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COMPETENCE-COMPETENCE IN COMMERCIAL ARBITRATION: ARBITRAL AUTONOMY AND JUDICIAL INTERVENTION IN CHINESE AND INTERNATIONAL PRACTICE

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I. ABSTRACT

The paper argues that the competence-competence principle has become a structural cornerstone of commercial arbitration, yet its operation remains uneven across legal systems and between its positive and negative effects. It first traces the historical and doctrinal genealogy of competence-competence and its close relationship with separability, showing how continental European theory, the UNCITRAL Model Law, case law in the US and UK, and leading scholarship together construct a conceptual framework that empowers arbitral tribunals to rule on their own jurisdiction while postponing full judicial control. It then analyzes how this framework is embodied in key international instruments and in the legislation and practice of France, Germany, the United States and China, highlighting particularly the divergent strength of the "rule of priority" or negative effect in channeling courts toward prima facie rather than full review at the gateway stage. Using a doctrinal and empirically informed comparative method, the study shows that China's current regime still gives courts and institutions a structurally privileged role in jurisdictional questions, which weakens both the positive and negative effects of competence-competence despite formal recognition in statutes and arbitral rules. We suggest that a calibrated strengthening of the negative effect through a clearer priority rule in favor of arbitral tribunals, combined with targeted, post-award judicial review, as a way to better reconcile party autonomy, procedural efficiency and judicial legitimacy in Chinese and international commercial arbitration.

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II. KEYWORDS

Competence-competence; separability; negative effect; priority rule; commercial arbitration; New York Convention; arbitral autonomy.

III. INTRODUCTION

In legal parlance, competence signifies the legally granted authority to adjudicate a matter within a specified jurisdiction.[2] Within judicial and administrative frameworks, it represents the power and duty of an adjudicatory entity to hear and resolve disputes allocated to it by law[3] When applied to commercial arbitration, this concept engenders the competence-competence principle, whereby an arbitral tribunal is authorized to initially address questions regarding its own jurisdiction, encompassing the existence, validity, and scope of the arbitration agreement.

The competence-competence principle is a cornerstone of international arbitration, allowing tribunals to rule on their own jurisdiction without waiting for court intervention, thus promoting efficiency in arbitration proceedings.[4] This principle is recognized in various international arbitration frameworks, contributing to its widespread acceptance and application[5], it has been crystallized in the arbitration laws of several states, including the United States and China, albeit with differing levels of acceptance and implementation.

Several scholars have analyzed the competence-competence principle to demonstrate its evolution in the United States, particularly through case law, including the Supreme

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[2] Mohammad Moein (2009) Moein dictionary, *Amir Kabir Publication House*, Tehran, Twenty Sixth Edition- p. 2195

[3] Abdullah Shams Abdullah Shams (2006) - *The full text of the Civil Procedure Code*-Drak- Tenth Edition -vol 1, p. 374

[4] Graves, J., & Davydan, Y. (2011). Competence-Competence and Separability-American Style. Social Science Research Network. Consulted in https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2354578_code2101338.pdf?abstractid=2354578&mirid=1 , on 27 December 2025.

[5] Demir, I. E. (n.d.). Kompetenz-kompetenz ilkesi ve olumsuz etkisi. Consulted in https://doi.org/10.52273/sduhfd..960346., on 19 December 2025.

Court's decision in Rent-a-Center, West, Inc. v. Jackson[6] (Graves & Davydan, 2011)[7]. China's approach, which is still developing, with ongoing discussions after the legislative reforms to align with international norms and reduce judicial intervention in arbitration proceedings (Zhang Shuang, 2023)[8].

There is still room to study this principle, as a notable gap still exists between normative recognition and judicial application, especially in jurisdictions where courts retain strong supervisory powers. Many scholars have underexplored the lack of widespread acceptance of the negative effects of the principle compared to its positive effects, which highlights an unresolved disparity in legal interpretations and applications.

This study addresses these gaps by analyzing how and why the competence-competence principle operates unevenly in practice and what this reveals about the evolving balance between arbitral autonomy and judicial control in Chinese and international arbitration.

The first section will address the doctrinal genesis of the competence-competence principle through its evolution and variant. The second section will explore how different countries legislate the competence-competence principle and their respective practices. The last section suggests using the rule of priority to favor arbitrators and serves as a recommendatory solution.

A. Research Objectives

In light of the doctrinal uncertainties and comparative divergences, the present study pursues the following research objectives:

[6] Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63 (2010).
[7] Graves, Jack M., & Davydan, Yelena. (2011). *Competence-Competence and Separability – American Style*, consulted in https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1402&context=scholarlyworks on 3rd January 2026.
[8] Zhang, S. (2023). *Current Situation, Development and Breakthrough in China: Learning from the US Approach to Competence-Competence: Implications for China's Arbitration System*. AEHSSR (Madison Proceedings). Consulted in https://madison-proceedings.com/index.php/aehssr/article/view/1405, on 3rd January 2026.

1. To analyze the doctrinal foundations of the competence-competence principle, with particular attention to its positive and negative effects.
2. To compare how international instruments and selected national legal systems operationalize tribunal priority and judicial control.
3. To assess whether China's current arbitration framework effectively implements competence-competence in practice.
4. To evaluate whether a strengthened rule of priority could better reconcile arbitral autonomy and judicial legitimacy.

To operate these objectives and structure the analytical inquiry, the study is guided by the following research questions:

B. Research Questions:

1. **Main Research Question:** To what extent is the competence-competence principle effectively applied in practice, beyond its formal recognition in international and Chinese arbitration law?
2. **Sub-questions:**
   - How do the positive and negative effects of competence-competence operate across different legal systems?
   - How does China's arbitration law compare with Model Law–inspired regimes regarding tribunal priority?
   - What role can the rule of priority play in limiting dilatory judicial intervention?

These questions are addressed through a doctrinal and comparative analysis of international instruments and selected national arbitration regimes.

C. Research Hypotheses

1. The effectiveness of competence-competence varies inversely with the degree of judicial intervention at the gateway stage

2. Jurisdictions with strong negative effect demonstrate higher arbitral autonomy and reduced procedural delays
3. China's current arbitration framework insufficiently implements competence-competence compared to Model Law jurisdictions.

D. Literature Review

The competence-competence principle has been the subject of sustained scholarly engagement across arbitration theory, comparative private law, and transnational dispute resolution. Existing literature may broadly be classified into three overlapping strands: conceptual and doctrinal theorisation of the principle; comparative analysis of its legislative and judicial implementation; and normative critiques addressing the balance between arbitral autonomy and judicial supervision.

