

# Kluwer Arbitration Blog

## New Pattern, New Momentum: Thoughts from Shanghai Arbitration Week 2021

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The 2021 Shanghai Arbitration Week (“SHAW”) kicked off on 8 November 2021, accompanying the grand event of the [Shanghai International Arbitration Summit](#). Mr. Xiong Xuanguo, Vice Minister of the Justice Department of the PRC, Mr. Peng Chenlei, Vice Mayor of Shanghai Municipal People’s Government, Ms. Anna Joubin-Bret, Secretary-General of UNCITRAL, and Ms. Lucy Reed, President of ICCA presented [welcoming speeches](#) at the opening ceremony of the Shanghai International Arbitration Summit, with reference to the theme of “*New Pattern, New Momentum for International Arbitration*” for 2021 SHAW. In a panel discussion following the opening ceremony, Dr. Ma Yi, Vice-Chair of SHIAC shared with the audience about SHIAC’s perspective on how the new momentum will trigger the development of international arbitration in terms of global governance. His panelists included Ms. Claudia Salomon, President of ICC Court of Arbitration, Mr. Audley Sheppard QC, Chairman of the Board of LCIA and Mr. Rimsky Yuen, Co-President of HKIAC.

In the exploration of the new trends for arbitration, 18 professional forums were organized by different institutions and organizations, with 3 of them directly hosted by SHIAC. This post looks at three key topics: (a) the concerted development of arbitration in the Yangtze Delta Region; (b) the new trends of financial arbitration in Shanghai; (c) the new trends of arbitration in China and Japan under the era of digital economy.

### The concerted development of arbitration in the Yangtze Delta Region

The Integrated Development of the Yangtze Delta Region was [announced](#) to be a national strategy by PRC President Xi Jinping in November 2018 and officially retained the status of national strategy in 2019. The economic significance of the Yangtze River Delta underlies the founding purpose of the Alliance, which was to explore the concerted development of member arbitration commissions in the Yangtze Delta Region, so that the member arbitration commissions could equip themselves with the needs of the market participants in the economies in the Yangtze Delta Region. 10 arbitration commissions located in the Yangtze Delta Region first formed

an [Alliance](#) in 2020. In the [second conference](#) for the Alliance on 9 November 2021, the number of the members of the Alliance increased to 36, which included almost all the arbitration commissions in the Yangtze Delta Region.

Based on the statistics shared by the director of the Shanghai Judicial Bureau the arbitration commissions in the Yangtze Delta Region accepted 115,191 arbitration cases in the past 20 years, with a gross value of RMB 130.773 billion yuan. That number of arbitration cases was nearly 30% of the arbitration cases nationwide, echoing the economic weight of the Yangtze River Delta, i.e. about 25% of China's GDP.

As the incumbent chair of the Alliance, SHIAC, represented by Dr. Ma Yi, chaired the discussion on the status and development of each arbitration commission. The undocumented consensus of the second conference was that the member arbitration commissions should ready themselves for the ever-growing market of the Yangtze Delta Region and the increasing needs from the market participants for efficient and fair resolution of disputes.

Competition for the Chinese market will become hotter as new policies in [Shanghai](#) and [Beijing](#) signals the PRC government's welcoming attitude towards the international arbitration institutions in their case management services in Mainland China. Meanwhile, a number of leading international arbitration institutions have already set up their representative offices/hearing center in Shanghai, e.g. ICC, SIAC, HKIAC, KCAB, WIPO, and CAS. Therefore, it is expected that the arbitration landscape in the Yangtze Delta Region will become more diversified.

### **The new trends of financial arbitration in Shanghai**

Financial activities in Shanghai continue to grow in 2021. The overall value of the finance industry in Shanghai for the first three quarters of 2021 was RMB 590.51 billion yuan. In August 2021, the new [governmental plan](#) for building Shanghai as an international financial center was released, highlighting further growth in financial activities. One critical aspect mentioned was the enhancement of the legal infrastructure for financial dispute resolution.

Financial activities in Shanghai were led by the development of digital technologies, the increased awareness of ESG (environment, society, governance), and the sustainable or green finance. In the [Rule of Law for Finance in Shanghai: New Pattern, New Momentum](#) conference held on 18 November 2021, over 150 financial industry participants, legal practitioners and scholars explored the new trends of finance in Shanghai, including the resolution of financial disputes.

