

A Study on Establishing Joint Arbitration Institutions at China's Hainan Free Trade Port

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The Supreme People's Court of China supports the establishment of an international commercial dispute resolution center involving foreign arbitral institutions at Hainan Free Trade Port, but the setting up of such institutions is challenging. Cooperation between China and other countries can help address challenges in the establishment of joint arbitration institutions in Hainan. Compared with the setting up of arbitration institutions by a single foreign party, joint arbitration institutions can share costs and risks, make more neutral arbitration judgments, leverage on the strengths of both parties, as well as facilitate the cultivation of arbitrators. A joint arbitration institution can be defined as a legal entity, with checks and balances on corporate governance. Hainan can make use of its free trade port policy and legislative powers to implement "lenient admission, strict regulations and proper support" for foreign arbitral institutions to establish joint arbitration institutions, suspend outdated provisions of the Arbitration Law, and draft supplementary legislation.

Keywords: Hainan Free Trade Port, foreign arbitral institutions, joint arbitration institutions, amendment of Arbitration Law, international arbitration

Introduction

The Supreme People's Court of China supports the establishment of an international commercial dispute resolution center through foreign arbitral institutions at Hainan Free Trade Port, but the setting up of such institutions is challenging. Existing studies mainly focus on foreign arbitral institutions setting up branch offices, while neglecting the idea of establishing joint arbitration institutions.

Joint arbitration institutions are mutually established between entities from different countries. One example of a joint arbitration institution is the arbitration center co-established by the Dubai International Financial Center and London Court of International Arbitration (DIFC-LCIA). DIFC-LCIA soon became a renowned and trusted international arbitration center due to its flexibility and practicality of procedural rules (George, 2018). Despite the abolishment of DIFC-LCIA by the Dubai government in 2021, it does not negate the center's important contribution to the internationalization of Dubai's arbitration (Kadhim, 2021).¹ The Hainan Free Trade Port can

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¹ Dubai abolished DIFC-LCIA because its international arbitration has gained enough growth under DIFC-LCIA, and not because it had issues with DIFC-LCIA. It was abolished to move away from external dependence and support Dubai's local arbitration agency Dubai International Arbitration Centre (DIAC) to set up a branch at the Dubai International Financial Centre (DIFC).

establish joint arbitration institutions through foreign arbitral institutions as it has advantages similar to Dubai's free trade zone.

Foreign arbitral institutions and relevant entities in China can co-establish a joint arbitration institution in Hainan. Relevant entities include domestic arbitration institutions engaged in dispute resolution, or industry associations with a strong demand for dispute resolution. Joint arbitration institutions have specific advantages compared with arbitration institutions established by a sole party.

First, a joint arbitration institution can share costs, uncertainties, and risks between both parties. Second, a joint arbitration institution can integrate the arbitration experience of both parties to better realize "the internationalization of Chinese arbitration and the Sinicization of international arbitration" (Chen, 2018, pp.7-12). Moreover, a joint arbitration institution is more neutral, whereby domestic and foreign clients need not worry that the joint arbitration institution will favor either party. Joint arbitration institutions are also more conducive towards the cultivation of international arbitrators. Joint arbitration institutions can provide more opportunities for Chinese arbitrators to gain experience in international arbitration, and allow foreign arbitration practitioners to engage in international arbitration involving China, thus enabling both parties to familiarize themselves with arbitration procedures and practices in China and elsewhere.

This paper will study ways to set up a joint arbitration institution at Hainan Free Trade Port. The first part will discuss the design of a joint arbitration institution, while the second part will examine policy support for the establishment of a joint arbitration institution. Meanwhile, the third part of this paper will analyze the legal support for the setting up of a joint arbitration institution at Hainan Free Trade Port before drawing conclusions in the final section.

Establishment and Structure of Joint Arbitration Institutions

It is necessary to select the relevant bodies and devise a proper structure to set up a joint arbitration institution in Hainan.

