distinctive functions of *ad hoc* arbitration in China, which plays a linchpin role in resolving disputes within designated regions such as free trade zones, the free trade port as well as "other regions prescribed by the State", thereby providing legal assistance for China's goals of deepening reform, opening-up and attracting foreign investment.

This study suggests that the four commonalities between China and Western *ad hoc* arbitration mentioned in subsection 1 of Part II of this article are merely skin-deep similarities. In contrast, the fundamental resemblance between Chinese and Western *ad hoc* arbitration lies in their shared characteristic of "demanding for users' mutual trust". As for "appealing to niche users and demanding their mutual trust" - a dual quintessence of *ad hoc* arbitration in China - the feature of "appealing to niche users" is the primary and decisive one. It actually dominates over the secondary trait of "demanding users' mutual trust", rather than the reverse. The author contends that the "two wings" in the said structure of "one body with two wings" exert a determinant combined influence upon the primary feature of "appealing to niche users" of China's *ad hoc* arbitration. To be precise, the "two wings" of *ad hoc* arbitration in China and the idiosyncrasy of "appealing to niche users" subject to their influence constitute the fundamental distinction between China's *ad hoc* arbitration system and that of the West.

It is also worth noting that, how to ensure the independence and impartiality of the arbitrator in China's *ad hoc* arbitration, which possesses the hallmark of "highly depend on niche users' mutual trust", has become an urgent technical problem to be solved. In the opinion of this paper, there are the in-process and the *ex-post* control mechanisms to tackle this challenge. The so-called in-process mechanism mainly refers to the system of information disclosure, recusal, and

substitution of the incumbent *ad hoc* arbitrators. All these are provided in principle in Article 45, as well as Articles 46 to 49 of *the new Arbitration Law*. In addition, although the valid laws of China say nothing about the system of replacing incumbent *ad hoc* arbitrators, there are already *ad hoc* arbitral rules that shed light on this once obscure spot. For instance, Article 15 of *the ad hoc* Arbitration *Rules of the China Maritime Law Association* provides for the replacement of the incumbent arbitrators.[37] At the same time, the so-called post-event control mechanism mainly has two branches: One is the *ex-post* judicial review jointly provided by *the new Arbitration Law* and related laws and judicial interpretations, and the other is the administrative, civil, and criminal responsibilities that *ad hoc* arbitrators who engaged in illegal professional activities shall bear. As the author has already published a relevant treatise on this topic (Du, 2026b), readers may refer to its contents, and no redundant elaboration will be carried out here.

Lastly, the application of *ad hoc* arbitration in China will have the following two effects: On the one hand, in the foreseeable future, *ad hoc* arbitration is unlikely to be widely promoted and universally applicable within China. On the other hand, in the not-too-distant future, *ad hoc* arbitration will not become a strong competitor to China's existing arbitration institutions, which has two specific meanings: (1) In the field of China's civil and commercial arbitration, arbitral institutions of China will continue to play a leading role.[38] (2) In China, the relationship between these two arbitral mechanisms should be one of healthy compe-

[37]The official website of China Maritime Law Association: https://www.cmla.org.cn/data/upload/image/20220621/1655801025341715.pdf.

[38]From a micro perspective, *ad hoc* arbitration in China can hardly rival institutional arbitration. Taking Shanghai as an example, from August 2024 to May 2025, "four foreign-related maritime *ad hoc* arbitrated cases have been awarded, and one judicial review against an *ad hoc* arbitrated case has been concluded by the Shanghai Maritime Court." *Reply to Suggestion No. 1030 from the 3rd Session of the 16th Municipal People's Congress*, the official website of Shanghai Municipal Bureau of Justice: https://sfj.sh.gov.cn/2020jyhtagk_bljgzdgk/20250516/ee413fef6c3741b18480e1862da3ffbf.html .
In contrast, "in the year of 2025, arbitration institutions in Shanghai have already accepted 12,536 filed cases." *Reply to Proposal No. 0093 from the 4th Session of the 14th Shanghai Municipal Committee of the Chinese People's Political Consultative Conference*, the official website of Shanghai Municipal People's Government: https://www.shanghai.gov.cn/gwk/search/content/f50e310566ea42868c9df687163157a9.

From a macro perspective, the conclusion is also similar, which has four concrete meanings: First, in terms of the application time frame, institutional arbitration in China has been in operation for 30 plus years, while *ad hoc* arbitration has only been in use for a few months. Second, as pointed out in subsection (2) under Part 2 of this essay, From the dimension of the unique Chinese legal culture, Chinese people are deeply ingrained in trusting government agencies, organizations, and legally endorsed arbitral institutions, but are full of doubts about improvised things such as *ad hoc* arbitration. (3) Foreign related cases and purely domestic cases that do not comply with paragraph 1 under Article 82 of *the new Arbitration Law* cannot be settled by *ad hoc* arbitration in China. By comparison, these two types of cases are precisely within the scope of arbitral institutions in China. (4) Chinese authority pointed out that: "As of the end of August 2025, 285 arbitration committees have been established lawfully nationwide, handling over 5 million arbitral cases with a total amount of over 9,000 billion yuan in involved subject matters. The applicants for arbitration involve more than 100 countries and regions around the globe." *285 arbitration commissions in China have handled over 5 million arbitration cases cumulatively*, the official website of Central Government of China: https://www.gov.cn/lianbo/bumen/202509/content_7042820.htm. In contrast, even though, due to its strong confidentiality, the relevant data on *ad hoc* arbitration in China is difficult to come by, its numbers and use frequencies can be safely estimated as nowhere near comparable to the aforementioned data of China's institutional arbitration.

tition, mutual promotion and friendly coexistence.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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