Arbitration remains popular in agreements for innovative financial products, which often demonstrates a strong inclination for confidentiality. Financial arbitration remains the top category in SHIAC's arbitration case management where 397 cases were registered in 2020 with a disputed amount over RMB 15.26 billion yuan, covering almost all financial sectors. Apart from confidentiality, the appointment of arbitrators with substantial experience in finance and expert witnesses is also an

advantage. For example, in the model agreement for Pledge and Buy-Back of Debentures (an innovative means of financing in the capital market) published by the Shanghai Stock Exchange in 2018, the dispute resolution clause provided for arbitration in SHIAC. Since the publication of the model agreement, SHIAC has accepted 8 cases regarding the performance of the agreement for Pledge and Buy-Back of Debentures, with a total dispute amount of RMB 1 billion yuan.

However, some questions regarding the scope of an arbitration agreement under PRC law remain unresolved, e.g. whether a limited partner could invoke the arbitration agreement signed by the partnership with the counter-party.

### **The new trends of arbitration in China and Japan in the digital economy**

On 22 November 2021, SHIAC signed a cooperation agreement with [JIDRC](#). Both sides agreed to work together and bring innovative arbitration services to commercial parties in China and Japan. This agreement with JIDRC marks the 19<sup>th</sup> agreement that SHIAC has executed with arbitration institutions/organizations outside Mainland China.

The economic background of the seminar was the side agreement between the Chinese government and the Japanese government over the reduction of tariff reached for the first time, apart from the upcoming [Regional Comprehensive Economic Partnership](#) (“RCEP”), to which both China and Japan are signatories. The expectation of the rising of mutual economic activities is furthered by the rapid development of digital technologies, which in the legal sphere breeds new questions in practice.

One of the trends discussed was the compatibility of Online Dispute Resolution (“ODR”) for cross-border arbitration. According to the speech delivered by the Secretary General of JIDRC, Mr. Yoshihisa Hayakawa, ODR was mainly adopted to resolve small claim disputes of online shopping before the outbreak of COVID-19. The COVID-19 hastened the wider use of ODR. The Japanese government, as well as some international organizations, has established protocols to encourage the use of ODR, e.g. the Hybrid hearings with advanced camera and sound systems introduced by JIDRC, the [ISO TC321](#), and the [UNCITRAL technical notes on ODR](#), etc. One particular question of legal interest is the right of consumers to revoke an arbitration clause put in the contract by the online retailers, which usually is a standard contract.

Another trend was the exchange of data generated in the adoption of digital technologies. According to Professor Ji Weidong, Director of Center for Governance and Legal Research on Artificial Intelligence of Shanghai Jiao Tong University, the Chinese government takes a scattered approach towards data exchanges, resembling the practice of Securities Exchanges; while the Japanese government adopts a centralised approach of information banks. Regarding the Chinese approach, the Shanghai government plans to build a [data exchange harbor](#) in the Lin Gang New Area. In response to the governmental plan, SHIAC has established the [Data Arbitration Center](#) to encourage the use of arbitration in resolving new types of disputes arising from data transactions. With the robust digital economy in play in the

Chinese market, e.g. the Tik Tok (i.e. Dou Yin in Chinese version), T-mall, Amazon, JD, etc, the commercial disputes relating to digital transactions and data exchanges are expected to further grow especially in the difficult times of the COVID-19.

## Conclusion

The 2021 SHAW was officially **closed** on December 2, 2021. More than 5000 arbitration practitioners participated in 18 forums online or in-person during the four weeks. Looking back, the 2021 SHAW provided a welcome platform for communication among the participants and a well-selected combination of events and seminars. The keen interest in 2021 SHAW also demonstrated the ever-increasing demand for innovative arbitration services. To this end, SHIAC is well placed to meet the needs of the worldwide commercial parties having an interest in the world's second-largest and fastest-growing market. Looking forward to 2022, SHIAC is determined to follow the developing approach featured by internationalism and professionalism. Further promotion of SHIAC arbitration and the use of commercial arbitration in its general sense will continue through our efforts in presenting new and exciting events and information to readers worldwide.

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