In China, the legal landscape for international arbitration is vast and complex. Legal and tax matters are handled by Altenburger Ltd. legal + tax, and we extend special thanks to Dr. Clarisse von Wunschheim, our Of Counsel and Partner at Altenburger Ltd.

### 1. The Prior Reporting System – The Current Framework

In view of these flaws, the arbitration community has been pushing for reforms. In China, foreign arbitral awards as well as Chinese awards involving a foreign element are subject to the Prior Reporting System (2017). This reforms serves to ensure further consistency in the judicial review of arbitration-related cases.

#### 1.1 The Prior Reporting System – The Current Framework

In China, foreign arbitral awards as well as Chinese awards involving a foreign element are subject to the Prior Reporting System (2017). This system has been implemented to address the following issues:

- Lack of specific time limits for the Prior Reporting System
- Substantial delays in the process for enforcing arbitral awards
- Deviation from the law comparing to usual local court practices

#### 1.2 Changes Implemented by the SPC Provisions on the Prior Reporting System

The reforms have introduced several changes:

- Implementation of specific time limits for the Prior Reporting System
- Use of a new electronic platform and procedures
- Reduction of the number of levels required for approval

Yet this improvement came with a price: Given the lack of specific time limits imposed on the Prior Reporting System, it has led to substantial delays in the process for enforcing arbitral awards. It is thus not uncommon for foreign companies to experience pro-arbitration environments in the Chinese court system.

In China, enforcement of foreign or foreign-related awards tends to be lengthy, delayed or unsuccessful. To avoid these issues, it is crucial to carefully evaluate and choose an appropriate dispute resolution mechanism for your commercial relationships.

### 2. Reasons to Consider a Foreign-Related Award

- Higher chances of enforcement
- Lower costs
- More flexible and efficient procedures

### 3. Legal Considerations

- **Commercial guarantees**: Consider providing commercial guarantees in your contracts (e.g., performance guarantees) as well as negotiating commercial guarantees or contractual penalties in your contracts.
- **Asset research**: Proceed with due diligence of your contractual Chinese partner (who are they, who are the shareholders / beneficial owners) as well as preliminary asset research (how are they organized, where do they have assets). Although more and more Chinese companies are transparent about their assets, there may be hidden assets.
- **Financial support**: Consider approaching a so-called “Third Party Funder” to fund the arbitration proceedings but also to trace assets and finance enforcement proceedings in foreign jurisdictions.
- **Insurance**: Consider obtaining insurance in case of non-enforcement (or delay in enforcing) of a potential award. You should seriously consider non-enforcement insurance.

### 4. Conclusion

To ensure the successful and timely enforcement of an award, you should carefully evaluate and choose an appropriate dispute resolution mechanism for your commercial relationships. Our team at Asiallians and Altenburger can provide you with comprehensive legal and tax advice to support your enforcement case, from the cumbersome translation and legalization process to PRC legal procedures, including in China.

At Asiallians and Altenburger, we have over 20 years of experience in the Greater China area, and we are well-equipped to advise you on this matter. Please contact Beijing@asiallians.com for more information.