

Yuan Wang

Introduction and Comparison
of Chinese Arbitration
Institutions

Heft 126

May 2013

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by

Yuan Wang

Institute of Economic Law
Transnational Economic Law Research Center (TELC)
School of Law
Martin Luther University Halle-Wittenberg

Yuan Wang, LL.B (Southwest University of Political Science and Law, China), LL.M (International Economic Law) is a PhD candidate at the Faculty of Law, Economics and Business of the Martin Luther University, Halle/Wittenberg; she is concurrently a visiting scholar at Columbia Law School.

Christian Tietje/Gerhard Kraft/Matthias Lehmann (Hrsg.), Beiträge zum Transnationalen Wirtschaftsrecht, Heft 126

Bibliografische Information der Deutschen Bibliothek

Die Deutsche Bibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet unter <http://www.dnb.ddb.de> abrufbar.

ISSN 1612-1368 (print)
ISSN 1868-1778 (elektr.)

ISBN 978-3-86829-589-4 (print)
ISBN 978-3-86829-590-0 (elektr.)

Nominal Charge: 5 Euro

The „Essays on Transnational Economic Law“ may be downloaded free of charge at the following internet addresses:

<http://institut.wirtschaftsrecht.uni-halle.de/de/node/23>
<http://telc.jura.uni-halle.de/de/node/23>

Institut für Wirtschaftsrecht
Forschungsstelle für Transnationales Wirtschaftsrecht
Juristische und Wirtschaftswissenschaftliche Fakultät
Martin-Luther-Universität Halle-Wittenberg
Universitätsplatz 5
D-06099 Halle (Saale)
Tel.: 0345-55-23149 / -55-23180
Fax: 0345-55-27201
E-Mail: ecohal@jura.uni-halle.de

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A. Introduction

The arbitration institutions within and around the People's Republic of China (PRC) have become increasingly attractive for investors and businesspeople from both China and world-wide.

Take for example the most prominent arbitration institution in the PRC, the China International Economic and Trade Arbitration Commission (CIETAC). Annually, it has an average number of 800 to 1200 cases with a steady increase; most cases are of foreign nature.¹ In addition to the arbitration institutions located on the mainland China, Hong Kong Special Administrative Region (Hong Kong SAR) has been a favorable venue for China-related international arbitration, as well. The Hong Kong International Arbitration Centre (HKIAC) witnessed a large increase of mainland-related caseload since the turnover in 1997.² The arbitration institutions in other locations of the Greater China Region are also reasonable choices for China-related disputes.

Despite the promising caseload, many arbitration institutions in China are not well known by the international community. The reasons of which, *inter alia*, may be because of the young age of these institutions and their low international profile.

For the interests of both practitioners and academia, this article aims to introduce various arbitration institutions in the Greater China region in a comparative approach. A general introduction into each institution is highlighted in Part B. The brief history and organization of the arbitration institutions located in the PRC, Taiwan, Hong Kong SAR and Macau Special Administrative Region (Macau SAR) are presented in this part. Moreover, a comparison among different procedural factors of those institutions is explored subsequently in Part C.

B. General Introduction to Chinese Arbitration Institutions

I. China International Economic and Trade Arbitration Commission

1. History

In 1954, the Chinese Central Government passed the *Decision Concerning the Establishment of a Foreign Trade Arbitration Commission (FTAC) within the China Council for the Promotion of International Trade (CCPIT)*.³ This decision intended to develop an institution and relevant rules on issues of arbitral tribunals and enforce-

¹ The Latest Development in CIETAC Arbitration of 19. February 2009, available at: <<http://www.ilsac.gov.au/InternationalLegalCooperation/AustraliaChinaLegalProfessionDevelopmentProgram/ACLDPProgram2009/Documents/The-Latest-Development-in-CIETAC-Arbitration-by-Zhou-Wen-Conference-Paper.pdf>> (visited on 15. December 2012).

² HKIAC Annual Report 2008 of 31. December 2008, available at: <http://www.hkiac.org/images/stories/hkiac/2008_Annual_Report.pdf> (visited on 15. December 2012).

³ The Decision was made on May 6, 1954 at the 215th Session of the Government Administration Council, for more information, see *Tao*, Arbitration Law and Practice in China, 8.

ment of arbitral awards. Correspondingly, in 1956, the CCPIT put forth *Provisional Rules on the Arbitration Procedures for the Foreign Trade Arbitration Commission* within the CCPIT.⁴ The Provisional Rules were promulgated for settling contracts and transactions disputes which derive from Sino-foreign trade. The number of cases presented to the FTAC before 1978 is unknown. Allegedly, the FTAC handled only twenty cases in the first decade after its establishment, mostly through means of conciliation.⁵

In 1980, consistent to the „Open Door Policy”, the Chinese Central Government altered the name of the FTAC to the *Foreign Economic and Trade Arbitration Commission* (FETAC).⁶ After 1980, the FETAC handled some conflicts relating to Chinese-foreign economic cooperation, such as Sino-foreign joint ventures, foreign-owned capital enterprises and international bank credit.⁷

Eight years later, the FETAC was renamed to the *China International Economic and Trade Arbitration Commission*, the name which is still used today.⁸ Significant progress has been made in the CIETAC since 1988. Before 1988, the arbitration rules were to be drafted by the CCPIT, the governmental branch under the Central Government. However, the Central Government granted the CIETAC the competence to draft its own arbitration rules.⁹ From 1988 to the present, the CIETAC promulgated seven versions of arbitration rules, which has largely reflected the UNCITRAL Model Law.¹⁰

2. Organization

As the largest arbitration institution in the PRC, the CIETAC has its general headquarters in Beijing. Four sub-commissions can be found in Shenzhen (south China), Shanghai (east China), Chongqing (southwest China) and Tianjin (Financial Arbitration Center), respectively.¹¹ It is important to note that the *Shanghai Commission* has become independent from the headquarters in April 2012. The Shanghai branch will eventually form its own panel of arbitrators and arbitration rules.¹²

⁴ Zhao, *The Modifications and Development of the Arbitration Rules of CIETAC*, 1.

⁵ Zhao/Song/Li, *Journal of International Arbitration* 20 (2003), 169-188.

⁶ The Notice of Concerning the Conversion of Foreign Trade Arbitration Commission into Foreign Economic and Trade Arbitration Commission, promulgated by the State Council of the PRC on 6 February 1980, for more information, see *Mistelis*, *Concise International Arbitration*, 513.

⁷ *Ibid.*

⁸ The State Council, *Official Reply Concerning the Renaming of the Foreign Economic and Trade Arbitration Commission as the China International Economic and Trade Arbitration Commission and the Amendments to Its Arbitration Rules*, 21 June 1988, for more information, see *Tao*, *Arbitration Law and Practice in China*, 21.

