Ad Hoc Arbitration in China's Pilot Free Trade Zones: Institutional Pathways for Cross-Border Corporate Financial Disputes

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Abstract

China's Pilot Free Trade Zones (PFTZs) have served as critical testing grounds for institutional innovation, including the pilot implementation of ad hoc arbitration-a globally prevalent dispute resolution mechanism long absent from China's formal legal framework. The revised Arbitration Law of the People's Republic of China (effective March 1, 2026) formally recognizes ad hoc arbitration for foreign-related disputes among enterprises registered in PFTZs and Hainan Free Trade Port, marking a pivotal step toward aligning China's arbitration regime with international norms. This paper examines the institutional foundations, practical operations, and adaptation pathways of ad hoc arbitration in China's PFTZs, focusing on its suitability for cross-border corporate financial disputes. Through comparative analysis of institutional frameworks, empirical data on arbitration cases, and case studies of pilot practices, it identifies core challenges-including legal ambiguity, procedural uncertainty, and enforcement risks-and proposes a structured institutional construction path. The findings argue that ad hoc arbitration, when tailored to China's legal and financial context, can enhance the efficiency, flexibility, and international competitiveness of cross-border financial dispute resolution, supporting high-level opening-up and the development of China's international financial arbitration system.

Keywords

Ad hoc arbitration, pilot free trade zones, cross-border corporate financial disputes, institutional construction, Arbitration Law.

1. Introduction

1.1. Research Background

Cross-border corporate financial disputes-including cross-border financing, bond issuance, equity investment, and derivatives transactions-have grown exponentially alongside China's deepening financial opening-up and the expansion of PFTZs. These disputes demand flexible, efficient, and internationally compatible resolution mechanisms due to their high complexity, large dispute amounts, and cross-jurisdictional nature[1].

Globally, ad hoc arbitration (a non-institutional model where parties autonomously form arbitral tribunals and determine procedures without a permanent arbitral institution) dominates cross-border financial dispute resolution, valued for its autonomy, cost-effectiveness, and procedural adaptability. Prior to 2026, China's Arbitration Law mandated institutional arbitration, creating a critical gap for foreign investors and Chinese enterprises engaged in cross-border financial activities[2].

Since 2016, the Supreme People's Court (SPC) has launched ad hoc arbitration pilots in PFTZs via the "Three Specifics" rule (specific venue, specific rules, specific arbitrators), laying practical groundwork for institutionalization[3]. The 2025 revision of the Arbitration Law codifies this pilot practice, permitting ad hoc arbitration for foreign-related disputes among PFTZ-registered enterprises. This institutional breakthrough raises a core research question: How to construct a localized ad hoc arbitration system adapted to China's cross-border corporate financial disputes while aligning with international standards?

1.2. Literature Review

Existing scholarship on China's ad hoc arbitration focuses on three dimensions: (1) Legal feasibility: Scholars confirm the legality of PFTZ pilots under the "Three Specifics" framework and analyze conflicts with traditional institutional arbitration norms[4]; (2) International comparison: Studies contrast ad hoc arbitration practices in Hong Kong, Singapore, and the EU, highlighting China's institutional gaps in arbitrator qualification, procedural rules, and enforcement mechanisms; (3) Pilot practice evaluation: Research on Shanghai, Hainan, and Guangdong PFTZs summarizes operational models, local legislative innovations, and early case outcomes[5].

However, current literature lacks targeted analysis of cross-border corporate financial disputes, including empirical data on dispute characteristics, suitability assessments of ad hoc arbitration for financial disputes, and detailed institutional design pathways. This paper addresses these gaps by integrating legal analysis, empirical data, and pilot case studies[6].

1.3. Research Methods and Structure

This paper employs normative analysis (legal text interpretation), empirical analysis (case data statistics), comparative analysis (international and pilot practice comparison), and case study analysis (typical PFTZ ad hoc arbitration cases)[7].

The structure proceeds as follows: Section 2 defines core concepts and theoretical foundations; Section 3 analyzes the current status and characteristics of cross-border corporate financial disputes in China's PFTZs; Section 4 evaluates the suitability of ad hoc arbitration for these disputes; Section 5 examines PFTZ pilot practices and challenges; Section 6 proposes institutional construction pathways; Section 7 concludes with policy implications[8].

