AIADR Journal of

International ADR Forum

The Journal of scholarly resources for users and practitioners of Alternative Dispute Resolution forum

2025 Volume 5 Issue 19

ASIAN INSTITUTE OF ALTERNATIVE DISPUTE RESOLUTION
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AIADR Journal of International ADR Forum

A REPERTOIRE OF GLOBAL JURISPRUDENCE

The "*International ADR Forum*" is the scholarly journal published quarterly, four times a year, starting from 31 August 2020 by Asian Institute of Alternative Dispute Resolution ("AIADR"). The scholarship is contributed by independent ADR practitioners, academics, researchers, scholars, and users of the ADR Forums. The articles sought are original as the works of the authors submitting it for publication in ADR Forum and are published after a blind peer review by a panel of reviewers from academia, distinguished practitioners, members of judiciary and acclaimed authors. The commentaries and book reviews are presented voluntarily by the commentators or members of the Institute. All contributors undertake to be committed to the Vision of the Institute.

Published by Asian Institute of Alternative Dispute Resolution (AIADR)

28-1, Jalan Medan Setia 2, Bukit Damansara, 50490 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur, Malaysia.

https://www.aiadr.world Email: thesecretariat@aiadr.world; aiadr.editor@aiadr.world;

Library of Congress Cataloguing-in-Publication Data

Tags for Indexing and Categories of ADR

1. Dispute Resolution; 2. Alternative Dispute Resolution; 3. Adjudication; 4. Arbitration.
5. Mediation; 6. Expert Determination; 7. Neutral Evaluation; 8. Expert Witness.

KOD JALUR / BARCODE

eISSN 2773-5052

9 772773 505006

AIADR Journal of International ADR Forum
VOL 5 ISSUE 19, February 2025

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The Potential Use of AI in Construction Mediation

By: Terence Toh Tieng Chiah

Terence Toh Tieng Chiah is the Planning Director at BKAsiaPacific (Malaysia) Sdn Bhd, a leading construction consultancy firm operating across Asia. With 20 years of experience in construction, he has held roles including Project Planner, Project Manager, and Claims Consultant. His expertise covers mechanical engineering, building projects, hydropower, data centers, and microchip fabrication plants. He is an expert in delay analysis, contractual and commercial management, and has provided testimony in arbitration, High Court cases, and CiPAA adjudications.

He is an accredited professional in dispute resolution and delay analysis, holding memberships in esteemed institutions:

- **Associate Member**, The Academy of Experts (TAE), UK (Membership No. 4037)
- **Member**, Asia Pacific Institute of Experts (APIEx), Singapore (Membership No. I0078)
- **Member**, Malaysia Institute of Arbitrators (MIArb), Malaysia (Membership No. M/630)
- **Associate Member**, Asian Institute of Arbitrators, Malaysia (Membership No. A2200761)
- **Evaluative Mediator**, RICS, UK
- **Expert Determiner**, Pertubuhan Arkitek Malaysia (PAM)

Introduction

"*An invasion of armies can be resisted; an invasion of ideas cannot be resisted*" a popular phrase credited to Victor Hugo[1], the French poet and novelist. In today's world we have seen widespread use of artificial intelligence (AI) in our daily lives, signaling that its time is now. In fact, AI is a lot more embedded in our lives that we think. For example, SIRI, the virtual personal assistant developed by Apple integrated into various Apple devices, such as iPhones, iPads and Mac computers. The Oxford English Dictionary defined Artificial Intelligence ("AI") as follows:

> artificial intelligence, n., '*The capacity of computers or other machines to exhibit or simulate intelligent behavior; the field of study concerned with this*'.

[1] https://gutenberg.org/cache/epub/10381/pg10381-images.html

Admittedly there have been missteps in using AI, for example the recent case[2] in which lawyers suing the Colombian airline Avianca submitted a brief full of previous cases that were just made up by ChatGPT (an advanced language model developed by the company OpenAI that uses deep learning to generate human-like responses in a conversational manner). Such case, while serious and damaging, will reduce once users of AI better understand its limitations.