⁹ *Ibid.*

¹⁰ For the earlier versions of the CIETAC Arbitration Rules, see *Tao*, *Arbitration Law and Practice in China*, 17-31.

¹¹ Official Introduction of the CIETAC is available at: <<http://www.cietac.org/index.cms>> (visited on 15. December 2012).

¹² Further information of the independence of Shanghai Branch from the CIETAC headquarters, see *Beijing-Shanghai rivalry leads to schism at CIETAC* of 16. April 2012, available at: <<http://www.globalarbitrationreview.com/news/article/30473/beijing-shanghai-rivalry-leads-schism/>> (visited on 15. December 2012).

The core personnel of the CIETAC include a Chairman, a Vice-Chairman and other staff members.¹³ The Chairman is the official representative of the CIETAC according to the CIETAC Arbitration Rules, the Vice-Chairman may perform the functions of the Chairman with authorization.

For daily administration, the CIETAC has a Secretariat at the headquarters in addition to Secretariat branches at sub-commissions.¹⁴ However, both the headquarters' Secretariat and other branches' are under the leadership of the Secretary General.¹⁵ The Beijing headquarters, South China Branch, Southwest Branch and Tianjin International Financial Arbitration Centre belong to the unified inner organization of the CIETAC. The administrative approach of the Shanghai sub-commission has not been settled following its recent separation.

The CIETAC consists of three specialized committees: the Expert Advisory Committee, the Case Editorial Committee and the Arbitrator Qualification and the Evaluation Committee.¹⁶ The Expert Advisory Committee has multiple tasks. It is, first, responsible for research and consultation on both material and procedural problems; second, the Expert Advisory Committee should supervise the timely modification of the CIETAC Arbitration Rules. Moreover, the Expert Advisory Committee is responsible for training the arbitrators. Concurrently, the Case Editorial Committee is responsible for editing the case collection at the end of the hearing as well as the annual magazines of the CIETAC. At the same time, the Arbitrator Qualification and Evaluation Commission reviews and evaluates the arbitrators' qualifications and performance under the Chinese Arbitration Law and the CIETAC Arbitration Rules. Furthermore, both the Case Editorial Committee and the Arbitrator Qualification and Evaluation Committee will make recommendations for the appointment and dismissal of arbitrators.

Depending on the specific nature of potential disputes, the CIETAC also establishes professional committees under its auspices. Currently there are the Arbitration Center for Food Industry and the Business Professional Committee.¹⁷ The CIETAC and the Chinese Food Industry Association created the Arbitration Center for Food Industry together. The Center is dedicated to provide legal advice and dispute solution service for the food industry enterprises, companies and individuals. The Business Professional Committee was established by the CIETAC, the China Chamber of Commerce and the CCPIT Business Industry Branch. The Committee provides legal consultation and dispute resolution mechanisms for the commercial circulation enterprises, companies and individuals.

With regard to the arbitrators, the CIETAC has a „closed panel” tradition.¹⁸ All Chinese arbitration commissions are required to produce a registered list of arbitrators

¹³ Article 2.1, CIETAC Arbitration Rules 2012, available at: <http://www.cisg.law.pace.edu/cisg/moot/CIETAC_Rules_2011.pdf> (visited on 15. December 2012).

¹⁴ Article 2.2, CIETAC Arbitration Rules 2012.

¹⁵ Article 2.3, CIETAC Arbitration Rules 2012.

¹⁶ For more information of the CIETAC, <<http://cn.cietac.org/AboutUS/AboutUS.shtml>> (visited on 15. December 2012).

¹⁷ *Ibid.*

¹⁸ *Gu*, *Journal of International Arbitration* 25 (2008), 121 (149 f.).

by Chinese Arbitration Law.¹⁹ With the existence for exceptional foreign arbitrators, the Chinese arbitrators are hired by the CIETAC as working staff with a monthly salary.²⁰ These arbitrators must also attend training programs provided by the CIETAC to increase their professional knowledge.²¹

II. Beijing Arbitration Commission

Beijing Arbitration Commission („BAC“) was established on 28 September 1995 following the enactment of the Chinese Arbitration Law on 1 September 1995. The first version of BAC Arbitration Rules was published in the same year. The Arbitration Rules were subjected to modifications in 1996, 1997, 1999, 2001, 2004 and 2008.²² The frequent modifications of the Arbitration Rules reflected the quick adaptation of the BAC into the international commercial arbitration market. The caseload of the BAC increased from seven disputes in 1995 to 1,566 disputes in 2010.²³ As a young arbitration institution, the BAC has achieved tremendous success which paralleled the economic development of China.

In addition to the arbitration service, on 1 August 2011, the Mediation Center of the BAC was established to promote the settlement of high-end commercial disputes by mediation.²⁴ The Center is considered to be a means to achieve a harmonious society.

From the institutional perspective, Beijing People’s Government organized the establishment of the BAC. Under the guidance of the Chinese Arbitration Law, local governments should assist the organization of domestic arbitration commissions.²⁵ However, although the local governments supported the creation of the respective arbitration commissions, it does not mean that the Chinese local governments control the decisions of these arbitration commissions. For example, a Vice Chairwoman of the BAC mentioned that the future organizational reform of the BAC would adhere

¹⁹ Article 13, Chinese Arbitration Law, both Chinese and English versions are available at: <<http://www.lawinfochina.com/display.aspx?lib=law&id=710&CGid=>> (visited on 15. December 2012).

²⁰ CIETAC Regulation on Appointment of Arbitrators (Chinese version), available at: <<http://cn.cietac.org/Arbitration/ArbitrationPrescribeEngage.shtml>> (visited on 15. December 2012).

²¹ Arbitrators Training Regulation of CIETAC (Chinese version), available at: <<http://cn.cietac.org/Arbitration/ArbitrationPrescribeTraining.shtml>> (visited on 15. December 2012).

²² For the historical versions of the BAC Arbitration Rules, available at: <<http://www.bjac.org.cn/rule/linian.htm>> (visited on 15. December 2012).

²³ General Introduction into BAC is available at: <<http://www.bjac.org.cn/introduce/index.html>> (visited on 15. December 2012).

²⁴ Introduction and Recommendation of the Mediation Center, available at: <<http://www.bjac.org.cn/mediation/index.html>> (visited on 15. December 2012).

