CHINA DISPUTE RESOLUTION

NEWS LETTER



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NEWS ALERT

1. The First Comprehensive and Major Revision of the Arbitration Law of the People's Republic of China

After four years of deliberation, China has enacted a landmark revision to its Arbitration Law, passed on 12 September 2025 and effective from 1 March 2026, marking the most significant overhaul since 1995. The new law consists of 8 chapters and 96 articles, with an increase of 16 articles comparing to the old revision. Key changes include: revisions on the formality and substance of the arbitration agreement; the introduction of arbitral institutions and limited openings for foreign arbitral institutions to operate in designated zones; ad hoc arbitrations allowed for certain foreign-related disputes; expansion and streamlining of court-issued interim measures available; stricter disclosure and eligibility rules for arbitrators; the recognition of online arbitration as a valid process; and a tighter period for set-aside of awards. The amended law modernizes China's arbitration framework in line with international standards. It consolidates three decades of innovation in Chinese arbitration practice and should help advance both the arbitration sector and the broader rule-of-law business environment.

2. Xiamen Maritime Court Confirms Validity of Ad Hoc Arbitration Agreements in Landmark Foreign-Related Crew Disputes

On 19 September 2025, the Xiamen Maritime Court concluded three landmark cases confirming the validity of ad hoc arbitration agreements in foreign-related crew labor disputes — the first judicial review of such agreements in China following the enactment of the newly revised Arbitration Law. Under the former Arbitration Law, ad hoc arbitration agreements were generally deemed invalid in China if they failed to specify an arbitration commission, as required by Article 16. Although limited pilot programs in Shanghai and Hainan permitted ad hoc arbitration within free trade zones, national recognition was absent. In these cases, Mainland crew members and a Hong Kong-based ship management company had entered into Seafarer Employment Agreements in the Xiamen Pilot Free Trade Zone. The agreements adopted the Maritime Silk Road Special Arbitration Rules and designated Xiamen as the seat of arbitration. The Court held that the disputes involved clear foreign and Hong Kong elements and contained all essential arbitration elements, ensuring procedural integrity. These are the first batch of cases in China where the judicial review of the validity of ad hoc arbitration agreements is conducted since the adoption of the new Arbitration Law, which authorizes ad hoc arbitration in foreign-related maritime disputes and in approved free trade zones under Article 82, providing valuable judicial guidance and practical experience for the full implementation of the revised Arbitration Law and reinforcing China's commitment to aligning its arbitration framework with international standards.

3. The Supreme People's Court Highlights Beijing's First Cross-Border Judicial Appraisal Case in the Fifth Batch of Typical Belt and Road Initiative Cases

On 25 September 2025, the SPC released the fifth batch of Typical Cases Involving the Construction of the Belt and Road Initiative, underscoring China's judicial efforts to support cross-

border commercial cooperation. Among the featured cases, Beijing Xiaocheng v. Jiangsu Zhonghuan drew particular attention as the first case in Beijing involving cross-border judicial appraisal. The dispute arose from Xiaocheng's purchase of photovoltaic modules from Zhonghuan in 2014 for installation at a power station in Ghana. After the plant's grid connection failed to meet expected power output, Xiaocheng alleged product defects and sought repayment and damages. During the proceedings, the Beijing No. 4 Intermediate People's Court faced the challenge of verifying the quality of 8,099 PV modules located overseas. Through coordination among both parties and appraisal institutions, the court adopted a hybrid approach combining on-site testing in Ghana with laboratory analysis in China—using representative samples to extrapolate overall product quality. This innovative cross-border appraisal allowed the court to balance scientific rigor, procedural feasibility, and fairness in adjudication, ultimately resolving complex factual disputes efficiently. The case provides a valuable model for handling cross-border evidence collection and appraisal in transnational cases, enhancing China's capacity to deliver reliable judicial services for enterprises "going global" under the Belt and Road framework.

4. Guangdong High People's Court Issues Typical Maritime Cases, Clarifies Validity of Arbitration Agreements with Ambiguous Clauses

On 26 September 2025, the Higher People's Court of Guangdong Province released ten typical maritime trial cases, one of which addresses how courts determine the validity of an arbitration agreement when the dispute resolution clause is ambiguous or the name of the arbitration institution is inaccurate. In the case, the original contract stipulated that disputes arising from its performance should be submitted to the "Guangzhou Branch of the China Maritime Arbitration Commission (CMAC)" for arbitration. A subsequent repayment agreement provided that, in the event of default, the seller could "apply to the local maritime court for arbitration." The Guangzhou Maritime Court found that this wording failed to reflect a clear and consistent agreement to arbitrate. However, since the repayment agreement was supplementary to the original contract, the court interpreted the dispute resolution clause in light of the original contract. Separately, although CMAC had not formally established a "Guangzhou branch", it maintained an office there, and the parties' intention to arbitrate under CMAC rules was evident. The Guangzhou Maritime Court ultimately upheld the validity of the arbitration agreement, emphasizing that minor inaccuracies in naming the arbitration institution should not invalidate an otherwise clear intent to arbitrate. Later, the Guangdong High People's Court ruled to reject the appeal and uphold the original ruling. The judgment underscores the judiciary's supportive stance toward maritime arbitration and its pragmatic approach in preserving parties' agreed dispute resolution mechanisms.

5. China Expands and Refines Internet Courts' Jurisdiction to Address Emerging Digital Disputes

On 11 October 2025, the Supreme People's Court released the Provisions on the Jurisdiction of Internet Courts, which will take effect on 1 November 2025. The Provisions expand the jurisdictional scope of China's three Internet Courts—in Beijing, Hangzhou, and Guangzhou—to include four new categories of technology-driven disputes: (i) ownership, infringement, and contract disputes involving internet data; (ii) personal internet information protection and privacy disputes; (iii) ownership, infringement, and contract disputes over internet virtual property; and

(iv) online unfair competition cases. At the same time, certain traditional internet cases—such as online financial loan and copyright ownership disputes—are being removed from the Internet Courts' jurisdiction. The Provisions will help safeguard emerging data-related rights and promote the orderly and healthy growth of China's platform and digital economy.

