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Athena Jiangxiao Hou

Michael Dewey

Qing Lyu

Steven Shengxing Yu

Jingbing Li

See next page for additional authors

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Central/East Asia & China

Authors

Athena Jiangxiao Hou, Michael Dewey, Qing Lyu, Steven Shengxing Yu, Jingbing Li, Yanling Zheng, Ray Cheng Xu, Ying (Jenny) Lu, and Asen Velinov

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ATHENA JIANGXIAO HOU, MICHAEL DEWEY, QING LYU,
STEVEN SHENGXING YU, JINGBING LI, YANLING ZHENG,
RAY CHENG XU, YING (JENNY) LU AND ASEN VELINOV*

I. Overview of China's First Financial Court

In light of rapid economic growth and increased financial disputes, China established the Shanghai Financial Court (“SFC”) in 2018. The SFC was formally inaugurated on August 20, 2018, and is an intermediate court focused on complicated, finance-related cases in the city.¹ It hears financial and administrative cases under the jurisdiction of the Shanghai Intermediate People’s Court.² The Supreme People’s Court (“SPC”) has clarified the jurisdiction of the SFC to cover commercial cases, including disputes involving securities, futures, trusts, insurance, and bills and financial lending, among others.³ The SFC also handles certain bankruptcy cases involving financial institution debtors and administrative cases involving financial regulators as defendants.

Shanghai is the financial hub of China. The city is home to a large number of banks, insurance companies, securities companies, and a variety of companies engaged in emerging financial derivatives services. The

* Athena Jiangxiao Hou, Michael Dewey and Qing Lyu, Chief Legal Officer and Corporate Counsels of Fuyao Glass America Inc., edited this article. Qing Lyu, corporate counsel of Fuyao Glass America Inc., authored Section I. Steven Shengxing Yu, partner of Hiways Law Firm (Shanghai), authored Section II. Jingbing Li and Yanling Zheng, senior partner and partner of ZY Partners in Beijing, China, respectively, authored Section III. Ying (Jenny) Lu, Legal Consultant of Perkins Coie LLP in Beijing, China authored Section IV. Michael Dewey, corporate counsel of Fuyao Glass America Inc., authored Section V. Ray Cheng Xu, LLM candidate at New York University and a Chinese Licensed Lawyer and Jiangxiao Athena Hou, Chief Legal officer of Fuyao Glass America Inc. authored Section VI. Asen Velinov, Foreign Counsel with Co-Effort Law Firm in Shanghai and Consultant with Shanghai Media Group, authored Section VII.

1. See generally Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Sheli Shanghai Jinrong Fayuan de Jueding (全国人民代表大会常务委员会关于设立上海金融法院的决定) [Decision of the Standing Comm. Nat’l People’s Cong. on the Establishment of Shanghai Financial Court] (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 27, 2018, effective Apr. 28, 2018) (China), available at http://www.npc.gov.cn/npc/xinwen/2018-04/27/content_2053982.htm.

2. *Id.* ¶ 2.

3. Zuigao Renmin Fayuan Guanyu Shanghai Jinrong Fayuan Anjian Guanxia de Guiding (最高人民法院关于上海金融法院案件管辖的规定) [Provisions of the Sup. People’s Ct. on the Jurisdiction of Shanghai Financial Court Cases] (promulgated by Sup. People’s Ct., Aug. 7, 2018, effective Aug. 10, 2018) (China), available at <http://www.court.gov.cn/zixun-xiangqing-111351.html> [hereinafter *Regulation*].

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Shanghai Stock Exchange is also located there. It comes as no surprise that Shanghai, which is also home to major arbitration institutions, was selected as the location for China's first financial court. In 2017 alone, "courts in Shanghai heard more than 179,000 finance-related cases."⁴ The number of such lawsuits in Shanghai grew on average 51 percent annually from 2013 to 2017.⁵

The SPC's seven-article Regulation details the jurisdiction of the SFC. Under Article 1 Provision 1, the SFC has jurisdiction over disputes involving securities, futures, trusts, insurance, negotiable instruments, letters of credit, financial lending contracts, bankcards, financial lease contracts, entrusting financial contracts, and pawns, among other issues.⁶ These financial cases are governed under Regulations of the Causes of Civil Cases ("RCCC").⁷ The SPC has clarified in the Regulations that the SFC also has jurisdiction over new types of civil and commercial disputes involving online payment of non-bank payment agencies, online lending, and internet-based equity crowdfunding that are not addressed by the RCCC or other judicial interpretations.⁸ The SFC only adjudicates certain types of bankruptcy cases involving financial institutions, not ordinary commercial entities. In addition, such bankruptcy cases usually involve substantial stakes and demand certain experience and understanding of financial matters. Having the SFC hear these financial cases helps set consistent judicial standards and promotes judicial efficiency.

Two major arbitration institutions, the Shanghai Arbitration Commission ("SAC" established in 1995) and the Shanghai International Arbitration Center ("SIAC" established in 1988), handle a number of financial disputes. Arbitration is a common resolution venue for financial disputes, including, in particular, international disputes. Arbitration has led to an increased number of court appeals of arbitral results. Before the establishment of the SFC, judicial review of arbitration awards was mainly accepted by the Shanghai No. 1 and No. 2 Intermediate People's Courts ("IPCs"). Article 1 Provision 5 provides more guidance on recognition and enforcement of foreign judgments or rulings involving international financial disputes.⁹ The Regulation also provides guidance on the recognition and enforcement of judgments of financial and commercial disputes by Hong Kong, Macao, and Taiwan courts.¹⁰

4. *China Launches First Financial Court in Shanghai*, XINHUA NET (Aug. 21, 2018, 2:49 PM), http://www.xinhuanet.com/english/2018-08/21/c_137407119.htm.

5. *Id.*

6. *Regulation*, *supra* note 3, art. 1.

7. *See generally* Minshi Anjian Anyou Guiding (民事案件案由规定) [Regulations of the Causes of Civil Cases] (promulgated by Nat'l People's Cong., effective Mar. 03, 2008) (China), available at http://www.npc.gov.cn/npc/xinwen/fztd/sfjs/2008-03/03/content_1425565.htm.

8. *Regulation*, *supra* note 3, art. 1.

9. *Id.* art. 1.

