

A COMPARATIVE STUDY ON OBTAINING THIRD-PARTY EVIDENCE IN INTERNATIONAL ARBITRATION: TAKING ENGLAND AND CHINA FOR EXAMPLE

*Ke Mu**

ABSTRACT

Arbitration is a private and consensual process with a strong character of relativity, which means it can only bind the signatories of arbitration agreements in general terms. However, the increasing complexity of civil and commercial disputes in modern society leads to a rising need for third-party evidence (such as documents and testimony) in order to discover the facts before the adjudication. It draws forth the key question of this research: How could the parties, arbitral tribunals, and state courts cope with the situation where third parties are unwilling to submit evidence that is under their control? In respect of positive law, international conventions, model rules, and domestic laws as the U.K. and China keep silent on this issue. On the theoretical level, the crux of the dilemma of obtaining third party evidence lies in the irreconcilable conflicting interests among arbitration stakeholders within this mechanism. For comparative purposes, Section II elucidates the widely recognized influence of legal culture on domestic evidentiary regulations by shaping the general conceptualisation of “justice” and “truth”; whereas it further argues that cultural discrepancies are not a fundamental impact factor to the taking of evidence, especially in the field of

* Ke Mu is a PhD candidate at the University of Edinburgh and lawyer in China. She can be contacted at ke.mu@ed.ac.uk. The author would like to express deepest gratitude to Beijing Arbitration Commission for the sponsorship of this research, to Professor Veronica Ruiz Abou-Nigm who kindly proffered valuable comments on this paper.

international arbitration. Then, Section III proposes that the decisive factor should be the interactive dynamics of arbitration stakeholders and observes the special status of state courts in taking third party evidence for arbitration. Section IV analyses English law and practice in terms of providing judicial assistance in taking third-party evidence in arbitration-related contexts. Section V proposes original suggestions for improving the Chinese regulatory framework of obtaining third-party evidence in arbitration based on an in-depth reflection on the status quo and the previous research findings.

KEYWORDS: *international arbitration, taking of evidence, discovery, third-party evidence, judicial assistance, arbitration stakeholders, comparative study, cultural implication*