6. "China Digital Valley" International Data Arbitration Institute Officially Established

On 28 September 2025, the "China Digital Valley" International Data Arbitration Institute was jointly established by the Hangzhou Municipal Bureau of Data, Hangzhou Municipal Bureau of Justice, Hangzhou Municipal Bureau of Economy and Information Technology, and the Hangzhou Arbitration Commission / Hangzhou International Arbitration Court. The Institute operates as an internal division of the Hangzhou Arbitration Commission. The Institute is positioned as a central platform for developing and improving the arbitration mechanism for data transaction disputes. By protecting the legitimate rights and interests of participants in data transactions and fostering a sound market environment for data circulation, the Institute seeks to help unlock the economic value of data and promote the growth of Hangzhou's digital economy and new productive forces.

7. The Beijing Arbitration Center Established the China (Beijing) Securities and Futures Arbitration Center and Issued Arbitration Rules for Securities and Futures

On 25 September 2025, the Beijing Arbitration Commission ("BAC") inaugurated the China (Beijing) Securities and Futures Arbitration Center ("CSFAC") and issued the Arbitration Rules for Securities and Futures. Comprising 17 articles, the Rules establish a specialized, efficient framework tailored to the unique nature of securities and futures disputes. They expand arbitration to cover a wide range of financial instruments, promote fully digital proceedings through BAC's online platform, and introduce a "pre-arbitration mediation" mechanism to encourage early settlement. The Rules also provide for expert participation, collective dispute resolution via representative and consolidated cases, and an innovative "advance compensation" system enabling parties to suspend proceedings upon settlement and resume them if necessary. Separately, the Rules established a "model award" system to guide the handling of disputes involving common factual and legal issues, which allows tribunals to directly apply the legal standards established in the model award unless a party raises a substantiated objection. The launch of CSFAC and its new Rules marks a key milestone in Beijing's effort to professionalize and modernize capital market dispute resolution, enhancing procedural efficiency, investor protection, and confidence in its financial legal infrastructure.

An overview of the recent cases regarding enforcement of trust assets in China

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Trust activities are governed by the provisions of the *Trust Law* and other statutes in China. Per Articles 15, 16, and 29 of the *Trust Law* , a trust constitutes an arrangement where a settlor, on the basis of confidence reposed in the trustee, transfers property rights to be managed/disposed by the trustee in the trustee's name for beneficiaries' interests or specific purposes.

As in common with other jurisdictions, a fundamental and defining feature of trusts under Chinese laws is the independence of trust assets. During the trust term, trust assets remain independent from the personal property of settlors, trustees, and beneficiaries. Beneficiaries hold beneficial interests rather than ownership, and trust assets cannot be treated as property liable for settlor's, trustee's or beneficiaries' obligations.

Recently, a trilogy of three Chinese cases concerning the enforcement of family trust assets has drawn widespread attention, raising concerns on how secure these trusts really are. By looking closely at these three cases, this article explores the key issues they raise and what they mean for the future of trusts as an institution in China.

I. Introduction

1. (2020) E 01 Zhi Yi No. 661 & 784

This case relates to a freezing order over the funds held under a trust.

A husband (Hu) used marital assets to establish a trust for a child born out of wedlock with his mistress (Zhang), where Zhang was settlor and the child beneficiary. The wife (Yang) successfully sued for unjust enrichment, securing a RMB 40 million restitution order. During the enforcement process, the court froze all of the trust funds, which Zhang perhaps unsurprisingly objected to.

In recognizing the independence of the trust assets, the court ruled that the case did not meet the legal threshold for compulsory enforcement against the trust funds, as none of the circumstances specified under Article 17 of the Trust Law were present (see below). The court reasoned, however, that the freezing order did not constitute compulsory enforcement in the strict sense, since it neither affected the substantive trust rights nor disrupted trust administration. On this basis, the court maintained the freezing measures.

2. Case No. (2025) Lu 1502 Zhi Yi No. 84

This case relates to enforcement against trust assets following the settlor's conviction for engaging in illegal medical practice.

Lu was convicted of illegal medical practice and ordered to forfeit 15.33 million yuan in illicit gains. To enforce this confiscation order, the court froze a family trust Lu had established. In his defense, Lu sought to demonstrate that the majority of trust assets originated from legitimate sources, with

only a minor portion traceable to illegal activities. The court rejected Lu's arguments based on the following reasoning: First, while a portion of the trust funds originated from wealth management proceeds, the principal sum invested in the wealth management products was itself suspected to involve or constitute illegal gains. Consequently, the proceeds derived from illegal gains should likewise be deemed unlawful. Second, lawful income and illegal proceeds had become commingled. As money is a fungible asset, it was impossible to distinguish the specific sources, making it difficult to determine which portions of the trust assets were legitimate and which were illicit. Third, the court clarified that the recovery of illegal proceeds may be pursued through two methods: "in-kind recovery" (recovering the original illicit assets) or "value-based recovery" (recovering equivalent value from lawful assets). If an effective judgment orders the continued recovery of illegal proceeds, but the whereabouts of such proceeds cannot be ascertained, such that in-kind recovery becomes objectively impractical, the enforcement may instead target the equivalent value from the subject's lawfully obtained property.

3. Case No. (2023) Su 0602 Zhi No. 6286-1

This case relates to enforcement of a trust's funds following the settlor's conviction for bribery and contract fraud.

Defendant Cui was convicted of bribery and contract fraud, sentenced to 14 years, fined RMB 800,000, and ordered to disgorge RMB 70.12 million. The court seized RMB 5.48 million from Cui's bank accounts and RMB 41.43 million from the funds under a trust settled by Cui.

Without adjudicating upon and determining the validity of the trust in its decision, the court held that the trust assets were equivalent to personal "deposits" and were thus executable.

II. Our Analysis

1. The Chinese Legal Framework of Trust

Under Chinese law, once a trust is properly established, the trust assets are segregated from the settlor's own assets and cannot be enforced against to satisfy the settlor's personal liabilities.

However, to prevent misuse for evading obligations or illegal purposes, the *Trust Law* imposes strict requirements on trust, including that:

- The trust must not harm state interests or public interests (Article 5).
- The trust must serve a lawful purpose (Article 6);
- The trust property must be clearly identifiable and lawfully owned by the settlor (Article 7);
- Registration of trust assets is mandatory where required by law (Article 10); and
- Assets prohibited from transfer cannot form part of the trust without regulatory approval (Article 14).

