Ten Model Cases of Judicial Review of Arbitration Published by the Supreme People's Court

Area of Law:	Arbitration Institutions Optimization of Doing Business
Level of Authority:	Documents of Judicial Interpretation Nature
Date Issued:	01-16-2024
Effective Date:	01-16-2024
Issuing Authority:	Supreme People's Court
Status:	Effective
Topic:	Release of Judicial Cases

Ten Model Cases of Judicial Review of Arbitration

Published by the Supreme People's Court

最高人民法院发布十起仲裁司法审查典型案例

(January 16, 2024)

（2024年1月16日）

Since the 18th CPC National Congress, the CPC Central Committee has attached great importance to the development of the arbitration undertaking, and General Secretary Xi Jinping has clearly required “insisting on the non-litigation dispute resolution mechanism in the front.” Arbitration, as a non-litigation dispute resolution system stipulated in laws and regulations of China, is also an internationally accepted dispute resolution method, and an important part of the diversified dispute resolution mechanism in China's social governance system. The Supreme People's Court attaches great importance to the judicial review of arbitration, continuously improves the arbitration mechanism for judicial support and supervision, and actively supports the law-based, professional, standardized, and international development of commercial arbitration, to provide a strong judicial guarantee for the development of China's arbitration cause and the enhancement of arbitration credibility.

十八大以来，党中央高度重视仲裁事业发展，习近平总书记明确提出要“坚持把非诉讼纠纷解决机制挺在前面”。仲裁是我国法律规定的非诉纠纷解决制度，也是国际通行的纠纷解决方式，是我国社会治理体系中多元化纠纷解决机制的重要组成部分。最高人民法院高度重视仲裁司法审查工作，持续完善司法支持和监督仲裁机制，积极支持商事仲裁的法治化、专业化、规范化、国际化发展，为我国仲裁事业发展和仲裁公信力的提升提供有力司法保障。

The ten typical cases published this time are of various types, including applications for recognition and enforcement of foreign arbitral awards, applications for recognition and enforcement of Hong Kong arbitral awards, and other cases, as well as applications for revocation of arbitral awards, applications for confirmation of the validity of arbitration agreements, disputes over jurisdiction objection, and other cases; and are of rich contents, covering sports arbitration and financial arbitration, but also involving the effectiveness of arbitration clauses of peer-to-peer lending platforms, disclosure obligations of arbitrators, arbitration procedures, re-arbitration, public order and good customs and other issues, vividly reflecting the new situation and new problems facing the judicial review work of arbitration in the people's courts in the new era, and having fully reflected the judicial position of the people's court in attaching equal importance to arbitration support and supervision and actively creating a market-oriented, law-based and international first-class business environment.

这次发布的十个典型案例，类型多样，既包括申请承认和执行外国仲裁裁决、申请认可和执行香港仲裁裁决等案件，又包括申请撤销仲裁裁决、申请确认仲裁协议效力、管辖权异议纠纷等案件；内容丰富，既涵盖体育仲裁、金融仲裁，又涉及网贷平台仲裁条款效力、仲裁员披露义务、仲裁程序、重新仲裁、公序良俗等多个问题，生动反映出新时期人民法院仲裁司法审查工作面临的新情况新问题，充分体现了人民法院对仲裁支持和监督并重、积极营造市场化法治化国际化一流营商环境的司法立场。

First, recognizing (accepting) and enforcing overseas arbitral awards, and supporting the development of international commercial arbitration. In the case that Art Mosaic Company applied for recognition and enforcement of an arbitral award in Uzbekistan, it performed its obligations under international treaties in good faith, strictly implemented the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and recognized and enforced foreign arbitral awards in accordance with the law. In the case that Yihai Company applied for recognition and enforcement of a Hong Kong arbitration Award, in accordance with the provisions of the Arrangement for the Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region, the law of the place of arbitration applied to review the validity of the arbitration agreement and the Hong Kong arbitral award was recognized and enforced. In the case that Taisei Industrial Gases Co., Ltd. applied for confirming the validity of the arbitration agreement, it was specified that the arbitration clauses stipulated in the contract by the parties for the arbitration of foreign arbitration institutions in the mainland of China were in line with the provisions of Article 16 of the Arbitration Law of China and an effective arbitration clause and supported the development of the international commercial arbitration.

一是承认（认可）与执行境外仲裁裁决，支持国际商事仲裁发展。在艺术马赛克公司申请承认和执行乌兹别克斯坦仲裁裁决案中，善意履行国际条约义务，严格执行《承认及执行外国仲裁裁决公约》，依法承认和执行外国仲裁裁决。在亿海公司申请认可和执行香港仲裁裁决案中，依据《最高人民法院关于内地与香港特别行政区相互执行仲裁裁决的安排》的规定，适用仲裁地法律对仲裁协议效力进行审查，认可和执行香港仲裁裁决。在大成产业气体株式会社等申请确认仲裁协议效力案中，明确当事人在合同中约定外国仲裁机构在我国内地仲裁的仲裁条款，符合我国仲裁法第十六条的规定，系有效仲裁条款，支持国际商事仲裁发展。

Second, specifying the review standards for cutting-edge difficult issues and unifying the scale of judgment. In the case of contract disputes between Shanghai Shenxin Football Club and Shanghai Shenhua Football Club, etc., the scope of cases accepted by the Arbitration Commission set in the sports association and the China Sports Arbitration Commission was accurately defined, to promote the development of a diversified settlement mechanism for sports disputes, and serve the guarantee for “law-based governance of sports.” In the case that Oceanwide Holding Company applied for confirming the validity of the arbitration agreement, the parties' autonomy of will was respected, and it was determined that the arbitration clause of the main contract could not apply to the secondary contract. In the case that Chongqing Yihe Health Company applied for revoking the arbitral award, the subject applying for revoking the award was strictly limited to the “parties,” to maintain the finality of the award. In the case that Wang [REDACTED] and Li [REDACTED] applied for cancellation of an arbitral award, it was recognized that both parties knew or should have known that the private lending behavior of borrowing money for gambling violated public order and good customs, and the arbitral award made accordingly was against the public interest and should be revoked, which was a model case that the people's Court maintained public order and good customs, and promoted and practiced socialist core values.

二是明确前沿疑难问题的审查标准，统一裁判尺度。在上海申鑫足球俱乐部与上海申花足球俱乐部等其他合同纠纷案中，准确界定体育协会内设仲裁委、中国体育仲裁委员会的受案范围，促进体育纠纷多元化解决机制发展，服务保障“依法治体”。在泛海控股公司申请确认仲裁协议效力案中，尊重当事人意思自治，认定主合同的仲裁条款不能扩张适用于从合同。在重庆颐合健康公司申请撤销仲裁裁决案中，严格将申请撤销裁决的主体限定为“当事人”，维护裁决的一裁终局性。在王某与李某申请撤销仲裁裁决案中，认定双方明知或应知借款用作赌资的民间借贷行为违反公序良俗，据此作出的仲裁裁决违背社会公共利益，应予撤销，系人民法院维护公序良俗、弘扬和践行社会主义核心价值观的典型案例。

Third, strengthening supervision over arbitration in accordance with the law and promoting the sound development of arbitration. In the case that Sun [REDACTED] and Nanjing Sunfei Technology Company applied for cancellation of an arbitral award, it was specified that the arbitration clause signed without confirmation by signature or express consent of the contract counterpart and signed in the form of the so-called “seal” was invalid, and the arbitration institution was reminded of effectively controlling the “entrance gate” to ensure the enforceability of the arbitral award. In the case that China First Highway Engineering Co., Ltd. applied for cancellation of an arbitral award, it was specified that the arbitrator failed to perform the disclosure obligation in accordance with the arbitration rules, thus affecting the exercise of the parties' disqualification right, and it fell under the circumstance of possibly affecting the correct award, the arbitral award should be accordingly canceled to ensure the fairness of the arbitration procedure. In the case that Zhang [REDACTED] applied for revoking an arbitral award, in view of the defects in the arbitration procedure, the arbitration institution was notified of conducting re-arbitration, and the arbitration tribunal was given an opportunity to make up for the defects in the arbitration procedure, having reasonably balanced the relationship between the defects in the arbitration procedure and the finality of the arbitral award.

三是依法加强仲裁监督，促进仲裁健康发展。在孙某、南京孙飞科技公司申请撤销仲裁裁决案中，明确未经合同相对人签字确认或明示同意、以所谓“印章”等形式签订的仲裁条款无效，提醒仲裁机构把好“入口关”，以保障仲裁裁决的可执行性。在中交第一公路工程局公司申请撤销仲裁裁决案中，明确仲裁员未按照仲裁规则履行披露义务，影响当事人回避权利行使的，属于可能影响正确裁决的情形，据此撤销仲裁裁决，确保仲裁程序公正。在张某申请撤销仲裁裁决案中，针对仲裁程序存在瑕疵的情况，采取通知仲裁机构重新仲裁的方式，给予仲裁庭弥补仲裁程序瑕疵的机会，合理平衡了仲裁程序瑕疵与仲裁裁决终局性之间的关系。

Through this release of model cases, the scale of judicial review of arbitration in courts across the country will be further unified, the power of judicial review of arbitration will be standardized, the quality and efficiency of judicial review of arbitration will be improved, and arbitration institutions shall be standardized and guided to handle arbitration cases according to the law, and the continuous improvement of the credibility and influence of arbitration in China will be promoted.

