

Study on the Application of Online Arbitration Mechanism in China-ASEAN Free Trade Area

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Abstract: With the entry into force of RCEP and the deepening of China-ASEAN digital economy cooperation, online arbitration mechanism has become an important path to resolve regional economic and trade disputes. This paper systematically researches the application of online arbitration mechanism in China-ASEAN FTA, firstly, analyzing the necessity of mechanism construction in the context of digital trade development; secondly, revealing the technical and systemic challenges such as legal differences among member countries and conflicting rules of arbitration place; and then, proposing the application of the “soft law first + technological innovation + bilateral pilot”, including the formulation of model arbitration agreement, the construction of cloud arbitration platform, and other specific suggestions. Through the synergistic promotion of rules coordination, technology empowerment and talent cultivation, an online arbitration mechanism adapted to regional characteristics can be gradually constructed, providing a new paradigm for dispute resolution under the framework of RCEP.

1. Background on the Application of the Online Arbitration Mechanism in the China-ASEAN Free Trade Area (FTA)

2024, the total trade value between China and ASEAN was 6.99 trillion yuan, an increase of 9.0%, accounting for 15.9% of China's total foreign trade, and the two sides have been each other's largest trading partner for five consecutive years.^[1] The expansion of Chinese e-commerce platforms such as Lazada, Temu, and Shein in the ASEAN market has led to cross-border e-commerce transactions topping 1.2 trillion yuan in 2023, accounting for 18.7 percent of total China-ASEAN trade. However, the growth of cross-border transactions has also brought about a large number of contract fulfillment disputes, intellectual property infringement, payment disputes and other issues. Traditional litigation or arbitration procedures are difficult to efficiently resolve such disputes due to language barriers, high costs, enforcement difficulties, etc. However, online arbitration still has the legal framework of traditional arbitration, and online arbitration has not fundamentally innovated in the fundamentals of the dispute resolution mechanism, nor has it changed the intrinsic nature of international commercial arbitration, but is rather a deformation of traditional arbitration in the Internet era,^[2] which urgently requires the establishment of an online dispute resolution mechanism that adapts to the characteristics of digital trade. This urgently requires the establishment of an online dispute resolution mechanism

adapted to the characteristics of digital trade. This indicates that online arbitration has a broad application prospect in international trade disputes, but only the China International Economic and Trade Arbitration Commission (CIETAC) is currently able to provide online arbitration services in China.^[3]

At the same time, under the framework of RCEP, e-commerce chapter also puts forward new requirements for dispute resolution: such as in e-commerce dispute resolution to encourage members to adopt or maintain alternative dispute resolution mechanisms to deal with e-commerce disputes; in the area of electronic authentication and e-signature, member states are required to recognize the legal effect of cross-border electronic evidence; in the area of protection of personal information, the dispute resolution process is required to comply with the rules of cross-border flow of data. etc. All these indicate that, from an international perspective, among the four types of ADR mechanisms, arbitration is more widely used and more fundamental than mediation, complaint and conciliation.^[4] The online arbitration mechanism of China-ASEAN FTA is bound to make changes to respond to the urgent needs of economic development.

2. Challenges in the Application of the Online Arbitration Mechanism in the China-ASEAN Free Trade Area (FTA)

2.1. Barriers to Legal Harmonization

Article 16 of China's Arbitration Law^[5] provides that an arbitration agreement must be in writing and must expressly agree on the arbitration matters and the arbitration institution to be selected. Although the Electronic Signature Law recognizes the validity of data messages, in judicial practice, courts are still cautious in recognizing purely electronic arbitration agreements. The Thai Arbitration Act B.E. 2545 (2002), on the other hand, specifies in Articles 9 and 10 that the written form of an arbitration agreement includes “any means by which the contents of the agreement may be recorded”, which covers electronic communications. This reflects the difference in their recognition of electronic signatures. Other ASEAN countries, such as Vietnam, recognize data messages in their E-Commerce Law, but impose additional restrictions on certain types of electronic agreements (e.g., financial arbitration) that may affect the establishment of online arbitration agreements. This suggests that if a Chinese or Thai enterprise agrees to online arbitration through an electronic contract, Chinese courts may refuse to enforce it on the basis of “lack of conformity with the written form”, whereas Thai arbitral institutions recognize its validity, which could lead to difficulties in enforcing the award across borders.