1. Doctrinal and Conceptual Foundations

Early doctrinal scholarship conceptualises competence-competence as a necessary corollary of party autonomy and procedural efficiency. Gary Born frames the principle as an inherent attribute of arbitration, arguing that tribunals must possess jurisdictional self-determination to prevent opportunistic litigation from undermining the arbitral process. Similarly, John J. Barceló III situates competence-competence within transnational contract theory, emphasising its dependence on separability and its function as a structural shield against judicial displacement of arbitration.

French doctrinal writing, particularly by Emmanuel Gaillard, has been especially influential in articulating the internal logic of the principle. Gaillard's theory of the "negative effect" reconceptualises competence-competence not merely as tribunal authority, but as a procedural rule of priority allocating decision-making competence between courts and arbitrators. This theoretical move reframes the principle from a narrow jurisdictional doctrine into a systemic allocation mechanism governing institutional authority within the arbitral order.

2. Comparative and Institutional Approaches

A second strand of literature adopts a comparative methodology, analysing how competence-competence is operationalised in national arbitration regimes. Scholars such as George Bermann and Francisco González de Cossío examine the divergent treatment of jurisdictional objections in civil law and common law systems, highlighting the varying strength of tribunal priority and judicial deference.

Comparative studies consistently identify France as the strongest exponent of the negative effect, while England and Germany adopt more conditional models permitting parallel judicial review. The United States is frequently analysed as a distinct category, where competence-competence is mediated through the concept of arbitrability and is heavily dependent on contractual delegation. This body of literature underscores that competence-competence is not a uniform doctrine but a jurisdiction-sensitive institutional design choice.

3. Critical and Normative Scholarship

More recent literature adopts a critical and normative orientation, interrogating whether competence-competence genuinely enhances procedural efficiency or merely redistributes litigation costs. Some scholars caution that excessive tribunal autonomy risks undermining access to justice and judicial legitimacy, particularly where arbitration agreements are imposed through unequal bargaining power.

Others, however, defend a strong negative effect as essential for safeguarding the integrity of arbitration. Gaillard and Banifatemi argue that without a robust rule of priority, competence-competence collapses into a symbolic principle devoid of practical effect. This debate reflects a deeper theoretical tension between contractual freedom and public adjudicatory authority.

4. Literature on China and Emerging Gaps

Chinese scholarship largely focuses on statutory interpretation and institutional practice rather than theoretical reconstruction. Authors such as Zhang Shuang highlight the structural dominance of courts under the 1994 Arbitration Law and critique the absence

of genuine tribunal autonomy. Empirical studies remain limited, and most analyses rely on formal legal texts rather than systematic examination of judicial behaviour.

Notably, existing literature tends to treat competence-competence as a binary variable, either present or absent, without adequately theorising its internal asymmetry between positive and negative effects. Moreover, comparative studies rarely integrate China into broader theoretical frameworks, often treating it as a descriptive outlier rather than as a site for conceptual refinement.

5. Positioning of the Present Study

This study situates itself within the normative-comparative tradition but seeks to advance the literature in three respects. First, it analytically disaggregates competence-competence into its positive and negative components and demonstrates that these dimensions may diverge significantly within the same legal system. Second, it integrates China into a structured comparative framework, moving beyond descriptive accounts toward systemic explanation. Third, it reframes the rule of priority as a core institutional design principle rather than a peripheral procedural doctrine.

In doing so, the study addresses a critical gap in existing scholarship by showing that the effectiveness of competence-competence depends not on formal recognition, but on the structural allocation of authority between courts and arbitral tribunals. The literature has extensively theorised tribunal power; this study contributes by theorising judicial restraint as the missing institutional condition for genuine arbitral autonomy.

E. Research Methodology

This study employs a primarily doctrinal research methodology, supplemented by a limited empirical aspect, and is organized through an analytical research framework. The doctrinal analysis scrutinizes international legal instruments, national arbitration statutes, institutional regulations, and prominent judicial rulings to elucidate the conceptual foundations and legal functioning of the competence-competence principle, along with its positive and negative implications.

The empirical component is qualitative and illustrative rather than statistical, utilizing selected case law and institutional practices to evaluate the practical exercise of jurisdictional authority, particularly in China and comparable jurisdictions. Through a comparative analytical lens, the study assesses how various legal systems prioritize jurisdiction between arbitral tribunals and courts, thereby identifying structural patterns, divergences, and emerging trends in the application of competence-competence.

IV. THE DOCTRINAL GENESIS OF THE COMPETENCE-COMPETENCE PRINCIPLE

The competence-competence principle did not originate as a static rule but rather as a doctrinal response to the practical necessity of safeguarding arbitration from unwarranted judicial intervention. Its development embodies both the historical evolution of the principle and the gradual refinement of its internal framework, which collectively elucidates its current application in international commercial arbitration.

A. The genesis of the competence-competence principle

The emergence of the competence-competence principle is grounded in its historical evolution within continental legal thought and its conceptual strengthening through the principle of separability. Analyzing these foundational principles enables an understanding of how arbitral tribunals acquired recognition as competent bodies to determine their own jurisdiction.

B. History of the Competence-Competence Principle

The principle's true origins lie in German and French scholarship responding to expanding commercial arbitration. German writers like Wach (1883) and Neumann (1894) formulated "Kompetenz-Kompetenz" to argue that arbitrators derive authority from the parties' pactum de contrahendo, enabling them to rule on objections to prevent court sabotage[9]. French doctrine (compétence-compétence) paralleled this, with arbitrators in

[9] Francisco González de Cossío, 'The <Compétence-Compétence >Principle, Revisited', (2007), 24, Journal of International Arbitration, Issue 3, pp. 231-248, Consulted in

the *Chambre Arbitrale* de Paris assuming jurisdiction over validity challenges by the 1890s[10].

Over time, this practical insight evolved into an articulated doctrine with both positive and negative effects, anchored in the idea that arbitrators derive their powers from party autonomy and must be able to protect that autonomy against dilatory court tactics[11].

In the nineteenth and early twentieth centuries, international commercial arbitration was mostly ad hoc and contractual, with few clear statutory rules about who should decide jurisdictional objections. Arbitrators nevertheless began to assume the power to determine their own jurisdiction as a matter of necessity: if parties could halt proceedings simply by alleging that the arbitration agreement was invalid, arbitration would lose its value as a swift and neutral mechanism[12].