通过这次典型案例的发布，将进一步统一全国法院仲裁司法审查尺度，规范仲裁司法审查权，提升仲裁司法审查质效，同时有助于规范和指引仲裁机构依法办理仲裁案件，促进我国仲裁公信力和影响力的持续提升。

Case 1

案例1

Strictly Implementing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards to Recognize Foreign Arbitral Awards

严格执行《承认及执行外国仲裁裁决公约》 承认外国仲裁裁决

—case of Uzbek Art Mosaic Co., Ltd. applying for recognition and enforcement of an arbitral award of the International Commercial Arbitration Court of the Uzbek Chamber of Commerce and Industry

——乌兹别克斯坦艺术马赛克有限责任公司申请承认和执行乌兹别克斯坦工商会国际商事仲裁院仲裁裁决案

[Basic Facts]

【基本案情】

In September 2017, Art Mosaic Company and Hongguan Company concluded an international goods sale contract through the Internet, agreeing that if Hongguan Company did not deliver the goods as agreed in the contract, Art Mosaic Company could file an application for arbitration to the International Commercial Arbitration Court of the Uzbek Chamber of Commerce and Industry, an arbitration institution where the company was located, according to the arbitration agreement. After Art Mosaic Company applied for arbitration, the International Commercial Arbitration Court of the Uzbek Chamber of Commerce and Industry rendered an arbitral award in accordance with the law, and ordered Hongguan Company to return corresponding payment for goods to Art Mosaic Company, and assume compensation and arbitration fees. Art Mosaic Company filed an application with the Intermediate People's Court of Foshan City of Guangdong Province for recognition of the arbitral award in dispute. Hongguan Company defended that the person who signed the contract Liu [REDACTED] was not its employee, and had no right to represent the company to conclude any sales contract with a foreign party, therefore there was no arbitration agreement with Art Mosaic Company, and the arbitral award should not be recognized.

2017年9月，艺术马赛克公司与宏冠公司通过互联网订立国际货物买卖合同，约定因宏冠公司未按合同约定交付货物，艺术马赛克公司可根据仲裁协议向该公司所在地仲裁机构乌兹别克斯坦工商会国际商事仲裁院提起仲裁申请。艺术马赛克公司申请仲裁后，乌兹别克斯坦工商会国际商事仲裁院依法作出仲裁裁决，裁令由宏冠公司向艺术马赛克公司返还相应货款、承担赔偿金及仲裁费。艺术马赛克公司向广东省佛山市中级人民法院提出承认案涉仲裁裁决的申请。宏冠公司抗辩称签署合同的人员刘某并非其公司员工，无权代表其对外订立买卖合同，故其与艺术马赛克公司不存在仲裁协议，案涉仲裁裁决不应被承认。

[Adjudication]

【裁判结果】

The Intermediate People's Court of Foshan City of Guangdong Province held that both China and the Republic of Uzbekistan were contracting parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the relevant provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards should be applied to the review in this case. According to the provisions of Articles 2 and 4 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the prerequisite for judging whether the arbitral award in dispute meets the conditions for non-recognition and enforcement in Article 5 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards is whether there is a legal and valid arbitration agreement between the parties. In consideration of such facts as negotiation on the sales contract in dispute, certain appearance form of the negotiation with the business seal of Hongguan Company, contact address of Hongguan Company stipulated in the contract, and payment made to the bank account of Hongguan Company, the court confirmed that Art Mosaic Company had reasons to believe that Liu [REDACTED] had the right to enter into the contract in dispute on behalf of Hongguan Company, and the arbitration agreement agreed in the contract was established and had validity on Hongguan Company, therefore Hongguan Company's claims that there was no arbitration agreement between the two parties and the arbitral award in this case should not be recognized could not be established. Accordingly, the court ruled to recognize the foreign-related arbitral award.

[Significance]

广东省佛山市中级人民法院认为，中国和乌兹别克斯坦共和国均为《承认及执行外国仲裁裁决公约》缔约国，本案应适用《承认及执行外国仲裁裁决公约》相关规定进行审查。根据《承认及执行外国仲裁裁决公约》第二条、第四条之规定，判断案涉仲裁裁决是否符合《承认及执行外国仲裁裁决公约》第五条不予承认和执行条件的前提是当事人之间是否存在合法有效的仲裁协议。结合案涉买卖合同的磋商情况、合同加盖宏冠公司业务章已经具备一定的外观形式、合同约定了宏冠公司联系地址、宏冠公司银行账户收取付款等事实，该院认定艺术马赛克公司有理由相信刘某有权代表宏冠公司与其订立案涉合同，合同中约定的仲裁协议成立，且效力及于宏冠公司，宏冠公司关于双方不存在仲裁协议以及不应承认本案仲裁裁决的主张不能成立。该院据此裁定承认案涉外国仲裁裁决。

【典型意义】

The arbitral award in this case was made by an Uzbek arbitration institution, involving a dispute over an international sales contract of goods between companies in China and Uzbekistan. Under the circumstance that the seal affixed by the Chinese party was an official seal for which the formalities for registration and recordation have been undergone, in consideration of the negotiation on the contract, the signing and performance of the contract, the case handling court confirmed that the foreign party had fulfilled its reasonable duty of care, thus confirming that there was a valid arbitration agreement between the Chinese and foreign parties. After the conclusion of the case, the case handling court received a letter of gratitude from the Consulate General of the Republic of Uzbekistan in Shanghai. This case reflected the judicial position of the people's court in recognizing awards made by arbitration institutions in countries co-constructing the “Belt and Road” and effectively performing the obligations under the international convention in strict accordance with the provisions of the international convention, having effectively served guaranteeing high-quality co-construction of the “Belt and Road.”

本案仲裁裁决由乌兹别克斯坦仲裁机构作出，涉及中乌两国公司之间的国际货物买卖合同纠纷。在中方当事人加盖的印章为非经登记备案公章的情况下，办案法院结合合同的磋商、签订以及履行情况，认定外方当事人已尽到合理的注意义务，由此确认中外双方当事人之间存在有效的仲裁协议。本案审结后，办案法院收到乌兹别克斯坦共和国驻上海总领事馆的致谢信。本案体现了人民法院严格依照国际公约的规定承认“一带一路”共建国家仲裁机构所作裁决、切实履行国际条约义务的司法立场，有力服务保障高质量共建“一带一路”。

[Reference Number] No. 1 [2021] Assistance in Recognition of Foreign Judgments, 06, Intermediate People's Court of Foshan City of Guangdong Province

【案号】广东省佛山市中级人民法院（2021）粤06协外认1号

Case 2

案例2

Accurately Applying the Arrangement for the Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region to Recognize and Enforce Arbitral Awards in Hong Kong

准确适用《最高人民法院关于内地与香港特别行政区相互执行仲裁裁决的安排》 认可和执行香港仲裁裁决

—case of Yihai International Limited applying for recognition and enforcement of the arbitral award of the Hong Kong International Arbitration Centre

——亿海国际有限公司申请认可和执行香港国际仲裁中心仲裁裁决案

[Basic Facts]

【基本案情】

In February 2020, the seller Yihai Company and the buyer Lianshun Company negotiated about the transaction, and negotiated about the contract on international sale of goods by E-mail, WeChat and other electronic communication channels. After the two parties reached preliminary consensus on the elements of sale of goods, Yihai Company sent the form containing the basic elements of the sales transaction and four drafts of the contract to Lianshun Company through E-mail. After receiving the text of the draft contract, Lianshun Company responded to Yihai Company with the contract details, raising objections to the port of discharge, quantity and demurrage in three draft contracts respectively, but did not raise objections to the arbitration clause contained therein. Yihai Company made corresponding amendments and sent the draft contract to Lianshun Company again. After receiving it, Lianshun Company replied that “it will sign back after the company's approval process is completed,” but it did not sign back thereafter. Later Lianshun Company believed that the contract was not established and refused to accept the goods, on the grounds that the two parties had not signed the contract. It was agreed in the aforesaid four draft contracts that any dispute arising from the contract should be submitted to the Hong Kong International Arbitration Centre (“HKIAC”) for arbitration. In June 2020, Yihai Company applied to the Hong Kong International Arbitration Centre for arbitration, requiring Lianshun Company to compensate for the loss of

2020年2月，卖方亿海公司与买方联顺公司洽谈交易，通过电邮及微信等电子通迅途径磋商国际货物买卖合同，在双方就货物买卖要素初步达成一致后，亿海公司通过电邮向联顺公司发送了包含买卖交易基本要素的表格以及四份合同草案。联顺公司接收合同草案文本后对合同细节向亿海公司进行了回应，针对其中的三份合同草案分别提出卸货港、数量、滞期费的异议，但未对其中所载的仲裁条款提出异议。亿海公司进行相应修改并向联顺公司再次发送了合同草案。联顺公司收到后，回复“等公司审批流程走完后回签”，但其后并未回签。后联顺公司以双方未签署合同为由，认为合同未成立并拒绝接货。前述四份合同草案均约定因合同产生的争议提交香港国际仲裁中心仲裁。2020年6月，亿海公司向香港国际仲裁中心申请仲裁，要求联顺公司赔偿违约损失并承担仲裁费用。香港国际仲裁中心于2021年5月作出仲裁裁决。亿海公司于2021年10月向浙江省杭州市中级人民法院申请认可和执行该仲裁裁决。联顺公司则主张双方之间不存在仲裁协议且认可和执行该仲裁裁决违背内地社会公共利益，应当不予认可和执行该仲裁裁决。

breach of contract and assume the arbitration costs. The HKIAC made the arbitral award in May 2021. In October 2021, Yihai Company applied to the Intermediate People's Court of Hangzhou City of Zhejiang Province for recognition and enforcement of the arbitral award. Lianshun Company claimed that there was no arbitration agreement between the two parties, the recognition and enforcement of the arbitral award was contrary to the public interests of the Mainland society, and the arbitral award should not be recognized or enforced.

