

A PRACTICAL PERSPECTIVE OF ELECTRONIC ARBITRAL AWARDS

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CASE STUDY OF CHINESE PRACTICE

- Pure electronic arbitral awards not very common: usually a dual track system
- Pure electronic judgments are increasingly common
 - Specific law to ensure validity of electronic judgments
 - Civil Procedure Law (Art 90)
 - "Regulations of the Supreme People's Court on Several Issues Concerning the Trial of Cases by Internet Courts" (Fa Shi [2018] No. 16) Article 15
 - "Online Litigation Rules" (Art 29)
 - Enforcement support: electronic enforcement allow filing, delivery and execution of electronic judgments

ELECTRONIC ARBITRAL AWARDS – COMPARATIVE STUDY

Electronic Judgments	Electronic Arbitral Awards
Special laws and judicial interpretations recognize the legality of electronic judgments	No specific legal framework
Unified regulatory system	Decentralized internal rules
Higher degree of unification and connectivity in court electronic platforms	Diverse institutional platforms
Besides technical means, courts can directly rely on court internal records to authenticate	Rely on technical means to authenticate
Lower confidentiality requirements	High confidentiality
Traditional problem to be enforced abroad	International enforcement advantage

RECENT DEVELOPMENG

- Guangdong High Court established the new platform (activated in August 2024) to connect courts, arbitration institutions and preservation system
- Courts can directly acquire arbitration documents and awards from arbitral institutions
- Not only connecting arbitral institutions in Mainland, but also in HK – still developing
- This platform may be followed by other provinces in China and promote electronic arbitral awards in China
- Still face difficulties to enforce foreign arbitral awards



仲裁当事人



各地仲裁机构



担保机构



广东省裁审对接平台



调阅仲裁卷
(发起/查收)

发送法院裁定
(审核/发送)

仲裁司法审查案件数据分析

仲裁财产保全
(审查/裁定/执行)

调卷、查卷、保全办理

获取本机构数据

担保办理

调卷、查卷、保全办理



全省各级法院

INTERNATIONAL PERSPECTIVE

VALIDITY AND ENFORCEMENT UNCERTAINTY OF E-AWARDS: INTERNATIONAL LEGAL FRAMEWORK

- Lack of specific law recognizing validity of electronic awards
- Absence of internationally uniform standards for electronic awards and delivery: conflict of laws
- UNCITRAL Model Laws may have limited scope of application
- General provisions lacking operational details
- Potential incompatibility of Texts

MAL	NYC	MLFIC	MLES	ECC
Art 31(1) in writing, with signature		Art 6.1, Art 7.1	Art 6.1, 6.3	Art 9.2, Art 9.3
Art 31(2) state the reasons				
Art 35(2) original award	Art IV.1 duly authenticated award	Art 8.1: reliable assurance as to integrity when it was first produced in final form		Art 9.4
Art 35(2) a copy thereof	Art IV.1 duly certified copy			
Art 35(2) Certified translation	Art IV.2 certified translation			
Art 31(4) deliver to the parties Art 3: deemed delivered—personally, mailing address, registered email				Art 10(2): becomes capable of being retrieved by the addressee. reach the electronic address
		Art 1: commercial activities	Art 1(1): commercial activities	Art 1(1): formation or performance of a contract

TECHNICAL AND PRACTICAL CHALLENGES

- Making e-awards: signature of all arbitrators
- Delivering e-awards: consent, methods
- Applying for enforcement
 - Foreign courts' e-filing system
 - Authentication of foreign awards
 - Lack of international standards
 - System and software interoperability
 - Recognition of foreign certification bodies
 - Notarization/legalization (Apostille) of foreign awards
 - Certified translation of foreign awards
 - Due Process: different standards on delivering e-awards, e-signature, etc.

THREE PILLARS TO PROMOTE E-AWARDS

- **Specific law to ensure validity and enforceability of e-awards**
- **Compatible Ecosystem– e-filing in courts, e-authentic instruments, e-certified translation (or recognize awards that can be authenticated by any means)**
- **International technological standards and interoperative system: authentication technology and trusted certified body**