

Online Arbitration of E-commerce Disputes in the People's Republic of China: Due Process Concerns

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E-commerce has been rapidly growing in China which has quickly become the largest e-commerce market in the world. However, this has also led to an increasing number of e-commerce disputes. In practice, such disputes are resolved by online dispute resolution. As the results of online dispute resolution are not legally binding, however, China's online arbitration procedure has been criticized especially regarding the conflicts between party autonomy and institutional autonomy. China's judicial reviews would claim that such awards cannot be enforced. Therefore, there is a call to make online arbitral awards enforceable and to expand the application of online arbitration to more e-commerce disputes in China. This paper examines how to best analyse and address such conflicts. We explain the importance of arbitral institutions' autonomy in terms of ensuring access to justice as well as the importance of limiting party autonomy in certain circumstances due to the rise in online disputes.

Keywords: Online Arbitration, Judicial Reviews, Digital Justice, Parties' Procedural Rights, Institutional Autonomy

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I. INTRODUCTION

A. Online Arbitration in E-commerce Disputes and Judicial Review

E-commerce is a technological business mode that allows buyers to make online purchases and receive goods via local package delivery or pickup from sellers. E-commerce offers consumers the benefits of lower search costs and more product variety than conventional retail stores as well as access to merchants who do not have local brick-and-mortar stores.¹ These advantages have reshaped consumption patterns and quickly led China to become the largest e-commerce market in the world.² However, the rising popularity of e-commerce has also resulted in a larger number of commercial disputes. Disputes arising from e-commerce tend to involve less value and occur more frequently than conventional commercial disputes. There is no doubt that conventional methods of dispute resolution, such as litigation and alternative dispute resolution (ADR), are not suitable for most e-commerce disputes. Rather, such disputes should be resolved through online dispute resolution (ODR), a less costly and more efficient alternative. In the first two decades of the twenty-first century, e-commerce provided a proof of concept for ODR. In China, for example, Alibaba, one of the largest e-commerce mega-platforms globally, adopted the ODR processes to resolve hundreds of millions of disputes a year.³

The ODR process, as a new method of dispute resolution, has been used to resolve a substantial number of small-claims e-commerce disputes. However, it is difficult to ignore that ODR awards are not legally binding the parties. The enforcement of results or awards would just depend on the relevant e-commerce mega-platform. Therefore, online arbitration is more suitable than ODR for resolving certain online disputes, especially in the area of cross-border e-commerce. Certain arbitral institutions in China such as the Shenzhen Court of International Arbitration (SCIA) also provide arbitral rules for e-commerce, which state that the scope of application of the rules includes “disputes arising from online transactions.”⁴ As online transactions typically involve e-commerce, online arbitration is an appropriate way to resolve e-commerce disputes between businesses and between businesses and customers.

Binding online arbitration, as compared with the standard ODR process, offers advantageous award enforcement. However, courts may not enforce the online arbitration awards for the due process concerns. Whether a prior online arbitration

award could be enforced was controversial until the Supreme Court of the People's Republic of China (PRC) stated that "prior online arbitration" does not comply with the Civil Procedure Law or the Arbitration Law, so that the resulting awards are not binding.⁵

The courts' main arguments regarding online arbitration concern due process, specifically the validity of electronic services and written hearings, which fail to maintain consistent standards. Some judges hold that written hearings should be applied in online arbitration; they claimed that written hearings would violate neither the parties' autonomy nor their basic procedural rights, because parties' choice of online arbitration for dispute resolution involves default consent of written hearings.⁶

In contrast, some online arbitration awards are deemed unenforceable by courts. The primary argument against written hearings concerns the violation of the basic procedural rights of the parties to disputes. Articles 15 and 75 of China's Arbitration Law names the China Arbitration Association, a social organisation charged with the regulation of arbitration commissions, as having the authority to establish arbitration rules. Institutional arbitration may also entail the formulation of interim arbitration rules and regulations. However, certain local courts have claimed that the China Arbitration Commission does not provide specific rules for online arbitration and China's Arbitration Law and Civil Procedure Law do not include clear provisions for online arbitration. They have further claimed that the written hearing procedures stipulated in some arbitral institutions' rules do not protect parties' basic procedural rights according to China's Arbitration Law, thereby violating the parties' right to due process.⁷

Additionally, Article 39 of China's Arbitration Law requires an arbitration tribunal to hold oral hearings to hear a case, which states: "Whereas the parties concerned agree not to hold oral hearings, the arbitration tribunal may give the award based on the arbitration application, claims and counter-claims and other documents."⁸ If parties agree to resolve disputes via online arbitration, in the absence of an agreement to a written hearing, such courts have claimed that the written hearing violates the above rule.⁹

The other major controversy surrounding the online arbitration process concerns the electronic service of legal notice, which also fails to maintain a consistent standard of judicial review. Certain judicial reviews consider electronic service

to violate due procedure. According to such reviews, Article 87 of China's Civil Procedure Law states that awards may not be served electronically.¹⁰ Therefore, institutional arbitration should not serve arbitration awards electronically, either; to do so would fail to protect the parties' basic procedural rights and violate due process.¹¹

Furthermore, even though a party subject to the execution of an arbitral award has electronically received the appropriate legal notice documents and the arbitral tribunal has confirmed that the party has received such documents, some local courts in China may still assume electronic service to constitute a procedural violation, regardless of the successful transmission of information.¹² However, other local courts do not consider electronic service to be a procedural violation, arguing that when parties agree to resolve disputes by online arbitration, they agree to abide by the institutional arbitral rules.¹³

B. Research Question and Study Goal

In China, the enforcement of some online arbitration awards and the refusal to enforce others highlight the tension between the protection of parties' procedural rights and the need for efficient dispute resolution. The courts rejecting online arbitration awards focus more on parties' procedural rights, whereas the courts finding written hearings and electronic service not to constitute procedural violations focus on improving the efficiency of dispute resolution.

The protection of parties' procedural rights reflects the need for party autonomy in the arbitration process. In a large number of cases, even when the parties reach an agreement to resolve their disputes via online arbitration, they do not agree on specific forms of service or hearing. Whether electronic service and written hearing violate party autonomy in these cases is doubtful. Furthermore, efficient dispute resolution requires arbitral institutions, arbitral tribunals, and arbitrators to act as diligent case managers in all cases not only conducting arbitrations fairly, but also doing their utmost to avoid unnecessary delay or expense. Avoiding unnecessary delay and expense may conflict with party autonomy to a certain extent. However, arbitral institutions must follow applicable rules specifying guarantees of efficiency to ensure institutional autonomy. In online arbitration, institutional autonomy thus requires electronic service and written hearings. Online arbitration's main method of notice is electronic service through the arbitration service platform. Furthermore,

online arbitration allows for both virtual and written hearings. Some institutional arbitration relies mainly on written hearings to promote cost efficiency, which may conflict with party autonomy. Therefore, from the authors' point of view, balancing party autonomy and institutional autonomy is crucial to guarantee the validity of online arbitration awards and the further development of online arbitration.

As mentioned above, the high standard of judicial review of online arbitration awards in China reflects the tension between the protection of parties' procedural rights and the need for efficient dispute resolution. However, the high standard of such reviews has rendered some online arbitration awards unenforceable, limiting the further development of online arbitration.