This article explores the potential areas which AI can be utilized in evaluative mediation (where the mediator provides expert opinions, advice, or evaluations to assist the parties in reaching a resolution) compared to purely facilitative mediation (mediator guides the parties in a neutral and impartial manner, helping them communicate, identify interests, and find mutually acceptable solutions), in particular construction mediation.

Mediation has been used to resolve disputes since ancient times, for example historical records indicated that mediation have been used to resolve disputes between parties for thousands of years[3].

Mediation is increasingly recognized in investor-state disputes. UNCITRAL Working Group III emphasized interest in advancing alternative dispute resolution (ADR), including mediation[4]. The new ICSID Mediation Rules now provide a framework for resolving investment disputes involving States and organizations, allowing parties to initiate mediation through prior agreements or by filing a request. Mediation's efficiency, satisfaction among users, and ability to preserve business relationships contribute to its growing role in resolving cross-border disputes.

Mediation has become increasingly popular globally and in India for its cost-effective, efficient, and relationship-preserving approach to dispute resolution, offering a viable alternative to time-consuming litigation. Supported by international frameworks like the Singapore Convention, mediation ensures

[2] https://www.theverge.com/2023/5/27/23739913/chatgpt-ai-lawsuit-avianca-airlines-chatbot-research
[3] Mediation in China — Thousands of Years of Mediation History (https://mediatbankry.com/2017/02/23/mediation-in-china-thousands-of-years-of-mediation-history/)
[4] https://mediationblog.kluwerarbitration.com/2023/04/24/the-cross-border-mediation-landscape-2022-sidra-survey-final-report/

enforceability of cross-border settlements, attracting businesses and individuals. India's Mediation Act 2023[5] builds on this momentum by addressing gaps in standalone legislation, enforceability, and regulation, introducing pre-litigation, online, and community mediation, and establishing the Mediation Council of India to maintain standards. With its focus on confidentiality, timelines, and enforceability, the act modernizes India's ADR framework and positions the country as a global hub for mediation

But mediation is not without its difficulties, and those faced by the mediator in particular include, but are not limited to, enticing all to participate voluntarily, navigating power dynamics to ensure equal participation, addressing emotional barriers that obstruct effective communication and problem-solving, dealing with complex or high-stakes cases that may require extensive knowledge or expertise, and maintaining impartiality and neutrality throughout the mediation.

A. AI as a Mediator's Tool

In an evaluative mediation, the mediator offers the parties an objective appraisal of the case's advantages and disadvantages throughout the mediation process, along with a projection of what would probably happen if the matter went to court or arbitration.

This can be useful for the parties in helping them comprehend their alternatives and decide how to resolve their conflict. Evaluative mediation has a lot of benefits. It can first aid parties in understanding their legal alternatives and rights. Second, it can assist parties in determining their chances of winning a case. Third, it can speed up and facilitate the parties' ability to come to a mutually beneficial solution.

However, there are also some potential disadvantages to evaluative mediation. First, it can accentuate power imbalance between the parties, as the mediator may be seen as being more aligned with one party than the other[6]. Second, it can discourage parties from negotiating in good faith, as they may feel compelled to accept the mediator's assessment of the case. Third, it can lead to parties feeling pressured to settle, even if they do not believe that the settlement is fair. The

[5] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4902878

[6] Power imbalances in mediation: how far should a mediator go? (24 June 2020) Part 1 by Barney Jordaan (source: https://www.linkedin.com/pulse/power-imbalances-mediation-how-far-should-mediator-go-barney-jordaan/)

foregoing is where AI can be an indispensable tool for mediator due to the following:

a. Efficiency: The scheduling of meetings, contract analysis[7] , and monitoring of mediation progress are just a few of the mediation-related duties that AI may automate. As a result, the mediator may have more time to devote to the mediation's more crucial elements, such as fostering a relationship between the parties and encouraging dialogue.

b. Accuracy: AI is capable of analysing vast volumes of data to find patterns and trends that might be useful in settling the conflict. This can assist the mediator in determining the priorities and areas of interest and needs of the parties and in coming up with original solutions that the parties could consider during negotiations.

c. Impartiality: AI is not influenced by feelings or interpersonal connections, which might help level the playing field for the parties. Thus, the mediator's use of AI during the proceedings can be seen in positive light by the parties and this can prove crucial during situations where previously was conflict or mistrust between the parties.

