



East Asia
Branch

CI Arb

HK Legal Services Forum Jiangsu – HK

Together we seize business opportunities

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Structure 流程

1. Ways to resolve a dispute 解决争议方法
2. Why choose arbitration as the preferred option 以仲裁解决争议的优势
3. Forum Shopping in the Seat : 2015 International Arbitration Survey 选择仲裁地:英国伦敦**Queen Mary University** 的国际仲裁调查
4. How the Seat is determined? 如何决定仲裁地
5. Legal significance and implications 仲裁地的法律地位重要性
6. What to consider in choosing the seat of arbitration when drafting the arbitration clause 如何在合约的仲裁条款清楚列明仲裁地和考虑因素
7. The Chartered Institute of Arbitrators and East Asia Branch 特许仲裁学会(东亚分会)

1. Ways to resolve a dispute

解决争议方法

- Litigation 诉讼
- Arbitration 仲裁
- Mediation/Conciliation 调解 / 和解
- Expert Determination 专家裁断
- Adjudication etc. 建筑业审裁

2. Why choose arbitration as the preferred option 选择仲裁的优势

Arbitration versus Mediation/ Conciliation 仲裁对比调解

- Mediation/conciliation may not be successful. 调解也许不成功
- In the event that the parties are able to reach a settlement agreement, the agreement itself is a valid contract but itself is a non-binding decision. 调解达成的协议，是一有效新的合约，并没有约束及执行力
- In contract, the arbitral award rendered by an arbitral tribunal is a legally binding and enforceable decision pertaining to the *res judicata* effect 仲裁裁决是一有约束及执行力的结果

2. Why choose arbitration as the preferred option 仲裁的优势

Arbitration versus Litigation 仲裁对比诉讼

There are 9 aspects that arbitration differs from court litigation including 有9点不同

1. Competence and special expertise of the decision maker 仲裁庭的专业性
2. Protection of privacy and confidentiality 保密性
3. Enforceability of the arbitral award 执行性
4. Speed and finality 速度和终局
5. Neutral forum 中立性
6. Procedures 程序灵活
7. Cost 成本方面
8. Special powers 特殊权力
9. Representation 代理人



3. Forum Shopping in the Seat of Arbitration- The 2015 Survey 选择仲裁地- 2015 QMU调解结果

2015 International Arbitration Survey by Queen Mary University of London
2015年英国伦敦Queen Mary University 的国际仲裁调查

Preferred and Improved Seats常用的仲裁地及进步的仲裁地

- The 5 most preferred and widely used seats are London, Paris, HK, Singapore and Geneva, i.e. **HK ranks the 3rd** 5个最常用的仲裁地是伦敦，巴黎，香港，新加坡及日内瓦
- The primary factor driving the selection of a seat is its **reputation** and **recognition** 选择仲裁地首要因素是名声及认受性
- Preferences for certain seats are based on **legal infrastructure, neutrality/impartiality** of the legal system, the **arbitration law, track records** of enforcing arbitration agreements and arbitral awards 其他因素是康制基建及制度，中立性，仲裁法及执行仲裁裁决的纪录
- Most improved seat over the past 5 years is Singapore, followed by HK 最进步的仲裁地是新加坡，其次香港
- **HKIAC** is the **3rd most preferred arbitral institution** after ICC and LICA and is the **most improved institution** ahead of SIAC, ICC, LCIA and ICDR/AAA 最常用仲裁机构是**ICC**，其次是**LICA**，第三是**HKIAC**.

3. Forum Shopping in the Seat of Arbitration 选择仲裁地

It may mean “*shopping around for a suitable jurisdiction and venue or seat in which potentially more than one option legitimately exists, or indeed more than one has already been invoked or more than one has already been exhausted*”. Richard Kreindler’s article in “Arbitral Forum Shopping”

In short, one party is seeking to gain certain legal advantages or benefits out of forum shopping; or avoid certain legal disadvantages; or simply to find a seat where one feels comfortable/good/is familiar with.

