

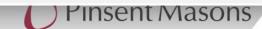
### **Evidence**

#### **Common Law**

- obtain <u>all relevant</u> 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 crossexamined by the parties. Evidence without crossexamination 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、合法性以及与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
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  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
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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项尖律师(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。包括參與撰寫《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

THE LAWYERD://cicc.court.gov.cn/html/1/218/347/329/378/1641.html)
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