²⁵ Article 10, Chinese Arbitration Law, available at: <<http://www.lawinfochina.com/display.aspx?lib=law&id=710&CGid=>> (visited on 15. December 2012).

to the direction of being private and independent. It will also follow the basic principle of separation between the government and the arbitration institution.²⁶

From the inner governance aspect, the BAC is led by the Conference of the Committee.²⁷ The Committee decides the most important issues regarding personnel, money and the modification of arbitration rules.²⁸ A Chairman, four Vice Chairmen and ten other members constitute the current Committee of the BAC.²⁹ A Disciplinary Committee is set by the Committee to decide the qualification of the arbitrators and supervise the arbitrators' behaviors under the BAC Arbitration Rules.³⁰ The BAC Office carries out the daily administrative work of the BAC.³¹ The BAC Office is in charge of the procedural work of the arbitration proceedings and the collection of arbitration fees.³² Lastly, the Committee has the freedom to entrust the Office with other missions.

III. Shanghai Arbitration Commission

Similar to the BAC, the *Shanghai Arbitration Commission* (SAC) was founded on 18 September 1995 by the efforts of the Legal Affairs Office of Shanghai Government under the guidance of the Chinese Arbitration Law.³³ The SAC is also one of the most significant arbitration commissions in the PRC. Demonstrating a stable development, the annual acceptance of cases by the SAC varies from 1,000 disputes to 1,600 disputes since 2004.³⁴

The SAC, following the professionalization of the Commission, established three special arbitration courts: the Financial Arbitration Court,³⁵ the Intellectual Property Arbitration Court³⁶ and the International Shipping Arbitration Court.³⁷ The SAC created these three courts in the year of 2007, 2008 and 2009 respectively.

²⁶ Arbitration Institutions: Administrative or Civil? (Zhong Cai Ji Gou: Xing Zheng Hua Hai Shi Min Jian Hua?) of 29 January 2008, available at: <http://www.china.com.cn/xxsb/txt/2008-01/29/content_9610852.htm> (visited on 15. December 2012).

²⁷ Article 5-12, BAC Arbitration Rules, available at: <<http://www.bjac.org.cn/en/arbitration/index.html>> (visited on 15. December 2012).

²⁸ Article 8, BAC Arbitration Rules.

²⁹ See Article 5, BAC Arbitration Rules, also Committee members at: <<http://www.bjac.org.cn/organize/weiyuanhui.html>> (visited on 15. December 2012).

³⁰ Article 18, BAC Arbitration Rules.

³¹ Article 13, BAC Arbitration Rules.

³² Article 14, BAC Arbitration Rules.

³³ Article 2 of SAC Charter states that „the SAC is organized by Shanghai People's Government according to the law”, available at: <http://sme.sgst.cn/zc/zcrc/200709/t20070907_153693.html> (visited on 15. December 2012).

³⁴ Statistics of the SAC of 31 December 2011, available at: <http://www.accsh.org/about/?parent_id=5&class_id=70> (visited on 15. December 2012).

³⁵ Shanghai Court of Financial Arbitration, available at: <<http://www.accsh.org/jr/>> (visited on 13. November 2012).

³⁶ Shanghai Court of Intellectual Property Arbitration, available at: <<http://www.accsh.org/building.html>> (visited on 15. December 2012).

³⁷ Shanghai Arbitration Court of International Shipping, available at: <<http://www.accsh.org/hy/>> (visited on 15. December 2012).

As of 2012, the SAC has 11 sub-divisions in different areas of Shanghai with an increasing caseload.³⁸ These sub-divisions are affiliated with the SAC. Some are established according to geographic considerations: *Pudong* Arbitration Center (2004), *Songjiang* Arbitration Center (2005), *Lingang* Arbitration Center (2006), *Minxing* Arbitration Center (2006) and *Baoshan* Arbitration Center (2008). The five centers are located in the suburban areas and the *Pudong* New Area of Shanghai. The remaining sub-divisions of the SAC were created to render decisions with respect to the corresponding nature of the dispute: Real Estate Decoration Arbitration Center (2002), Small Consumers Arbitration Center (2003), Arbitration Center of Automobile Consumption (2005), Arbitration Center of Steel Industry Service Association (2008), Taiwan Related Arbitration Center (2009), as well as Commerce and Trade Arbitration Center (2011).

The SAC Committee has a Chairman and four Vice Chairmen. The Chairman and Vice Chairmen govern the administrative aspects of the SAC with other committee members.³⁹ Moreover, the Committee decides the most important issues of the SAC, such as the appointment or discharge of arbitrators, modification of the Arbitration Rules, etc.

Five departments comprise the SAC governance: Case Acceptance Department, Arbitration Department I and II, Development Department as well as Administrative Department.⁴⁰ The Secretariat Office of the SAC oversees the five departments generally.⁴¹ The Secretariat is in charge of acceptance, delivery, record and maintenance of the arbitration paper works. It is also authorized to collect the arbitration fees.⁴² Each of the Arbitration Courts have individually assigned Secretariats.

IV. Chinese Arbitration Association

Formerly known as the *Commercial Arbitration Association of the Republic of China* (CAAROC), the CAAROC changed its professional name to the *Chinese Arbitration Association, Taipei* (CAA) for adaption of the ROC Arbitration Act.⁴³ The CAA has become the leading arbitration institution in Taiwan and one of the most influential arbitration centers in Asia Pacific since its establishment in 1955.⁴⁴ The average caseload of the CAA is around 200 disputes each year, both domestic and international.⁴⁵

³⁸ The information is available at: <<http://www.accsh.org/accsh/english/node61/index.html>> (visited on 15. December 2012).

³⁹ Article 4 of the SAC Charter, available at: <http://sme.sgst.cn/zc/zcrc/200709/t20070907_153693.html> (visited on 15. December 2012).

⁴⁰ The governance information of the SAC is available at: <http://www.accsh.org/about/?parent_id=2&class_id=14> (visited on 15. December 2012).

⁴¹ *Ibid.*

⁴² Article 12 of the SAC Charter of 7. September 2007, available at: <http://sme.sgst.cn/zc/zcrc/200709/t20070907_153693.html> (visited on 15. December 2012).

⁴³ CAA English Brochure, 2.

⁴⁴ *Ibid.*

⁴⁵ The caseload of CAA is available at: <<http://www.arbitration.org.tw/english/about.htm>> (visited on 15. December 2012).

Under the auspices of the CAA, the CAA Mediation Center was opened in May 2003 pursuant to the ROC Arbitration Act.⁴⁶

„In the absence of any arbitration agreement [to the contrary], the parties may choose to submit their dispute to mediation and jointly appoint a mediator to conduct the mediation. Upon the successful conclusion of the mediation between the parties, the mediator shall record the results of the mediation in a mediated agreement.”⁴⁷

Accordingly, the Center administers all cases referred to the CAA through mediation.