In fact, this essay highlights the following examples of AI, or more accurately machine learning that are already being used in research and contract review:

a. Lex Machina - a legal analytics platform that uses AI to analyze large amounts of case data. Lex Machina can be used to track case trends, identify key players, and assess the likelihood of success in a particular case.

b. IBM Watson - a large language model that can be used to analyze case law and identify relevant precedents. Watson has been used by law firms and legal departments to help with a variety of tasks, such as research, drafting documents, and predicting outcomes.

c. MyCase - a legal practice management software that includes an AI-powered research tool. The research tool can be used to find relevant case

[7] https://www.fastcompany.com/90873337/ai-contract-review-software

law, identify relevant statutes and regulations, and track case developments.

This article puts forward that the mediator has existing tools in his/her arsenal to assist in the evaluative aspects of the mediation, for example leveraging aforesaid tools, to in providing up to date quotes of the relevant case laws which the mediator can then expound to the parties during the mediation proceedings.

B. Predictive Analytics

AI algorithms can analyze past court judgement and arbitration decisions to identify patterns and trends, thus helping parties make informed decisions during mediation. For example, AI can predict the likelihood of success or failure in a particular case based on similar past cases.

As the article [8] in the footnotes aptly Scherer (2019) describes: "*These conclusions, however, should not detract from the most obvious point: **AI** will **fundamentally affect** the **legal profession** and **legal activities**, including **judicial decision-making**. It is therefore important to study further how best to use AI, even with the limitations, barriers, and issues highlighted in this article. In international arbitration, which is under constant criticism for being too expensive and time-consuming, the claim by some AI developers that computers 'can do the work that took lawyers 360,000 hours' must be taken seriously. Future research is necessary to explore the ways human decision-makers and AI can best be combined to obtain the most efficient results. Coming back to the quotation from Antoine de Saint-Exupery in the introduction, we may not be able to foresee what the future of AI models looks like, but we can enable that future by carefully considering the implications of judicial decision-making with AI*". (emphasis added)

Likewise, a similar approach can be taken for mediation that is by leveraging the power of AI in combing through thousands of published court judgement to give the mediator 'a feel' of each party's chances by weighing in the strengths and weaknesses of each party.

[8] "Scherer, Maxi, Artificial Intelligence and Legal Decision-Making: The Wide Open? Study on the Example of International Arbitration (May 22, 2019). Queen Mary School of Law Legal Studies Research Paper No. 318/2019, Available at SSRN: https://ssrn.com/abstract=3392669

C. Taking on 'Co-Mediator' role to assist the Mediator

In evaluative mediation, there are a few core competencies that the mediator is expected to hold, one of them is the ability to retain confidentiality. Another crucial skill is to be able to manage time efficiently. However, during the course of the mediation, especially during joint/private sessions with the parties, when the mediator during the heat of the negotiations would have to shuttle between each party, could potentially fail to remind the parties or either party on the matter of keeping confidentiality. This entirely 'human error' would be fatal and likely put doubt to the legitimacy of the mediation, as the mediator could be deemed to be 'unfair' to the party.

To circumvent this, AI could be employed to play the role of a 'co-mediator' that is virtually present during the proceedings. In essence this AI co-mediator role would be to:

- Prompt the mediator at the end of each joint / private sessions on stating confidentiality and all other important matters;
- Recording negotiated proposal / counter-proposal during joint/individual sessions;
- Providing 'live view' to both parties (without breaching confidentiality) on the proposal offered by the other party for open / transparent communication;
- Time-keeping to ensure that joint / private sessions keep to the time limits.

