

CONSTRUCTING THE SOCIAL GOVERNANCE
FRAMEWORK FOR AD HOC ARBITRATION IN CHINA
— —FROM THE PERSPECTIVE OF OPTIMIZING
RELATIONS BETWEEN ARBITRATION INSTITUTIONS
AND ARBITRATION ASSOCIATIONS

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Abstract

Following the enactment of the Arbitration Law of the People's Republic of China (2025), ad hoc arbitration has obtained explicit statutory recognition in China. Nevertheless, its operation remains constrained by fragmented normative sources, unclear governance boundaries, and unresolved coordination between arbitration associations and arbitration institutions. From the perspective of social governance, this article examines the normative supply and functional positioning of these two actors in China's ad hoc arbitration regime through doctrinal analysis of existing legislation, local rules, and institutional guidelines. It argues that the current framework still suffers from ambiguity regarding the legal nature of the filing mechanism and from the continuing tendency of arbitration institutions to over-intervene in ad hoc proceedings. The article proposes that arbitration associations should be repositioned as self-regulatory bodies responsible for formal filing, model rule-making, and arbitrator oversight, while arbitration institutions should adhere to the principles of limited intervention and procedural assistance, acting primarily as appointing authorities and providers of ancillary procedural services. On this basis, it advocates a governance structure characterized by functional differentiation and normative coordination so as to safeguard party autonomy, preserve procedural legitimacy, and strengthen China's competitiveness in international commercial arbitration.

Keywords: ad hoc arbitration; social governance; arbitration associations; arbitration institutions; industry self-regulation

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I. INTRODUCTION

China's ad hoc arbitration regime is currently developing rapidly.³ Since the Supreme People's Court issued *Opinions on the Provision of Judicial Safeguards for the Construction of Pilot Free Trade Zones* ("FTZ") on December 30, 2016, a number of arbitration associations and arbitration institutions have successively established comprehensive rules or Guidance for Services for ad hoc arbitration. Meanwhile, certain FTZ administrative bodies, exemplified by the Shanghai Municipal Bureau of Justice, have also formulated administrative documents such as the *Measures of Shanghai Municipality for Promoting Ad Hoc Arbitration in Foreign-related Commercial and Maritime Affairs*.

The *Arbitration Law of the People's Republic of China* (2025), enacted on September 12, 2025, introduces the concept of the arbitral seat for choice-of-law purposes, but it also cautiously affirms, for the first time at the legislative level, the legality of ad hoc arbitration for specific foreign-related disputes seated in China through Article 82. Subsequently, major arbitration institutions and the newly established arbitration associations have responded, enriching and complicating the normative system for ad hoc arbitration. However, due to the diversity of normative drafting entities, varying scopes of application, and differences in enactment timing (e.g., before and after the issuance of the *Arbitration Law of the People's Republic of China* (2025)), the current normative framework for ad hoc arbitration remains fragmented and internally inconsistent in both hierarchy and institutional design.

Moreover, the China Arbitration Association was formally established in 2022 in accordance with the 1994 PRC Arbitration Law, followed by the gradual formation of arbitration associations in various administrative regions. As the industry self-regulatory organization explicitly stipulated by both 1994 and 2025 PRC Arbitration Law, arbitration associations are expected to play important roles in rule-making, industry supervision, and other functions within the arbitration

3 Zuigao Renmin Fayuan Guanyu Shiyong <Zhonghua Renmin Gonghe Guo Zhongcai Fa> Ruogan Wenti de Jieshi, Fashi [2006] Qi Hao (最高人民法院关于适用《中华人民共和国民事诉讼法》若干问题的解释·法释【2006】7号) [Interpretation of the Supreme People's Court of Certain Issues Concerning the Application of the Arbitration Law of the People's Republic of China] (promulgated by the Judicial Comm. Sup. People's Ct., Aug. 23, 2006, effective Sept. 8, 2006) Chinalawinfo (last visited Mar. 30, 2026) (China).

governance system. However, in the realm of ad hoc arbitration, the normative supply and functional exercise of arbitration associations are still in an exploratory phase. In practice, the respective roles of arbitration associations and arbitration institutions remain insufficiently coordinated in the governance of ad hoc arbitration. Although existing research has provided academic interpretations of individual ad hoc arbitration norms, no specialized study has focused on the interrelationship and functional positioning between arbitration associations and arbitration institutions in the context of ad hoc arbitration. Nor has there been a systematic analysis of the systemic positioning of arbitration associations within the social governance of ad hoc arbitration.⁴

Against this background, clarifying the systemic positioning of arbitration associations and arbitration institutions in the social governance mechanism of ad hoc arbitration holds significant theoretical and practical importance. In summary, the practice of ad hoc arbitration in FTZs faces a dual dilemma: diverse sources of norms and unclear positioning of governance subjects. The ad hoc arbitration rules formulated by different subjects reflect inconsistencies in content. The functional boundaries between arbitration associations and arbitration institutions in ad hoc arbitration governance remain unclear, affecting the normative operation of the ad hoc arbitration system and the effective realization of party autonomy. This paper adopts the analytical perspective of social governance in ad hoc arbitration, focusing on the core entities within the arbitration autonomy system—namely, the normative supply and functional positioning of arbitration associations and arbitration institutions in ad hoc arbitration. Starting from a normative analysis, it reviews the normative hierarchy and drafting entities of existing ad hoc arbitration rules, subsequently analyzing the role misalignment and functional confusion between arbitration associations and arbitration institutions in ad hoc arbitration governance. Finally, it proposes a path for constructing an ad hoc arbitration governance system featuring functional division and normative coordination, with a view to promoting the sound development of ad hoc arbitration in China, thereby laying a solid

4 Zhang Jian (张健), *Goujian Zhongguo Zimaoqu Linshi Zhongcai Guize de Falü Sikao—Yi Hengqin Ziyou Maoyi Shiyangu Linshi Zhongcai Guize wei Zhongxin* (构建中国自贸区临时仲裁规则的法律思考——以<横琴自由贸易试验区临时仲裁规则>为中心) [*Legal Thoughts on Constructing Ad Hoc Arbitration Rules in China's Pilot Free Trade Zones: Centering on the Hengqin Free Trade Pilot Zone Ad Hoc Arbitration Rules*], 2 [FAZHI LUNTAN] (法治论坛) [RULE OF LAW FORUM] 383, 383-94 (2017).

foundation for enhancing China's status in the field of international commercial arbitration.