Regarding inner organization, the Annual General Assembly Conference leads the CAA.⁴⁸ The most fundamental matters of the CAA are decided by the Conference through a majority vote. A Board of Directors makes the key policies for the future plans of the CAA. A Chairperson is the highest-ranking representative of the CAA. Besides the guidance of the General Assembly and the Board of Directors, the day-to-day business of the CAA is under the charge of the Secretariat. Seven sub-divisions are under the Secretariat according to different works.

Fourteen Specialized Committees are set up by the CAA to provide „quality alternative dispute resolution service”. Some of the Committees are entrusted with a special field of disputes, such as the Construction Dispute Committee, the Maritime Arbitration Committee, the Intellectual Property Rights Dispute Committee, etc. Some Committees are in charge of the governance of the arbitrators, such as the Training and Study Committee, the Ethics Committee and Appointment Committee. The rest Committees are invested with functions in regard to the research of the CAA, registration of applications or collection of fees.⁴⁹

V. Hong Kong International Arbitration Center

Funded by contributions from business, society and the Hong Kong government in 1985, *Hong Kong International Arbitration Center* (HKIAC) is now completely independent.⁵⁰ Today, the HKIAC has developed as a major international arbitration institution. Aimed to promote the development of mediation, the Hong Kong Mediation Council (HKMC) was set up within the HKIAC in January 1994.⁵¹

The organization of the HKIAC is centered on the HKIAC Council with the support of the Appointment Advisory Board and the International Advisory Board.

⁴⁶ Information of the Mediation Center is available at: <http://www.arbitration.org.tw/english/about_organization.htm> (visited on 15. December 2012).

⁴⁷ Article 45, sub para1, ROC Arbitration Act, available at: <<http://www.arbitration.org.tw/english/image/Arbitration/Arbitration%20Law%20of%20the%20Republic%20of%20China.pdf>> (visited on 15. December 2012).

⁴⁸ Information of the Organization is available at: <http://www.arbitration.org.tw/english/about_organization.htm> (visited on 15. December 2012).

⁴⁹ CAA English Brochure, 4.

⁵⁰ *Moser/Cheng*, Hong Kong Arbitration, 24.

⁵¹ *Yang*, in: Rovine (ed.), *Mediation in Hong Kong*, 309.

The HKIAC Council makes the most significant decisions for the management of the HKIAC.⁵² The Management Committee, as well as the Secretariat, assist the daily management of the HKIAC Council.

The Appointment Advisory Board is established by the HKIAC Council to make final decisions on appointment of an arbitrator or umpire. They are also consulted upon to determine the number of arbitrators for a particular dispute.⁵³ In addition, the International Advisory Board is formed by a limited number of leading businesspersons as well as distinguished figures in international arbitration communities in Hong Kong SAR.⁵⁴ The Board consults on the present policies of the HKIAC as well as its future development.

The Secretariat functions through ten sub-divisions of the HKIAC: the HKIAC Arbitrator Appointment Committee, the Asia Domain Names Dispute Resolution Center, the HKIAC Domain Name Panel Selection Committee, the Maritime Arbitration Group, the HKIAC Users' Council, the Joint Consultative Committee, the HK 45, the HKIAC Panel Selection Committee, the Hong Kong Mediation Council and the HKIAC Mediator Accreditation Committee.⁵⁵

VI. World Trade Center Macau Arbitration Center

The *World Trade Center Macau Arbitration Center* (WTCM) was authorized by Order 48/GM/98,⁵⁶ which was published in the Macau Official Gazette number 24 of 15 June 1998 as one of the four arbitration institutions located in Macau. The other three are the Macau Consumers Council, the Macau Lawyers Association and the Arbitration Center on Insurances and Private Funds. However, the Macau Consumers Council and Arbitration Center on Insurances and Private Funds hear disputes below MCD 50, 000 in the area of consumer's disputes, insurance conflicts as well as problems in private funds as defined by Macau government.⁵⁷ Comparatively, the Macau Lawyers Association and WTCM have the potentiality to shoulder more tasks from international commercial arbitration than they actually do. The WTCM is led by the Committee which is composed of a Chairman, a Vice Chairman, two Committee members and a Secretary General.⁵⁸

⁵² More information of the HKIAC is available at: <<http://www.hkiac.org/index.php/en/hkiac/about-us>> (visited on 15. December 2012).

⁵³ Article 4, HIKIAC Arbitration (Appointment of Arbitrators and Umpires) Rules, available at: <[http://www.legislation.gov.hk/blis_pdf.nsf/4f0db701c6c25d4a4825755c00352e35/096C7758C175E2A9482578B00055CFE1/\\$FILE/CAP_609B_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/4f0db701c6c25d4a4825755c00352e35/096C7758C175E2A9482578B00055CFE1/$FILE/CAP_609B_e_b5.pdf)> (visited on 15. December 2012).

⁵⁴ HKIAC 2011 Annual Report of 31. December 2011, available at: <http://www.hkiac.org/images/stories/hkiac/2011_Annual_Report.pdf> (visited on 15. December 2012).

⁵⁵ A chart of the structure of the HKIAC is available at: <<http://www.hkiac.org/index.php/en/hkiac/organisation-structure>> (visited on 15. December 2012).

⁵⁶ For information of the WTCM, see <<http://www.wtc-macau.com/arbitration/eng/index.htm>> (visited on 13. November 2012).

⁵⁷ Zhang, in Yu/Zhao (ed.), *Arbitration Legal System of Macau*, 271.

⁵⁸ The personnel of the WTCM is available at: <<http://www.wtc-macau.com/arbitration/gb/index.htm>> (visited on 15. December 2012).

Historically, arbitration has not been a popular dispute resolution method in Macau, which was shown clearly in the Macau Sardine Case in 1987.⁵⁹ With regard to the WTCM, to the end of 2011, it has had only two commercial disputes to settle.⁶⁰ Nevertheless, the future of arbitration in Macau is promising based on rapid local economic growth, on one hand, and the heavy caseload burden of the Macau courts, on the other.⁶¹

C. Comparison of Arbitration Procedures of the Arbitration Institutions

Having provided a brief introduction into the history and organization of the arbitration institutions related to China, the interesting points in the arbitration procedures according to the institutional arbitration rules are going to be comparatively analyzed. Three procedural issues are going to be studied in the following: the panel list, the general endurance of the procedures and the cost of the procedures at various arbitration institutions.

