

On the Improvement of Adr Mechanism of China's Finance

Hongmei Sun^{1,2}

¹Diqing Central Branch of the People's Bank of China, Shangri-La, Yunnan, China

²Chongqing University Law School, Chongqing, 400040, China

Keywords: Financial Adr Mechanism, Financial Consumers, Thinking Enlightenment

Abstract: At Present, China's Financial Development is Still in the Stage of Barbaric Growth, with Insufficient Supervision and Frequent Disputes. China's Financial Consumer Disputes Involve a Large Number of Scattered, Complex and Diverse Legal Relations, and It is Difficult to Collect Evidence. Traditional Dispute Resolution Methods Are Difficult to Protect the Interests of Financial Consumers. Adr Online Dispute Resolution Mechanism Conforms to the Characteristics of China's Finance, and Has the Advantages of High Efficiency, Convenience and Economy. This Paper Holds That the Application of Adr to Solve Financial Disputes in China Should Follow the Principle of Both Convenience and Fairness, and the Inclined Protection of Consumers' Rights, and Build a Dispute Resolution Mechanism That Conforms to the Current Reality and is Moderately Advanced.

1. Introduction

In Recent Years, China's Finance Has Developed Rapidly in China, But At the Same Time, the Phenomenon of Insufficient Supervision, Frequent Disputes and Infringement of Financial Consumers' Rights and Interests Has Occurred Frequently[1]. the Concept of "Financial Consumer" Has Been Controversial for a Time, Because the Traditional Concept Holds That the Transaction Behavior of Financial Market is Investment, Which Belongs to "Production Consumption" Rather Than "Life Consumption" in Essence. the Scope of Consumer Protection Has Formed a Consensus, and the Academic Community Has Also Carried out Many Explorations and Innovations on the Mechanism of Consumer Protection. However, At Present, Both Theoretical Research and Legislative Practice Are Focused on the Ex Ante Protection Mechanism for the Rights and Interests of Financial Consumers, and There Are Deficiencies in the System Design for the Ex Post Settlement Mechanism after Financial Consumer Disputes.

2. Types and Characteristics of Financial Disputes in China

Internet financial services. Due to the virtual, technical and open characteristics of the Internet, users are faced with double risks of technical and financial aspects when purchasing financial products and services on China's financial platform, which is very easy to cause disputes.

2.1 Types of Financial Disputes in China

Disputes over breach of contract. Default is the main cause of disputes in the traditional financial field[2]. The virtual nature of the Internet makes financial consumers lack of rational judgment on the credit status of investment objects, and the risk of default in China's financial industry is greatly increased.

Tort disputes. It is inevitable for consumers to provide financial institutions with detailed personal information such as identity information, account information, fund status, etc., which are easily used by financial institutions for other commercial purposes. In China's financial field, due to the application of big data technologies such as data mining and data analysis, consumers' deeper personal information such as consumption preferences and capital needs may be obtained by financial platforms or other entities. At the same time, due to the potential technical performance of computer networks, hackers' intrusion, virus attacks, financial fraud and other risks, consumers are faced with account capital loss Threat, which leads to the infringement disputes between the

financial consumers and the financial enterprises or the third party.

2.2 Characteristics of Financial Disputes in China

Disputes involve a large number of people and are scattered. China's finance meets the requirements of Inclusive Finance, and its services cover a large number of small and micro enterprises and the general public[3].

The status of both parties to the dispute is becoming more and more different. As consumers purchase financial services through the Internet, they are faced with information displayed on Web pages or mobile phones.

The legal relationship in disputes is complex and diverse. The complex and pluralistic legal relationship leads to the difficulty of qualitative analysis and evidence collection of legal relationship in litigation.

It is difficult to collect evidence after a dispute. However, due to the completion of financial transactions on the Internet, evidence mostly exists in the form of electronic evidence, and consumers usually ignore the preservation of evidence[4], which makes it difficult for consumers to restore the facts of cases through evidence in case of disputes, facing the embarrassment of no evidence.

It's difficult to carry out the decision after it's made. The development of financial services in China makes the way of property storage and transfer more diversified and hidden. As shown in Figure 1.



Fig.1 Research and Deduction of Financial Adr Mechanism

3. The Feasibility and Advantages of Adr in China's Financial Consumption Disputes

3.1 Adr Feasibility

The new characteristics of China's financial disputes are necessary to establish a diversified dispute resolution mechanism which is suitable for China's national conditions. The ADR (Online Dispute Resolution) originated from e-commerce is the best choice for China's financial industry. ADR is the result of the combination of traditional dispute resolution mechanism and network technology, which gets rid of the shackles of physical places[5]. ADR overcomes the defects of face-to-face, time-consuming and inconvenient traditional dispute resolution mechanism, realizes the quick, flexible and economical handling of disputes, and then ensures that the rights and interests of financial consumers in China are transformed into real rights and interests. Domestic scholars define ADR in a narrow sense and a broad sense. The definition of ADR in a narrow sense holds that ADR is the application of ADR (alternative dispute resolution, non litigation dispute resolution mechanism) on the network platform.

