

International Commercial Court: The Chinese Model?

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I. Background

- International commercial disputes: A big cake?
 - Dubai International Financial Center Court (2006);
 - Qatar International Court in Doha (2009);
 - Singapore International Commercial Court (2015);
 - Abu Dhabi Global Market Courts (2016);
 - Astana International Financial Centre Court (2018);
 - Netherlands Commercial Court (soon);
 - International Commercial Chamber of Paris Court of Appeal (2018);
 - Brussels International Business Court (2010?)
 - International Commercial Chamber of Regional Court of Frankfurt (2018)

Dubai International Financial Center Court



Qatar International Court in Doha



Abu Dhabi Global Market Courts



Singapore International Commercial Court



Astana International Financial Centre Court



Netherlands Commercial Court: Launching soon



Netherlands Commercial Court



de Rechtspraak | **NCC** Netherlands Commercial Court

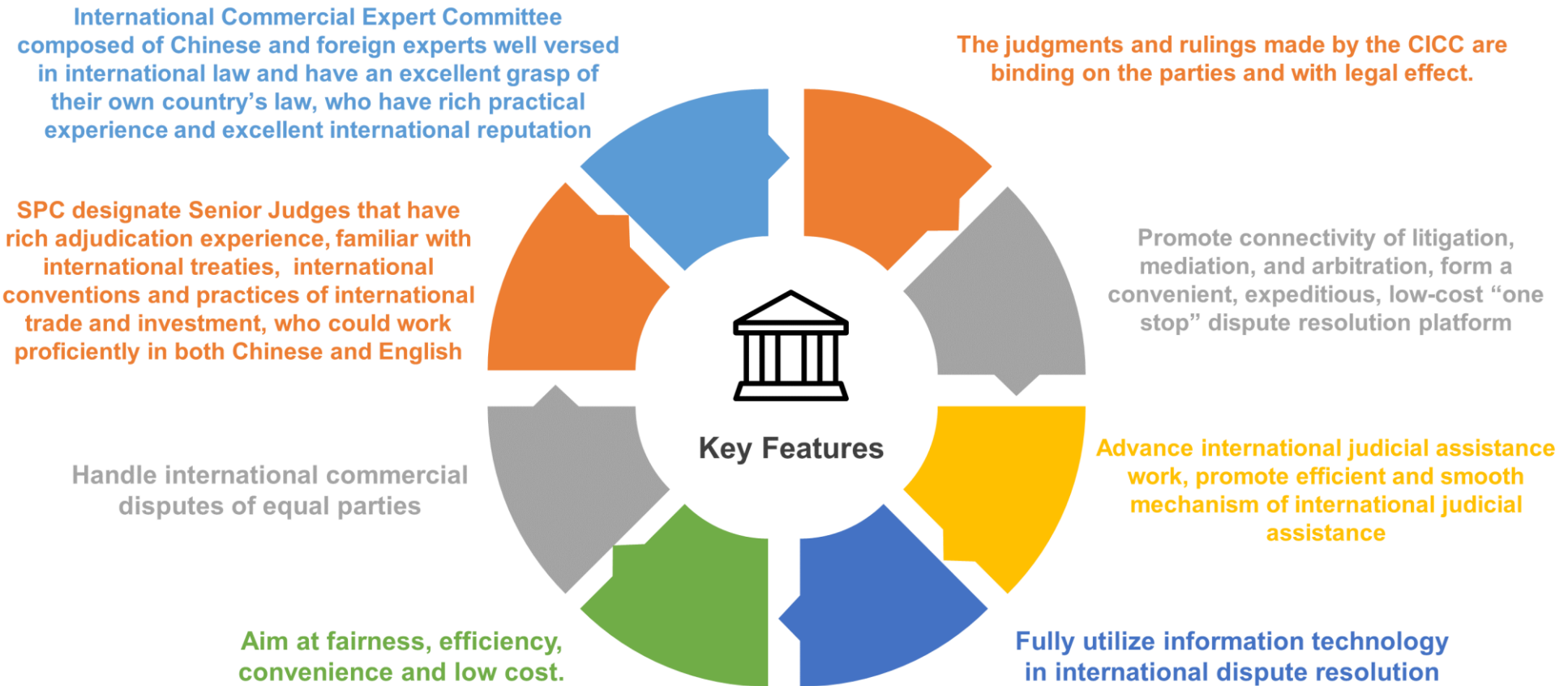
China International Commercial Court

- On 29 June, 2018, the First International Commercial Court and the Second International Commercial Court were respectively inaugurated in Shenzhen and Xi'an.