简而言之，选择仲裁地是找寻法律优势或减少法律不确定性或找寻一处的仲裁法律是你熟悉的。

3. Forum Shopping in the Seat of Arbitration 选择仲裁地

Seat of arbitration is important because 仲裁地的重要性

1. It is the country where the award was made and the arbitration took place. 它是仲裁裁决的所在地
2. The seat is the juridical seat of the arbitration, i.e. legal seat (not the “physical” place) 仲裁地具有法律地的地位
3. It provides the territorial link between the arbitration itself and the arbitration law of the place i.e. to what extent are the courts’ involved in the process 这串连了与当地法院的关系
4. It is the place for challenges or annulment process in relation to the arbitration 它亦是挑战裁定的法院的所在地
5. Enforcement stage, Art V(1)(a) and (d) of the NYC: an award may be refused if the arbitration agreement is not valid under the law of the seat or there is non-conformity of the law of the seat e.g. composition, arbitral procedures etc. 在他国处理执行仲裁裁决时，考虑的因素包括是仲裁协议在仲裁地是否有效，仲裁庭的成立是否正规等

4. How the Seat is determined

如何决定仲裁地

Seat of arbitration is usually determined by 仲裁地是

Certain 明确

Explicit

1. Express agreement of the parties (by the arbitration clause or subsequent agreement with no arbitration clause) 双方协议确定

Not explicit

2. Fixed at the place where the arbitration institution is located 在仲裁机构的地方

Uncertain 不明确

3. Determined by the arbitration institution 由仲裁机构裁定
4. Determined by the tribunal if the parties have submitted to certain rules 由仲裁庭决定
5. Last resort, the seat of arbitration is determined in accordance with the applicable law of the place where one party seeks such determination. 由有关的地方法律决定那里是仲裁地

5. Legal significance and implications

仲裁地的法律地位重要性

Why parties want to shop the seat, why they prefer one seat over another, which areas they look into in shopping the seat and how they should do the shopping:- 在选择仲裁地时:-

1. The party initiating the arbitration has an interest in choosing the appropriate regimes, rules and seat from the standpoint of jurisdiction (as a weak or defective jurisdiction will undermine the continuation of the arbitration and the enforceability of the award) 提出仲裁通知书的一方希望仲裁可以顺利进行
2. Forum shopping in arbitration is to obtain a home advantage, or at least the perception of such an advantage, insofar as a particular seat (and its national law on arbitration) will give rise to the selection or appointment of arbitrators with a corresponding nationality or background. 有否主场优势如熟悉法律，选聘仲裁员 (国籍及背景等)
3. By selecting a particular seat, the forum shopper influences which mandatory principles of law may apply with respect to the procedure in the arbitration and which local courts at the seat may play in its supervisory role. 选择仲裁地后亦包括了选定仲裁地所在地方之法院的监管 / 协助角色

5. Legal significance and implications

仲裁地的法律地位重要性

4. A seat may be chosen out of an interest in being able to enforce it locally in accordance with the local enforcement standards and procedures. 原因之一是较容易在当事人本土执行
5. The law of the seat normally dictates the legal standard for annulment of any award. 仲裁地的当地法院是进行撤销仲裁裁决的法院，相关的法律准则及考虑至为重要
6. The seat may be chosen out of considerations of convenience, cost and user-friendliness of a location and facilities. 可以是因方便，成本低及熟悉，最易掌握及理解去选仲裁地
7. Applicable municipal law may have an impact on the choice of arbitral seat and procedures, e.g. certain JV disputes in China are referred specifically to CIETAC for arbitration. 某些当地法律可能影响仲裁地的选址

5. Legal significance and implications

仲裁地的法律地位重要性

Particular legal issues involving the choice or a particular seat 选仲裁地可能引伸的法律问题

1. The conflict of laws rules applied by the arbitral tribunals 冲突法
2. The law applicable to certain issues of arbitration 个别议题
3. The involvement of the courts in the seat of arbitration 法院角色
4. The recognition and enforcement of the arbitral award 执行方面

