

Research on the Approval System of Judicial Review Cases in Commercial Arbitration under the Background of Arbitration Law Amendment

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Abstract

The fundamental advantage of commercial arbitration lies in its integration of party autonomy with state-enforced enforcement mechanisms, distinguishing it from other dispute resolution methods. With the promulgation of the Supreme People's Court's "Provisions on Reporting and Approval of Judicial Review Cases in Arbitration", judicial authorities have increasingly supported commercial arbitration. The institutional framework now regulates negative review procedures for commercial arbitration, while the judicial approval system has become more rigorous in both procedural design and practical implementation. However, constrained by hierarchical regulatory frameworks and ambiguous content, the judicial approval review mechanism still faces challenges including dual-track internal and external reporting systems, unclear legal basis, and opaque review processes. These issues urgently require theoretical exploration and practical refinement to enhance the effectiveness of the approval system.

As a crucial dispute resolution mechanism, commercial arbitration is based on the parties' mutual consent and enforced through state-mandated mechanisms. Academic circles have engaged in intense discussions and in-depth research regarding judicial review of commercial arbitration by the state: Professor Zhang Xiaojun³ argues that while commercial arbitration maintains autonomy, inherent institutional flaws and the pursuit of judicial fairness justify state intervention. Professor Wang⁴ Zuxing demonstrates the necessity and legitimacy of court supervision over commercial arbitration through four dimensions: the nature of arbitration authority, its inherent characteristics, functional roles, and historical context. In practice, judicial review of commercial arbitration

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³ Zhang Xiaojun, *The Intervention of Judicial Power in Commercial Arbitration and Its Limits*, Hebei Law, 2006(04).

⁴ Wang Zuxing, *The Logical Generation and Logical System of Commercial Arbitration Supervision — The Progressive Development Based on the Optimization of the Relationship between Commercial Arbitration and Litigation*, Contemporary Law, 2015(06).

cases has become the mainstream approach and international standard, with debates focusing on implementation methods and available remedies. The "Provisions of the Supreme People's Court on Reporting and Approval of Judicial Review Cases in Arbitration" (Judicial Interpretation [2017] No.21, hereinafter referred to as the "Approval Regulations"), effective January 1, 2018, clarified for the first time through judicial interpretation whether courts' arbitration review cases are subject to supervision. This study comprehensively analyzes China's approval system for arbitration judicial review by examining the "Approval Regulations" alongside domestic and international legislation, while projecting future trends in China's commercial arbitration judicial review approval mechanisms, seeking scholarly insights.

1. The Necessity and Evolution Path of Establishing the Judicial Review and Approval System for Commercial Arbitration

1.1 The Necessity of Establishing the Judicial Review Report System for Commercial Arbitration

In commercial arbitration practice, when parties challenge arbitral awards by claiming violations of "public interest," legislative definitions of this concept remain undefined. Given that China's commercial arbitration institutions were initially government-established with strong administrative characteristics, early developments in the field often employed local protectionism. Courts frequently invoked "public interest" to safeguard Chinese clients' interests. A notable case involved Zhengzhou Intermediate People's Court ruling on a dispute between Kaifeng Dongfeng Garment Factory and the China International Economic and Trade Commercial Arbitration Commission (CIETAC). The court initially denied enforcement, citing potential harm to national economic interests and foreign trade order. However, the Supreme People's Court later ruled this decision incorrect. This landmark case became a catalyst for the establishment of an internal reporting system.

"All those who hold power tend to abuse it- a timeless truth. Those in authority will wield their authority until encountering boundaries."⁶ When formulating the Commercial Arbitration Law, China initially raised concerns about commercial arbitration and the impartiality of arbitrators,⁷ granting courts judicial oversight over commercial arbitration while neglecting supervision of their own powers. According to the Civil Procedure Law (hereinafter "Civil Procedure Law") and the Commercial⁸ Arbitration Law (hereinafter "Arbitration Law"), when courts conduct judicial reviews of commercial arbitration cases, the majority of judges being former military personnel with limited expertise in commercial arbitration may lead to inconsistent rulings. Moreover, since court reviews encompass both procedural and substantive aspects, revoking or refusing to enforce commercial arbitration awards essentially creates a "second trial" process that negates the original arbitration decisions.