Against this backdrop, this research aims to develop online arbitration, particularly given the high volume of online disputes generated in Chinese trade. For this purpose, the authors may raise a question: How should the conflict between party autonomy and institutional autonomy be analysed and addressed in judicial review in China? This research paper is composed of five parts including Introduction and Conclusion. Part two will define the procedure and characteristics of online arbitration, according to the development of online arbitration in China. Part three will discuss theory related to access to justice and associated issues as well as access to digital justice. Part four will present the international expedited procedure and associated legal concerns, and compare the mandatory rules of the expedited procedure to those of the online arbitration procedure.

The standard of judicial review of online arbitration awards is considered high in China. The online arbitration procedure is fully supervised in accordance with the review standards of traditional arbitration. It protects parties' procedural rights in some circumstances. Simultaneously however, it limits the advantages and further development of online arbitration. The judicial review of online arbitration should thus improve arbitral institutions' autonomy and limit party autonomy to accelerate the development of online arbitration to resolve the rising number of disputes arising from e-commerce in China.

II. OVERVIEW OF ONLINE ARBITRATION

A. What is “Online Arbitration”?

By definition, online arbitration is conducted online. The conceptual basis of online arbitration is similar to that of conventional arbitration, as the Internet and other technologies are merely tools applied in arbitration not changing its underlying principles. Conventional arbitration, or offline arbitration, is based on such principles as freedom of contract, confidentiality, cost effectiveness, due process, binding decisions, and reducing court intervention.¹⁴ Online arbitration embraces the same basic principles like conventional arbitration, as well as the same rights-based approach.¹⁵ In this regard, online arbitration is quite similar to offline arbitration. However, online arbitration is more cost effective and efficient than offline arbitration. It eliminates the need to travel to a physical location for an arbitration hearing as well as the need to file a large volume of documents.¹⁶

However, online arbitration is not just the combination of an online mechanism and traditional arbitration. Some of the key elements of online arbitration differ from those of conventional arbitration. For example, Badiei points out that: online arbitration agreements, such as business-to-consumer agreements, are not always consensual in practice; decisions in online arbitrations are not always binding in certain judicial systems; and due process is flexible because of the emphasis placed on its cost effectiveness and speed.¹⁷

We support the latter opinion, i.e., that online arbitration is not a branch of conventional arbitration based on other reasons. According to this theory, the combining of technology and dispute resolution transpires in three stages, namely technology-assisted, technology-based and technology-facilitated ODR.¹⁸ At the technology-assisted stage, information dissemination and exchange technologies are harnessed to facilitate the resolution of disputes between parties. For instance, the Internet technology is used to publish notice as a service of process. “Technology-based ODR” refers to the use of technology to resolve disputes automatically. Online arbitration in China remains at both the technology-assisted stage and technology-assisted stage. The last stage, “technology-facilitated ODR,” refers to the use of technology not only to resolve disputes automatically, but also to prevent disputes and other potential problems.

There is no standard definition of “online arbitration” yet. However, a review of the literature indicates that early studies define the term according to the stage of technological development at the time.¹⁹ Thus, “online arbitration” was first defined in terms of technology-assisted ODR, which has generally endured until today. However, the Internet and other technologies presently used in ODR not only serve as the mechanism, but can also affect the value judgment in dispute resolution, as may be observed in intelligent arbitration applications. Therefore, online arbitration tends to be developed at the second stage. Considering that technologies can affect value judgment in some circumstances, this study defines “online arbitration” as a process by which parties may consensually submit a dispute to a governmental decision maker, selected by or for the parties, to render a binding award, issuing a decision resolving the dispute in accordance with a neutral procedure that includes due process as well as the parties’ agreement or arbitration tribunal decision. We further clarify that the online arbitration process may include the collection of information and a certain degree of automated processing.

B. Characteristics of Online Arbitration

The differences between offline arbitration and online arbitration can be found in the associated institutional rules and practices. The rules of online arbitration reflect this arbitration method’s particular characteristics of electronic service and written hearings. Online arbitration offers more ways of hearing disputes than offline arbitration does, although this is not specified in the online arbitration rules. Online arbitration may be categorised into three types according to the type of hearing, namely artificial intelligence (AI) arbitration, written hearing online arbitration, and virtual hearing online arbitration. Briefly, AI arbitration is the application of AI technology in dispute resolution to resolve similar disputes in batches. Written-hearing online arbitration means the arbitrator reviews only the written documents relevant to the case. It is a type of online arbitration in which arbitrators can judge disputes online according to the written documents. Virtual hearing online arbitration is a unique form of arbitration which resolves disputes originating both online and offline. The Chinese courts have not expressed a different level of due process concerns with respect to these types of arbitration.

III. ANALYSIS BASED ON ACCESS TO DIGITAL JUSTICE

A. Access to Justice and Associated Theories

“Access to justice” is a fundamental human right. The term “access to justice” refers to “the ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through formal and informal justice systems, for grievances in accordance with human rights principles and standards.”²⁰ Theoretically, when an individual’s liberty or property is jeopardised, “access to justice” is generally guaranteed by equal access to an independent, impartial process entailing a fair and just trial.

“Access to justice” is a universal good that protects the rights of the rich and poor equally. However, it is difficult to implement in the short term. The equal access to justice may be developed via a movement comprising three waves in the last century. The first wave of the access to justice movement began in the early 20th century aiming to address problems faced by specific people or groups who were poor or otherwise socially ostracised.²¹ At this time, Reginald H. Smith, a Boston lawyer, became the most prominent advocate for legal aid with his Carnegie Foundation Report on Justices and the Poor (1919).²² He argued that the legal profession should have an obligation to take charitable cases and providing free legal counsel to the poor should be an elementary requirement of justice.²³

With these developments, the number of public interest lawsuits submitted to courts rose, contributing to the second wave of the access to justice movement. The second wave in access to justice was designed to overcome the organisational obstacles to civil and political liberties. Cappelletti argued that in modern economics, individuals acting alone lack the resources to protect their rights, as their interests are simply too diffuse.²⁴ The second wave of the access to justice movement therefore focused on enforcing and protecting the public interest. The focus of the justice movement was expanded beyond the poor to address the rights of those who were not usually disadvantaged but lacked equal access to justice. The third and final wave of the access to justice movement comprised the development of ADR processes and the expansion of efforts beyond the US. As caseloads of courts were rapidly increasing, arbitration was introduced to community as an avenue for addressing conflict in lieu of litigation in the 1970s.²⁵ The Global Pound Conference

of 1976 was a significant turning point in the recognition of access to justice issues. At the conference, the US Supreme Court Chief Justice Warren Burger discussed the ills of the legal system,²⁶ including high costs related to a slow, complex, and overburdened court system and potential solutions to these problems.²⁷ Since then, “access to justice” has included both submitting claims to the courts and using ADR.

