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On the Objective Arbitrability of Civil and Commercial Disputes in China

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Abstract

Statutorily, objective arbitrability refers to which types of civil and commercial disputes can be resolved through arbitration. Generally, all civil and commercial disputes involving only monetary and property conflicts between or among equal civil dealers that can be freely disposed of have objective arbitrability. Specifically, the judgment of the objective arbitrability can be divided into the following three situations: 1) Disputes with objective arbitrability: civil and commercial contract disputes; Infringement disputes; disputes concerning rights *in rem*; civil and commercial disputes under the exclusive jurisdiction of Chinese courts; consumer disputes; copyright disputes; securities disputes; trust disputes; maritime disputes; civil and commercial disputes involving administrative contracts. 2) Disputes without objective arbitrability: determination of the civil legal status of the subject; identification of the abstract capacity to conduct civil transactions of the subject; identification of the capacity to personally conduct civil transactions of the subject; disputes involving personal rights such as marriage, adoption, guardianship, support, inheritance, etc.; disputes over the validity of wills; dispute over company dissolution; antitrust disputes; disputes concerning the harmed public interests of society; bankruptcy cases; the non-contentious affairs under the special procedures of *the Civil Procedure Law of China*; the de-right issues of lost bills handled by the initiated procedure for public summons for exhortation; disputes over rural land contract; labor disputes; human resources disputes; sports disputes; foreign exchange management disputes; administrative disputes; a civil and commercial case pending to a people's court. 3) Situations where specific analyses are required: disputes arising from concurrent yet conflicting substantive legal liabilities; patent and trademark infringement disputes; cases governed by the expedited procedure for the monetary debt recovering; civil and commercial disputes suspected of criminal offenses.

Keywords

Chinese Civil and Commercial Disputes, Objective Arbitrability, Analyses upon Classification

1. Definition and Explanation

The old Arbitration Law of China came into effect on September 1, 1995. "Over the past 20 plus years, more than 270 arbitration institutions have been established nationwide in accordance with the law, handling over 4 million arbitration cases with a total amount of over 5 trillion RMB involved. The disputes resolved cover a wide variety of economic and social fields, and the parties involved come from more than 100 countries and regions around the world" (He, 2024). *The new Arbitration Law of China* was enacted by the 17th meeting of the Standing Committee of the 14th National People's Congress on September 12, 2025, and will come into effect on March 1, 2026.

Based on the above situation, China's domestic and foreign-related civil and commercial arbitration will have significant development in the coming days. To support and facilitate this positive trend, it is necessary to define the meaning and scope of arbitrability. Two jurists point out that "arbitrability refers to the scope of controversies that can be resolved through arbitration pursuant to the law. Arbitrability can be further broken down as the subject arbitrability and the objective arbitrability. The issues of arbitrability belong to the domestic laws of a country. Violation of arbitrability can lead to the invalidity of the arbitration agreement"[1]. Furthermore, it may also result in the revocation or non-enforcement of effective arbitration awards by court rulings.

From the literature quoted in the preceding paragraph, the arbitrability of civil and commercial cases can be divided into two sub-groups: the subjective arbitrability and the objective arbitrability. This article will focus on the analyses of issues related to the objective arbitrability. The issue of the subjective arbitrability will be further explored in a separate treatise.

2. Objective Arbitrability Analyses

1) The concept

The objective arbitrability refers to which types of civil and commercial disputes can be resolved through arbitration. From a theoretical perspective, objective arbitrability can be discussed at three dimensions: first, the scope of substantive legal disputes that can be submitted for arbitration as agreed upon by both sides in their related arbitration agreement; second, the scope of specific arbitration requests put forward by the applicant when applying for arbitration according to the relevant arbitration agreement; third, the types and scope of legally ar-

[1]Edited by Jiang Wei and Xiao Jianguo, *Arbitration Law* (3rd edition), Renmin University Press, 2016, p.137.

bitrable civil and commercial disputes. This article studies the objective arbitrability at the third dimension.

In terms of legally recognized objective arbitrable issues, Article 3 of *China's New Arbitration Law* states principled requirements on this matter. Paragraph 1 of Article 3 stipulates that "contractual disputes and other disputes over rights and interests in property between citizens, legal persons and unincorporated organizations that are equal subjects may be arbitrated". Meanwhile, paragraph 2 of Article 3 excludes a series of issues cannot be arbitrated, that is, "the following disputes shall not be arbitrated: a) marital, adoption, guardianship, support and succession disputes; b) administrative disputes that shall be handled by administrative organs as prescribed by law".

Some of the issues specified in the above-quoted paragraph 2 of Article 3 cannot be submitted for arbitration due to the lack of sufficient disposition right of the parties concerned, such as marriage, adoption, guardianship, support, and succession disputes. At the same time, other disputes (e.g. administrative disputes) that cannot be arbitrated due to the lack of the equal legal standing between the two sides involved. Although Article 3 provides principled requirements on the objective arbitrability of China, due to the wide variety of civil and commercial disputes, the author feels the urge to conduct a meticulous and detailed examination here. The following text will systematically explore whether various specific disputes have objective arbitrability.

2) Specific analyses

In principle, civil and commercial disputes refer to controversies or conflicts involving civil and commercial legal relationships between equal market dealers. This type of disputes often involves issues of rights and obligations between two or more disputants, which need to be resolved in accordance with the law. Civil and commercial disputes are not only numerous, but also diverse, and it is necessary to conduct a systematic examination of whether they have objective arbitrability or not:

First, due to the unambiguous legal restriction imposed by the civil laws of China, as for the determination of the civil legal status of the subject, the identification of the abstract capacity to conduct civil transactions of the subject, the identification of the capacity to personally conduct civil transactions of the subject, these three matters apparently lack the objective arbitrability (Article 2, Articles 13-25 of *the Civil Code of China*).

Second, disputes over the validity of a will can only be resolved through civil litigation. The basis for this conclusion is that disputes over the validity of wills are essentially succession-related disputes. It will inevitably involve identity confirmation among the interested persons, such as determining the eligibility and scope of heirs, as well as the distribution plan and sequence of the inheritance. This type of disputes possesses attributes of personal rights and ethical factors, which are different from pure monetary and property disputes, and therefore lack objective arbitrability.

For example, in a case, the foreign effective "arbitration award determined the issues of inheritance, which violated the provisions of *China's Arbitration Law* that succession issues cannot be arbitrated, and was therefore refused to be recognized and enforced by the courts of China. The Supreme People's Court held that the dispute in this case arose from the fact that the arbitration applicant Wu Chunying, as the legal heir of her deceased husband, claimed her contractual rights to the Mongolian arbitration tribunal based on the arbitration clause in the contract in question. If the relevant arbitration award does not involve inheritance matters, it can be recognized and enforced. However, the main contents of the arbitration award in question are to confirm Wu Chunying's legitimate heir status as well as the investment property rights that should be obtained (by her) due to this status. (Meanwhile,) The award failed to address the relevant commercial disputes such as the continued operation and cancellation of the related company. As a result of it, the arbitration award in question mainly pertains to inheritance matters. In line with item (1) of Article 3 of *the old Arbitration Law of China* (item (1) under paragraph 2 of Article 3 of *the new Arbitration Law of China*), succession disputes cannot be arbitrated. Therefore, in the light of Article 5 (2) (a) of *the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, this foreign arbitral award in question shall not be recognized or enforced (in China)"[2].

