

When Is an Arbitration a Foreign or International Tribunal?

August 05, 2020

Second Circuit affirms Chinese arbitration organization is not a “foreign or international tribunal” under section 1782.

In [February 2019](#), the U.S. District Court for the Southern District of New York denied petitioner Hanwei Guo’s discovery application after determining that the China International Economic and Trade Arbitration Commission (CIETAC) did not qualify as a “foreign or international tribunal” under [28 U.S.C. § 1782\(a\)](#). That ruling primarily was based on the Second Circuit’s decision in *National Broadcasting Co. (NBC)*. On appeal *In re Application of Hanwei Guo*, No. 19-781 (2d Cir. July 8, 2020), Guo argued that *NBC* was no longer good law, having been overruled or otherwise undermined by the U.S. Supreme Court’s decision in *Intel Corp.* While acknowledging that courts following Intel have reached different conclusions on the issue of whether a private foreign arbitration falls within section 1782(a), the Second Circuit rejected the notion that Intel undermined NBC. Rather, the court declared that NBC remains binding precedent in the Second Circuit.

Turning to the merits of the appeal, the Second Circuit agreed with the district court that a CIETAC arbitration is a private international commercial arbitration, thus falling outside the scope of section 1782(a)’s “foreign or international tribunal” requirement. The court clarified that in determining whether an arbitration is a “foreign or international tribunal,” the inquiry does not turn on the governmental or nongovernmental origins of the entity in question, but on whether the body possesses the functional attributes most commonly associated with private arbitration. Considering the relevant factors, the court found that the functional attributes of CIETAC arbitrations clearly fall outside the scope of the tribunals contemplated by section 1782. As a result, the Second Circuit affirmed the district court order denying Guo’s petition for discovery.

Republished with permission of the ABA Section of Litigation Committee.

Authored By



Alex B. Silverman

Related Practices

[Litigation and Trials](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.