



# Digital Economy, Sustainability and International Economic Law

Editors:

**Lei Zhang**  
**Xiaowen Tan**  
**Pinguang Ying**

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# **Current and Future Developments in Law**

*(Volume 3)*

## ***Digital Economy, Sustainability and International Economic Law***

Edited By

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## FOREWORD

Sustainability in digital economy is one of the most critical and challenging points of international economic law terrains. In this regard, the new volume of “Digital Economy, Sustainability and International Economic Law” of Current and Future Developments in Law series successfully delivers significant research outcomes in both theoretical and practical considerations by clarifying the legal ground, development and analytical framework for the new photovoltaic industry and technology subsidy matters. In this book, the best samples and practices are critically examined including the roles of the WTO in dealing with modern technological development. This book contains insightful chapters on the current and future development of artificial intelligence, in terms of the transformation of the WTO technological innovation and regulation from corporate governance to sustainable and digital corporate governance. Additionally, the proposed model and the designation of the Central Bank Digital Currency (CBDC) in the People’s Republic of China have been evaluated, focusing on its challenges and responsibilities. Then, this book suggests mediation as an alternative approach to deal with the diversified dispute as China’s grand strategy and legal tool for the future digital economy. The editors are China’s top-tier international economic lawyers representing the WTO sponsored research institution. In this regard, this book will be valuable for triggering progressive research development in international economic law and sustainability in the time of digitalization.

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## PREFACE

Current and Future Developments in Law: Digital Economy, Sustainability and International Economic Law presents the most topical issues that address the interconnection between digital economy, sustainability and international economic law. It covers a range of topics, including renewables subsidies, AI and corporate governance, digital currency, dispute resolution and other important research on new developments in the law. The selected chapters illustrate how the digital economy, sustainable development goals and arrangements could influence and potentially shape international economic law, and how they are intertwined in an increasingly connected world. However, as the concepts of digital economy and sustainable development integrate unevenly into different fields of law, the selection focuses on the most visible influences in the current international economic law. This book is a valuable source for legal scholars, practitioners and law students seeking updated and critical information on a more digital, and sustainable international economic law.

The chapters in this volume are written by eminent authorities devoted to the emerging multi-disciplinary fields of international economic law. Zheng in chapter 1 of the volume discusses WTO rules on renewable energy with a focus on the photovoltaic subsidy. Monti in chapter 2, explores the connotation of corporate social responsibility from a comparative point of view among China, Japan, and Bhutan. Marchegiani, in chapter 3 analyzes the prospect of algorithmic governance in contemporary corporate law systems and demonstrates that pursuing sustainable development of firms invariably needs human intelligence and sensitivity in the exercise of discretion at the board level. Lu *et al.*, in chapter 4 investigate the most cutting-edge issue of digital currency and the challenges digital currency may have under the internationalization of the Renminbi. Chen, in chapter 5 considers the great disparity in the development of commercial mediation in different GBA regions and proposes a uniform rule framework to govern the mutual recognition and enforcement of commercial mediated settlement agreements across the GBA. Zheng *et al.*, in chapter 6 discuss the emerging diversified dispute resolution mechanism and evaluates both its recent and future developments.

I hope that the readers will find these views and examination valuable and thought-provoking so that they may trigger further research on a digital and sustainable international economic law. I am grateful for the timely efforts made by the editorial personnel, especially Ms. Humaira Hashmi and Ms. Rabia Maqsood at Bentham Science Publishers.

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## CHAPTER 1

# A Legal Analysis of the Photovoltaic Subsidy Under The WTO Trade Regime

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**Abstract:** The pursuit of greenhouse gas reduction objectives by major economies has led them to increase their share of renewable energy. Energy subsidies are crucial but are fraught with controversy under WTO law. For renewables such as photovoltaics, the focus on production subsidies makes them an easier target of WTO cases. The photovoltaic industry requires technological innovation, which is rarely addressed in WTO law. Therefore, there is a need to reform the relevant rules to support the development of renewable energy.

**Keywords:** Fossil fuel energy subsidy, Photovoltaic, Renewable energy subsidy, Technology subsidy, WTO.

## INTRODUCTION

The accelerating climate change necessitates abatement in greenhouse gas (GHG) emissions to mitigate the devastating consequences of rising temperatures. Therefore, both the European Union (EU) and China have introduced a future climate and energy framework as their responses. Considering their ambition to reduce GHG emissions, much of the work lies in curtailing the production and consumption of fossil fuels, which requires that a higher share of energy come from renewable sources. Among all the options, solar energy is regarded as the cornerstone of the new EU energy system (Commission, 2020), as technological innovation has helped solar energy to become more reliable and economical. Similarly, solar energy has been prominent in China's energy market. China has been the most prolific origin of photovoltaic (PV) module shipment since 2010. (IEA, 2020) The rapid growth of the PV industry is deemed to support China's 2060 carbon neutrality formulation.

However, parallel environmental attempts do not always generate cooperation. In 2012, a trade dispute concerning solar panels arose between the EU and China.