Establishing a judicial review system for commercial arbitration aligns with its principles of fairness, a practice widely adopted internationally. Countries implementing such mechanisms typically adopt two approaches based on appeal eligibility: conditional appeal systems⁹ (e.g., Section 67(4) and Section 68(4) of the Arbitration

⁵ Guangzhou Commercial Arbitration Commission, *A Brief Analysis of the Approval System for Judicial Review of Commercial Arbitration (Part 1) — The past and present of the approval system*; at https://www.baidu.com/link?url=5mgu5o5-785sdke6DdeThV4DUes_Es_Jj4zlX24O_AP_1nTmjlgPQFhviDpQT40WFG&wd=&eqid=b2c9038b00004e3e000000055d08e608, (February 28, 2023).

⁶ [French] Montesquieu, *The Spirit of the Laws (Part I)*, translated by Zhang Yanshen, Commercial Press, 1961, p. 154.

⁷ Chen Zhidong, *Analysis of Several Legal Issues on the Reversal Procedure of Commercial Arbitration Awards in China — and Discussion on the Legislative Improvement of the Reversal Procedure*, Journal of Law, 1998(11).

⁸ Long Zongzhi, *Review of He Weifang's article 'Returning Soldiers to the Court'*, Law, 1998(06).

⁹ Song Lianbin, *Selected Materials of International Commercial Arbitration*, Intellectual Property Press, 2004, p. 374.

Act 1996 in the UK, and Section 81(4) of the Commercial Arbitration Ordinance¹⁰ in Hong Kong, 2010) and unconditional¹¹ appeal systems (e.g., Section 1065(1) of the¹² German Code of Civil Procedure, Section 1481(1) of the French Code of Civil Procedure, and Section 28(1) of the Uniform¹³ Commercial Arbitration Act 2000). While establishing¹⁴ such mechanisms is essential for enforcing civil procedure laws and fulfilling international obligations, China's Civil Procedure Law and Arbitration Law explicitly uphold the "finality of arbitration" principle, prohibiting appeals against annulment or non-enforcement decisions. Therefore, implementing an internal reporting mechanism serves dual purposes: it aligns with global standards while demonstrating support for commercial arbitration, and ensures the integrity and coherence of China's legal framework.

For these reasons, China established an internal reporting system for judicial review of foreign-related commercial arbitration awards in 1995. In practice, this system has proven¹⁵ remarkably effective in supporting such rulings. Consequently, the internal reporting mechanism for judicial review cases in commercial arbitration not only demonstrates theoretical legitimacy and practical rationality, but also upholds the principles of independence and impartiality in commercial arbitration. This framework successfully balances the tension between efficiency and fairness in commercial dispute resolution.

1.2 The Evolution Process and Characteristics of the Reporting System

The establishment of any system is not achieved overnight but through continuous practice and exploration. This principle also applies to China's judicial review and approval mechanism for commercial arbitration. Prior to the promulgation of the "Approval Regulations", the country's judicial review reporting system for commercial arbitration was composed of "laws", "judicial interpretations", "notices", and "approvals". In fact, the evolution of China's judicial review approval system for arbitration cases can be divided into several stages: The initial internal reporting phase (1995-1998): The "Notice on Issues Concerning the Handling of Foreign-related Commercial Arbitration and Foreign Commercial Arbitration Matters by People's Courts" (Fa Fa [1995] No.18) established the first internal reporting system. It required reviewing courts to report their opinions step-by-step when considering foreign-related, Hong Kong-Macao-Taiwan-related, or maritime disputes involving commercial arbitration agreements that might invalidate arbitration agreements or refuse to enforce arbitral awards. The notice also specified that rulings refusing to enforce arbitral awards could not be subject to retrial or appeal, and set deadlines for reporting such refusal. The development phase (1998-2003): The reporting system expanded to include rulings revoking arbitration awards and re-arbitrations, with deadlines established. Through official approvals, it was confirmed that rulings revoking commercial arbitration awards could not be subject to retrial, procuratorial protest, or court president protest, forming an internal reporting framework for revoking arbitration awards. The matured and transitional phases of the internal reporting system. Since 2003, China has progressively refined its internal reporting system for foreign-related arbitration cases involving Hong Kong, Macao, and Taiwan. This

¹⁰ German Civil Procedure Law, translated by Ding Qiming, Xiamen University Press, 2016, p. 237.

¹¹ French New Code of Civil Procedure, translated by Luo Jiezheng, China Legal System Press, 1999, p. 144.

¹² Song Lianbin, *Selected Materials of International Commercial Arbitration*, Intellectual Property Press, 2004, p. 441.

¹³ Civil Procedure Law, art. 154.

¹⁴ Arbitration Law, art. 9.