As cross-border trade expanded, institutional rules and arbitral awards increasingly reflected this practice by expressly allowing tribunals to examine their own jurisdiction, including the existence, validity, and scope of the arbitration agreement. This practice crystallized in continental European doctrine under the labels "Kompetenz-Kompetenz" in German and "*compétence-compétence*" in French, both expressing the basic idea that a tribunal must be able to rule on its own competence[13].

https://kluwerlawonline.com/journalarticle/Journal+of+International+Arbitration/24.3/JOIA2007017 on 3rd January 2025.

[10] Abugu, Uwakwe and A. D. Oduwole. "An overview of the principle of competence-competence in international commercial arbitration." (2020),

[11] Caivano RJ and Ceballos Ríos NM, 'El principio Kompetenz-Kompetenz, revisitado a la luz de la Ley de Arbitraje Comercial Internacional argentina' (2020) THĒMIS-Revista de Derecho (PUCP) https://revistas.pucp.edu.pe/index.php/themis/article/view/23423 accessed 4 January 2026.

[12] Abugu, Uwakwe and A. D. Oduwole. "An overview of the principle of competence-competence in international commercial arbitration.", Op.cit.

[13] Caivano RJ and Ceballos Ríos NM, 'El principio Kompetenz-Kompetenz, revisitado a la luz de la Ley de Arbitraje Comercial Internacional argentina' (2020) THĒMIS, op.cit., p.89.

C. The principle of separability in the light of the competence-competence principle

The principle of separability holds that an arbitration agreement is distinct and independent from the main contract which contains it[14]. The main function of the principle of separability is to shield the arbitration clause from any attack directed against the main contract. Since the arbitration clause is separate and distinct from the main contract, a challenge to the latter will not automatically impact the former[15].

Separability supplies competence-competence with its necessary conceptual infrastructure. If an arbitration clause was treated as merely one term inside the main contract, then any allegation that the main contract is void[16] (fraud, illegality, incapacity, lack of authority, or defective formation) would automatically disable the arbitration clause and allow a party to escape arbitration by attacking the contract as a whole. As Lord Hoffmann put it: "*The principle of separability […] means that the invalidity or rescission of the main contract does not necessarily entail the invalidity or rescission of the arbitration agreement. The arbitration agreement must be treated as a 'distinct agreement' and can be void or voidable only on grounds which relate directly to the arbitration agreement*"[17].The doctrinal answer is to treat the arbitration clause as a distinct agreement about dispute resolution, capable of surviving even if the main contract is later found invalid[18].

The UNCITRAL Model Law makes this linkage explicit. Article 16(1) provides that, for jurisdictional purposes, "an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract,"[19] and that a

[14] Irina Ţuca, *Separability and Competence-Competence: A Comparative Perspective*, Laywers Weeks, p.3.
[15] Premium Nafta Products Ltd v Fili Shipping Company Ltd [2007] UKHL 40, per Lord Hoffmann at paragraph 17.
[16] George A. Bermann, The "Gateway" Problem in International Commercial ArbitrationThe Yale Journal of International Law, Vol 37, p. 23.
[17] Ibid, per Lord Hoffmann at paragraph 17.
[18] See, classically, Prima Paint Corp v Flood & Conklin Mfg Co 388 US 395 (1967); Buckeye Check Cashing, Inc v Cardegna 546 US 440 (2006) (holding that challenges to the validity of the main contract do not, without more, impeach the arbitration agreement).
[19] UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006) art 16(1).

tribunal decision finding the contract "null and void" does not necessarily invalidate the arbitration clause. In doctrinal terms, separability is what prevents jurisdictional objections from becoming a universal "main contract invalidity" defense to arbitration and is therefore essential to any workable rule of tribunal priority[20].

An examination of the *travaux préparatoires* of Article 16 reveals that the drafters were acutely conscious of the necessity to balance tribunal independence with suitable judicial supervision. During the UNCITRAL Working Group discussions, delegates concentrated on three primary issues: the scope and authority of the tribunal to determine jurisdiction under Article 16(1); the procedural timing of jurisdictional objections outlined in Article 16(2); and the nature of court involvement as specified in Article 16(3)[21]. The travaux demonstrates that the principles of Kompetenz-Kompetenz and the associated doctrine of separability were intentionally adopted to enable tribunals to determine jurisdiction at the initial stage, thereby reducing the likelihood of dilatory litigation tactics that may impede arbitration[22]. Simultaneously, the provision for a court ruling on preliminary jurisdictional issues, restricted to a brief, non-appealable period and allowing arbitration to proceed pending judicial review—demonstrates a deliberate attempt to maintain judicial oversight after the decision without significantly compromising the tribunal's authority. This equilibrium is deliberate, arising from comprehensive draughting records and official reports of the UNCITRAL sessions, which underscore both tribunal discretion and procedural safeguards to prevent unwarranted interference.

D. The dual variant of the competence-competence principle

1. The positive effect

[20] For this characterization of separability and its role in competence-competence, see eg Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 3; Roque J Caivano and Natalia M Ceballos Ríos, 'El principio Kompetenz-Kompetenz, revisitado a la luz de la Ley de Arbitraje Comercial Internacional argentina' (2020) *THĒMIS-Revista de Derecho* (PUCP) 245.
[21] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006) art 16(3).
[22] UNCITRAL, *Report of the United Nations Commission on International Trade Law on the Work of its Eighteenth Session* (A/40/17, 3–21 June 1985) paras 62–71.

Competence-competence is often analyzed through its positive and negative effects. The positive effect is the tribunal's authority to rule on its own jurisdiction. The positive effect means the tribunal has authority to decide jurisdictional objections (existence, scope, validity) in the first instance. Model Law Article 16(1) is the clearest expression of this effect, giving the tribunal power to rule on its own jurisdiction and tying that power to separability[23].

As a result, challenging the existence or the validity of the arbitration agreement will not prevent the arbitrators from proceeding with the arbitration, ruling on their own jurisdiction and, if they retain jurisdiction, rendering a decision on the merits of the dispute notwithstanding any court action aimed at setting aside the decision on jurisdiction. This is known as the 'positive effect' of the principle of competence-competence, today recognized in a vast majority of countries[24].

Accepting this positive effect of the principle of competence-competence and the arbitrator's inherent power to determine their jurisdiction on the basis of the arbitration agreement entails the consequence that domestic courts should not, in parallel and with the same degree of scrutiny, rule on the same issue, at least at the outset of the arbitral process[25].

2. The negative effect

[23] Ibid.

[24] In this respect, the UNCITRAL Model Law has played an influential role, see Article 16 on the Competence of an arbitral tribunal to rule on its own jurisdiction: '(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.... (3) The arbitral tribunal may rule on a plea ... either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award'.