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The EU imposed the first period of anti-dumping and anti-subsidy measures, requested by the EU solar panel producer representative, on imported Chinese solar panels for two years. China remonstrated with the EU and lodged a complaint at the World Trade Organization during the dispute, claiming that EU solar policies and regulations are inconsistent with Most-Favoured-Nation treatment (MFN) and constituted prohibited subsidies under the Agreement on Subsidies and Countervailing Measures (SCM Agreement) (WTO, 2012). A trade war was imminent when China increased the duties on European polysilicon and wine products in retaliation. Fortunately, the two parties forbore to escalate the dispute by reaching a settlement after China's exporters agreed on a price undertaking at the parlous juncture. These restrictions were eventually ceased in 2018, when the European Commission (EC) did not initiate another investigation to extend the measures, claiming that such a decision is a balance between different parties in the solar panel market.

It has been another decade since the China-EU solar panel dispute, during which PV technology has been subject to continuous innovation, and PV enterprises both in China and the EU are growing less dependent on subsidies, as is partially revealed by the continuous reduction of the subsidy amounts. Given that PV electricity is approaching a complete zero-subsidy era, it is worth reviewing the subsidy issues within the WTO trade regime and discerning the potential risks in China-EU photovoltaic products trade based on the existing rules.

Under this context, this article seeks to examine domestic PV policies under the WTO trade regime. It consists of five parts: Part two examines the history and present of the PV and renewable energy policies in China and the EU, and it bridges them with the WTO rules, and with the SCM Agreement in particular. Part three invokes the technology subsidy rulings of the EU Aircraft dispute to provide an analysis regarding potential PV cases. Part four discusses the drawbacks existing in current WTO rules that hamper the introduction of technology support in the PV sector. Part five looks ahead to the direction of WTO reform to promote the development of the PV industry.

## **PV AND RENEWABLE ENERGY SUBSIDIES UNDER THE UMBRELLA OF THE WTO**

### **An Ebbing Subsidy in the Chinese PV industry**

The Chinese PV industry has experienced the conceptual stage, the subsidy stage and the post-subsidy stage. In the early conceptual stage, solar panels were not profitable due to the immaturity of the technology, while the industry escaped this predicament in the following subsidy stage. The introduction of the Germany Renewable Energy Sources Act (EEG) indicated the commencement of this stage.

The Renewable Energy Law of China stipulates that grid companies should purchase the total electricity generated by renewable energy. Since then, the Chinese PV industry's development has kept increasing rapidly, making China the leading exporter of PV modules. However, such development was not balanced since the size of the domestic market was not comparable to the growth of production, resulting in an export surge since 2006 and a slight improvement in import performance (Groba & Cao, 2015). The production surplus is the fundamental cause of the 2012 EU-China solar dispute, since the EU was the main export market for Chinese PV panels, which meanwhile caused an additional fiscal burden when the amount of the PV subsidy kept rising.

To reduce the surplus of PV modules and components production, the Chinese government adjusted the energy pricing policies, continuing to attenuate financial support towards the PV industry. Furthermore, the requirements to get financial support were substantially changed. At the early subsidy stage, financial support was based on equipment installations. The types of financial stimulants included low-interest policy loans and export credit subsidy programmes, according to European PV producer representative ProSun. Such an installation-oriented pattern did encourage new PV establishments but neglected that new installation does not necessarily generate new electricity. Therefore, energy policy reform elevated the threshold to get support by altering it from new installation to electricity generation, when investment swarmed into the PV industry since it was effortless to get the subsidy from the government, despite the fact that some PV plants are built to low-quality standards.

Meanwhile, the Chinese government has been dampening the amount of support. In this process, a landmark regulation is a notice on matters relevant to PV power generation in 2018, bringing in a comprehensive reduction of the PV subsidy. The first change concerns the PV subsidy catalogue. Grid companies shall purchase the PV electricity generated by the companies in the catalogue according to Chinese PV pricing policies. It guaranteed the incomes of PV industries but was abruptly terminated by the new regulation that no longer incorporates all the ordinary solar power plants built in 2018. The second change is the extensive drop in the subsidy amount. The government promised a peak subsidy amount of 0.8 yuan/kWh in 2010 and reduced it over time. In the 2018 regulation, the National Development and Reform Commission further reduced the subsidy for solar power projects to about 0.05 yuan/kWh, about one-sixteenth of the 2010 level. (Mo, 2020) The Chinese PV market anticipates that such support is about to halt, and the industry is approaching the post-subsidy stage.