Third, paragraph 1 of Article 3 of *the New Arbitration Law of China* provides that civil and commercial contract disputes between equal dealers do have arbitrability, which is crystal clear. However, it is important to pay attention to the following two related details:

(a) The arbitral tribunal's determination of the agreed guarantee liability must be based on the judgment of the relevant main creditor's rights. Therefore, the arbitral tribunal's judgment on such essential substantive matters as a necessary prerequisite for the contract in question cannot be considered as went beyond the scope of arbitrable issues. For example, in the case of the applicant (Chuying Company) versus the respondent (Xingu Company) for abrogating an arbitration award, the Chinese court held that "Chuying Company's grounds for revocation lack legal basis. In this case, one party submitted its arbitration claims based on the arbitration clause in the guarantee agreement and requested the opposing party to assume joint and several guarantee liability. The arbitral tribunal's determination of the agreed guarantee liability inevitably involves the examination and determination of the amount of the main debt. Based on the evidence adduced by both sides, the arbitral tribunal determined the corresponding guarantee liability after figuring out the amount of the main debt, which did not go beyond the scope of the arbitration clause in the guarantee agreement regarding 'any dispute arising from or related to this guarantee letter'. Therefore, the party (the applicant) cannot allege that the arbitrated matters do not belong to the scope of the arbitration clause in this guarantee letter, and thus apply for set aside the related arbitration

[2]Edited by Liu Li: *The Studies on Litigation of International Civil Procedure Jurisdiction and Judicial Assistance*, China University of Political Science and Law Press, 2016, p.294.

award" (He, 2024).

(b) In pursuance of Chinese laws, the parties may agree on different dispute resolution methods for different matters in their signed contract. This reflects respect for the parties' disposal rights in substantive and procedural laws. In terms of a contract, "for example, it only stipulates that a portion of the disputed contents can be arbitrated, or designates different procedures, institutions, adjudicators, etc. for different disputes, which are carefully tailored by the parties to ensure the pertinence of dispute resolution, and of course, it may also be a result of a compromise driven by different wills between or among the parties ... For instance, a contract stipulates: 'Disputes related to the imported equipment under this contract shall be submitted to the Shenzhen Branch of the China International Economic and Trade Arbitration Commission for arbitration; whereas disputes related to the ensuing project shall be submitted to the Economic Contract Arbitration Commission of the Shenzhen Administration for Industry and Commerce for arbitration ...'" (Xu & Chen, 2014).

As for the segmentation mechanism mentioned in the above paragraph, the following risks should also be noted: "In any case, it is best and ideal if both parties can fulfill the arbitration arrangement according to the original agreement when resolving the disputes, otherwise disagreements over the type, content, etc. of the disputes will turn the originally carefully devised arrangement into a tool of delaying tactics" (Xu & Chen, 2014).

Fourth, item (4) of Article 39 of *the Law of China on the Protection of Consumers' Rights and Interests* (revised for the second time on October 25, 2013) stipulates that, in case of disputes with business operators over consumer rights and interests, consumers may settle the disputes by applying to arbitral organs for arbitration according to the arbitral agreements with business operators. From this perspective, Chinese law recognizes the arbitrability of consumer disputes. However, due to the narrow definition of "consumer" in *the Law of China on the Protection of Consumers' Rights and Interests* (Article 2: The rights and interests of consumers in purchasing and using goods or receiving services for daily consumption shall be under the protection of *this Law*), the arbitrability of consumer disputes is adversely affected. Therefore, in arbitration practice, it is far from common for consumers to protect their rights and interests through arbitration after a dispute occurs.

The author believes that the main reasons why consumer disputes are rarely resolved through arbitration are as follow: a) This method of resolving disputes is often stipulated in written contracts for the bulk purchase and sale of goods, and the quantity of sold goods is often quite large. By comparison, in the vast majority of verbal contract transactions where consumers and retailers complete their deals in real-time, it is rare for the relevant controversies to be resolved by initiating arbitration. b) In consumer disputes, there is a significant disparity in the power balance between the parties involved. In such disputes, one party is a well-to-do merchant registered by the state, due to their significantly smaller resources available for arbitration compared to the other side (the rich merchant), consumers

often have little interest in using arbitration mechanisms. c) When resolving disputes through arbitration, although the procedures have been significantly simplified compared to civil litigation, the relevant arbitral mechanism still has the drawbacks of being complex, expensive, and time-consuming for a large number of frequently occurring small-scale consumer disputes.

Fifth, "for a long period of time, infringement cases could not be resolved through arbitration or other private disputes settlement mechanisms, which may be closely linked to the understanding of infringement disputes by the ruling authorities. During the period when arbitration was not allowed to resolve infringement disputes, the ruling decisionmakers classified the nature of infringement disputes as controversies concerning the public order ... With the deepening of the ruling authorities' understanding of the nature of the arbitral system, the practice of settling disputes through arbitration was gradually established in the field of tortious conducts, although its application scope was restricted. (The reason for this change is that,) according to the basic characteristics of the civil and commercial arbitration system, as long as the case itself has two co-existing attributes of property content and parties concerned in equal standing, it can be resolved through arbitration. In fact, the issue of arbitrability in the field of infringement has been conceded by international conventions. The definition of the scope of arbitrable disputes in *the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* is not based on whether it is a contract or tort, but on its commercial nature. This wording clearly does not restrict non-contractual disputes like infringements from being arbitrated. Similarly, the wording of the ICC Model Clauses covers cases where a contract is invalidated by deception, and has been explicitly recognized by the Cour D'appeal of Paris in practice"[3].

In accordance with paragraph 1 of Article 2 of *the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, as long as the parties agree in writing to submit all or part of a legal relationship, whether contractual or not, to arbitration, the signatory countries shall recognize such agreement[4]. In addition, the commercial reservation declaration made by China when joining *the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* also clearly stated that any dispute arising from commercial legal relationships under Chinese laws, whether contractual or non-contractual, shall be governed by *this Convention*. The reservation declaration also clearly states that the so-called "contractual and non-contractual commercial legal relationships" specifically refer to economic rights and obligations arising from contracts, infringements, or relevant legal rules[5]. Obviously, the non-contractual commercial

[3]Edited by Wang Zhuxing: *Foreign Procedure and Arbitration*, Xiamen University Press, 2007, p.257.
[4] https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/new-york-convention-e.pdf, last visited on March 7, 2026.
[5]*Notice of the Supreme People's Court on the Implementation of "the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards" Acceded to by China* (Fa (Jing) Fa [1987] No. 5, http://gongbao.court.gov.cn/Details/e4defa983a153b314590d73e5a0c60.html, last visited on March 7, 2026.

legal relationships referred to in *the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and China's aforementioned reservation declaration should all include disputes arising from infringement.

