

Kluwer Arbitration Blog

Interviews with Our Editors: Arbitration Tips, Thoughts and Tattle from Dr Ma Yi of SHIAC

Deborah Loh (Assistant Editor for Southeast Asia) (Clifford Chance Asia) · Sunday, September 13th, 2020 · Shanghai International Arbitration Center (SHIAC)

Dr Ma Yi is the Vice Chairman and Secretary-General of the Shanghai International Arbitration Center (“SHIAC”) - SHIAC is also one of our Blog’s newest Permanent Contributors. Before joining SHIAC, he was actively involved in the growth of Shanghai’s legal scene as a Director at the Shanghai Municipal Bureau of Justice and the Deputy Secretary of the Shanghai Bar Association’s Communist Party of China Committee.

We are pleased for this chance to interview him for our Blog.

1. Can you share with us your vision for SHIAC?

Thank you for the question. As SHIAC’s vice-Chairman and Secretary General it is my pleasure to introduce SHIAC to our international arbitration community through this blog.

SHIAC was established in 1988 by the Shanghai Municipal Peoples’ Government (“SMPG”), to improve the business environment for investment and trade, and to resolve disputes more effectively. Inspired by the leading chambers of commerce, i.e. the International Chamber of Commerce and the Stockholm Chamber of Commerce, the SMPG let the China Council for the Promotion of International Trade Shanghai establish the then CIETAC Shanghai, which changed its name to SHIAC in April 2013.

To me, the distinctive feature of SHIAC is its dedication to offering more international dispute resolution services. SHIAC has made significant forays in this respect in recent times:

- In 2014, SHIAC promulgated the [first set of rules for the China \(Shanghai\) Pilot Free Trade Zone \(“SHIAC’s FTZ Arbitration Rules”\)](#). SHIAC also worked with the International Air Transport Association to establish the world’s first arbitration court for the aviation industry.
- In 2015, SHIAC set up the [BRICS Dispute Resolution Center](#) and the [China-Africa Joint Arbitration Center Shanghai](#).

- In 2016, the ICCA's annual Report for Commercial Arbitration reported on an SHIAC arbitration award that had been successfully enforced by the United States courts.
- In 2019, SHIAC established the Shanghai International Dispute Resolution Center, which is the first of its kind in mainland China to offer comprehensive dispute resolution services, similar to Singapore's Maxwell Chambers.

Over the past 30 years, parties from over 80 countries and regions have had their arbitrations administered by the SHIAC, and SHIAC's arbitration awards have been recognized and enforced in about 70 countries and regions.

The arbitration community has also acknowledged SHIAC's efforts to become more international. In March 2016, SHIAC was awarded the Global Arbitration Review ("GAR")'s "Guide to Regional Arbitration award for an arbitral institution that impressed in 2015", and also placed runner-up in the category of "innovation by an individual or organization in 2015". SHIAC was the first arbitration institution in mainland China to receive awards from the GAR. In 2018, SHIAC was also included in the China International Commercial Court's first list of arbitration institutions providing one-stop dispute resolution services to international users.

2. It has been some months since the start of the COVID-19 outbreak that prompted the Chinese Ministry of Justice to issue guidelines encouraging online dispute resolution. What are the measures SHIAC has taken, or intends to take, to promote online dispute resolution?

COVID-19 has had a big impact on the world's legal service industries. The need for technology to assist dispute resolution in difficult times is, I dare to say, staring in our face.

In April 2020, SHIAC organized a [seminar](#) to discuss how to use technology to assist dispute resolution amid COVID-19. I talked about what we had done, such as using videoconferencing for case management conferences and for expert witnesses to give evidence. We have also conducted online mediations. In the future, we intend to continue using technology to assist our case management conferences and hearings. We are also looking at the possibility of using digital signatures and evidence storage, and drafting guidelines for those matters. In short, SHIAC will spare no efforts to meet the needs of dispute resolution amid COVID-19.

3. We understand from SHIAC's website that roughly 60% of SHIAC's arbitrators are from PR China. What advice would you give to counsel on how to best present their case to Chinese arbitrators?

I am first going to look at the other side of the coin. That is, over 40% of our arbitrators are from Hong Kong, Macau, Taiwan and foreign countries. Annually, about 15% of our cases are foreign-related or international. Even in the domestic cases, over 80% of them involve companies with foreign investors. Therefore, even where domestic cases are heard by mainland China arbitrators, they would not be

purely domestic or Chinese, or completely different from international arbitration as we know it.

From my experience, wherever the arbitrators may come from, it's all about winning their trust. To do that, the parties and their representatives should be knowledgeable about the dispute's background and the arbitration procedures, and make excellent oral and written submissions. Chinese arbitrators are as practical and professional as international arbitrators. They value the legal texts and documentary evidence, but they also look for practical solutions for effective dispute resolution where the case requires. That said, I think parties and their representatives should bear the legal culture differences in mind when dealing with Chinese arbitrators, to gain their trust.

4. Do you foresee that arbitration will continue to grow in popularity in PR China? In your view, what might be some ways to encourage this growth e.g. do you think China's arbitration laws should be reformed?