The access to justice movement further accelerated relevant debates about the nature of justice and the way to access it. Then, it mainly focused on the question of whether ADR could have the capacity to enhance “access to justice.” Supporters of ADR believe that it is necessary to change the court system and courts should not be the principal venue of dispute resolution. One study of civil litigation points out that litigation is only the tip of a pyramid in which some claimants hold another responsible for perceived injuries and an even smaller number confront the responsible party to seek redress.²⁸ This structure is maintained by a justice system that cannot provide unlimited access to justice.²⁹

When a limited number of cases and claims can be processed by the courts, the access to justice via the court system is limited. At the Global Pound Conference, Frank Sander presented his vision of a “multi-door courthouse,” which means a venue offering various processes tailored to the resolution of different types of disputes.³⁰ Sander developed this vision for the future, advocating “fitting the forum to the fuss” by matching specific kinds of disputes to corresponding kinds of processes.³¹ This would allow courts to reduce their caseloads and accelerate the growth of both the number and the variety of ADR programs. Such expansion of ADR would reduce not only caseloads but also costs, which would allow more claims to be processed, thereby increasing access to justice. However, opponents of the multi-door courthouse proposal, such as Owen Fiss, considered courts to be a public body bearing sole responsibility for resolving legal grievances justly and fairly.³² Researchers also suggested that, in practice, private alternatives to the public courts might harm the poor, women, and minority groups in comparison with the powerful, wealthy, and majority groups,³³ as advantaged groups such as the rich and powerful could more easily control ADR, harming disadvantaged groups in the process. As a result, although the development of ADR may facilitate the processing of claims, it may not realize equal access to justice.

B. Access to Justice vs. Access to Digital Justice

Digital justice is a leverage of digital technology to establish fair and efficient legal processes. Rabinovich-Einy and Katsh proposed the theory of access to digital justice, based on the theory of access to justice. The conventional theory of access to justice cannot explain the explosion of online disputes from e-commerce in the era of digital technology and the Internet communication. The court system and conventional ADR methods such as commercial arbitration have proven to be inadequate to deal with the volume and unique characteristics of online disputes. Thus, it is necessary to address their shortcomings.³⁴

ODR is an effective method of handling disputes in cyberspace, especially those arising from e-commerce. It acknowledges the unique qualities of online interactions, which represent three main shifts: “(1) The shift from physical to online communications; (2) the shift from a human “third party” to the “fourth party”; (3) the shift from a “data-less” mentality to processes that revolve around data.”³⁵ These shifts will be discussed in more detail below.

Rabinovich-Einy and Katsh emphasized that efforts to improve access to digital justice should simultaneously enhance both access and justice through the leverage of technology. Access may be improved by the wide availability of online redress and prevention mechanisms as well as by algorithms that can support large numbers of disputes and offer easy-to-use, plain-language, and tailored processes. Access to digital justice is more complicated than access to conventional justice. The former involves not only accessing equal and fair justice, but also using data and algorithms in a way that affects parties in an even-handed manner subject to quality control.³⁶ Rabinovich-Einy and Katsh also pointed out the importance of privacy in digital dispute prevention, noting that potential problems such as infringement of individual privacy and the use of private information in online platforms merit serious attention.³⁷

C. Can Online Arbitration Ensure Access to Digital Justice in China?

Online arbitration has the capacity to provide equal access to digital justice. In order to provide access to digital justice via online arbitration, the arbitration processes should reflect Rabinovich-Einy and Katsh’s three shifts.³⁸ Therefore, it is the authors’ point of view that, the first shift concerns a transition from in-person interaction in a physical space to online communication. The initial definition of

“online arbitration” clearly focused on disputes in cyberspace, which is the main difference between ODR and conventional arbitration. Resolving disputes in cyberspace can enhance efficiency, as this forum provides easy, remote, and round-the-clock communication, so that parties need not miss work or pay for travel. The first shift is the original advantage of online arbitration; with the technological development, online arbitration procedure can be virtualised from partial to full.

The second shift involved in the development of digital justice concerns the expanded capacity associated with a “fourth party” that is not dependent on human capacity or physical space. This allows for a much larger volume of disputes to be resolved, including such problems that were once considered too trivial to resolve due to limited capacity. AI is a form of online arbitration involving the “fourth party” of technology. Such technology would be adopted as a tool to both resolve disputes and provide value judgment references for arbitrators in certain circumstances. It should be noted that AI in arbitration is not a fully automated process; awards must still be issued by a neutral, human third party, as in other types of arbitration. Rather, AI in the arbitration process enables the automated generation of documents, such as arbitration applications and lists of evidence materials, the collection, organisation, and categorisation of various data and information related to the case. It also helps arbitrators clarify the main facts of the case. These functions reduce the need for human participation. Furthermore, with a large number of cases on institutional arbitrations’ cloud platforms, arbitrators can more easily compare case data and systematically determine the relevant civil procedure law, its judicial interpretation, and other applicable laws and regulations. These platforms ensure that case judgments are fairer, more equitable, and more consistent with the arbitration rules, regulations and laws. They allow arbitrators to intelligently analyse the evidence provided by parties in support of their claims based on the data of previous cases, thereby providing the relevant results and analysis opinions to arbitrators for reference.³⁹ Therefore, from the author’s point of view, the fourth party of digital technology replaces part of the manual work of arbitration and assists in arbitral tribunals to resolve disputes.

AI in online arbitration requires the collection and processing of data, which leads to the third shift from traditional arbitration. Big data allows monitoring the quality of processes and outcomes; uncovering biases and problems in the operation of dispute resolution algorithms and even the prevention of disputes. Online

commercial arbitration in China is subject to Article 40 of the PRC Arbitration Law regarding confidentiality. In addition, some online arbitral institutions guarantee the security of data transmitted online and encrypt case data to keep cases confidential.⁴⁰ From the author's point of view, this is a higher standard of confidentiality than offline arbitration offers.

Although arbitral institutions must fulfil any legal confidentiality obligations, with the development of binding and non-binding platforms, parties have learned to cooperate extensively to break down information barriers. For example, hash value verification, electronic signature, credible time stamp storage, and blockchain storage are applied by some non-binding platforms to ensure data authenticity and meet confidentiality requirements. Also, some institutional arbitrators sign data-sharing agreements with judicial institutions.⁴¹

As online arbitration remains in the initial stages of the third shift, however, arbitrators lack data-coordination and -sharing mechanisms. The use of big data in legal processes has not yet been regulated. As such, data have not been used in the prevention of disputes. In other words, although the prevention of disputes through data analysis does not fully meet the requirements of digital justice, dispute resolution essentially conforms to the requirements of digital justice in terms of procedural assistance, and data collection and leverage. According to the above analysis and from the authors' point of view, online arbitration is one type of ODR which enables access to digital justice, both in theory and in practice.

D. Importance of Arbitral Institutions' Autonomy for Access to Digital Justice

Arbitral institutions' autonomy is necessary to facilitate access to digital justice. As discussed above, online arbitration can improve access to digital justice. According to Rabinovich-Einy and Katsh, in order to improve dispute resolution, one must enhance both access and justice by leveraging technology.⁴² Specifically, online redress, prevention mechanisms and algorithms can be used to enhance access, while using and protecting personal data and algorithms can enhance digital justice.

Rabinovich-Einy and Katsh's first shift concerns the change from physical to online communications.⁴³ From the authors' point of view, this shift in online arbitration reflect in arbitration venue. Allowing institutional autonomy would accelerate this shift. For example, although electronic service and written hearings are controversial matters in online arbitration, to grant institutional autonomy

would be to admit the suitability of these mechanisms. The second and third shifts in the theory of access to digital justice also require improved autonomy on the part of arbitral institutions. These shifts relate to data collection and use, such as using algorithms to provide advice to arbitrators. Such data use can improve the efficiency of dispute resolution. However, improved institutional autonomy is needed to allow institutional arbitrators to collect and leverage data in some circumstances.