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**CHAPTER 2**

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**Corporate Social Responsibility: The Experiences of China, Japan and Bhutan. A Comparative Approach****Federica Monti<sup>1\*</sup>**<sup>1</sup> *Political Science, Communication and International Relations Department, University of Macerata, Italy*

**Abstract:** The concept of corporate social responsibility (CSR) has its roots in the United States, between the 1930s and 1950s. Following the first definition proposed by Howard Bowen, who is today considered the father of CSR, it soon became a concept of great interest to the scientific community. Over the decades, this community has gradually shifted its interest from a definition of CSR to its implementation. Nevertheless, in today's highly globalized and pluralized economies, affected as they are by new social issues, deficiencies in the theorization and conceptualization of CSR are still considered significant and pending challenges, which need to be resolved before there can be a univocal and global understanding of CSR. In this context, culture plays an important and distinctive role: the more global and de-territorialized a corporate's activities, the wider the differences to which its CSR approach is exposed. Consequently, when applied to a pluralized and globalized market service, the more difficult the theorization and conceptualization of CSR become. The experiences of Japan and China, both deeply touched by Confucianism over time, represent two interesting examples of special dimensions of CSR from which Western countries can learn much. The CSR approach of Bhutan offers another interesting perspective. Recognising that the objective identification of corporate duties is extremely complex, and that it is equally complex to identify criteria, on the basis of which a corporate practice may be considered to conform to the principles of CSR, the chapter wants to stimulate debate around the question: *Does CSR need to be regulated and defined, as 'something' new in corporates' management experience, or is it perhaps something that has always existed, and in some situations, is self-regulating and therefore it translates only in a tool for competition?*

**Keywords:** Comparative law, CSR, Culture, Eastern – southern asian countries, European union, United nations.

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## INTRODUCTION

Nowadays, corporate social responsibility (CSR) has become a concept of crucial importance, resounding louder than it ever did in the past. Among the questions that emerge most frequently within debates on the topic are: ‘*What is the best definition of CSR?*’, ‘*What does CSR really stand for and what does it imply?*’, ‘*Does a univocal definition of CSR really exist?*’ Other debates may include ‘CSR as a sustainable choice and as an integrative part of corporate governance models’ and ‘CSR as an external strategy of management to increase a corporate’s value.’ However, it is significant that, over time, reflections on the *theorization and conceptualization* of CSR have generally remained at the edge level, and there has been greater debate on their possible *application*.

It is to be noted that during recent decades, we have witnessed a shift in the interest expressed in the scientific literature: by the early noughties, scientific contributions had moved away from *theoretical research* and on to *empirical investigation* (Carroll, 2008). However, the huge proliferation of attempts at clarification and explanation, although not oriented towards achieving a univocal concept of CSR, must not be interpreted as an indication of the inefficiency of the system but, on the contrary, as an index identifying the specificity of certain systems (legal, economic, cultural, *etc.*) and of the countries of origin, and consequently confirming the need to search for a CSR identity.

You can consider China and its version of CSR—*created and reshaped with Chinese characteristics* (*qiye shenhui zeren*, 企业社会责任)—in contrast to the Western-centric CSR, or you can think of the Japanese interpretation of CSR (*kigyō shiyakuwai sekinin*, 企業社會責任), which is *shaped* according to the managerial philosophy of *Kaizen* (改善) and other business precepts, such as the *Kyosei* (共生), which expresses the concept of co-living. Another very special CSR-related concept is that of a *Gross National Happiness* (GNH) based economy, such as that in Bhutan, where the GNH is considered to be of greater importance than the Gross Domestic Product (GDP).

Consistent with these adaptations of CSR, the definition *proposal* for CSR, which probably expresses the greatest truth, is that suggested by Votaw (1973), in whose opinion: ‘*The term [CSR] is a brilliant one; it means something, but not always the same thing, to everybody*’.

### **The Origin And The Development Of CSR: A Brief Overview**

For a better understanding of CSR, and in an attempt to pinpoint its essence, it is useful to go back to its origins: CSR has its roots, mainly in the United States, between the 1930s and the 1950s. Investigated by both economic and legal sciences, CSR was systematically analysed and adopted as a new business model. This was supported by growing interest from the scientific community and built on the milestone ‘definition’ as proposed by Howard Bowen (1953), who is still today considered the ‘father of CSR.’

‘The term social responsibilities of businessmen will be used frequently. It refers to the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society. This definition does not imply that businessmen, as members of society, lack the right to criticize the values accepted in society and to work toward their improvement. Indeed, in view of their great power and influence, they may well have an obligation to do so. It is assumed, however, that as servants of society, they must not disregard socially accepted values or place their own values above those of society (Bowen, 1953).

As mentioned above, during the 1930s, prominent authors such as Berle and Means (1932), Barnard (1938), Clark (1939), and later, Kreps (1940) started to develop a new concept for corporations, in which sensitivity towards human beings and their social problems, together with behavioural practices inspired by moral values, should direct an executive body in its management operations. Later, prominent studies involving CSR pushed toward a theorization of the concept. This process was continued and strengthened by the contributions of Frederick (1960), Davis (1967) and Sethi (1975), who latter stated: ‘*the concept of social responsibility is prescriptive in nature,*’ continuing that it ‘*implies bringing corporate behavior up to a level where it is congruent with the prevailing social norms, values, and expectations of performance;*’ later it continued to be explored thanks to Drucker’s (1984) thoughts on CSR as being a way ‘to turn a social problem into economic opportunity.’ Drucker had already been preceded by Carroll (1979) with his innovative *three-dimensional conceptual model*, taken as the fundamental premise for the concept of pyramidal CSR.