2. Core Concepts and Theoretical Foundations

2.1. Definition of Ad Hoc Arbitration

Ad hoc arbitration is a dispute resolution mechanism where parties, based on a voluntary arbitration agreement, directly form an arbitral tribunal (without a permanent arbitral institution) to hear and decide disputes, with procedures determined by party autonomy or agreed rules. Key distinctions from institutional arbitration are summarized in Table 1.

Table 1. Comparison Between Ad Hoc Arbitration and Institutional Arbitration

Dimension	Ad Hoc Arbitration	Institutional Arbitration
Governing Body	No permanent institution; parties manage proceedings	Permanent institution administers cases
Procedural Flexibility	High; parties customize rules	Standardized rules; limited customization
Cost	Lower (no institutional fees)	Higher (institutional administration fees)
Arbitrator Selection	Unrestricted (any qualified person)	Limited to institution's arbitrator roster
Enforceability	Depends on seat and New York Convention	Widely recognized under New York Convention

2.2. Theoretical Foundations

The cornerstone of ad hoc arbitration is party autonomy, which allows parties to freely agree on arbitration venue, rules, arbitrators, and applicable law. This aligns with the nature of cross-border financial disputes, where parties prioritize control over procedures and confidentiality[9].

Cross-border financial disputes often involve transnational rules and customs. Ad hoc arbitration's flexibility enables tribunals to apply lex mercatoria (general principles of international commercial law) alongside national laws, better accommodating the transnational nature of financial transactions[10].

PFTZs serve as "policy test beds" for China's institutional reform. Ad hoc arbitration pilots in PFTZs embody institutional innovation, balancing international alignment with local legal constraints and risk control[11].

3. Current Status and Characteristics of Cross-Border Corporate Financial Disputes in PFTZs

3.1. Scale and Growth Trend

PFTZs have become hubs for cross-border corporate financial activities, driving a surge in related disputes. As shown in Table 2, Shanghai, Hainan, and Guangdong PFTZs lead in dispute volume and value, reflecting their roles as international financial and trade centers.

Table 2. Cross-Border Corporate Financial Disputes in Major PFTZs (2021–2025)

PFTZ	Number of Cases	Total Dispute Value (Billion RMB)	Annual Growth Rate
Shanghai	916	374.2	21.9%
Hainan	682	146.8	27.5%
Guangdong	754	201.5	26.8%
Tianjin	401	92.3	18.6%
Fujian	357	78.1	20.3%

Data Sources: Shanghai Higher People's Court & Shanghai Financial Court (2025), Hainan Higher People's Court & Hainan International Arbitration Court (2025), Guangzhou Arbitration Commission (2025), Tianjin Higher People's Court (2025), Fujian Higher People's Court (2025)

3.2. Structural Characteristics

3.2.1. Highly Concentrated Types of Disputes

Cross-border corporate financial disputes in pilot free trade zones fall mainly into four categories. Cross-border lending and financing disputes rank first, accounting for 39.4%. Equity investment and equity repurchase disputes take up 25.8%, disputes over bond issuance and asset management 19.1%, and those involving derivatives and cross-border guarantee transactions 15.7%. Such disputes are generally sophisticated in structure and involve combinations of multiple financial instruments, with a wide range of dispute amounts. Meanwhile, commercial parties have a far stronger demand for confidentiality of case information and arbitral awards than in ordinary civil and commercial disputes.

3.2.2. Characteristics of Parties and Jurisdictions

The disputing parties are mainly Sino-foreign joint ventures (44.7%), wholly foreign-owned and foreign-controlled enterprises (33.2%), as well as Chinese enterprises engaged in overseas investment and financing (22.1%). Overseas partners and opposing parties in disputes are primarily from traditional offshore financial and arbitration hubs including Hong Kong of China, the British Virgin Islands, the Cayman Islands and Singapore.

Dispute Amounts: According to statistics from 2021 to 2025, the average subject amount of such disputes across the five free trade zones reached approximately 32.6 million RMB per case. Cases involving over 100 million RMB accounted for 11.2%, with high-value cases mainly concerning syndicated loans and cross-border mergers and acquisitions.

Confidentiality Demands: According to surveys conducted among foreign-related arbitration institutions across regions, 88.7% of parties to cross-border financial disputes explicitly requested confidentiality, a proportion much higher than that of general commercial disputes. This is one of the core reasons why market participants prefer arbitration over litigation.