Access to digital justice emphasises not only on “access” but also on “justice.”⁴⁴ Therefore, in addition to listing the reasons for arbitral institutions’ autonomy or the advantage of allowing institutional autonomy, digital justice should be discussed. Thus, “digital justice” refers not only to elements of conventional justice including party autonomy, but also to procedural assistance and the collection and leverage of data in online arbitration. We consider party autonomy to be necessary for certain kinds of disputes. However, some types of disputes require that care be taken in the use of technology and leverage of data. It is thus necessary to address these matters as they pertain to the categories of cases and to form clear boundaries for online arbitration to provide the desired equal access to digital justice.

IV. Expedited International Commercial Arbitration Procedures

A. Overview

Theoretically, commercial arbitration offers certain advantages over trial, such as flexibility, confidentiality, arbitrator expertise, enforceability, conclusiveness, speed, and cost-efficiency, thereby encouraging parties to choose this method of dispute resolution, especially for cross-border disputes.⁴⁵ Entering the digital age, however, commercial arbitration procedures consider too slow and expensive,⁴⁶ losing much of their appeal. Expedited procedures were thus proposed to increase the efficiency of arbitral proceedings, specifically by solving the issues of time and cost. The first such expedited procedure to be introduced was the 2004 version of the Swiss Rules of International Arbitration. Since then, the term “expedited procedure” has become commonplace in institutional rules.⁴⁷ Leading arbitration institutions are the Singapore International Arbitration Centre, the London Court of International Arbitration, the International Chamber of Commerce (ICC), and

the Hong Kong International Arbitration Centre which have introduced effective expedited procedures.

The expedited procedure is used in commercial arbitration following the principles of commercial arbitration with special features. For example, the relevant ICC arbitration rules mandate the appointment of a sole arbitrator with broad arbitral tribunal powers for an expedited procedure. Accordingly, the ICC court can appoint a sole arbitrator regardless of any contrary provision of the arbitration agreement between parties.⁴⁸ In terms of the broad powers granted to the arbitral tribunal, the expedited procedure contains a non-exhaustive list of measures which may be used by the tribunal to guarantee the efficiency of the proceedings. The arbitral tribunal can render decisions on disputes solely based on submitted documents, without hearing and examination of witnesses or experts. Article 30 of the 2021 ICC Arbitration Rules, by referring to Appendix VI, Article 1(2), state that expedited procedures shall apply automatically to cases in which the amount in dispute does not exceed USD 2 million or USD 3 million, depending on the date of the arbitration agreement.⁴⁹ Article 30 also provides that such cases are subject to the ICC court's determination, unless the parties decide to opt out or the ICC Court of Arbitration considers such procedures inappropriate under the given circumstances.⁵⁰ This may give rise to criticisms of expedited procedures based on due process concerns.

B. Balance between Institutional Autonomy and Party Autonomy

Expedited procedures may be criticized for the due process violations. Due process requires that all proceedings be fair; every party be treated equally; the opportunity to be heard be given fairly; and responding to the opponent's case before a decision is made by a lawfully constituted tribunal or decision-maker.⁵¹ The due process concern regarding expedited procedures in international arbitration mainly centres on party autonomy, which will be discussed in more detail below. While efficiency is also crucial in expedited procedures, what may be regarded as an emerging rule states that arbitrators are in all cases to act as diligent case managers; to conduct arbitrations fairly; and to do their best to avoid unnecessary delay or expense.⁵²

1. Primacy of Party Autonomy in Determining Procedure

In general, the principle of party autonomy, which emerged in the 19th century, is based on the choice of law in a contract.⁵³ However, this principle has broader

implications in the area of commercial arbitration. “Party autonomy” in the context of arbitration refers to the freedom of parties to agree on the procedure to be followed by an arbitral tribunal in a proceeding to resolve a dispute between them.⁵⁴

Party autonomy has been endorsed by not only national laws, but also the rules of international arbitral institutions and organizations. The PRC Arbitration Law explicitly require that parties’ choice of procedural provisions be respected.⁵⁵ Parties to disputes can thus make an agreement for the arbitral procedure. If a tribunal does not respect the parties’ autonomy in terms of choosing their procedural provisions, an arbitral award cannot be enforced in the Chinese courts.⁵⁶ This provision also appears in international commercial arbitration, such as the New York Convention and the United Nations Commission on International Trade Law Model Law.

Theoretically, arbitration is different from court trials because of this ability of parties to agree on procedure. As commercial arbitration only occurs as the result of parties’ consent, a unilateral decision by the arbitral institution cannot easily overrule the parties’ choice of arbitration rules.⁵⁷ Thus, the authority of arbitral tribunals comes only from agreements between parties. If the arbitral institution or tribunal cannot respect the parties’ arbitration agreement by exceeding the mandate entrusted to it (in this case, expedited procedure), the main characteristic of party autonomy is lost, as the jurisdiction exercised may be outside the scope of what the parties bargained for and would voluntarily have chosen. Therefore, it is the authors’ opinion that there is no doubt that party autonomy is the key principle of arbitration.

However, party autonomy in commercial arbitration is not unlimited, but generally restricted first by the arbitration agreement. When disputes are not resolved by commercial arbitration, they should instead be submitted to a court. Articles 2 and 3 of the PRC Arbitration Law state that contractual disputes and other disputes over rights and interests in property may be arbitrated.⁵⁸ Furthermore, party autonomy may be subject to public policy in some circumstances, especially in international commercial arbitration based on local social, economic and cultural conditions. Therefore, it may vary from country to country.

2. The Value of Efficiency

The value of efficiency is relevant to institutional autonomy. An institutional arbitration involves the intervention of a specialised institution that administers

the arbitration process. Institutional arbitration has its own essential characteristics that differ from those of ad hoc arbitration. The first essential characteristic is that such arbitral proceedings are conducted under pre-formulated arbitration rules.⁵⁹ Generally, each institution has its own set of rules that provide a framework for its arbitrations and its own form of administration to assist in the process. Once parties choose institutional arbitration to resolve their disputes, the rules of that arbitration institution would become part of their arbitration agreement. Furthermore, the institution is obliged to administer the arbitration by a service contract which enters into with the parties. Conversely, ad hoc arbitration is governed by rules tailor-made by the parties themselves. Institutional arbitration is preferable to ad hoc arbitration because it can spare the efforts of the parties and their attorneys for determining the arbitration procedure and drafting an arbitration clause.⁶⁰