Despite its centrality, a definition of CSR has never been shared or made official, either at the international level, or at the macro-regional level (by scholars, by institutions, through countries’ self-regulation codes where present, and so on), with the inevitable result that there are several, independent definitions, which are not coordinated or in line with each other, and consequently, often interpreted with profound differences. Furthermore, most of the scientific literature on the

## CHAPTER 3

## AI, Corporate Governance And Sustainability

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**Abstract:** Since the beginning of this century, information technologies have been characterized by impressive advancements that have offered us powerful tools such as distributed ledger technologies, blockchain, machine learning algorithms and smart contracts. Corporate law has not been immune from this rapid evolution; in 2014, the news that an algorithm named “Vital” had been appointed to a board of directors of a Hong Kong-based venture capital firm caused a sensation in the business environment and among corporate law scholars. In fact, this algorithm did not assume the legal role of a board member; rather it operated as an advisor of the board of directors aimed at protecting the firm from risky (as well as overpriced) investments.

A similar use of technology at the board level has been noticed as a starting point from which it is conceivable (and desirable) to develop unique tools to overcome humans’ cognitive biases and improve board monitoring function as well as boost businesses’ productivity.

The crucial role of Corporation Technologies in reducing agency costs and promoting the disintermediation of organizational structures has been further emphasised in connection with the corporate social responsibility discourse. In fact, the economist Milton Friedman’s traditional assumption that ‘the only social responsibility’ of the corporation is ‘to increase its profit so long as it stays within the rules of the game’ has been vigorously re-discussed. In the Anglo-American corporate debate, as well as in the European debate, the sustainability of businesses is among the top item in the agendas of leading corporations and policy makers, increasingly so after the pandemic has exposed the vulnerability of economic structures to systemic risks.

In view of the intersection between corporate governance and sustainability, the international debate has identified shareholders’ long-term interests as a point of convergence of private business models and social and environmental values. In other words, private companies are invited to assume a societal role and to design appropriate strategies for managing their impact on the environment and the society as a whole.

The colours of 21<sup>st</sup> -century corporate law are *blue* for corporate technologies and *green* for environmental policies. The prospect of algorithmic governance in contemporary corporate law systems could be a desirable tool as long as it serves to pr-

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omote the sustainable development of firms integrating management models inspired by IEL general principles but not compromising their competitiveness.

**Keywords:** Artificial intelligence, Corporate governance, Sustainability.

## INTRODUCTION

Since the beginning of this century, information technologies have been characterized by impressive advancements that offer powerful tools such as distributed ledger technologies, blockchain, machine learning algorithms and smart contracts.

The breath-taking technical advances we have witnessed in recent years have been included in the field of artificial intelligence, or AI, generally defined as ‘the science and engineering of making intelligent machines’ (McCarthy, 2007). Recently, the European Commission has defined artificial intelligence as referring ‘to systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals’ (European Commission, 2018). The OECD *AI Principles*, adopted by OECD Member States in 2019, provide, in turn, a functional concept of artificial intelligence as ‘a machine-based system that is capable of influencing the environment by producing an output (predictions, recommendations or decisions)’ and ‘that uses machine and/or human-based data and inputs to formulate options for outcomes designed to operate with varying levels of autonomy’ (OECD, 2019).

Artificial intelligence is thus a set of multipurpose tools and techniques created to stimulate processes that mimic human decision-making and involve the computer in performing traditionally human tasks. The definition mentioned initially is the only one general enough to be universally agreed, but the expression ‘AI’ is rather considered an ‘umbrella term, comprised by many different techniques’, including many services we use every day for improving our smartphone experience, like autocorrect features (Calo, 2017; Gruner-Csikszentmihalyi, 2018). The function of imitating human behaviour is not, however, essential in the development of AI and there is a widespread belief that the machine could overcome the cognitive capacity of human beings through the development of a form of artificial general intelligence, completely separate from human intelligence.

Already today, however, intelligent machine systems can show key cognitive abilities which comprise a mix of classification, prediction, and decision-making processes, which have demonstrated a large range of applications in corporate governance, business management and investment decision-making.

Corporate law has not been immune from this rapid evolution. In fact, in 2014, the news that an algorithm named ‘Vital’ had been appointed in the board of directors of a Hong Kong-based venture capital firm caused a sensation in the business environment and among corporate law scholars. The media has heavily echoed this announcement suggesting that starting from this experiment on AI and corporate governance, it would be possible to introduce artificial intelligence to the boardroom in the very near future.

In the ‘Vital’ case, the algorithm did not assume the legal role of board member; it operated as an advisor of the board of directors that aimed to protect the firm from risky (as well as overpriced) investments. In fact, the board could not make investment decisions without the approval of the algorithm, which formed its opinion by scanning prospective financing of target companies, analysing clinical trials of products (operating the target in the pharmaceutical sector) and examining other relevant data, such as intellectual property rights and previous funding rounds.