[Adjudication]

【裁判结果】

The Intermediate People's Court of Hangzhou City of Zhejiang Province held that the law of the place where the arbitral award was made, i.e., the law of the Hong Kong Special Administrative Region, should be applied to reviewing whether the dispute arbitration agreement was effectively established. According to the provisions of the Arbitration Regulations of the Hong Kong Special Administrative Region and the views of relevant case laws, in consideration of the background of previous transactions between the two parties, the two parties exchanged the contract texts containing arbitration clauses during the negotiation process with the intention of concluding a contract, although Lianshun Company did not take the initiative to send the contract text to Yihai Company, it responded to the corresponding contract text and did not raise any objection to the arbitration clause. Therefore, even if the two parties do not ultimately agree to sign the contract text, based on the principle of independence in the effectiveness of the arbitration agreement, the parties should be deemed to have agreed upon the arbitration clauses contained in the four draft contracts. This arbitration clause satisfied the

浙江省杭州市中级人民法院认为，该案应当适用仲裁裁决地法律即香港特别行政区法律对诉争仲裁协议是否有效成立进行审查。根据查明的香港特别行政区《仲裁条例》的规定和相关判例的观点，结合双方的过往交易背景，双方在意图缔结合同的磋商过程中交换了记载有仲裁条款的合同文本，虽然联顺公司并未主动向亿海公司发送合同文本，但就相应合同文本进行了回应，且未对仲裁条款提出异议。因此，即使双方最终并未一致签署该合同文本，基于仲裁协议效力的独立性原则，应当认定双方就四份合同草案所载的仲裁条款达成合意。该仲裁条款符合香港特别行政区《仲裁条例》第十九条关于“合意提

requirements of Article 19 of the Arbitration Regulations of the Hong Kong Special Administrative Region on “consensual submission of arbitration” and “written form,” and was legally established and had legal effect. The validity of the arbitration clause should not be affected whether the parties had formed a legal and valid transaction contract. The dispute involved in the case was a dispute between specific contract parties, and the settlement result only affected the contract parties, and did not involve social public interests. The court ruled to recognize and enforce the arbitral award in accordance with the provisions of the Arrangement for the Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region to Recognize and Enforce Arbitral Awards in Hong Kong and the Supplementary Arrangement for the Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region to Recognize and Enforce Arbitral Awards in Hong Kong.

交仲裁”及“书面形式”要求，其合法成立并具有法律效力。不论双方是否形成合法有效的交易合同，均不影响该仲裁条款的效力。案涉纠纷系特定合同当事人间的争议，处理结果仅影响合同当事人，不涉及社会公共利益。该院依据《最高人民法院关于内地与香港特别行政区相互执行仲裁裁决的安排》《最高人民法院关于内地与香港特别行政区相互执行仲裁裁决的补充安排》的规定，裁定认可和执行案涉仲裁裁决。

[Significance]

【典型意义】

In accordance with the provisions of item (1) of paragraph 1 of Article 7 of the Supreme People's Court's Arrangement for the Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region to Recognize and Enforce Arbitral Awards in Hong Kong, if the parties have not agreed on the applicable law of the arbitration agreement, the law of the place where the arbitral award is made should be applied to judge the establishment of an arbitration agreement, and under the principle of independence of the arbitration agreement, it is specified that the establishment of arbitration clauses may be independent of the adjudication rules of the establishment of contracts, which is of reference significance to the review of similar cases.

该案根据《最高人民法院关于内地与香港特别行政区相互执行仲裁裁决的安排》第七条第一款第一项的规定，在当事人未约定仲裁协议准据法的情况下，适用仲裁裁决地的法律判断仲裁协议成立问题，同时根据仲裁协议独立性原则，明确仲裁条款的成立可以独立于合同的成立之裁判规则，对同类案件的审查具有参考意义。

[Reference Number] No. 1 [2021], Recognition of the Arbitration Award Made by the HKIAC, 01, Intermediate People's Court of Hangzhou City of Zhejiang Province

【案号】浙江省杭州市中级人民法院（2021）浙01认港1号

Case 3

案例3

Specifying the Validity of Arbitration Clauses for Arbitration in Mainland China by Overseas Arbitration Institutions Agreed by the Parties to Promote the Diversified Settlement of Foreign-Related Commercial Disputes in Pilot Free Trade Zones

明确当事人约定境外仲裁机构在我国内地仲裁的仲裁条款有效 促进自由贸易试验区涉外商事纠纷的多元化解决

—Taisei Industrial Gases Co., Ltd. v. Taisei (Guangzhou) Gases Co., Ltd. and Praxair (China) Investment Co., Ltd. (case of applying for confirming the validity of an arbitration agreement)

——大成产业气体株式会社、大成（广州）气体有限公司与普莱克斯（中国）投资有限公司申请确认仲裁协议效力案

[Basic Facts]

【基本案情】

In August 2012, Taisei Corporation of South Korea and Praxair Corporation, an enterprise formed in the Shanghai Pilot Free Trade Zone, entered into an Offtake Agreement, in which Article 14.2 provides that if negotiation on any dispute arising from this agreement or related thereto fails, both parties agree on submitting such dispute to the Singapore International Arbitration Centre for arbitration in Shanghai in accordance with its arbitration rules. In February 2013, Taisei Corporation, Plexair Corporation and Taisei Guangzhou Company entered into a Supplemental Agreement (I) to transfer Taisei Corporation's rights and obligations under the Offtake Agreement to Taisei Guangzhou Company, and Taisei Corporation was jointly and severally liable for the performance of Taisei Guangzhou Company's obligations during the term of the Offtake Agreement. In March 2016, Taisei Corporation and Taisei Guangzhou Company jointly filed an application for arbitration with the Singapore International Arbitration Centre, requesting the arbitration tribunal to determine Praxair Corporation's breach of contract and rule it to perform payment obligations. In the arbitration proceedings of the Singapore International Arbitration Centre, Plexair Corporation raised a jurisdictional objection to the arbitral tribunal. The Arbitral Tribunal made a decision on jurisdiction in July 2017, and the majority held that the place of hearing stipulated in the arbitration clause was Shanghai, China, the place of arbitration was Singapore, the applicable law of the arbitration agreement was Singapore law, the arbitration clause in dispute was valid under Singapore law, and the arbitral tribunal had jurisdiction over the dispute involved in this case. In August 2017, Praxair Corporation instituted a litigation with the Singapore High Court, seeking confirmation that the arbitral tribunal had no jurisdiction over the dispute. In the same month, the Singapore High Court held in the

2012年8月，韩国大成株式会社与在上海自贸试验区内设立的企业普莱克斯公司签署《承购协议》，第14.2条约定对因本协议产生的或与之有关的任何争议，协商不成的，双方均同意将该等争议最终交由新加坡国际仲裁中心根据其仲裁规则在上海仲裁。2013年2月，大成株式会社、普莱克斯公司以及大成广州公司签署《补充协议（一）》，将大成株式会社在《承购协议》项下的权利与义务转让给大成广州公司，大成株式会社对大成广州公司在《承购协议》合同期间内的义务履行承担连带保证责任。2016年3月，大成株式会社、大成广州公司共同向新加坡国际仲裁中心提出仲裁申请，请求仲裁庭认定普莱克斯公司违约并裁决其履行支付义务等。在新加坡国际仲裁中心的仲裁程序中，普莱克斯公司向仲裁庭提出管辖权异议。仲裁庭于2017年7月作出管辖权决定，多数意见认为案涉仲裁条款约定的开庭地点为中国上海，仲裁地为新加坡，仲裁协议准据法为新加坡法，案涉仲裁条款在新加坡法下有效，并认定仲裁庭对案涉争议有管辖权。2017年8月，普莱克斯公司向新加坡高等法院起诉要求确认仲裁庭对争议无管辖权。同月，新加坡高等法院判决认为仲裁条款约定争议提交新加坡国际仲裁中心在上海仲裁应理解为仲裁地为新加坡。普莱克斯公司上诉至新加坡最高法院上诉庭。2019年10月，新加坡最高法院上诉庭作出二审判决，认定第14.2条约定“在上海仲

judgment that the arbitration clause stipulating that the dispute submitted to the Singapore International Arbitration Centre for arbitration in Shanghai should be construed that the place of arbitration was Singapore. Praxair Corporation appealed to the Court of Appeal of the Supreme Court of Singapore. In October 2019, the Court of Appeal of the Supreme Court of Singapore rendered a judgment of second instance, determining that the stipulation in Article 14.2 that “arbitration in Shanghai” indicated that the place of arbitration was in Shanghai, rather than Singapore, but failing to determine other issues of dispute such as whether the arbitral tribunal had jurisdiction over the dispute. To this end, the arbitral tribunal issued a Decision to Suspend the Arbitration and waited for the Chinese court to confirm the validity of the arbitration clause involved in the case. In January 2020, Taisei Corporation and Taisei Guangzhou Company applied to the Shanghai No.1 Intermediate People's Court for confirmation of the validity of the arbitration clause.