I. Panel List

Arbitration Institution	Composition of Arbitrators Panel	Appointment of Arbitrators Outside the Panel	Appointing Authority
CIETAC	79 % Chinese ⁶²	With agreement of the opposing party and the confirmation of the Chairman of the CIETAC ⁶³	Chairman of CIETAC ⁶⁴
BAC	84 % Chinese ⁶⁵	Confirmation by BAC ⁶⁶	Chairman of BAC ⁶⁷
SAC	100 % Chinese ⁶⁸	Not Possible ⁶⁹	Chairman of SAC ⁷⁰

⁵⁹ *Kerr*, Arbitration v. Litigation: The Macau Sardine Case, *Int'l Bus. Law.*, April 1987, 152 (152).

⁶⁰ Arbitration not Popular in Macau, *Macau Business Magayne* of 10. February 2012, available at: <<http://www.macaubusiness.com/news/arbitration-not-popular-in-macau/14038/>> (visited on 15. December 2012).

⁶¹ The Reality and Opportunities of Macau Arbitration (Ao Men Zhong Cai De Xian Zhuang Yu Ji Yu) of 23. November 2007, available at: <<http://www.cgcc.org.cn/news.php?id=43253>> (visited on 15. December 2012).

⁶² Chinese here means arbitrators from the Mainland, Hong Kong SAR, Macau SAR and Taiwan region. Panel of Arbitrators of CIETAC in 2011 is available at: <<http://www.cietac.org/index.cms>> (visited on 18. November 2012).

⁶³ Article 24 (2), CIETAC Arbitration Rules 2012, „Where **the parties** have agreed to nominate arbitrators from outside CIETAC's Panel of Arbitrators...subject to the confirmation by the Chairman of CIETAC in accordance with the law". The Rules are available at: <http://www.cisg.law.pace.edu/cisg/moot/CIETAC_Rules_2011.pdf> (visited on 15. December 2012).

⁶⁴ Article 25 (4), CIETAC Arbitration Rules.

⁶⁵ Arbitrators List of BAC, <<http://www.bjac.org.cn/arbitrator/index.asp>> (visited on 15. December 2012).

⁶⁶ Article 55 (2), BAC Arbitration Rules, available at: <<http://www.bjac.org.cn/en/arbitration/index.html>> (visited on 15. December 2012).

⁶⁷ Article 55 (3), BAC Arbitration Rules.

⁶⁸ Arbitrators List of SAC <http://www.accsh.org/about/?parent_id=4&class_id=74> (visited on 15. December 2012).

CAA	97 % Chinese ⁷¹	Parties' Autonomy ⁷²	CAA or the court ⁷³
HKIAC	17% Chinese ⁷⁴	Parties' Autonomy	HKIAC ⁷⁵
WTCM	100% Chinese ⁷⁶	At the discretion of the General Council when the General Council becomes the appointment authority according to the arbitration agreement or the Arbitration Rules ⁷⁷	General Council ⁷⁸

Among the six arbitration organizations introduced above, the panel of arbitrators has the most international diversity choice in the HKIAC. With regard to the appointment of arbitrators, the CAA and the HKIAC leave the party more room to choose the arbitrators in or outside the Panel list provided. The BAC requires confirmation by the Arbitration Commission itself when the parties intend to have an arbitrator outside the List of Arbitrators provided by the BAC. The possibility to appoint an arbitrator outside the panel exists in the CIETAC and the WTCM, but the likelihood is small. The CIETAC asks for the consent from both parties as well as the approval of the Chairman, to let an „outside” arbitrator be a part of the arbitral tribunal. For example, in a Sino-foreign dispute, if the foreign party wants to choose a foreign arbitrator on the list, the Chinese party is able to not approve the entrance of the foreign arbitrator under the CIETAC Arbitration Rules, *vice versa*. When the WTCM governs arbitration, the WTCM General Council decides whether to accept an arbitrator outside the list only when the parties choose the General Council as their appointing authority in their arbitration agreement or when the General Council becomes the appointing authority according to the WTCM Arbitration Rules. Party autonomy is at a minimum in the SAC arbitration, where the parties are only allowed to appoint arbitrators from the List of Arbitrators of the SAC, who are all Chinese.

⁶⁹ Article 24, Arbitration Rules of SAC, available at: <<http://www.accsh.org/accsh/english/node67/node68/index.html>> (visited on 15. December 2012).

⁷⁰ Article 28, Arbitration Rules of SAC.

⁷¹ The List of Arbitrators of CAA, available at: <<http://arbitrator.arbitration.org.tw/Default.aspx?u=2>> (visited on 15. December 2012).

⁷² Article 16, CAA Arbitration Rules, available at: <<http://www.arbitration.org.tw/english/image/Arbitration/CAA%20Arbitration%20Rules.pdf>> (visited on 15. December 2012).

⁷³ Article 19, CAA Arbitration Rules.

⁷⁴ Panel of Arbitrators of HKIAC, <<http://www.hkiac.org/index.php/en/arbitrators/panel-of-arbitrators>> (visited on 15. December 2012).

⁷⁵ Article 3, HIKAC Procedure for the Administration of International Arbitration, available at: <<http://www.hkiac.org/images/stories/arbitration/HKIAC%20Procedures%20for%20International%20Arbitration.pdf>> (visited on 9. December 2012); and Article 8.1 (b) of HKIAC Administered Arbitration Rules, available at: <<http://www.hkiac.org/index.php/en/arbitration-rules-a-guidelines/hkiac-administered-arbitration-rules>> (visited on 15. December 2012).

⁷⁶ Panel of Arbitrators of WTCM: <<http://www.wtc-macau.com/arbitration/eng/arbitration.htm>> (visited on 15. December 2012).

⁷⁷ Article 16, WTCM Arbitration Rules, available at: <http://adrresources.com/docs/adr/3-0-463/1998_china_macau_wtcm_en_reglamento_interior.pdf> (visited on 15. December 2012).

⁷⁸ Article 17, WTCM Arbitration Rules.

II. General Endurance of Arbitration Procedures

Arbitration Institution	Response to Notice of Arbitration	Formation of the tribunal	Challenge and replacement of the arbitrators	Rendering the award	Correction or additional award
CIETAC	45 days ⁷⁹	15 days ⁸⁰	10 days ⁸¹	6 months after formation of tribunal ⁸²	30 days ⁸³
BAC	15 days ⁸⁴	15 days ⁸⁵	5 days ⁸⁶	4 months after formation of tribunal ⁸⁷	30 days ⁸⁸
SAC	15 days ⁸⁹	Provided in Notice of Arbitration	Provided in Notice of Arbitration	4 months after formation of tribunal ⁹⁰	30 days ⁹¹
CAA	10 days ⁹²	30 days ⁹³	14 days ⁹⁴	10 days after closure of the hearings ⁹⁵	No specific rules
HKIAC	30 days ⁹⁶	30 days ⁹⁷	15 days ⁹⁸	Decided by the	30 days ⁹⁹

⁷⁹ Article 14, CIETAC Arbitration Rules, available at: <http://www.cisg.law.pace.edu/cisg/moot/CIETAC_Rules_2011.pdf> (visited on 15. December 2012).