II. THE BASIC CONNOTATION AND ANALYTICAL FRAMEWORK OF SOCIAL GOVERNANCE IN AD HOC ARBITRATION

In the realm of institutional arbitration, certain scholars have proposed the concept of "supervision and governance mechanisms for commercial arbitration institutions," aiming to clarify the "top-down supervision model and institutional system composed of administrative supervision, judicial supervision, industry self-regulatory supervision, and internal governance of institutions" in Chinese arbitration, revealing the interconnected and interactive institutional relationships among state administrative organs, judicial organs, arbitration associations, and arbitration institutions.⁵ This concept, grounded in the "state-society" theoretical framework, defines the state-level regulation of arbitration institutions as a supervision mechanism, while societal-level regulation is termed a governance mechanism for arbitration institutions. Within this, governance mechanisms are further divided by subject into industry governance by arbitration associations and internal governance by arbitration institutions.⁶

Ad hoc arbitration is centered on the principle of party autonomy, with its institutional design emphasizing procedural flexibility and autonomy.⁷ Regarding arbitration institutions, although in international commercial arbitration practice, arbitration institutions may provide case management services or act as "appointing authorities" for ad hoc arbitration, commercial entities like arbitration institutions should not play a supervisory or governance role over ad hoc arbitration itself. Regarding arbitration associations, from an international perspective, they typically refer to two types of organizations with distinct functions: one type is non-profit industry organizations aimed at promoting arbitration culture and conducting

5 See Tu Wei (涂卫), *Shangshi Zhongcai Jigou Jianguan yu Zhili Jizhi de Xueli Chanshu—Yizhong “Guojia—Shehui” de Fenxi Kuangjia* (商事仲裁机构监管与治理机制的学理阐释——一种“国家—社会”的分析框架) [*Academic Elaboration on the Supervision and Governance Mechanism of Commercial Arbitration Institutions: A “State-Society” Analytical Framework*], 5 [Hebei Faxue] (河北法学) [HEBEI LAW SCIENCE] 184 (2013).

6 *Id.*

7 See Yang Liangyi (杨良宜), *Guoji Shangwu Zhongcai* (国际商务仲裁) [*International Business Arbitration*] 2 (1997).

academic research⁸; the other type is permanent arbitral institutions that directly manage arbitration cases⁹. Both differ from the functional positioning of arbitration associations in the Chinese context. Some scholars point out that "the China Arbitration Association is, in name only, similar to arbitration associations in other countries, such as the American Arbitration Association or the Swiss Arbitration Association, but in reality, it is a completely different concept."¹⁰ Therefore, from an international comparative perspective, a systematically theorized concept like the "supervision and governance mechanism" has not yet formed in the field of ad hoc arbitration.

However, the legislative practice of ad hoc arbitration in China exhibits distinct characteristics. Article 82 of the *Arbitration Law of the People's Republic of China* (2025) explicitly establishes the legality of ad hoc arbitration and stipulates the industry self-regulatory supervision function of arbitration associations over ad hoc arbitration through a "filing" system. Concurrently, the published ad hoc arbitration rules generally reserve institutional space for the involvement of arbitration institutions. When analyzing China's first ad hoc arbitration rule, the *Hengqin* Rules, some scholars noted that the rules "take institutional intervention in ad hoc arbitration as the logical starting point for the system."¹¹ These normative arrangements indicate that under the current framework of China's arbitration system, the normative operation of ad hoc arbitration has an unavoidable interactive relationship with arbitration associations and arbitration institutions. Based on this, this paper defines this practical phenomenon as the "social governance system for ad hoc arbitration," distinguishing it from the relatively mature theory of supervision and governance mechanisms in the context of institutional arbitration.

8 See ASS'N FOR INT'L ARB.[国际仲裁协会], About AIA, <https://arbitration-adr.org/about/?id=gcoop> (last visited Mar. 21, 2026).

9 See AM. ARB. ASS'N.[美国仲裁协会], Arbitration, <https://www.adr.org/arbitration/> (last visited Mar. 21, 2026).

10 See Lin Yifei (林一飞), *Zhongcai Xiehui yu Zhongcai Jigou de Guanxi* (法仲裁协会与仲裁机构的关系) [*The Relationship Between Arbitration Associations and Arbitration Institutions*], RENMIN FAYUAN BAO (人民法院报) [PEOPLE'S COURT DAILY], (Jun. 6, 2007), at 5.

11 See Zhang Chaohan (张超汉) & Ding Tongmin (丁同民), *Woguo Jianli Ziyou Maoyi Shiyanku Linshi Zhongcai Zhidu de Yiyi ji Lujing* (我国建立自由贸易试验区临时仲裁制度的意义及路径) [*The Significance and Path of Establishing an Ad Hoc Arbitration System in China's Free Trade Pilot Zones*], 8 ZHONGZHOU XUEKAN (中州学刊) [ACADEMIC JOURNAL OF ZHONGZHOU], 62, 64 (2017).

Simultaneously, since ad hoc arbitration does not rely on permanent arbitral institutions for case management, the focus of its governance system shifts from "industry supervision and internal institutional governance" to "normative coordination of ad hoc arbitration procedures by multiple entities." This article uses social governance as an analytical lens to examine the roles of arbitration associations and arbitration institutions in ad hoc arbitration.

The rationale for this theoretical modification lies in the fact that, as Tu Wei observes, the core of social governance lies in the regulation of arbitration activities by internal organizations within the arbitration autonomy system through autonomy and self-discipline.¹² In the context of ad hoc arbitration, although the role of permanent arbitral institutions changes, the industry self-discipline of arbitration associations and the procedural assistance and service functions of arbitration institutions still constitute important vehicles for social governance.