[25] Emmanuel Gaillard and Yas Banifatemi, ''negative effect of competence-competence: the rule of priority in favor of the arbitrators", Copyright © Cameron May, pp.257-273.

The negative effect of competence-competence[26] pertains to the distribution of decision-making power between arbitral tribunals and domestic courts during the preliminary phase of jurisdictional disputes. Instead of entirely eliminating judicial oversight, this effect defers substantive court review until the tribunal has had the chance to determine its jurisdiction. Consequently, courts are anticipated to abstain from comprehensive scrutiny of jurisdictional challenges initially and to engage only at a subsequent stage, usually in matters concerning annulment or enforcement of the award. This arrangement aims to reconcile arbitral independence with judicial supervision while reducing procedural disruption[27].

This effect is challenged as courts should not finally determine arbitral jurisdiction at the outset and should refer parties to arbitration unless the arbitration agreement is plainly ineffective, depending on the jurisdiction's standard.

Although the UNCITRAL Model Law does not explicitly utilize the terminology of the "negative effect" of competence-competence, it would be incorrect to imply that this aspect is entirely disregarded. Instead, the Model Law incorporates tribunal priority within its procedural framework. Article 16(1) affirms the arbitral tribunal's authority to determine its own jurisdiction and reinforces this authority through the principle of separability, thereby ensuring that jurisdictional objections do not automatically interrupt the arbitral process. This tribunal-centric approach is further reinforced by Article 8, which holds that courts refer parties to arbitration unless the arbitration agreement is null and void, inoperative, or incapable of being performed, and by Article

[26] This terminology was originally suggested by Emmanuel Gaillard in 1994: see Emmanuel Gaillard, 'Convention d'arbitrage', in Juris Classeur: Droit International Fasc. 586-5,1149,50 (1994); see also E. Gaillard and J. Savage (eds.), Fouchard Gaillard Goldman on International Commercial Arbitration 11660 et seq., Kluwer (1999), *On the negative effect of competence competence and the prima facie review*, more particularly, see Emmanuel Gaillard, ''L'effet négatif de la compétence-compétence'', in *Etudes de procédure et d'arbitrage en l'honneur de Jean François Poudret* 387, Univ. Lausanne (1999); Emmanuel Gaillard, ''La reconnaissance, en droit suisse, de la seconde moitié du principe d'effet négatif de la compétence-compétence'', in Global Reflections on International Law, Commerce and Dispute Resolution - Liber Amicorum in honour of Robert Briner 311, ICC Pub. No. 693 (200).

[27] Emmanuel Gaillard and Yas Banifatemi, ''negative effect of competence-competence: the rule of priority in favor of the arbitrators", op.cit, p.260.

16(3), which restricts judicial review of preliminary jurisdictional determinations to a specific post-decision phase while permitting the arbitration to proceed pending such review. In this context, the Model Law employs a functional approach to the negative effect by directing early judicial intervention through limited review mechanisms.

E. The legislative approaches to the competence-competence principle

The competence-competence principle is not solely a result of doctrinal development but also a consequence of legislative decision-making. Its scope and efficacy are contingent upon the manner in which international instruments articulate the principle and how domestic legal systems integrate and implement it within their arbitration frameworks.

F. The embodiment of the competence-competence principle in international legal instruments

1. The UNCITRAL Model Law's Perspective

The UNCITRAL Model Law is central for both doctrinal and comparative reasons: it offers a widely used template for national legislation and expresses competence-competence and separability in a single coordinated scheme. Article 16(1) codifies the positive effect and the separability rule in one provision, ensuring the tribunal can decide jurisdiction and can treat the arbitration clause as independent from the container contract. Article 5 also states a general principle limiting court intervention to what the Law provides, supporting the idea that arbitration should not be continually displaced by court proceedings once parties have opted into the arbitral framework[28].

2. The principle in the New York Convention and Arbitral Rules

Alongside the Model Law, the New York Convention system (in functional terms) complements competence-competence by requiring contracting states to respect arbitration agreements and enforce awards, which allows tribunal-first decision-making to remain meaningful in cross-border settings.

[28] UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006) art 5.

The basic requirement that the parties to an arbitration agreement honor their undertaking to submit to arbitration any disputes covered by their agreement entails the consequence that the courts of a given country are prohibited from hearing such disputes. If seized of a matter covered by an arbitration agreement, the courts will be required to refer the parties to arbitration. This principle is embodied in Article 11(3) of the New York Convention:

The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed[29].

The Model Law's Article 8 reflects this same pro-referral architecture by requiring courts to refer disputes to arbitration unless the arbitration agreement is ineffective under the "null and void, inoperative or incapable of being performed" standard[30]. As a result, international commercial arbitration is not merely a private procedure but a legal order in which courts are expected to support arbitration at entry (referral) and exit (recognition/enforcement), rather than to substitute themselves for the tribunal at every stage.

V. THE COMPARATIVE ANALYSIS OF NATIONAL LEGISLATIVE APPROACHES ON THE COMPETENCE-COMPETENCE PRINCIPLE

National legal systems accept competence-competence but implement its negative effect differently, and this difference is often decisive for whether arbitration is protected from dilatory litigation tactics.

A helpful comparative method is to ask three questions in each jurisdiction:

[29] See also, in similar terms, UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006) art 8.
[30] Ibid.

1. Does the tribunal have statutory or judicially recognized power to decide jurisdiction? (Positive effect).
2. How intrusive is the court's gateway review when litigation is filed notwithstanding an arbitration clause? (Negative effect).
3. How and when can courts review jurisdiction after the tribunal has ruled?

A. French approach

France is commonly treated as the archetype of a strong negative effect: courts generally decline to decide jurisdiction first and will refer the parties to arbitration unless the arbitration clause is manifestly void or manifestly inapplicable. Article 1448 of the French Code of Civil Procedure embodies this logic by directing the court, when faced with a dispute subject to an arbitration agreement, to decline jurisdiction unless the arbitral tribunal has not yet been seized and the arbitration agreement is manifestly null or manifestly inapplicable[31]. This creates a legal presumption in favor of arbitral priority, designed to prevent jurisdictional disputes from being rerouted into ordinary litigation as a delaying tactic.