Relevant Bodies of Joint Arbitration Institutions

The relevant bodies of a joint arbitration institution refer to partnership entities from China and another country, which can be a Chinese arbitration organization and a foreign counterpart, or a relevant Chinese organization and a foreign arbitral institution.

A Chinese arbitration organization and a foreign counterpart as partners. As one of China's top arbitral institutions, the Hainan International Arbitration Court (HIAC) signed a memorandum of understanding (HIAC, 2020) with Singapore International Arbitration Centre (SIAC) for international arbitration cooperation. Other renowned arbitral institutions in China, such as the China International Economic and Trade Arbitration Commission (CIETAC), China Maritime Arbitration Commission (CMAC), and Beijing Arbitration Commission (BAC), can also set up a joint arbitral institution with a foreign arbitral organization in Hainan. The London Court of International Arbitration (LCIA) and International Chamber of Commerce International Court of Arbitration (ICC), Arbitration Institute of the Stockholm Chamber of Commerce (SCC), Vienna International Arbitration Center (VIAC), and other top international arbitral institutions are also possible partners for Chinese arbitral institutions to build a strong alliance.

A Chinese industry organization and a foreign arbitral institution as partners. Chinese industry organizations refer to national and local trade and industry associations as well as other organizations established in China, such as Machinery Industry Federation, Textile Industry Association, Foreign Service Industry Association, Metallurgical Construction Association, Cross-Border E-Commerce Association and Intellectual Property Protection Association (FCTACC, 2022). The selection of these trade and industry organizations mainly take into account the frequency of foreign-related disputes in their industries. If a Chinese arbitral institution is deemed unable to resolve foreign-related disputes, a joint arbitral institution can be set up with a foreign arbitral institution with industry expertise. For example, promoting innovation in the intellectual property system is a top priority to develop Hainan Free Trade Port. The Hainan International Intellectual Property Trading Center was suggested to be established to resolve intellectual property disputes and other arbitration matters (Cao & Wang, 2020). Thus, a joint arbitral institution with the Arbitration and Resolution Center of the World Intellectual Property Organization can be set up. As global grain and feed trade activities have increased significantly at Hainan Free Trade Port in recent years (Haikou Customs District, China, 2022),² China National Association of Grain Sector (CNAGS) can establish a joint arbitral institution with the Grain and Feed Trade Association (GAFTA), an international grain and feed arbitration organization, to deal with potential disputes and risks in the industry.

Structure of Joint Arbitral Institutions

The structure of a joint arbitral institution in Hainan refers to the organizational form and internal governance structure of the arbitral institution. As a hybrid mechanism of cooperation between China and another country, the structure of a joint arbitral institution has specific features.

In terms of organizational form, it should be a legal entity of a non-profit arbitral institution. Organizational form refers to the type of legal entity. The Arbitration Law of China³ does not specify the type of legal entities in the registration of arbitration commissions, and the Revised Draft of Arbitration Law of China⁴ does not specify the type of legal entities for the registration of arbitral institutions. Thus, there is no proper reference for the specific type of legal entity required to set up a joint arbitral institution with foreign arbitral institutions. Three types of non-profit legal entities are listed in the Civil Code of China⁵, including public institution, social organization, and donor. A joint arbitral institution cannot be established as a public institution legal entity since it must be non-governmental. Without a broad membership base, it is also not appropriate to be established as a social organization legal entity with a general assembly as its statutory body. Since the institution must be “independent”, it is also inappropriate to be established as a donor legal entity that is subject to the long-term supervision and possible interference from external donors.

The type of legal entity for a joint arbitral institution does not correspond to the three types of non-profit legal entities listed in the Civil Code, but it can be certified as an arbitral institution legal entity on the registration certificate once it has met the general requirements of the Civil Code on legal entities and non-profit legal entities.