10. *See id.*

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In China, where there are no jury trials, judges play an important role in adjudicating disputes. This is particularly true in complex financial disputes involving massive financial companies where the substance of disputes is varied and complicated. Emerging financial innovations and regulatory concepts are changing rapidly. Therefore, the SFC selects judges with rich experience in trials of financial cases through a public selection and then transfers those judges from the Financial Trial Chamber of IPCs. The SFC Vice President, Kai Xiao, was previously the director of financial prosecutions of the Shanghai People's Procuratorate. Many adjudication division judges of the SFC are former judges of the Financial Division of IPCs. These judges bring a wealth of trial experience with financial disputes and also help establish practices to follow.

The establishment of the SFC is another achievement of judicial reform following the establishment of Internet Courts¹¹ and Intellectual Property Courts.¹² The first case accepted and heard since the SFC's establishment was the October 18, 2018, trial of *Orient Securities Co. Ltd. v. Beijing Honggaozhongtai Investment Co., Ltd.*, a securities pledge and repurchase contract dispute.¹³ In the two months following the establishment of the SFC, 1,100 cases were filed with a value of 14.8 billion yuan.¹⁴

As the first specialized financial court in China, the SFC is expected to handle more and more financial cases. The establishment of a unified financial court, centralized jurisdiction over financial cases, and reform of the financial trial system and mechanism will help to establish a mature rule of law environment and provide specialized judicial efficiency to pave the way for this judicial system to follow.

11. The first Internet Court was formally established on August 18, 2017 in Hangzhou, Zhejiang. See Sara Xia, *China Establishes Its First Cyber-Court in Hangzhou: Thank You Alibaba*, CHINA L. BLOG (Aug. 16, 2017), <https://www.chinalawblog.com/2017/08/china-establishes-its-first-cyber-court-in-hangzhou-thank-you-alibaba.html>. Later Internet Courts were established in Beijing on September 9, 2018, and in Guangzhou, Guangdong on September 28, 2018. See Nick Beckett et al., *China Establishes Two New Internet Courts in Beijing and Guangzhou*, LEXOLOGY (Sept. 13, 2018), <https://www.lexology.com/library/detail.aspx?g=fF00aa01b-7810-4b68-a4ae-544518a843fa>; *China's Third Internet Court Opens in Guangzhou*, CHINA INTELL. PROP. (Oct. 11, 2018), <http://www.chinaipmagazine.com/en/news-show.asp?id=10144>.

12. The first Intellectual Property Court was formally established on November 6, 2014 in Beijing. Later Intellectual Property Courts were established in Guangzhou, Guangdong on December 16, 2014, and in Shanghai on December 28, 2014. See *Updates on China's Specialized IP Courts and Tribunals*, LEXOLOGY (Jan. 27, 2019), <https://www.lexology.com/library/detail.aspx?g=365fea3e-d682-4b63-822d-d7c9f0959b5d>.

13. See *Shanghai Financial Court Held The First Court Hearing*, SHANGHAI FIN. CT., http://shjrfy.hshfy.sh.cn/jrfy/English/news_view.jsp?pa=aaWQ9MzAyz (last visited Mar. 30, 2019).

14. *Id.*

II. China's Anti-Unfair Competition Law

The Anti-Unfair Competition Law (“ACL”),¹⁵ which was first introduced in 1993, served as a primary economic law until China’s first Antitrust Law became effective in 2008.¹⁶ While the Antitrust Law now holds the so-called status of “China’s economic constitution,” the ACL continues to provide an important guide for Chinese market supervision agencies and courts to correct market misconduct.¹⁷ Based on rich experience gained from decades in a dynamic and complicated market environment, China amended the ACL and made the new version effective from January 2018, aiming at expanding its jurisdiction and strengthening enforcement to meet the public expectation for market discipline.

A. ANTI-BRIBERY CAMPAIGN

Among its highlights, the newly amended ACL provides a strong hammer against commercial bribery that results in unfair competition. First, it includes new norms such as seeking “trading opportunities” and gaining “competitive advantage” in the categories of illegal benefits of bribery under the ACL, and it expands the narrow definition of “purchase and sales of commodity.”¹⁸ This legislative step endorsed the standard set by the Central Anti-Commercial-Bribery Regulatory Leading Group—an enforcement agency under the guidance of SPC and Supreme People’s Procuratorate (“SPP”)—back in 2007 and 2008.

Second, the amended ACL grants greater power to enforcement agencies, allowing them to seize and detain property gained from unfair competition. Further, enforcement officers can inquire into bank account information of an investigated business in an unfair competition investigation and can sanction a party who fails to cooperate.¹⁹

The amended ACL imposes enhanced enforcement measures against non-compliance with fair competition. A commercial bribery can be fined between RMB 100,000 to RMB 3 million (more than ten times higher than the previous range of RMB 10,000 to RMB 200,000).²⁰ In matters involving

15. See generally Zhonghua Renmin Gongheguo Fanbuzhengdang Jingzheng Fa (中华人民共和国反不正当竞争法) [Anti-Unfair Competition Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Nov. 4, 2017, effective Jan. 1, 2018) (China), available at http://www.npc.gov.cn/npc/xinwen/2017-11/04/content_2031432.htm [hereinafter *ACL*].

16. See Zhengquan Gu & Elliot Papageorgiou, *China’s new Anti-unfair Competition Law- More extensive and detailed protection*, LEXOLOGY (Jan. 12, 2018), <https://www.lexology.com/library/detail.aspx?g=9a5bafd2-45ec-4f2c-bece-895eb915a109>.

17. See Youngjin Jung & Qjan Hao, *The New Economic Constitution in China: A Third Way for Competition Regime?*, 24 Nw. J. INT. L. & BUS. 107, 107–108 (2003).

18. *ACL*, *supra* note 15, art. 7.

19. *Id.* art. 7, 13, 31.

20. Hui Xu et al., *China’s Newly Amended Anti-Unfair Competition Law Changes the Rules of the Game*, ASIAN-MENA COUNSEL Vol. 15, Issue 6, at 22 (2018), available at <https://www.lw.com/thoughtLeadership/china-newly-amended-anti-unfair-competition-law-latham>.

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serious violations, the enforcement authority may revoke a violator's business license.²¹ This enforcement power was not in the 1993 version of the ACL.

B. ONLINE COMPETITION

China is the second largest economy globally, having a substantial online component. In response to calls for regulation of e-commerce, the amendment adds a new article to address online business activities, which are complex and increasingly intensified. Article 12 of the amended ACL prohibits a business operator from hindering or undermining the operation of network products or services legally provided by other business operators.²² The amended ACL leaves some discretion to the enforcement agencies for further interpretation and case-by-case determination.