In terms of domestic academic research, "after the promulgation of *the old Arbitration Law of China* in 1995, some scholars also pointed out that Article 2 of *the old Arbitration Law of China* (paragraph 1 of Article 3 of *the new Arbitration Law of China*), which stated that 'contractual disputes and other disputes over rights and interests in property between citizens, legal persons and unincorporated organizations that are equal subjects may be arbitrated', should include infringement disputes" (Xu & Chen, 2014). However, it was not until 1998 when the Supreme People's Court made a ruling on the appeal case of 'the Light Industry Textile General Company of Jiangsu Provincial Material Group v. (Hong Kong) Yuyi Group Co., Ltd., (Canada) Taizi Development Co., Ltd.' for tort damage compensation that the conclusion on whether infringement disputes belong to 'other disputes over rights and interests in property' under *the Arbitration Law of China* was ultimately reached. In its ruling, the Supreme People's Court gave a clear affirmative conclusion on this issue[6].

Sixth, can patent and trademark infringement disputes be submitted for arbitration? This is also a question that needs to be explored. As mentioned earlier, China is a member of *the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. From the contents of Article 2 (1) of *this Convention* and the reservation declaration made by China when joining *this Convention*, patent and trademark tort disputes are typical non-contractual disputes and should be able to be submitted for arbitration. However, in line with Chapter 7 "Protection of Patent Rights" of *China's Patent Law* (Fourth Amendment on October 17, 2020) and paragraph 1 of Article 60 of *the Trademark Law of China* (Third Amendment on August 30, 2013), patent and trademark infringement disputes cannot be resolved through arbitration. In addition, other rules in Chapter 7 of *China's Trademark Law* on the protection of rights to the exclusive use of the registered trademarks do not mention the resolution of such disputes through civil and commercial arbitration.

To thoroughly clarify this puzzle, further classification and sorting should be carried out here. The author thinks that relevant situations should be handled in three ways:

1) If the dispute arises from the formation, performance, modification, or termination of intellectual property transfer, licensing, or other contracts, such as disputes over payment of fees or breach of contract liability arising from trademark licensing, such contract disputes fall within the scope of arbitrability. For example, from the contents of Article 594 of *China's Civil Code* (For a dispute arising from a contract for the international sale of goods or a technology import or export contract, the time limit for instituting an action or applying for arbitration is four years), it can be deduced that China has actually affirmed the arbitra-

[6]https://www.chinacourt.cn/article/detail/2002/11/id/18016.shtml, last visited on March 7, 2026.

bility of technology import and export contract disputes. In practice, the China International Economic and Trade Arbitration Commission has accepted and arbitrated intellectual property disputes[7].

2) Controversies over compensation for damage caused by infringement of industrial property rights such as patents and trademarks belong to other property rights disputes, and thus can also be arbitrated.

As for contractual and infringement disputes involving patents and trademarks, the related national normative documents and administrative regulations mainly are: a) Rule 42 of *Opinions on Strengthening Intellectual Property Protection* (October 31, 2022) jointly-issued by the General Office of the Central Committee of the Communist Party of China and General Office of the State Council. b) Rules (10) and (16) of *Opinions on Building a Data Infrastructure System to Better Utilize the Role of Data Elements* (December 2, 2022) jointly-issued by the Central Committee of the Communist Party of China and the State Council. c) Rules 6 and 7 of *the State Council Regulations on the Handling of Foreign Related Intellectual Property Disputes* (State Council Decree No. 801). d) *The Notice on Capacity Building of Intellectual Property Arbitration and Mediation Institutions* issued by the Office of the China National Intellectual Property Administration (Guo Zhi Ban Fa Xie Zi [2018] No. 7), etc.

3) It should be noted that if the core issue of the relevant disputes is to confirm the ownership of intellectual property rights (such as disputes over the qualifications of patent inventors, disputes over trademark registration rights), such contested cases usually involve the confirmation of rights by related administrative agencies and do not belong to civil right disputes between equal subjects, and therefore cannot be resolved through arbitration. In terms of this type of controversies, the relevant legal rules include: Chapter 5 "Invalidation of Registered Trademarks" (Articles 44 to 47) of *China's Trademark Law*. Items (11) and (12) under Article 1, as well as Articles 3 and 4 of *SPC Provisions on How to Implement Laws in the Trials of Patent Lawsuits* (Fa Shi [2001] No. 21, as revised by Fa Shi [2015] No.4), etc.

Seventh, in China, real right disputes have arbitrability, which is clearly recognized by relevant laws and regulations. For example, Article 233 of *China's Civil Code* stipulates that, where a real right is infringed upon, the right holder may have the matter settled by such means as private settlement, mediation, arbitration, and litigation. From this perspective, the following types of real right disputes may be submitted to civil and commercial arbitration for resolution: ownership disputes, disputes concerning usufructuary rights, disputes concerning real rights for security, disputes relating to possession protection, real estate registration disputes, neighboring relationship disputes, etc.

[7]"CIETAC actively plays a role in resolving intellectual property disputes. According to incomplete statistics, nearly 15% of the controversies heard by CIETAC involve intellectual property rights. In the past five years, CIETAC has accepted nearly 400 intellectual property cases involving the total disputed amount of nearly 20 billion yuan, many of which have significant social impacts." https://www.cietac.org/articles/33592, last visited on March 7, 2026.

Eighth, when there are a few competing yet co-existing substantive legal liabilities caused by the same transaction or the same event, a determination shall be made on the scope of arbitrable matters. From the perspective of procedural law, the so-called competing yet concurrent substantive legal liabilities can be further divided into two sub-types: one is the competing yet co-existing substantive legal liabilities in the broad sense (such as situations involving the unreal joint and several liability), and the other is the competing yet co-existing substantive legal liabilities in the narrow sense (such as situations where one act of the opposing party or the same transaction between the two sides triggers two or more co-existing yet competing substantive rights under the civil law or the commercial law). What is discussed here is the latter. *The Civil Code of China* specially designs a system in which the aggrieved party either chooses to sue or chooses to apply for arbitration in the event of the competing yet co-existing substantive legal liabilities in the narrow sense. Specifically, Article 186 of *the Civil Code of China* points out that, where a party breaches a contract, causing damage to the other party's personal or property rights and interests, the aggrieved party shall be entitled to request the party to *either* assume liability for breach of contract *or* assume tort liability. The wording of this rule clearly implies the authorization of relevant rights holders to make choices: either to choose civil litigation to resolve disputes, or to choose arbitration to resolve controversies; either choose to claim breach of contract, or choose to claim damages for infringement.

A related puzzle that needs to be further addressed here is: if the parties have agreed on an arbitration clause in their signed contract, can they apply for arbitration based on this arbitration clause when claiming tort liability? Or use this arbitration clause as the ground to raise a procedural objection against the jurisdiction exercised by a court for the related case?

