

Multi-party Dispute Resolution in Commercial Arbitration: Challenges and Innovations

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Abstract: Commercial disputes usually refer to disputes arising from transactions aimed at profit. The settlement should take into account both effectiveness and efficiency. At present, the multi-party disputes in commercial arbitration are the hot and difficult points of commercial arbitration in China. However, the multi-party disputes of commercial arbitration in China are facing many challenges, such as the unbalanced development of dispute legal service industry, the poor convergence of settlement methods and the imbalance of the proportion of diversified dispute resolution mechanisms. We suggest that we should promote multi-party communication, give full play to the market mechanism, strengthen multi-party cooperation, establish a "one-stop" settlement mechanism and learn from international experience, so as to meet the challenges faced by multi-party disputes in commercial arbitration.

1. Introduction

The term "commercial" has a very broad meaning from a legal perspective. We usually think that there are two necessary elements. First, the transaction of the intermediary is carried out, and second, the transaction is for profit. Therefore, commercial disputes, as its name implies, are contradictions and disputes arising from the rights and obligations of commercial subjects in their commercial activities. In essence, the commercial subject is quite different from the traditional civil subject. First of all, it is drafted by law, according to the different provisions of different countries, generally need the approval of the state, such as the need for industrial and commercial registration in our country [1]. In addition, the behavior of the commercial subject must be for the purpose of gaining profits.

At the same time, commercial subjects need to undertake relative commercial law obligations while enjoying their rights in commercial activities. Because of the obvious profit-making and business nature of commercial acts, the methods and claims of antagonistic acts adopted by commercial subjects in commercial acts also have the same characteristics. This leads to the fact that in commercial disputes, commercial parties will first consider the cost and return of resolving disputes, that is to say, the value and efficiency of commercial disputes are far higher than fairness and justice [2]. Based on this, we can say that the pursuit of commercial disputes is to adopt flexible and changeable solutions as far as possible on the premise of ensuring efficiency. A confidential and low-key approach to resolving international business disputes is becoming increasingly popular

among business professionals [3]. This approach not only protects the privacy of the parties involved, but also reduces the burden of court cases. Therefore, it is particularly important to create a commercial dispute resolution platform that integrates multiple functions. This platform can smoothly connect international commercial mediation, litigation, arbitration and other procedures.

2. Challenges of Multi-party Dispute Resolution in Commercial Arbitration

2.1. Unbalanced Development of Dispute Legal Services

In some areas of China, the development of legal service industry started early, the system was perfect, the division of labor was meticulous, and the degree of specialization was high. Our country is home to a cluster of local, mainland and overseas professionals, as well as many important legal bodies. In our area, the legal services industry started relatively late, so the market demand for legal services is not particularly strong, which also leads to the development of the entire industry being a bit behind the pace [4]. Speaking of legal services in our country, there has been rapid progress in recent years, with a significant increase in the number of lawyers, the size of law firms, and the number of cases handled. However, if we look internationally, we will find that there is still considerable room for improvement in terms of internationalization. We need to improve the mechanism for searching and using foreign laws in order to establish a rule system that is both respectful and open. Firstly, we need to make the rules for searching and applying foreign laws more detailed, and find more ways to understand and master these laws. Secondly, we need to ensure the accurate and precise use of international conventions and foreign laws [5]. At the same time, we also need to figure out how to expand the scope of application of these foreign laws.

2.2. Poor Convergence of Solutions

As far as the connection between litigation and arbitration is concerned, first, the inconvenience of arbitration preservation execution results in the superposition of execution procedures; second, the high threshold of property preservation increases the difficulty of the parties and affects the enthusiasm of the parties to choose our country. As far as the docking of litigation and mediation is concerned, first, the way of accepting cases is limited, which leads to the failure of pre-trial mediation. Second, the rules of the International Commercial Court issued by the Supreme Court are the trial version, which says that pre-trial mediation and litigation mediation can be used together, which sounds good, but actually it is a bit confusing. As a result, the so-called "one-stop" dispute resolution mechanism has become somewhat ambiguous, which may lead to issues with the balance of rights and obligations in practical operation. Thirdly, when it comes to the mediation of the expert committee, the current situation is that its role and positioning are not very clear, which makes it difficult for it to fully align with the international convention on international settlement agreements arising from mediation. This requires us to carefully consider how to better match these rules with international standards.