The amended ACL expressly prohibits inserting a link or forcing a URL redirection in an online product or service legally provided by another operator to compel a destination diversion without the approval of such operator.²³ This new provision is consistent with the judgment in *Baidu v. Qingdao Aoshang*, where the court ruled against the "bad" behavior, blaming a breach of good faith and business ethics that hinders the normal operation of other operators and jeopardizes their legitimate interests.²⁴ With the new law, a government agency or court will directly apply such provision to address the misconduct.

Indeed, some big platform companies with dominant positions seek to build walls that unfairly discriminate against competitors. In *Tencent v. Sogou*, defendant Sogou, a power search engine associated with Sohu.com, used its technical tools to direct Sogou users to delete Tencent products.²⁵ The case clearly demonstrated online unfair competition. The amended ACL now provides that any action "misleading, deceiving, [or] forcing users to modify, close, or uninstall network products or services legally provided

21. *ACL*, *supra* note 15, art. 18.

22. *Id.* art. 12.

23. *Id.*

24. Zhongguo Lianhe Wangluo Tongxin Youxiang Qingdaoshi Feng Qingdao Ao Shang Wangluo Jishu Beijing Baidu Wang Xun Keji Zhongguo Lianhe Wangluo Tongxin Youxiang Shandong Sheng Feng Buzheng Dangjing Zheng (中国联合网络通信有限公司青岛市分公司、青岛奥商网络技术有限公司、北京百度网讯科技有限公司、中国联合网络通信有限公司山东省分公司不正当竞争 [Beijing Baidu Netcom Science and Technology Co. v. Qingdao Aoshang Network Technology Co., Higher People's Court of Shandong], Lu Min San Zhong Zi No. 5-2 (Mar. 20, 2010) (China), *available at* <https://cgc.law.stanford.edu/judgments/shandong-2010-lu-min-san-zhong-zi-5-2-civil-judgment/>.

25. Tengxun Keji Shenzhen Youxian Gongsu Su Beijing Sougou Keji Fazhan Youxian Gongsu Deng Buzheng Dangjingzheng Jiufenan (腾讯科技(深圳)有限公司诉北京搜狗科技发展有限公司等不正当竞争纠纷案 [Tencent Technology (Shenzhen) Co., Ltd. v. Beijing Sogou Technology Development Co., Ltd.], Yi Zhong Min Chu Zi No. 16849, June 17, 2010 (Beijing No.1 Intermediate People's Court), *available at* http://www.pkulaw.cn/case/pfnl_117816331.html?match=Exact&_sm_au_=_iVV7JJjWj7GRQGTH.

by other business operators” is illegal and shall be subject to punishment, or else the operator must compensate its unfairly damaged competitor.²⁶

The third type of misconduct the amended ACL cracks down on is causing, maliciously or in bad faith, incompatibility with an online product or service legally provided by another operator.²⁷ But it is unclear how government enforcement will evaluate and determine what conduct is malicious. Reading the plain statutory language, actions in bad faith that are deliberately implemented or specifically targeted, or that impair the trading opportunities of other operators, may be considered unfair competition.²⁸

With the new and fast changing ecosystem, legislators are aware it is impossible to list all circumstances in which a business operator could take advantage of technology to change users’ choices or otherwise impede or disrupt the normal operation of network products or services duly provided by another. Thus, the amendment includes a catch-all clause, leaving room for judicial interpretation and administrative enforcement discretion.

An example of how China has reacted to legislation and enforcement on e-commerce is the establishment of three Internet Courts nationally, in Hangzhou, Beijing, and Guangzhou.²⁹ These courts are equipped to hear disputes arising from online activities, mostly from the signing or performance of online shopping contracts through e-commerce platforms. Looking forward, there is good reason to believe cases arising from online unfair competition will keep the courts busy.

Beyond its anti-bribery and online wrongdoing prohibitions, the amended ACL has other notable components. For example, it extends protection from business operators and market competition to include consumers, which is a big step forward. Furthermore, the amendment has borrowed from international experience and followed the mainstream by adopting a broadened definition of trade secret.

III. Trademark Law Development in China

Trademark law in China has developed in relation to the following three issues concerning the security of US companies sourcing goods from China and the defense against bad faith infringement allegation: (1) whether the use of a Chinese registered trademark merely for manufacturing and exporting from China but not for sale (the “OEM use of a trademark”) is sufficient to defend a non-use cancellation action; (2) whether the OEM use of a trademark constitutes trademark infringement if the trademark used for sourcing is not registered in China but is similar to a trademark registration owned by a third party; and (3) whether the legitimate right owner can be

26. *ACL*, *supra* note 15, art. 12.

27. *Id.*

28. *See id.* art. 2.

29. Meng Yu & Guodong Du, *China Establishes Three Internet Courts to Try Internet-Related Cases Online*, CHINA JUST. OBSERVER (Dec. 16, 2018), <https://www.chinajusticeobserver.com/insights/china-establishes-three-internet-courts-to-try-internet-related-cases-online.html>.

insulated from trademark infringement lodged by a subsequent bad faith registrant.

A. OEM USE OF A TRADEMARK

1. *Non-use Cancellation Action*

Numerous foreign companies have registered trademarks in China, but they primarily use such trademarks for sourcing activities rather than for sale in China. In practice, the China Trademark Office (“TMO”), the Trademark Review and Adjudication Board (“TRAB”), and the courts generally will accept OEM use evidence to sustain the registrations of such trademarks in non-use cancellations. For example, in the non-use cancellation action against the trademark VAN registered by a Japanese company, the Higher People’s Court of Beijing affirmed the TRAB decision and the trial judgment and illustrated the relevant policy considerations. First, the legislative intent of a non-use cancellation mechanism is to encourage active trademark use and to clear those idle trademarks. Using a trademark for OEM is sufficient to show the active use state of such a mark. Second, denying the OEM use of a trademark as a valid trademark use would go against China’s national policy to encourage the development of foreign trade.³⁰

2. *Trademark Infringement Litigation*

In a trademark infringement case where the defendant (the Chinese manufacturer) used the trademark 东风 (Dong Feng in Chinese characters) for manufacturing diesel engines according to the authorization from the Indonesian trademark owner and then exported such products to Indonesia, the SPC dismissed the infringement claims by Shanghai Diesel Engine Co., Ltd. (“SDEC”), who owned a Chinese trademark registration for the same Dong Feng mark.³¹ In this widely-cited case, the SPC provided the following guidance: first, the use of a mark by the Chinese manufacturer during the manufacturing and exportation of products will not cause a likelihood of confusion among Chinese consumers because those goods would not enter Chinese markets. Accordingly, the OEM use of a trademark by the manufacturer does not constitute trademark use. Second, if the Chinese manufacturer has duly examined the valid status of the authorized trademark in the destination country when it accepts the commission from a foreign company, the court determined that the manufacturer has fulfilled the duty of care unless there is evidence to the contrary. Third, when the courts try trademark infringement cases, on the

30. [Fortune Trade Consultants Co., Limited v. TRAB & Kent Japan Kabushiki Kaisha], Gao Xing Zhong No. 5390, Dec. 11, 2017 (Higher People’s Court of Beijing).