In the author's opinion, this issue should be handled in two ways:

a) It is difficult to apply for arbitration on the grounds of tortious conducts based on the arbitration agreement when one party's breach of contract infringes upon the other party's personal rights and interests. Because Article 3 of *China's New Arbitration Law* states that arbitrable issues are limited to pure monetary or property right disputes and do not include any personal right dispute, in this case, the parties concerned should resolve the dispute through civil litigation.

b) In cases where one party's breach of contract only infringes upon the other party's monetary or property rights, arbitration can certainly be applied for the resolution of the relevant controversies. For instance, Article 16 of the "*Opinions of the People's Court on Issues Concerning the Implementation of Judicial Supervision Against Civil and Commercial Arbitration Awards*" (approved by No. 3 meeting of the adjudication committee of the People's High Court of Jiangsu province in 2007, revised by observing a decision rendered on No. 21 meeting of the adjudication committee in the same Court in 2010) stipulates that, where liabilities of infringement and breach of contract compete and co-existing, if the parties choose to sue for infringement, they are still bound by the contract arbitration

clause[8].

It should be pointed out that, in terms of the above-quoted local norms, the infringement mentioned shall also be limited to property infringement. If it is a harm against related personal rights or a property dispute involving encroachment on personal rights, it certainly cannot be resolved through arbitration, and shall only be settled through civil litigation.

Ninth, is there arbitrability for disputes involving company dissolution in China? The author believes that the analyses of this issue should be dealt with from the following three perspectives:

1) In terms of the above-mentioned "Third" and "Fifth", as for the company dissolution matters, disputes either concerning the performance of shareholder's contractual obligations or related infringement damages are arbitrable. This is definite and clear. To avoid redundancy, the relevant reasoning will not be repeated here.

2) In China, disputes over implementing a company's dissolution and its registration do not have objective arbitrability. In this regard, the following judicial ruling is representative:

As for the company dissolution dispute between China BlueChemical Ltd., Shanxi Hualu Yangpoquan Coal Mine Co., Ltd., and Shanxi Hualu Thermal Power Co., Ltd., the parties involved have applied to the Supreme People's Court for the related case-reopening. In the corresponding Civil Procedural Ruling ((2016) Zui Gao Fa Min Zai No. 202), the Supreme People's Court clearly stated: "The current law does not empower arbitration institutions to dissolve a company. Because the arbitration institution's award on the dissolution of a company has no legal basis, even if the company's articles of association stipulate the dissolution mechanism of the company and further provide that any dispute arising from or related to the implementation of these articles of association can be submitted to the arbitration institution for resolution, the related arbitration agreement (concluded among the parties concerned) on the dissolution of the company shall not have corresponding legal effect"[9].

3) In China, disputes over whether a company's dissolution conditions are met are arbitrable. Logically and legally speaking, determining that the dissolution should be arranged and actually organizing the dissolution of the company specifically are two totally different concepts. In other words, the arbitral tribunal may make a ruling on whether the company in question should be dissolved, but it shall not organize the dissolution activities of the company in question. In this regard, the following case is typical:

In the case of "*applying for revocation of Ningbo Arbitration Commission*

[8]http://www.bbzcw.cn/page225?article_id=150, last visited on March 7, 2026.

[9]"*The Supreme People's Court: 8 Adjudging Opinions on Objections to Jurisdiction*", WeChat: Hebei People's High Court, website: https://mp.weixin.qq.com/s?__biz=MzA3OTYyMjkwNg==&mid=2649357996&idx=1&sn=451e15ab341d0b920cf55617a5b083a7&chksm=87adf939b0da702f289f1346eb1c64e42cd8de85c12f63010cda2d24804442b2d09ba6280c80&scene=27, last visited on March 7, 2026.

Award by Ningbo Yongxin Automotive Parts Manufacturing Co., Ltd.", "The revocation petitioner (Yongxin Company) alleges that the arbitrated issues concerning the dissolution of the joint venture company (Sant Company) violates the public interest. Although the Ningbo Intermediate People's Court, which participated in the judicial review against this arbitral award, apparently believed that the dissolution of Sant Company did not violate the public interest, it failed to provide reasons for that conclusion ... Based on the judicial review opinions of other cases, there should be two reasons: to begin with, although the arbitral tribunal obviously has no jurisdiction over the dissolution of the company and cannot organize the related dissolution activities, the arbitral award can make a decision on whether the company should be dissolved or not. The concepts of determining dissolution by award and organizing dissolution by award are different. Next, even if the arbitral award does violate such mandatory norm, it is still not sufficient to determine that it actually violated the public interest of society. Such mandatory norm is not sufficient to constitute the public interest of society. Furthermore, assuming that the arbitration award violates such mandatory norm, from the judicial review opinions of other sample cases, there is also a feasible solution to the problem, which is to conduct the judicial review in accordance with item 4 under paragraph 1 of Article 274 (now Article 291) of *the Civil Procedure Law of China*, which states that 'the matters decided by arbitration exceed the scope of the arbitration agreement or the authority of the arbitration institution'" (Zhang, 2019a).

Tenth, in China, property issues in copyright disputes have objective arbitrability. So, can disputes over personal right issues in copyright (such as the right of publication, the right of authorship, the modification right, and the right to protect the integrity of the work) be arbitrated? This article argues that these personal right issues in copyright can be resolved through civil and commercial arbitration. There are three reasons to support this conclusion: (a) cases in practice hold a positive attitude towards it. For example, among the "Top Ten Typical Arbitration Cases of Intellectual Property Disputes in the Yangtze River Delta" published by the Nanjing Arbitration Commission on its official website, "Case 5: Determination of the Right of Authorship for Collaborative Film Works" is prominently listed[10]. (b) Theoretically, personal rights such as the right of authorship and the publication right actually have property attributes. It should be protected separately from the author's true spiritual rights such as reputation, privacy, and creative freedom[11]. In addition, a monograph specially points out that from the perspective of property, the personal rights of works can also be understandably explained (Li Chen, 2013). (c) *The Copyright Law of China* does not exclude the arbitrability of personal rights enjoyed by authors. For instance, paragraph 1 of Article 60 of *China's Copyright Law* (revised for the third time on November 11, 2020) clearly provides that "copyright disputes can be mediated, or arbitration can

[10]http://ac.nanjing.gov.cn/zczx/gzdt/202305/t20230510_3907642.html, last visited on March 7, 2026.
[11]Co-edited by Shenzhen Court of International Arbitration and China International Arbitration Institute: *Typical Arbitration Cases and Essentials of Intellectual Property*, Peking University Press, 2021, pp. 9-11.

be applied to an (selected) arbitration institution based on a written arbitration agreement reached by the parties or the arbitration clause in the (relevant) copyright contract". This provision does not distinguish between property issues in copyright and personal right issues in copyright, but collectively refers to them as "copyright disputes".

For this sub-section, readers should also pay attention to the following details:

(i) Disputes over the validity of copyright are arbitrable. The so-called copyright validity dispute refers to the disagreements between or among parties regarding the true existence, the lawfulness, as well as the validity of the copyright of a work. This type of disputes usually involves core issues such as whether the object of copyright meets the conditions for legal protection, whether the right terminates upon expiration of the related term, or whether the right is lost due to specific legal procedures (e.g. the declared invalidation). These are civil disputes between equal subjects, which can be resolved through litigation or arbitration.