3.2 Advantages of Adr

Efficient, convenient and cheap. Due to the paperless and cross regional characteristics of financial transactions in China, if disputes are solved through traditional litigation and mediation, it will undoubtedly increase the cost of the parties and cause low efficiency of transactions[6]. ADR adopts modern network information technology to break the limitation of time, personnel and region. It does not need to transmit literal materials and evidence materials in reality, nor need to solve disputes "face to face" in court or arbitral tribunal, so as to avoid the time cost and money cost of the parties. With the powerful function of information technology, ADR platform can break

through the limit of human information processing and speed up the processing of cases.

Save judicial resources. The particularity of China's financial disputes requires judges to have some professional knowledge in the financial field, but at the same time, in the context of the reform of the court post system, the number of cases that judges need to deal with has increased dramatically, and judicial resources are relatively scarce. However, the cases of financial consumption disputes in our country are often of high incidence. If all the cases seek the relief of traditional judicial organs, it will undoubtedly cause great pressure on the traditional judicial organs[7]. ADR can make full use of the advantages of information technology, absorb professionals who are familiar with the financial field all over the country and even the world as referees, so that a large number of professionals can participate in the handling of cases through the Internet without leaving home, saving judicial resources to a large extent, and easing judicial pressure.

Create a relaxed and pleasant environment for dispute resolution. Through online settlement of disputes, it is easy to create a more harmonious atmosphere of dispute resolution, which is characterized by low cost, fast transmission and simple procedure. It can avoid the exchange of evils due to litigation between the two parties, and it is in line with the tradition of people's interest litigation. It is conducive to the establishment of a harmonious and friendly financial environment, the maintenance of subsequent transaction cooperation, and the realization of "win-win".

4. Problems Faced by ADR Application

4.1 Deficiencies of Relevant Legislation

At present, there is no effective dispute resolution mechanism in China's financial platform and industry, and there is no external regulatory system to restrict it. As a new thing, online dispute resolution mechanism is lack of relevant supporting laws[8]. Due to the electronic, virtual and cross regional characteristics of ADR, it can not fully apply the provisions of the civil procedure law, arbitration law and other procedural laws. Therefore, to a certain extent, online dispute resolution mechanism is at the edge of law, no matter from the perspective of substantive law or procedural law, which restricts its development to a large extent.

4.2 It is Difficult to Distinguish the True from the False

Without the pressure of face-to-face and the authority of the court, it seems more convenient for the parties to provide false verbal evidence; the development of information technology also provides tool support for counterfeiting, such as through the editing and synthesis of words, voice and video, the authenticity, legality and relevance of the evidence are in doubt.

4.3 Authority Questioned

Due to the lack of face-to-face communication, the parties have doubts about the fairness of the intermediate adjudicator in the virtual environment, and then about the enforcement power of the judgment document. At the same time, ADR is still a new thing in China, the social recognition of ADR is not high, and its credibility has been questioned.

5. ADR Applied to China's Financial Dispute System

The construction of ADR system in our country can adopt multiple development modes, including online consultation, online adjustment, online arbitration and online trial.

5.1 ADR Negotiation

This method is suitable for cases with small transaction amount and clear facts. In view of the current financial situation and regulatory costs in China, it is not realistic to build a national unified online negotiation platform. Therefore, at this stage, ADR negotiation should be based on the internal processing mechanism of financial institutions. This paper suggests that when supervising the access of China's financial platforms, the regulatory documents should clearly require that

China's financial platform enterprises must establish a mechanism of consumer complaint, investigation and negotiation, and clearly inform the complaint and negotiation channels when reaching a contract with consumers. Regulatory authorities should conduct regular inspection and data collection, and establish corresponding databases, as one of the important regulatory means for rating China's financial platforms. There is no doubt that online negotiation is the first choice for consumers to solve disputes conveniently and efficiently. Therefore, in order to save the cost of safeguarding rights, regulatory resources and judicial resources, online negotiation should be taken as the pre procedure of financial dispute handling in China, and the time limit for handling should be specified. When consumers do not accept the negotiation results of the financial platform or the financial platform does not handle consumer dispute cases within the legal time limit, consumers Then it has the right to propose a subsequent dispute resolution method.