This is a very strong approach to the principle of competence-competence, since it almost takes judicial intervention completely out of the picture in the initial stage of the inquiry. First, "manifestly null and manifestly not applicable" is a very high standard for the court's intervention. It is inflexible and requires the highest standard of proof, meaning that it will seldomly be satisfied. Second, the two exceptions in article 1448 are cumulative: both have to apply in order to trigger judicial involvement. This means that, even if the arbitration clause is manifestly null and manifestly not applicable, the courts will still not intervene if the arbitral tribunal has been constituted[32].

Because the principle of competence-competence prevented parties from challenging the jurisdiction of the arbitration tribunal at the initial stage, they are allowed to bring this

[31] Article 1448 of the French Code of Civil Procedure.
[32] Irina Țuca, *Separability and Competence-Competence: A Comparative Perspective*, Op.cit.

challenge before the courts at the enforcement stage. When French courts are presented with this claim, they will make a full inquiry into the issue and will judge the question of jurisdiction "de novo"[33]. Cases frequently discussed in this context (and used to demonstrate the French "autonomy" of the arbitration agreement in international arbitration) include Dalico and Putrabali (Cour de cassation), emphasizing the distinct legal treatment of the arbitration clause, consistent with separability and tribunal-first competence.

B. The English approach

Competence-competence is recognized by English law under section 30(1) of the English Arbitration Act 1996: "Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to:

1. whether there is a valid arbitration agreement,
2. whether the tribunal is properly constituted, and
3. what matters have been submitted to arbitration in accordance with the arbitration agreement"[34].

As clear from the statutory language, English law recognizes the positive dimension of the competence-competence principle: „the arbitral tribunal may rule on its own substantive jurisdiction". As stated in the caselaw, the standard which triggers the application of the principle is „good arguable cause"[35].

English leading cases illustrate both the breadth of arbitration agreements and the limits of deference. Fiona Trust is used to support a presumption that rational commercial parties intend a "one-stop" dispute resolution mechanism, so arbitration clauses are

[33] République arabe d'Egypte v Southern Pacific Properties Ltd [1986] Ju Fr 75; [1987] Ju Fr 469 (12 July 1984, Paris Court of Appeal and 6 January 1987, Cour de Cassation) (the Pyramids case). See also: Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan [2010] UKSC 46, paragraph 20 (on French law).
[34] English Arbitration Act 1996, section 30(1).
[35] Noble Denton Middle East and Another v Noble Denton International Ltd [2010] EWHC 2574 (Comm), paragraph 16; see also paragraphs 4-5, 12.

construed broadly to cover disputes connected to the relationship[36]. Dallah illustrates the other side of the balance: when enforcement is sought against a party that denies being bound by the arbitration agreement, courts may undertake close review of whether a valid arbitration agreement existed as to that party[37], which shows that competence-competence does not eliminate judicial supervision but relocates it to a later procedural stage.

C. The German approach

The German version of competence-competence sits somewhere in between the French and the English approaches. Section 1032(1) of the German Code of Civil Procedure (ZPO), mentions that "a court before which an action is brought in a matter which is the subject of an arbitration agreement shall […] reject the action as inadmissible unless the court finds that the arbitration agreement is null and void, inoperative or incapable of being performed"[38]. This is further qualified by section 1032(2), which mentions that: "Prior to the constitution of the arbitral tribunal, an application may be made to the court to determine whether or not arbitration is admissible"[39].

Germany's version of the competence-competence principle resembles the French approach when it comes to how courts assess whether an arbitration agreement exists. France's Code of Civil Procedure speaks of an agreement that is "manifestly void or manifestly not applicable," while German law uses comparable wording "null and void, inoperative or incapable of being performed."[40]

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[36] Fiona Trust & Holding Corporation v Privalov UKHL 40.
[37] *Dallah Real Estate and Tourism Holding Company v Ministry of Religious Affairs of the Government of Pakistan* UKSC 46.
[38] Zivilprozessordnung s1032(1): Wird vor einem Gericht Klage in einer Angelegenheit erhoben, die Gegenstand einer Schiedsvereinbarung ist, so hat das Gericht die Klage als unzulässig abzuweisen, sofern der Beklagte dies vor Beginn der mündlichen Verhandlung zur Hauptsache rügt, es sei denn, das Gericht stellt fest, dass die Schiedsvereinbarung nichtig, unwirksam oder undurchführbar ist.
[39] Ibid., s1032(2): Bei Gericht kann bis zur Bildung des Schiedsgerichts Antrag auf Feststellung der Zulässigkeit oder Unzulässigkeit eines schiedsrichterlichen Verfahrens gestellt warden.
[40] Irina Țuca, Separability and Competence-Competence: A Comparative Perspective, Op.cit.

Two points, however, deserve emphasis. First, because German legislation does not include the qualifier "manifestly," its threshold is lower, giving courts greater room to step in at an earlier stage. Second, German courts may also proceed where the agreement is "inoperative or incapable of being performed," bases for court jurisdiction that would not, as such, open the door to French courts under the French "manifestly" test. As a result, even though the texts look alike, German law is more court-friendly in practice[41].

German competence-competence also parallels the English model in that both legal systems tolerate parallel tracks. In both England and Germany, a court may address the validity of an arbitration agreement at the same time the arbitral tribunal is considering its own jurisdiction. Because this possibility of parallel review exists, neither system treats the arbitral tribunal as having exclusive authority over that question at the outset[42].

D. The US Approach

The U.S. approach strongly embraces separability and can support tribunal competence to decide jurisdiction, but it is distinctively "contract-first" in determining who decides gateway questions. The key analytic category is "arbitrability": unless parties clearly delegated arbitrability to the arbitrator, U.S. courts often decide that gateway issue, which conditions the negative effect on proof of delegation. As a result, U.S. law can be very supportive of tribunal priority when the parties' drafting is clear but can also generate substantial court litigation when the delegation of gateway issues is disputed.

At the first stage, the US courts will decide "substantive arbitrability issues", which include the existence, validity and scope of the arbitration agreement, unless there is "clear and unmistakable" evidence that the parties intended the contrary[43]. The

[41] Detlev Kühner, [ARBITRATION] ''The impact of party impecuniosity on arbitration agreements'', BMH Avocats,https://bmhavocats.com/en/2014/10/16/the-impact-of-party-impecuniosity-on-arbitration agreements/ , consulted on December 27, 2025.
[42] LE THI NGOC HA and NGUYEN VU THUY QUYNH, ''competence to rule on arbitral jurisdiction: various approaches'', Vietnamese Journal of Legal Science Vol. 13, No 01, 2025, pp.14-34.
[43] Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79 (2002), First Options, 514 U.S. See also: AT&T Technologies, Inc. v. Communications Workers of America 475 US 643, 649 (1986): validity of arbiration clause is a matter for judicial determination unless "unless the parties clearly and unmistakably provide otherwise."

arbitration tribunal is free to decide "procedural arbitrability issues", which include aspects such as timing, notice, waiver and estoppel[44].