III. CURRENT RESEARCH STATUS OF THE SOCIAL GOVERNANCE SYSTEM FOR AD HOC ARBITRATION

In the field of ad hoc arbitration governance, existing research predominantly focuses on individual governance subjects, with considerably more attention paid to arbitration institutions than to arbitration associations. Regarding arbitration institutions, international practice is quite mature, and their functional positioning is relatively clear, namely, undertaking assistance services and appointing authority functions in ad hoc arbitration, including providing arbitrator appointment and case management services.¹³ In practice, major arbitration institutions, such as China International Economic and Trade Arbitration Commission (CIETAC) and the Beijing Arbitration Commission (BAC), have already begun ad hoc arbitration assistance practices based on international experience, with their functional boundaries and operational models becoming increasingly clear.

¹² Tu, *supra* note 4, at 188.

¹³ See Zhang Shengcui (张圣翠) & Fu Zhijun (傅志军), *Woguo Zimaoqu Linshi Zhongcai Zhidu Chuangxin Yanjiu* (我国自贸区临时仲裁制度创新研究) [Research on the Innovation of the Ad Hoc Arbitration System in China's Free Trade Zones], 2 SHANGHAI CAIJING DAXUE XUEBAO (上海财经大学学报) [JOURNAL OF SHANGHAI UNIVERSITY OF FINANCE AND ECONOMICS], 140, 140-52 (2019).

In contrast, the research value of arbitration associations has not been fully explored. From an international comparative perspective, foreign legal systems lack institutional arrangements entirely corresponding to China's arbitration associations, making direct comparative law references difficult. From the perspective of domestic practice, although the 1994 Arbitration Law established the principle of establishing arbitration associations, the China Arbitration Association was only formally established in 2022, with local arbitration associations still being formed in succession. This lag in institutional development has left issues such as the functional positioning, normative supply, and supervision mechanisms of arbitration associations in ad hoc arbitration governance in a long-standing research void.

Article 82 of the *Arbitration Law of the People's Republic of China* (2025) establishes, for the first time at the legislative level, the supervisory functions of arbitration associations over ad hoc arbitration, particularly through the design of the "filing" system, providing a normative basis for arbitration associations to intervene in ad hoc arbitration. However, how to distinguish this supervisory function from administrative supervision and how to coordinate it with the assistance services of arbitration institutions still lacks clear theoretical guidance and institutional design. Against this backdrop, the interactive governance relationship formed by arbitration associations, arbitration institutions, and ad hoc arbitration holds significant importance.

IV. THE POSITIONING AND OPTIMIZATION OF THE RELATIONSHIP BETWEEN ARBITRATION ASSOCIATIONS AND ARBITRATION INSTITUTIONS UNDER THE SOCIAL GOVERNANCE OF AD HOC ARBITRATION

A. THE COMPLEMENTARY RELATIONSHIP BETWEEN ARBITRATION ASSOCIATIONS AND ARBITRATION INSTITUTIONS

Observing the interactive relationship between norm types and geographical distribution, arbitration associations and arbitration institutions form a complementary pattern based on subject type and normative supply conditions.

In regions where arbitration associations have been established, a "dual-layer structure" of "association rules plus institutional guidelines" emerges. Arbitration associations undertake the systematic

function of formulating ad hoc arbitration rules, providing a comprehensive procedural framework covering the entire process from arbitration notice, tribunal constitution, proceedings, to award issuance.¹⁴ Arbitration institutions, based on this, provide traditional assistance services.¹⁵

In regions where arbitration associations have not yet been established, arbitration institutions undertake more comprehensive functions. Some arbitration institutions, by issuing ad hoc arbitration service rules or procedural guidelines, provide not only auxiliary services but also a complete set of ad hoc arbitration procedural frameworks directly applicable by the parties. Such institutional rules effectively integrate the dual functions of rule-making and service provision, allowing parties to obtain a complete ad hoc arbitration institutional guarantee through arbitration institutions even in the absence of local arbitration association support.

This "dual-layer division where associations exist, institutional integration where they do not" pattern ensures that parties in different regions can obtain appropriate ad hoc arbitration normative support based on local institutional supply conditions. The functional distribution of rule-making between the two types of entities represents a functionally complementary arrangement during the transitional period when the China Arbitration Association is not yet fully operational and local arbitration associations have limited coverage.

B. THE SUPERVISORY RELATIONSHIP AMONG ARBITRATION ASSOCIATIONS, ARBITRATION INSTITUTIONS, AND AD HOC ARBITRATION

The supervisory relationship formed among arbitration associations, arbitration institutions, and ad hoc arbitration is of significant importance in constructing the social governance system for

14 See Shanghai Zhongcai Xiehui Linshi Zhongcai Guize (上海仲裁协会临时仲裁规则) [Ad Hoc Arbitration Rules of the Shanghai Arbitration Association] (promulgated by the Shanghai Arb. Ass'n, Aug. 2024); Hainan Ziyu Maoyigang Linshi Zhongcai Guize (海南自由贸易港临时仲裁规则) [Ad Hoc Arbitration Rules of the Hainan Free Trade Port] (promulgated by the Hainan Provincial Arb. Ass'n, July 2024).