² According to customs data, the grain import trade in Hainan has grown rapidly in recent years. In 2020, the import was nearly 450 million yuan, up 1,357.2% year on year. In 2021, imports exceeded 900 million yuan, up 100.6% year on year. In the first half of 2022, the import surpassed 700 million yuan, up 80.5% year on year.

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

⁴ Arbitration Law of the People's Republic of China (Revised) (Draft for Public Comments).

⁵ Articles 87-95 of The Civil Code of the People's Republic of China (Order No. 45 of the President of the People's Republic of China).

This is because the types of legal entities listed in the Civil Code are meant for guidance, rather than restriction. The principle of bona fide interpretation was used to overcome the legislation's limitations, allowing the joint arbitral institution to qualify as the Civil Code's definition⁶ of a non-profit legal entity. When the specific type of legal entity cannot be found in the list, it is feasible to set it as the arbitral institution legal entity in good faith. Second, the judicial administrative department reflects the type of an arbitral institution's legal entity in the name specified on the registration certificate, which is consistent with the practice of the institutional establishment management authority and civil affairs department to reflect the specific type of eligible entity in the name specified on the registration certificate⁷. Thus, arbitral institutions can be regarded as independent legal entities, and its organizational form is an arbitral institution legal entity defined as non-profit legal entities.

The governance structure is a corporate structure of reciprocal cooperation. Generally, a joint arbitral institution structure should be based on the concept of mutual checks and balances as well as coordination at the three levels of decision-making, execution, and supervision.

First, a joint council can be established as a permanent decision-making body. Both parties shall establish the joint council by convening a joint session divided into two groups, A and B, according to the principles of equality and appropriate size. Thus, both groups shall consist of five or seven members as an odd number is needed to reach a majority vote. The joint council shall consist of 10 or 14 members as an even number is needed to balance the decision-making power of both parties. Each group can appoint one or two deputy directors to assist the council chair in handling relevant affairs. Group A shall be established by the Chinese arbitral institution and a director shall be appointed to lead the group of Chinese nationals. The foreign arbitral institution shall establish Group B, with a director appointed to lead the group made up of foreigners. In other words, there will be two directors leading the joint council, and majority voting shall be conducted for decision-making. This means that Groups A and B shall vote on every issue. Only when both groups reached two-thirds or half of the votes can a resolution be passed by the joint council. The joint council shall consist of legal professionals, experts in business and trade (excluding civil servants), while the director shall represent the rights and obligations of both parties. The joint council may set up an expert advisory committee to improve decision-making.

Second, an arbitration court can be set up as an enforcement body. The joint council shall appoint arbitration court members, who are responsible for implementing the resolutions of the joint council and handling the day-to-day administrative affairs of the joint arbitral institution under the joint council's leadership and supervision. The arbitration court shall be led by a president jointly selected by joint council members. In addition, one or two vice presidents shall be nominated by Groups A and B to assist the president. To prevent the arbitration court's interference in the decision-making power of the joint council, the president of the court and council's director and deputy directors cannot hold concurrent posts and the vice president of the court cannot be a joint council member. The arbitration court may set up specific departments to assign tasks into two parts, namely dispute

⁶ Article 87 of The Civil Code of the People's Republic of China (Order No. 45 of the President of the People's Republic of China): A non-profit legal entity is a legal entity established for public welfare or other non-profit purposes and shall not distribute profits to investors, founders, or members.

⁷ The title on the registration certificate issued by Chinese Organization Administration Authority to a public institution legal entity is "Certificate for Public Institution Legal Entity", and the title of registration certificate issued by China's Ministry of Civil Affairs to a social organization legal entity is "Certificate for Social Organization Legal Entity", both of which reflect the legal entity qualification status of the registered subject on the registration certificate.

resolution and day-to-day administrative affairs, in ensuring the quality of arbitration. Two departments can be set up, namely dispute resolution department and administrative affairs department. The dispute resolution department is responsible for accepting and handling cases of dispute and may set up an arbitration office, mediation office, and business secretariat when the need arises. The business secretariat shall provide secretarial support for the arbitration and mediation offices in handling of cases. On the other hand, the administrative affairs department is responsible for the day-to-day administration of the arbitration court, and can set up a general office, personnel office, and property office to support the arbitration court's operations.