¹⁵ Yu Xifu, *Domestic Courts 'Support for International Commercial Arbitration Under Market Competition Mechanisms*, Dongyue Forum, 2014(04). Approximately 30%-40% of cases submitted by higher people's courts nationwide to the Supreme People's Court seeking to invalidate commercial arbitration agreements and awards were not approved. When combined with cases where intermediate people's courts disagreed with their counterparts' opinions but failed to seek approval from the Supreme People's Court, the proportion of such requests being denied became even higher.

development established clear protocols governing relationships between superior and subordinate enforcement departments, confirmed that arbitration agreements cannot be challenged through retrial procedures, and specified other circumstances requiring internal reporting. The revised "Reporting and Approval Regulations" transformed the previous internal reporting framework into a formal approval mechanism, while expanding the scope to include domestic arbitration award cases. The updated regulations now provide detailed guidelines for both case submissions and procedural requirements within the approval process.

The Civil Procedure Law and Arbitration Law stipulate that parties cannot appeal rulings to revoke or refuse enforcement of commercial arbitration awards, but may resolve disputes through re-arbitration or court litigation. Prior to the promulgation of the Reporting and Approval Regulations, the judicial review remedy system for commercial arbitration had the following characteristics: It established a reporting mechanism for judicial reviews of commercial arbitration. For foreign-related, Hong Kong, Macao, and Taiwan arbitration cases, rulings to invalidate arbitration agreements, revoke or refuse enforcement of arbitral awards must undergo internal reporting and can only be reviewed after the Supreme People's Court provides a response. The scope of application was limited. Although rulings to invalidate foreign-related commercial arbitration agreements, refuse enforcement of foreign-related arbitral awards, and deny recognition and enforcement of foreign commercial arbitration awards were expanded to include revocation and re-arbitration of foreign-related commercial arbitration awards, these were restricted to foreign-related cases and excluded from domestic commercial arbitration cases. The reporting procedure was simplified. Courts handling judicial reviews of commercial arbitration must report such cases to the Higher People's¹⁶ Court before issuing negative review opinions. When the Higher People's Court agrees with lower courts' review opinions, it must forward them to the Supreme People's Court. Lower courts may only make decisions after receiving responses from the Supreme People's Court. The reporting deadlines were not specified. Although the Arbitration Law stipulates that people's courts shall issue revocation rulings or dismiss application rulings within two months from the date of receiving applications for revoking commercial arbitration awards, and the Supreme People's Court's "Notice on Matters Concerning the Revocation of Foreign-related Commercial Arbitration Awards" and "Provisions on Fees and Review Periods for Recognizing and Enforcing Foreign commercial Arbitration Awards" specify reporting deadlines for rulings on revocation, re-arbitration, and refusal to recognize/execute foreign-related commercial arbitration awards, they fail to establish a response deadline from the Supreme People's Court. This results in prolonged responses to lower courts' review requests. Additionally, no reporting deadlines are specified for cases where commercial arbitration agreements are declared invalid, expire, contain unclear terms rendering them unenforceable, or foreign-related commercial arbitration awards are refused enforcement. Other judicial review scenarios for commercial arbitration also require reporting systems. For instance, in cases where parties seek confirmation of commercial arbitration agreement validity or apply to revoke/defy enforcement of awards issued by China International Economic and Trade Arbitration Commission (CIETAC), Shanghai International Economic and Trade Arbitration Commission (SIETAC), or South China International Economic and Trade Arbitration Commission (SCIEC), people's courts must first consult with their adjudication committees. After submitting opinions through hierarchical reporting channels to the Supreme People's Court, rulings may only be issued following the court's official response.

¹⁶ Shen Wei, *Normative Analysis of China's Commercial Arbitration Judicial Review System — Origin, Evolution, Mechanism and Defects*, Journal of Law, 2019(01).

2. Achievements of the Arbitration Judicial Review and Approval System

2.1 Uniform Arbitration Award Name

Prior to the enactment of the "Regulations on Reporting and Approval", there was considerable debate within academic circles and arbitration practice regarding the naming of arbitration. In 2009, the Ningbo Intermediate People's Court ruled that an arbitral award issued by the International Chamber of Commerce Arbitration Institute in Beijing constituted a "non-domestic award" and recognized its enforceability under the New York Convention, sparking ongoing academic and practical debates. Therefore,¹⁷ the classification of arbitral awards proves crucial as it determines their oversight and enforcement mechanisms. Two primary perspectives exist regarding how to classify arbitral awards: one advocates categorization based on the arbitration institution's location, while the other proposes classification according to the arbitration venue. The fundamental significance of such classification lies in establishing distinct judicial review approaches for different types of arbitral awards.