15 See Guangzhou Zhongcai Weiyuanhui Nansha Guoji Zhongcai Zhongxin Linshi Zhongcai Fuwu Guize (广州仲裁委员会南沙国际仲裁中心临时仲裁服务规则) [Ad Hoc Arbitration Service Rules of the Nansha International Arbitration Center of Guangzhou Arbitration Commission] (promulgated by the Nansha Int'l Arb. Ctr. of Guangzhou Arb. Comm'n, July 2025).

ad hoc arbitration. Some scholars point out that many issues in the arbitration field are essentially problems of institutional relationships formed during the supervision and management processes among various entities.¹⁶ Other scholars note that establishing a supervision mechanism for ad hoc arbitration in FTZs is a crucial part of constructing the ad hoc arbitration system.¹⁷ Forms of arbitration supervision can be divided into internal supervision (i.e., supervision by arbitration institutions), judicial supervision, industry supervision, and broad social supervision.¹⁸ Among these, industry supervision refers to supervision by arbitration associations.¹⁹ In the context of ad hoc arbitration, the internal supervision of arbitration institutions transforms into the functions of assistance, management, and supervision over ad hoc arbitration by arbitration institutions, ensuring that "when procedural disputes arise in a case, they play a final role in safeguarding and supervising, guaranteeing the effective operation of the ad hoc arbitration system."²⁰ The object of industry supervision by arbitration associations also expands from arbitration institutions to the ad hoc arbitration procedure itself through mechanisms like normative confirmation. An organic and diverse management and supervision relationship is formed among the three entities, collectively laying a solid foundation for the practical implementation of the ad hoc

16 Tu, *supra* note 4, at 184.

17 See Li Zhiqiang (李志强), Wang Xiangqian (王向前) & Sun Xiaolei, *Zhongguo (Shanghai) Ziyou Maoyiqu Linshi Zhongcai Zhidu de Jianli* (中国(上海)自由贸易区临时仲裁制度的建立) [Establishment of the Ad Hoc Arbitration System in China (Shanghai) Pilot Free Trade Zone], 6 *ZHONGGUO FALÜ* (中国法律) [CHINA LAW], 2013.

18 See Li Yan (李燕), *Shilun Woguo Zhongcai Jiandu Tizhi de Wanshan* (试论我国仲裁监督体制的完善) [On the Perfection of China's Arbitration Supervision System], 5 *XUESHU JIE* (学术界) [ACADEMICS], 2009.

19 See Wu Ruqiao (吴如巧) & Sheng Xia (盛夏), *Zhongguo Zhongcai Xiehui Chuangjian zhi Shang—Kunju, Fansi yu Tuwei* (中国仲裁协会创建之殇——困局、反思与突围) [The Dilemma, Reflection and Breakthrough of the Establishment of the China Arbitration Association], 2 *ZHONGCAI YANJIU* (仲裁研究) [ARBITRATION RESEARCH], 28, 32 (2015).

20 See Chen Lei (陈磊), *Zhongguo Zimaoku Linshi Zhongcai Zhidu de Helahua Jincheng yu Guize Tansuo—Jiyu Hengqin Ziyou Maoyi Shiyangu Linshi Zhongcai Guize Tiaowen Neirong de Kaocha* (中国自贸区临时仲裁制度的合法化进程与规则探索——基于《横琴自由贸易试验区临时仲裁规则》条文内容的考察) [Exploration on the Legalization Process and Rules of the Ad Hoc Arbitration System in China's Free Trade Zones: Based on an Investigation of the Provisions of the Hengqin Free Trade Zone Ad Hoc Arbitration Rules], 2 *ZHONGGUO GUOJI SIFA YU BILIAOFA NIANKAN* (中国国际私法与比较法年刊) [CHINESE YEARBOOK OF PRIVATE INTERNATIONAL LAW AND COMPARATIVE LAW] 184, 189 (2019).

arbitration system.

1. The Supervisory and Assistance Functions of Arbitration Institutions over Ad Hoc Arbitration

Arbitration institutions have supervisory functions over ad hoc arbitration. According to currently issued ad hoc arbitration norms, arbitration institutions possess certain management, supervision, and assistance functions. These include assisting in arbitrator appointment, breaking deadlocks in ad hoc arbitration (e.g., by determining reasonable arbitration costs, deciding on arbitrator challenges, and resuming arbitration proceedings), confirming the existence, validity, and jurisdiction objections of ad hoc arbitration agreements, and assisting in applying to the People's court for interim measures, covering the entirety of the ad hoc arbitration process.²¹

However, the risk of excessive intervention by arbitration institutions should also be guarded against. The principle of limited intervention by arbitration institutions in ad hoc arbitration should be emphasized to avoid conflicts between institutional arbitration rules and the flexibility and democratic nature of ad hoc arbitration.²² As some scholars point out, existing FTZ ad hoc arbitration rules, such as the Hengqin Rules, still employ the mandatory panel model for arbitrator selection, which contradicts the flexibility of ad hoc arbitration and negatively impacts party autonomy.²³

21 See Hao Shikun (郝世坤) & Guo Shasha (郭沙沙), *Woguo Linshi Zhongcai Zhidu Goujian de Luoji yu Lujing* (我国临时仲裁制度构建的逻辑与路径) [Logic and Path of Constructing China's Ad Hoc Arbitration System], 3 XINJIANG CAIJING DAXUE XUEBAO (新疆财经大学学报) [JOURNAL OF XINJIANG UNIVERSITY OF FINANCE AND ECONOMICS], 73, 73–80 (2024).

22 See Chen Ying (陈颖), “Zhongcaifa (Xiuding Cao'an)” *Beijing xia Woguo Linshi Zhongcai Zhidu Yanjiu* (《仲裁法(修订草案)》背景下我国临时仲裁制度研究) [Research on China's Ad Hoc Arbitration System under the Background of the “Arbitration Law (Revision Draft)”], in 2025 Shuzi Shidai De Shehui Jiegou Bianqian Yu Zhili Chuangxin Xueshu Jiaoliuhui Lunwenji (Shang) (2025 数字时代的社会结构变迁与治理创新学术交流会议论文集(上)) [Collection of Papers from the 2025 Academic Exchange Conference on Social Structure Changes and Governance Innovation in the Digital Age (Vol. I)] 57 (Zhongguo Zhihui Gongcheng Yanjiuhui (中国智慧工程研究会) [China Institute of Smart Engineering] eds., 2025).