Then, at stage two, in the spirit of competence-competence, the arbitration tribunal will get to decide for itself the existence and validity of the arbitration agreement (i.e., what the US courts have already decided at stage one). In theory, the arbitral tribunal is not bound by the courts' decision, but in practice the tribunal will almost always uphold it. This is because of art V(I)(e) of the New York Convention 1958[45] which mentions that recognition and enforcement of an award may be denied if the award has been set aside by the courts of the country where the award was made. In this case, if the arbitral tribunal's award states that it has jurisdiction, contradicting the US courts' assessment at the previous stage, the award might be denied enforcement both in the US and elsewhere in states which have ratified the New York Convention.

E. The Chinese approach

China is commonly described as taking a more court- or institution-controlled approach to jurisdictional questions than "*strong negative-effect*" jurisdictions such as France, making the gateway phase more court-facing and potentially more prone to delay. This design can be explained as prioritizing legal certainty and formal validity checks at the front end, even if the trade-off is a greater risk of parallel proceedings when jurisdiction is contested.

The core legislative feature is Article 20(1) of the PRC Arbitration Law (1994), which challenges arbitral jurisdiction away from the arbitral tribunal itself and toward either the arbitration commission or the competent people's court[46]. Under this structure, the tribunal does not automatically enjoy the Model Law–style power to rule on its own jurisdiction[47]; instead, jurisdiction/validity determinations are institution-centered or

[44] Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79 (2002).
[45] Who Decides the Arbitrators' Jurisdiction? Separability and Competence-Competence in Transnational Perspective, John. J. Barcelo III (2003), Cornell Law Faculty Publications, Paper 508.
[46] Article 20(1) of the PRC Arbitration Law (1994).
[47] UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006) art 16(1).

court-centered. Critically, where one party asks the arbitration commission to decide and the other applies to court, the court's ruling prevails, "*the court has the last word*", which gives courts overriding authority over the tribunal's jurisdiction at the gateway stage[48].

Doctrinally, Article 20[49] has two main implications for competence-competence. First, the classic positive effect (tribunal power to decide its own jurisdiction) is weakened, because the initial authority is not inherently vested in the arbitral tribunal. Second, the negative effect (court deference to arbitrators at the outset) is also weaker, because the statute expressly contemplates early court determination and gives it supremacy in the event of competing applications[50].

Despite this statutory architecture, leading Chinese arbitration institutions have developed a practical route toward competence-competence by delegating jurisdictional decision-making to the arbitral tribunal through their arbitration rules. For example, CIETAC and BAC rules are widely discussed as allowing the tribunal, once constituted and authorized, to determine jurisdiction, and to do so either by a separate jurisdictional decision/interim award or by incorporating the ruling into the final award[51].

Compared to France's strong negative effect, where courts typically decline jurisdiction unless the arbitration clause is manifestly invalid or inapplicable, China's Article 20 design keeps courts (and institutions) more centrally involved at the gateway stage[52]. While this may enhance initial legal predictability, it risks amplifying procedural complexity and delay relative to tribunal-first systems, especially when parties exploit the dual-track mechanism to secure a decisive court ruling[53].

Recent legislative developments indicate that China's approach to competence-competence may be undergoing a process of recalibration. The approach of Chinese

[48] Arbitration Law of the People's Republic of China (1994) art 20(1)
[49] Ibid.
[50] Ibid.
[51] CIETAC Arbitration Rules (2024) arts 6(1), 6(3); Beijing Arbitration Commission Arbitration Rules (2022) arts 6(4).
[52] Code de procédure civile (France) art 1448.
[53] Arbitration Law of the People's Republic of China (1994) art 20(1).

arbitration law towards the principle of *competence-competence* has undergone a notable retreat in the most recent reform proposals. While the 2021 Draft Amendment to the PRC Arbitration Law adopted a progressive stance by proposing to grant arbitral tribunals full authority to determine their own jurisdiction, including disputes relating to the existence, validity, and scope of the arbitration agreement, this reformist position was ultimately abandoned in the 2024 Draft Amendment.

Under Article 28 of the 2024 Draft, arbitral tribunals are empowered only to make preliminary determinations concerning the *validity* of the arbitration agreement. However, this provision falls significantly short of full competence-competence, as it does not extend to broader jurisdictional questions such as the scope of the arbitration clause or the tribunal's authority over the substantive dispute. Courts and arbitration commissions continue to retain primary and overriding authority in resolving jurisdictional objections, thereby preserving judicial dominance in the arbitral process.

This shift reflects a conservative recalibration of China's arbitration reform trajectory. Rather than consolidating arbitral autonomy, the 2024 Draft represents a partial retreat from the liberalising ambitions of the 2021 Draft. As noted by Kluwer Arbitration Blog and Ashurst, the removal of full competence-competence signals persistent institutional caution and an unwillingness to fully embrace international best practices in arbitral self-governance. The reform thus maintains a hybrid model in which tribunals possess limited procedural discretion, while courts remain the ultimate arbiters of jurisdictional legitimacy.

In effect, the 2024 Draft Amendment does not transform China into a jurisdiction recognising genuine arbitral autonomy. Instead, it reinforces a system of judicial supervision that continues to prioritise court control over arbitral independence in matters of jurisdiction.[54]

[54] Standing Committee of the National People's Congress, *Draft Amendment to the Arbitration Law of the People's Republic of China (for Review)* (全国人大常委会《仲裁法（修订草案）》, November 2024) art. 28.

Although the 1994 Arbitration Law remains in effect as of the date of submission, the draft reform indicates a possible transition from an institution- and court-oriented model towards a tribunal-centric framework aligned with international competence-competence standards. Whether this transition will lead to an increased adverse impact in practice will ultimately depend on judicial reception and interpretative discipline upon the implementation of the amendment[55].

VI. THE RULE OF PRIORITY FAVORS ARBITRATORS AND SERVES AS A RECOMMENDATORY SOLUTION

A. The party's autonomy as a preferential choice to arbitrate

The normative case for the rule of priority begins with party autonomy: in international commerce, arbitration is commonly selected to avoid unfamiliar courts, reduce forum risk, and secure a neutral procedure, so the legal system should protect that choice against tactical litigation. Competence-competence advances autonomy by ensuring the tribunal can decide whether it has jurisdiction instead of allowing a party to defeat the forum by merely filing first in court. Separability is essential here because it prevents "*contract invalidity*" allegations from functioning as an automatic veto on the arbitration agreement[56].