31. *SPC Overturns the “Dong Feng” Case and Revisits the Factors Which Constitute Infringement in OEM Arrangement*, DEACONS (BEIJING) INTELL. PROP. AGENCY CO. LTD. (June 05, 2018), <https://www.deaconschinaip.com/en/news/spc-overturns-the-dong-feng-case-and-revisits-the-factors-which-constitute-infringement-in-oem-arrangement>.

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one hand, they shall strictly follow the law and protect the lawful rights and interests of the trademark registrants, and on the other hand, they shall be careful about the potential over-protection for trademark registrants because otherwise, the normal trade and fair competition order would be disrupted.³²

B. SQUATTER'S DEFENSE AGAINST INFRINGEMENT ALLEGATIONS

The notorious New Balance case caused grave concern among foreign companies two years ago when the trial court ordered New Balance to pay the trademark squatter damages of RMB 98,000,000 (around USD 14,107,600) although the appellate court finally lowered the damage to RMB 5,000,000 (around USD 720,000).³³ In 2017, the SPC published its official Guiding Case No. 82.³⁴ The SPC held if concerned parties obtained a trademark registration via improper means and then enforced their trademark rights in bad faith, courts should dismiss their claims on the ground of abuse of civil rights.³⁵ 2018 has witnessed encouraging developments where Chinese courts took measures to discourage bad faith complaints and lawsuits lodged by the trademark squatters.

For example, in the Coppertone case, Yuhang District Court supported Bayer's claims and found the defendant's bad faith complaints with Taobao based on their bad faith trademark registrations had interfered with the normal business of the legitimate right owner, Bayer, and thus constituted unfair competition against Bayer.³⁶

In another case, where the defendant preemptively registered the generic name CPU (abbreviation of casting polyurethane elastomers) for various kinds of road materials and building materials and then filed a lawsuit and administrative raid actions against its competitor (the plaintiff), the Zhejiang Higher Court affirmed the trial judgment.³⁷ The court determined that the defendant's bad faith enforcement actions based on its bad faith registration had damaged the plaintiff's legitimate rights and interests and the defendant should pay the plaintiff for the economic losses caused by the bad faith

32. *Id.*

33. *China's Top 25 Typical Trademark Cases in 2016*, CHINA INTELL. PROP. MAG., <http://www.chinaipmagazine.com/en/journal-show.asp?id=1386> (last visited Apr. 01, 2019).

34. See Wang Sui Yong Su Shenzhen Ge Li Si Fushi Gufenyouxiang Hangzhou Yin Tai Shiji Baihuo Youxiang Qin Hai Shangbiao Quan Jiufen An (王碎永诉深圳歌力思服饰股份有限公司、杭州银泰世纪百货有限公司侵害商标权纠纷案 [Wang Suiyong v. Shenzhen Ellassay Fashion Co., Ltd. and Hangzhou Intime Century Department Store Co., Ltd., A Trademark Infringement Dispute], Sup. People's Ct. Judgment Comm., Guiding Case No. 82 (Mar. 6, 2017) (China), available at <https://www.chinacourt.org/article/detail/2017/03/id/2574902.shtml>.

35. *Id.*

36. Maritza Schaeffer, *China: Brand Owner Prevails in Unfair Competition Action Against Bad Faith Squatter*, LEXOLOGY (Dec. 31, 2018), <https://www.lexology.com/library/detail.aspx?g=bd59e2a6-3a44-4449-8948-4f4ed0a292b7>.

37. [Shaoxing City Keshun Building Materials Co., Ltd. v. Xinchang County Gongli Innovative Building Materials Co., Ltd.], Zhe Min Zhong No. 37 Civil Judgment, April 12, 2018 (Higher People's Court of Zhejiang).

enforcement (including the reasonable expenses incurred for defending the infringement allegation).³⁸

IV. Chinese Court Recognizes Blockchain-Verified Evidence

On June 27, 2018, the Chinese Hangzhou Internet Court announced its decision on a case regarding the infringement of the right to disseminate work over the internet.³⁹ This is the first time for a Chinese court to accept electronic data that was stored using blockchain technology as legal evidence. The court also clarified the examination standards for such electronic data.

A. FACTUAL BACKGROUND

This case was filed by Hangzhou Huatai Yimei Culture Media Co., Ltd. (“Huatai”) against Shenzhen Daotong Technology Development Co., Ltd. (“Daotong”). On July 24, 2017, a newspaper published an article discussing an incident and granted Huatai an exclusive right of communication through information networks to the article. But the same article was then published on a website owned by Daotong without permission.

Although Huatai subsequently requested Daotong to stop the infringement, Daotong ignored the request. As a result, Huatai filed a lawsuit against Daotong in the Hangzhou Internet Court. Huatai submitted evidence of the alleged infringement, including webpage screenshots and website source code, which were all uploaded to Factom and Bitcoin blockchains through Baoquan.com, a third-party evidence preservation platform based on the blockchain technology.

B. COURT EXAMINATION

At the outset, the court held that “for electronic data that is perpetuated and preserved by blockchain or similar technical means, an open and neutral attitude should be taken by the court, and the analysis and determination should be conducted on a case-by-case basis.”⁴⁰

To determine whether Huatai’s approaches to storing evidence complied with Chinese laws and regulations regarding electronic data and to determine the validity of the evidence, the court considered the following

38. *Id.*

39. Hangzhou Huatai Yimei Wenhua Chuanmei Youxian Gongsi Su Shenzhenshi Daotong Keji Fazhan Youxian Gongsi (杭州华泰一媒文化传媒有限公司诉深圳市道同科技发展有限公司) [Hangzhou Huatai Yimei Culture Media Co., Ltd. v. Shenzhen Daotong Technology Development Co., Ltd.], Zhe 0192 No. 81 (Hangzhou Int. People’s Ct., June 28, 2018) (China), translated in *In the matter: Plaintiff 1: Hangzhou Huatai Yimei Culture Media Co., Ltd. / Defendant 1: Shenzhen Daotong Technology Development Co., Ltd.*, DENNEMEYER, https://go.dennemeyer.com/hubfs/blog/pdf/Blockchain%2020180726/20180726_BlogPost_Chinese%20Court%20is%20first%20to%20accept%20Blockchain_Judgment_EN_Translation.pdf?t=1533233132812 (last visited Apr. 01, 2019).