23 Chen, *supra* note 19, at 191.

2. The Supervisory and Industry Self-Regulatory Functions of Arbitration Associations over Ad Hoc Arbitration

Regarding the supervision and assistance functions of arbitration associations over ad hoc arbitration, these can be divided into three aspects: supervision of case procedures, supervision of arbitrators, and enhancement of the arbitration community's autonomy. Notably, the function of supervising ad hoc arbitration case procedures, represented by the "filing with the arbitration association" system stipulated in Article 82 of the *Arbitration Law of the People's Republic of China* (2025), is a distinctive Chinese feature. The supervisory mandate of arbitration associations over arbitrators is grounded in Article 25 of the *Arbitration Law of the People's Republic of China* (2025), which stipulates supervision over "the conduct of arbitrators in arbitration activities." Additionally, arbitration associations can enhance the autonomy of China's arbitration community by formulating more neutral model rules, emulating international practices, organizing arbitrator training activities, and conducting academic promotion events within the arbitration community, thereby providing a solid practical foundation for the further improvement of China's foreign-related arbitration system.²⁴

Regarding the supervision of ad hoc arbitration procedures by arbitration associations, issues currently include unclear norms and undefined supervisory effects. Concerning the "filing" system stipulated in Article 82 of the *Arbitration Law of the People's Republic of China* (2025), this system has not yet been clarified by judicial interpretation or legal explanation at the normative level. Its legal nature and effect remain uncertain, and there is no similar research in academia.²⁵ This article posits that, in nature, it should be interpreted as a specific extension of the arbitration association's exercise of its industry supervisory functions. From a teleological interpretation perspective, the design intention of the record-filing system is not

24 See Song Jiaqi (宋嘉琪), *Woguo Shewai Shangshi Jiufu Linshi Zhongcai Zhidu Goujian Yanjiu* (我国涉外商事纠纷临时仲裁制度构建研究) [Research on the Construction of an Ad Hoc Arbitration System for Foreign-Related Commercial Disputes in China] 38 (Master's thesis, Shandong University (山东大学) 2024).

25 See Xinxu Ding *Zhongcaifa Zengjia Tèbie Zhongcai Zhidu Youhe Kaolü? Sifabu Shiyi* (新修订仲裁法增加特别仲裁制度有何考虑? 司法部释疑) [What are the Considerations for Adding a Special Arbitration System to the Newly Revised Arbitration Law? Ministry of Justice Explains], *ZHONGGUO XINWEN WANG* (中国新闻网) [CHINA NEWS SERVICE] (Sept. 29, 2025), <https://www.chinanews.com.cn/gn/2025/09-29/10491454.shtml>.

substantive case review but rather overall industry data accumulation and risk prevention and control.²⁶ Meanwhile, according to Article 25 of the *Arbitration Law of the People's Republic of China* (2025), the China Arbitration Association is a "self-regulatory organization of arbitration institutions." This positioning implies that filing should not have a decisive effect on the validity of individual cases; otherwise, it would grant industry self-regulatory organizations discretionary power beyond their statutory authority. Looking at the historical evolution, the establishment of the China Arbitration Association was explicitly required not to become the "overseer" of Chinese arbitration institutions, with a particular emphasis against "interfering in the hearing and award of arbitration cases, affecting the independence of arbitrators," and explicitly opposing "case-specific supervision."²⁷ Accordingly, the supervision under the record-filing system should be limited to information collection and macro-level industry management, and its review should be confined to a formal level, not extending to substantive judgments on matters such as the validity of arbitration agreements, the legality of tribunal composition, or the substantive content of awards.

According to currently published norms, this positioning has not been implemented in practice. Taking the *Hainan Arbitration Association Guidelines for Filing Ad Hoc Arbitration Cases (Trial)* issued in February 2026 as an example, the nature of filing, review standards, and legal consequences for failure to file are not yet clearly defined, potentially affecting parties' stable expectations of the ad hoc arbitration process.²⁸ The relevant rules need further clarification to ensure that the record-filing system returns to its functional core of industry supervision.

Beyond procedural supervision, establishing an evaluation and supervision system for ad hoc arbitrators by arbitration associations is

²⁶ What are the Considerations, *supra* note 24.

²⁷ See Guanyu Chengli Zhongguo Zhongcai Xiehui de Yijian (关于成立中国仲裁协会的意见) [Opinions on the Establishment of the China Arbitration Association] (promulgated by the China Int'l Econ. & Trade Arb. Comm'n & China Mar. Arb. Comm'n, Aug. 13, 2001), <https://www.cietac.org/articles/1160>.

²⁸ See Hainansheng Zhongcai Xiehui Linshi Zhongcai Anjian Beian Zhiyin (Shixing) (海南省仲裁协会临时仲裁案件备案指引(试行)) [Guidelines for Filing of Ad Hoc Arbitration Cases of Hainan Provincial Arbitration Association (Trial)] (promulgated by the Hainan Provincial Arb. Ass'n, Feb. 6, 2026), <http://ftp-hnaa.com/detail/263.html>.

also significant.²⁹ The core function of this system is to prevent arbitrators from relying solely on internal constraints such as "conscience" or "rationality" when handling cases.³⁰ This clarifies the boundaries of arbitrators' civil liability at the institutional level, or at least provides behavioral guidance through model rules, ensuring that arbitrators bear responsibility for their misconduct while not being unduly constrained by liability, which might otherwise inhibit their subjective initiative in judging cases.³¹

Finally, the industry self-regulatory functions of arbitration associations provide an institutional basis for enhancing the overall level of the ad hoc arbitration community. As a self-regulatory organization of the arbitration industry, arbitration associations are responsible for standardizing industry conduct, organizing professional exchanges, and promoting the dissemination of arbitration culture.³² Fully leveraging these functions helps form unified industry standards, a pool of professional talent, and a healthy industry ecology in the ad hoc arbitration field, providing sustained endogenous momentum for the normative operation and institutional maturity of ad hoc arbitration in China.

3. The Supervisory Functions of Arbitration Associations over Arbitration Institutions

"The China Arbitration Association is a social organization with the status of a legal person. Arbitral institutions are members of the China Arbitration Association. The charter of the China Arbitration Association shall be developed by its national congress of members. The China Arbitration Association is a self-regulatory organization of arbitral institutions, and in accordance with its charter, supervises arbitral institutions and their members, staff and arbitrators in arbitration activities." This is the Legislative basis for the supervisory

29 Chen, *supra* note 19, at 56.

30 See Han Ping (韩平), *Lun Zhongcaiyuan de Minshi Zeren* (论仲裁员的民事责任) [*On the Civil Liability of Arbitrators*], 3 WUHAN DAXUE XUEBAO (ZHEXUE SHEHUI KEXUE BAN) (武汉大学学报 (哲学社会科学版)) [WUHAN UNIV. J. (PHILOS. & SOC. SCI.)] 29 (2011).