⁸⁰ Article 25, CIETAC Arbitration Rules.

⁸¹ Article 30, CIETAC Arbitration Rules.

⁸² Article 46 (1), CIETAC Arbitration Rules.

⁸³ Article 51, 52, CIETAC Arbitration Rules.

⁸⁴ Article 10, BAC Arbitration Rules, available at: <<http://www.bjac.org.cn/en/arbitration/index.html>> (visited on 15. December 2012).

⁸⁵ Article 18, BAC Arbitration Rules.

⁸⁶ Article 22, BAC Arbitration Rules.

⁸⁷ Article 43, BAC Arbitration Rules.

⁸⁸ Article 46, BAC Arbitration Rules.

⁸⁹ Article 16, SAC Arbitration Rules available at: <<http://www.accsh.org/accsh/english/node67/node68/index.html>> (visited on 15. December 2012).

⁹⁰ Article 60, SAC Arbitration Rules.

⁹¹ Article 62, SAC Arbitration Rules.

⁹² Article 11, CAA Arbitration Rules, available at: <<http://www.arbitration.org.tw/english/image/Arbitration/CAA%20Arbitration%20Rules.pdf>> (visited on 15. December 2012).

⁹³ Article 17, CAA Arbitration Rules.

⁹⁴ Article 20, CAA Arbitration Rules.

⁹⁵ Article 41, CAA Arbitration Rules. However, Article 21 of Taiwan Arbitration Act states that „the arbitral tribunal shall render an arbitral award within six months of commencement of the arbitration”.

⁹⁶ Article 4, UNCITRAL Arbitration Rules, available at: <<http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-revised/arb-rules-revised-2010-e.pdf>> (visited on 15. December 2012); Article 5.1 of HKIAC Administered Arbitration Rules, available at: <<http://www.hkiac.org/index.php/en/arbitration-rules-a-guidelines/hkiac-administered-arbitration-rules>> (visited on 15. December 2012).

⁹⁷ Article 8, UNCITRAL Arbitration Rules; Article 8 of HKIAC Administered Arbitration Rules.

⁹⁸ Article 13, 14, UNCITRAL Arbitration Rules.

				Tribunal	
WTCM	10 days ¹⁰⁰	10 days ¹⁰¹	Decided by the General Council	6 months after formation of tribunal ¹⁰²	No specific rules

Arbitration is preferred over litigation because of its efficiency for international commerce. The nine arbitration institutions provide similar time schedules for the arbitration proceeding to achieve efficiency throughout the different phases of the arbitration procedure. Despite a fixed deadline by the respective arbitration institutions, certain flexibility is left to the tribunal or the other authorities to decide on the time schedule in specific cases. For example, HKIAC does not provide a deadline for the award in their arbitration rules because the number of situations requiring extensions would render any such time limit meaningless.¹⁰³

III. Arbitration Cost

Each arbitration institution has its individual method for calculating its fees. Moreover, the respective institutions operate in different currency zones. There are five evaluation currencies used by the six institutions. The following section will first introduce the various fees schedules of the six arbitration institutions. Second, a comparison of the approximate cost of claims at the same value is provided to have a clearer view of the fees required by the respective arbitration institutions.

1. CIETAC Fees Schedule¹⁰⁴

a) CIETAC Fees Schedule for Foreign-Related Disputes¹⁰⁵

(Not Including the General Acceptance Fee 10, 000 RMB)

⁹⁹ Article 38, 39, UNCITRAL Arbitration Rules; Article 34, 35 of HKIAC Administered Arbitration Rules.

¹⁰⁰ Article 29, WTCM Arbitration Rules, available at: <http://adrresources.com/docs/adr/3-0-463/1998_china_macau_wtcm_en_reglamento_interior.pdf> (visited on 15. December 2012).

¹⁰¹ Article 29, WTCM Arbitration Rules.

¹⁰² Article 49, WTCM Arbitration Rules, available at: <http://adrresources.com/docs/adr/3-0-463/1998_china_macau_wtcm_en_reglamento_interior.pdf> (visited on 15. December 2012).

¹⁰³ HKIAC Administered Arbitration Rules, available at: <<http://www.hkiac.org/index.php/en/arbitration-rules-a-guidelines/hkiac-administered-arbitration-rules>> (visited on 15. December 2012).

¹⁰⁴ All varieties of fees are available at: <<http://cn.cietac.org/Help/index.asp?hangye=6>> (visited on 13. November 2012).

¹⁰⁵ Applicable from 1 May 2012. According to *Opinions Relation to Several Issues Arising from the Application of the Civil Procedure Law 1991* issued by the Supreme People's Court on July 14, 1992. A foreign-related dispute means that: 1) one or both parties are foreign; 2) the relevant legal relationship was formed, changed or terminated in a foreign country; 3) the subject matter of the dispute is situated outside the territory of the PRC.

Claim Amount (RMB)	Fee Amount (RMB)
Below 1,000,000	4% of the claim amount, minimum 10,000
1,000,001 to 2,000,000	40,000 + 3.5% of the excess over 1,000,000
2,000,001 to 5,000,000	75, 000 + 2.5% of the excess over 2,000,000
5,000,001 to 10,000,000	150, 000 + 1.5% of the excess over 5,000,000
10,000,001 to 50,000,000	225, 000 + 1% of the excess over 10,000,000
50,000,001 to 100,000,000	625, 000 + 0.5% of the excess over 50,000,000
100,000,001 to 500,000,000	875, 000 + 0.48% of the excess over 100,000,000
500,000,001 to 1,000,000,000	2, 795, 000 + 0.47 of the excess over 500,000,000
1,000,000,001 to 2,000,000,000	5, 145, 000 + 0.46 of the excess over 1,000,000,000
Above 2,000,000,000	9, 745, 000 + 0.45 of the excess over 2,000,000,000 maximum 15,000,000

b) *CIETAC Fees Schedule for Domestic Disputes*¹⁰⁶

(Not Including the General Acceptance Fee 10,000 RMB)