When the Civil Procedure Law and Arbitration Law were first enacted, foreign-related arbitration could only be handled by designated foreign arbitration institutions. However, current regulations now permit both foreign arbitration institutions and domestic general arbitration institutions to accept domestic and international arbitration cases. This necessitates eliminating the distinction between foreign and domestic arbitration institutions and amending legislative loopholes to standardize terminology for¹⁸ arbitration awards. The "Reporting and Approval Regulations" categorize arbitration awards into three types: those issued by mainland arbitration institutions, Hong Kong, Macao, and Taiwan arbitration institutions, and foreign arbitration awards. Some scholars argue that replacing "awards from foreign arbitration institutions" with "foreign arbitration awards" aims to include provisional arbitration by foreign entities within judicial review scope. Therefore, adopting this perspective, the classification standard in these regulations appears to prioritize arbitration locations. As China currently lacks provisional arbitration mechanisms, the provisions explicitly designate mainland arbitration awards while categorizing overseas provisional arbitrations as Hong Kong, Macao, and Taiwan arbitration awards or foreign arbitration awards.

However, the nature of the arbitration award made by a foreign arbitration institution or a foreign provisional arbitration in mainland China and the arbitration award made by a Chinese arbitration institution overseas has not been clear. Therefore, the author believes that it is necessary to clarify this in the revision of the arbitration law and form a perfect system for the classification of arbitration.

2.2 Expanding the Scope of Judicial Review of Arbitration

Arbitration serves as a parallel dispute resolution mechanism to litigation, offering advantages such as efficiency, confidentiality, and flexibility compared to court proceedings. It balances the values of efficiency and fairness.

¹⁷ Zhang Shengcui, *On the Correction of China's Arbitral Award Recognition and Enforcement System*, Journal of Shanghai University of Finance and Economics, No.1, 2013. It is recommended to standardize the use of seven classification terms for arbitration awards in China: "Mainland Arbitral Awards", "Foreign-related Arbitral Awards Made in Mainland China", "State Party Arbitral Awards", "Non-Party State Arbitral Awards", "Hong Kong Arbitral Awards", "Macao Arbitral Awards", and "Taiwan Arbitral Awards".

¹⁸ Yue Feng, Zhang Wenyi, & Zhou Yin, *Unity and Innovation: Analysis of the Two Latest Judicial Interpretations on Arbitration Judicial Review*, published in Weike Xianxing Legal Information Database, <https://law.wkinfo.com.cn/professional-articles/detail/NjAwMDAwMzA1Mzg%3D?searchId=bbc6591bef7c479e986a5ae259ffc88b&index=3&q=#NoOrgan33>, (March 18, 2024).

In judicial review of arbitration¹⁹ cases, it is essential to clarify the scope of such reviews. This approach ensures two key objectives: first, safeguarding parties' demands for fair arbitration; second, fulfilling their expectations for efficiency through mechanisms like confidentiality and flexible processing capabilities.

Article 1 of the "Regulations on Reporting and Approval" establishes a proactive framework for judicial review of arbitration cases by identifying common scenarios in current practice while incorporating catch-all provisions for future applications. The author argues that while such catch-all clauses carry positive significance, their interpretation should be guided by legal hermeneutics to avoid arbitrary expansion of case scope. Notably, these provisions apply to: (1) Judicial review cases arising from the split of China International Economic and Trade Arbitration Commission (CIETAC), Shanghai International Economic²⁰ and Trade Arbitration Commission (SIETAC), and South China International Economic and Trade Arbitration Commission (SCIETAC) as stipulated in the Supreme People's Court's Notice on Proper Adjudication of Commercial Arbitration Judicial Review Cases (Fa [2013] No.194); (2) Judicial review of temporary arbitration cases within free trade zones. Conversely, evidence preservation, property preservation, and other compulsory measures are excluded from judicial review. Secondly, this marks the first extension of judicial review to domestic arbitration awards. While the Supreme People's Court's Reply to the Request for Refusal of Enforcement of Arbitral Award No.0112 [2002] from China International Economic and Trade Arbitration Commission (CIETAC) previously excluded domestic arbitration from the reporting system, the updated regulations now explicitly apply the reporting system to domestic arbitration awards by adding provisions for applications to confirm domestic arbitration agreements or seek revocation/execution of awards issued by mainland arbitration institutions. Finally, there is a change in the scope of judicial review of arbitration: rulings on re-arbitration are excluded from judicial review. The Supreme People's Court Notice on Matters Concerning the Reversal of Foreign-related Commercial Arbitral Awards (Fa [1998] No.40) stipulates that review opinions on re-arbitration of foreign-related arbitration awards should be reported level by level. However, the judicial interpretation specifies conditions for re-arbitration while abolishing the re-approval system. The author identifies two possible interpretations: First, courts may support re-arbitration rulings to protect parties' autonomy in choosing arbitration as a dispute resolution method. Without hierarchical approval requirements for re-arbitration rulings in judicial review cases, courts might prefer issuing re-review opinions rather than revoking or refusing enforcement of arbitration awards. Second, re-arbitration applies to cases with evidentiary flaws. Most scholars argue that court review of arbitration evidence constitutes substantive review, and such grounds should be removed from the circumstances for revoking or refusing enforcement. If the revised Arbitration Law removes evidence-related provisions from revocation and refusal enforcement scenarios, re-arbitration would no longer require specific conditions or hierarchical reporting. However, due to legislative ambiguity, the exact legal basis excluding re-arbitration from judicial review remains unclear.