Another attempt to applicate an ‘algorithmic entity’ to corporate management was made by an Information Technology company based in Helsinki, Tieto (now named Tietoevry due to the merger with the Norwegian company Evry), which announced in October 2017 that it had appointed artificial intelligence as a member of the leadership team of a new data-driven business unit (Petrin, 2019).

A similar use of technology at the board level has been noticed as a starting point from which it became conceivable (and desirable) to develop unique tools to overcome humans’ cognitive biases, improve board monitoring functions, and boost businesses productivity.

Advanced machine-learning algorithms, which possess the autonomous abilities to adapt and learn, offer appealing opportunities to increase business performance. They could lead to a fundamental change in society and vastly impact job opportunities across a wide variety of professional fields. Routinised jobs and jobs that do not require creative thinking skills and instead depend upon the ability to perform diverse kinds of cognitive labour would be highly affected by the increasing reliance on artificial intelligence (Brynjolfsson-McAfee, 2014; Markoff, 2015). In addition to the huge impact on the labour market and the predictable transformation of society in general, at least in the long term, increasing the use of digital solutions in business organizations has significant implications for corporate law and corporate governance.

The concept of *CorpTech* includes all solutions based on distributed ledger technologies, blockchains and smart contracts on the one hand, and big data analytics, artificial intelligence and machine learning on the other (Enriques &

## CHAPTER 4

# The Global Competition For Issuing Central Bank Digital Currency ('CBDC') And The Design Of Its Regulatory Framework - A Review Of The Development of CBDCs In China

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**Abstract:** By 2021, over two-thirds of countries across the globe were exploring the way to issue a CBDC, among which China has taken the lead. The Chinese CBDC – DCEP has been on trial in various cities and areas, which heralds its general application in the near future. However, by elaborating on the main features of the DCEP, this paper discerns several challenges that the DCEP may have to face owing to the special regulatory design – setting the reserve rate for the DCEP at 100% – to cater to the need of the internationalization of the Renminbi ('RMB'). This paper maintains that this approach cannot achieve the goal as contemplated. Instead, it would invoke the severe issue of narrow banking. To prevent this negative externality, as well as to stave off the risk of a systemic bank run, this paper proposes to adopt differentiated treatments for various types of digital wallets holding the DCEP.

**Keywords:** Bank run, Central bank digital currency ('CBDC'), DCEP, Digital wallets, Reserve rate.

## INTRODUCTION

In recent years, the financial market across the globe has witnessed the emergence and prosperity of digital currencies, which were mainly issued by non-governmental institutions or based upon distributed ledger systems. In light of their rapid development and the enormous potential that digital currencies bear, the monetary authorities in an increasing number of countries have started to take an interest in exploring central bank digital currencies ('CBDC'). Amid the outbreak of Covid-19, this trend has been reinforced due to the growing demand

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for cashless payment (Boar & Wehrli, 2021). According to the report by the Bank for International Settlements, by 2020, 86% of the countries around the world had set about working on the design of CBDC, among others, the largest economic entities, the US and Europe (Boar & Wehrli, 2021; European Central Bank, 2020; Board of Governors of the Federal Reserve System, 2023) A number of the countries went one step further, by either carrying out various forms of experiment or even by commencing pilot arrangements. By 2021, The Bahamas and the eastern Caribbean have already issued their CBDC, respectively (Yi, 2023).

Since 2014, China has been researching and seeking to issue its CBDC. As of 2020, the CBDC has been tested in several cities (J. Yang & Dou, 2021). This test has gradually been expanded to more cities and areas, as well as to more application situations, which heralds the general application of the CBDC across the country in the short term (Y. Yang, 2023).

The CBDC is expected to bring considerable changes to the current payment landscape, especially in the context of cross-border payment. Accordingly, particular attention has been paid to the role that the CBDC would play in facilitating the internationalization of the RMB (PBOC, 2021). Against this backdrop, it would be conducive to taking stock of the development and status quo of the CBDC in China before its general application. As the CBDC is a new invention for which there is not much successful experience, it can be imagined that the Chinese CBDC in test at present reveals certain insufficiencies and will encounter challenges that need to be dealt with in its design. This paper seeks to discern these challenges by canvassing the main features of the Chinese CBDC, and on this basis, propose possible solutions to them.

As such, this paper will be structured as follows: after the introduction, Section II briefly analyzes the reasons why the issuance of a CBDC is becoming a trend by elaborating on its necessity and merits. Subsequently, it defines the CBDC and demonstrates its possible models. Based on this concept clarification in general, Section III depicts the essential features of the Chinese CBDC, whereby the challenges that this digital currency would encounter are illustrated. Building upon this, possible responses to these challenges are proposed. Section IV concludes.

