

THE LAWYER
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Due process in discovery and production of documents in arbitration in Mainland China

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Evidence

Common Law

- obtain all relevant documents
- a party must disclose material evidence (and relevant law), even if it is unfavourable to that party

Civil Law

- documents that must be produced are those on which each party intends to rely

Burden of Proof

- Art. 43 of Arbitration Act
 - Parties shall provide evidences **in support of their own arguments**. The arbitration tribunal may, as it considers necessary, collect evidences on its own./当事人应当对自己的主张提供证据。仲裁庭认为有必要收集的证据，可以自行收集

- Art. 42(2) SCIA Arbitration Rules (2019//2/21)
 - Each party shall bear the burden of proving the facts **upon which its claims, defences or counterclaims are based**./当事人对自己的主张承担举证责任。仲裁庭有权决定当事人的举证责任

Examination of Evidence

- Art.45 of Arbitration Act
 - The evidence shall be presented during the hearings and may be examined by the parties/ 证据应当在开庭时出示，当事人可以质证

- Art. 43(1) SCIA Arbitration Rules (2019//2/21)
 - Unless otherwise agreed by the parties, the evidence shall be produced at the hearing and may be examined by the parties./ 除非当事人另有约定，证据应当在开庭审理时出示，当事人可以质证

Examination of Evidence

- Art. 43(3) SCIA Arbitration Rules (2019//2/21)
 - Evidence that the parties have jointly recognised or have no objection to shall be considered as examined evidence./当事人共同确认或没有异议的证据，视为已经质证
- Art. 43(4) SCIA Arbitration Rules (2019//2/21)
 - A party who provides **forged** evidence shall bear the consequences accordingly, and the arbitral tribunal shall have the power to reject the claims or counterclaims submitted by the party so concerned./当事人提供伪造的**证据的**，应承担相应的后果，仲裁庭有权据此驳回该方当事人提出的请求或反请求

Grounds for revocation of awards

- Domestic arbitral awards:
 - “the arbitration procedure was not in conformity with the statutory procedure/仲裁的程序违反法定程序的” (Art. 58 (1) (c) of PRC Arbitration Act)
 - “The evidence on which the award is based was **forged**/裁决所根据的证据是**伪造的**” (Art. 58 (1) (d) of PRC Arbitration Act)
- Foreign-related arbitral awards:
 - “the arbitration procedure is not in conformity with arbitration rules/仲裁的程序与仲裁规则不符的” (Art. 70 (1) (d) of PRC Arbitration Act & Art. 274(1)(c) of Code of Civil Procedure)

Interpretation of the SPC on the Application of the Civil Procedure Law

- “Evidence shall be presented in court and cross-examined by the parties. Evidence without cross-examination by the parties shall not be regarded as the basis for deciding the facts of a case./ 证据应当在法庭上出示，由当事人互相质证。未经当事人质证的证据，不得作为认定案件事实的根据” (Art. 103(1))
- “A party's evidence admissible during the preparatory phase before hearing shall be deemed as evidence cross-examined upon explanation by judges during court hearing/当事人在审理前的准备阶段认可的证据，经审判人员在庭审中说明后，视为质证过的证据” (Art. 103(2))

Interpretation of the SPC on the Application of the Civil Procedure Law

- “A people's court shall organize the parties to make cross-examination on the **authenticity** and **legitimacy** of evidence and the **relevance** of the evidence to be investigated, and explain and debate on the existence or not and degree of the probative force of the evidence/ 人民法院应当组织当事人围绕证据的**真实性**、**合法性**以及有待证事实的**关联性**进行质证，并针对证据有无证明力和证明力大小进行说明和辩论” (Art. 104)



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- Dr Chen, qualified in Taiwan, mainland China and New York State, has vast experiences in arbitration, infrastructure projects and cross-border investments. She is very experienced in acting as counsel in international arbitrations. She has also served as a sole, chair or co-arbitrator in over one hundred arbitrations, under the rules of the SIAC, ICC, HKIAC, CIETAC, BAC/BIAC, SCIA, SHIAC, CAA etc. She has acted as an emergency arbitrator in international arbitration proceedings.
- Helena has been recognized as a leading construction lawyer (since 2011) and a thought leader in Who's Who Legal and listed as a Recognized Practitioner by the Chambers under the category of Construction.
- Helena is a Fellow of the Chartered Institute of Arbitrators and the Convenor of its Taiwan Chapter. She frequently assists institutions (including the CIArb, ICC Institute of World Business Law, HKIAC, CIETAC, BAC/BIAC, SCIA) in delivering ADR training courses.



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- 陈希佳博士同时具备中国大陆、中国台湾和美国纽约州的律师资格；台湾大学法学博士及北京大学法学博士。
- 陈希佳博士在仲裁、基础设施项目和跨境投资领域具有丰富经验。陈博士经常在国际仲裁程序中代理当事人，曾在一百多件国内和国际仲裁程序中担任独任仲裁员、首席仲裁员和边裁，并且有在国际仲裁程序中担任紧急仲裁员经验。陈博士从2011年起已多年入选为国际名人录工程法领先优秀律师（**the Who's Who Legal of Leading Construction Lawyers**），并于2020荣获“思想领袖”荣誉。另外陈博士也获《商法》中国精英律师名录2018列为中国50顶尖律师（外资律所），从2019年起更获钱伯斯(Chambers)列为中国建筑工程领域受认可律师。
- 陈博士经常在仲裁、调解、PPP与建筑工程法等领域撰写文章并开展讲座。包括参与撰写《香港特别行政区、澳门特别行政区、台湾地区不可抗力及相关制度研究报告》，2020年7月甫刊登于最高人民法院国际商事法庭官方网站 (<http://cicc.court.gov.cn/html/1/218/347/329/378/1641.html>)