

# Developments in Financial Services Arbitrations in Shanghai

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Arbitration is often used to resolve financial disputes in China. For example, China's financial regulation organs, *i.e.*, People's Bank of China, China Securities Regulatory Commission, China Insurance Regulatory Commission and China Banking Regulatory Commission, each have made efforts in promoting the use of arbitration in their regulated areas of business. Data released by the Ministry of Justice of China shows that 544,535 arbitration cases were accepted by the 255 Chinese arbitration institutions in 2018. Among these, 120,358 (roughly 22.1% and the highest) were financial disputes. The total amount of these financial disputes reached some 233.4 billion RMB (roughly 33.6% and the highest). Several Chinese arbitration institutions, like Shanghai Arbitration Commission ("SAC"), Guangzhou Arbitration Commission and Jinan Arbitration Commission, have also set out arbitration rules specially tailored for resolving financial disputes.

In major financial centers like London and Hong Kong, data shows that London Court of International Arbitration ("LCIA") accepted 317 cases in 2018, where 29 percent of them are banking and financial disputes; while Hong Kong International Arbitration Center ("HKIAC") accepted 460 cases (262 arbitrations), where 29.3% of them are financial disputes. An earlier post discussed, amongst others, LCIA's traditional role in derivatives arbitrations.

## **Arbitrating Financial Services Disputes in Shanghai**

### **1. Strong Government Support and Increasing Numbers of Cases**

Finance is a core sector in the city of Shanghai. The Chinese government has offered strong support in developing Shanghai as both a finance hub and an arbitration hub.

Back in 2009, the State Council of China announced the national strategy of Shanghai International Financial Center. In order to realize the goal, Shanghai introduced an action plan, which includes 32 actionable policies in 6 aspects. In particular, the action plan sets the tone of the city to become an international hub for asset management.

As to arbitration, in 2015, the State Council of China mentioned in its Plan for Furthering Reforms of the Shanghai Free Trade Zone to accelerate the pace of building Shanghai as an Asian arbitration

center for the globe. In October 2017, Shanghai released an [action plan](#) to lead the country's "One Belt, One Road" (OBOR) Initiative, in which the goal to build OBOR international arbitration center was set. In January 2019, the Committee of Comprehensively Furthering Reforms of Shanghai announced an [implementation opinion on perfecting the arbitration mechanism, improving the credibility of arbitration and accelerating the pace of building Shanghai as an Asian arbitration center for the globe](#) ("Implementation Opinion"), in which the task of becoming an international arbitration center was included as a major part of the overall mission of constructing Shanghai as a global city with excellent legal and business environment.

In the past three years, the percentage of financial arbitrations has consistently been the highest among the disputes submitted to the two arbitration institutions based in Shanghai. For Shanghai International Economic and Trade Arbitration Commission (Shanghai International Arbitration Center, "SHIAC"), 636 financial arbitration cases were filed in the past three years, which is roughly 26% of all cases. In 2018, the amount of financial disputes in SHIAC reached 7,888 million RMB. Those financial disputes involved stock, bond, fund, futures, insurance, financial leasing, derivatives, trust, factoring, credit card, Internet finance, bank entrusted loan, share-holding entrustment and valuation adjustment agreements.

## **2. International Pool of Specialized Arbitrators**

Currently, SHIAC and SAC have made some progress in promoting arbitration for resolving financial disputes in Shanghai. For example, SHIAC updated its panel of arbitrators in May 2018. There are 367 (roughly 38%) arbitrators with financial expertise in the new panel. Among these, 294 of them are from Mainland China, the remaining 73 arbitrators are from HK, Macau, Taiwan and other jurisdictions. Those financial arbitrators have experience with both traditional financial matters and newly emerged ones.

## **3. Support from the Courts**

Over time, the Chinese courts have enhanced the mechanism of judicial review on arbitral awards, through a number of judicial interpretations and regulatory opinions. With the same efforts, an alternative dispute resolution system for resolving financial disputes has been created. By the end of 2018, the Financial Court of Shanghai accepted 1,897 cases. Their dispute amounts reached 25.2 billion RMB. The types of disputes include false statement in securities transactions, financial lending contract, corporate bond trade, pledged securities repurchasing, financial leading contract and business trust, etc.