D. Using AI in Contract Drafting / Settlement Agreement

When the mediation is successful, the parties then reach the stage on the drafting of the settlement agreement. Where lawyers are present, they will draft the Settlement Agreement. However, this is not always the case and the mediator could be asked to participate in drafting the settlement agreement. For obvious reasons, mediators are generally advised not to draft the settlement agreement when there is legal representative(s) by one party or both. However, in the case when there are no legal representatives, the role of AI could be particularly useful in drafting the settlement agreement, incorporating the heads of agreement. Despite its advancements, currently, AI has limitations, including producing false information (hallucinations), lacking common sense, and struggling with nuanced or complex context and the human mediator must still vet the said settlement

agreement.

E. Conclusion

As with any other technology, continued development in AI will see improvements especially its accuracy in areas it is used. As popularity of mediation as a dispute resolution mechanism grows, especially the use of evaluative mediation for construction disputes, AI's potential in assisting the mediator cannot be downplayed. The challenges faced by a mediator are plenty and well documented [9] and the mediator should explore all the tools and methods available at his/her disposal to overcome these challenges. Since AI is a product of human ingenuity, it serves as the perfect tool for the task at hand.

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[9] Mediation in the World Today: Opportunities and Challenges by Dale Bagshaw in © Journal of Mediation and Applied Conflict Analysis, 2015, Vol. 2, No. 1

Trends and Future of Construction Dispute Resolution in India and Middle East

By: Cheng Wan Yng

Ms. Cheng Wan Yng holds a Bachelor of Laws (LL.B.) and a Certificate of Legal Practice (CLP). She previously served as a Legal Executive and Head of Secretariat at the Asian Institute of Alternative Dispute Resolution (AIADR), focusing on legal administration and alternative dispute resolution. She is currently undergoing her pupilage at a firm specializing in corporate legal work.

Abstract

To introduce the trends and developments in construction dispute resolution for India and the Middle East, it's essential to start with a high-level overview of the construction industry's recent growth in both regions. The construction industry has seen substantial growth over the past decade. Fueled by rapid urbanization, ambitious government-led infrastructure projects, and significant private sector investments, these regions are becoming central to the global construction landscape.

1. INTRODUCTION

In India, construction accounts for a significant portion of the GDP, driven largely by urban infrastructure needs, such as smart cities, housing, and transportation.[1] According to Deloitte's analysis of India's construction market, the industry is expected to reach USD 1.4 trillion by 2025.[2] The government's "Smart Cities

[1] Deloitte, Global Powers of Construction (GPoC), July 2024, pg 16, (last accessed 15/11/2024) https://www2.deloitte.com/content/dam/Deloitte/at/Documents/presse/at-deloitte-global-powers-of-construction-2024-studie.pdf

[2] Deloitte, Innovative Financing Solutions: Accelerating India's Infrastructure Development, March 2022, pg 5, https://www2.deloitte.com/content/dam/Deloitte/in/Documents/financial-services/in-fs-ICEMA-noexp.pdf

Mission" and "Affordable Housing for All" schemes, along with private sector engagement, are primary contributors to this surge.[3] Likewise, the Middle Eastern construction industry is experiencing robust growth, driven by an expanding pipeline of ambitious projects and significant investment, particularly in Saudi Arabia and the UAE. The region's construction boom is grounded in strategic initiatives like Saudi Arabia's "Vision 2030" and the UAE's economic diversification plans, both aimed at reducing dependency on finite fossil fuels and fostering sustainable development to support rapidly growing populations.[4]

This rapid expansion, however, brings with it a set of challenges that has led to a rise in construction-related disputes in both India and the Middle East. As infrastructure projects grow in scale and complexity, so too do the intricacies of stakeholder involvement, legal frameworks, and regulatory requirements.[5] In both regions, construction projects frequently involve multiple, often international, contractors, suppliers, and financiers, all operating under tight timelines and stringent contractual obligations. The high stakes involved in these projects create fertile ground for potential conflicts over issues such as delays, cost overruns, and design changes.[6]