The past five years' data shows that the number of cases, the amounts in dispute and the number of practitioners all have hugely increased. As an example, our annual growth rate of arbitration is about 40%. In 2019, SHIAC accepted 1520 new cases, of which the aggregate amount in dispute reached RMB30.945 billion and the average amount in dispute exceeded RMB20 million. These are all record-breaking figures.

The driving force of such developments is the inclusion of arbitration in the top-level policy-making process for China's alternative dispute resolution system. This system is viewed as important support for China to build its business environment in line with the rule of law and attract foreign capital to grow the economy. As such, I am fully confident in the future of Chinese arbitration.

That said, if we want China to become a hub for international arbitration, we still have a long way to go. Five years ago, SHIAC organized an international seminar discussing the construction of an international arbitration center. The participating scholars mapped out the seven core elements for an international arbitration center, i.e. a good system of local arbitration laws, a group of judges familiar with arbitration, excellent arbitration institutions, a powerful team of arbitration practitioners, a well-functioning system for training young arbitrators, an arbitration-friendly environment and geographical advantages. As you can see, establishing an international arbitration hub requires coordinated efforts from the government, the courts and arbitration practitioners. What will put those efforts together and drive them forward is the fundamental consensus that arbitration, unlike litigation, has its own values and ideas. This consensus is critical to the vitality of arbitration itself.

Of course, amending China's current legal framework for arbitration is important. But we should not neglect the fortunes that the [Chinese Arbitration Law](#) has brought to its practitioners. My view is that the current Chinese Arbitration Law remains inclusive and practical. It allows Chinese arbitration institutions to take an innovative approach to arbitration through their rules. The successful operation of the SHIAC's FTZ Arbitration Rules is a good testimony to this. Those rules provide for innovative

procedures such as the appointment of arbitrators outside SHIAC's panel, mediation, amiable composition, small claims procedure, consolidation of proceedings and joinders.

5. You once talked about the “Sinicization of international arbitration”. What do you think are the key elements of this trend?

I think the key is the practices of Chinese arbitration institutions. Each year, Chinese arbitration institutions manage more cases than those of our foreign peers. A Chinese arbitration institution therefore has a larger pool of sample cases to guide it in amending its institutional rules and perfecting its case management practices.

Therefore, while international arbitration is acquiring more Chinese elements, arbitrations administered by Chinese arbitration institutions are also acquiring more international elements and becoming more acceptable to the international arbitration community. I am pleased to see that some of our institutional practices, like the use of tribunal secretaries, the institution's power to decide jurisdiction, the combination of arbitration with mediation and the scrutiny of arbitration awards, have become increasingly accepted by foreign counsels and arbitrators.

6. Arbitration is known for being final and binding. What are your views on an optional appellate mechanism in international arbitration?

I think a selective appeal mechanism gives the disputant a chance to gain relief on the substantive findings. Currently, there are the judicial appeal and the internal appeal mechanisms. The latter is provided for in the arbitration rules of the American Arbitration Association, Spanish Court of Arbitration, International Arbitration Chamber of Paris, Grain and Feed Trade Association, and Federation of Oils, Seeds and Fats Association, etc.

My understanding is that the values of arbitration should be different from those of litigation. Any amendment to arbitration rules that goes against its values will only make arbitration resemble litigation more. That would cause arbitration to lose its charm, and perhaps even its vitality.

Personally, I do not deny that an appeal mechanism may assist in correcting possible errors in factual or legal findings. However, if another group of arbitrators decides the appeal, how do we trust that their views are more correct? If the disputants remain unsatisfied with the appeal results, do we give them a third chance? Or, do we allow the disputants to set aside the results of the appeal so that the original award can be revived? These are all questions we need to think about thoroughly. In fact, if arbitral institutions do well in curating their panel of arbitrators, and increase procedural transparency and scrutiny of arbitration awards, then the efficacy of proceedings and the quality of arbitration awards can be well safeguarded without the need for an appellate mechanism.

7. To end on a lighter note, do you have any fun or interesting facts about arbitration in PR China to share with our readers?

I can share the story of when we assisted the International Bar Association (“**IBA**”) in organizing its International Arbitration Day. This is a global event that has been recognized and well participated by practitioners, arbitrators and jurists around the world. However, up until 2016, the event had never been held in China.

In 2015, the IBA drafted a letter to SHIAC, expressing its hopes to hold the 19th [IBA International Arbitration Day](#) in Shanghai. The IBA thought that the Chinese market had huge potential, and that the local institutions were becoming increasingly internationalised.

To ensure the success of the event and attract more participants, the IBA invited SHIAC to be the first local institution to give support to the event. During the preparation stage, we performed a huge amount of coordination, advertising, promoting and administrative work. At last, over 500 participants from 53 countries and regions participated in the 19th IBA International Arbitration Day. This experience shows the unique feature of Chinese arbitration institutions: we are not only providers of professional legal services, but also reliable partners in promoting arbitration. After that event, dozens of participating attorneys expressed their willingness to join our panel, including Mr. David W. Rivkin, the then Chairman of the IBA.

Thank you for your time!

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