(ii) Copyright infringement disputes are arbitrable. There are two reasons for this assessment: in the first place, as mentioned in the previous sub-section "Fifth", general tort disputes are arbitrable. As a specific type of tortious controversies, copyright infringement disputes shall also have arbitrability. Next, there are cases in Chinese practice that demonstrate the arbitrability of copyright tort disputes. For example, the book compiled by Shenzhen Court of International Arbitration provides a thorough analysis of a case concerning "understanding and recognizing the originality of computer software works"[12].

Eleventh, in China, the majority of antitrust disputes do not have objective arbitrability. As mentioned earlier, only civil and commercial disputes between equal parties can be submitted for arbitration. From the contents of Chapter 7 "Legal Liability" (except for Article 60) of *China's Anti-Monopoly Law* (revised for the first time on June 24, 2022), it can be seen that these provisions are norms for related administrative authorities to investigate and punish relevant entities that engage in monopolistic acts. From this perspective, most anti-monopoly issues are essentially disputes in the sense of administrative laws, which shall be resolved through administrative reconsideration and litigation, rather than through civil litigation or civil and commercial arbitration.

As a lawful exception to the above generally-applicable conclusion, some civil disputes between or among equal dealers involving anti-monopoly issues are arbitrable. In this regard, the following provision is typical: Paragraph 1 of Article 60 of *China's Anti-Monopoly Law* stipulates that if a business operator engages in monopolistic behavior and causes losses to others, they shall bear civil liability in accordance with the law. This is a typical tort dispute. According to the aforesaid "Fifth", if both sides can reach a written agreement before or after the occurrence of the related infringement on this issue, they may submit such disputes to arbi-

[12]Co-edited by Shenzhen Court of International Arbitration and China International Arbitration Institute: *Typical Arbitration Cases and Essentials of Intellectual Property*, Peking University Press, 2021, p.21, p.27.

tration.

Paragraph 2 of Article 60 of *China's Anti-Monopoly Law* further provides that if a business operator engages in monopolistic behavior that harms the public interest, the people's procuratorate at or above the level of a city with districts may file a civil public interest lawsuit with the people's court in accordance with the law. So, the perplex here is: can the two parties reach a written agreement to submit such infringement of civil public interest to arbitration for resolution? In this regard, although there is a loophole in the laws and judicial interpretations of China, we can make the following theoretical analyses to patch the gaping hole:

Arbitration is a controversy resolving mechanism based on a voluntary consensus between both parties, which requires the existence of a valid written arbitration agreement between the parties and specifies the submission of particular disputes to the selected arbitration institutions for settlement. However, infringements involving public interests, such as endangering social public safety, violating basic principles of the constitution or laws, encroaching on the legitimate rights and interests of unspecified huge number of consumers, infringing on environmental and ecological public welfare or social good customs, are often considered unsuitable for arbitration to resolve, because civil and commercial arbitration emphasizes full private autonomy, and the protection of public interests often excludes arbitrary and willful disposal by related individuals, thus requiring public law remedies such as the civil litigation.

In judicial practice, if an effective arbitration award is found to violate relevant public interests, the people's court with jurisdiction may, based on the principle of reservation of public order, rule to repeal or not enforce the award (paragraph 2 of Article 71, Article 76, and paragraph 2 of Article 83 of *the New Arbitration Law of China*; paragraph 3 of Article 248 and paragraph 2 of Article 291of *the Civil Procedure Law of China*, etc.). This also indicates that tort disputes that violate public interests lack objective arbitrability. In addition, paragraph 2 of Article 146 and Article 287 of *SPC Interpretations on the Civil Procedure Law*, which provides that settlement agreements or court mediation agreements related to public interest litigation must be publicly announced, on some extent, also reflect the lack of objective arbitrability in such infringement incidents.

To sum up, most antitrust disputes do not have objective arbitrability. some civil disputes between or among equal dealers involving anti-monopoly issues are arbitrable. In the meantime, anti-monopoly issues involving public interest protection certainly cannot be arbitrated.

Twelfth, "the attitude of Chinese authorities towards the arbitrability of securities disputes is ambiguous. Although according to *the Interim Regulations on the Administration of Stock Issuance and Trading*, disputes related to stock issuance or trading can be submitted to arbitration institutions by agreement, and on August 26, 1994, the Securities Committee of the State Council officially designated the China International Economic and Trade Arbitration Commission as the arbitral institution for securities disputes to accept disputes arising from stock issu-

ance or stock exchanges, *the Securities Law of China* and *the Trust Law of China* do not have clear provisions for the arbitrability of securities disputes"[13]. For example, certain articles in *the Securities Law of China* (revised for the second time on December 28, 2019) (such as paragraph 3 of Article 44, paragraph 3 of Article 92, paragraphs 2 and 3 of Article 94, and Article 95) mention civil litigation, while other handful articles mention administrative litigation (such as Article 223), but none of them mention that disputes involving securities can be resolved by civil and commercial arbitration. Likewise, in *the Trust Law of China* (enacted on April 28, 2001), only two articles (such as item 4 under Article 11 and Article 65) mention civil litigation, but none mention civil and commercial arbitration.

Even though the relevant laws and regulations are vague, there are indeed arbitration activities involving securities disputes and trust disputes in China's practice. For instance, China's securities arbitration system is constructed based on legal frameworks such as *the Arbitration Law of China* and *the Interim Regulations on the Administration of Stock Issuance and Trading* (Issued by Order No. 112 of the State Council on April 22, 1993). Since 2021, pilot projects for securities and futures arbitration have been launched in Shenzhen, Shanghai, and other places. As the first securities arbitration platform in China, the China (Shenzhen) Securities and Futures Arbitration Center is jointly established by the Shenzhen Court of International Arbitration and the Shenzhen Stock Exchange, and has handled a total of 58 billion RMB in dispute[14]. The Shenzhen Court of International Arbitration has formulated the "Guidelines for Arbitration Procedures of Securities and Futures Civil Compensation Disputes", innovatively establishing a merged mechanism including arbitration, the system of representatives, as well as demonstrative arbitration, and allowing installment payment of the related arbitration fees[15]. The Shanghai Arbitration Commission also created its Securities and Futures Arbitration Center in December 2024 and signed a memorandum of cooperation with the Shanghai Stock Exchange to promote specialized dispute resolution[16]. At the same time, there is a case where the South China International Economic and Trade Arbitration Commission (also known as the Shenzhen Court of International Arbitration) arbitrated a dispute over a trust contract between the applicant and the respondent[17].