As construction becomes more sophisticated, the need for robust and adaptable dispute resolution mechanisms has become increasingly clear. Complexities introduced by cross-border partnerships, cultural differences, and varied regulatory landscapes add layers of potential discord that traditional litigation struggles to address effectively. Consequently, alternative dispute resolution (ADR) methods such as arbitration, adjudication, and mediation have emerged as vital tools. These mechanisms not only offer a means to resolve disputes

[3] Ken Research, India Construction Market Outlook to 2028, July 2024 (last accessed 15/11/2024), https://www.kenresearch.com/industry-reports/india-construction-market

[4] Yu, Haian & Shang, Zufeng & Wang, Fenglai. (2024). Analysis of the Current Situation of the Construction Industry in Saudi Arabia and the Factors Affecting It: An Empirical Study. https://www.researchgate.net/publication/382961309_Analysis_of_the_Current_Situation_of_the_Construction_Industry_in_Saudi_Arabia_and_the_Factors_Affecting_It_An_Empirical_Study (last accessed 15/11/2024)

[5] Asia Law House, Dr. Sridhar Mothe, Infrastructure Contracts and Management 2nd Edn, 2024, Chapter 1. See also: Norton Rose Fulbright, International arbitration report, May 2019, https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/knowledge-pdfs/international-arbitration-report---issue-12.pdf?revision=2af60927-1ed7-46ae-b317-5af59b72c270&revision=5248609906647387904

[6] Ibid

efficiently but also help maintain business relationships, an essential factor in the fast-paced and interconnected construction industry.

2. NATURE OF CONSTRUCTION DISPUTES

Construction disputes stand out due to their highly technical and multifaceted nature, involving a complex web of parties, responsibilities, and legal issues.[7] Unlike other types of disputes, construction-related issues often arise from the intersection of various fields, such as engineering, design, finance, and law.[8] The intricacies of these disputes demand a detailed understanding of specialized knowledge, including technical specifications, engineering principles, and industry practices.[9] Furthermore, the involvement of multiple parties—such as contractors, subcontractors, suppliers, and clients—complicates matters by creating a chain of responsibilities, where the breach of one party's obligation can have cascading effects on others.[10] This complexity requires careful analysis of the roles and obligations of each party and makes the allocation of liability a key issue in resolving disputes.[11]

Moreover, construction disputes are often time-sensitive, driven by the need to avoid project delays and mitigate financial losses.[12] The pressure for swift resolution is heightened by the fact-specific nature of these disputes, which often involve fast-changing conditions, such as fluctuations in material costs, unforeseen weather events, or changes in regulations.[13] Unlike other forms of legal conflict, these disputes require not only an understanding of the law but also expertise in managing the technical and commercial aspects of construction projects.[14]

Some of the common types of disputes in construction projects include:[15]

[7] Nishith Desai Associates, Construction Disputes in India, 2020, https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Construction-disputes-in-india.pdf (last accessed 15/11/2024)
[8] Ibid
[9] Ibid
[10] Sweet & Maxwell, Chow Kok Fong, Construction Arbitration, 2023, Chapter 1
[11] Ibid
[12] London Publishing Partnership, Julian Bailey, Construction law, Volume III,2020, Chapter 23
[13] Ibid
[14] Supra n10
[15] Gamage, Amila & Kumar, Suresh. (2024). Causes of Disputes in Construction Projects. Saudi Journal of Civil Engineering, See also : Sandra Matarneh, Construction Disputes Causes and

- **Delays in Project Completion:** Delays are one of the most frequent issues in construction projects. They can result from various causes, such as unforeseen events, modifications to the design or project scope, contractor inefficiencies, or delays in approvals from regulatory authorities.
- **Cost Overruns:** Exceeding the budget is another prevalent source of disputes. Cost overruns can arise from changes to the project scope, schedule delays, or resource mismanagement.
- **Quality Issues:** Disputes often emerge regarding the quality of construction work, particularly when it deviates from agreed standards or specifications. Discrepancies in quality can lead to prolonged disagreements between contractors and project owners.
- **Contract Interpretation:** Misunderstandings regarding contract terms can lead to conflicts, especially in large projects involving multiple agreements and stakeholders.
- **Payment Issues:** Construction projects involve significant financial transactions, and payment disputes between contractors, subcontractors, and project owners are common. These disputes typically involve issues of non-payment, underpayment, or delayed payments.