Claim Amount (RMB)	Fee Amount (RMB)
Below 200,000	Minimum 6, 000
200,001 to 500,000	6, 000 + 2% of the excess over 200,000
500,001 to 1,000,000	12, 000 + 1.5 % of the excess over 500,000
1,000,001 to 2,000,000	19, 500 + 0.5% of the excess over 1,000,000
2,000,001 to 6,000,000	24, 500 + 0.45% of the excess over 2,000,000
6,000,001 to 10,000,000	42, 500 + 0.4% of the excess over 6,000,000
10,000,001 to 20,000,000	58, 500 + 0.3% of the excess over 10,000,000
20,000,001 to 40,000,000	88, 500 + 0.2% of the excess over 20,000,000
40,000,001 to 100,000,000	128, 500 + 0.15% of the excess over 40,000,000
100,000,001 to 500,000,000	218, 500 + 0.13% of the excess over 100,000,000
Above 500,000,000	738, 500 + 0.12% of the excess over 500,000,000

¹⁰⁶ Applicable from 1 May 2012. According to *Notice of the General Office of the State Council on the Measures Regarding Arbitration Fees of Arbitration Commissions (Guo Ban Fa 1995 No. 44)*. The foreign invested Joint Ventures or companies registered in China are considered to be Chinese. Therefore, the disputes arising from a foreign invested Joint Venture of foreign capital company is considered as a domestic dispute. Original language in Chinese, available at: <<http://www.whwj.gov.cn/wjjw/search/fileInfoServlet?fileCode=12600273>> (visited on 15. December 2012).

2. BAC Fees Schedule¹⁰⁷

a) Administrative Fee¹⁰⁸

Claim Amount (RMB)	Fee Amount (RMB)
No more than 1,000	a minimum amount of not less than 100
1,001 to 50,000	100 + 5% of the disputed amount exceeding 1,000
50,001 to 100,000	2,550 + 4% of the disputed amount exceeding 50,000
100,001 to 200,000	4,550 + 3% of the disputed amount exceeding 100,000
200,001 to 500,000	7,550 + 2% of the disputed amount exceeding 200,000
500,001 to 1,000,000	13,550 + 1% of the disputed amount exceeding 500,000
above 1,000,001	18,550 + 0.3% of the disputed amount exceeding 1,000,000

b) Case Handling Fee¹⁰⁹

Claim Amount (RMB)	Fee Amount (RMB)
No more than 200,000	a minimum of not less than 5,000
200,001 to 500,000	5,000 + 2% of the disputed amount exceeding 200,000
500,001 to 1,000,000	11,000 + 1% of the disputed amount exceeding 500,000
1,000,001 to 5,000,000	16,000 + 0.4% of the disputed amount exceeding 1,000,000
5,000,001 to 10,000,000	32,000 + 0.3% of the disputed amount exceeding 5,000,000
10,000,001 to 20,000,000	47,000 + 0.25% of the disputed amount exceeding 10,000,000
20,000,001 to 40,000,000	72,000 + 0.2% of the disputed amount exceeding 20,000,000
above 40,000,001	112,000 + 0.1% of the disputed amount exceeding 40, 000, 000

¹⁰⁷ The BAC Fees Schedule is available at: <<http://www.bjac.org.cn/en/Arbitration/Fees.html>> (visited on 13. November 2012).

¹⁰⁸ Amended and adopted on 16 September 2003 at the fifth meeting of the third session of the Beijing Arbitration Commission and effective as of 1 March 2004, according to Notice of the General Office of the State Council on the Measures Regarding Arbitration Fees of Arbitration Commissions.

¹⁰⁹ The BAC case handling fee is available at: <<http://www.bjac.org.cn/en/Arbitration/Fees.html>> (visited on 15. December 2012).

3. Fees Schedule¹¹⁰

a) Administrative Fee

Claim Amount (RMB)	Fee Amount (RMB)
No more than 1,000	a minimum amount of not less than 100
1,001 to 50,000	100 + 5% of the disputed amount exceeding 1,000
50,001 to 100,000	2,550 + 4% of the disputed amount exceeding 50,000
100,001 to 200,000	4,550 + 3% of the disputed amount exceeding 100,000
200,001 to 500,000	7,550 + 2% of the disputed amount exceeding 200,000
500,001 to 1,000,000	13,550 + 1% of the disputed amount exceeding 500,000
above 1,000,001	18,550 + 0.3% of the disputed amount exceeding 1,000,000

b) Case Handling fee

Claim Amount (RMB)	Fee Amount (RMB)
Below 2,000,000	1% of the Claim Amount, minimum 1,000 for the disputes in which both Parties are from Shanghai; 1,500 for the dispute in which one of the parties comes from Shanghai; 2,000 for the dispute in which both of the parties are not from Shanghai
200,001 to 500,000	2,000 + 0.75% of the disputed amount exceeding 200,000
500,001 to 1,000,000	4,250 + 0.4% of the disputed amount exceeding 500,000
1,000,001 to 5,000,000	6,250 + 0.3% of the disputed amount exceeding 1,000,000
5,000,001 to 10,000,000	18,250 + 0.25% of the disputed amount exceeding 5,000,000
above 10,000,001	30,750 + 0.05% of the disputed amount exceeding 10,000,000

4. CAA Fees Schedule¹¹¹

(Arbitration Regarding to Property Disputes)¹¹²

¹¹⁰ The Fee Schedule of SAC is available at: <http://www.accsh.org/about/?parent_id=3&class_id=78> (visited on 15. December 2012).

¹¹¹ According to Rules on Arbitration Institution, Mediation Procedures, and Fees, jointly promulgated by orders of (88) Fa-08006, Executive Yuan and (88) *Yuan Tai Ting Ming* 3-02096, Judicial Yuan on March 3, 1999, available at: <<http://www.arbitration.org.tw/english/image/Arbitration/The%20Rules%20on%20Arbitration%20Institutions,%20Mediation%20Procedures,%20and%20Fees.pdf>> (visited on 15. December 2012).

¹¹² Article 25 of Rules on Arbitration Institution, Mediation Procedures, and Fees.