31 Chen, *supra* note 19, at 192.

32 See Zhang Xiaojian (张小建), *Zhongguo Zhongcai Xiehui Jiben Wenti Yanjiu — Jianlun Woguo "Zhongcaifa" Youguan Tiaokuan de Xiugai* (中国仲裁协会基本问题研究 — 兼论我国《仲裁法》有关条款的修改) [*Research on Basic Issues of China Arbitration Association: Also on the Revision of Relevant Articles of China's "Arbitration Law"*], 2 ZHONGCAI YANJIU (仲裁研究) [ARB. RSCH.] 41 (2006).

functions of arbitration associations over arbitration institutions. Existing views suggest that the scope of industry supervision by arbitration associations over arbitration institutions should be "strictly limited to the disciplinary conduct of arbitration commissions, their members, and arbitrators,"³³ and should not affect the autonomy of arbitration institutions. This article posits that, within the framework of social governance in ad hoc arbitration, arbitration associations' supervision over arbitration institutions should not involve individual awards or internal management affairs. However, they have the authority to review whether the ad hoc arbitration rules formulated by arbitration institutions comply with industry model standards. This does not constitute interference with institutional autonomy but is an inherent part of industry self-discipline, promoting the formation of unified industry norms, as exemplified by the filing review of law firm rules by bar associations.³⁴ Based on this, arbitration associations should establish principled industry norms and fully exercise their industry norm-setting functions to avoid risks such as "excessive intervention in ad hoc arbitration by arbitration institutions when formulating specific ad hoc arbitration-related rules, thereby affecting the independence and efficiency of ad hoc arbitration."³⁵ However, given that the China Arbitration Association is still in its infancy and many local arbitration associations are in the preparatory or start-up phase, the transformation of this supervisory function from institutional design to practical operation may still take time.

33 See Tu Wei (涂卫), *Zhongcai Jiguan Jianguan yu Zhili Jizhi Yanjiu* (仲裁机构监管与治理机制研究) [Research on the Supervision and Governance Mechanism of Arbitration Institutions] 113 (2013) (Ph.D. dissertation, University of International Business and Economics (对外经济贸易大学)).

34 See Zhonghua Quanguo lüshi Xiehui lüshi Hangye Guize Zhiding Guicheng (Shixing) (中华全国律师协会律师行业规则制定规程 (试行)) [Procedures for the Formulation of Industry Rules for Lawyers by the All China Lawyers Association (Trial)] (promulgated by the All China Lawyers Ass'n, Aug. 11, 2004, effective Aug. 11, 2004), art. 40, <https://www.pkulaw.com/chl/a06b398365ec7e5bbdfb.html>.

35 See Chen Lei (陈磊), Shiyong "Hengqin Ziyou Maoyi Shiyangu Linshi Zhongcai Guize" Jinxing Linshi Zhongcai de Xianshi Kunjing ji Bentuhua Tuijin (适用《横琴自由贸易试验区临时仲裁规则》进行临时仲裁的现实困境及本土化推进) [Practical Difficulties and Localization Promotion of Ad Hoc Arbitration Applying the "Hengqin Free Trade Zone Ad Hoc Arbitration Rules"], 4 FAZHI LUNTAN (法治论坛) [LEGAL FORUM] 305, 309(2020).

**C. PATHWAYS FOR OPTIMIZING THE RELATIONSHIP
BETWEEN ARBITRATION ASSOCIATIONS AND
ARBITRATION INSTITUTIONS**

**1. Improving the Arbitration Association System and
Unifying Industry Self-Regulatory Norms**

**(1) Clarifying the Self-Regulatory Nature of the Ad Hoc
Arbitration record-filing system**

Based on the analysis above, the "record-filing system" established by Article 82 of the *Arbitration Law of the People's Republic of China* (2025) was intended by the legislature to achieve moderate industry monitoring of ad hoc arbitration. However, without clear procedural definition, it risks being distorted into administrative review, which neither helps preserve the democratic and flexible nature of ad hoc arbitration, nor does it prevent arbitration associations from becoming a de facto "second government," thereby deepening their administrative dependency.³⁶ Therefore, the primary task in improving the record-filing system is to clarify its legal nature, specify the filing entity, and regulate the legal consequences.

From the perspective of legal nature, ad hoc arbitration filing should be defined as "information statistics and industry monitoring under formal review," rather than substantive validity recognition. The record-filing system should not have a substantive constructive effect on the validity of the ad hoc arbitration agreement, the jurisdiction of the ad hoc tribunal, or the finality of the award; otherwise, industry self-regulatory organizations would overstep the boundaries of public authority review and party autonomy. From the perspective of the filing entity, current rules refine the filing entity from the arbitration association stipulated in Article 82 of the *Arbitration Law of the People's Republic of China* (2025) to its provincial-level arbitration associations.³⁷ However, there is still no unified arbitration association regulation, nor a clearly tiered national arbitration association system. Existing views suggest that "local arbitration associations should become institutional members of the China Arbitration Association, and may be established at the provincial, autonomous region, or

³⁶ Zhang, *supra* note 31, at 44.

³⁷ See Hainansheng Zhongcai Xiehui Linshi Zhongcai Anjian Beian Zhiyin (Shixing) (海南省仲裁协会临时仲裁案件备案指引(试行)) [Guidelines for Filing of Ad Hoc Arbitration Cases of Hainan Provincial Arbitration Association (Trial)] (promulgated by the Hainan Provincial Arb. Ass'n, Feb. 6, 2026, effective Feb. 6, 2026), art. 2, <http://ftp-hnaa.com/detail/263.html>.

municipal level."³⁸ Regarding the record-filing system, establishing this arbitration association system is particularly important. On the one hand, it is necessary for unifying filing norms; on the other hand, if the arbitration association system is not established, filing norms are not unified, and filing responsibility entities are not clarified, it may lead to situations like "multiple filings for one case" or parties "selecting" a suitable arbitration association for their case based on each association's filing rules. This would cause chaos in filing practice, nullifying the institutional purpose of formally monitoring ad hoc arbitration cases.