2.3. Imperfect Diversified Dispute Resolution Mechanism

Despite the gradual establishment of a "one-stop" multi-dispute resolution mechanism and the active diversion of disputes under the leadership of the court, the parties still lack the willingness to submit disputes to arbitration and mediation. The reason is that the connection between the administrative and regional arbitration and mediation management system needs to be improved, and commercial mediation also lacks the enforcement power given by law. In the current multi-dispute resolution mechanism, although the court is actively promoting the diversion of disputes,

the parties are not willing to choose arbitration and mediation as a solution. The problem behind this is that the management system of arbitration and mediation has the problems of administration and regionalization, which leads to the lack of sufficient flexibility and efficiency in its actual operation.

3. Innovations of Multi-party Dispute Resolution in Commercial Arbitration

3.1. Promote Multi-Party Communication

Due to the differences of dispute resolution methods, it is necessary to choose different ways according to the situation of individual cases in the process of dispute resolution. For example, in cases where the interests of the parties to the dispute are not very different and the relationship is well maintained, mediation can be chosen to promote communication and understanding among the parties. For those cases that have certain professional and privacy requirements and the parties want to get enforceable legal documents, arbitration can provide final awards and promote their voluntary enforcement, and the enforcement system of arbitral awards can also enhance the enforceability of awards. Litigation is a realistic choice for those business relationships where the parties have great differences and are difficult to maintain, and all parties want to get a case that can completely settle disputes and directly implement the results of dispute resolution. In addition, once the situation of dispute resolution changes, it can also be transferred to other ways based on autonomy of will to meet the changes in the interests of both parties to the dispute.

3.2. Give Full Play to the Market Mechanism

Commercial arbitration has a good foundation for cooperation and development, and the civil and autonomous nature of arbitration can avoid the sensitive topic of judicial power; the internationalization of arbitration is in line with the development direction of internationalization of business environment; the arbitration procedure is flexible, focusing on party autonomy and confidentiality, as well as adequate judicial protection, which meets the needs of commercial subjects for effective and efficient dispute resolution. Therefore, commercial arbitration should be identified as the core mechanism of commercial dispute resolution, and commercial arbitration cooperation should be innovated from two aspects of arbitration legislation docking and arbitration judicial protection, with the institutional guarantee shared by the arbitration service market as the fulcrum. The government should strengthen external supervision, give full play to market competition mechanisms, and allow arbitration institutions to dissolve according to law. It should also give full play to the external supervision of administration and judicature, and punish acts that undermine the fairness of arbitration according to law. The people's courts have continuously improved the review procedures of arbitration judicial review cases from the institutional level, reflecting the equal emphasis on judicial support and supervision of arbitration, and providing more intimate and meticulous legal services for market participants.

3.3. Strengthen Diversified Cooperation

The arbitration institutions shall strengthen cooperation with local judicial organs. They shall establish a docking mechanism for litigation and mediation with intermediate people's courts and intellectual property courts, fully leveraging the procedural flexibility of arbitration in the multi-dispute resolution mechanism and the advantages of the multi-disciplinary professional talent pool of arbitration institutions. Furthermore, they shall establish a team of expert mediators to participate in the docking of litigation and mediation, receive and appoint mediation cases, and form an expert

mediation team. The arbitration authority shall efficiently resolve disputes through the methods of "mediation plus judicial confirmation" and "transition from mediation to arbitration". At the same time, in order to better carry out the docking of litigation and mediation, we signed the Opinions on Jointly Improving the Quality and Effectiveness of Property Preservation, Judicial Review and Execution of Arbitration Cases with the Court, further broadened the channels and scope of information sharing, established an online filing and rapid execution mechanism for arbitration cases, and fully realized information network sharing. We will strengthen cooperation with market supervision departments and trade associations.