40. *Id.*

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aspects: (1) the qualification of the evidence preservation platform, (2) the credibility of the technical method to obtain the evidence on the infringing website, and (3) the integrity of blockchain electronic evidence preservation.⁴¹

Regarding the qualification of the evidence preservation platform, the court recognized that Baoquan.com is neutral with regard to Huatai and is qualified as a third-party electronic evidence preservation platform.⁴²

Regarding the credibility of the data capturing method, the court noted that Baoquan.com captures images from target webpages by automatically invoking Puppeteer (a Google open source program). Baoquan.com also obtains the source code of the target webpages by invoking the curl command. The whole system is open to the public equally, and the operational process is automatically completed. Therefore, the court concluded the source of the electronic data obtained via this system was highly reliable. In this case, the screenshots captured through Puppeteer indicated the above-mentioned article published on the website of Daotong in 2017 was exactly the same as the article at issue.

Finally, with regard to the integrity of the blockchain electronic evidence preservation, the court analyzed the theory of the blockchain technology and confirmed the distributed database of blockchain makes it difficult to tamper with or delete the data stored on the blockchain. Accordingly, if the electronic data at issue can be proven to have been saved to a blockchain, this method of maintaining the integrity of contents should be reliable.⁴³

The court further examined the two following aspects to determine that the electronic data had been uploaded to the blockchain: (i) whether the electronic data had truly been uploaded; and (ii) whether the uploaded electronic data is the electronic data at issue. The court calculated and compared the hash value of the contents contained in the block node in the Bitcoin blockchain, the contents stored in the Factom blockchain, and the file that packaged and compressed the webpage screenshots, source code, and invocation information downloaded from Baoquan.com. Because all the values were confirmed to be consistent, the court found the electronic data had been actually uploaded into the Factom and Bitcoin blockchains, and such electronic data had been preserved completely without any change since being uploaded.⁴⁴

The court concluded the standard for determining the validity of electronic evidence should not be raised because the relevant technologies are novel, nor should it be lowered because of the difficulty to tamper with or delete the electronic data. The effectiveness of evidence should be determined in a comprehensive manner according to relevant laws and

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

regulations, where the emphasis should be on the examination of the data source and content integrity, and security of the technical method.⁴⁵

In this case, the court recognized the reliability and integrity of the blockchain-based electronic data at issue and held that the actions of Daotong infringed Huatai's right of communication through the internet.⁴⁶

This is the first case in China where a court allowed evidence obtained from blockchain technology to be used in litigation. It shows China is attaching more and more importance to and anticipates the development of blockchain technology.

V. Most Recent SPC Guiding Case Focuses on Justifiable Defense

The Supreme People's Court of China has continued its work to build a more robust system of case law to guide Chinese courts. On June 20, 2018, the SPC released its eighteenth batch of Guiding Cases, containing one employment case, two civil commercial cases, and one criminal case.⁴⁷

A. GUIDING CASES AND STANFORD LAW'S DATABASE

Chinese Guiding Cases draw their origin from November 2010, when the SPC issued the Provisions of the Supreme People's Court Concerning Work on Case Guidance.⁴⁸ These provisions are aimed at establishing a new system for summarizing adjudication experiences, unifying the application of law, enhancing adjudication quality, and safeguarding judicial impartiality. To achieve the goals of this new system, the SPC uniformly releases Guiding Cases, which have guiding effect on adjudication and enforcement work in courts throughout the country. Each Guiding Case contains a summary of the original ruling or judgment and is supplemented with a section titled "Main Points of the Adjudication." The Guiding Cases also summarize the legal rules considered in the case, the facts, the outcomes of legal proceedings, and the reasons for the final ruling. With the four cases on June 20, 2018, the SPC has now released ninety-six Guiding Cases.

Just months after the SPC issued its November 2010 provisions, Dr. Mei Gechlik of Stanford Law School founded the China Guiding Cases Project (the "CGCP"). The mission of the CGCP is "to advance the understanding of Chinese law and help to develop a more transparent and accountable

45. *Id.*

46. *Id.*

47. See *Zuigao Renmin Fayuan Guanyu Fabu Di 18 Pi Zhidao Xing Anli de Tongzhi* (最高人民法院关于发布第18批指导性案例的通知) [*Notice of the Supreme People's Court on Issuing the Eighteenth Group of Guiding Cases*] (promulgated by Sup. People's Ct., June 20, 2018) (China), available at http://www.lawinfochina.com/display.aspx?id=28473&lib=law.http://rmfyb.chinacourt.org/paper/html/2018-06/28/content_140564.htm?div=-1 [hereinafter Notice].

48. Mei Gechlik & Jennifer Ingram, *China's Fifty-Seven Civil Guiding Cases*, STAN. L. SCH. CHINA GUIDING CASES PROJECT, GUIDING CASES ANALYTICS, ISSUE NO. 7, at 2 (Sept. 2018), available at <https://cgc.law.stanford.edu/guiding-cases-analytics/issue-7/>.

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judiciary in China by engaging experts and other stakeholders around the world to contribute to a unique knowledge-base, undertaking capacity-building activities for legal actors, and promoting public education and participation.”⁴⁹ Since its beginning as a project supported by a few law students, the CGCP has grown to a current team of nearly 200 members and more than fifty advisers. The activities of the CGCP have likewise multiplied, ranging from the translation and analysis of Guiding Cases to the implementation of new initiatives such as the Belt and Road Series.

While translations of the first ninety-two Guiding Cases can be found online at the CGCP website, the four most recent cases are not yet available. This section provides an overview of Guiding Case No. 93, the criminal case in batch eighteen, known as “Intentional Injury by Yu Huan.” The case arises from a loan sharking arrangement gone awry, resulting in the death of the loan shark’s henchman.