3. Balancing Party Autonomy with Efficiency in Expedited Procedures

In terms of party autonomy in expedited international arbitration procedures, Rules for Expedited Arbitrations of SCC's Arbitration Institute may differ from standard (non-expedited) arbitration rules.⁶¹ Given that, the meaning of "party autonomy" may also be different from that in standard arbitration procedure. Specifically, the expedited rules do not require the parties' explicit agreement. Instead, the rules may be inferred from a term of their agreed-upon arbitration rules,⁶² which is considered to be respectful of party autonomy. When parties choose expedited arbitration rules, they express a willingness to abide by all of those rules. Furthermore, too much emphasis on party autonomy is not conducive to efficient dispute resolution.⁶³ It is doubtful that arbitral tribunals are bound by parties' procedural agreements under all circumstances. As a result, the implementation of expedited procedures must also emphasize institutional autonomy. It is necessary to provide institutional arbitration with the autonomy to make relevant rules to improve efficiency. The move towards greater fairness and efficiency in arbitration proceedings cannot be implemented without paying a modest price in terms of party autonomy. The time has come for parties' autonomy over the choice of arbitral procedure to be subject to certain limitations in international arbitration law, lest the proclaimed objectives of fairness and efficiency be severely undermined.⁶⁴

C. Autonomy of Online Institutional Arbitration: Comparison of Relevant Rules

1. Similarities between Online Arbitration and Expedited Arbitration

Online arbitration and expedited arbitration rules are similar mainly in their relative support of institutional autonomy as compared with standard arbitration rules. They are also similar in the limits they impose on party autonomy, which is mainly reflected in their service of process and hearing procedures. Online arbitration was initially used by China's International Economic and Trade Arbitration Commission to resolve disputes involving related domain names from 2000.⁶⁵

However, online arbitration was not applied to solve a large number of commercial disputes until 2015. The Guangzhou Arbitration Commission (GZAC), the SCIA and the Wuhan Arbitration Commission (WHAC) are the most common venues for online arbitration. Therefore, these relevant online arbitration rules will be analysed based on these three institutional arbitrators. The service of process in online arbitration is generally conducted online; certain online arbitration rules do not specify any particular means of serving notice other than "electronic service." This limits party autonomy and empowers arbitral institutions to manage arbitrations. For example, Article 1 of the GZAC Online Arbitration Rules states: "Arbitral documents and evidence shall be submitted and serviced via the GZAC online arbitration service platform." Article 11 provides for special service of process following the failure of electronic service, stating that if the GZAC or opposing party fails to provide an address for electronic service or a phone number, the GZAC may create an email account for such an addressee on an online arbitration service platform.⁶⁶ Article 6 of the SCIA's Online Arbitration Rules also indicate that service should be conducted online.⁶⁷

In contrast to the above two arbitral institutions, the WHAC's Online Arbitration Rules emphasise the mandatory provision of electronic service. Absent any special circumstances, they recognize that electronic service is the conventional method of service for online arbitration.⁶⁸ As the arbitration rules of the three main arbitration commissions require online service, parties that choose online arbitration to resolve their disputes must accept this method of service. The cited rules do not specify whether parties may choose non-electronic means as the method of service. Compared with traditional offline arbitration, parties to online arbitration have less autonomy in choosing the method of service.

Most online arbitration rules provide for special online hearing procedures,

which can be categorized as either oral or written hearings. Some arbitral institutions adopt written hearings, mainly to improve the efficiency of resolutions, as this procedure does not require a virtual hearing but rather resolves disputes based solely on written documents. The PRC Arbitration Law does not provide specific rules for the conduct of hearings. Instead, most offline commercial arbitrations in China are conducted in trials, not written hearings. Article 52 of the GZAC Arbitration Rules also indicates that the “arbitral tribunal shall hold oral hearings.”⁶⁹ If it is agreed by both the parties and the tribunal, the arbitral tribunal may decide to do the written hearing solely based on submitted documents. However, Article 24 of the GZAC Online Arbitration Rules differs significantly from the corresponding offline arbitration rules in this regard.⁷⁰

Compared with online arbitration rules, conventional arbitration rules provide parties with more autonomy in terms of the types of hearings available to them. Offline arbitration rules stipulate that the parties and tribunal should agree before disputes may be resolved via written hearings. However, no such consent is required from the parties in online arbitration. Rather, the decision as to whether a written hearing is required is up to the arbitral tribunal. Moreover, online arbitration rules do not specify that the parties to a dispute have the right to decide against a hearing in writing. Therefore, online arbitrations limit the autonomy of the parties and increase the management power of arbitral institutions in terms of hearing proceedings.

2. Party Autonomy: Online Arbitration vs. Expedited Arbitration

The application of online arbitration rules is not a mandatory clause. Mandatory arbitration can be imposed on unwilling parties, just as expedited arbitration can be imposed in international arbitration. Online arbitration differs distinctly from those mandatory expedited procedures. The three main online arbitral institutions’ rules require an online arbitration agreement or clause to be formed by the parties to a dispute to adopt online arbitration procedures to resolve the dispute. Furthermore, arbitral institutions cannot empower arbitral tribunals to adopt rules or procedures that are not compliant with the parties’ arbitration agreement or clause. For example, Article 4(2) of the GZAC Online Arbitration Rules states that “when parties to a dispute agree to submit to arbitration in accordance with online arbitration rules but do not agree on a specific arbitral institution, they shall be deemed to have agreed to submit the dispute to the GAZC.”⁷¹ Furthermore, Article 4(3) states that

“parties submitting disputes to the GZAC for online arbitration shall be deemed to agree to conduct the arbitration in accordance with online arbitration rules.” Article 4(4) addresses the application scope, stating: “Those disputes arising from online transactions or other disputes can be arbitrated in accordance with online arbitration rules.” These articles indicate that even for disputes arising from online transactions, if one party opposes the use of online arbitration, the arbitral institution cannot impose online arbitration.

Both the SCIA and the WHAC contain similar Online Arbitration Rules to the GAZC’s rules in terms of application. The WHAC Online Arbitration Rules indicate that if parties to a dispute agree on the online arbitration procedure, this agreement shall be followed, unless the commission has stated that the agreement cannot be completed or is inconsistent with legal provisions.⁷² This article establishes a priority for party autonomy in terms of procedure to a certain extent. Conversely, the expedited procedure in international arbitration, such as the ICC’s expedited procedure, grants arbitration tribunals the power to adopt the specific procedure according to the “conflict guideline,”⁷³ even when the parties do not agree to it. Arbitral institutions may therefore properly determine whether to convert an arbitration from the standard procedure to the expedited procedure.⁷⁴

Comparing expedited procedures and standard online arbitration procedures in terms of party consent, although the service of process and hearing procedures of online arbitration may limit party autonomy in some circumstances, in international arbitration, the party autonomy of online arbitration procedure may not be as limited as that of the expedited procedures. For example, the ICC Arbitration Rules state: “By agreeing to arbitration under the Rules, the parties agree that Article 30 and the Expedited Procedure Rules set forth in Appendix VI (collectively Expedited Procedure Provisions) shall take precedence over any contrary terms of the arbitration agreement.”⁷⁵ As such, even though parties’ agreement is in conflict with the expedited procedures, the arbitral tribunal can still run the expedited procedures. On the contrary, if there is not an arbitration agreement or when parties expressly object to adopting online arbitration procedure, arbitral institutions cannot empower an arbitral tribunal to adopt another procedure.