6. What to consider in choosing the seat when drafting the arbitration clause 选择仲裁地的考虑

When drafting the arbitration clause:- 当决定选择那处是仲裁地，应考虑

1. Well aware of the legal significance of the seat of the arbitration 仲裁地所带来的法律重要性
2. Locate the primary enforcing states where future award may be enforced, i.e. where the assets of the other party are located. 仲裁裁决会在那些地方进行
3. Compare the legal infrastructure of different seats in terms of procedures, assets preservation, assets preservation, evidence taking, challenges, annulment procedures and its track records of enforcing arbitration agreements and arbitral awards 比较各地法律，程序，产权保障，撤销及进行裁决之纪录
4. Consider the other factors such as neutrality, logistical convenience and costs. 中立性，方便性及成本
5. Designate a seat explicitly. 明确写出仲裁地

A GOOD SEAT CHOSEN AT THE BEGINNING MAKES A GOOD ENDING IN ARBITRATION

好的开始 (明确选定仲裁地)，会带来完满的后果 (满意的过程及可执行的裁决)

7. The Chartered Institute of Arbitrators and the EAB

CI Arb is a leading professional membership organization representing the interests of alternative dispute practitioners worldwide.

英国特许仲裁学会（CI Arb）是一个非牟利性的在英注册的慈善团体通过拥有众多分支机构的国际网络为公共利益务

With over 14,500 members located in more than 134 countries spreading in 6 continents, CI Arb supports the global promotion, facilitation and development of all forms of private dispute resolution.

在全球拥有14,500名(分布约134国家)的会员分布在6大洲，他们在促进和发展私法争端解决领域

As a not-for-profit, UK registered charity, CI Arb works in the public interest through an international network of 37 Branches and EAB is the largest overseas Branch outside UK.

作为非牟利组织，英国注册慈善机构，是英国以外最大的海外分支机构，通过37个分支机构和EAB的国际网络为公众利益工作

7. The Chartered Institute of Arbitrators and the EAB

As a professional Chartered Institute, CI Arb offers a range of education and vocational training courses and qualifications from introductory to advanced levels in the various disciplines of dispute resolution, including arbitration, mediation and construction adjudication.

作为一个专业特许学会，他们为仲裁员、调解员及裁判员提供教育及培训，从争议解决的各个学科的入门到高级，包括仲裁，调解和建筑裁决

Membership of CI Arb (ACI Arb, MCI Arb, FCI Arb, Chartered Arbitrator) is widely recognized. It carries a worldwide reputation of knowledge, experience and excellence. Besides, there are benefits of networking, attending seminars or trainings, receiving journals and newsletters and also YMG activities

CI Arb (ACI Arb, MCI Arb, FCI Arb, 特许仲裁员) 的成员资格被广泛认可，它具有世界范围内的知识，经验和卓越的声誉，此外，还有网络的好处，参加研讨会或培训，接收期刊和通讯以及**YMG**活动

7. The Chartered Institute of Arbitrators and the EAB

Who can become an arbitrator? 谁可以成为仲裁员

1. Anyone can become an arbitrator. While many arbitrators are in the legal profession, many are not and come from various professional and technical backgrounds. 任何人都可以成为仲裁员，虽然许多仲裁员有法律专业，但许多来自各行各业
2. Arbitration is a secondary profession. 仲裁是另一专业
3. The arbitrator has a judicial role in listening to the facts and evidence presented by the parties, applying the relevant law and issuing a final award, hence training and education is important (especially in the international context) 仲裁员在听取双方提交的事实和证据方面及裁决均具有法律作用，要正确适用有关法律并颁发最终裁决书，因此培训和教育很重要 (特别是在国际仲裁背景下)

SO, WELCOME TO JOIN CIARB(EAB)

所以欢迎加入 CI Arb (EAB)