We can collaborate with the Market Supervision Bureau to establish a strategic partnership. We can connect the links of arbitration, mediation, and administrative law enforcement together, making our intellectual property protection network more compact and enhancing the level of protection. In addition, we can also cooperate with the People's Mediation Committee for Financial Disputes to facilitate mediation and coordination. We can sign a strategic cooperation agreement on jointly establishing financial dispute arbitration and coordination, utilizing the professional knowledge of arbitrators to handle financial disputes quickly and fairly. By employing this approach, arbitration institutions can not only resolve disputes quickly but also ensure the fairness of the handling process.

3.4. Establish a "one-stop" solution mechanism

In 2021, Guangzhou officially launched the APEC-ODR platform. The platform conforms to the rules of the APEC Framework for Online Settlement of Cross-border Commercial Disputes, has a three-dimensional data and user privacy protection system, supports real-time switching of interface languages, electronic delivery, international electronic signature interface and other functions, and has technologies such as real-time translation of multiple languages and artificial intelligence assistants. It provides a "one-stop" online multi-dispute resolution mechanism for global parties, which integrates negotiation, mediation and arbitration. The platform was selected as the recommended case of "I do practical things for the masses-2021 People's Livelihood Demonstration Project" jointly published by People's Daily, Minsheng Weekly Magazine and Central Party School Publishing House. On May 1, 2022, APEC officially listed Guangzhong as one of the three official providers of ODR platforms in the world, and promoted its application to the world. Since the introduction of APEC official website, the ODR platform has accepted 13 cases with a total amount of nearly 1.1 billion yuan. One of the cases took less than 7 days from the submission of the application to the arbitration award issued by Guangzhong according to the mediation content, which has a wide global enforcement, highlighting the convenience and efficiency advantages of the ODR platform in closing the case, and its effect was well received by the parties.

3.5. Learn from International Experience

At present, China is vigorously promoting the pilot work of the construction of international commercial arbitration centers, such as promoting Beijing to become an international commercial arbitration center serving the construction of international science and technology innovation centers and international communication centers, and building Shanghai into an Asia-Pacific arbitration center facing the whole world. Guangzhou and Shenzhen, Guangdong Province, will be built into an international commercial law and dispute resolution service center linking Hong Kong and Macao to serve the construction of Guangdong-Hong Kong-Macao Greater Bay Area, facing the whole world, and Hainan Province will be built into an international commercial arbitration center serving Hainan's free trade port, facing the Pacific and Indian Oceans, and so on. In 2010, the Singapore International Arbitration Centre (SIAC) launched the Emergency Arbitration Rules and

the Expedited Arbitration Rules, which were widely welcomed and reflected in many arbitration institutions and associations. In 2016, SIAC launched the Early Rejection Rules, becoming the first commercial dispute resolution institution to launch such rules. In 2017, arbitration rules for investment were proposed in the light of the characteristics of different investment treaties and the funding of third parties. Innovation runs through the practice of arbitration in Singapore, which also reflects our principles. We share information and best practices to better handle our work. International judicial cooperation is also a key link in the effectiveness of international arbitration, otherwise we will not be able to enforce arbitration awards. International cooperation is also a catalyst for innovation. Arbitration institutions around the world will do their best to ensure the fairness and inclusiveness of arbitration. They will do their best to make the whole practice more practical and efficient. I believe it has a good future.

4. Conclusion

With the increasing complexity and number of international commercial disputes, it is not in line with China's reality to change the traditional litigation dispute resolution mechanism purely from the system in order to solve commercial disputes fairly, efficiently and professionally, and to create a fair, transparent and predictable business environment. Therefore, the need to improve and perfect the international commercial dispute resolution mechanism on the basis of the original mediation, arbitration and litigation mechanism arises at the historic moment. In order to construct a multi-settlement mechanism of international commercial disputes that not only meets the needs of our country but also adapts to international rules, we should focus on adhering to the bottom line of the principle of rule of law and strengthening the protection of party autonomy.

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