B. GUIDING CASE NO. 93: INTENTIONAL INJURY BY YU HUAN

The background of this case begins in the summer of 2014, when Su Yinxia and her husband borrowed the equivalent of about \$145,000 from Wu Xuezhao at a monthly interest rate of 10%.⁵⁰ When, on April 14, 2016, Wu determined Su had defaulted on the loan, Wu sent a group of individuals, including Du Zhihao, to Su’s workplace to demand repayment. Prior to the incident, the loan shark’s henchmen had conflicts with Su Yinxia and her family on several occasions to pressure them to pay the loan. The henchmen did not bring any weapons or use physical violence against Su or her family.

Upon finding Su and Yu Huan, who is Su’s son, employee, and defendant in the subsequent court case, at their corporate office, Du verbally abused them and exposed his genitalia to Su while in her son’s presence. Du also slapped Yu Huan across his face and pressed him forcefully by the shoulders to prevent him from standing.

Du had been at the workplace for more than an hour when another employee called the police, who, upon arrival, advised the parties against fighting and left to speak with the employee who phoned in the complaint. Before the police had left the premises, Yu Huan attempted to leave but was prevented by Du. Du and other debt collectors then surrounded Yu Huan in a corner of the room and Yu Huan brandished a knife to warn them against approaching further. They persisted, however, and Yu Huan stabbed them. Du died from his injuries the following day.

On February 17, 2017, Yu Huan was convicted of intentional injury and sentenced to life in prison by the Intermediate People’s Court of Liaocheng City, Shandong Province.⁵¹ On appeal, the Higher People’s Court of Shandong Province reduced his sentence to a fixed-term imprisonment of

49. *Mission and Major Achievements*, STAN. L. SCH. CHINA GUIDING CASES PROJECT, <https://cgc.law.stanford.edu/mission/> (last visited Mar. 31, 2019).

50. *Notice*, *supra* note 47.

51. *Id.*

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five years for intentional injury. The SPC stated in the Guiding Case that the original judgment was correct in finding Yu Huan guilty of intentional injury. It affirmed that the trial court applied appropriate trial procedure but held that the trial court failed to consider facts comprehensively. The SPC concluded: the court was erroneous in determining the self-defense principal under criminal law, and the sentence was too heavy. The SPC endorsed the Higher People's Court's ruling that reduced Yu Huan's sentence to five years.

In the Guiding Case, the SPC set forth four primary takeaways. First, an ongoing act of illegally restricting the personal freedom of a person is unlawful infringement under paragraph 1, Article 20 of the Criminal Law, and justifiable defense may be exercised against such infringement.⁵² Next, illegally restricting one's personal freedom while insulting him and giving him minor beatings is not a violent crime that seriously endangers his personal safety for the purposes of paragraph 3, Article 20 of the Criminal Law. Third, the court must consider such factors as the nature, means, intensity, and harm of the unlawful infringement, as well as the nature, timing, means, intensity, environment, harmful consequence, and other circumstances of the defense against it in judging whether defense is justifiable.⁵³ If death or serious injury results from a defense against illegal restriction coupled with insults and minor beatings, then paragraph 2, Article 20 of the Criminal Law dictates the defense obviously exceeds the necessary limit and causes material damage.

Finally and significantly, when an unjustifiable defense results from the victim's unlawful infringement that "seriously degrades another person or desecrates human relations," the victim's contemptible conduct must be considered in sentencing in order to ensure the judicial adjudication withstands the legal test and aligns with the public concept of equity and justice.⁵⁴ The SPC noted that Du's genitalia exposure to Su in the presence of Yu Huan and the insulting conduct toward Yu Huan were key factors provoking Yu Huan's aggressive response. But Yu Huan's conduct was excessive because the police officer was still waiting in the courtyard of Su's office building at the time when Yu Huan stabbed the henchmen in Su's reception room, and Yu Huan caused one death, two serious injuries (including stabs to the back), and one other injury.

This case has received much media attention and public outcry in China over what many viewed was, in light of the circumstances, a harsh original prison sentence for Yu Huan. It is a challenging determination of whether Yu Huan used excessive force in self-defense. The SPC directed courts to consider the totality of circumstances, including not only the threat of imminent serious bodily harm but also provocation by the victim, the latter of which is similar to the US concept of "heat of the moment" defense.

⁵². *Id.*

⁵³. *Id.*

⁵⁴. *Id.*

VI. China's New Regulations and Policy on Internet Medical Services

On July 17, 2018, the National Health Commission of China (“MOH”) issued a set of new regulations to set forth the entrance and operation standards for businesses seeking to provide medical services over the internet.⁵⁵ These regulations are: (1) the Administrative Measures of Internet Diagnostic and Treatment (Trial) (“AMIDT”),⁵⁶ (2) the Administrative Measures of The Internet Hospitals (Trial) (“AMIH”),⁵⁷ and (3) the Administrative Measures of Tele-Medicine Services (Trial) (“AMTMS”).⁵⁸

A. ENTRANCE REQUIREMENTS FOR INTERNET MEDICAL SERVICE PROVIDERS

The new regulations permit a limited scope of “internet diagnostic and treatment activities,” which include only (1) follow-up medical examinations for certain common diseases and chronic diseases provided by licensed medical institutions, and (2) chronic disease services provided by licensed family doctors who have existing contracts with patients.⁵⁹ In addition, the regulations prohibit MOH’s counterparts from approving any internet medical services before the local governments’ establishment of corresponding on-line inspection platforms.⁶⁰

Apart from internet medical services directly provided by licensed medical institutions, the new regulations permit third-party entities without a medical institution license to jointly establish “internet hospitals” with licensed medical institutions.⁶¹ Third-party entities may provide qualified

55. Guan Yu Yin Fa Hu Lian Wang Zhen Liao Guan Li Ban Fa (Shi Xing) Deng San Ge Wen Jian de Tong Zhi (关于印发互联网诊疗管理办法(试行)等三个文件的通知) [Notice on Releasing the Administrative Measures of Internet Diagnostic and Treatment (Trial) and Other Documents] (jointly promulgated by National Health Commission and State Administration of Traditional Chinese Medicine, July 17, 2018, effective July 17, 2018) (China), *available at* http://www.cbdi.com/BigData/2018-09/18/content_5839161.htm [hereinafter *Circular 25*].

56. *See generally* Hu Lian Wang Zhen Liao Guan Li Ban Fa (Shi Xing) (互联网诊疗管理办法(试行)) [Administrative Measures of Internet Diagnostic and Treatment (Trial)] (jointly promulgated by National Health Commission and State Administration of Traditional Chinese Medicine, July 17, 2018) (China), *available at* <http://www.dffyw.com/faguixiazai/xzf/201809/44783.html> [hereinafter *AMIDT*].