## **THE REASONS FOR ISSUANCE OF A CBDC, CONCEPT CLARIFICATION, AND POSSIBLE MODELS**

### **The Necessity And Merits Of Issuing A CBDC**

As demonstrated by the trend, more and more countries have seen an increasing

need to issue CBDCs. With technological advances, society is more digitalized than ever in history. A variety of digital currencies have emerged in recent years, including those decentralized cryptocurrencies represented by Bitcoins and the stablecoins such as Diem (previously known as Libra) issued by Facebook. These digital currencies, in particular the Diem, which is conceived as a super-sovereign currency, have drawn great political and public concern (Callens, 2021). Besides, digital payment has gradually become the prevalent payment method, substituting to a large extent for the traditional means. Companies offering such services have grown to gigantic sizes. Building upon the large sum of the funds to be managed under the payment services, these internet-based giants, for instance, Alibaba and eBay, also seek to expand their business to financial services, at times even by circumventing the regulations on traditional financial institutions given the loopholes in the regulatory framework lagging behind technological development (Peng, 2021). This may pose a threat to the stability of the entire financial system, not to mention when these companies further plan to issue coins. On the other hand, however, the increasing digitalization of the economy calls for more efficient payment methods other than the traditional ones, especially in cross-border transfer. Moreover, the impact is not only one-way. It is also expected by certain countries and areas that the application of a more efficient digital payment method will facilitate the digitalization of the financial sector, and further, the broader economy, as revealed by a report issued by the European Central Bank (European Central Bank, 2020). The function of current digital payment methods, such as Alipay in China or Pay-TM in India, demonstrates that the digitalization of payment means is facilitative to financial inclusion (McKinsey Global Institute, 2016). Yet, these payment methods do not enable payment in scenarios where both transaction parties are offline. Thus, a more resilient payment method backed up by the central bank, with offline access to both transaction parties, which can be employed even in tail risks, would be even more conducive to financial inclusion.

On top of these, the Covid-19 pandemic has reinforced the need for cashless payment. Before the pandemic outbreak, the role of physical cash was already declining. The fear of virus transmission through cash has propelled several countries to accelerate their development of CBDCs (Chen & Ming, 2023).

The issuance of CBDC also incorporates specific policy considerations as it represents the transmission of monetary policies. Through choices of features, such as whether the CBDC provides remuneration to its holders, the monetary authority may use it as a tool to influence consumption and investment at a macroeconomic level. Further, the phenomenon of ‘dollar hegemony’ (Cao, 2016) has prompted countries such as China to seek to bypass the control and influence of the dollar through the issuance of digital currencies, which could be more

## CHAPTER 5

# Refinement of Commercial Mediation Systems In The Greater Bay Area: From The Perspective Of Hong Kong's Experience And Implications For The Mainland

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**Abstract:** Commercial mediation is regarded as one of the most significant parts of diversified dispute resolution mechanisms, since it has unique advantages compared with “adversarial” dispute resolution mechanisms, such as litigation and arbitration, particularly in cross-border disputes. With the support of official guidelines and the implementation of local governments, it is observed that mediation has become a popular alternative dispute resolution method applied by more and more citizens in the GBA. In addition, China became a member state of the Singapore Mediation Convention in 2019, which demonstrates that China attaches great importance to mediation mechanisms, with both academics and professionals recognizing the unique role of mediation in the process of dispute resolution. Against this backdrop, this article focuses on the implications of the Hong Kong experience to the development of commercial mediation in the Mainland, which revolves around four aspects: voluntariness of mediation activities, confidentiality rules, the enforceability of mediated settlement agreements and capacity building of mediators. Due to the great disparity in the development of commercial mediation in different GBA regions, particularly in terms of rule frameworks and patterns of mediation, this article argues that the future development in the GBA of commercial mediation can refer to the Hong Kong experience in the following four respects. Firstly, the principle of voluntariness should be enhanced in the conduct of commercial mediation; Secondly, provisions of confidentiality and detailed provisions for breaching the confidentiality principle should be formulated in commercial mediation; Thirdly, a uniform rule framework to govern the mutual recognition and enforcement of commercial mediated settlement agreements across the GBA should be provided. Last but not least, a uniform mediator evaluation system and a mediator qualification certification platform should be established in the Mainland.

**Keywords:** Commercial mediation, Greater bay area, Hong kong, Mainland.

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## INTRODUCTION

The “Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Greater Bay Area” was signed by the National Development and Reform Commission and the local governments of Guangdong, Hong Kong and Macao in 2017, setting out the objectives and principles for the regional cooperation and development of the Greater Bay Area (GBA) (Hong Kong Government 2017). The GBA consists of nine municipalities in Guangdong Province and two Special Administrative Regions (*i.e.*, Hong Kong and Macao). The nine municipalities refer to Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing in Guangdong Province, which are also called “the nine Pearl River Delta municipalities” (hereinafter the nine PRD municipalities). Among all the cooperation goals, it is noteworthy that Hong Kong was set to play the role of “a centre for international legal and dispute resolution services in the Asia-Pacific Region” (Hong Kong Government 2017). Two years later, the “Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area” (hereinafter the Outline Development Plan) was issued by the CPC Central Committee and the State Council (Hong Kong Government 2019). For the purpose of creating a globally competitive business environment, the Outline Development Plan provides that the international commercial dispute resolution mechanism should be refined to “support exchanges and cooperation among arbitration and mediation organisations” and “provide arbitration and mediation services to the economic and trade activities” in the GBA (Hong Kong Government 2019).