Key features



Judges



The “one-stop” international commercial dispute resolution mechanism

- Pursuant to Article 11 of the Provisions, The Supreme People’s Court will select international commercial mediation institutions and international commercial arbitration institutions that meet certain conditions to build up together with the International Commercial Court a dispute resolution platform on which mediation, arbitration and litigation are efficiently linked, thereby creating a “one-stop” international commercial dispute resolution mechanism.

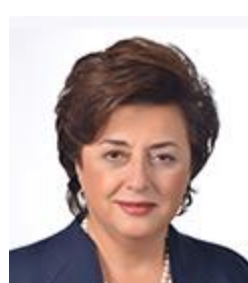
The International Commercial Expert Committee

- Pursuant to Article 11 of the Provisions, the Supreme People's Court will set up an International Commercial Expert Committee.
- On 24 August, 2018, the Supreme People's Court made two Decisions respectively on the Establishment of International Commercial Expert Committee and the Appointment of the First Group of Members for the International Commercial Expert Committee.

Expert Directory



Expert Directory



Tasks of the Experts Committee

- International Commercial Experts Committee is a major institutional innovation made by the CICC.
- The Committee is composed of Chinese and foreign experts invited by the Supreme People's Court. The members may mediate cases entrusted by the International Commercial Court to resolve international commercial disputes for litigant parties, provide advisory opinions on specific legal issues in international commercial dispute cases for the people's courts, and give advice and suggestions on relevant judicial interpretations and judicial policies formulated by the Supreme People's Court.

Some critiques:

- What is the nature of the International Commercial Expert Committee?
- Are members of the International Commercial Expert Committee dedicated to the CICC or can they serve the parties at the same time?
- Do the services they provide require the CICC or the parties to pay?
- How do they ensure their neutrality?

The Jurisdiction of the CICC

- the CICC may accept the following cases: (1) **First instance** international commercial cases in which the parties have chosen the jurisdiction of the Supreme People's Court according to Article 34 of the Civil Procedure Law, with an amount in dispute of at least RMB 300,000,000 yuan; (2) **First instance** international commercial cases which are subject to the jurisdiction of the higher people's courts who nonetheless consider that the cases should be tried by the Supreme People's Court for which permission has been obtained; (3) First instance international commercial cases that have a nationwide significant impact; (4) Cases involving applications for preservation measures in arbitration, for setting aside or enforcing international commercial arbitration awards according to Article 14 of these Provisions; (5) Other international commercial cases that the Supreme People's Court considers appropriate to be tried by the International Commercial Court

Scope of jurisdiction

First instance international commercial cases in which the parties have chosen the jurisdiction of the Supreme People's Court according to Article 34 of the Civil Procedure Law, with an amount in dispute of at least 300,000,000 Chinese yuan

First instance international commercial cases which are subject to the jurisdiction of the higher people's courts who nonetheless consider that the cases should be tried by the Supreme People's Court for which permission has been obtained;