The same problem arises with the virtualization of the law of the place of arbitration. In traditional arbitration, the principles for determining the place of arbitration are the “principle of party autonomy” and the “principle of the closest connection”, and one of the major problems faced by online arbitration platforms is the issue of the place of arbitration. Some online arbitration platforms do not have relevant arbitration institutions to correspond with them, such as easy simple network needs relevant arbitration institutions to correspond with them, therefore, the place of arbitration of online arbitration platforms need to be clarified.^[6] For example, the Malaysian Arbitration Act adopts the framework of the New York Convention (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York in 1958, is the international treaty with the largest number of contracting parties, the greatest impact and the most successful operation in the field of arbitration, and undoubtedly one of the most important pillars on which the edifice of international commercial arbitration relies)^[7], which requires that the arbitral awards be bound by a statutory “place of arbitration”, and the online arbitration platform needs to clarify the place of arbitration. Online arbitration proceedings are still subject to the designation of the geographic place of arbitration, which may otherwise affect the recognition and enforcement of the award. The Supreme Court of the

Philippines explicitly rejected the concept of a “virtual seat of arbitration” in a 2021 jurisprudence, holding that an arbitral proceeding must be tied to a physical jurisdiction, which puts purely online arbitral awards at risk of being invalidated in that country. This suggests that if an arbitral institution offers a fully virtual arbitration process, but the parties choose Malaysia or the Philippines as the place of arbitration, the award may be unenforceable due to non-compliance with local laws.

2.2. Variable Level of Legal Skills

Although the form of participation is different, the parties involved remain the same. However, the new technology embedded in the new form will bring new requirements to all parties involved in arbitration. First of all is the arbitrator, online arbitration procedures must be different from the ordinary offline arbitration, the parties to the expression of the views of the reception of the form of evidence given and credibility of the judgment, the arbitration process of the rhythm of the control and other issues need to arbitrators have a higher level of legal professionalism to face the arbitration process may arise in the problem. Secondly, lawyers, like arbitrators, may lose body language and other visual or audio cues normally used to assess the credibility of witnesses in online arbitration due to technical reasons such as equipment, which may be lost in the screen.^[8] A significant amount of online arbitration practice suggests that assessing witness credibility remotely will be more difficult. Not only that, but the online format also requires lawyers to have adequate technical skills and to adapt their advocacy skills to remote hearings to the same effect as in offline arbitration, which places a higher level of professionalism on the lawyers.

2.3. Technical Issues Applicable to the Mechanism

The application of online arbitration mechanisms inevitably encounters technical problems, of which security and signal stability are the biggest influencing factors. In recent years, there have been numerous cyber-attacks, and the security of online meetings is also a hot topic. Commercial arbitration involves sensitive commercial information of both parties, which definitely needs to be kept confidential and not disclosed, so how to ensure the information security and information privacy of both parties participating in the meeting is also a key point, including the common recording behaviors in the meeting, such as audio recording, video recording and so on, which also need to be regulated. In addition, how to ensure the continuous stability of the meeting is also a problem that needs to be explored, the characteristics of the network to help us break the limitations of time and space, to achieve low-cost and high-efficiency online arbitration, but also because of the technical and signal problems brought about by the arbitration process is not stable.

3. Progress in the Application of the Online Arbitration Mechanism in the China-ASEAN Free Trade Area (FTA)

3.1. Legal Synergy Pathways

First of all, it is necessary to construct the applicable law, that is, to implement the “soft law first” mode: to clarify the validity of electronic arbitration agreements, to unify the recognition standard of “written form” in China, Thailand and Vietnam, and to allow e-mail and blockchain deposits to be used as the carrier of valid arbitration agreements. At the same time, incorporating the “default arbitration rules” clause, if no specific procedures are agreed upon, the online arbitration process recommended by RCEP will be automatically applied to reduce negotiation costs. In terms of standardization, the RCEP E-Commerce Committee will take the lead in formulating data security standards for cross-border online arbitration, such as rules on encrypted transmission and cross-border

storage, so as to balance the efficiency and data sovereignty demands of member states. And guidelines on electronic evidence authentication will be issued to clarify the rules for courts in ASEAN countries to adopt blockchain deposits, time stamps and other technologies.

Secondly, there is a need to innovate on the key provisions: the design of the “floating place of arbitration” clause under section 19 of the Hong Kong China Arbitration Ordinance^[9] allows the parties to agree in the online arbitration agreement that “the laws of the place of arbitration shall not govern the rules of procedure” or the arbitral tribunal shall virtualize the place of arbitration in accordance with the “principle of closest connection”. At the same time, we can promote the signing of bilateral agreements on mutual legal assistance between China and Malaysia and China and the Philippines, so as to recognize the validity of awards issued by the floating place of arbitration. In addition, it is also possible to formulate a “blacklist” exception mechanism for the recognition of the validity of electronic service, i.e., to recognize the validity of electronic service in principle, but to set up a “blacklist” exception - if the party's country explicitly prohibits a particular mode of electronic service, it will automatically switch to that country's recognized alternative means such as mutual legal assistance (MLA). The RCEP Secretariat will regularly update the “blacklist” of countries and the exception rules to enhance operability.

