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The Path for Online Arbitration: A Perspective on Guangzhou Arbitration Commission's Practice

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In recent years, the combination of arbitration and technology has raised great concerns among international arbitration community. Much discussion has centred on online arbitration and use of artificial intelligence in arbitration.

In China, the rapid growth of electronic business (including but not limited to internet consumer applications and mobile financial services) has posed challenges to traditional arbitral procedures. Further, to overcome difficulties under current arbitral legislation framework which has been seen by some to be rigid, centralized and too similar to the judicial process, several arbitration institutions in Mainland China have endeavored to introduce the latest technology to make arbitral proceeding more flexible, efficient and time-effective. [China Guangzhou Arbitration Commission \("GZAC"\)](#) is one such institution.

GZAC and Online Arbitration

GZAC was one of the [first seven arbitration institutions founded after the enactment of 1994 Arbitration Law](#). It was founded shortly after on August 29, 1995.

In 2007, GZAC commenced its study on online arbitration. Seven years later, it launched an unprecedented project to transform itself into an online arbitration institution. Dozens of experienced IT engineers were retained and assigned into groups to develop the online arbitration system. Unlike other institutions which have generally chosen to cooperate with third party service providers, GZAC employed its own technical team, IT engineers and programmers dedicated to developing GZAC's online arbitration system.

On September 24, 2015, GZAC organized China Internet Arbitration Alliance, gathering more than 100 entities including arbitration institutions, universities, enterprises and social groups to promote online arbitration. On October 1, 2015 GZAC issued its first Online Arbitration Rules, which was the first set of arbitral rules in Mainland China with specific reference to how an arbitration can be run online. In October 2016, a new system named Arbitration Cloud Platform 1.0 was released. The

Arbitration Cloud Platform 1.0 was one-stop online service for arbitration conducted entirely online including case filing, delivery of materials, constitution of tribunal, holding the hearing, examining evidence, drafting and rendering of an award, etc.. In 2017 and 2018, the [Arbitration Cloud Platform was upgraded to a newer version](#).

Compared with the traditional arbitration, my view is that GZAC's online arbitration is more cost-effective and efficient because: (i) it is paperless; (ii) time limit for answer, constitution of tribunal has been vastly narrowed for the wide use of electronic delivery; (iii) documentary-only arbitration is by default but even if a hearing is needed, it is also more convenient to arrange an online conference; and (iv) in 2018, Arbitration Cloud Platform 2.0 allows for cases with similar scenario and same legal issues to be filed, managed and decided on batches, under which an award can be generated automatically and dispatched after the approval of tribunal.

Since then, the caseload of GZAC has skyrocketed. In 2017, it accepted 89,530 cases, among which 70,079 follow the online arbitration process entirely. In 2018, the number of online arbitrations handled by GZAC increased to 166,634 with the total dispute sum of RMB 9.5 billion (approximately USD 1.4 billion).

New Challenges, New Chances

With great success come new challenges. At the very beginning, some local courts declined to enforce awards rendered in the online arbitration process for various reasons. For example, several courts had rejected award enforcement by applying 2012 Civil Procedure Law which has vastly narrowed down the use of electronic delivery. Those courts held that GZAC failed to "appropriately notify" the respondent¹⁾, and hence vacated the award on breach of due process basis.

Fortunately, the situation has changed. On February 23, 2018, the Supreme People's Court issued a specific judicial interpretation concerning enforcement of arbitral award (Provisions of the Supreme People's Court on Several Issues Concerning the Enforcement of Arbitral Award referred to as "**Enforcement Provisions**"). Article 14(2) of Enforcement Provisions arguably gives judicial recognition of the validity of notice provisions stipulated in arbitration rules²⁾, even though such a measure is technically incompatible with Civil Procedure Law and other regulations. However, I think it is still premature to say that electronic delivery has been entirely legitimised because on one hand, Enforcement Provisions are not binding in setting aside proceedings. Hence, sufficient engagement and dialogue between competent courts and arbitration institutions is still necessary to ensure the effectiveness and enforcement of an award rendered in an online arbitration.

Another challenge is the competition brought by other dispute resolution fora. In 2017, China established its pilot [Internet Court in Hangzhou](#). In 2018, Internet Courts of Beijing and Guangzhou were formed with the strong support from the Chinese government. Apart from the courts, e-commerce giants such as Alibaba, Jingdong, etc. have also established their own online dispute resolution system to cope with the simple and small claims. This came about because of Article 63 of [E-Commerce Law](#)

which came into effect on January 1, 2019 and has empowered e-commerce operators to build their own dispute resolution system.

Against this backdrop, GZAC launched two initiatives in 2018. First is the [proposed revision of GZAC's Online Arbitration Rules](#), which: (i) broadened the scope of application of online arbitration, under which GZAC and the tribunal are vested with the power to decide on the appropriateness of the case for resolution by online arbitration; (ii) introduced new technologies into arbitral proceedings, for instance, the rules require tribunals to examine the authenticity of electronic signature while being conscious of the common use of technologies such as time-stamp and block-chain technologies. The appointing authority may also decide on the arbitrator appointment by referring to big data results; and (iii) incorporated some of the latest thinking in international arbitration such as making sole arbitrator as the default number of arbitrator. The revised rules have been released in draft format and are now in the consultation process with the public.

Second, on 28 September 2018, GZAC, along with its partners, has [released a new e-commerce platform named Dashizhiyue Intellectual Transaction Platform](#), a B2B supply-chain platform providing a one stop service for storage of transaction records, storage of evidence, legal advice, identity of parties and determination of the dispute. It is noteworthy that the transaction records and related materials would have been stored by the third party service providers before any dispute commences hence it will be not necessary for parties to furnish evidence themselves. Dashi dispute resolution platform would be able to automatically collate the relevant evidence and forward them to parties after the commencement of the dispute resolution proceeding.

The Future of Online Arbitration in China

The decentralization, in-territoriality and ubiquity are inherent features of online transaction and these may well require more than the traditional dispute resolution mechanism. The traditional way to run an arbitration may satisfy such requirements, but is far from enough in my view.

I see much in the future of Online Arbitration, but there is still much to do. First of all, arbitration institutions and practitioners should deepen their cooperation to make China a more arbitration-friendly jurisdiction. In 2019, the establishment of China Arbitration Associate which has long been suspended is likely to restart. This will be a good chance to make the voice of arbitration society more influential. Second, a successful online arbitration mechanism requires support from law firms, technical corporations, e-commercial operators and governmental sectors. Last, arbitration institutions in Mainland China should provide more efficient, convenient and user-friendly online service.

Moving forward from online arbitration, institutions in Mainland China like GZAC are likely to explore uncharted waters like artificial intelligence arbitration. With the help of most advanced technologies, the AI arbitrator can learn, automatically review and decide a case. It is not likely that AI arbitrator will operate without the need for a

human but it can enhance the efficiency and quality of arbitration.

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References

↑1 For example, in 2018 Xiang 08 Zhi No. 55(September 20,2018), Zhangjiajie Intermediate People’s Court of Hunan Province opined that delivery of arbitral award was not compatible with Civil Procedure Law, and hence refused to enforce an online award by GZAC.

Article 14 does not specify online arbitration. It uses the general heading of
 ↑2 “arbitration rules” but online arbitration rules fall within the scope of “arbitration rules”.

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