Claim Amount (TWD)	Fee Amount (TWD)
Below 60,000	3,000
60,001 to 600,000	3,000 + 4% of the excess over 60,000
600,001 to 1,200,000	24,600 + 3% of the excess over 600,000
1,200,001 to 2,400,000	42,600 + 2% of the excess over 1,200,000
2,400,001 to 4,800,000	66,600 + 1.5% of the excess over 2,400,000
4,800,001 to 9,600,000	102,600 + 1% of the excess over 4,800,000
Above 9,600,000	150,600 + 0.5% of the excess over 9,600,000

5. HKIAC Fees Schedule

a) Administrative Fee

Sum in dispute (in USD)	Administrative fee (USD)
up to 50,000	USD 1,500
from 50,001 to 100,000	0.70%
from 100,001 to 500,000	0.60%
from 500,001 to 1,000,000	0.40%
from 1,000,001 to 2,000,000	0.20%
from 2,000,001 to 5,000,000	0.12%
from 5,000,001 to 100,000,000	0.06%
from 10,000,001 to 50,000,000	0.03%
over 50,000,001	USD26,850

b) Arbitrators Fee

Sum in dispute (in USD)	Fees(USD)	
	Minimum	Maximum
up to 50,000	USD2,000	14%
up to 50,001 to 100,000	2.50%	10%
from 100,001 to 500,000	1.00%	5%
from 500,001 to 1,000,001	0.70%	2.60%
from 1,000,001 to 2,000,000	0.40%	1.40%
from 2,000,001 to 5,000,000	0.25%	0.70%
from 5,000,001 to 10,000,000	0.075%	0.40%
from 10,000,001 to 50,000,000	0.05%	0.20%
from 50,000,001 to 80,000,000	0.025%	0.14%
from 80,000,01 to 100,000,000	0.012%	0.12%
over 100,000,000	0.01%	0.06%

6. WTCM Fees Schedule¹¹³

Claim Amount (patacas)	Administrative Fee (patacas)	Arbitration Fee (patacas)
Below 250, 000	5% of the claim amount, minimum 5, 000	2.5% of the claim amount, minimum 3, 500
250, 001 to 500, 000	12, 500 + 4% of the excess over 250, 000	6, 250 + 2% of the excess over 250, 000
500, 001 to 1,250, 000	22, 500 + 2.5% of the excess over 500, 000	11, 250 + 1.25% of the excess over 500, 000
1, 250, 001 to 2, 500, 000	41, 250 + 1.5% of the excess over 1, 250, 000	20, 625 + 0.75% of the excess over 1, 250, 000
2, 500, 001 to 5, 000, 000	60, 000 + 0.75% of the excess over 2, 500, 000	30, 000 + 0.35% of the excess over 2, 500, 000
5, 000, 001 to 12, 500, 000	78, 750 + 0.6% of the excess over 5, 000, 000	38, 750 + 0.3% of the excess over 5, 000, 000
12, 500, 001 to 25, 000, 000	123, 750 + 0.5% of the excess over 12, 500, 000	61, 250 + 0.25% of the excess over 12, 500, 000
25, 000, 000 to 50, 000, 000	186, 250 + 0.4% of the excess over 25, 000, 000	92, 500 + 0.2% of the excess over 25, 000, 000
Over 50, 000, 000	286, 250 + 0.2% of the excess over 50, 000, 000	142, 500 + 0.1% of the excess over 50, 000, 000

7. Cost Comparison

Based on different currencies and different calculation methods, the comparison of arbitration costs in the six arbitration institutions is complex. In this section, the comparison is based on a consideration of claims in Euros. Where the official currency required by the respective institutions is not in Euro, the currencies are transformed into Euro according to current exchange rates. Three scenarios will be calculated, that involve 1,000,000 and 10,000,000 and 50,000,000 Euro claims amount,¹¹⁴ the approximate costs of the case in all the six arbitration institutions.

Arbitration Institution	Claim Amount (EURO)	Approximate Cost (EURO)
CIETAC (Foreign Related Disputes)	1,000,000	23,500
	10,000,000	94,800
	50,000,000	294,800
BAC	1,000,000	9,950

¹¹³ Internal Regulation of the Voluntary Arbitration Center, World Trade Center Macau, available at: <http://adrresources.com/docs/adr/3-0-463/1998_china_macau_wtcm_en_reglamento_interior.pdf> (visited on 15. December 2012).

¹¹⁴ The exchange rates of the respective currencies on 11. April 2012[✓]

	10,000,000	50,600
	50,000,000	210,600
SAC (Both parties are not from Shanghai)	1,000,000	9,840
	10,000,000	59,760
	50,000,000	279,770
CAA	1,000,000	7,680
	10,000,000	52,960
	50,000,000	254,200
HKIAC	1,000,000	9,150 to 37,700
	10,000,000	21,000 to 81,100
	50,000,000	38,100 to 154,100
WTCM	1,000,000	14,000
	10,000,000	55,000
	50,000,000	170,500

In the one million Euro claims, the CAA, the SAC and the BAC have the highest economic charges; the HKIAC has on average comparatively higher charges, while the cost at the WTCM and the CIETAC is in the middle. In the disputes involving fifty million euro claims, the WTCM and the HKIAC have the lowest monetary requirement. However, the fees at other arbitration institutions are not of huge difference in the fifty million euro claims.

D. Conclusion

The various Chinese arbitration institutions give the parties options when they prefer institutional arbitration as their dispute settlement solution means. Established at dissimilar allocations, the six arbitration institutions explored in this article have similar aims to promote alternative dispute resolution related to China.

From the perspective of the establishment, the CIETAC, the BAC and the SAC are still in a transition from „administrative” management to „civil” operation.¹¹⁵ Despite the governmental participation in the three arbitration institutions, the maintenance and decision-making of the three mainland arbitration institutions are independent from the government. Comparatively, the CAA, the HKIAC and the WTCM hold a non-governmental background.

In the proceedings, the arbitration institutions located in the PRC have a closed panel list system for the formation of the arbitral tribunal. The parties have limited party autonomy when selecting an arbitrator outside the list under the requirement of Chinese Arbitration Law.¹¹⁶ Moreover, the arbitrators provided in the list of the CIETAC, the BAC, the SAC, the CAA and the WTCM are mostly Chinese. Howev-

¹¹⁵ *Song/Yang*, *Legal Review Journal (Fa Xue Ping Lun)*, 3 (2009), 15(21).

¹¹⁶ Article 13, Chinese Arbitration Law, available at: <<http://www.lawinfochina.com/display.aspx?lib=law&id=710&CGid=>> (visited on 15. December 2012).

er, the CIETAC started to open the „closed panel” to foreign arbitrators during the last decade. The Chinese component in the panel list results from the larger portion of domestic disputes in the caseload. As more international disputes go to the Chinese arbitration institutions, a larger involvement of foreign arbitrators will occur spontaneously. The HKIAC, on the other hand, provides the parties more autonomy to choose arbitrators outside the list and more diversified nationalities inside the panel list.

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Beiträge zum Transnationalen Wirtschaftsrecht

(bis Heft 13 erschienen unter dem Titel: Arbeitspapiere aus dem
Institut für Wirtschaftsrecht – ISSN 1619-5388)

ISSN 1612-1368 (print)
ISSN 1868-1778 (elektr.)

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