With the support of the official guidelines and the implementation of local governments, it is observed that mediation has become a popular alternative dispute resolution method applied by more and more citizens in the GBA (Ministry of Justice of PRC 2021a). From the perspective of Guangdong, the nine PRD municipalities contributed to 1,628 mediation cases (with the value of the objects reaching \$217 million) in 2020, of which 1,377 cases have been resolved (Ministry of Justice of PRC 2021a). By the end of 2020, Guangdong had built 13 commercial mediation organizations and one mediation cooperation platform to attract high-level legal professionals to act as mediators and coordinate foreign-related mediation cases (Ministry of Justice of PRC 2021a). In June 2021, the Shenzhen Commercial Mediation Association (China’s first commercial mediation association) was established in Shenzhen to develop rules for the conduct of commercial mediation and promote the market opening of the mediation industry (Ministry of Justice of PRC 2021b).

Since the GBA comprises three different legal systems, represented by the Mainland legal system in the nine PRD municipalities, the Common Law System

in Hong Kong and the Civil Law System in Macao, the legal departments of the GBA established the “GBA Legal Departments Joint Conference (hereinafter the GBA Joint Conference)” to facilitate regular exchanges and collaborations in legal matters (Hong Kong Government 2021). The GBA Joint Conference further endorsed the establishment of the “GBA Mediation Platform” in 2020. The GBA Mediation Platform is built to provide unified standards and rules for the promotion of mediation in the GBA, including “qualification, accreditation and other relevant standards for mediators”, “establishment of a local panel of qualified GBA mediators” and “best practices for cross-border mediation rules and mediators’ code of conduct (Hong Kong Government 2021). In this regard, the development of the GBA and the state policies on the construction of a diversified dispute resolution mechanism provide great opportunities for the development of commercial mediation in China.

In August 2019, China became a member state of the United Nations Convention on International Settlement Agreements Resulting from Mediation (hereinafter the Singapore Mediation Convention) (Ministry of Commerce of China 2019). The adoption of the Convention in China demonstrates that China attaches great importance to mediation mechanisms, with both academics and professionals recognizing the unique role of mediation in the process of dispute resolution (Zhao, 2020). However, the successful implementation of the Singapore Mediation Convention also relies upon the legal reform direction and the promotion of commercial mediation in China (Zhao, 2020). In this context, the promotion and development of commercial mediation in the GBA have become one of the major focuses for China to bring its mediation rule framework in line with the international standard.

## **RESEARCH SCOPE OF COMMERCIAL MEDIATION**

There is currently no uniform definition for mediation in domestic and foreign academia. According to Cambridge Dictionary, the word “mediation” refers to “the process by which someone tries to end a disagreement by helping the two sides to talk about and agree on a solution” (Cambridge Dictionary 2021). The Singapore Mediation Convention defines the conduct of (international commercial) mediation as “a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons (“the mediator”) lacking the authority to impose a solution upon the parties to the dispute.” (UNCITRAL 2019). As for commercial mediation, it is an alternative dispute resolution method conducted between two parties to resolve commercial disputes through negotiation coordinated by a neutral third party (mediator) (Fan, 2020). Commercial mediation represents a comprehensive

## A Diversified Dispute Resolution Mechanism for Settling International Commercial Disputes in China

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**Abstract:** Globalization and international trade call for dispute resolution service competitions among various nations. China is building a Diversified Dispute Resolution Mechanism (DDRM) to connect litigation with alternative dispute resolution methods to enhance the efficiency and flexibility of its dispute resolution system and improve the legal environment for foreign investment. This Chapter demonstrates China's latest development in international commercial dispute resolution from three perspectives: the construction of the Chinese International Commercial Court under the Belt-and-Road Initiative, arbitration reforms in FTZs, and the development of commercial mediation in China with the impact of the Singapore Mediation Convention on Mediation. These judicial reforms and legal practices prove that China is moving towards the modernization of its commercial dispute resolution system, but further legislative and judicial reforms are required.