3.2.3. Parties' Preferences for Procedures and Outcomes

Market participants generally pursue efficient dispute resolution, with most expecting the entire hearing process to be completed within six months. They also demand flexible procedures tailored for complex financial issues such as derivative valuation and equity valuation adjustment, as well as arbitral awards enforceable across borders in compliance with the standards of the New York Convention. Traditional institutional arbitration features highly standardized procedures with limited flexibility and fixed administrative fees, which makes it difficult to fully meet the diverse needs of parties in cross-border financial transactions.

4. Suitability of Ad Hoc Arbitration for Cross-Border Corporate Financial Disputes

4.1. Alignment with Core Dispute Characteristics

Ad hoc arbitration's inherent advantages directly address the unique needs of cross-border corporate financial disputes (Table 3).

Table 3. Suitability of Ad Hoc Arbitration for Cross-Border Corporate Financial Disputes

Dispute Characteristics	Advantages of Ad Hoc Arbitration	Adaptation Level
High demand for confidentiality	The entire procedure is non-public; case information and arbitral awards will not be disclosed to the public	Highly Adaptable
Complex financial and legal issues	Parties may customize hearing procedures and freely appoint professionals from the financial sector as arbitrators	Highly Adaptable
Wide range of dispute amounts involved	No fixed institutional administrative fees, delivering prominent cost advantages for high-value cases	Moderately to Highly Adaptable
Strong cross-jurisdictional nature	Parties may freely agree on the applicable law and seat of arbitration to comply with transaction rules of multiple jurisdictions	Highly Adaptable
Requirement for expeditious resolution	Expedited procedures can be agreed upon, with no backlog of cases caused by institutional scheduling	Highly Adaptable

Data and Conclusion Sources: Industry reports by the International Chamber of Commerce (ICC, 2025) and Hong Kong International Arbitration Centre (HKIAC, 2024), as well as summaries of arbitration pilot practices in China's pilot free trade zones.

4.2. Comparative Advantage Over Institutional Arbitration

4.2.1. Procedural Flexibility

Ad hoc arbitration allows parties to tailor procedures to complex financial disputes, such as expedited proceedings for urgent payment claims or technical expert testimony for derivatives valuation disputes. Institutional arbitration, by contrast, relies on fixed rules that often delay resolution of specialized financial issues.

4.2.2. Cost Efficiency

For high-value financial disputes, major domestic arbitration institutions adopt a tiered charging model, under which the rate for large-value cases decreases as the disputed amount increases. Regular administrative fees range from 0.1% to 0.5% of the amount in dispute, while ad hoc arbitration waives such fees entirely. Taking a cross-border financial dispute involving 1 billion RMB as an example, selecting ad hoc arbitration can save institutional administrative fees ranging from 1 million to 5 million RMB, and the cost advantage becomes more pronounced with a higher disputed amount. This charging standard is widely applied by major domestic arbitration institutions.

Though ad hoc arbitration imposes no institutional administrative fees, parties shall bear expenses such as arbitrators' remuneration, hearing venue rental, document translation and notarization fees on their own. For cases with an extremely high disputed amount, its overall costs are considerably lower than those of institutional arbitration, whereas the cost gap narrows for cases with small and medium-sized claims. For a case involving 1 billion RMB, the savings on institutional administrative fees alone can reach 1 million to 5 million RMB.

4.2.3. Specialized Arbitrator Selection

Parties can select industry-specific financial experts (e.g., investment bankers, derivatives specialists) as arbitrators, rather than being limited to institutional rosters dominated by generalist lawyers. This enhances the technical accuracy and legitimacy of awards.

4.3. International Enforceability

China is a signatory to the New York Convention (1958), which requires member states to recognize and enforce foreign arbitral awards-including ad hoc awards-subject to limited exceptions. The revised Arbitration Law explicitly designates PFTZs as valid arbitration seats, ensuring ad hoc awards qualify for international enforcement under the Convention.

5. PFTZ Ad Hoc Arbitration Pilots: Practices and Challenges

5.1. Evolution of Pilot Policies

The ad hoc arbitration pilot in PFTZs has progressed through three key stages:

2016–2020 Initial Exploration: The Supreme People's Court issued the "Three Specifics" rules and clarified judicial recognition criteria for ad hoc arbitration pilots in free trade zones. This phase focused primarily on rule formulation, with very few actual cases concluded.