Based on the preceding paragraph, it can be seen that securities disputes and trust disputes in China should have objective arbitrability. Its unique traits are: (a) There is no clear rule on this in relevant departmental laws. (b) Not all legally established domestic arbitration institutions are authorized to conduct these two types of arbitration. Only limited arbitration institutions staffed by relevant pro-

[13]Edited by Jiang Wei and Xiao Jianguo, *Arbitration Law* (3rd edition), Renmin University Press, 2016, p.143.
[14]http://www.csrc.gov.cn/shenzhen/c105616/c7439578/content.shtml, last visited on March 7, 2026.
[15]https://www.scia.com.cn/arbitrate/rule/15.html, last visited on March 7, 2026.
[16]https://www.accsh.org/news.html?id=1719, last visited on March 7, 2026.
[17]https://alk.12348.gov.cn/Detail?dbID=77&dbName=GNZC&sysID=676, last visited on March 7, 2026.

fessionals and having a certain cooperative relationship with related stock exchanges can engage in these two types of arbitration.

Thirteenth, paragraph 2 of Article 529 of *SPC Interpretations on the Civil Procedure Law* stipulates that, in line with Article 34 (formerly Article 33) and Article 279 (formerly Article 273) of *the Civil Procedure Law of China*, for cases that fall under the exclusive jurisdiction of the courts of the People's Republic of China, the parties concerned shall not agree to choose foreign courts for jurisdiction, except for those that agree to choose arbitration. From this perspective, whether it is a case governed by the domestic exclusive jurisdiction or a case governed by the foreign-related exclusive jurisdiction, both sides are definitely entitled to reach an arbitration agreement, thereby excluding the application of these two types of exclusive jurisdiction respectively. In other words, for these two types of civil and commercial disputes involving exclusive jurisdiction, they have objective arbitrability. In addition, for various civil and commercial cases involving specialized jurisdiction, as long as they are simple monetary and property disputes between equal subjects, they should also have objective arbitrability.

Fourteenth, according to Article 11, Article 14, paragraph 2 of Article 18, Article 19, Article 22, paragraph 2 of Article 28, Article 29, paragraph 2 of Article 46, paragraph 1 of Article 47, Article 61, Article 72, Article 109, and paragraph 1 of Article 116 of *the Special Maritime Procedure Law of China*, maritime disputes in China have objective arbitrability. From the content of Rule 3 "Scope of Acceptance" of the 2021 version of the Arbitration Rules of the China Maritime Arbitration Commission, the above viewpoint can also be confirmed[18]. In addition, besides the China Maritime Arbitration Commission which can arbitrate maritime disputes, other lawfully-established arbitration commissions in China can also arbitrate maritime disputes. For example, the "Scope of Arbitration Acceptance" on the website of Cangzhou Arbitration Commission (Cangzhou International Arbitration Center) can vindicate this assessment[19].

Fifteenth, enterprise insolvency refers to the overall and comprehensive debt repaying arrangement initiated either by a profit-making enterprise (the debtor) or its creditor when the enterprise's assets are insufficient to cover its debts due to poor management, and it is unable to repay its due debts pursuant to the law. *The Law of China on Enterprise Bankruptcy* was passed by the Standing Committee of the National People's Congress in 2006, establishing three related proceedings: settlement, reorganization, and liquidation. This law prioritizes encouraging profit-making enterprises to avoid bankruptcy through reorganization and applies to all corporate legal persons and some financial institutions. The causes of bankruptcy adopt a composite identification standard, mainly including "inability to repay due debts", "insolvency", and "obvious lack of solvency". In China, this type of case is under the jurisdiction of the court in the debtor's domicile.

[18] http://www.cmac.org.cn/index.php?catid=20, last visited on March 7, 2026.

[19] http://www.czzcwyh.com/zcw/c128500/202507/4da6f486cfde45a782921c0c64361eff.shtml, last visited on March 7, 2026.

In terms of its nature, the bankruptcy procedure of profit-making enterprises in China is a non-contentious affair governed by the judicial organs. Its main characteristics are: a) There are no plaintiffs, defendants, or two types of third parties in the bankruptcy proceedings, only the applicants and the respondents. b) In insolvency cases, the court is required to render its decisions on both procedural and substantive issues only in the form of procedural rulings. c) In pursuance of Article 12 of *the Law of China on Enterprise Bankruptcy* and relevant judicial interpretations, the procedural rulings declared by the people's court on bankruptcy matters, except for the procedural rulings rejecting the bankruptcy application, are not allowed to be appealed. d) When dissatisfied with the relevant procedural ruling made by the people's court, the only further judicial remedy is to apply for its reconsideration once (e.g. Article 66 of *the Law of China on Enterprise Bankruptcy*). In addition, the relevant parties are barred from applying for the civil case-reopening of such rulings, the court shall not rehear these cases on its own initiative, and the people's procuratorates are also prohibited from lodging civil protests against these rulings.

Based on descriptions of the above paragraph, it can be concluded that bankruptcy cases are not civil and commercial disputes, so they can neither be handled by civil litigation nor by civil and commercial arbitration. As a reflection of this assessment, *the Law of China on Enterprise Bankruptcy* enacted on August 27, 2006 says nothing about the arbitrability of enterprise bankruptcy matters. In another word, it can be asserted with certainty that bankruptcy cases do not have objective arbitrability in China.

Sixteenth, as for a series of uncontested affairs stipulated in Chapter 15 "Special Procedures" of *the Civil Procedure Law of China*, they are all clearly unsuitable to be resolved through arbitration. Furthermore, it is not appropriate to use arbitration to settle the de-right issues concerning lost negotiable instruments that can be endorsed and transferred by making use the procedure for public summons for exhortation in *the Civil Procedure Law of China*. However, it should be noted that cases governed by the expedited procedure for the monetary debt recovering stipulated in *the Civil Procedure Law of China* may be resolved through civil and commercial arbitration when certain preconditions are met.

Seventeenth, in China, disputes over rural land contracts, labor disputes, human resource disputes, and sports disputes do not have objective arbitrability. For example, Article 93 of *the New Arbitration Law of China* clearly points out that the arbitration for labor disputes, the arbitration for rural land contract and operation disputes, and the arbitration for sports disputes shall be governed by relevant laws such as *the Labor Dispute Mediation and Arbitration Law of China*, *the Law on Mediation and Arbitration of Disputes over Rural Land Contracts of China*, and *the Law of China on Physical Culture and Sports* respectively.

As for this sub-topic, readers should pay attention to the issue of defining standards for labor disputes. In this regard, paragraph 1 of Article 2 of *the Labor Law of China* provides that "*this Law* shall apply to enterprises, economic organiza-

tions owned by individuals, and workers who have formed labor relations with them within the territory of the People's Republic of China". This is the labor dispute referred to in *the Arbitration Law of China*. However, if there is a dispute between two companies arising from the performance of their signed employment contracts, it does not fall within the scope of labor disputes. "For example, in reality, it is common to use labor dispatch companies such as foreign enterprise human resources service companies as a medium for the employment contract of foreign employees. The labor contract of foreign employees is not directly signed with the employing unit, but is signed with the foreign enterprise human resources service company in the form of labor dispatch, and then sent to work at the employing unit. Therefore, although the actual labor occurs between the employee and the employing unit, and the salary may also be directly paid by the employing unit, not via the foreign enterprise human resources service company, but there is actually no labor contract between the foreign employee and the employing unit. In this case, when a dispute arises, it is possible to resolve the dispute between the employing unit and the labor-dispatching company through civil and commercial arbitration due to the lack of consensus on compensation for the related foreign employees" (Xu & Chen, 2014).