Article 11 of the *Trust Law* makes clear that a trust is void if it falls within one of the following scenarios:

- The trust purpose violates laws, administrative regulations, or harms public interests;

- The trust property cannot be clearly identified;
- The settlor establishes the trust with illegal property or property prohibited by the *Trust Law* from being used to establish a trust;
- The trust is established solely for the purpose of litigation or avoiding legitimate debt collection;
- The beneficiary or the class of beneficiaries cannot be determined;
- Other circumstances specified by laws or administrative regulations.

Article 12 of the *Trust Law* provides that if the establishment of a trust violates the interests of a creditor, the creditor can make an application to revoke the trust, so long as the creditor does so within one year from the date when the creditor knows or should have known the reason for revocation.

Article 17 of the *Trust Law* further provides that the trust property can be enforced against compulsorily in the following circumstances:

- The creditor had already procured the right to priority in receiving compensation from the trust property even before the trust was established, and the creditor exercises the right according to law;
- Debts are incurred from the trustee's handling of the trust affairs and the creditor requires the debts to be paid off;
- The taxes that accrued in relation to the trust property are due; and
- Other circumstances provided by law.

2. Application in these cases

All three cases mentioned above involve the enforcement of trust assets, yet none. strictly speaking, fall within the circumstances permitting compulsory enforcement as outlined in Article 17 of the *Trust Law*. This has sparked widespread debate within the industry and raised concerns about the protection of trust assets' independence.

However, a closer examination of these cases reveals that each trust exhibited defects of varying severity. In the first case, the funds used to establish the trust were derived from an unauthorized disposal of marital joint assets. The second and third cases both involved trust funds originating from illegal gains. These circumstances conflict with the *Trust Law*'s explicit requirements that trust assets must consist of the settlor's lawful property and that trusts must align with public interest.

3. Lingering Problems

That said, the court rulings in these cases have left certain questions open for discussion.

First, does freezing trust assets violate the principle of trust asset independence? According to Article 95 of the *Minutes of the National Courts' Civil and Commercial Trial Work Conference* (commonly referred to as the *"Nine People's Guidelines"*), trust assets remain independent from the personal assets of the settlor, trustee, or beneficiary during the trust's existence. Therefore, unless the circumstances specified in Article 17 of the *Trust Law* are met, courts should not permit parties to apply for preservation measures against trust funds held in dedicated accounts by custodian banks

or trust companies due to disputes involving the settlor, trustee, or beneficiary. As for beneficiaries, Article 47 of the *Trust Law* stipulates that if a beneficiary cannot repay debts which have fallen due, their beneficial interest in the trust may be used to settle those debts — but trust assets themselves cannot be directly enforced against.

Second, prior to enforcing against trust assets, if none of the conditions under Article 17 of the *Trust Law* apply, should courts proceed directly with enforcement, or should they first determine the validity of the trust before moving forward? Although the ultimate outcome may be the same, the decision to enforce against trust assets without first adjudicating upon the validity of the trust itself raises significant concerns. Not only does this approach fail to satisfy the parties' legitimate expectations of procedural fairness, but it also risks eroding market confidence in the trust — a consequence that could prove detrimental to the institution's sustainable development.

III. Conclusion

The three cases canvassed in this note have sparked renewed debate about how far trust protections should extend, while underscoring a fundamental rule: trusts cannot shield illegally acquired wealth. Only properly established and lawfully administered trusts qualify for legal protection.

The principle of trust asset independence constitutes the very foundation of trust operations. To safeguard the sustainable development of trusts and maintain market confidence in the legally protected nature of this institution, judicial practice must pay particular attention to balancing substantive justice with procedural justice. The pursuit of efficiency must not come at the expense of procedural due process.

Judicial Assistance in Evidence Collection for Arbitration: Practical Breakthroughs Based on Authority from the Shanghai International Commercial Court

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Abstract:

In May 2025, the Shanghai International Commercial Court, for the first time, granted orders in support of evidence collection in international commercial arbitration through the issuance of an investigation order. This marked a significant breakthrough in the development of mechanisms for coordination between arbitration and judicial proceedings in China. The case not only provided a workable path for evidence collection in arbitration, but also strengthened institutional confidence in conducting international arbitration within China. This article systematically reviews the legal basis of arbitral tribunals' authority to collect evidence in China and, using the investigation order systems of Shanghai and Guangdong as representative examples, analyzes the relevant local regulations and their practical applications. On this foundation, with reference to the *UNCITRAL Model Law on International Commercial Arbitration* as well as the relevant provisions and practices of the United States, the United Kingdom, and Switzerland, the article further explores the future development of the evidence-gathering mechanism. Finally, based on the current institutional framework, this article offers practical observations and recommendations to arbitration practitioners.

I. Introduction

In May 2025, the Shanghai International Commercial Court, upon reviewing an application submitted by the Shanghai International Economic and Trade Arbitration Commission (Shanghai International Arbitration Center) for evidence collection on the basis of an interim measure granted by the arbitral tribunal, issued an investigation order to assist in obtaining relevant evidence. This marked the first time that the Court supported international commercial arbitration in evidence collection through the issuance of an investigation order, reflecting the judiciary's role in providing coordinated support for international arbitration.[1]

The case arose from a dispute over a cross-border data services contract involving a Hong Kong company, a foreign company, and a Jiangxi-based company in China. The core issue in the arbitration was whether the contract had been validly concluded between the parties, which in turn depended on verifying the identities of the parties' transaction representatives. However, the only retained information of these representatives took the form of their WeChat accounts, and the registration details of these accounts were difficult to verify. Consequently, the parties applied to the arbitral tribunal for assistance in evidence collection. Although the arbitration institution issued a letter requesting cooperation from a third party, the request was refused, and evidence collection was obstructed, causing the arbitral proceedings to stall. Subsequently, the arbitral tribunal issued a formal interim measure. The arbitration institution then applied, through the Shanghai Courts' "One-

Stop" International Commercial Dispute Resolution Platform, to the Shanghai International Commercial Court for an investigation order. After examination, the Court, in accordance with the *Measures of the Shanghai High People's Court on Issuing Investigation Orders to Assist Arbitration in Evidence Collection (Trial)*, issued an investigation order, thereby facilitating the progress of evidence collection in the arbitration.[2]

The successful issuance of this investigation order not only advanced the resolution of the individual case, but also promoted the effective linkage between arbitration and judicial proceedings in China. The practical application of the arbitral investigation order constitutes a positive response to the concept of "Court Assistance in Taking Evidence" under international arbitration rules, forming an institutional pathway within the Chinese framework for dispute resolution. It provides a new direction for the integration of China's arbitral system with judicial procedures. This article will systematically review the institutional basis for and current practice of evidence collection in the context of arbitration in China. Thereafter, drawing on international rules and comparative experiences from other jurisdictions, this article will also explore the practical implications for arbitration in practice.