2.3 Clarifying the Cases to be Reported and Approved

The reporting system serves as a secondary oversight mechanism for courts during judicial review of arbitration cases, aiming to standardize court procedures and uphold judicial fairness. This dual approach requires courts to exercise prudence in their judicial review while providing indirect remedies to arbitration parties through internal

¹⁹ Delaosa, *International Arbitration Science Exploration: A Collection of Empirical Studies*, translated by Chen Fuyong and Ding Jianyong, China University of Political Science and Law Press, 2009, p. 17.

²⁰ Zhang Yongjian, Ren Xuefeng, & Liang Ying, *Understanding and Application of the Provisions on Reporting and Approval of Arbitration Judicial Review Cases and the Provisions on Several Issues in the Trial of Arbitration Judicial Review Cases*, People's Justice (Application), 2018(04).

supervision. Given the unique value of arbitration, judicial review must ensure both fairness and efficiency, meaning not all arbitration cases require reporting. The "Reporting Regulations" adopt a reporting-based framework, specifying application conditions, procedures, and reporting requirements. However, the primary question remains: which cases qualify for reporting? Articles 2, 3, and 7 of the Regulations not only reference the reporting system but also address reporting requirements for confirming arbitration agreement validity in civil litigation. Specifically, the reporting system applies only when courts issue negative review opinions on arbitration cases during judicial review.

The system clarifies the applicable cases for arbitration judicial review and approval, including rulings to invalidate arbitration agreements, revoke or refuse enforcement of arbitral awards, deny recognition and enforcement of arbitral awards, and deny recognition and enforcement of arbitral awards. This maintains consistency with pre-interpretation regulations while unifying arbitration terminology, thereby eliminating domestic distinctions in judicial review and incorporating domestic arbitration agreements into the scope. For non-international arbitration cases involving public interest or cross-provincial administrative regions, judicial review authority is centralized under the Supreme People's Court. When establishing the approval system for domestic arbitration awards, higher people's courts generally only need to review opinions, except when cases involve parties domiciled across provincial administrative regions²¹ or when refusing enforcement or revoking awards from mainland Chinese arbitration institutions due to violations of public interest. The author argues that centralizing cross-jurisdictional arbitration judicial review authority under the Supreme People's Court aims to prevent local protectionism and ensure judicial fairness. Scholars also note the cautious approach toward "public interest" considerations: given the limited number of domestic arbitration cases and the professional competence of higher people's courts, it would be inappropriate for the Supreme People's Court to issue such reviews. However, since the legislation does not explicitly define "public interest," parties can expand its scope to apply for revocation or non-enforcement of arbitration awards. This has led to inconsistent interpretations of public interest across commercial judicial reviews and among courts, resulting in divergent outcomes regarding the assessment of "public interest." To prevent abuse of this concept and ensure uniform judicial recognition, the Supreme People's Court is granted unified authority to conduct such reviews.

The internal reporting system is established through a series of notifications and approvals, lacking unified regulations for arbitration procedures. This results in frequent irregularities and lax enforcement during practical operations. Therefore, establishing standardized approval procedures is crucial when implementing the reporting system. The "Approval Regulations" specify approval procedures in three key aspects. Approval Courts: The review court's level varies depending on the type of domestic or international arbitration award. Article 2(1) of the Regulations stipulates that for foreign-related or cross-border (Hong Kong, Macao, Taiwan) arbitration cases, intermediate people's courts or specialized people's courts must report to the Supreme People's Court through hierarchical approval channels if they intend to invalidate arbitration agreements, refuse enforcement, or revoke awards from mainland Chinese arbitration institutions. Article 2(2) specifies that for non-cross-border cases, intermediate courts may report to higher people's courts for approval if they intend to invalidate awards. However, cases involving parties domiciled across provincial administrative regions or those refusing enforcement/revocation citing public interest violations must be reported to the Supreme People's Court. Approval Procedures: The approval system for arbitration judicial review differs from reconsideration and appeals. Articles 4-6 require

²¹ Song Lianbin, *New Progress and Significance of Arbitration Judicial Supervision System*, People's Rule of Law, 2018(05).

lower courts to submit written reports and case files along with detailed review opinions when reporting to higher courts. When necessary, the higher people's court may inquire. After examination, the higher people's court shall reply to the lower people's court in the form of a reply letter.