裁”表明仲裁地在上海，而不是新加坡，但就仲裁庭对争议是否有管辖权等其他争议问题不作认定。为此，仲裁庭出具《中止仲裁决定》，等待中国法院确认案涉仲裁条款的效力。2020年1月，大成株式会社、大成广州公司向上海市第一中级人民法院申请确认案涉仲裁条款效力。

[Adjudication]

【裁判结果】

The Shanghai No. 1 Intermediate People's Court held that the dispute resolution clause in Article 14.2 of the Offtake Agreement was a genuine expression of intent by the parties and was contractually binding on the parties, according to the context of the arbitration clause and the interpretation and analysis on the parties, the arbitration place was Shanghai, China, the parties also confirmed that the applicable law of the arbitration agreement was law of China, the arbitration clause involved in the case had the intention to request arbitration, agreed on the arbitration matters, and selected a specific arbitration institution, Singapore International Arbitration Centre, which complied with the provisions of Article 16 of the Arbitration Law of China, and should be deemed valid.

上海市第一中级人民法院认为，《承购协议》第14.2条争议解决条款是当事人真实意思表示，对当事人具有合同约束力，根据仲裁条款上下文及各方当事人的解读分析，仲裁地点在中国上海，各方当事人亦确认仲裁协议准据法为中国法律，案涉仲裁条款有请求仲裁的意思表示，约定了仲裁事项，并选定了明确具体的仲裁机构新加坡国际仲裁中心，符合我国仲裁法第十六条的规定，应认定有效。

[Significance]

【典型意义】

This case resolved the dispute over the validity of arbitration clause under the circumstance that the parties voluntarily agreed to submit a foreign-related dispute to an overseas arbitration institution for arbitration, but the arbitration place was determined to be in the Mainland China. The Arbitration Law of China had no provisions on this issue, but in judicial practice, response to it could not be refused for absence of explicit provisions. From the perspective of practice of international commercial arbitration, the place of arbitration, as a place in legal sense, had no necessary connection with the hearing place, the meeting place, the investigation and evidence collection place of the arbitral tribunal, etc. Its function was mainly determining the place of the arbitral award, determining the jurisdiction court with the right to exercise judicial supervision, and determining the applicable law of arbitration procedure and arbitration

本案解决了当事人自愿约定将涉外争议提交境外仲裁机构仲裁但将仲裁地确定在我国内地的情形下仲裁条款效力的争议问题。我国仲裁法对于该问题没有作出规定，但司法实践不能以法无明文规定而拒绝回

agreement. In this case, the arbitration place agreed by the parties was Shanghai, so the validity of the arbitration clause in the judgment of the Court of Appeal of the Supreme Court of Singapore should be determined by the court at the arbitration place, i.e., the Chinese court, as a court with right to supervisory jurisdiction, rather than the court of Singapore. In consideration of the fact that the relevant issues are not prohibited by the Chinese law, the Shanghai No. 1 Intermediate People's Court filled the legal loophole by loosely interpreting the “selected arbitration commission” in Article 16 of the Arbitration Law as “arbitration institution,” and ruled that the clause stipulating that the parties agree to submit their disputes to overseas arbitration institutions for arbitration in the Mainland China should be valid, showing the people's court's judicial position of fully respecting the arbitration will of the parties, conforming to the development trend of international arbitration, and seeking truth and pragmatic solutions to the problems. On the other hand, the Shanghai No. 1 Intermediate People's Court, as the court at the place of arbitration, actively exercised its jurisdiction, accurately applied the law, and specified the rules for the validity of arbitration agreements, having created a predictable legal environment for the diversified settlement of disputes in the pilot free trade zone, which was of great significance for Shanghai to accelerate the construction of the Asia-Pacific Arbitration Centre and buildING an international popular arbitration place.

应。从国际商事仲裁实践看，仲裁地作为法律意义上的地点，与仲裁庭的开庭地点、合议地点、调查取证地点等均没有必然的联系，其功能主要在于确定仲裁裁决籍属、确定有权行使司法监督权的管辖法院以及用于确定仲裁程序准据法、仲裁协议准据法等。本案中，当事人约定的仲裁地在上海，故新加坡最高法院上诉庭判决案涉仲裁条款效力宜由仲裁地法院即中国法院作为享有监督管辖权的法院予以认定，而不宜由新加坡法院作出认定。上海一中院结合我国法律对相关问题未作禁止性规定的实际情况，通过将仲裁法第十六条规定的“选定的仲裁委员会”宽松解释为“仲裁机构”的方法填补法律漏洞，裁定当事人约定争议提交境外仲裁机构在我国内地仲裁的条款有效，展示了人民法院充分尊重当事人仲裁意愿、顺应国际仲裁发展趋势、求真务实解决问题的司法立场。另一方面，上海一中院作为仲裁地法院积极行使管辖权、准确适用法律、明确仲裁协议效力规则，为自由贸易试验区多元化解决纠纷营造了可预期的法治环境，对于上海加快建设亚太仲裁中心、打造国际上受欢迎的仲裁地具有十分重要的意义。

[Reference Number] No. 83 [2020], Civil, Special Proceeding, 01, Shanghai No. 1 Intermediate People's Court

【案号】上海市第一中级人民法院（2020）沪01民特83号

Case 4

案例4

Accurately Defining the Administrative Boundary Between Multi-Level Sports Dispute Resolution Mechanisms to Promote the Construction of Diversified Resolution Mechanisms for Sports Disputes

—Shanghai Shenxin Football Club Co., Ltd. v. Shanghai Shenhua Football Club Co., Ltd., Shanghai Greenland Sports and Culture Development Co., Ltd. (case of contract disputes)

准确界定多层次体育纠纷解决机制间主管边界　推进体育纠纷多元化解机制建设

——上海申鑫足球俱乐部有限公司与上海申花足球俱乐部有限公司、上海绿地体育文化发展有限公司其他合同纠纷案

[Basic Facts]

On February 20, 2019, Shenxin Company entered into the Player Loan Agreement with the same contents with Shenhua Company and its four players respectively, which mainly stipulated that Shenxin Company would lease Shenhua Company's players and pay the rent, and agreed that if both parties violated the contract, they would submit it to the Chinese Football Association for arbitration until holding violators legally liable. On February 25 of the same year, Shenhua Company and Shenxin Company entered into the Training Cooperation Agreement, having stipualted the players' appearance rate and the calculation method for Shenhua Company's payment of incentives to Shenxin Company. As the Chinese Football Association issued a decision not to accept the arbitration of Shenxin Company for application on the grounds that Shenxin Company had not been registered in the registration system of the Football Association since 2020, Shenxin Company instituted a litigation with the Chongming District People's Court of Shanghai, requesting an order that: Shenhua Company should pay incentives, liquidated damages, legal fees, etc. Shenhua Company raised an objection to jurisdiction during the defense of

【基本案情】

2019年2月20日，申鑫公司与申花公司及其四名球员分别签署内容相同的《球员租借协议》，协议主要约定申鑫公司租借申花公司球员并支付租借费，并约定双方如有违约，呈报中国足协仲裁，直至追究法律责任。同年2月25日，申花公司与申鑫公司签署《培训合作协议》，约定了球员出场率及申花公司向申鑫公司支付奖励款的计算方法。因中国足球协会以申鑫公司自2020年起未在足协注册系统中注册为由，出具不予受理申鑫公司仲裁申请的决定，申鑫公司诉至上海市崇明区人民法院，请求判令：申花公司支付奖励款、违约金、律师费等。申花公司在一审答辩期间提出管辖权异议，认为《球员租借协议》与《培训合作协议》为有机整体，支付奖励款是因球员租借而产生的纠纷，而《球员租借协议》约定违约交中国足协仲裁，故应驳回

the first instance, holding that the Agreement on Lease of Players and the Agreement on Training Cooperation were an organic whole, and the payment of incentives is a dispute arising from lease of players, and the Agreement on Lease of Players stipulated that default should be submitted to the Chinese Football Association for arbitration, therefore Shenxin Company's litigation should be rejected. The court of first instance ruled to reject the litigation instituted by Shenxin Company on the grounds that the dispute in this case fell under the scope of disputes to be accepted by the arbitration commission of the Football Association. Shenxin Company appealed to the Shanghai No. 2 Intermediate People's Court.