II. Normative Framework and Practice of Evidence Collection in Arbitration in China

To better understand the institutional basis and operational pathways for evidence collection in arbitration in China, this section reviews the legal foundations, local regulations, and practical application of the relevant legal principles in this area, thereby outlining the overall system and current practice of arbitral evidence collection in China.

1. Legal Basis for Arbitral Tribunals' Power to Collect Evidence

China's *Arbitration Law* grants arbitral tribunals the authority to collect evidence on their own initiative under certain circumstances. According to Article 43, while parties bear the burden of proof for their claims, the arbitral tribunal may, where it deems necessary, collect evidence on its own.[3] Although this provision expressly confers the power of "collecting evidence independently" on arbitral tribunals, its effectiveness remains rather limited. In practice, when evidence collection is required in arbitration proceedings, it is usually carried out by the arbitration institution, which issues a letter of assistance for investigation, with the said letter then being presented by the parties or the tribunal to the relevant entities for the purpose of retrieving evidence. However, because such letters carry no coercive force, they often fail to achieve substantive results. This is particularly the case when evidence is sought from government authorities or institutions, which frequently refuse to cooperate on the ground that "letters of assistance lack binding force," thereby hindering effective evidence collection in arbitration.[4]

The *Arbitration Law* also provides for judicial support in relation to evidence in arbitration. Under Article 46, when evidence may be destroyed or may be difficult to obtain in the future, a party may apply for evidence preservation, which the arbitration commission will forward to the basic people's court at the location of the evidence for disposition.[5] However, the scope of this provision is very limited, as it only applies to evidence preservation and fails to address the broader need for routine evidence collection in arbitration.

At present, the lack of coercive power on the part of arbitral tribunals in evidence collection, and the

limited effectiveness of judicial assistance, weakens the effectiveness of arbitration in obtaining evidence and ascertaining facts. This, in turn, undermines the efficient resolution of disputes and diminishes the credibility of the arbitral system.

However, this long-standing deficiency in the tribunal's authority to collect evidence has now been further addressed at the legislative level. On September 12, 2025, the Standing Committee of the Fourteenth National People's Congress, at its Seventeenth Session, adopted the newly revised *Arbitration Law of the People's Republic of China* (hereinafter referred to as the "*New Arbitration Law*"). Article 55 of the *New Arbitration Law*, while retaining the arbitral tribunal's authority to "collect evidence on its own", adds a new provision stipulating that the tribunal "may, when necessary, request that relevant entities provide assistance in accordance with the law".[6] This revision provides a clearer statutory basis for arbitral investigation and evidence collection. Meanwhile, Article 58 further specifies that people's courts "shall handle [such requests] in a timely manner in accordance with the law", and expressly allows parties to an arbitration agreement to apply for evidence preservation before the commencement of arbitration should the need be urgent.[7] Although the new law will not take effect until March 1, 2026, these amendments formally establish, at the national legislative level, the principle of judicial assistance in arbitral evidence collection. They signify that China's mechanism for coordination between arbitration and the judiciary is entering a new stage of development, under which mechanisms such as investigation orders are expected to become increasingly institutionalized and workable.

2. Local Regulations on Evidence Collection in Arbitration

While legislative improvements are being made at the national level, local judicial practice has also developed. In recent years, regions like Shanghai and Guangdong have, through judicial documents or local regulations, introduced a system of arbitral investigation orders aimed at addressing the ineffectual nature of arbitral tribunals' power to collect evidence. However, in many other parts of the country, the authority of arbitral tribunals to collect evidence remains primarily embodied in the relevant arbitration rules, without a mechanism that imposes binding obligations on external entities.

For example, Article 34 of the *Beijing Arbitration Commission Arbitration Rules* and Article 45 of the *Xi'an Arbitration Commission Arbitration Rules* both provide that, where a party applies and the arbitral tribunal considers it necessary, or on the tribunal's own motion, the tribunal may investigate the facts and collect evidence on its own initiative.[8] Although these arbitration rules further make reference to Article 43 of the *Arbitration Law*, their effect remains confined to the arbitral proceedings themselves. They cannot impose obligations of cooperation on external third parties, lack coercive force, and therefore do not particularly assist evidence collection in arbitration.

By contrast, local legislation in Shanghai and Guangdong has taken the lead nationwide, establishing a system of arbitral investigation orders and thereby providing institutional judicial support for arbitral tribunals in evidence collection. Shanghai, through multi-level regulations such as the *Regulations of Shanghai Municipality on Optimizing Business Environment*, the *Regulation of the Shanghai Municipality on Promoting the Initiative for an International Commercial Arbitration Center*, and the *Measures of the Shanghai High People's Court on Issuing Investigation Orders to Assist Arbitration in Evidence Collection (Trial)*, has built a mechanism covering both domestic and foreign arbitration institutions and various types of cases. Guangdong, for its part, has progressively

improved its support system for arbitral investigation orders through policy documents such as the *Decision of the Standing Committee of the People's Congress of Guangdong Province on Strengthening Legal Services to Promote the Development of the Guangdong–Hong Kong–Macao Greater Bay Area*, the *Three-Year Action Plan for Optimizing the Business Environment in Guangdong Province (2023–2025)*, and the *Measures of the Guangdong High People's Court on Issuing Investigation Orders to Assist Commercial Arbitration Institutions in Evidence Collection (Trial)*.