3. Problems Existing in the Judicial Review and Approval System of Commercial Arbitration in China

In 2017, the Supreme People's Court successively issued a series of judicial interpretations including the "Notice on the Centralized Handling of Arbitration Judicial Review Cases", the "Provisions on Several Issues Concerning the Trial of Arbitration Judicial Review Cases" (hereinafter referred to as the "Trial Provisions"), the "Provisions on Several Issues Concerning the Handling of Arbitration Award Enforcement Cases by People's Courts", and the "Reporting and Approval Regulations". These collectively formed China's arbitration judicial review system, standardizing judicial review procedures, enhancing local courts' support for arbitration, and preventing excessive court supervision. However, as these interpretations were formulated in the form of judicial interpretations with lower legal hierarchy and overly generalized provisions, the reporting and approval system still faces certain challenges. Therefore, this paper aims to analyze existing difficulties through the lens of the reporting and approval system and relevant judicial practices, thereby exploring viable solutions for China's arbitration judicial review reporting and approval framework.

3.1 The "Dual-track System" of Internal and External Differentiation Has Not Been Changed

China's dual-track supervision system for domestic and international arbitration, which differentiates²² between domestic and foreign cases, has drawn criticism from both academia and legal practitioners. Although the "Reporting and Approval Regulations" and "Adjudication Rules" have unified judicial review scopes by extending reporting requirements to non-international arbitration cases involving Hong Kong, Macao, and Taiwan, the latter still applies differentiated approval procedures based on case jurisdiction. While this appears to establish a unified judicial review framework,²³ it fundamentally retains the dual-track structure. Scholars argue that the restriction of reporting thresholds for non-international arbitration cases to intermediate people's courts primarily addresses China's massive arbitration caseload. Submitting such cases to the Supreme People's Court would reduce review efficiency while undermining its judicial authority.

Regardless of the rationale behind the application of the reporting and approval system- whether categorized by its international involvement- the positive significance of the "Reporting and Approval System" in China's arbitration judicial review should be acknowledged, though objective evaluation remains necessary. In my view, the "Regulations on Reporting and Approval" have preliminarily resolved two key issues regarding the debate over "domestic-foreign differentiation." First, they establish for the first time a legislative framework to formalize the "parallel-track system." Prior²⁴ to the promulgation of the "Reporting and Approval System," discussions about

²² A representative example is Chen An's *Parallel system in the article Analysis of China's Foreign-related Arbitration Supervision Mechanism*, and Xiao Yongping's *Dual-track system in the article My Views on the Analysis of China's Foreign-related Arbitration Supervision Mechanism - Discussion on the article "Analysis of China's Foreign-related Arbitration Supervision Mechanism"*

²³ Shen Wei, *Normative Analysis of China's Arbitration Judicial Review System - Origin, Evolution, Mechanism and Defects*, Journal of Law, 2019(01).

²⁴ Ma Zhanjun, *On the Modification and Improvement of China's Arbitration Award Reversal and Non-enforcement System and A Review of the Relevant Provisions of the Supreme People's Court's Interpretation on the Application of the Arbitration Law of the People's Republic of China*, Journal of Law, 2007(02).

domestic and foreign arbitration under this system remained theoretical. The Regulations explicitly incorporate domestic arbitration into the reporting scope, narrowing the gap between the "dual-track system." Second, they provide the first legislative clarification of the specific implementation methods for the "parallel-track system." Before the Regulations were enacted, scholars had extensively debated the standards for reviewing arbitration cases under this framework. Similarly, research is needed within the reporting and approval system for arbitration judicial review: Should non-international arbitration judicial review align with international arbitration standards, or vice versa? The Regulations clarify that the "parallel-track system" specifically requires non-international arbitration judicial review to conform to international standards.