3. Importance of Limiting Party Autonomy in Online Arbitration

To best explain why limiting party autonomy in certain circumstances is important

for the development of online arbitration, the positive and negative effects of limiting party autonomy and allowing institutional autonomy should be first analyzed. The positive effects of limiting party autonomy mainly concern arbitration supervision. Compared to traditional arbitration, online arbitration is less developed and some participants in arbitrations are not familiar with online arbitration procedures and have difficulty ensuring proper procedures. Therefore, compared with flexible procedures that would allow more party autonomy, it may be more desirable to allow more institutional autonomy, so that arbitral tribunal can better monitor the online institutional arbitration procedures easily. If so, arbitration awards made under such institutional online arbitration rules will be more unlikely to be set aside or declared unenforceable.⁷⁶ Additionally, allowing institutional autonomy may improve the efficiency of the procedure as much as the expedited procedure in international arbitration.⁷⁷ Online arbitration is used for a large volume of cases involving small claims. Thus, cost and time efficiency are the key elements of such dispute resolutions. Unlimited party autonomy may decrease efficiency, but increase the cost of dispute resolution, rendering it difficult to process a large number of disputes.

In terms of negative effects, arbitral institutions serve as institutional rule makers as well as procedural monitors, which may introduce conflicts of interest in some instances, resulting in the risk of ineffective supervision. As the maker of institutional rules, arbitral institutions have the right to create, explain, and apply such rules. In doing so, they significantly influence the effects of arbitration on its participants.⁷⁸ Furthermore, when institutional arbitration is monitored in the absence of a conscious restraint mechanism, it may bring excessive intervention to arbitration procedures.⁷⁹ It is believed that as institutional arbitration has greater influence than offline arbitration, institutional monitoring power should be limited to guarantee proper procedure.

The positive effects of limiting party autonomy are to obviously support arbitration rules granting institutional autonomy such as arbitration supervision and to improve the procedural efficiency. Although allowing institutional autonomy may limit party autonomy, by choosing arbitration, parties elect to submit to all of the predictable limitations of the applicable rules. In addition, compared with the mandatory rules of expedition in international arbitration, online arbitration rules limit party autonomy to a lesser extent. If parties to a conflict have formed no online

arbitration agreement or if they expressly object to resolving their dispute through online arbitration, the dispute will not be submitted to online arbitration, which limits the power of arbitral institutions. In this case, therefore, party autonomy is not the main issue. Rather, the main issue is whether the hearing and service processes are reasonable. As arbitral institutions' power exists mainly in its forms of service of process and hearings, the question is whether electronic service and written hearings can ensure the fairness of judgments while addressing the explosion of online disputes.

V. CONCLUSION

Based on the above analysis, we have found that judicial reviews of online arbitration procedures in China exhibit certain flaws in reasoning. First, the standard of review tends to ignore the value of access to digital justice and over-restricts institutional autonomy, which affects the supervision of online arbitration procedures. For example, it fails to meet the same standards as offline arbitration procedures. The boom in e-commerce has changed the landscape of business, while also generating a large number of online disputes. Conventional or offline dispute resolution mechanisms are incapable of processing such a large volume of disputes in an expedited manner. Therefore, online arbitration seems necessary to guarantee access to digital justice for the parties to disputes.

Although it is necessary to supervise online arbitration, reviewing courts ignore the fact that e-commerce disputes, especially small-claims disputes, are not well suited to traditional methods of resolution. If the standard of judicial review is too high, this may result in the inadequate resolution of many e-commerce disputes and reduced access to justice. Online arbitration can improve access to justice allowing institutional autonomy in China. Thus, the standard of judicial review of such arbitration should be adapted to realize digital justice and courts should accept institutional rules governing modernized methods of service of process and hearings. In terms of party autonomy, according to Article 75 of the PRC Arbitration Law,⁸⁰ arbitration conducted online or in writing is not expressly prohibited. The Law also grants arbitral institutions the right to independently formulate arbitration rules without violating mandatory provisions.

Furthermore, the standard of judicial review of online arbitration procedures overemphasizes party autonomy. When parties reach an agreement to resolve disputes through online arbitration, they agree to submit to the rules of such arbitration. Thus, parties' autonomy should not exclude the arbitral tribunal's autonomy. However, the standard of judicial review denies the validity of online arbitration awards on the grounds that arbitration associations and legislators have not formulated nonconflicting online arbitration rules. This indicates faulty reasoning on the part of the reviewing courts.

Therefore, we conclude that the standard of judicial reviews of online arbitration should focus more on parties' procedural rights, ignoring the value of digital justice. The high standard applied to such reviews reflects the conflict between the protection of parties' procedural rights and the need for efficient dispute resolution in light of the high volume of such disputes. We have examined on how the conflict between party autonomy and institutional autonomy should be analysed and addressed in judicial review in China. This research shows that judicial reviews of online arbitration should provide arbitral institutions with autonomy and accelerate the development of online arbitration to address the rising number of e-commerce disputes in China.

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REFERENCES

1. Paul Dolfen et al., *Assessing the Gains from E-Commerce* (National Bureau of Economic Research Paper No. w25610, 2019).
2. Luo Xubei et al., *E-Commerce Development and Household Consumption Growth in China* (World Bank Policy Research Working Paper No. 8810, 2019).
3. O. Rabinovich-Einy & E. Katsh, *Access to Digital Justice: Fair and Efficient Processes for the Modern Age*, 18 CARDOZO J. CONFLICT RESOL. 637 (2016).
4. Shenzhen Court of International Arbitration (SCIA), SCIA Online Arbitration Rules (2019), art. 3, <http://www.scia.com.cn/files/fckFile/file/SCIA%20Online%20Arbitration%20Rules.pdf>.
5. PRC Supreme Court, Reply on the Application of Laws such as the Filing and Enforcement of Arbitration Institutions' prior online arbitration Award or Mediation Document, legal interpretation (2018) No.10 [最高人民法院关于仲裁机构“先予仲裁”裁决或者调解书立案、执行等法律适用问题的批复, 法释 (2018) 10号] (May 28, 2018), <http://gongbao.court.gov.cn/Details/e5142d99804715987d5c36978ab588.html>.
6. Cui Wuchen and Guangzhou Baiyue Catering Management Co., Ltd. Application for Revocation of Arbitral Award Special Procedures Civil Ruling, [崔戌晨、广州市百悦餐饮管理有限公司申请撤销仲裁裁决特别程序民事裁定书] (Guangdong Guangzhou Interim People's Court Sept.11, 2018) (Yue No.1 Special Civil Case No. 955) (China).
7. Beijing Shengyuan Chengan Asset Management Co., Ltd. and Du Yong Financial Loan Contract Dispute Execution and Implementation Ruling [北京盛元承安资产管理有限公司、杜勇金融借款合同纠纷执行实施类执行裁定书], (Sichun Bazhong Interm. People's Ct. Mar. 4, 2019) (Chun No. 19, Execution Case No. 42) (China); Chengdu Youlala Information Technology Co., Ltd. Applies for the Ruling on the Execution of Wang Tao's Loan Contract [成都优啦啦信息技术有限公司申请王涛借款合同执行裁定书] (Heilongjiang Zhaodong Interm. People's Court June 27, 2019) (Hei No. 1282 Execution Case No. 1212) (China); China CITIC Bank Co., Ltd. Changzhou Branch and Qiu Qiaoshi Loan Contract Dispute Execution Ruling [中信银行股份有限公司常州分行与邱巧石借款合同纠纷执行裁定书] (Jiangsu Changzhou Interm. People's Ct. Nov. 8, 2019) (Su No. 04 Execution Case No. 285); [Shenzhen Dadi Xintong Guarantee Co., Ltd., Sun Xiaobing's Domestic Non-foreign-related Arbitral Award Enforcement Implementation Type of Enforcement Ruling [深圳市大地信通担保有限公司、孙晓冰国内非涉外仲裁裁决执行实施类执行裁定书], (Guangdong Shanwei Interm. People's Ct. Jun. 18, 2019) (Yue No. 15 Execution Case No. 234) (China); [Shenzhen Dadi Xintong Guarantee Co., Ltd. and Fu Tao Private Lending Dispute Execution and Implementation Ruling [深圳市大地信通担保有限公司、付涛民间借贷纠纷执行实施类执行裁定书], (Hubei Xiaogan Interm. People's Ct. Aug. 26, 2019) (ENo. 09 Execution Case No. 260) (China).
8. PRC Arbitration Law (2017), art. 39.