Eighteenth, the administrative contract is an agreement with administrative rights and obligations that is negotiated and agreed upon by administrative organs and their counterparties to achieve administrative management goals. In China, the parties to administrative contracts are not subjects on the equal status, so disputes arising from administrative contracts are not arbitrable. As a result, disputes arising from the following administrative contracts do not have objective arbitrability: rights transfer contracts of state-owned land usage, contracts of operating rural land, contracts for operating state-owned industrial enterprise, government franchise agreements (such as agreements involving special operations such as energy, municipal public utilities, transportation, environmental protection, etc.), national scientific research contracts, public expropriation compensation contracts (such as land and housing expropriation compensation agreements, etc.), national procurement contracts (such as national defense equipment procurement contracts, procurement contracts for grain, cotton, tobacco, etc.), contracts of undertaking public engineering projects (such as construction contracts for national highways, airports, bridges, large-scale water supply, power supply, gas supply), etc.

In terms of resolving disputes related to administrative contracts, we also need to pay attention to the following three details:

a) Administrative contract disputes are only a small part of administrative disputes. In China, administrative disputes refer to legal disputes arising between administrative agencies and citizens, legal persons, or unincorporated organizations due to the implementation of specific administrative acts. There are various types, mainly covering the following nine categories: i) administrative penalty disputes: such as refusing to accept penalty decisions such as fines, confiscation of

illegal gains, revocation of licenses, etc. ii) Disputes over administrative coercive measures: involving temporary coercion of individuals or property, such as sealing, seizure, freezing, etc. iii) Administrative licensing disputes: including refusal to grant permission, revocation of a previously granted permission, etc. iv) Administrative confirmation disputes: such as dissatisfaction with the determination of legal facts such as land ownership, marital status, and accident liability. v) Administrative payment dispute: involving the refusal or deduction of entitled benefits such as minimum living allowance and social insurance benefits. vi) Administrative expropriation and requisition disputes: such as objections to the compensation standards for land expropriation and house demolition. vii) Controversies over government information disclosure: Citizens' applications for government information disclosure are unreasonably rejected or not responded to. viii) Administrative agreement disputes: including disputes over the formation, performance, modification, termination, or invalidity of administrative contracts, such as disputes over PPP project agreements signed between the government and enterprises. ix) Disputes arising from other specific administrative actions, such as administrative rulings, administrative rewards, administrative supervision and inspection.

The above-mentioned administrative disputes usually focus on the specific administrative acts of administrative agencies, with the core concern being whether the acts are legal and appropriate. The main solutions include administrative reconsideration and administrative litigation, but not civil litigation and civil and commercial arbitration.

b) Disputes arising from the statutory or agreed administrative priority to benefit of the administrative organ mentioned in administrative contracts (such as their supervision power over the performance of the contract, their commanding power over the opposite party, their unilateral power of either modifying or terminating contract, etc.) can be resolved through administrative litigation, but shall not be resolved through civil litigation or civil and commercial arbitration.

c) In terms of the "civil or commercial rights and obligations between equal subjects" involved in administrative contracts, it is possible to submit them to civil and commercial arbitration when both parties have signed corresponding arbitration agreements before or after the dispute occurs. Specifically, "this type of dispute is common in cases where the disputing party is a joint venture. In practice, arbitration applications filed by one party of a joint venture company regarding the other party's unauthorized dissolution of the joint venture company, breach of contract in the capital transfer agreement, and false capital contributions all involve some administrative approval procedures. However, the subject and content of such disputes do not meet the constitutive requirements of administrative disputes and are disputes arising between equal parties due to the performance of the joint venture contract. Therefore, according to the arbitration clause in the joint venture contract, such disputes can be arbitrated" (Xu & Chen, 2014).

As for the conclusion drawn in the above paragraph, it can also be supported

by real cases in China. In this regard, the following two cases are very typical: one is the case of Libo County People's Government and others applying to confirm the validity of the arbitration agreement with the respondent (Shanshui Company) (He, 2024); The second is the case of Shengchuang Company (the applicant) applying for the revocation of the arbitration award against Xie Mou Chen and others (the respondents) (He, 2024).

Nineteenth, in China, foreign exchange management disputes lack objective arbitrability. Foreign exchange management disputes usually involve illegal buying and selling of foreign currencies, evading governmental supervision through virtual currency exchange, or assisting underground banks in fund transfer and other illegal activities. If these behaviors are serious, they may constitute criminal offenses such as illegal business operations; If the criminal prosecution standard is not met, administrative penalties shall be imposed, such as administrative fines in accordance with *Regulations on the Foreign Exchange System of China* (State Council Decree No. 532). As for this type of disputes, they apparently are not civil and commercial disputes between equal subjects.

Twentieth, does the civil and commercial dispute involving criminal offenses have objective arbitrability? This paper believes that this issue should be treated differentially according to the following two situations:

a) If civil and commercial disputes and the related criminal offenses can be separated, they can be handled independently without interfering with each other. For example, "the Supreme People's Court has issued a guiding case, namely the case of 'Private Loan and Guarantee Contract Dispute concerning Wu Guojun versus Chen Xiaofu, Wang Kexiang, and Zhongjian Real Estate Development Co., Ltd. of Deqing County'. The core viewpoint of the judicial judgment in this case is that private loan is suspected of or actually constitutes the crime of illegal absorption of public deposits, and if one party to the contract may be held criminally responsible, it does not necessarily affect the effectiveness of the private loan contract and the related guarantee contract. This is to divide apart the independent legal effect of civil and criminal trials in the same legal relationship from the perspective of substantive laws" (Huang & Zhang, 2020). Of course, in dealing with this situation, in order to ensure the priority and timeliness of criminal prosecution, the doctrine of "criminal first, civil later" may need to be implemented.

b) In terms of civil and commercial arbitration in China, when a criminal offense is indeed disguised as a corresponding civil and commercial dispute, the relevant arbitration institution shall not accept the related arbitration application, or the court with jurisdiction shall rule to revoke the relevant arbitration award in accordance with the laws. The author believes that the supporting basis for this revocation should be item (2) under paragraph 1 of Article 58 of *the old Arbitration Law of China* (Article 71 of the new law)—the matters decided in the award exceed the scope of the arbitration agreement or are beyond the arbitral authority of the arbitration commission.

c) The further handling thereafter should be divided into two sub-situations: i)

For private criminal prosecutions, if the victim has not filed a criminal complaint against the offender, the arbitration tribunal should still continue to handle the arbitration request as a civil and commercial case. But if the victim wishes to hold the offender criminally responsible, the arbitral tribunal may transfer the case materials to the court with jurisdiction for the related criminal trial. At the same time, the arbitral tribunal needs to procedurally reject the applicant's arbitration petition. ii) For criminal cases prosecuted by the people's procuratorates, if the arbitration tribunal finds that the substantive content of the case is suspected of criminal offenses during the arbitration, it shall immediately terminate the arbitration and promptly transfer the discovered situation or clues to the criminal investigation organs (such as public security organs) for handling.