3. DISPUTE RESOLUTION

As highlighted above, the complexities inherent in construction projects—from design issues and project delays to regulatory challenges and breakdowns in communication—have contributed significantly to the rise in construction disputes. These disputes not only impact project timelines and budgets but also strain relationships among stakeholders and increase the overall risks associated with construction endeavors. Given this landscape, it is essential to explore and understand the various methods available for resolving these disputes effectively.

The following discussion will focus on the primary dispute resolution methods currently utilized in the construction industry, including traditional litigation,

Resolution Methods: A Case Study from a Developing Country, Journal of Construction in Developing Countries, 29(1), 139–161, 2024, See also : Kelvin Zhen, Shi Yee, and Wai Wah (2023), Factors Causing Dispute In Construction Industry: Contractors' Perspectives, Journal of Surveying, Construction and Property (JSCP) Volume 14, 2023 Issue 1

arbitration, mediation and other forms of alternative dispute resolution (ADR) mechanisms.

A party may enter a dispute resolution process either by requirement or by choice. Participation is mandatory in instances of statutory adjudication[16] and litigation[17], where initiating an adjudication or legal proceedings by one party obligates the other party to engage in a dispute resolution process, even without their prior consent. Participation is, however, voluntary in other forms of dispute resolution, most notably in arbitration, where party autonomy is paramount[18]. Recently, expert determination has also emerged as an alternative to both arbitration and litigation. Equally significant are consensual forms of dispute resolution, which aim to reach an agreed resolution between the parties rather than having their rights and obligations determined or assessed by a third party. Mediation stands out as the leading example of this approach.[19]

In general, dispute resolution clauses in construction and engineering contracts often require an initial notification of a dispute by the aggrieved party, followed by a non-adversarial resolution attempt through negotiation, conciliation, or a similar approach. If the dispute remains unresolved, it then proceeds to an adversarial resolution method, such as expert determination, adjudication, dispute board, arbitration, or litigation. Dispute resolution agreements in these contracts, as well as in similar fields, are frequently structured as multi-tiered processes. This structure requires multiple rounds of resolution attempts before reaching a final adjudication that delivers a binding decision. Often, completing one step—such as executive negotiation or mediation—is a condition precedent to advancing to the next stage, like expert determination or arbitration. Once parties have agreed to a specific dispute resolution process, they are generally obligated to adhere to it and are not allowed, with few exceptions, to disregard the dispute resolution agreement in favour of initiating court proceedings.[20]

[16] Bailey, “Public Law and Statutory Adjudication” (2008) 24 Const LJ 461
[17] Supra n12, 23.03
[18] Flood and Caiger, “Lawyers and Arbitration: The Juridification of Construction Disputes” (1993) 56 MLR 412
[19] Nicholas Gould, Claire King & Philip Britton, Mediating Construction Disputes: An Evaluation of Existing Practice, John Cheever, Journals, London, Vintage Books (2010) 163
[20] Evergreat Construction Co Pte Ltd v Presscrete Engineering Pte Ltd [2006] 1 SLR(R) 634 at [48]–
[50], per VK Rajah J

4. ARBITARTION

4.1. What is Arbitration?

The primary question we should ask ourselves is, what is Arbitration? According to Redfern & Hunter, Arbitration is essentially a very simple method of resolving disputes. Disputants agree to submit their disputes to an individual whose judgment they are prepared to trust. Each puts its case to this decision maker, this private individual—in a word, this 'arbitrator'. He or she listens to the parties, considers the facts and the arguments, and makes a decision. That decision is final and binding on the parties—and it is final and binding because the parties have agreed that it should be, rather than because of the coercive power of any state.