9. [Ningbo Yunlian Small Loan Co., Ltd. and Ma Haifang Loan Contract Dispute Execution Review Type Execution Ruling [宁波云联小额贷款有限公司、马海芳借款合同纠纷执行审查类执行裁定书], (Guangxizhuangzu Highest People's Court June 18, 2020) (Gui Executive Review Case No. 55) (China).
10. Guangdong Tongchan car services Co., Ltd. Inner Mongolia Branch and Liyaotings' Domestic Non-foreign-related Arbitral Award Enforcement Implementation Type of Enforcement Ruling [广东通产汽车服务有限公司内蒙古分公司与李耀庭国内非涉外仲裁裁决执行实施类执行裁定书], (Inner Mongolia Huhehaote Interm. People's Ct. Mar. 28, 2019) (Nei No. 01, Execution Case No. 87) (China).
11. Shiqiao Financial Leasing (China) Co., Ltd. and Lu Fuyuan Loan Contract Dispute Execution Reconsideration Execution Ruling [狮桥融资租赁(中国)有限公司、卢富源借款合同纠纷执行复议执行裁定书], (Guangxizhuangzu Highest People's Court, Nov. 17, 2021) (Gui Executive Review Case No. 257).
12. Beijing Shengyuan Chengan Asset Management Co., Ltd. and Zhao Kai's Arbitration Award Dispute Enforcement Ruling [北京盛元承安资产管理有限公司与赵凯仲裁裁决纠纷执行裁定书], (Jilin Songyuan Interm. People's Court, June 28, 2019) (Jinlin No. 07, Execution Case No. 70) (China).
13. Wuchen & Guangzhou Baiyue Catering Management Co., Ltd., *supra* note 6.
14. JULIAN LEW ET AL., *COMPARATIVE INTERNATIONAL COMMERCIAL ARBITRATION* 2-3 (2003).
15. Chinthaka Liyanage, *Online Arbitration Compared to Offline Arbitration and the Reception of Online Consumer Arbitration: An Overview of the Literature*. 22 SRI LANKA J. INT'L L. 173 (2010).
16. Sami Kallel, *Online Arbitration*, 25 J. INT'L ARB. 345 (2008).
17. FARZANEH BADIEI, *ONLINE ARBITRATION DEFINITION AND ITS DISTINCTIVE FEATURES* (2010), <http://ceur-ws.org/Vol-684/paper8.pdf>.
18. Mohamed S. Abdel Wahab, *ODR and E-arbitration: Trends and Challenges*, in *ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE: A TREATISE ON TECHNOLOGY AND DISPUTE RESOLUTION* 399 (2012).
19. Existing literatures define online arbitration as the the combination of an online mechanism and traditional arbitration. *See, e.g.*, Chinthaka Liyanage, *Online Arbitration Compared to Offline Arbitration and the Reception of Online Consumer Arbitration: An Overview of the Literature*. 22 SRI LANKA J. INT'L L. 173 (2010).
20. Ramaswamy Sudarshan, *Rule of Law and Access to Justice: Perspectives from UNDP Experience* (2003) (Unpublished paper, European Commission Expert Seminar on Rule of Law and Administration of Justice as Part of Good Governance, Brussels), <https://www.un.org/ruleoflaw/blog/document/rule-of-law-and-access-to-justice-perspective-from-undp-experience>.
21. Lawrence Friedman, *Access to Justice: Some Historical Comments*, 37 FORDHAM URBAN L.J. 3 (2010), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2323&context=ulj>.

22. Reginald Smith, *Justice and the Poor: A study of the present denial of justice to the poor and of the agencies making more equal their position before the law with particular reference to legal aid work in the United States* (Bull. No. 13) (Carnegie Foundation for the Advancement of Teaching, 1921).
23. Robert W. Gordon, *Lawyers, the Legal Profession & Access to Justice in the United States: A Brief History*, DAEDALUS 177 (2019).
24. Ronald Sackville, *Some Thoughts on Access to Justice*, 2 N.Z.J. PUB. & INT'L L. 85 (2004).
25. Deborah R. Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement is Re-shaping Our Legal System*, 108 PENN ST. L. REV. 165 (2003).
26. Carrie Menkel-Meadow, *Regulation of Dispute Resolution in the United States of America: From the Formal to the Informal to the 'Semi-formal'*, in REGULATING DISPUTE RESOLUTION: ADR AND ACCESS TO JUSTICE AT THE CROSSROADS (Felix Steffek et al. eds., 2013). <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2300&context=facpub>.
27. JEROLD AUERBACH, *JUSTICE WITHOUT LAW?: RESOLVING DISPUTES WITHOUT LAWYERS* 95 (1984), https://books.google.co.kr/books?id=1Do5mQEACAAJ&pg=PR3&hl=ko&source=gbs_selected_pages&cad=2#v=onepage&q&f=false.
28. Richard E. Miller & Austin Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15 L. & SOC'Y REV. 525 (1980).
29. Friedman, *supra* note 21, at 3.
30. Frank E. Sander, *Varieties of Dispute Processing*, in THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN THE FUTURE 65 (1979).
31. Frank E. Sander & Stephen B. Goldberg, *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure*, 10 NEGO. J. 49 (1994).
32. Owen M. Fiss, *Against Settlement*, 93 YALE L.J. 1073 (1983).
33. Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545 (1990); Richard Delgado et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, WIS. L. REV. 1359 (1985).
34. O. Rabinovich-Einy & E. Katsh, *Access to Digital Justice: Fair and Efficient Processes for the Modern Age*, 18 CARDOZO J. CONFLICT RESOL. 637 (2016).
35. *Id.*
36. *Id.*
37. *Id.*
38. Rabinovich-Einy and Katsh's three shifts means: (1) the shift from physical to online communications; (2) the shift from a human "third party" to the "fourth party"; (3) the shift from a "data-less" mentality to processes that revolve around data. *See* Rabinovich-Einy & Katsh, *id.* at 637.
39. Juncheng Hao, Principles of AI Arbitration [智能仲裁的原理], Hao Juncheng Law Firm Website (May 7, 2019), <http://www.hjclf.com/newsinfo/1181579.html>.
40. Wuhan Arbitration Commission (WHAC), Online Arbitration Rules, art. 48, <https://www.whac.org.cn/index.php/zcgz/index/type/163.html>.