Although the "Reporting and Approval Regulations" have not fully abolished the "dual-track system", the author argues that a complete "unified-track system" should be implemented due to judicial review uniformity, enhanced arbitration capabilities of various institutions, and improved judicial review capacities of higher people's courts. It is recommended to align existing foreign-related and cross-border arbitration review procedures with non-cross-border cases when applying the reporting and approval system for arbitration judicial review. Simultaneously, Article 3 of the Regulations should²⁵ be amended: applications for refusal of enforcement or revocation of arbitral awards based on violations of public interest must be reported stepwise to the Supreme People's Court. Three reasons support this: First, aligning the latter with the former would address scholars' concerns about "overburdening higher authorities while neglecting lower levels". Second, analyzing the Supreme People's Court's adoption of review recommendations from higher courts reveals that most cases approved by the Supreme Court indicate its competence in reviewing foreign-related and cross-border arbitration cases. Third, the absence of explicit definition of "public interest" in legislation allows parties to abuse this ground to obstruct creditors' rights realization through revocation or refusal of enforcement.

Therefore, the author argues that the "parallel-track system" of judicial review for arbitration rulings represents an inevitable trend in China's judicial oversight of domestic and international arbitral decisions. This approach carries dual positive implications: it not only safeguards the rights of parties in non-international arbitration cases involving Hong Kong, Macao, and Taiwan, but also contributes to the advancement of China's arbitration framework.

3.2 The Nature of the Approval System is Not Clear

The nature of the judicial review and approval system in arbitration has long been questioned by scholars. The "Approval Regulation" stipulates that lower courts must submit cases for approval to higher courts, which then issue replies before making rulings based on review opinions. This demonstrates that the approval system differs from both reconsideration and appellate procedures. If viewed as a reconsideration process, it does not involve lower courts submitting review opinions to higher courts for relief but rather sharing a review²⁶ procedure between two courts, with lower courts issuing review opinions under the name of higher courts. As scholars have noted: In internal reporting systems, formal ruling authority is separated from substantive decision-making power. If considered an appellate process, the approval case undergoes two or three trial stages, requiring lower courts to make rulings based on higher court opinions, thereby depriving them of independent adjudicative rights.

²⁵ Zhu Ke, *The Transformation of the Internal Reporting System for Judicial Review Cases in International Commercial Arbitration*, Journal of Law, 2017(06).

²⁶ Zhan Wanqiu, *On the Internal Reporting System of International Commercial Arbitration in China*, Technology and Market, 2011(12).

This ambiguity in the nature of the reporting and approval system has led to three critical issues. First, whether lower courts must strictly follow the review opinions of higher courts when making rulings remains questionable. The "Reporting and Approval Regulations" stipulate that "rulings may only be made after the Supreme People's Court (High People's Court) reviews the case." However, judicial interpretations reveal that while the reporting process emphasizes procedural necessity, it does not mandate lower courts to comply with review opinions. Second, this violates the principle of hierarchical independence. In practice, two or three courts simultaneously adjudicate cases under the reporting system, where higher courts retain final authority over review opinions, thereby constraining the arbitration judicial review power of lower courts. This undermines judicial independence: it discourages lower courts from actively conducting judicial reviews, leading to ineffective support and oversight of arbitration. Simultaneously, it causes a sharp increase in arbitration judicial review cases handled by higher courts and the Supreme People's Court, impairing their other functions. Consequently, arbitration authority diminishes, reducing arbitration institutions to mere appendages of the judiciary, leaving arbitral decisions subject to prolonged uncertainty. Third, the reporting system lacks adversarial mechanisms. According to Articles 4-6 of the regulations, higher courts primarily issue arbitration judicial review opinions through written examination. Even when factual uncertainties exist, they merely question or return cases to lower courts without involving arbitration parties or institutions during the review process. This undermines procedural rights and compromises fairness in judicial proceedings.

3.3 Lack of Transparency in the Approval Process

The review and approval system is a procedure for higher people's courts to correct erroneous rulings made by lower courts. However, due to its uncertain nature, this system lacks transparency, adversarial nature, and standardization compared to appeal and reconsideration procedures. The existing issues are mainly manifested in three aspects: First, the Supreme People's Court has not specified a review period. In the "Notice of the Supreme People's Court on Matters Concerning the Reversal of Foreign-related Commercial Arbitration Awards" and the "Regulations on Fees and Review Periods", when the judicial review court intends to issue a negative review opinion, it only stipulates that²⁷ lower courts should report to the Supreme People's Court within two months, without specifying the review period for the Supreme Court. According to survey data, among 220 cases published between 2000 and 2015, the time from initiating the reporting procedure to receiving the Supreme Court's final reply was relatively long, with some cases even taking up to seven years. According to Article 60 of the Arbitration Law, courts should issue rulings within two months from accepting arbitration revocation cases. Whether courts should bear responsibility for delayed review opinions remains unclear. Second, there is no feedback mechanism. The "Review and Approval Regulations" stipulate that lower courts may issue rulings based on the superior court's review opinions after the latter completes the review. However, if lower courts fail to implement the review system or do not follow the superior court's review opinions, whether they should bear certain responsibilities remains undefined. Third, the specific implementation of the review and approval system is lax. The Reporting Regulations have been in effect for more than a year, but in practice there are few cases of domestic arbitration cases being reported.