申鑫公司的起诉。一审法院以本案争议属于足协仲裁委受理范围为由裁定驳回申鑫公司的起诉。申鑫公司向上海市第二中级人民法院提出上诉。

[Adjudication]

【裁判结果】

The Shanghai No. 2 Intermediate People's Court held that, first, the scope of consensus on arbitration of the Football Association in the Agreement on Lease of Players did not extend to the Agreement on Training Cooperation. The arbitration clause in the Agreement on Lease of Players clearly stipulated that the Arbitration Committee of the Football Association would accept disputes arising from the performance of the agreement. The litigation request in this case referred to Shenxin Company's obligation to pay incentives after ensuring the player's appearance rate and Shenxin Company's right to collect incentives, which were only bound by the Agreement on Training Cooperation and did not belong to the content agreed upon in the Agreement on Lease of Players, therefore, the scope of consensus on arbitration of the Football Association did not include the dispute in this case. Second, as a branch under the Football Association specializing in dealing with internal disputes, the

上海市第二中级人民法院认为，第一，《球员租借协议》中关于足协仲裁的合意范围不及于《培训合作协议》。《球员租借协议》中的仲裁条款明确约定足协仲裁委受理因履行该协议而产生的纠纷。本案诉讼请求指向的是申鑫公司保证球员出场率后申花公司支付奖励款的义务和申鑫公司收取奖励款的权利，该权利义务仅受《培训合作协议》约束，不属于《球员租借协议》约定的内容，故足协仲裁的合意范围

Arbitration Committee of the Football Association is an internal autono[REDACTED]s body. Its ruling power comes from the collective authorization of members, and the rulings made are internal decisions in nature, and have binding and mandatory force, i.e., internal effect, according to the internal rules. Shenxin Company was not registered with the Football Association, so there was lack of coercive force in the arbitral award of the football association. Third, the Sports Arbitration Commission could not accept the dispute in this case. The Sports Arbitration Commission is an arbitration institution established by the sports administrative department of the State Council to deal with sports disputes according to the new Chapter IX of the Sports Law of the People's Republic of China amended in 2022. The arbitral awards made by it had legal effect. In this case, the parties to the dispute had not reached consensus of the Sports Arbitration Commission, so the Sports Arbitration Commission had no right to accept the dispute in this case. The court ruled to revoke the first-instance ruling and ordered the Chongming District People's Court of Shanghai to hear the case.

不包括本案纠纷。第二，足协仲裁委作为足协专门处理内部纠纷的下设分支机构，属于内部自治机构，其裁决权源于成员集体授权，作出的裁决在性质上属于内部决定，依据内部规则产生约束力和强制力即内部效力。申鑫公司并未在足协注册，足协仲裁裁决的强制力存在欠缺。第三，体育仲裁委无法受理本案纠纷。体育仲裁委是依据2022年修订的《中华人民共和国体育法》新增第九章，由国务院体育行政部门设立的专门处理体育纠纷的仲裁机构，其作出的仲裁裁决具有法律效力。本案中，纠纷各方之间并未达成体育仲裁委仲裁合意，故体育仲裁委无权受理本案纠纷。该院裁定撤销一审裁定，指令上海市崇明区人民法院审理。

[Significance]

【典型意义】

This case is the first case clearly defining the competent boundary between multi-level sports dispute resolution mechanisms after the revision of the Sports Law of the People's Republic of China and the establishment of the China Sports Arbitration Commission. Under the new pattern of “governing sports according to the law,” the people's courts have accurately defined the scope of cases to be accepted by the arbitration commission and the China Sports Arbitration Commission set up in sports associations, promoted the development of a diversified mechanism for resolving sports disputes, reflected the encouragement of sports autonomy, maximized the advantages of specialized agencies in the professionalism and timeliness in handling disputes, and fully guaranteed the relief rights of the parties and the substantive resolution of sports disputes. This case provided a reference for the trial of such cases, further promoted the modernization of sports governance systems and governance capacity, and provided judicial guarantee for accelerating the construction of sports power.

本案系《中华人民共和国体育法》修订及中国体育仲裁委员会设立后首例明确界定多层次体育纠纷解决机制间主管边界的案件。在“依法治体”的新格局下，人民法院准确界定体育协会内设仲裁委、中国体育仲裁委员会的受案范围，促进体育纠纷多元化解决机制发展，体现了鼓励体育自治，发挥专门机构处理纠纷专业度、及时性等优势，充分保障了当事人的救济权利和体育纠纷的实质性化解。本案为类案的审理提供了可资借鉴的思路，更为推进体育治理体系和治理能力现代化、加快建设体育强国提供了司法保障。

[Reference Number of the Judgment of First Instance] No. 1673 [2023], First, Civil Division, 0151, Chongming District People's Court of Shanghai

【一审案号】上海市崇明区人民法院（2023）沪0151民初1673号

[Reference Number of the Judgment of Second Instance] No. 6825 [2023], Final, Civil Division, 02, Shanghai No. 2 Intermediate People's Court

【二审案号】上海市第二中级人民法院（2023）沪02民终6825号

Case 5

案例5

Respecting the Parties' Autonomy of Will and Specifying that the Arbitration Clause of the Master Contract Could Not Apply to the Accessory Contract

尊重当事人意思自治 明确主合同的仲裁条款不能适用于从合同

—China Oceanwide Holding Group Co., Ltd. v. Guo [REDACTED] (case of applying for confirming the validity of an arbitration agreement)

——中国泛海控股集团有限公司与郭某申请确认仲裁协议效力案

[Basic Facts]

【基本案情】

In December 2019, Guo [REDACTED] and fund manager Minsheng Wealth Company and fund custodian China Merchants Securities Company entered into the Fund Contract, the Fund Supplementary Confirmation Letter, and the Confirmation Letter for Subscription to Shares of “Minsheng Wealth Zunyi No. 9 Investment Fund.” On the day of signing of the Fund Contract, Guo [REDACTED] paid 4.3 million yuan to the designated fundraising account of Minsheng Wealth Company as scheduled. It was stipulated in the Fund Contract that all disputes arising from or in connection with this Contract which could not be settled through friendly negotiation should be submitted to [REDACTED] Arbitration Commission for arbitration. In October 2014, Oceanwide Company issued a Commitment Letter to Minsheng Wealth Company, promising to provide credit enhancement guarantee support for the liquidity and asset security of asset management products initiated and established by Minsheng Wealth Company and assuming active management responsibilities. In September 2021, Guo filed an application for arbitration with the agreed arbitration commission, listing Minsheng Wealth Company, China Merchants Securities Company and Oceanwide Company as respondents. In November 2021, Oceanwide Company filed an Application for Objection to Arbitration Jurisdiction with the arbitration commission, arguing that the arbitration commission had no jurisdiction over the dispute between Guo [REDACTED] and it. In January 2022, the Beijing Financial Court accepted Oceanwide Company's application for confirming the validity of the arbitration agreement.

2019年12月，郭某与基金管理人民生财富公司、基金托管人招商证券公司签订了《基金合同》《基金补充确认函》《“民生财富尊逸9号投资基金”份额认购（申购）确认书》。《基金合同》签订当日，郭某如约将430万元支付至民生财富公司指定募集账户。《基金合同》约定因本合同而产生的或与本合同有关的一切争议，经友好协商未能解决的，应提交某仲裁委员会申请仲裁。2014年10月，泛海公司向民生财富公司作出《承诺函》，承诺对民生财富公司发起设立并承担主动管理职责的资产管理产品的流动性及资产安全性提供增信担保支持。2021年9月，郭某向约定的仲裁委员会提出仲裁申请，将民生财富公司、招商证券公司、泛海公司列为被申请人。2021年11月，泛海公司向该仲裁委员会提出《仲裁管辖权异议申请书》，认为该仲裁委员会对郭某与其之间的争议无管辖权。2022年1月，北京金融法院立案受理泛海公司申请确认仲裁协议效力一案。

[Adjudication]

【裁判结果】

The Beijing Financial Court held that Oceanwide Company did not directly enter into a Fund contract with Guo [REDACTED], and the Commitment Letter was not issued by Oceanwide Company to Guo [REDACTED]. There was no clear intention of settling disputes between Oceanwide Company and Guo [REDACTED] through arbitration, and there was no arbitration agreement. Oceanwide Company raised an objection before the first hearing of the arbitral tribunal, which was in line with the relevant procedural provisions. After inquiring [REDACTED] Arbitration Commission, the arbitration commission did not make any decision on the validity of the objection. The court ruled that there was no arbitration agreement between Oceanwide Company and Guo [REDACTED].

北京金融法院认为，泛海公司并未直接与郭某签订《基金合同》，《承诺函》并非泛海公司向郭某出具。泛海公司与郭某之间并未有明确的仲裁解决争议的意思表示，不存在仲裁协议。泛海公司在仲裁庭首次开庭前提出了异议，符合相关程序性规定，经询问某仲裁委员会，该委并未对仲裁效力异议作出决定。该院裁定确认泛海公司与郭某之间不存在仲裁协议。

[Significance]

【典型意义】

This case is a model case determining the extension of validity of arbitration clause in the master contract to the accessory contract. The parties' autonomy of will is the cornerstone of arbitration agreement. By fully respecting the parties' will of arbitration, and in view of the relationship between the master and accessory contract, the particularity of the arbitration, and the formality of the arbitration clause, the people's court determined that the arbitration clause of the master contract had no binding force on the accessory contract if there was no arbitration clause in the accessory contract. This case has provided useful guidance for regulating the extension of the validity of arbitration clause in similar cases.