Regarding the legal consequences of failure to file or non-compliance, to adhere to the essence of industry self-regulatory, such consequences should be prevented from spilling over into the judicial and administrative spheres. If "failure to file" or "filing rejection" is directly equated with "invalid arbitration" or "refusal to recognize or enforce the award," this would not only lack a basis in higher-level law but also severely contradict the contractual foundation of the de-institutionalized nature of ad hoc arbitration. This article posits that a reasonable institutional design should return to the statutory function of industry associations, which is "supervision over personnel." In other words, the legal consequences of failing to fulfill the filing obligation should be reflected in internal industry disciplinary actions imposed by arbitration associations against non-compliant arbitrators (such as reprimands, industry notifications, and, in severe cases, removal from the panel list of member institutions). By internalizing responsibility in this way, the effectiveness of arbitration association supervision is maintained, while ensuring that judicial supervision, administrative supervision, and social governance systems each perform their respective roles, preventing the excessive expansion of social power from undermining private autonomy.

(2) Broadening the Supervision Pathways for Arbitration Associations over Ad Hoc Arbitrators

Effective industry supervision by arbitration associations over ad hoc arbitration ultimately needs to be implemented through behavioral regulation of the members of ad hoc arbitration tribunals, thereby avoiding procedural intervention by arbitration associations in specific arbitration cases.

³⁸ Tu, *supra* note 32, at 104.

Regarding the methods of supervising arbitrators, many scholars have proposed specific and operational supervision schemes, including formulating codes of conduct for arbitrators, establishing arbitrator admission systems, and using arbitration institutions to impose access restrictions and behavioral supervision on arbitrators.³⁹ However, it is noteworthy that in the context of ad hoc arbitration, parties are not compelled to select arbitrators from the panel of an arbitration institution, thus rendering unclear the pathway for arbitration associations to supervise ad hoc arbitrators. The author proposes two solutions here.

First, arbitration associations can achieve industry supervision over ad hoc arbitrators by broadening the types of membership access. Article 25 of the *Arbitration Law of the People's Republic of China* (2025) only stipulates that arbitration institutions are members of the association, without confirming individual membership status. However, since arbitrators appointed by parties in ad hoc arbitration have no restrictive relationship with permanent arbitral institutions, allowing arbitrators to join the arbitration association as individual members is of great significance for the development of China's ad hoc arbitration system.⁴⁰ Second, given that current ad hoc arbitration rules often restrict or limit party autonomy in appointing arbitrators to the panel list of the arbitration institution, and some viewpoints suggest that in the early stages of establishing arbitration associations, "membership types should be institutional members, i.e., arbitration commissions, with individual membership being deferred,"⁴¹ it is reasonable and operable during the transitional period of arbitration association development to temporarily supervise ad hoc arbitrators through the panel system, exercising supervision over arbitration institutions. It is worth noting that this approach seems to implicitly assume that the parties' autonomous right to appoint arbitrators in ad hoc arbitration is subject to the panel system, which contravenes the principle of party autonomy in ad hoc arbitration. Therefore, this should not be considered a long-term solution for arbitration

39 Tu, *supra* note 32, at 111–112.

40 Zhang, *supra* note 31, at 47.

41 Tianjin Zhongcai Weiyuanhui (天津仲裁委员会) [Tianjin Arb. Comm'n], "Zhongcaifa" Xiugai ji Zhongguo Zhongcai Xiehui Zhangcheng Qicao Yanjiu Gongzuo Zuotanhui Tijiao Cailiao (《仲裁法》修改暨中国仲裁协会章程起草研究工作座谈会提交材料) [Materials Submitted to the Symposium on the Revision of the "Arbitration Law" and the Drafting of the Charter of the China Arbitration Association] (Apr. 18–20, 2006) (unpublished manuscript, on file with author) (presented at Xiamen).

association supervision over ad hoc arbitration; the first solution should remain the long-term development goal for arbitration associations.

(3) Establishing a Model of Supervision over Arbitration Institutions through "Industry Regulations"

In the context of ad hoc arbitration, supervision by arbitration associations over permanent arbitral institutions should not focus on traditional supervision of the institutions themselves but should shift to compliance constraints at the rule level. At this point, the function granted to arbitration associations by Article 25 of the *Arbitration Law of the People's Republic of China* (2025) to "formulate arbitration rules" should be interpreted as granting them the power to formulate "industry regulations with model law characteristics."

Academic research generally indicates that industry regulations hold a position akin to "soft law" in the governance of social organization legal persons.⁴² Arbitration associations should formulate a unified national Model Self-Regulatory Rules for China's Ad Hoc Arbitration Industry, serving as the cornerstone for regulating ad hoc arbitration operations. From the perspective of social governance, the core of arbitration association supervision over arbitration institutions lies in reviewing whether the Ad Hoc Arbitration Rules, Ad Hoc Arbitration Assistance/Guidelines Rules, etc., formulated by each permanent arbitral institution deviate from the basic spirit of the industry model rules. Through "compliance filing review" of institutional ad hoc arbitration rules, arbitration associations can prevent arbitration institutions from leveraging their rule-drafting convenience to artificially create unreasonable procedural barriers or mandatory panel requirements in ad hoc arbitration, thereby promoting a coherent and orderly regulatory environment for ad hoc arbitration.

(4) Establishing and Improving Social Sanction Mechanisms in Line with Industry Self-Discipline Characteristics

The effective implementation of social governance requires a deterrent sanction mechanism as a backing. According to economic deterrence theory, when the expected cost of punishment for an actor

42 See Li Hongbo (李红勃), *Hangye Guizhang Canyu Shehui Zhili de Lilun Zhengcheng yu Fazhihua Lujing* (行业规章参与社会治理的理论证成与法治化路径) [Theoretical Justification and Rule of Law Path for Industry Regulations Participating in Social Governance], 10 ZHONGZHOU XUEKAN (中州学刊) [ACADEMIC JOURNAL OF ZHONGZHOU] 57-64 (2023).