Shanghai and Guangdong — Local Regulations on Arbitral Evidence Collection		
Region	**Instrument**	**Key Provisions**
Shanghai	*Regulations of Shanghai Municipality on Optimizing Business Environment (2024 Amendment)*	**Article 81:** The people's courts in this Municipality shall establish the working mechanism of issuing investigation orders in support of the hearing of arbitration cases.
	Regulation of the Shanghai Municipality on Promoting the Initiative for an International Commercial Arbitration Center	**Article 22:** In an arbitration case in Shanghai managed by an arbitration institution in this municipality or an overseas arbitration business office, when a party and its agent are unable to collect evidence in person for objective reasons, and the arbitral tribunal also has difficulties in investigation and collection, and if it is necessary to collect the evidence, and the evidence is located or can be collected in this municipality, a people's court in this municipality may provide support on application by the arbitration institution.
	Measures of the Shanghai High People's Court on Issuing Investigation Orders to Assist Arbitration in Evidence Collection (Trial)	Specifies the scope of application for investigation orders, the conditions for application, case jurisdiction, the required application formalities, and the handling procedures.
Guangdong	*Decision of the Standing Committee of the People's Congress of Guangdong Province on Strengthening Legal Services to Promote the Development of the Guangdong–Hong Kong–Macao Greater Bay Area*	**Article 5:** The people's courts are encouraged to explore supporting arbitration institutions' evidence collection by means such as investigation orders.
	Three-Year Action Plan for	**Article 29:** Improve the diversified

	Optimizing the Business Environment in Guangdong Province (2023–2025)	dispute-resolution mechanisms; strengthen coordination and interface between judicial authorities and arbitration and mediation institutions, as well as industry associations and chambers of commerce.
	Measures of the Guangdong High People's Court on Issuing Investigation Orders to Assist Commercial Arbitration Institutions in Evidence Collection (Trial)	Specifies the scope of application for investigation orders, the conditions for application, the competent courts, the required application materials, and the procedures for case registration (filing), acceptance, and review.

3. Operational Mechanism of Arbitral Investigation Orders

On the basis of the gradual establishment of normative rules for evidence collection in arbitration, the relevant operational mechanisms are directly related to whether the system can be effectively implemented. Building on their respective local regulations, the courts in Shanghai and Guangdong have issued the *Measures of the Shanghai High People's Court on Issuing Investigation Orders to Assist Arbitration in Evidence Collection (Trial)* and the *Measures of the Guangdong High People's Court on Issuing Investigation Orders to Assist Commercial Arbitration Institutions in Evidence Collection (Trial)* respectively. Using these measures as examples, the following section sets out the specific procedural steps for applying for an investigation order in arbitration.

	Shanghai	**Guangdong**
Applicant	Arbitration institution	Arbitration institution
Scope of Application	1. Arbitration cases accepted by domestic arbitration institutions, or by foreign arbitration institutions registered in Shanghai, with Shanghai as the seat of arbitration; 2. Excluding labor and personnel disputes.	1. Arbitration cases accepted by arbitration institutions in Mainland China; 2. Arbitration cases accepted by foreign arbitration institutions registered in Guangdong, with Guangdong as the seat of arbitration; 3. Other arbitration cases for which the people's court considers it appropriate to issue an investigation order.
Conditions for Application	1. The parties and their representatives are unable to collect evidence themselves due to objective reasons; 2. The requested evidence is related to the facts to be proved in the case and collection is necessary;	1. The requested evidence is necessary to collect and relates to the facts to be proved in the case; 2. The parties are unable to collect the evidence themselves due to objective reasons; 3. The evidence is located in, or can be collected within, Guangdong.

	3. The evidence is located in, or can be collected within, Shanghai; 4. The arbitral tribunal itself has difficulties in collecting the evidence.	
Competent Court	1. For domestic maritime commercial arbitration cases, applications for investigation orders shall be submitted to the Shanghai Maritime Court; for other domestic arbitration cases, to the basic people's court where the evidence is located or may be collected. 2. For foreign-related and Hong Kong/Macao/Taiwan-related maritime commercial arbitration cases, applications for investigation orders shall be submitted to the Shanghai Maritime Court; for foreign-related and Hong Kong/Macao/Taiwan-related financial arbitration cases, to the Shanghai Financial Court; for other foreign-related and Hong Kong/Macao/Taiwan-related arbitration cases, to the intermediate people's court where the evidence is located or may be collected.	1. For applications for the issuance of an investigation order in non-foreign-related arbitration cases accepted by arbitration institutions in Mainland China, jurisdiction shall rest with the basic people's court at the location of the arbitration institution or its branch, or at the location of the evidence. 2. For applications for the issuance of an investigation order in foreign-related and Hong Kong/Macao/Taiwan-related arbitration cases accepted by arbitration institutions in Mainland China, jurisdiction shall rest with the intermediate people's court at the location of the arbitration institution or its branch, or at the location of the evidence. 3. For applications for the issuance of an investigation order in arbitration cases accepted by overseas arbitration institutions, jurisdiction shall rest with the intermediate people's court at the location of the evidence. 4. For applications for the issuance of an investigation order in maritime commercial arbitration cases, jurisdiction shall rest with the Guangzhou Maritime Court.
Application Materials	1. Application for issuing an investigation order; 2. Identification and work certificate of the arbitral tribunal member or staff of the arbitration institution conducting the investigation under the order; or, if a lawyer conducts the investigation, the	1. Application for issuing an investigation order; 2. Information on the investigation-order holders designated by the arbitration institution; 3. Arbitration case-filing and acceptance documents, the request for arbitration, the statement of defense, etc;

	lawyer's identification and practicing certificate together with the power of attorney and the law firm letter; 3. Arbitration case-filing and acceptance documents, the request for arbitration, the statement of defense, etc; 4. Other materials required by the people's court.	4. Other materials required by the people's court.
Acceptance Deadline	The people's court shall, within 15 days from the date of accepting the application for an investigation order, issue an investigation order to the applying arbitration institution in accordance with the law. If, upon examination, the people's court decides not to issue the order, it shall notify the arbitration institution in writing and state its reasons.	1. Formal review: If the people's court considers that the materials submitted by the arbitration institution comply with the requirements, it shall register the case under the "assisting arbitration" category; if the materials do not comply, the court shall notify the arbitration institution within 10 days to make corrections. 2. Substantive review: The people's court shall, within 15 days from the date of case registration, decide whether to issue an investigation order. If it decides not to issue such an order, it shall notify the arbitration institution in writing and state its reasons.
Validity Period of Investigation Order	Not specified.	1. The validity period shall be determined by the people's court based on the specific circumstances of the case, up to a maximum of 30 days; 2. Upon expiry, the order automatically lapses. If the investigation cannot be completed within the validity period for justified reasons, the arbitration institution may apply for one extension. The specific extension period shall be determined by the people's court based on the case circumstances.
Result Feedback	The arbitration institution shall, within 15 days after the expiry of the validity period of the investigation order, submit the	The investigation-order holder shall, within 15 days after completing evidence collection, submit a written response on the investigation results to the people's

	investigation results in writing to the people's court.	court.