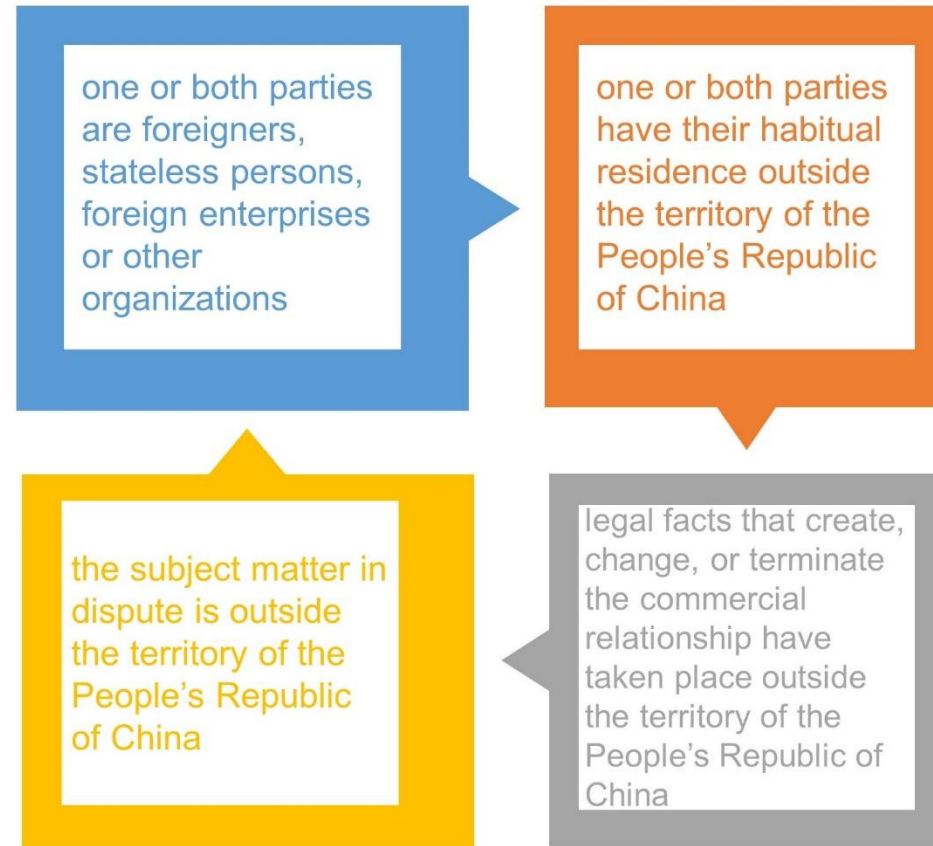
First instance international commercial cases that have a nationwide significant impact



Cases involving applications for preservation measures in arbitration, for setting aside or enforcement of international commercial arbitration awards according to Article 14 of these Provisions;

Other international commercial cases that the Supreme People's Court considers appropriate to be tried by the International Commercial Court

The definition of "International Commercial Cases"



The “actual connection” principle

- Article 34 of the Civil Procedure : “The parties to a contractual dispute or any other property dispute may agree in writing to be subject to the jurisdiction of the people's court at the place having **actual connection with the dispute**, such as where the defendant is domiciled, where the contract is performed, where the contract is signed, where the plaintiff is domiciled or where the subject matter is located, etc., provided that such agreement does not violate the provisions of the Law regarding court-level jurisdictions and exclusive jurisdictions.”

Critique

- The jurisdiction of the CICC is therefore restricted.

Finality of CIICC judgment

- CIICC accepts **the first instance** international commercial cases ;
- Pursuant to Article 15 of the Provisions, a judgment or ruling made by the CIICC is a legally effective judgment or ruling.
- Article 11(4) of the Law on the Organization of the People's Courts of the People's Republic of China stipulates that “judgments and orders of first instance of the Supreme People's Court are all judgments and orders of last instance, that is, legally effective judgments and orders”.

Conclusions

- CICC is a new type of international commercial dispute resolution institution that has been carefully designed to cater to the need of the “Belt and Road” construction under the current legal framework of China.
- The CICC does not fundamentally change the existing judicial system of China, and thus does not need to be established through amending the Constitution law and other laws of China.

Old wine in a new bottle?

- CICC doesn't use foreign procedural law;
- CICC has no foreign judges;
- No foreign lawyer can plead and defend before the CICC;
- CICC doesn't accept cases with no Chinese element.