Third, a supervisory board can be created as a permanent supervisory body. The supervisory board shall be established by a joint session convened by both parties, and shall only report to the joint session. Members of the supervisory board, joint council, and arbitration court cannot hold concurrent posts. The supervisory board may comprise seven or nine members depending on costs, with one chairperson and two deputy chairpersons. To maintain independence, both parties shall jointly appoint a third-party chair of the supervisory board. In addition, both parties shall appoint one deputy chairperson from their respective organizations to assist the chairperson and balance the supervisory power of both parties. The supervisory board shall also appoint an equal number of supervisors, including deputy chairpersons, to supervise the work of the joint council and arbitration court, such as financial audits, determining their work performance, and whether there are disciplinary violations. It may set up an audit office and disciplinary supervision office to conduct financial audits on the joint arbitral institution, perform supervisory duties, as well as handle complaints and tip-offs on the staff of the joint council and arbitration court. However, expansion of supervisory power should be moderate through specific work systems as excessive expansion can affect operations.

It should be noted that the joint session is the highest decision-making body of the joint arbitral institution. As an ad hoc organization, it is a temporary session jointly convened by the highest decision-making bodies of both parties. It is held regularly once a year and can also be convened when the need arises. The joint session is responsible for the establishment, changes, and dissolution of the joint arbitral institution, approval of the articles of association, as well as appointment and change of personnel at the joint council and supervisory board. The joint council and board of supervisors shall report to the joint session and deliver work reports at the annual joint session.

Policy Support for the Establishment of a Joint Arbitral Institution at Hainan Free Trade Port

Given the absence of provisions on foreign arbitral institutions in the Arbitration Law of China, and that the Revised Draft of the Arbitration Law is still awaiting approval, Hainan Free Trade Port can devise policies that accelerate the involvement of foreign arbitral institutions, including administrative regulations for foreign arbitral institutions and other measures.

Administrative Regulations for Foreign Arbitral Institutions

Shanghai and Beijing are currently the only two cities that have issued administrative regulations on foreign arbitral institutions⁸. Hainan can learn from the best practices of these two cities and enact more open and

⁸ Shanghai: Administrative Regulations on the Establishment of Joint Arbitral Institutions by Foreign Arbitral Institutions in Lingang New Area of China (Shanghai) Pilot Free Trade Port Zone (HSG 2019 No. 5); Beijing: Administrative Regulations on the Establishment of Joint Arbitral Institutions by Foreign Arbitral Institutions in China (Beijing) Pilot Free Trade Zone (JSF 2020 No. 91).

innovative administrative regulations on the establishment of a joint arbitral institution with foreign arbitral institutions. The administrative regulations shall cover registration management and post-registration supervision.

First, in terms of registration management, the conditions for establishing arbitral institutions should be open and inclusive, and registration procedures should be simple. On one hand, relatively lenient criteria shall be established for registration. (1) Foreign arbitral institutions are defined as non-profit arbitral institutions established abroad, including institutions with arbitration experience but not specializing in arbitration. (2) Joint arbitral institutions established by foreign arbitral institutions at Hainan Free Trade Port are non-profit legal entities under Chinese law, whose organizational form, governance structure, and mode of operation are at the discretion of the founders, provided that they do not violate laws and regulations. (3) There shall be no limit on the years of establishment and international reputation of foreign arbitral institutions⁹, who are only required to provide proof of their legal establishment and arbitration services abroad. On the other hand, registration procedures should be simple. (1) An online application platform should be available, enabling complex matters to be resolved online, while key matters may require in-person verification. (2) There should be a relatively short time limit for registration. The total time limit may not exceed 30 days, from acceptance of an application by Hainan Provincial Department of Justice to submission of application to the Ministry of Justice for filing until a ID code and certificate have been issued.