4. Practical Cases of Investigation Orders in Arbitration

The following section selects representative cases of investigation orders from Shanghai and Guangdong. These cases are organized according to the type of dispute, the arbitration institution involved, the court of acceptance, the evidence requested, and the legal basis and reasoning for the court's decision to issue the investigation order. This serves to provide a snapshot of how the investigation order system operates in practice.

Representative Cases of Investigation Orders in Shanghai and Guangdong	
Cross-border Data Services Contract Dispute (2025, Shanghai)[9]	
Arbitration Institution	Shanghai International Economic and Trade Arbitration Commission (Shanghai International Arbitration Center)
Court of Acceptance	Shanghai International Commercial Court
Evidence Requested	WeChat account registration information and other materials for identifying the parties' representatives in order to determine whether the contract was validly concluded
Legal Basis for Support	*Measures of the Shanghai High People's Court on Issuing Investigation Orders to Assist Arbitration in Evidence Collection (Trial)*
Legal Basis for Support	1. The requested evidence was relevant to the case and necessary for adjudication; 2. The parties and the arbitral tribunal were unable to collect the evidence themselves despite repeated attempts; 3. According to the rules of the arbitral institution, the interim measures issued by the arbitral tribunal were made through proper procedures. The tribunal's decision on interim measures could serve as an important reference for the people's court in reviewing the application for an investigation order.
Real Property Sale and Purchase Contract Dispute (2023, Shanghai)[10]	
Arbitration Institution	Shanghai Arbitration Commission
Court of Acceptance	Minhang District People's Court of Shanghai
Evidence Requested	Real property registry information, used to determine whether the disputed property was subject to mortgage, lease, or other restraints on transfer affecting the continued performance of the contract
Legal Basis for Support	*Regulations of Shanghai Municipality on Optimizing the Business Environment*

Legal Basis for Support	1. The application was specific and clear; 2. The requested evidence could not be collected independently by the applicant; 3. The requested evidence was directly related to the facts of the case.
Construction Project Contract Dispute (2025, Guangdong)[11]	
Arbitration Institution	Heyuan Arbitration Commission
Court of Acceptance	Dongyuan County People's Court of Heyuan City
Evidence Requested	Key evidence includes relevant project contracts, stamped documents, and settlement documents for the works or any subcontracted works
Legal Basis for Support	*Measures of the Guangdong High People's Court on Issuing Investigation Orders to Assist Commercial Arbitration Institutions in Evidence Collection (Trial)*
Legal Basis for Support	The application met the scope of application and conditions set out in the *Measures*.
Contract for Work Dispute (2025, Guangdong)[12]	
Arbitration Institution	Guangzhou Arbitration Commission
Court of Acceptance	Cuiheng New Area People's Tribunal of Zhongshan First People's Court
Evidence Requested	Real-name verification information of designated WeChat accounts
Legal Basis for Support	*Measures of the Guangdong High People's Court on Issuing Investigation Orders to Assist Commercial Arbitration Institutions in Evidence Collection (Trial)*
Legal Basis for Support	1. The application met the scope of application and conditions set out in the *Measures*; 2. The submitted application materials were complete and accurate.

Based on the foregoing cases, it can be observed that when courts in Shanghai and Guangdong receive applications for investigation orders from arbitration institutions, they generally review the following aspects of the case:

First, the relevance of the evidence — that is, whether the evidence requested is directly related to the dispute in question and is indeed necessary for the arbitral tribunal to render its award. For example, in examining the application for an investigation order in the cross-border data services contract dispute, the Shanghai International Commercial Court considered the WeChat account registration information requested to be indispensable evidence for deciding the arbitral dispute, and thus treated it as an important basis for granting the investigation order.

Second, the necessity of evidence collection — that is, whether the parties and the arbitral tribunal, despite having made reasonable efforts, are still unable to collect the relevant evidence on their own, therefore requiring judicial assistance. For instance, in the Heyuan construction project contract dispute and the Guangzhou contract for work dispute, the requested information was not accessible to non-judicial entities or individuals, which restricted the tribunal's ability to collect the evidence and necessitated the court's assistance.

Third, the procedural legality involved — that is, whether the arbitral tribunal's application for an investigation order falls within the applicable scope, meets the conditions for application, and complies with all relevant procedural requirements. In both the Shanghai cross-border data services contract dispute and the Guangzhou contract for work dispute, the courts found that the tribunal's applications were procedurally proper and the supporting materials complete, and therefore granted the applications.

III. Comparative Perspectives

The following section considers the *UNCITRAL Model Law on International Commercial Arbitration* (hereinafter referred to as the "*Model Law*") and the mechanism of seeking court assistance for arbitral evidence-gathering in major jurisdictions such as the United States, the United Kingdom, and Switzerland. The features of the foreign institutional design are specifically considered, and serve as comparative references for assessing China's system.

1. Model Law: Establishing the Basic Framework for Court Assistance in Evidence Collection

Article 27 of the *Model Law* expressly provides that, with the approval of the arbitral tribunal, either the tribunal or a party may request assistance from a competent court of the State in taking evidence. The court may, within the limits of its competence and according to its rules on taking evidence, grant such a request.[13] This provision provides a basis for institutional support for arbitral tribunals in obtaining evidence, and is a useful starting point.