In particular, according to [Rule on the Jurisdiction of the Shanghai Financial Court](#) promulgated by the Supreme People's Court on 7 August 2018, the Financial Court of Shanghai is charged with the judicial review on arbitration-related issues as the intermediate people's courts of first instance in Shanghai over financial civil and commercial cases, such as confirming the validity of the arbitration agreement and reviewing the application for setting aside arbitral awards. In the light of the case data published on the China Judgements Online, amongst the 16 decisions on arbitral awards to date, 7 decisions were made on the validity of fundamental arbitration agreements; 7 decisions were made on the jurisdictional challenges; 2 decisions were on the revocation of awards. In all the 7 cases on the validity of fundamental arbitration agreements, the applicant's requests against the validity were rejected by the court. In the 7 cases on the jurisdictional challenges, the court confirmed in 3 cases that a valid agreement excludes the jurisdiction of a court. In the 2 cases seeking revocation of

awards, the court rejected the applicant's requests for revocation in both cases.

It is worth noting that the first case accepted by the Financial Court of Shanghai on the validity of arbitration agreement (*2018 Hu 74 Min Te 3 Hao*) was about a pledged bond repurchasing contract dispute, and the court confirmed the agreement on SHIAC arbitration in the contract was valid. In *2019 Hu 74 Min Te 1 Hao*, the Financial Court of Shanghai also heard an application on the revocation of an arbitral award rendered by SHIAC for an insurance contract dispute, and the court rejected the applicant's request of revoking the award. Therefore, it can be concluded that the abilities of Shanghai arbitration institutions to arbitrate financial disputes have been testified and the Shanghai courts' supportiveness in enforcing arbitral awards have been demonstrated. Together, they lay a solid foundation for Shanghai to establish itself as an international financial and arbitration center.

## **Future of Shanghai for Financial Disputes**

Though financial arbitration in China has made rapid development in these years, the number of disputes accepted by arbitration institutions is incomparable to that by the courts. A 2017 survey report issued by the ICC reveals that, in the 50 respondents of financial institutions and bank consultants, 70% of them have no experience of international arbitration. The room for arbitration to grow and resolve financial disputes in China is huge. The aforementioned Implementation Opinions urges Shanghai to "put forth efforts in innovating arbitration mechanism", "perfect a coordinated system for arbitration, litigation and mediation". In this sense, the task of building Shanghai as an international financial center would require not only the thriving of arbitration, but also the engagement of other alternative dispute resolution methods, in particular, to increase the usage of arbitration and mediation for emerging financial disputes.

There has been progress in forging a "litigation-mediation" working capacity in Shanghai. In 2017, the Joint Mediation Committee for the securities, funds and futures was established in Shanghai. Shanghai High Court and China Securities Regulatory Commission signed a memorandum on building "litigation-mediation" working mechanism for disputes in securities, funds and futures. As summarized in this article, compared with litigation, the values relied upon by the mediation process, *i.e.* voluntary, equal, inclusive, efficient and cost-saving, are more easily realized through arbitration.

Taking SHIAC arbitration rules as an example, in SHIAC's 2014 version of Free Trade Zone Arbitration Rules, SHIAC was the first Chinese arbitration institution to provide for "mediation before the constitution of the arbitral tribunal" and formed a panel of mediators for the disputants. In practice of SHIAC, a joint venture dispute worth an amount over 500 million RMB was submitted to arbitration under the SHIAC Free Trade Zone Arbitration Rules, and successfully settled through mediation.

The future of combining arbitration with mediation for dispute resolution purposes may be written in the two following ways.

First, the model in Singapore may be adopted. The Singapore International Mediation Center ("SIMC") would recommend the disputants to seek mediation after they have submitted the case to Singapore International Arbitration Center ("SIAC") and SIAC has constituted the arbitral tribunal. If the disputants agree to SIMC mediation, SIAC and the tribunal would stop the arbitration process and give the disputants a maximum of 8 weeks to mediate their disputants with the help from SIMC. If the mediation is successful, SIMC would request SIAC to enter the mediation agreement into an arbitral award, which can be enforced through the courts.

Second, arbitration institutions, mediation institutions and industrial organizations may jointly conduct

training for commercial dispute resolution experts. In Shanghai, most of the mediators sitting on the panels of commercial mediation institutions are legal experts and they also sit on the panel of arbitrators. But the fundamental requirements of a successful mediation may depend more on industrial experience and knowledge than legal expertise. Top-notch training is important. Since SHIAC formed its panel of mediators in 2014, over 30 mediators from legal, economic and trade sectors have received professional training in this respect.

## **Conclusion**

In the new area, the basic policy orientation of the Chinese financial regulators goes for: “serving the real economy”, “preventing and controlling financial risks” and “furthering financial reforms”. Against this background, a modern dispute resolution mechanism must be created to resolve and prevent financial disputes, and to embrace and encourage financial innovation. For commercial arbitration, it must cope and grow with the new trend of financial development in China.

The building of Shanghai as an international financial center relies on three basic elements: innovation, risk-prevention and one-stop ADR services. Under the correlation between financial activities and the arbitration, the legal communities represented by arbitration institutions, practitioners and mediation institutions are faced with great opportunities.