57. *See generally* Hu Lian Wang Yi Yuan Guan Li Ban Fa (Shi Xing) (互联网医院管理办法(试行)) [Administrative Measures of Internet Hospitals (Trial)] (jointly promulgated by National Health Commission and State Administration of Traditional Chinese Medicine, July 17, 2018) (China), *available at* <http://www.dffyw.com/faguixiazai/xzf/201809/44782.html>.

58. *See generally* Yuan Cheng Yi Liao Fu Wu Guan Li Gui Fan (Shi Xing) (远程医疗服务管理规范(试行)) [Administrative Measures of Tele-Medicine Services (Trial)] (jointly promulgated by National Health Commission and State Administration of Traditional Chinese Medicine, July 17, 2018), *available at* <http://www.dffyw.com/faguixiazai/xzf/201809/44781.html>.

59. *AMIDT*, *supra* note 56, art 2.

60. *See id.* art. 6.

61. *See id.* art. 5.

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medical professionals and information platform services to the internet hospitals.⁶²

On the other hand, medical institutions that provide medical services should submit an application to the governing authority and, upon approval of the filing, add internet diagnostic and treatment services into the business scope on their medical institution license.⁶³ The service scope of these medical institutions should be compliant with their medical institution license.⁶⁴

B. RULES OF INTERNET DIAGNOSTIC AND TREATMENT PRACTICE

The new regulations provide some clarification about how the internet medical services will be distributed. The medical institutions and third parties engaged in services should execute an internet service agreement, and, in the chronic disease service agreement, the community medical institutions should clarify the process for rendering these services, each party's rights and obligations, and the risks of medical damages and divulgence of patients' health data.⁶⁵

In addition, medical institutions will be prohibited from using medical services for the initial diagnosis, prescribing narcotic drugs, psychotropic drugs, and other specially regulated drugs. Likewise, for patients whose conditions have deteriorated and who require in-person diagnosis, the medical institution should immediately cease providing internet medical services and advise the patients to seek treatment at a medical institution.⁶⁶

Moreover, medical institutions providing internet medical services employ licensed medical practitioners and should be properly equipped with the internet technology, equipment, technical personnel, information security systems, and electronic medical records management systems.

C. PROMOTING TELE-MEDICINE SERVICES AND INFORMATION SHARING PLATFORMS BETWEEN DIFFERENT LEVEL HOSPITALS

The new regulations encourage Class III hospitals to provide tele-medicine services to other hospitals at or below Class II level and encourage on-line education and communication of clinical knowledge and technology between doctors and medical institutions.⁶⁷ Furthermore, the new regulations advise medical institutions at different levels to establish

62. *See id.* art. 17

63. *Id.* art. 9.

64. *Id.* art. 11.

65. *Id.* art. 10, 15.

66. *Id.* art. 16, 19.

67. Hospitals in China are generally divided into three classes according to the types and scale of medical services, number of departments, and characteristics of the medical practitioners.

information sharing platforms to enable efficient sharing of patients' electronic medical records and improve the patient referral process.⁶⁸

D. IMPLICATIONS FOR THE MARKET

These regulations, for the first time, set forth the requirements for licensing, medical practice, and inspection of the business activities of the internet medical service providers. They also seek to raise the market entry requirements and narrow the scope of permissible internet medical services. As explained by Jiao Yahui, Deputy Director of the Medical Institution Reform Bureau of MOH, the Government will continue to enhance the entry level and inspection on the new businesses of internet medical services to protect the public health.⁶⁹

VII. Judgment Enforcement in China Under Belt & Road Policy

China established International Commercial Courts with the objective of addressing Belt and Road disputes on the fifth anniversary of the initiative, continuing the optimization of the legal system for international business activity trend.

Internationalization of the Chinese court system continued in 2018. Despite unexpected shakeups in the global system and a slowdown in outbound investment activity, Chinese courts continued the trend of indicating to new foreign investors and traditional stakeholders a willingness to recognize and enforce foreign commercial court judgments. For example, a Chinese court in Wuhan recognized and enforced a California judgment based on preexisting reciprocity, a Polish judgment based on a bilateral legal cooperation treaty, and a Singaporean judgment based on “proactive” reciprocity.⁷⁰ The Supreme People’s Court is also said to be “drafting a regulation on understanding and implementing civil and commercial judgments from foreign courts.”⁷¹

In 2018, for the fifth anniversary of the Belt and Road Initiative (“BRI”) (which was incorporated in China’s Constitution in late 2017,⁷² signifying long-term commitment to the initiative on the part of China despite

68. *AMIDT*, *supra* note 56, art. 22–23.

69. See Wang Bingyang (王秉阳), *Guojia Jiankangwei Fabu 3 Wenjian Guifan Hulanwang Zhenliao Xingwei* (国家卫健委发布3文件规范互联网诊疗行为) [*MOH Released Three Documents in Regulation of Internet Diagnostic and Treatment Activities*], XINHUA NET (Sept. 14, 2018, 5:58 PM), http://www.xinhuanet.com/politics/2018-09/14/c_1123432526.htm (China).

70. Suni Gong, *The Chinese Court’s Enforcement of a U.S. Civil Judgement*, NYU L.: TRANSNAT’L NOTES (Apr. 17, 2018), <https://blogs.law.nyu.edu/transnational/2018/04/the-chinese-courts-enforcement-of-a-u-s-civil-judgement/>.

71. Hannah Feldshuh, *Opinion: There Are Better Ways to Boost Belt and Road’s Appeal Than Blaming ‘China Bashing’*, CAIXIN GLOBAL (Nov. 9, 2018, 4:37 PM), <https://www.caixinglobal.com/2018-11-09/opinion-there-are-better-ways-to-boost-belt-and-roads-appeal-than-blaming-china-bashing-101345032.html>.

72. “*Belt and Road*” incorporated into CPC Constitution, PEOPLE’S DAILY ONLINE (Oct. 24, 2017, 12:54 PM), <http://en.people.cn/n3/2017/1024/c90000-9284135.html>.