The Model Law's scheme reflects this autonomy-protective structure. Article 8(1) directs courts to refer the dispute to arbitration unless the arbitration agreement is "*null and void, inoperative or incapable of being performed*," which recognizes arbitration as the primary forum selected by the parties[57]. Article 8(2) then protects the arbitral process from being paused by parallel litigation by allowing arbitration to continue and an award to be made even while court proceedings are pending[58].

[55] Zhang (n 1) 6–8.
[56] Fiona Trust & Holding Corporation v Privalov UKHL 40.
[57] UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006) art 8(1).
[58] UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006) art 8(2).

B. The recognition of the rule of priority

The rule of priority is best understood as a procedural allocation rather than a denial of judicial authority[59]. It does not remove courts from the system; instead, it relocates court involvement to points where it preserves legitimacy without enabling delay most importantly at enforcement or annulment, and in limited forms of early review where the law allows. The Model Law captures this logic by permitting tribunals to decide jurisdiction and by providing for defined court review of preliminary jurisdictional rulings under Article 16(3), while still allowing the tribunal to proceed pending that review[60].

Comparative analysis underscores the practical stakes of priority. Jurisdictions with a robust negative effect, such as France's 'manifest nullity or inapplicability' standard under Article 1448 of the Code de procedure civile, materially constrain opportunities for tactical jurisdictional challenges, as courts hesitate to supplant the tribunal's initial ruling[61]. By contrast, where the negative effect operates more conditionally (as in the United States, where arbitrability defaults to courts absent clear delegation), parties retain greater scope to engineer delay via preliminary court applications, rendering precise drafting of delegation provisions outcome-determinative[62].

VII. SUGGESTIONS AND RECOMMENDATIONS

In light of the doctrinal analysis and comparative findings presented in this study, it becomes evident that the practical effectiveness of the competence-competence principle depends less on its formal recognition and more on the structural design of jurisdictional priority between arbitral tribunals and courts. The Chinese arbitration framework, while progressively acknowledging the principle, still exhibits systemic weaknesses that undermine both its positive and negative effects. Accordingly, the following legislative,

[59] UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006) arts 16, 34.
[60] UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006) art 16(3).
[61] Code de procédure civile (France) art 1448.
[62] First Options of Chicago, Inc v Kaplan 514 US 938 (1995).

procedural, and policy-oriented recommendations are proposed to address these deficiencies and strengthen arbitral autonomy.

A. Legislative Reforms to China's Arbitration Framework

A primary recommendation is the explicit statutory adoption of a tribunal-first model of jurisdictional determination. China should revise its arbitration legislation to clearly vest arbitral tribunals with the initial authority to decide all jurisdictional questions, including the existence, validity, and scope of the arbitration agreement. This reform would align Chinese law more closely with Article 16 of the UNCITRAL Model Law and international best practices, which treat tribunal competence as a structural safeguard against dilatory litigation.

Furthermore, legislative provisions should eliminate the dual-track mechanism under which both courts and arbitration commissions may concurrently determine jurisdiction, with courts retaining supremacy. Instead, judicial review should be deferred to post-award stages, limited to annulment and enforcement proceedings. This would preserve judicial legitimacy while preventing premature disruption of arbitral proceedings.

B. Best Practices for Drafting Arbitration Agreements

Given the persistent judicial involvement at the gateway stage in China, parties and practitioners should adopt more sophisticated drafting techniques to reinforce tribunal competence. Arbitration clauses should contain express delegation provisions stating that the arbitral tribunal has exclusive authority to determine jurisdiction, including issues of arbitrability. Such clauses reduce interpretative ambiguity and enhance the likelihood of judicial deference.

Additionally, parties should specify institutional rules that incorporate competence-competence in their arbitration agreements, as institutional frameworks such as CIETAC and the Beijing Arbitration Commission already permit tribunals to rule on jurisdiction once constituted. Strategic drafting thus becomes a practical tool for compensating for statutory weaknesses.

C. Procedural Mechanisms to Strengthen the Negative Effect

From a procedural perspective, courts should be encouraged to adopt a prima facie standard of review when confronted with jurisdictional objections. Judicial scrutiny at the entry stage should be confined to assessing whether the arbitration agreement is manifestly invalid or inapplicable, without engaging in full evidentiary examination. This mirrors the French "manifest nullity" test and serves to operationalize the negative effect of competence-competence.

In addition, procedural rules should expressly permit arbitral proceedings to continue notwithstanding pending court applications on jurisdiction. This prevents tactical delays and ensures that arbitration remains an effective dispute resolution mechanism rather than a process vulnerable to procedural sabotage.

D. Policy Recommendations for Judicial Training

Finally, institutional reform must be accompanied by targeted judicial education. Judges handling arbitration-related matters should receive systematic training on international arbitration principles, particularly the rationale and functioning of competence-competence and separability. Without interpretative discipline at the judicial level, even well-designed legislative reforms risk being neutralized in practice.

Judicial guidelines or interpretative notices issued by the Supreme People's Court could play a critical role in standardizing court practice and promoting consistent deference to arbitral tribunals at the jurisdictional threshold.

VIII. CONCLUSION

This study aims to investigate whether the competence-competence principle is practically implemented beyond its formal acknowledgement within international and Chinese arbitration law. The analysis indicates that, although the principle is broadly recognized at the normative level, its practical efficacy fundamentally relies on how legal systems prioritize arbitration tribunals versus domestic courts at the jurisdictional threshold. Where tribunals are authorized to determine their own jurisdiction as a matter

of priority and courts restrict themselves to deferred or limited review, competence-competence functions as a significant safeguard of arbitral independence. Conversely, in cases where courts preserve the authority to establish jurisdiction initially, the principle risks being diminished to a mere formal declaration with limited substantive effect.

The comparative analysis indicates distinct structural differences. France exemplifies the most pronounced manifestation of the adverse impact of competence-competence, as courts typically refuse jurisdiction unless the arbitration agreement is evidently void or inapplicable, thus guaranteeing substantial tribunal precedence. Germany and England implement more conditional frameworks, acknowledging the tribunal's authority to determine jurisdiction while permitting concurrent or preliminary judicial review under specified conditions. The United States employs a delegation-based methodology, wherein the tribunal's priority is contingent upon explicit and unequivocal acceptance from the parties for arbitral resolution of arbitrability. In contrast, China maintains a structurally court-dominant framework under the 1994 Arbitration Law, where jurisdictional authority is primarily assigned to courts or arbitral institutions rather than tribunals. Recent draft reforms show a probable shift towards a tribunal-first setup, suggesting a gradual alignment with international competence-competence criteria.