本案系主从合同中仲裁条款扩张效力认定的典型案例。当事人意思自治是仲裁协议的基石。人民法院充分尊重当事人的仲裁意愿，根据主从合同的关系、仲裁的特殊性、仲裁条款的要式性等，在从合同没有仲裁条款的情况下，认定主合同的仲裁条款对从合同不具有约束力。本案为规范仲裁条款效力的扩张提供了有益的类案指引。

[Reference Number] No. 13 [2022], Civil, Special Proceeding, 74, Beijing Financial Court

【案号】北京金融法院（2022）京74民特13号

Case 6

Examining the Validity of the Arbitration Clause According to the Law and Confirming Invalidity of the Arbitration Clause to Which the Counterparty Has Neither Affixed Signature for Confirmation Nor Explicitly Expressed Consent

—Sun [REDACTED] and Nanjing Sunfei Science and Technology Consulting Co., Ltd. v. Yingtan Yujiang District Shengke Trading Co., Ltd. (case of applying for cancellation of an arbitral award)

[Basic Facts]

In April 2018, borrower Sunfei Technology Company entered into a Loan Contract with lender Zeng [REDACTED][REDACTED] through the peer-to-peer lending platform due to the need for capital turnover. Sun [REDACTED] provided mortgaged guarantee for the loans involved in the case with all real estates owned and entered into the Mortgage Contract (Third Party). Both contracts stipulated that disputes should be under the jurisdiction of the people's court where the collateral was located. Later, the contractual creditor's rights were ultimately accepted by Shengge Company after three times of transfer. Shengge Company applied for arbitration to [REDACTED] Arbitration Commission, and the arbitration commission rendered an award in November 2019. Sunfei Technology Company and Sun [REDACTED] applied to the Railway Transportation Intermediate Court of Nanning for revoking the aforesaid arbitral award on the grounds that no arbitration clause had been agreed between them and Shengke Company.

案例6

依法审查仲裁条款效力 明确合同相对人未签字确认亦未明确表示同意的仲裁条款无效

——孙某、南京孙飞科技咨询有限公司与鹰潭余江区升恪贸易有限公司申请撤销仲裁裁决案

【基本案情】

2018年4月，借款人孙飞科技公司因资金周转需要，通过网络借贷平台与出借人曾某某签订《借款合同》。孙某以其所有的不动产为案涉借款提供抵押担保，并签订《抵押合同（三方）》。两份合同均约定发生争议由担保物所在地人民法院管辖。此后该合同债权经三次转让，最终由升恪公司受让。升恪公司向某仲裁委员会申请仲裁，某仲裁委员会于2019年11月作出裁决书。孙飞科技公司、孙某以其与升恪公司之间并未约定仲裁条款为由，向南宁铁路运输中级法院申请撤销上述仲裁裁决。

[Adjudication]

【裁判结果】

The Railway Transportation Intermediate Court of Nanning held that the seal was affixed to the blank space in the middle of the contract clause for the arbitration clause in the Loan Contract in dispute, while the arbitration clause in the Mortgage Contract (Third Party) was added to the other agreed matters in Article 11 by hand, and both the seal content and the handwritten content were changes to the dispute resolution clause; under the circumstance that Sun [REDACTED] and Sunfei Technology Company denied the arbitration clause, the change had not been confirmed by Sunfei Technology Company and Sun [REDACTED] by signature or other means, and Shengge Company had no evidence to prove that the seal and handwritten content have been confirmed by Sunfei Technology Company and Sun [REDACTED], therefore, it could not be determined that Zeng [REDACTED] and Sunfei Technology Company and Sun [REDACTED] had reached consensus on changing the dispute resolution method in the Loan Contract and Mortgage Contract (Third Party) to jurisdiction over arbitration, and there was no legally effective arbitration agreement in this case. The court ruled to revoke the arbitral award in the case.

南宁铁路运输中级法院认为， 案涉《借款合同》中的仲裁条款系以印章方式加盖在合同条款中间的空白处，而《抵押合同（三方）》中的仲裁条款则是以手写方式添加于第十一条其他约定事项中，印章内容与手写内容均系对争议解决条款的变更，在孙某、孙飞科技公司否认该仲裁条款的情形下，该变更未经孙飞科技公司和孙某以签字或其他方式予以确认，升恪公司亦无证据证明该印章及手写内容经过孙飞科技公司和孙某的确认，故不能认定曾某某与孙飞科技公司、孙某就《借款合同》《抵押合同（三方）》的争议解决方式变更为仲裁管辖达成了合意，本案不存在合法有效的仲裁协议。该院裁定撤销案涉仲裁裁决。

[Significance]

【典型意义】

With the development of the network economy, disputes over peer-to-peer lending have occurred frequently, and arbitration has become the preferred dispute resolution method for peer-to-peer lending platform companies for its advantages of convenience, efficiency and confidentiality. In this case, it had been specified that the arbitration clauses in the form of “seal” and “handwriting” were invalid without the signature for confirmation or the explicit consent of the contract counterpart. The trial of this case effectively reminded arbitration institutions of effectively taking good care of the “entrance gate.” For cases of arbitration of disputes over peer-to-peer lending, in the case of change in the dispute resolution method agreed in the contract, the arbitration institution had the obligation to prudently identify whether the contract conterparty had consensus to submit the disputes to arbitration for settlement, to ensure the enforceability of the arbitral award.

随着网络经济的发展，网络贷款纠纷频发，仲裁以其便捷、高效、保密的优势成为网贷平台公司青睐的争议解决方式。本案明确了未经合同相对人签字确认或明确表示同意的，“印章”及“手写”等形式仲裁条款无效。本案的审理有效提醒仲裁机构把好“入口关”，对于网络贷款纠纷仲裁案件，在合同约定的争议解决方式发生变更的情况下，仲裁机构有义务审慎识别合同相对方是否具有将纠纷提交仲裁解决的合意，以保障仲裁裁决的可执行性。

[Reference Number] No. 21 [2022], Civil, Special Proceeding, 71, Railway Transportation Intermediate Court of Nanning, Guangxi

【案号】南宁铁路运输中级法院（2022）桂71民特21号

Case 7

案例7

Accurately Defining Arbitrators' Disclosure Obligations According to the Arbitration Rules to Ensure the impartiality of the Arbitration Procedures

根据仲裁规则准确界定仲裁员披露义务　确保仲裁程序公正

—China First Highway Engineering Co., Ltd. v. Tianbei Investment Group Co., Ltd. (case of applying for cancellation of an arbitral award)

——中交第一公路工程局有限公司与天贝投资集团有限公司申请撤销仲裁裁决案

[Basic Facts]

【基本案情】

In March 2017, Tianbei Company filed an application for arbitration with [REDACTED] Arbitration Commission for a case of disputes over a construction contract for construction project, and China First Highway Engineering Co., Ltd. filed a counterclaim for arbitration. After hearing the case, the arbitral tribunal found that the case was complicated and the amount of dispute was large, so it consulted the expert advisory committee of the arbitration commission on the dispute between the two parties in April 2018. In July 2018, the tribunal issued its award. China First Highway Engineering Co., Ltd. applied to the Intermediate People's Court of Wenzhou City of Zhejiang Province for revoking the aforesaid arbitral award on the grounds that the composition of the arbitral tribunal had violated the procedure.

2017年3月，天贝公司因与中交一公司建设工程施工合同纠纷一案，向某仲裁委员会提出仲裁申请，中交一公司提出仲裁反请求。仲裁庭经审理后，认为案情复杂，争议额大，遂就双方争议问题于2018年4月向该仲裁委员会专家咨询委员会进行了咨询。2018年7月，仲裁庭作出裁决。中交一公司以仲裁庭的组成违反程序等为由向浙江省温州市中级人民法院申请撤销上述仲裁裁决。

[Adjudication]

【裁判结果】

The Intermediate People's Court of Wenzhou City of Zhejiang Province held that Tianbei Company's agent in the arbitration case, Yang [REDACTED], and arbitrator Chen [REDACTED], had worked in the same law firm. When Yang [REDACTED] served as director of the expert advisory committee of [REDACTED] Arbitration Commission, Chen [REDACTED] and the chief arbitrator of the arbitration case were expert members of the expert advisory committee of [REDACTED] Arbitration Commission. However, the profile of Yang [REDACTED] as an arbitrator on the official website of [REDACTED] Arbitration Commission did not show that he was the director of the expert advisory committee, and the situation that he was the director of the Expert Advisory Committee was not disclosed during the arbitration process. In accordance with the provisions of item (3) of

浙江省温州市中级人民法院认为，天贝公司在仲裁案件中的代理人杨某与仲裁员陈某曾在同一律师事务所工作。杨某担任某仲裁委员会专家咨询委员会主任期间，陈某及仲裁案件首席仲裁员均系该委专家咨询委员会专家成员。但某仲裁委员会官网页面上对杨某的仲裁员概况

paragraph 1 of Article 56 of the arbitration rules of the arbitration commission, where an arbitrator had any other relationship with the party or his agent in the case, which might affect the fairness of the award, the arbitrator should disclose it to the arbitration commission and request for withdrawal, and the party should also have the right to apply for withdrawal. In the arbitration process of the arbitration-related case, Chen [REDACTED] and others failed to disclose the relationship between them and the agent of Tianbei Company in accordance with the arbitration rules, which affected the exercise of the parties' right of disqualification to a certain extent, which might affect the fair award. Although the expert advisory committee of [REDACTED] Arbitration Commission said that the members of the expert advisory committee held in April 2018 were determined by the committee's lottery, because it refused to provide the meeting minutes for the people's court, and there was no relevant record of lottery in the arbitration case file materials, reasonable suspicion that Yang [REDACTED] had exerted undue influence on the discussion as director of the expert advisory committee could not be excluded. Accordingly, the court ruled to revoke the aforesaid award made by [REDACTED] Arbitration Commission.