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pushbacks from members of the global community and some notable, unsuccessful BRI projects), various measures were taken with the aim to strengthen the credibility of the BRI and “boost legal cooperation, making BRI projects sustainable and legally defensible for nations regardless of their internal judicial system.”⁷³

This major step toward credibility, further openness, and transparency of doing business with China represents institutional upgrades, as does the establishment of China-based International Commercial Courts.⁷⁴ Under the Belt and Road banner, these measures aim to create a “stable, fair, transparent, and predictable business environment under the rule of law.”⁷⁵

The SPC established three International Commercial Courts (initially announced and referred to as Belt and Road courts) based in Beijing (HQ), Xi’an (focusing on cases arising from the Silk Road Economic Belt, which connects China, Central Asia, the Middle East, and Europe), and Shenzhen (to take cases arising along the Maritime Silk Road, which connects China, Southeast Asia, Africa, and Europe). These Belt and Road courts aim to be one-stop, comprehensive dispute resolution entities, addressing Belt and Road and other international related commercial disputes.

Article 2 of the Provisions lists the types of cases the courts will be considering and gives broad discretion to the SPC to assign cases to the ICCs if they are considered “appropriate.” Article 4 suggests the judges will be Chinese, be proficient in both English and Chinese, and have relevant international experience. Eight judges have been appointed to date.⁷⁶ The SPC also established an International Commercial Expert Committee,⁷⁷

73. Feldshuh, *supra* note 70.

74. See *Zuigao Renmin Fayuan Fuanyu Sheli Guoji Shangshi Fating Ruogan Wenti de Guiding* (最高人民法院关于设立国际商事法庭若干问题的规定) [Provisions of the Supreme People’s Court on Several Issues Regarding the Establishment of the International Commercial Court] (promulgated by the Sup. People’s Ct., June 25, 2018, effective July 1, 2018), SUP. PEOPLE’S CT., June 27, 2018, art. 1, (China), available at <https://cgclaw.stanford.edu/zh-hans/belt-and-road/b-and-r-texts/20180701-provisions-re-intl-commercial-courts/>.

75. *Zhong Gong Zhong Yang Bang Guo Wu Yuan Bang Yinfa Guanyu Jianli Yidai Yilu Guoji Shang Shi Zheng Duan Jiejue Jizhi He Jigou de Yijian* (中共中央办公厅、国务院办公厅印发《关于建立“一带一路”国际商事争端解决机制和机构的意见》) [The General Office of the Central Committee of the Communist Party of China and the General Office of the State Council issued the “Opinions on Establishing the ‘One Belt, One Road’ International Commercial Dispute Resolution Mechanism and Institutions”], CHINA INT’L COMM. CT. (June 27, 2018), <http://cicc.court.gov.cn/html/1/218/149/192/602.html>, translated in *Opinion Concerning the Establishment of the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions*, CHINA INT’L COMM. CT. (June 27, 2018), <http://cicc.court.gov.cn/html/1/219/208/210/819.html>.

76. *Zuigao Renmin Fayuan Renming Guoji Shang Shi Fating Faguan* (最高人民法院任命国际商事法庭法官) [Eight Judges of China International Court were Appointed] CHINA INT’L COMM. CT. (July 3, 2018), <http://cicc.court.gov.cn/html/1/218/149/192/820.html>, translated in *Eight Judges of China International Court were Appointed*, CHINA INT’L COMM. CT. (July 3, 2018), <http://cicc.court.gov.cn/html/1/219/208/210/821.html>.

77. *Zuigao Renmin Fayuan Guanyu Chengli Guoji Shangshi Zhanjia Weiyuanhui de Jueding* (最高人民法院关于成立国际商事专家委员会的决定) [Decision of the Supreme People’s Court on the Establishment of an International Committee of Experts on Commerce] CHINA INT’L COMM. CT.

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which as of November 10, 2018, consisted of thirty-two Chinese and foreign experts.⁷⁸ The Committee “aim[s] to enhance international exchange and cooperation, ensure operation and promote adjudication of the International Commercial Court, and support parties to resolve international commercial disputes through arbitration, mediation, litigation and other diversified commercial dispute settlement methods.”⁷⁹ In addition to the Courts and the Committee, the China Council for the Promotion of International Trade (“CCPIT”) also established an International Dispute Prevention & Settlement Center.⁸⁰

These multiple developments signal the commitment of Chinese authorities to streamline dispute resolution and make the business environment more attractive to foreign parties. But there are areas of uncertainty, as the piecemeal approach and top down controls attract criticism by foreign commentators. Against the backdrop of a global system that is becoming more complex and uncertain, Chinese authorities want to reassure investors and other stakeholders that their interests will be adequately protected. But there are concerns about creating high profile dispute resolution venues when disputes have traditionally been left to the relevant business parties or neutral, third jurisdictions. There are also concerns Chinese investors might be encouraged to attempt to select these venues in their contracts with foreign parties, and whether they are successful will then depend on the relative leverage of the parties.

The ICCs have not yet rendered decisions as of November 10, 2018, and there is no information on whether they have already taken cases, so their viability remains to be determined.

(Aug. 24, 2018), <http://cicc.court.gov.cn/html/1/218/149/192/947.html>, translated in *The Decision on the Establishment of International Commercial Expert Committee of the Supreme People's Court*, CHINA INT'L COMM. CT. (Aug. 24, 2018), <http://cicc.court.gov.cn/html/1/219/235/243/index.html>.

78. See *Guoji Shangshi Zhanjia Weiyuanhui Zhanjia Weiyuan Jianli* (国际商事专家委员会专家委员简历) [*Resume of the Expert Committee of the International Committee of Commercial Experts*] CHINA INT'L COMM. CT., <http://cicc.court.gov.cn/html/1/218/226/234/index.html> (last visited Apr. 1, 2019), translated in *Expert Directory*, CHINA INT'L COMM. CT., <http://cicc.court.gov.cn/html/1/219/235/237/index.html> (last visited Apr. 1, 2019).

79. *Guoji Shangshi Zhanjia Weiyuanhui Zhanjia Zuigao Renmin Fayuan Chengli Guoji Shangshi Zhanjia Weiyuanhui* (最高人民法院成立国际商事专家委员会) [*The Supreme People's Court established the International Committee of Experts on Commerce*] CHINA INT'L COMM. CT. (Aug. 26, 2018), <http://cicc.court.gov.cn/html/1/218/149/156/945.html>, translated in *The Supreme People's Court Established the International Commercial Expert Committee*, CHINA INT'L COMM. CT. (Aug. 26, 2018), <http://cicc.court.gov.cn/html/1/219/208/209/981.html>.

80. *A Symposium on the Establishment of International Dispute Prevention & Settlement Center Held in Beijing*, CHINA COUNCIL FOR THE PROMOTION OF INT'L TRADE (Jan. 31, 2018, 4:45 PM), http://en.ccpit.org/info/info_4028811760d8d5d401614b64c12e0024.html.