**Structure:** The structure of this chapter consists of five sections. Section I summarizes the concept of a diversified dispute resolution mechanism (DDSM) in the background of China's further integration into the world market and embracing international rules of commercial dispute resolution. Section II to IV demonstrates the framework of the DDSM from three perspectives: international commercial court, arbitration, and commercial mediation. Section II focuses on China's International Commercial Court with emphasis on its jurisdiction, expertise in foreign law ascertainment, procedural reforms, and the construction of a one-stop international commercial dispute resolution platform. Section III concentrates on international arbitration reforms in the context of free trade zones. The FTZs serve as a judicial experiment for allowing foreign arbitration institutions to administer international commercial disputes in China, with practical challenges, such as the legality concern of foreign arbitration institutions, the scope of foreign-related disputes, and judicial support for the arbitration proceedings administered by foreign arbitration institutions. Section IV discusses the mediation legal framework in China, focusing on judicial mediation and commercial mediation, with a light touch on the impact of the Singapore Convention on China's mediation de-

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velopment. Section V concludes with current challenges to China's development in a diversified dispute resolution mechanism and provides recommendations for the future development of the DDRM.

**Keywords:** Amendment of the arbitration law, Commercial mediation, Diversified dispute resolution mechanism, International commercial court.

## **INTRODUCTION: THE DESIGN OF THE DDRM AND ITS BACKGROUND**

Diversified Dispute Resolution Mechanism (Duo Yuan Jiu Fen Jie Jue Ji Zhi, hereinafter DDRM) refers to a combination of litigation and alternative dispute resolution methods (including without limitation to negotiation, mediation, and arbitration) to promote efficient, convenient, and flexible dispute resolution in China.

According to the Annual Working Report of the Supreme People's Court (SPC) in 2009, the number of cases that the peoples' courts handled in 2008 was 19.5 times the number of cases in 1978, while the number of judges only increased by 1.68%. Due to this sharp increase of cases and the limited availability of judicial resources, the SPC has issued Certain Opinions on the Establishment and Improvement of a Dispute Resolution Mechanism through a Combination of Litigation and Non-litigation in 2009 ("the 2009 ADR Opinions"). The 2009 ADR Opinions address a wide range of ADR mechanisms and emphasize the interplay between court proceedings and ADR mechanisms to provide greater flexibility and efficiency in dispute resolution. Moreover, the SPC in 2016 implemented the Opinions on Further Deepening the Reform of the Diversified Dispute Resolution Mechanism of the People's Courts ("the 2016 ADR Opinions") to further promote the establishment of a legal regime that connects litigation and non-litigation. The SPC's 2016 ADR Opinions recognize various ADR mechanisms and grant the judicially ratified mediated settlement agreements with enforceability. Moreover, the 2016 ADR Opinions seek to promote the internationalization of the DDRM and strengthen international cooperation in judicial authorities, arbitration institutions, and mediation institutions between China and other countries.

The White Paper of the People's Court on the Reform of the Diversified Dispute Resolution Mechanism (DDRM White Paper) synthesized both legislative and practical development of the DDRM in China from 2015 until 2020. It covers both civil and commercial disputes. From the DDRM White Paper, the scope of mediation has been expanded from people's mediation and judicial mediation to commercial mediation as well. The DDRM reform is led by the Supreme People's

Court in China, followed by local people's courts at different levels. At the national level, the people's court has established an online mediation platform integrating mediation with judicial adjudication. At the local level, for example, Zhejiang People's Court (where the Chinese tech giant Alibaba is located) has also established a dispute resolution platform to facilitate dispute resolution *via* mediation and litigation.

With the launch of the Belt and Road Initiative and the Free Trade Zone (FTZ) policies, China needs to be armed with a set of dispute settlement regimes for disputes arising from international commercial and trade disputes. Taking this background into account, various dispute resolution mechanisms have been constructed. First, in respect of the court system, the Supreme People's Court of China (SPC) has endeavored to improve international commercial dispute resolution by setting up Chinese International Commercial Courts (CICC). A one-station commercial dispute resolution platform has also been established by the CICC. Second, reforms have taken place in several free trade zones in China to welcome international arbitration and mediation institutions. There is a need to reform the Arbitration Law of the PRC, which has not been amended ever since its promulgation in 1994. Third, the rise of commercial mediation has distinguished it from people's mediation and judicial mediation systems in China, providing services for business parties in international trade and commercial disputes.

### **THE CONSTRUCTION OF THE CICC IN CHINA UNDER THE BELT-AND-ROAD INITIATIVE**

The Belt and Road Initiative (BRI Initiative) was proposed by Chinese President Xi Jinping in 2013 during his visit to Central and Southeast Asia to promote policy, coordination, connectivity of infrastructure, facilities, trade, and finance among the countries alongside the Belt and Road. The Opinions on Establishing BRI Initiative Dispute Settlement Mechanism and Institutions designate the establishment of China's International Commercial Court (CICC) with two locations (one in Shenzhen and the other in Xi'an). Shenzhen municipality is located within the Guangdong-Hong Kong-Macau Greater Bay Area, while Xi'an municipality is the starting point of the China-Europe Railway and the silk road. By setting up its two international commercial courts in these two strategic spots, the CICC aims to facilitate international commercial disputes arising from the BRI projects by means of the DDRM. CICC is the permanent court designated by the SPC specifically to adjudicate international commercial disputes. Following the steps of the SPC, local courts have also endeavored to establish specialized international commercial courts for handling foreign-related commercial disputes.

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