In summary, when criminal clues are discovered during arbitration, the following measures can be taken: in the case of the abovementioned situation (a), arbitral proceedings and criminal prosecution can be conducted separately without affecting each other. The normative basis is the said guidance case publicized by the Supreme People's Court. Furthermore, the handling can also be done by referring to Article 1 and Article 10 of *SPC Provisions on Issues Involving Suspected Economic Crimes in the Trial of Economic Disputes* (Fa Shi [1998] No. 7, as revised by Fa Shi [2020] No. 17); when encountering the aforesaid situation (b), in addition to applying Article 71 of *the New Arbitration Law of China*, further processing should also be conducted by referring to Articles 11 and 12 of *SPC Provisions on Issues Involving Suspected Economic Crimes in the Trial of Economic Disputes*; When facing with the aforesaid situation (c) (i), reference can be made to Article 114 of *the Criminal Procedure Law of China* for case-handling; When encountering the aforesaid situation (c) (ii), reference can be made to paragraph 1 of Article 110 of *the Criminal Procedure Law of China* for case-handling.

Twenty-first, for the same civil and commercial case that is pending to the Chinese court, the parties to the same foreign-related dispute shall not submit it to civil and commercial arbitration separately within or outside China. In other words, civil and commercial cases in this state lack objective arbitrability. For example, as for the contract dispute between HemofarmDD, MAG International Trade Company, Suramo Media Co., Ltd. and Jinan Yongning Pharmaceutical Co., Ltd., "the case was arbitrated by the ICC International Court of Arbitration, and in the process of applying for recognition and enforcement of the related arbitration award in China ... After review, the High People's Court of Shandong applied to the Supreme People's Court for approval. After review, the Supreme People's Court remarks that:

'The arbitration award in this case was rendered by the ICC International Court of Arbitration and should be reviewed in accordance with *the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, which China has joined. ... In the case where the relevant court in China has procedurally ruled to preserve the property of the joint venture company (Jinan-Hemofarm Pharmaceutical Co., Ltd.) for the lease contract dispute between the joint venture

company and Jinan Yongning Pharmaceutical Co., Ltd., the ICC International Court of Arbitration's further hearing and ruling on the same lease contract dispute between Jinan Yongning Pharmaceutical Co., Ltd. and the joint venture company violates China's judicial sovereignty and the jurisdiction of the Chinese court. In line with item (c) under paragraph 1 as well as item (b) under paragraph 2 of Article 5 of *the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, recognition and enforcement of ICC Arbitration Award No. 13464/MS/JB/JEM shall be refused.'" (Zhang, 2019b).

As for the above paragraph, the following relevant details should also be noted: Based on the monographs of German jurists, the system of lis pendens (Anhangigkeit) is used to solve the following problem, that is, within a country, the same case cannot be accepted and tried by two or more courts at the same time or successively. Meanwhile, the court currently hearing the case is also barred from accepting it again. Essentially, the lis pendens is a public law injunction that only restricts the judicial organs within a country and does not directly bind relevant arbitration institutions (Jauernig, 2003; Musielak, 2005). Therefore, the situation discussed in the preceding paragraph does not directly involve the lis pendens, but rather directly concerns whether civil and commercial cases in this state have objective arbitrability or not. Furthermore, in the judicial process of recognizing and enforcing foreign arbitration awards, procedural issues related to such objective arbitrability may arise.

3. Final Remarks

This article provides a systematic explanation and analysis of the meaning of objective arbitrability, as well as various aspects of objective arbitrability in Chinese civil and commercial arbitration. The author draws a basic conclusion here:

Objective arbitrability refers to which types of civil and commercial disputes can be resolved through arbitration. Generally, all civil and commercial disputes involving only monetary and property conflicts between or among equal civil dealers that can be freely disposed of have objective arbitrability. Specifically, the judgment of the objective arbitrability can be divided into the following three situations: 1) disputes with objective arbitrability: civil and commercial contract disputes; Infringement disputes; disputes concerning rights *in rem*; civil and commercial disputes under the exclusive jurisdiction of Chinese courts; consumer disputes; copyright disputes; securities disputes; trust disputes; maritime disputes; civil and commercial disputes involving administrative contracts. 2) Disputes without objective arbitrability: determination of the civil legal status of the subject; identification of the abstract capacity to conduct civil transactions of the subject; identification of the capacity to personally conduct civil transactions of the subject; disputes involving personal rights such as marriage, adoption, guardianship, support, inheritance, etc.; disputes over the validity of wills; dispute over company dissolution; antitrust disputes; disputes concerning the harmed public interests of society; bankruptcy cases; the non-contentious affairs under the special proce-

dures of *the Civil Procedure Law of China*; the de-right issues of lost bills handled by the procedure for public summons for exhortation; disputes over rural land contract; labor disputes; human resources disputes; sports disputes; foreign exchange management disputes; administrative disputes; a civil and commercial case pending to a people's court. 3) Situations where specific analyses are required: disputes arising from concurrent yet conflicting substantive legal liabilities; patent and trademark infringement disputes; cases governed by the expedited procedure for the monetary debt recovering; civil and commercial disputes suspected of criminal offenses.

In terms of objective arbitrability, attention should also be paid to two sets of related details. They are:

1) When one of the following situations occurs, disputes regarding objective arbitrability will arise: a) When one party to the arbitration agreement brings a lawsuit to the court, the legally valid arbitration agreement between the two parties can become a procedural defense for the opposing party to assert that the court has no jurisdiction, except for situations where the arbitration agreement is invalid. b) When one party applies for arbitration, the other party may raise relevant procedural challenges to the selected arbitration committee. c) In the light of Article 71 of *the New Arbitration Law of China*, when applying to the relevant court to form a collegial bench to revoke an effective arbitration award. d) In line with Article 76 or Article 84 *of the New Arbitration Law of China*, when applying to the relevant court for a ruling not to enforce an effective arbitration award. e) When one party applies to the competent people's court for recognition and enforcement of an overseas effective arbitration award, the opposite party may raise such a procedural challenge.

2) In terms of the law application for disputes involving objective arbitrability, "we believe that the parties need to refer to at least the following laws or rules to make a preliminary assessment on the arbitrability of their dispute: a) the arbitral rules of the selected arbitration institution regarding the scope of its case acceptance; b) the laws of the country where the selected arbitration institution is located regarding the arbitrability of their dispute; c) the laws of the country where the arbitration to be held or the laws applicable to their arbitration procedure regarding the arbitrability of the dispute; d) the laws applicable to determining the effectiveness of their arbitration agreement regarding the arbitrability of the dispute; e) the laws applicable to the substantive relationship of the case or the related contract regarding the arbitrability of the dispute; f) the laws of the country, where the revocation, recognition, and enforcement of the relevant arbitration award or the determination of the effectiveness of the related arbitration agreement may be carried out, regarding the arbitrability of the dispute" (Xu & Chen, 2014).

Conflicts of Interest

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

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