2. United States: Strong Arbitral Powers and Limited Judicial Intervention

In the United States, the *Federal Arbitration Act* grants arbitral tribunals broad powers in evidence-taking, including the authority to subpoena witnesses and to order the production of documents.[14] Courts generally provide assistance only in exceptional circumstances, particularly in urgent cases involving evidence preservation. For example, in *Ferro Union Corp. v. SS Ionic Coast*,[15] the claimant sought pre-arbitration investigation of a vessel docked at the Port of Houston. Given the vessel's imminent departure and the risk of evidence being lost, the court approved a narrowly tailored investigation request. The court also emphasized that this measure did not interfere with the arbitral proceedings themselves, but rather provided the tribunal with potentially critical factual support. The U.S. model highlights the principle of tribunal-led proceedings, with courts playing a supplementary role. This contrasts with the current situation in China, where arbitral tribunals often depend on court assistance in the context of evidence-gathering.

3. United Kingdom: Flexible Court Assistance with Tribunal Powers Centered on the Parties

Under the *Arbitration Act 1996*, the powers of arbitral tribunals to collect evidence are primarily limited to orders made and issued to the parties to the arbitration. These typically take the form of

ordering disclosure of documents or inspection of property.[16] Where the tribunal lacks sufficient authority or is unable to act effectively, the courts may intervene by exercising their powers in support of arbitral proceedings, including by ordering third parties to provide evidence or testimony.[17] In *A and B v. C, D and E*, the applicants sought to compel a non-party to provide testimony in support of arbitration proceedings seated in New York, invoking Section 44 of the *Arbitration Act*. At first instance, the Court dismissed the application primarily because section 44 was held to not apply to non-parties, and additionally because the preconditions under section 43 for securing witness attendance, namely that the witness be in the United Kingdom and that the arbitration be seated in England and Wales or Northern Ireland, were not satisfied.[18] On appeal, the Court of Appeal overturned this decision, holding that Section 44 could apply to foreign arbitrations and to non-parties.[19] This demonstrates that while the United Kingdom has clearly defined boundaries for court assistance in arbitral evidence collection, its system also embodies nuanced rules regarding the scope of evidence and the parties involved.

4. Switzerland: A Comprehensive System of Tribunal-Led Proceedings with Court Support

Switzerland regulates domestic arbitration under the *Swiss Code of Civil Procedure* and international arbitration under the *Federal Act on Private International Law*. Both statutes explicitly grant arbitral tribunals the authority to collect evidence independently. Where judicial assistance is needed in evidence collection or other procedural matters, the tribunal, or a party with the tribunal's approval, may apply to a competent court.[20] Furthermore, if interim measures ordered by the tribunal are not complied with, courts may enforce them upon application.[21] Switzerland's institutional design reflects a highly standardized and transparent mechanism that ensures arbitral independence while simultaneously providing robust judicial support to facilitate the smooth conduct of proceedings.

In sum, although the approaches of these jurisdictions differ in the scope and intensity of court assistance in evidence collection, they share a common principle: safeguarding the independence of arbitration while enhancing its effectiveness through clear statutory authorization and procedural safeguards. For China, these experiences provide valuable comparative insights for understanding the practical value and future development of its own system.

IV. Conclusion

With the gradual implementation of the investigation order system in arbitration, a framework of coordination between arbitral tribunals and courts is taking shape in Chinese arbitration practice. This allows for greater operability and practical utility in the evidence-gathering process.

From a practical perspective, parties should strengthen their awareness in relation to the preservation of evidence prior to the disputes occurring. They should also actively cooperate with interim measures and investigative arrangements during arbitration proceedings. Arbitration institutions, on the basis of existing rules, should further standardize the procedures for applying for investigation orders, and establish communication mechanisms with local courts. Lawyers, as key actors in the process of arbitral evidence collection, must master the relevant mechanisms, design effective investigative strategies, and enhance the efficacy of their case management.

In sum, the practical advancement of the investigation order system not only optimizes the fact-finding mechanism of arbitral proceedings, but also enhances China's institutional attractiveness as

a seat of international arbitration. For all stakeholders in arbitration practice, timely understanding and effective use of this tool will be an important means of improving the efficiency of dispute resolution. Looking forward, as judicial assistance rules are further refined, investigation orders will become an essential bridge linking arbitral efficiency with judicial authority, laying a solid foundation for the internationalization of Chinese arbitration.

Sincere thanks are extended to intern Weibing Chen for her contribution to this work.

1 Shanghai International Commercial Court Issued an Investigation Order to Assist in Evidence Collection for International Commercial Arbitration. Supreme People's Court of the People's Republic of China <https://www.court.gov.cn/zixun/xiangqing/465981.html>

2 China's First Case! Shanghai International Commercial Court Issued an Investigation Order in Support of Interim Measures in International Arbitration. Shanghai First Intermediate People's Court <https://mp.weixin.qq.com/s/-FPCv4OCtt2XrYPqUDKCdg>

3 Arbitration Law of the People's Republic of China (2017 Amendment)

Article 43 Parties shall provide evidences in support of their own arguments.

The arbitration tribunal may, as it considers necessary, collect evidences on its own.

4 Wang Xiaoxin. Beijing Arbitration Feature | Feasible Pathways for Evidence Collection by Arbitral Tribunals in Chinese Commercial Arbitration. Beijing Arbitration Commission<https://mp.weixin.qq.com/s/3dacXu5RhG8FwycHazWp1w>

5 Arbitration Law of the People's Republic of China (2017 Amendment)

Article 46 Under circumstances where the evidence may be destroyed or lost or difficult to obtain at a later time, a party may apply for preservation of the evidence. If a party applies for preservation of the evidence, the arbitration commission shall submit his application to the basic people's court in the place where the evidence is located.

6 Arbitration Law of the People's Republic of China (2025 Revision)

Article 55 A party shall provide evidence in support of its own claims.

The arbitration tribunal may, as it considers necessary, collect evidence on its own initiative, and may, when necessary, request relevant entities to provide assistance in accordance with the law.

7 Arbitration Law of the People's Republic of China (2025 Revision)

Article 58 Where any evidence may be destroyed or lost or difficult to obtain at a later time, a party may apply for evidence preservation. If a party applies for evidence preservation, the arbitral institution shall refer the application to the primary people's court at the place where the evidence is located, and the people's court shall handle it in a timely manner in accordance with the law.