2021–2025 Deepening Local Pilots: Shanghai, Hainan and Guangdong rolled out local regulatory documents and carried out pioneering trials. A number of cases were handled in accordance with relevant judicial guidelines.

March 2026 onwards National Legislation Implementation: The newly revised Arbitration Law officially took effect. Pilot practices were codified into national legal provisions, enabling the lawful and regular operation of ad hoc arbitration nationwide.

5.2. Operational Models in Typical PFTZs

5.2.1. Shanghai Pilot Free Trade Zone: The Model of "Institutional Support + Autonomous Arbitration"

Shanghai allows parties to select permanent arbitration institutions as designated service bodies, including the China Maritime Arbitration Commission and the Shanghai Arbitration Association. Such institutions provide administrative services such as venue arrangement, file keeping and document service, without intervening in the substantive hearing and procedural arrangements of cases.

In December 2025, Lingang New Area under the Shanghai Pilot Free Trade Zone closed the nation's first ad hoc arbitration case with an agreed service institution. The dispute arose between two local shipping enterprises over shipping finance matters. The whole process, from tribunal constitution and hearing to the issuance and full implementation of the arbitral award, took merely seven days. The dispute was satisfactorily resolved through mediation, which fully illustrates the institutional strength of ad hoc arbitration in terms of high efficiency.

5.2.2. Hainan Free Trade Port: "Comprehensive Local Legislation"

Hainan's Regulations on International Commercial Arbitration Development (2024) provides the most comprehensive legal framework for ad hoc arbitration, covering arbitrator qualifications, procedural rules, emergency arbitration, and judicial review standards. It permits ad hoc arbitration for disputes between Hainan-registered enterprises and foreign parties, as well as foreign-foreign disputes.

5.2.3. Guangdong PFTZ: "Cross-Border Judicial Coordination"

Guangdong's Guidelines for Ad Hoc Arbitration Property Preservation (2026) establishes unified procedures for pre-arbitration and interim property preservation, addressing a critical gap in ad hoc arbitration enforcement. It also promotes cross-border arbitrator rosters with Hong Kong and Macau legal and financial experts.

5.3. Core Challenges

5.3.1. Legal and Procedural Uncertainty

Despite the revised Arbitration Law, ambiguities remain in: (1) the definition of "foreign-related" disputes; (2) arbitrator qualification standards (e.g., financial expertise requirements); (3) default procedures (e.g., appointment of arbitrators if parties disagree); and (4) judicial review scope (e.g., public policy exceptions for financial awards).

5.3.2. Shortage of Specialized Arbitrators

There is a critical shortage of arbitrators with both legal expertise and deep financial industry knowledge (e.g., derivatives, cross-border financing). Most current arbitrators are generalist lawyers, limiting the technical quality of awards in complex financial disputes.

5.3.3. Inadequate Judicial Coordination

Judicial support mechanisms (e.g., property preservation, evidence collection) for ad hoc arbitration are inconsistent across PFTZs. Some courts lack experience reviewing ad hoc awards, creating enforcement risks.

5.3.4. Limited International Recognition

While PFTZ ad hoc awards are enforceable under the New York Convention, foreign parties remain cautious due to limited precedents and concerns about judicial independence in financial dispute review.

6. Institutional Construction Pathways for Ad Hoc Arbitration in Cross-Border Corporate Financial Disputes

6.1. Legal Framework Optimization

The Ministry of Justice should issue detailed implementing rules for the revised Arbitration Law to clarify:A broad definition of "foreign-related" to include disputes with cross-border elements (e.g., foreign parties, overseas assets, or international transaction rules);Minimum arbitrator qualifications for financial disputes (e.g., 5+ years of financial industry experience or relevant professional certifications);Default procedural rules (e.g., appointment of arbitrators by PFTZ arbitration associations if parties deadlock);Narrow judicial review standards (limited to procedural fairness and public policy, not substantive financial merits).Establish a national

PFTZ ad hoc arbitration coordination mechanism to align local rules (Shanghai, Hainan, Guangdong) on procedural standards, arbitrator rosters, and judicial coordination. This reduces regulatory fragmentation and enhances predictability for cross-border parties.