Second, their business shall be strictly supervised with better guidance. On one hand, strict supervision is mainly reflected in the supervision of the joint arbitral institution's operations and the work performance of staff. (1) Strict supervision shall be adopted on the joint arbitral institution in aspects such as registration compliance, scope of cases and profit motives, with a withdrawal mechanism in place. (2) The work performance of staff should also be strictly managed, including administrative personnel and arbitrators engaged in arbitration management and services. On the other hand, guidance is reflected in aspects such as centralized office, information transparency, cooperation and exchanges. (1) Joint arbitral institutions are guided in sharing an office space with domestic arbitral institutions and other legal service providers. (2) Joint arbitral institutions are encouraged to take the initiative to disclose and update their business information, except confidential information, through channels such as official website in a timely manner. (3) Guidance on cooperation and exchanges between joint arbitral institutions and local arbitral institutions can develop Hainan's arbitration industry, while promoting healthy competition and cooperation.

Support Measures for the Development of Legal Services Industry

In addition to good management practices, support measures are also needed for joint arbitral institutions to operate in Hainan. Shanghai and Beijing have formulated support measures for the development of the legal services industry¹⁰. Hainan can study the best practices of both cities to introduce more innovative and improved

⁹ The administrative regulations of Shanghai and Beijing require foreign arbitral institutions to provide proof that they have been legally established abroad, and are highly influential and engaged in arbitration services for at least five years. This threshold is not conducive to emerging foreign arbitral institutions with development potential. Moreover, the requirement of reputation self-certification may bring an unnecessary burden of proof on qualified foreign arbitral institutions. Compared with Shanghai and Beijing, Hainan should adopt a more open attitude and abandon these unreasonable restrictions.

¹⁰ Shanghai: Policies for Promoting the Development of Legal Services Industry in Lingang New Area of China (Shanghai) Pilot Free Trade Zone (HZMLGW (2020) No. 350). The support measures cover six aspects: incentives for settlement of institutions, office space support, talent support, incentives for high-level legal services, cross-border settlement facilitation, and tax benefits; Beijing: Notice of Beijing Municipal Development and Reform Commission and Beijing Municipal Bureau of Justice on the

support measures, and provide coordinated support for joint arbitral institutions in aspects such as office space provision, subsidies, tax incentives, and employment facilitation.

First, office space shall be provided for joint arbitral institutions. One of the most important factors when a foreign arbitral agency establishes a joint arbitral institution in Hainan is office space. An international dispute resolution center building or park can be built in Hainan for domestic and foreign legal service providers, including arbitral institutions, with relatively low or affordable rent.

Second, joint arbitral institutions shall enjoy subsidies. Costs are a foreseeable major issue for the establishment of joint arbitral institutions in Hainan. Subsidies will greatly ease their economic burden and ensure smooth operations in Hainan, such as exemption or reimbursement of a certain rate in office space rental and purchasing of large office equipment.

Third, tax incentives shall be provided for joint arbitral institutions and arbitration professionals. According to the requirements of institutional innovation, the Hainan Free Trade Port can negotiate with the Ministry of Finance and State Taxation Administration to simplify the tax-exempt status procedures of eligible joint arbitral institutions and include them in the tax-free list. The staff of joint arbitral institutions engaged in arbitration services shall also be included in the list, including management and arbitration secretaries, as well as arbitrators.

Fourth, support shall be provided to facilitate the employment of arbitration professionals at joint arbitral institutions. Hainan can simplify the handling and approval of administrative affairs for foreign arbitrators such as entry and exit permits, work and residence permits. For example, the three permits can be issued and combined through a “foreign talent card”, promoting “a single card for customs clearance and checking”. Preferential treatment can also be provided for domestic and foreign arbitration talents in purchasing of cars and homes, healthcare, social security, and education of their children.