In case of emergency, a party to an arbitration agreement may, before applying for arbitration, apply to the people's court for evidence preservation in accordance with the relevant provisions of the Civil Procedure Law of the People's Republic of China. If a party applies for evidence preservation, the people's court shall handle it in a timely manner in accordance with the law.

8 Beijing Arbitration Commission Arbitration Rules (2022)

Article 34: Investigation and Collection of Evidence by the Arbitral Tribunal

(1) If a party makes an application and the Arbitral Tribunal considers it necessary, or there is no such application but the Arbitral Tribunal considers it necessary according to the particular circumstances of the case, the Arbitral Tribunal may undertake investigations and/or collect evidence on its own initiative.

Xi'an Arbitration Commission Arbitration Rules (2023)

Article 45 Investigation by the Arbitral Tribunal

(1) Where a party makes an application and the Arbitral Tribunal deems it necessary, or where there is no such application but the Tribunal deems it necessary based on the particular circumstances of the case, the Tribunal may conduct investigations and collect evidence on its own initiative.

9 China's First Case! Shanghai International Commercial Court Issued an Investigation Order in Support of Interim Measures in International Arbitration. Shanghai First Intermediate People's Court<https://mp.weixin.qq.com/s/-FPCv4OCtt2XrYPqUDKCdg>

10 SHAC Updates | Shanghai Arbitration Commission Obtains the First Investigation Order Assisting an Arbitration Institution. Shanghai Arbitration Commission <https://mp.weixin.qq.com/s?__biz=MzA3NzQ2NjY5NA==&mid=2650369007&idx=1&sn=8ff627a7833442c7f9483ab1fd67b2a5&chksm=875c56c6b02bdfd0dede49904ac674ccfe9e177b220d6d6bd48aaf7e62f99c8ab88298d167b8&scene=27>

11 [Hefa Action] The City's First Heyuan Court Issues an Investigation Order in a Commercial Arbitration Case. Heyuan Intermediate People's Court<https://mp.weixin.qq.com/s/7193VxwdNelKe4xrHza5dA>

12 The First Investigation Order, Tackling the Difficulties of Evidence Collection in Arbitration. Zhongshan Intermediate People's Court<https://mp.weixin.qq.com/s/q-4vScoeiz-wiFqfwqMFZw>

13 UNCITRAL Model Law on International Commercial Arbitration 1985 With amendments as adopted in 2006 Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

14 U.S. Code: Title 9 — ARBITRATION

§7 - Witnesses before arbitrators; fees; compelling attendance

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case.

15 Ferro Union Corp. v. SS Ionic Coast, Civ. A. No. 67-H-662

16 Arbitration Act 1996

34 Procedural and evidential matters.

(1)It shall be for the tribunal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter.

(2)Procedural and evidential matters include—

(d)whether any and if so which documents or classes of documents should be disclosed between and produced by the parties and at what stage;

(e)whether any and if so what questions should be put to and answered by the respective parties and when and in what form this should be done;

(f)whether to apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented;

(g)whether and to what extent the tribunal should itself take the initiative in ascertaining the facts and the law;

(h)whether and to what extent there should be oral or written evidence or submissions.

38 General powers exercisable by the tribunal.

(4)The tribunal may give directions in relation to any property which is the subject of the proceedings or as to

which any question arises in the proceedings, and which is owned by or is in the possession of a party to the proceedings—

(a)for the inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party, or

(b)ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property.

(5)The tribunal may direct that a party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation.

(6)The tribunal may give directions to a party for the preservation for the purposes of the proceedings of any evidence in his custody or control.

17 Arbitration Act 1996

43 Securing the attendance of witnesses.

(1)A party to arbitral proceedings may use the same court procedures as are available in relation to legal proceedings to secure the attendance before the tribunal of a witness in order to give oral testimony or to produce documents or other material evidence.

(2)This may only be done with the permission of the tribunal or the agreement of the other parties.

(3)The court procedures may only be used if—

(a)the witness is in the United Kingdom, and

(b)the arbitral proceedings are being conducted in England and Wales or, as the case may be, Northern Ireland.

(4)A person shall not be compelled by virtue of this section to produce any document or other material evidence which he could not be compelled to produce in legal proceedings.

44 Court powers exercisable in support of arbitral proceedings.

(1)Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders (whether in relation to a party or any other person) about the matters listed below as it has for the purposes of and in relation to legal proceedings.

(2)Those matters are—

(a)the taking of the evidence of witnesses;

(b)the preservation of evidence;

(c)making orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings—

(i)for the inspection, photographing, preservation, custody or detention of the property, or

(ii)ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property; and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration;

(d)the sale of any goods the subject of the proceedings;

(e)the granting of an interim injunction or the appointment of a receiver.

(3)If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.

18 A, B v C, D and E, (2020) EWHC 258 (Comm)

19 A and B v C, D and E, [2020] EWCA Civ 409

20 Swiss Code of Civil Procedure

Art. 375 Taking of evidence and assistance by the state court

(1) The arbitral tribunal shall conduct the taking of evidence itself.

(2) If the taking of evidence or any other procedural step by the arbitral tribunal requires the assistance of the state

judicial authorities, the arbitral tribunal may seek the assistance of the competent state court pursuant to Article 356(2).

With the consent of the arbitral tribunal, this may also be done by a party.

Federal Act on Private International Law

Art. 184

1 The arbitral tribunal takes the evidence itself.

2 Where state legal assistance is required for the taking of evidence, the arbitral tribunal or a party with the consent of the arbitral tribunal may request the participation of the state court at the seat of the arbitral tribunal.

21 Swiss Code of Civil Procedure

Art. 374 Provisional measures, security and damages

(1) The state court or, unless the parties have agreed otherwise, the arbitral tribunal may at the request of a party order provisional measures, including measures for the preservation of evidence.

(2) If the party concerned does not voluntarily comply with a measure ordered by the arbitral tribunal, the state court shall, at the request of the arbitral tribunal or a party, make the necessary orders; if a party makes the request, the consent of the arbitral tribunal must be obtained.

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