3.2. Technology Integration Program

By using layered technology to structure the online arbitration platform, a regional cloud arbitration platform is constructed at the foundation layer - relying on the infrastructure of the China-ASEAN Information Port, a cloud arbitration platform with multi-language support is constructed to realize intelligent case management (supporting automatic filing of electronic files and real-time multi-language mutual translation), Asynchronous trial (solving the problem of time zone differences among ASEAN countries), blockchain deposit (docking with judicial blockchain nodes in various countries to ensure the effectiveness of electronic evidence); developing smart contract execution system at the application layer - taking cross-border letter of credit disputes as a pilot scenario, deploying automatically triggered arbitration clauses, i.e., automatically starting the arbitration procedure when the default conditions of the smart contract are fulfilled, and developing automatic evidence capture and arbitration procedures, as well as developing automatic evidence extraction. Arbitration program, development of evidence automatic capture module to realize real-time retrieval of transaction data, and establishment of award automatic execution channel.

In terms of security guarantee mechanism, it innovates digital identity authentication to guarantee procedural security, connects Thailand's digital identity authentication system (NDID) with China's "net certificate", develops arbitration-specific digital identity verification channel - biometric + blockchain double authentication, and cross-border credible mutual recognition of arbitrators' and parties' identity information; establishes a dynamic security Setting up a dynamic security protection mechanism to establish a regional arbitration data security shield - adopting a program that is compatible between China's commercial cryptographic algorithms and the encryption standards of ASEAN countries. The above program can build a new paradigm of online arbitration in line with the era of digital economy through the dual drive of technological innovation and security guarantee.

3.3. Implementation of the Safeguards System

Improving the level of legal technology by building a regional team of arbitration professionals. For example, in the context of existing cooperation, the China University of Political Science and Law and the National University of Singapore have set up the ASEAN Online Arbitration Accreditation Program, which has developed a specialized cross-border online arbitration course covering core contents such as the RCEP e-commerce rules, the comparison of arbitration laws of

ASEAN countries, and the identification of electronic evidence. It issues professional qualification certificates that are mutually recognized bilaterally, cultivates composite arbitration talents who are familiar with Chinese, English and ASEAN languages, and establishes a "virtual arbitration tribunal" practical training module, so that trainees can improve their practical skills through simulated online case handling. In addition, a Vietnam-Guangxi bilingual arbitrator roster has been established, with arbitrators proficient in both Chinese and Vietnamese languages jointly certified by the Guangxi Arbitration Association and the Vietnam Chamber of Commerce and Industry (VCCI), and special training in dispute resolution skills in e-commerce and cross-border logistics for the characteristics of Sino-Vietnamese trade disputes along the border, and a roster management office has been set up in the Beibu Gulf International Commercial Arbitration Center to provide continuous career development support.

In terms of enforcement facilitation measures, the "last kilometer" of award landing has been opened through the establishment of an online arbitral award fast review window in Guangxi Pilot Free Trade Zone, the development of an award intelligent pre-trial system to automatically check the compliance of arbitration procedures and the operability of the enforcement subject matter, the launching of a pilot project for docking with the Singapore Supreme Court's e-enforcement system, and the establishment of a blockchain tracking mechanism on the status of enforcement to realize that all parties can query the progress of the case in real time, and so on. In this way, the final implementation of the ruling is opened.

4. Conclusion

The RCEP e-commerce rules and the development of digital trade have provided institutional space and technical possibilities for online arbitration, but the existing legal framework is still lagging behind obviously. Differences in the determination of the validity of arbitration agreements among member states and conflicts in the rules of the place of arbitration are constraining the wide application of online arbitration. However, the development advantages of online arbitration are also obvious: providing a strong dispute resolution guarantee mechanism for cross-border e-commerce, allowing parties to resolve disputes in a fast and effective manner through an arbitration mechanism that is mutually recognized by the parties, and introducing the participation of experts in related businesses in dispute resolution. Online arbitration will boost the development of cross-border e-commerce, and at the same time maximize the advantages of online arbitration.^[10] In the future, efforts should be made to promote the construction of a regularized cooperation mechanism under the framework of RCEP, so that online arbitration can truly become a "safety valve" for regional digital economic and trade cooperation. Along with the deepening of the construction of China-ASEAN digital community, online arbitration mechanism is expected to develop a new governance model with more regional characteristics.

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request arbitration; (b) the subject matter of arbitration; (c) the arbitration committee selected."

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