41. Liu Dong, Guangzhou Intermediate People's Court and Guangzhou Arbitration Commission jointly signed documents to help improve the quality and efficiency of property preservation, judicial review and enforcement of arbitration cases: It will significantly reduce the time and cost of the parties [广州市中级人民法院与广州仲裁委员会会签文件助力提升仲裁案件财产保全、司法审查和执行质效: 将大幅降低当事人的时间成本和费用成本], Guangzhou court website (Sep. 18, 2021), <https://www.gzcourt.gov.cn/xwzx/fbh/ck499/2021/09/9003613309273178.html>.
42. Rabinovich-Einy & Katsh, *supra* note 34.
43. *Id.*
44. *Id.*
45. In the 2015 International Arbitration Survey, 90% of the respondents indicated that international arbitration was their preferred dispute resolution mechanism, either as a stand-alone method (56%) or together with other forms of ADR (34%). See Queen Mary University of London, White & Case, International Arbitration Survey: Improvements and innovations in international arbitration (2015), <http://www.arbitration.qmul.ac.uk/research/2015>.
46. *Id.*
47. James Rogers & Katie Chung, Summary Awards and Expedited Procedures—Strike Out or Home Run? (May 2018), <https://www.nortonrosefulbright.com/en/knowledge/publications/d4dc14a1/summary-awards-and-expedited-procedures-mdashbrstrike-out-or-home-run#:~:text=Broadly%2C%20the%20objective%20of%20an,cost%E2%80%91effective%20resolution%20of%20disputes>.
48. ICC Arbitration Rules 2021, Appendix VI, art. 2(1), <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration>.
49. *Id.* art. 30 & Appendix VI, art. 1(2).
50. ICC, Expedited Procedure Provisions, <https://iccwbo.org/dispute-resolution-services/arbitration/expedited-procedure-provisions>.
51. Fabricio Fortese & Lotta Hemmi, *Procedural Fairness and Efficiency in International Arbitration*, 3(1) GRONINGEN J. INT'L L. 110 (2015).
52. Paolo Michele Patocchi, *Party Autonomy vs. Case Management in International Arbitration*, 29 BANKA HUK. DERGISI 127 (2013).
53. S.A. Fagbemi, *The Doctrine of Party Autonomy in International Commercial Arbitration: Myth or Reality?*, 6 J. SUSTAINABLE DEV. L. & POL'Y 202-46 (2015).
54. *Id.*
55. PRC Arbitration Law (2017), arts. 39 & 40.
56. PRC Civil Procedure Law (2017), art. 237.
57. Z. Ruohan, *A Review of the Strong Sole Arbitrator Clause in Expedited Arbitration* [快速仲裁中强势独任仲裁员条款之检视] 5 J. SHANGHAI U. INT'L. ECON. & BUS. [上海对外经贸大学学报] 88-97 (2020).
58. Article 2, section 1 of the PRC Arbitration Law states: "Contractual disputes between

citizens of equal status, legal persons and other economic organizations and disputes arising from property rights may be put to arbitration.” Article 3 states: “The following disputes cannot be put to arbitration: 1. Disputes arising from marriage, adoption, guardianship, bringing up of children and inheritance. 2. Disputes that have been stipulated by law to be settled by administrative organs.”

59. Pinsent Masons, Institutional vs. ‘ad hoc’ arbitration, Pinsent Masons Website (Aug. 12, 2011), <https://www.pinsentmasons.com/out-law/guides/institutional-vs-ad-hoc-arbitration>.
60. Out-law guild, Institutional vs. ‘ad hoc’ arbitration, Pinsent Masons website (Aug. 12, 2011), <https://www.pinsentmasons.com/out-law/guides/institutional-vs-ad-hoc-arbitration>.
61. The Arbitration Institute of the Stockholm Chamber of Commerce, <https://sccinstitute.com/our-services/rules>.
62. Alexander Uff, Expedited Arbitration, Autonomy and Due Process (2021), <http://arbitrationblog.practicallaw.com/expedited-arbitration-autonomy-and-due-process-part-one>.
63. BERNHARD BERGER & FRANZ KELLERHALS, INTERNATIONAL AND DOMESTIC ARBITRATION IN SWITZERLAND 285 (2021).
64. Patocchi, *supra* note 52.
65. China International Economic and Trade Arbitration Commission, <http://www.cietacodr.org/aboutus.html>.
66. GZAC Online Arbitration Rules (2015), arts. 1 & 11, <https://www.gzac.org/zcgz/36677.jhtml>.
67. SCIA Online Arbitration Rules (2019), art. 6, <http://www.scia.com.cn/files/fckFile/file/SCIA%20Online%20Arbitration%20Rules.pdf>. It states: “Hearing of online arbitration cases shall be heard online. Case acceptance, payment of fees and costs, service, exchange of evidence, hearing, mediation, rendering of an award, and other procedures related to online arbitration cases shall in general be conducted online.”
68. Article 13 of the WHAC Online Arbitration Rules state: “Any registration on the WHAC online arbitral service platform, arbitration documents including mediation documents, withdrawal decisions and other documents shall be served online. According to the specific circumstance of the case proceedings, the commission or the arbitral tribunal may also decide to assist by offline service, such as mail service and other appropriate means.” See WHAC Online Arbitration Rules (2019), art. 13, <https://www.whac.org.cn/index.php/zcgz/index/type/163.html>.
69. GZAC Arbitration Rules (2017), art. 52, <https://www.gzac.org/zcgz/36681.jhtml>.
70. Article 24 of the GZAC Online Arbitration Rules states: “The arbitral tribunal shall conduct an inquiry appropriately in the online arbitration case. The arbitral tribunal may issue a list of questions to the parties through the GZAC online arbitration service platform. Parties shall answer the tribunal’s questions and explain within five days from the day of receipt of the question sheet, and if no explanation is made within the time limit, they shall be

deemed to have waived the right to explain.” It further stipulates: “If an arbitral tribunal considers it necessary, it may try the cases through appropriate means such as online video hearing, online communication, and teleconference, but it shall ensure fair treatment of all parties.” See GZAC Online Arbitration Rules (2015), art. 24, <https://www.gzac.org/zcgz/36677.jhtml>.

71. *Id.* art. 4.

72. WHAC Online Arbitration Rules (2019), art. 3.

73. ICC Arbitration Rules (2021), art. 30.1.

74. *E.g.*, Article 30 of ICC Arbitration Rules states: “Expedited procedures shall apply automatically to cases in which the amount in dispute does not exceed USD2 million or USD3 million.” See ICC Arbitration Rules (2021), art. 30, <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration>.

75. *Id.* art. 30.1.

76. S. Lianbing, *China’s arbitration supervision mechanism and its improvement* [论中国仲裁监督机制及其完善] 2 J. LIS & SOC. [法制与社会] 146 (2003).

77. *Id.*

78. L. Chuxiang, *Administrative arbitration and Its Overcoming* [仲裁行政化及其克服] 3 J. JIANGXI. SOC. SCI. [江西社会科学] 146 (2012).

79. *Id.*

80. Article 75 of the PRC Arbitration Law states: “The Arbitration Commission may formulate provisional arbitration rules in accordance with this Law and the relevant provisions of the Civil Procedure Law before the formulation of the arbitration rules by the China Arbitration Association.”