5.2 Adr Mediation

ADR mediation is that the parties, with the assistance of a third party, communicate through e-mail, electronic bulletin board and other network tools, and finally reach a mediation agreement. With the development of e-commerce, there are some online mediation websites in China, such as China Online Dispute Resolution Center (www.adr. Com. CN), Zhongxin ADR Service Center (www.adr. EBs. Org. CN), etc. However, the practice of online mediation in China is still in its infancy, with low scale and popularity, and lack of supporting mechanisms. There are the following problems to be solved in the application of ADR mediation to solve financial disputes in China: 1. The construction of ADR mediation platform. Generally speaking, mediation out of litigation can be conducted by a third party organization (such as an industry association) and an administrative agency (such as a financial regulatory agency). China's financial regulators have a high prestige, but under the current "one committee, one bank, two meetings" regulatory pattern, financial regulators have complex affairs, and the establishment of special mediation institutions may increase the burden of taxpayers. However, the mediation of industry association is relatively simple, time-consuming and low-cost, which can serve the financial consumers to the maximum extent. This paper suggests that China's financial industry association, China's Financial Association, should set up ADR mediation platform, which is responsible for formulating mediation rules, appointing mediators and supervising the implementation of mediation agreements. At the same time, financial consumers are allowed to submit disputes to other online mediation platforms for processing, appropriate diversion[9], and improve work efficiency. 2. Effectiveness of ADR mediation agreement. ADR mediation is based on the principle of voluntariness. One party of financial disputes in China can apply to the ADR mediation platform. After obtaining the consent of the other party, the mediator will organize both parties to mediate, and facilitate both parties to reach a mediation agreement.

5.3 Adr Arbitration

In line with the innovation of China's finance, it is more suitable for dispute resolution than litigation. ADR Financial Arbitration shall solve:

Construction of ADR arbitration institution.

According to the rules, financial consumers can apply for arbitration online, pay arbitration fees and pleadings in advance online, raise jurisdiction objections online, change requests or counterclaims, select arbitrators online, etc. The arbitration court can accept the arbitration application online, issue the notice of arbitration online, set up the arbitration court online, hear the case online and serve the arbitration award documents. After Guangzhou Arbitration Commission, Wenzhou and other arbitration commissions issued special rules for online arbitration of online loan disputes, and Zhuhai Arbitration Commission issued financial arbitration rules of China. At present, the number of domestic online arbitration institutions is relatively small, and there are few financial dispute arbitration rules in China. Considering the specialization of financial transactions in China, local arbitration commissions should be encouraged to establish online financial arbitration platforms to accelerate the study of arbitration rules. We should try our best to select arbitrators from the financial industry in order to ensure that the knowledge reserve of arbitrators can meet the

needs of China's financial practice.

Setting of arbitration clause.

The premise of arbitration is that both parties sign an effective arbitration agreement or arbitration clause on the basis of agreement, while transactions on the Internet platform often use electronic format contracts, and consumers can only choose to “agree all” or abandon the transaction. Consumer regulators should require China's financial platforms to set up checkboxes for submitting to arbitration and bringing a lawsuit in the format contract, so that consumers can freely choose dispute resolution.

5.4 Adr Litigation

ADR litigation refers to the use of Internet technology to complete the prosecution, filing, proof, trial, judgment, implementation of the whole process of online trial. Although litigation has the defects of long time and high cost, as the last guarantee of right relief, the role of online litigation in the settlement of financial consumption disputes in China can not be ignored.

5.4.1 The choice of ADR litigation is applicable.

At present, three Internet courts have been set up in China, including Beijing, Guangzhou and Hangzhou. The scope of cases of these three courts clearly includes disputes over financial loan contracts and disputes over small loan contracts in China. It can be said that the online litigation solution of financial consumption disputes in China has a certain practical basis. However, at present, there are only three Internet courts in China, whose jurisdiction is limited, and the existing regional jurisdiction stipulated in the civil procedure law conflicts with the non regional nature of China's finance, which cannot meet the needs of low-cost, efficient and rapid resolution of China's financial disputes.

5.4.2 Burden of proof in ADR litigation.

In China's financial consumption disputes, information asymmetry has not been alleviated. Financial institutions have obvious advantages over consumers in terms of technology, capital and personnel. Their infringement and breach of contract have great concealment. China's financial consumers are in a very disadvantageous position. Therefore, in order to protect the legitimate rights and interests of financial consumers, the burden of proof can be properly inverted to financial institutions.

References

- [1] Qian Z. (2017). *The Types, Functions and Enlightenment of British Ombudsman*.
- [2] Kete K. (2018). *Pure Being*, vol. 42.
- [3] Krobb F. (2018). *Situationen des Fremden. Ästhetik und Reiseliteratur im späten 18. Jahrhundert* by Von Reinhard M. Möller (review), vol. 110.
- [4] John D. Eigenauer. (2018). *Untangling the Complexities of Radical Enlightenment*. *Huntington Library Quarterly*, vol. 81, no. 1, pp. 153-156.
- [5] Lucy Rollin. (2018). *Mothers in Children's and Young Adult Literature: From the Eighteenth Century to Postfeminism* eds. by Lisa Rowe Fraustino and Karen Coats (review). *Lion & the Unicorn*, vol. 46.
- [6] Szeghi T M. (2018). *Literary Didacticism and Collective Human Rights in US Borderlands: Ana Castillo's The Guardians and Louise Erdrich's The Round House*, vol. 52.
- [7] Scott Breuninger. (2017). *The Irish Enlightenment* by Michael Brown (review). *New Hibernia Review*, vol. 21.
- [8] Janes R. (2017). *Eighteenth-Century Thought Volume 3* ed. by Earle Havens and James G. Buckerood (review), vol. 41.
- [9] Milam J, Parsons N. (2017). *Ideas and Enlightenment*, vol. 41.