This demonstrates that the existing reporting and approval system has not resolved lingering issues within the internal reporting framework. This situation increases costs for arbitration parties when seeking judicial oversight

²⁷ Shen Wei, *Normative Analysis of China's Commercial Arbitration Judicial Review System — Origin, Evolution, Mechanism and Defects*, Journal of Law, 2019(01).

through court applications, thereby diminishing their willingness to choose arbitration as a dispute resolution method. Furthermore, given the demands for arbitration efficiency and procedural fairness, the author argues that optimizing the reporting and approval mechanism is essential to strengthen judicial supervision over court-ordered arbitration processes.

Therefore, the substantive reporting and approval system has not fundamentally altered the core structure of internal reporting mechanisms, nor resolved their significant operational challenges. The "Reporting and Approval Regulations" have advanced China's arbitration judicial review framework while providing strategic guidance for future reforms. These regulations also offer valuable insights into practical implementation of internal reporting systems. In the process of revising the Arbitration Law, particular emphasis should be placed on optimizing judicial oversight models, clarifying the nature of reporting and approval mechanisms, and enhancing transparency in procedural compliance processes.

4. Development Prospect of Judicial Review and Approval System for Commercial Arbitration in China

Through analyzing the arbitration judicial review and approval system, it is necessary to summarize practical experiences of the reporting system and recognize opportunities for China's arbitration development. Reform of the approval²⁸ system is essential, particularly as scholars have proposed transitioning from the approval system to a limited appeal system when legislation has not yet clearly defined "public interest". The establishment of an appeal system can address existing issues in the current approval framework, such as judicial independence, adversarial proceedings between parties, judge involvement, and procedural fairness. Additionally, it enables effective supervision of courts' arbitration judicial review authority to protect litigants' rights. China could adopt Germany and France's appellate systems for arbitration judicial review. Furthermore, for arbitration judicial review cases involving revocation or non-enforcement of arbitral awards based on "public interest" grounds, lower people's courts should report review reports progressively to the Supreme People's Court.

In summary, the appellate system should encompass the following elements: First, establishing an appellate mechanism. This involves amending the Arbitration Law to explicitly apply the appeal procedure for judicial review of arbitration cases. Second, defining eligibility criteria. By referencing China's approval system and international appellate frameworks, only when courts invalidate arbitration agreements, revoke arbitral awards, or refuse enforcement may creditors in arbitration decisions retain appeal rights. Concurrently, as stipulated in the Civil Procedure Law, rulings on non-acceptance, application rejection, or jurisdictional objections can be appealed. Therefore, arbitration disputes should also permit appeals. Third, specifying appeal deadlines and trial periods. The approval system has been criticized for lacking deadlines for the Supreme People's Court to issue review opinions, which must now be clearly defined in the appellate framework. Germany allows immediate appeal against decisions rejecting enforcement applications, while France mandates a one-month appeal period for refusal of enforcement permits. China adopts the Civil Procedure Law's provisions, setting ten-day appeal deadlines and thirty-day trial periods. This ensures arbitration efficiency and prevents prolonged uncertainty in arbitral decisions. Fourth, establishing jurisdictional courts for appellate cases. The system applies only to arbitration judicial review cases meeting statutory requirements. When existing legal provisions have not yet

²⁸ Zhu Ke, *The Transformation of the Internal Reporting System for Judicial Review Cases in International Commercial Arbitration*, Journal of Law, 2017(06).

clearly defined "public interest," arbitration judicial review cases involving revocation or non-enforcement of arbitral awards based on "public interest" shall be reported step-by-step to the Supreme People's Court. Other cases shall be handled by higher people's courts as appellate jurisdictions. Fifth, the review procedures for appeal cases shall be stipulated. First, amendments shall be made to the trial of arbitration judicial review cases involving revocation and non-enforcement, requiring court hearings as the primary method. Second, in arbitration appeal cases, written proceedings shall serve as supplementary to court hearings, implementing principles of limited review and procedural review. This approach not only fully safeguards the litigation rights of arbitration parties but also demonstrates courts' prudence in rejecting arbitration judicial review rulings. However, trial deadlines must be clearly defined to prevent malicious procedural delays by litigants.