Legal Support for the Establishment of Joint Arbitral Institutions at Hainan Free Trade Port

Compared with pilot free trade zones in cities such as Shanghai and Beijing, the Hainan Free Trade Port has the unique advantage of legislative power over its free port. Before the amended Arbitration Law of China was enacted, Hainan can leverage on this advantage to resolve issues pertaining to shortcomings in the Arbitration Law and reform its arbitration system and facilitate the establishment of joint arbitral institutions.

Suspension of Some Arbitration Law Provisions in Hainan

Some provisions of China's Arbitration Law pose challenges for foreign arbitral institutions to establish a joint arbitral institution and conduct arbitration business in Hainan. Hainan can seek suspension of specific provisions in the arbitration laws from the Standing Committee of the National People's Congress¹¹.

First, the provisions on “arbitration commission” and “foreign-related arbitration commission” shall be suspended. This means that the provisions of Arbitration Law on “arbitration commission” shall not apply to

Issuance of Measures on Reforming and Optimizing the Development Environment of the Legal Services Industry (JFGG (2021) No.2). Support measures include six aspects: work residence and entry and exit facilitation, cross-border payment facilitation, optimization of judicial and administrative approval, establishment of international commercial arbitration center, development of foreign-related legal service providers, and training of legal services personnel.

¹¹ Article 13 of the Legislation Law of the People's Republic of China (2015 Amendment) stipulates that the NPC and its Standing Committee may decide to temporarily adjust or suspend some provisions of the law on specific administrative matters for a certain period, as part of legal reforms. The establishment and business development of arbitral institutions is under administrative matters; thus, Hainan can seek the suspension of relevant provisions of the Arbitration Law for a certain period.

arbitral institutions established by foreign arbitral institutions in Hainan as foreign arbitral institutions are different from “arbitration commissions” (Articles 10-13 of the Arbitration Law) and “foreign-related arbitration commission” (Articles 66-68 of the Arbitration Law) in terms of name, method of establishment, organizational form, governance structure, appointment of arbitrators and preparation on the list of arbitrators as stipulated in the provisions. The establishment of joint arbitral institutions can be addressed in the supplementary legislation. Hainan shall regulate relevant matters concerning the establishment of joint arbitral institutions involving foreign arbitral institutions through its free trade port legislation.

Second, the provisions on the “selection of arbitration commission” in the “arbitration agreement” shall be suspended. Article 16 of the Arbitration Law requires the “selected arbitration commission” to be specified in the arbitration agreement, which does not conform to existing international practices. When the Arbitration Law was first enacted, it did not consider the establishment of joint arbitral institutions involving foreign arbitral institutions in China. The “arbitration commission” refers to the arbitral institution established by the Chinese government, and it is not applicable to joint arbitral institutions.

Temporary Supplementary Legislation to Address Shortcomings of Arbitration Law

Given that China's Arbitration Law does not include provisions for foreign arbitral institutions, the People's Congress of Hainan and its standing committee can draft supplementary arbitration legislation applicable to Hainan and formulate the “International Commercial Arbitration Regulations of Hainan Free Trade Port” to regulate issues on the development of international commercial arbitration in Hainan, based on China's arbitration laws¹².

First, special provisions shall be drafted on the establishment of joint arbitral institutions involving foreign arbitral institutions in Hainan. At present, Hainan Free Trade Port's support for international commercial arbitral institutions focuses on the Hainan International Arbitration Court (HIAC)¹³. While this is understandable, it indicates local protectionism. Internationalization and openness are distinctive features of free trade ports. While supporting the development of local arbitral institutions, foreign arbitral institutions should also be given fair opportunities and proper support¹⁴. The regulations may stipulate the requirements, type of cases, structure, procedures for establishment and supervision methods for the establishment of joint arbitral institutions in Hainan, and provide a legal basis for foreign arbitral institutions to set up joint arbitral institutions.