[Significance]

介绍中，并未显示其为专家咨询委员会主任，仲裁过程中亦未对其系专家咨询委员会主任情况进行过相应披露。根据该仲裁委员会仲裁规则第五十六条第一款第三项的规定，与本案当事人或其代理人有其他关系，可能影响公正裁决的，仲裁员应当自行向仲裁委员会披露并请求回避，当事人也有权提出回避申请。案涉仲裁案件的仲裁过程中，陈某等人未按照仲裁规则披露其与天贝公司代理人之间的关系，一定程度上影响了当事人回避权利的行使，属于可能影响公正裁决的情形。虽然某仲裁委员会专家咨询委员会称2018年4月召开的专家咨询委员会成员由该委摇号确定，但因其拒绝向人民法院提供此次会议的会议记录，且目前在仲裁案件卷宗材料中并无有关摇号的相关记录，故不能排除担任专家咨询委员会主任的杨某对此次讨论施加不当影响的合理怀疑。据此，该院裁定撤销某仲裁委员会作出的上述裁决。

【典型意义】

The impartial and independent exercise of arbitration power by arbitrators is the guarantee for effective resolution of commercial disputes through arbitration procedures. In this case, the arbitrator failed to fully perform the obligation of disclosure in accordance with the arbitration rules, which to some extent had affected the exercise of the parties' disqualification right, and might affect the fairness of the award. Therefore, the people's court revoked the arbitral award on the grounds that “the composition of the arbitration tribunal or the arbitration procedure violated the legal procedure.” The handling of this case had fully reflected the effective supervision over arbitration by the people's court through cases of judicial review of arbitration, and urged arbitration institutions to pay attention to the provisions on the disclosure of arbitrators, to ensure fairness of arbitration procedures.

仲裁员公正、独立行使仲裁权是商事纠纷通过仲裁程序得到有效解决的保障。本案仲裁员未按照仲裁规则充分履行披露义务，一定程度上影响了当事人回避权利的行使，属于可能影响公正裁决的情形，故人民法院以“仲裁庭的组成或者仲裁的程序违反法定程序”为由撤销仲裁裁决。该案的处理充分体现了人民法院通过仲裁司法审查案件有效监督仲裁，促使仲裁机构重视对仲裁员披露事项的规定，确保仲裁程序公正。

[Reference Number] No. 63 [2018], Civil, Special Proceeding, 03, Intermediate People's Court of Wenzhou City of Zhejiang Province

【案号】浙江省温州市中级人民法院（2018）浙03民特63号

Case 8

案例8

Specifying That Outsiders Have No Qualification to Apply for Cancellation of Arbitral Awards to Maintain the Final Effect of Arbitral Awards

明确案外人不具有申请撤销仲裁裁决的主体资格 维护仲裁裁决终局效力

—Yihe Health Industry Co., Ltd. of Chongqing Pharmaceutical Group v. Zhongheng Construction Group Co., Ltd., and Dazu District Second People's Hospital of Chongqing City (case of applying for revoking an arbitral award)

——重庆医药集团颐合健康产业有限公司与中恒建设集团有限公司、重庆市大足区第二人民医院申请撤销仲裁裁决案

[Basic Facts]

【基本案情】

In December 2021, [REDACTED] Arbitration Commission rendered a ruling: Dazu District Second People's Hospital should pay to Zhongheng Company shutdown losses. In is arbitration case, the applicant was Zhongheng Company and the respondent was Dazu Second Hospital. In March 2022, Yihe Company, as an outsider to the case, applied to Chongqing No. 1 Intermediate People's Court for revoking the arbitral award for the following reasons: First, the award matters exceeded the scope of the arbitration agreement; Second, Zhongheng Company and Dazu Second Hospital maliciously colluded with each other, resulting in the wrong arbitral award and having infringed upon the legitimate rights and interests of Yihe Company.

2021年12月，某仲裁委员会作出裁决：大足第二医院向中恒公司支付停工损失等。该仲裁案件中，申请人为中恒公司，被申请人为大足第二医院。2022年3月，颐合公司作为案外人，向重庆市第一中级人民法院申请撤销上述仲裁裁决，理由如下：一是裁决事项超出仲裁协议范围；二是中恒公司与大足第二医院恶意串通，导致仲裁裁决错误，侵害颐合公司的合法权益。

[Adjudication]

【裁判结果】

Chongqing No. 1 Intermediate People's Court held that the case was an application for canceling a domestic arbitral award, and the eligibility of the applicant in the case should be examined in accordance with the provisions of Article 58 of the Arbitration Law of the People's Republic of China. According to the provisions of Article 58 of the Arbitration Law of the People's Republic of China, only the parties to an arbitration case may apply for revoking an arbitral award, and the “party” here referred to the applicant or the respondent of the arbitration case. Yihe Company, the applicant of this case, was not the applicant or the respondent in the arbitration case, and as an outsider, it did not have the eligibility to apply for revoking the arbitral award, and its application for revoking the arbitral award should be rejected. If Yihe Company held that there were errors in the arbitral award in dispute and its legitimate rights and interests had been damaged, it may apply to the people's court for not enforcing the arbitral award in dispute in accordance with the Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Cases Regarding Enforcement of Arbitral Awards by the People's Courts. Accordingly, the court ruled to reject Yihe Company's application.

重庆市第一中级人民法院认为，本案是申请撤销国内仲裁裁决案件，应依据《中华人民共和国仲裁法》第五十八条的规定对本案申请人主体是否适格进行审查。根据《中华人民共和国仲裁法》第五十八条之规定，只有仲裁案件的当事人才能申请撤销仲裁裁决，这里的“当事人”是指仲裁案件的申请人或被申请人。本案申请人颐合公司并非案涉仲裁案件的申请人或被申请人，其作为案外人不具备申请撤销仲裁裁决的主体资格，其申请撤销仲裁裁决应予驳回。颐合公司如认为案涉仲裁裁决存在错误，损害其合法权益，可以依据《最高人民法院关于人民法院办理仲裁裁决执行案件若干问题的规定》，向人民法院申请不予执行案涉仲裁裁决。据此，该院裁定驳回了颐合公司的申请。

[Significance]

【典型意义】

How to give relief to outsiders in arbitration cases is a common concern in theory and practice. As a dispute settlement mechanism, commercial arbitration is established on the basis of consensus of the parties about arbitration. Under the principle of the parties' autonomy of will, the agreed arbitration institution should exercise jurisdiction to render arbitral awards on the commercial disputes agreed to be submitted for arbitration by the parties. Therefore, Article 58 of the Arbitration Law of the People's Republic of China stipulates that only “parties” may apply to the intermediate people's court where the arbitration commission is located for revoking an arbitral award. In strict accordance with the aforesaid provisions of the Arbitration Law, in this case, it was made clear that outsiders had no eligibility for applying for revoking an arbitral award, and concurrently outsiders were reminded of seeking for relief channels in the execution procedure of the award.

对仲裁案件的案外人如何给予救济是当前理论及实务界共同关注的问题。商事仲裁作为一种争端解决机制，建立在当事人仲裁合意的基础上，根据当事人意思自治原则，由约定的仲裁机构行使管辖权，就当事人约定提交仲裁的商事纠纷作出仲裁裁决。因此，《中华人民共和国仲裁法》第五十八条规定，可以向仲裁委员会所在地的中级人民法院申请撤销仲裁裁决的主体仅限于“当事人”。本案严格按照仲裁法的上述规定，明确案外人不具有申请撤销仲裁裁决的主体资格，同时提示案外人在裁决执行程序中的救济渠道。

[Reference Number] No. 104 [2022], Civil, Special Proceeding, 01, Chongqing No. 1 Intermediate People's Court

【案号】重庆市第一中级人民法院（2022）渝01民特104号

Case 9

案例9

Reasonably Balancing the Relationship Between the Arbitration Defects and the Finality of the Arbitral Award to Protect the Procedural Rights of the Parties

合理平衡仲裁瑕疵与仲裁裁决终局性之间的关系　保护当事人正当程序权利

—Zhang [REDACTED] v. Nanchang Huanxing Mutual Entertainment Culture Media Co., Ltd. (case of applying for revoking an arbitral award)

——张某与南昌环星互娱文化传媒有限公司申请撤销仲裁裁决案

[Basic Facts]

【基本案情】

An arbitration commission accepted the contract dispute between Huanxing Company and Zhang [REDACTED] due to the Exclusive Cooperation Brokerage Agreement for Anchors, and made an arbitral award in April 2022. Zhang [REDACTED] claimed that he only got to know the arbitral award after receiving the court's enforcement notice, but there was no relationship between him and Huanxing Company. The main evidence for the arbitration commission's ruling, the Exclusive Cooperation Brokerage Agreement for Anchors, was not signed by Zhang [REDACTED], and although the bank account name in the agreement in dispute was consistent with Zhang [REDACTED]'s name, the identity card number of the bank account holder was inconsistent with Zhang [REDACTED]'s ID card number, and the contact phone number provided by Huanxing Company for the arbitral tribunal was not Zhang [REDACTED]'s, resulting in Zhang [REDACTED]'s failure to receive the notice of trial and arbitration documents, failure to participate in the hearing of the arbitral tribunal, and loss of the opportunity to debate. Zhang [REDACTED], based on the reason that the evidence of the arbitral award was forged, requested revocation of the arbitral award.