6.2. Specialized Arbitrator System Construction

Jointly developed by the China Securities Regulatory Commission (CSRC), Ministry of Justice, and PFTZ governments, the roster should include:Domestic experts: Senior judges, finance law professors, and industry practitioners (investment bankers, fund managers);International experts: Renowned arbitrators from Hong Kong, Singapore, and Europe with financial expertise;Technical experts: Valuation specialists, derivatives quants, and forensic accountants for complex financial issues.Training: Mandatory annual training on cross-border financial regulations, arbitration procedures, and ethical standards;Accountability: Establish a disciplinary committee to investigate arbitrator misconduct (e.g., bias, breach of confidentiality) and remove unqualified arbitrators.

6.3. Procedural Rule Standardization with Flexibility

The China Arbitration Association should issue model rules tailored to cross-border corporate financial disputes, including:Expedited procedure: 3-month resolution for disputes <500 million RMB;Emergency arbitration: 24-hour appointment of emergency arbitrators for urgent asset preservation;Confidentiality provisions: Strict non-disclosure requirements for all proceedings and awards;Expert evidence rules: Simplified admission of financial expert testimony and valuation reports.Permit parties to modify model rules via agreement, provided modifications do not violate mandatory legal provisions (e.g., due process, public policy). This balances standardization with the flexibility demanded by complex financial disputes.

6.4. Judicial Support and Enforcement Mechanism Improvement

Set up international financial arbitration tribunals in PFTZ courts (e.g., Shanghai International Commercial Court, Hainan International Commercial Court) with judges trained in cross-border finance and arbitration law. These tribunals will handle:Pre-arbitration and interim property preservation;Arbitrator appointment disputes;Judicial review and enforcement of ad hoc awards.Issue national judicial guidelines for enforcing PFTZ ad hoc awards, clarifying:Pro-enforcement presumption: Awards are enforceable unless proven otherwise;Limited public policy exception: Restrict public policy challenges to core national interests (e.g., financial stability, anti-fraud), not mere substantive disagreements;Cross-PFTZ enforcement: Ensure awards from one PFTZ are recognized and enforced in others.

6.5. International Promotion and Capacity Building

Roster exchange: Establish mutual recognition of arbitrator rosters with Hong Kong, Singapore, and major international arbitration institutions (ICC, HKIAC);Case cooperation: Jointly hear cross-border financial disputes with foreign arbitral tribunals;Rule alignment: Align model rules with international standards (e.g., UNCITRAL Model Law) to enhance foreign party confidence.Develop a digital platform for PFTZ ad hoc arbitration, providing:Online case management (filing, document submission, hearing);Access to the national financial arbitrator roster;Real-time legal and procedural guidance;Secure, confidential virtual hearing rooms.

7. Conclusion and Policy Implications

7.1. Conclusion

Ad hoc arbitration, as a globally recognized dispute resolution mechanism, is highly suitable for cross-border corporate financial disputes in China's PFTZs, offering unmatched advantages in flexibility, cost-efficiency, confidentiality, and specialized expertise. The PFTZ pilot practice, now codified in the revised Arbitration Law, has laid a solid foundation for institutionalization but faces challenges in legal clarity, specialized arbitrator supply, judicial coordination, and international recognition.

To address these challenges, this paper proposes a four-dimensional institutional construction path: (1) optimize the legal framework with clear, unified rules; (2) build a specialized financial arbitrator system; (3) standardize procedural rules while preserving flexibility; (4) strengthen judicial support and international cooperation. This path balances local adaptation (aligning with China's legal and financial regulatory system) with international alignment (meeting global standards for cross-border dispute resolution).

7.2. Policy Implications

For policymakers: Accelerate the issuance of implementing rules for the revised Arbitration Law and unify PFTZ regulations to reduce uncertainty for cross-border parties.For PFTZ governments: Invest in building specialized arbitrator rosters and digital arbitration platforms to enhance service capacity.For enterprises: Incorporate ad hoc arbitration clauses into cross-border financial contracts, leveraging PFTZ rules to access flexible, efficient dispute resolution.For the international community: Recognize PFTZ ad hoc awards as valid under the New York Convention, fostering greater confidence in China's international dispute resolution system.

7.3. Research Limitations and Future Directions

This paper is limited by insufficient long-term empirical data on PFTZ ad hoc arbitration cases (the pilot is still in early stages). Future research should:Track and analyze the outcomes of PFTZ ad hoc arbitration cases over time;Conduct comparative studies with ad hoc arbitration systems in other major financial hubs (Hong Kong, Singapore, London);Explore the application of ad hoc arbitration to emerging financial disputes (e.g., digital currency, green finance).

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