¹² According to Article 10 of the Hainan Free Trade Port Law of the People's Republic of China enacted in June 2021, Hainan People's Congress and its standing committee can implement relevant regulations on trade, investment and related activities at Hainan Free Trade Port without violating laws, including other legal matters that need to be drafted by the National People's Congress and its standing committee for approval. Foreign arbitral institutions are involved in the resolution of trade and investment disputes, thus it is not inappropriate to interpret the administration of foreign arbitral institutions as “trade, investment and related activities”. Hence, Hainan may seek approval from the Standing Committee of National People's Congress on supplementary legislation for the management of foreign arbitral institutions.

¹³ For example, the Hainan Provincial Department of Justice issued Measures for Hainan Province to Implement Opinions on Improving Arbitration System to Strengthen Credibility of Arbitration on December 20, 2019. Although the title states the improvement of the province's arbitration system, it focuses on ways to support the development of Hainan International Arbitration Court.

¹⁴ As a model of free trade ports, Singapore not only supports the development of its local arbitral institution, Singapore International Arbitration Center (SIAC), but also partnered with foreign arbitral institutions such as International Chamber of Commerce (ICC) Court of Arbitration, International Center for Dispute Resolution (ICDR) of the American Arbitration Association and Permanent Court of Arbitration (PCA), and Arbitration and Dispute Resolution Center of World Intellectual Property Organization (WIPO ADR).

Second, special provisions shall be made for joint arbitral institutions to conduct arbitration business in Hainan. The type of cases handled by joint arbitral institutions should first be clarified. They can deal with international commercial and investment cases, as well as international sports disputes and intellectual property disputes that are not prohibited by law¹⁵. Furthermore, local arbitration standards shall apply to the arbitration business conducted by joint arbitral institutions in Hainan and arbitration awards made by them are legally-binding, which determines whether the parties concerned can receive legal remedies. Thus, the regulations shall specify that the arbitration awards reached by joint arbitral institutions are legally-binding. Meanwhile, Hainan's judicial support and supervision of joint arbitral institutions should be clear. The recognition and enforcement of arbitration awards, revocation of awards, and interim measures of arbitration procedures require judicial support and supervision. Thus, the regulations shall specify that Hainan's judicial system supports and supervises joint arbitral institutions in these aspects. In particular, it should improve provisions on interim and urgent measures such as property preservation, evidence and behavior preservation, provide the arbitration tribunal with the right to decide on interim or urgent measures, and set up a system of emergency arbitrators, so that the court can provide the necessary support before and after the arbitral tribunal has been formed.

Conclusion

The Hainan Free Trade Port boasts institutional advantages unrivalled by other cities in China, making it an ideal place to innovate the country's arbitration system. Hainan can serve as pilot test for China to open up its arbitration market, attract foreign arbitral institutions to establish joint arbitral institutions in Hainan, and improve China's arbitration system. With significant advantages over the establishment of arbitral institutions by a sole party, setting up joint arbitral institutions in China is an unprecedented way to bring in foreign arbitral institutions. Hainan will boost its competitiveness in China's arbitration industry if it places an emphasis on establishment of joint arbitral institutions to attract foreign arbitral institutions. The innovative and integrated system is Hainan Free Trade Port's most significant feature. It can support the establishment of foreign arbitral institutions in Hainan through innovative policies and arbitration legislation, to achieve internationalization and modernization of arbitration as well as enable domestic and foreign arbitral institutions to improve their quality of services. Dispute resolution is one of the key indicators of a region's business environment. The establishment of joint arbitral institutions is necessary to set up an international commercial dispute resolution center that allows Hainan to match the highest international standards of trade rules and level of openness.

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¹⁵ Article 26 of the Revised Draft of Arbitration Law stipulates that as long as a civil litigation is permitted by law and arbitration is not prohibited, an arbitration agreement reached by the parties concerned shall be valid in accordance with provisions of the Arbitration Law.

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