(i.e., the product of the probability of punishment and its severity) exceeds the benefits derived from the violation, rational individuals tend to choose compliant behavior.⁴³ Arbitration associations should establish a multi-tiered sanction system consistent with the laws of industry self-regulation:

i. **Reputational and Credit Sanctions:** Establish an industry blacklist system and a notification mechanism for violations. For arbitrators and institutions involved in sham arbitration, malicious delays, or serious breaches of good faith in ad hoc arbitration, industry disclosures should be made, leveraging reputational mechanisms to create deterrence.

ii. **Qualification and Access Sanctions:** For arbitrators with egregious conduct, it is recommended that member units of the industry association jointly impose boycotts, canceling their eligibility for inclusion in arbitration institution panels.

iii. **Linkage Mechanism Between Liability Insurance and Compensation Recovery:** Promote a professional liability insurance system for arbitrators, using sanctions imposed by the arbitration association as a key parameter for insurance claims and premium adjustments. Through such private sanctions, which lack the coercive power of state authority but possess highly market-oriented and industry-specific binding force, genuine industry self-purification in ad hoc arbitration can be achieved.

2. Optimizing The Role Positioning And Functional Integration Of Arbitration Institutions In Ad Hoc Arbitration

While clarifying the industry self-regulatory positioning of arbitration associations, permanent arbitral institutions also need to find their place within the social governance landscape for ad hoc arbitration constructed by the *Arbitration Law of the People's Republic of China* (2025). This involves transforming from "management entities" to "assistance and guarantee entities" and properly calibrating the relationship between institutional arbitration

43 See Lin Junyue (林钧跃), *Lun Gonggong he Shichang Liangzhong Butong Leixing de Shixin Chengjie Jizhi jiqi Huhu Guanxi* (论公共和市场两种不同类型的失信惩戒机制及其互补关系) [On the Two Different Types of Credit-Deficient Punishment Mechanisms: Public and Market, and Their Complementary Relationship], 1 ZHENGXIN (征信) [CREDIT REPORTING] 11-25 (2022).

and ad hoc arbitration.

(1) Drawing on International Commercial Arbitration Experience, Uphold the Principles of "Limited Intervention" and "Procedural Assistance"

Some scholars, when discussing the relationship between institutional arbitration and ad hoc arbitration, point out that they are not in a competitive or oppositional relationship of mutual exclusivity but rather a complementary, symbiotic relationship.⁴⁴ When intervening in ad hoc arbitration, Chinese arbitration institutions must abandon the "paternalistic" management inertia formed in institutional arbitration,⁴⁵ restrain the impulse for excessive intervention, and properly position themselves as appointing authorities and providers of procedural support services.

In specific operations, the services provided by arbitration institutions should be limited to necessary matters to break procedural deadlocks. For example, arbitration institutions should only intervene when parties cannot agree on the appointment of a sole arbitrator or when a challenged arbitrator cannot decide on the challenge themselves. Simultaneously, arbitration institutions should actively provide logistical conveniences for ad hoc arbitration, such as hearing facilities, escrow services, and service of documents. This intervention should be "passive intervention upon party request," not "active intervention *ex officio*," thereby preserving the efficient, confidential, and party-driven nature of ad hoc arbitration to the greatest extent possible. The ad hoc arbitration norms formulated by some arbitration institutions currently generally align with the values demonstrated by this principle; however, some rules exhibit a tendency toward the "bureaucratization" of ad hoc arbitration procedures, lacking design features to prevent excessive intervention by arbitration institutions. At

44 See Chen Lei (陈磊), *Zimaoqu Linshi Zhongcai de Zhidu Jichu yu Wanshan Lujing—Yi Linshi Zhongcai yu Jiguan Zhongcai Guanxi zhi Youhua wei Shijiao* (自贸区临时仲裁的制度基础与完善路径——以临时仲裁与机构仲裁关系之优化为视角) [*Institutional Basis and Perfection Path of Ad Hoc Arbitration in Free Trade Zones: From the Perspective of Optimizing the Relationship Between Ad Hoc Arbitration and Institutional Arbitration*], 8 NANJING SHEHUI KEXUE (南京社会科学) [NANJING JOURNAL OF SOCIAL SCIENCES] 91 (2020).

45 See Wu Ruqiao (吴如巧) & Li Zhen (李震), *Cong Guojia dao Shehui: Zhongguo Shangshi Zhongcai Zhidu de Fansie yu Wanshan* (从国家到社会：中国商事仲裁制度的反思与完善) [*From State to Society: Reflection on and Improvement of China's Commercial Arbitration System*], 7 SHEHUI KEXUE ZHANXIAN (社会科学战线) [SOCIAL SCIENCE FRONT] 192 (2020).

the same time, major permanent arbitral institutions should systematically calibrate their self-formulated Ad Hoc Arbitration Guidelines/Rules for compliance, guided by the subsequent industry model regulations issued by the China Arbitration Association.

V. CONCLUSION

The trajectory of ad hoc arbitration in China is currently at a critical transitional juncture, pivoting from rule creation to practical implementation. Constructing a scientific social governance system requires clarifying the distinct roles and interactive logic between arbitration associations and arbitration institutions. Arbitration associations must return to their core self-regulatory nature by refining the "filing" system, strengthening arbitrator supervision, and formulating industry model rules to achieve macro-level compliance and industry self-purification.

Simultaneously, arbitration institutions should abandon "paternalistic" management inertia and strictly uphold the principles of "limited intervention" and "procedural assistance". By establishing a governance framework featuring functional division and normative coordination, China can resolve current dilemmas involving diverse normative sources and unclear positioning. Such a governance arrangement would better protect party autonomy and enhance China's position and competitiveness in international commercial arbitration.