Simultaneously, this access is subject to certain limitations. Its analysis is predominantly doctrinal and comparative, based on legislation, institutional regulations, and reported case law rather than on comprehensive empirical investigation of judicial practice. Furthermore, the analysis of China's changing stance must remain tentative, given that the draft amendments to the Arbitration Law have not yet been enacted and their judicial reception cannot be definitively evaluated.

These restrictions suggest multiple directions for future study. Empirical research analyzing the manner in which courts assess jurisdictional determinations during the annulment or enforcement phases would enhance comprehension of the practical functioning of competence-competence. Further inquiry will also be required to evaluate the actual effects of China's arbitration law reform upon enactment, especially regarding

judicial deference to arbitral jurisdictional determinations. Finally, the interplay between competence-competence and emergent procedural mechanisms, such as emergency arbitration and interim relief, merits further examination given their increasing importance in international commercial arbitration.

IX. BIBLIOGRAPHY

A. Books and Articles

1. Abugu Uwakwe, and A. D. Oduwole, 'An Overview of the Principle of Competence-Competence in International Commercial Arbitration' (2020).
2. Barceló III John J, 'Who Decides the Arbitrators' Jurisdiction? Separability and Competence-Competence in Transnational Perspective' (2003) *Cornell Law Faculty Publications*, Paper 508.
3. Bermann George A, 'The "Gateway" Problem in International Commercial Arbitration' (2012) 37 *Yale Journal of International Law* 1.
4. Born Gary B,*International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 3.
5. Caivano Roque J, and Natalia M Ceballos Ríos, 'El Principio Kompetenz-Kompetenz, Revisitado a la Luz de la Ley de Arbitraje Comercial Internacional Argentina' (2020) *THĒMIS – Revista de Derecho (PUCP)* 245 https://revistas.pucp.edu.pe/index.php/themis/article/view/23423 accessed 4 January 2026.
6. Cossío, Francisco González de, 'The *Compétence-Compétence* Principle Revisited' (2007) 24 *Journal of International Arbitration* 231 https://kluwerlawonline.com/journalarticle/Journal+of+International+Arbitration/24.3/JOIA2007017 accessed 3 January 2026.
7. Demir İsmail E,'Kompetenz-Kompetenz İlkesi ve Olumsuz Etkisi' (*Süleyman Demirel niversityJournal* 2020) https://doi.org/10.52273/sduhfd..960346 accessed 19 December 205.

8. Gaillard Emmanuel, and Yas Banifatemi, 'Negative Effect of Competence-Competence: The Rule of Priority in Favour of the Arbitrators' in *Enforcement of Arbitration Agreements and International Arbitral Awards* (Cameron May 2000) 257-273.
9. GaillardEmmanuel,' L'effet négatif de la compétence-compétence' in *Études de procédure et d'arbitrage en l'honneur de Jean-François Poudret*(Université de Lausa nne 1999) 38;
   sealso 'La reconnaissance en droit suisse de la seconde moitié du principe d'eff et négatif de la compétence-compétence'
   in *Global Reflections on International Law, Commerce and Dispute Resolution – Liber Amicorum Robert Briner* (ICC Pub No 693 2000) 311.
10. Graves, Jack M, and Yelena Davydan, 'Competence-Competence and Separability - American Style' (2011) *Social Science Research Network* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2354578 accessed 3 January 2026.
11. Ha, Le Thi Ngoc, and Nguyen Vu Thuy Quynh, 'Competencte to Rule on Arbitral Jurisdiction: Various Approaches' (2025) 13 (1) *Vietnamese J ournal of Legal Science* 14-34.
12. Kühner, Detlev,'The Impact of Party Impecuniosity on Arbitration Agreements ' (*BMH Avocats* Blog, 16 October 2014) https://bmhavocats.com/en/2014/10/16/the-impact-of-party-impecuniosity-on-arbitration-agreements/ accessed 27 December 2025.
13. Moein Mohammad,*Moein Dictionary* (26th edn, Amir Kabir Publication House Tehran 2009) 2195.
14. Shams Abdullah,*The Full Text of the Civil Procedure Code* (10th edn, Drak 2006) v ol 1, p 374.
15. **Ţuca Irina,**'Separabilityand Competence-Competence: A Comparative Perspe ctive' (*Lawyers Weeks* 2020) 3.

16. Zhang S,'Current Situation, Development and Breakthrough in China: Learnin g from the US Approach to Competence-Competence: Implications for China's Arbitration System' (2023) *AEHSSR (Madison Proceedings)* https://madisonpro ceedings.com/index.php/aehssr/article/view/1405 accessed 3 January 2026.

B. Cases

1. Buckeye Check Cashing, Inc v Cardegna 546 US 440 (2006).
2. Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of t he Government of Pakistan UKSC 46.
3. Fiona Trust and Holding Corporation v Privalov UKHL 40.
4. First Options of Chicago, Inc v Kaplan 514 US 938 (1995).
5. Howsam v Dean Witter Reynolds, Inc 537 US 79 (2002).
6. Noble Denton Middle East and Another v Noble Denton International Ltd EW HC 2574 (Comm).
7. Premium Nafta Products Ltd v Fili Shipping Co Ltd UKHL 40.
8. Prima Paint Corp v Flood & Conklin Mfg Co 388 US 395 (1967).
9. Rent-A-Center, West, Inc v Jackson 561 US 63 (2010).
10. République arabe d'Égypte v Southern Pacific Properties Ltd (1984 Paris CA; 1 987 Cass Civ 1re) (Ju Fr 75 and Ju Fr 469).

C. International Instruments

1. *New York Convention on the Recognition and Enforcement of Foreign Arbitral Award s* (1958) arts II, V.
2. *UNCITRAL Model Law on International Commercial Arbitration* (1985, amended 2 006) arts 5, 8, 16, 34.

D. National Legislation and Institutional Rules

1. *Arbitration Law of the People's Republic of China* (1994) art 20(1).
2. *Beijing Arbitration Commission Arbitration Rules* (2022) arts 6(4).
3. *CIETAC Arbitration Rules* (2024) arts 6(1), 6(3).
4. *Code de procédure civile* (France) art 1448.
5. *English Arbitration Act 1996* s 30(1).
6. *Zivilprozessordnung* (Germany) ss 1032(1)–(2).