某仲裁委员会受理环星公司与张某因《主播独家合作经纪协议书》引起的合同纠纷一案，于2022年4月作出仲裁裁决。张某主张其在收到法院执行通知书后才得知该仲裁裁决，但其与环星公司之间没有任何关系，仲裁委员会所作裁决依据的主要证据《主播独家合作经纪协议书》并非张某所签，且案涉协议中银行收款账户户名虽与张某的名字一致，但该银行账户户主身份证号码与张某的身份证号码不符，环星公司向仲裁庭所提供的联系电话也并非张某的手机号码，致使张某没有收到开庭通知及仲裁文书，未能参加仲裁庭庭审，丧失了辩论的机会，张某以案涉仲裁裁决所根据的证据是伪造的，请求撤销该仲裁裁决。

[Adjudication]

【裁判结果】

The Intermediate People's Court of Xiamen City of Fujian Province held that because Zhang [REDACTED] provided evidence to prove that his personal identity information might have been fraudulently used and used to sign a contract with Huanxing Company, and whether the signature and handprint to the contract in dispute was Zhang [REDACTED]'s needed to be determined through identification. To correct the defects in the arbitration procedure and resolve the disputes between the two parties as soon as possible, the court notified the arbitral tribunal of conducting re-arbitration within a certain period of time and concurrently ruled to suspend the revocation procedure. After the re-arbitration by the arbitration commission, the court ruled to terminate the revocation procedure. In the process of re-arbitration of the arbitration commission, the applicant Huanxing Company withdrew its application for arbitration.

福建省厦门市中级人民法院认为，因张某提供证据证明，其本人身份信息可能被人冒用并用于和环星公司签订案涉合同，而确认案涉合同上签名及手印是否为张某本人所为，需通过鉴定才能确定。从纠正仲裁程序瑕疵、尽快解决双方争议角度考虑，法院通知仲裁庭在一定期限内重新仲裁，同时裁定中止撤销程序。后该仲裁委员会重新仲裁，法院遂裁定终结撤销程序。仲裁庭在重新仲裁过程中，申请人环星公司撤回了仲裁申请。

[Significance]

【典型意义】

When the identity of the parties to an arbitration might be wrong or there were defects in the arbitration procedure, the people's court gave the arbitral tribunal the opportunity to make up for the defects in the arbitration procedure by notifying the arbitration institution of conducting a new arbitration, which had more effectively balanced the relationship between the defects in the arbitration procedure and the finality of the arbitral award, and had provided a useful idea for handling of such cases.

人民法院在仲裁当事人身份可能存在错误、仲裁程序存在瑕疵的情况下以通知仲裁机构重新仲裁的方式，给予仲裁庭弥补仲裁程序瑕疵的机会，较好地平衡了仲裁程序瑕疵与仲裁裁决终局性之间的关系，对于类案的处理提供了可资借鉴的思路。

[Reference Number] No. 273 [2022], Civil, Special Proceeding, 02, Intermediate People's Court of Xiamen City of Fujian Province

【案号】福建省厦门市中级人民法院（2022）闽02民特273号

Case 10

Making It Clear That Debt Generated by Providing Funds for Gambling Is Illegal Debt to Uphold Public Order and Good Customs According to the Law

—Wang [REDACTED] and Li [REDACTED] (case of applying for revoking an arbitral award)

[Basic Facts]

In January 2022, Li [REDACTED] applied for arbitration to [REDACTED] Arbitration Commission on the basis of the Loan contract signed with Wang [REDACTED] and asked Wang [REDACTED] to repay 1 million yuan. In August 2022, [REDACTED] Arbitration Commission rendered a ruling: Wang [REDACTED] should repay the loan principal and interest to Li [REDACTED]. Wang [REDACTED] claimed that the arbitral tribunal ignored the fact that the loan in dispute was funds provided for gambling, and characterized the case as a simple private loan, which violated the principle of public order and good customs, therefore requested the Intermediate People's Court of Guiyang City of Guizhou Province to revoke the arbitral award.

[Adjudication]

案例10

明确为赌博提供资金而产生的债务属于非法债务 依法维护公序良俗

——王某与李某申请撤销仲裁裁决案

【基本案情】

2022年1月，李某以其与王某签订的《借款合同》为依据向某仲裁委员会申请仲裁，要求王某还款100万元。2022年8月，某仲裁委员会作出裁决：王某向李某偿还借款本金及利息。王某主张仲裁庭忽视案涉借款系为赌博提供资金的事实，其将本案定性为单纯的民间借贷，违背了公序良俗原则，请求贵州省贵阳市中级人民法院撤销上述仲裁裁决。

【裁判结果】

The Intermediate People's Court of Guiyang City of Guizhou Province held that from the perspective of flow of borrowed funds in dispute, Li [REDACTED]'s sister Li [REDACTED] firstly transferred the fund to Li [REDACTED], Li [REDACTED] then transferred the funds to Wang [REDACTED], and Wang [REDACTED] transferred the funds to Li [REDACTED] for purchasing gambling coins, and from the evidence in this case, Li [REDACTED] should have been aware of the lending gambling career of his sister Li [REDACTED] in Macao, therefore, it should be determined that the 1 million yuan in dispute was actually the gambling funds provided by Li [REDACTED] for Wang [REDACTED]. Li [REDACTED] claimed that the fact that Wang [REDACTED] borrowed 1 million yuan from him was neither in line with common sense, nor conformed to the trading habits of economic exchanges between the two parties, and the legitimate borrowing basis facts that it claimed did not exist. Given that all parties knew that the loan was used for gambling and gambling was against the public order and good customs in Mainland China, the funds in dispute should not be protected by law. Accordingly, the court ruled to revoke the aforesaid arbitral award made by [REDACTED] Arbitration Commission.

贵州省贵阳市中级人民法院认为，从案涉借款资金流向来看，李某妹妹李某某先将款项转给李某，李某再将款项转给王某，王某又将款项转给李某某用于购买赌币，从本案证据看，李某对其妹李某某在澳门所从事的放贷赌博抽成职业应该知晓，故应当认定案涉100万元实际是李某某向王某提供的用于赌博的赌资。李某主张王某向其借款100万元的事实不符合常理，亦不符合双方经济往来的交易习惯，其所主张的正当借款基础事实不存在。鉴于各方均明知借款用途为赌博，而赌博行为系违反内地公序良俗的行为，案涉款项依法不应受法律保护。据此，该院裁定撤销某仲裁委员会作出的上述仲裁裁决。

[Significance]

【典型意义】

In judicial practice, lenders often provide private lending for borrowers to carry out illegal and criminal activities, and both lenders and borrowers know or should have known that the loans are used for gambling, drug money, etc. Such lending behavior is a civil legal behavior that violates public order and good customs. Paragraph 3 of Article 58 of the Arbitration Law of the People's Republic of China stipulates that: “If the people's court finds that the award is contrary to the public interest, it shall order revocation of the award.” In accordance with the provisions of this article, the people's court has specified the rules for applying the principle of public order and good customs in cases applying for canceling arbitral awards, and revoked the arbitral award in dispute in accordance with the law. This case is a model case of the people's court upholding public order and good customs, carrying forward and practicing socialist core values in accordance with the law.

司法实践中，出借人为借款人从事违法犯罪活动提供民间借贷的情形时有发生，且出借人和借款人均明知或应知借款用作赌资、毒资等，此类借贷行为属于违背公序良俗的民事法律行为。《中华人民共和国仲裁法》第五十八条第三款规定：“人民法院认定该裁决违背社会公共利益的，应当裁定撤销。”人民法院依据该条规定，明确了公序良俗原则在申请撤销仲裁裁决案件中的适用规则，依法撤销案涉仲裁裁决。本案系人民法院依法维护公序良俗、弘扬和践行社会主义核心价值观的典型案例。

[Reference Number] No. 54 [2023], Civil, Special Proceeding, 01, Intermediate People's Court of Guiyang City of Guizhou Province

【案号】贵州省贵阳市中级人民法院（2023）黔01民特54号