4.2. Unique features of Arbitration

Arbitration has become a popular dispute resolution method in the construction industry for several reasons:

a. Efficiency and Speed
Construction projects are typically time-sensitive, with delays potentially incurring significant financial penalties. Arbitration offers a faster alternative to traditional litigation, as parties can establish their own timelines and avoid the lengthy procedures and backlog often associated with court cases.[21] Furthermore, arbitration allows for more streamlined procedures, enabling quicker resolution of issues. Unlike court proceedings, arbitration typically has fewer formal requirements and procedural delays, making it an attractive option for time-sensitive construction projects.[22]

b. Expertise in Technical Matters
The construction industry is characterized by technical complexities that often require specialized knowledge to resolve disputes effectively. Arbitration allows parties to select arbitrators with specific expertise in

[21] White, D. (2020). Construction Arbitration: An Efficient Alternative to Litigation. Journal of Construction Law, 45(3), 215-230
[22] Green, S., & Douglas, R. (2019). Efficiency in Construction Arbitration. International Journal of Dispute Resolution, 12(1), 45-60

construction law, engineering, or related fields.[23] Having arbitrators who are well-versed in the technical aspects of construction not only ensures that they understand the underlying issues but also helps them make informed decisions based on industry practices and standards.[24]

c. Confidentiality
Arbitration proceedings are generally private, which can be crucial for parties in the construction industry who may wish to protect sensitive commercial information, trade secrets, or reputational concerns.[25]Confidentiality is especially valuable for companies who want to maintain ongoing relationships with other stakeholders in the construction ecosystem, as it minimizes public disclosure of disputes that could otherwise damage business relationships or the company's public image.[26]

d. Flexibility of Process
Unlike court proceedings, arbitration is flexible in terms of procedural and evidential rules. The parties can choose arbitration institutions that provide tailored rules, such as the International Chamber of Commerce (ICC) or the American Arbitration Association (AAA), which are known for their specialized construction arbitration frameworks.[27] The flexibility to design a process that best suits the nature of the construction dispute can make arbitration more efficient and less formal, fostering a more collaborative approach to dispute resolution.[28]

e. Enforceability of Awards

[23] Arocca, J.P.L. (2021). "Rethinking the Structure of Construction Arbitration: A Dispute Systems Design Approach to the Position of Experts, See also : Flood, J, & Caiger, A. (1993). "Lawyers and Arbitration: The Juridification of Construction Disputes"
[24] Ibid
[25] Ndirangu, R.N. (2014). "Influence of Arbitration on Dispute Resolution in the Construction Industry: A Case of Nairobi County, Kenya"
[26] Neill, P. QC (1996). "Confidentiality in Arbitration"
[27] Association of Construction Arbitrators (ACA). (2021). Guidelines for Construction Arbitration. Retrieved, https://www.adr.org/sites/default/files/Construction%20Rules.pdf (last accessed 15/11/2024)
[28] MinterEllisonRuddWatts, Construction arbitration: Why is arbitration so suited to construction disputes?, 2024, https://www.minterellison.co.nz/insights/construction-arbitration-why-is-arbitration-so-sui (last accessed 15/11/2024)

Arbitration awards are widely recognized and enforceable under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which has been ratified by over 160 countries.[29] This is particularly advantageous in construction, as projects often involve international parties and cross-border transactions.[30]

4.2. Arbitration Development in Middle East

The arbitration landscape in the Middle East has experienced notable transformations over the past few years, driven by efforts across several Gulf Cooperation Council (GCC) countries to enhance their arbitration frameworks and facilities. In 2021, the DIFC-LCIA Arbitration Centre was dissolved, and its ongoing caseload was transferred to the Dubai International Arbitration Centre (DIAC).[31] This move prompted DIAC to issue updated arbitration rules in 2022, designed to meet international standards.[32] Since then, DIAC has restructured its arbitration court and has been actively positioning itself as a premier arbitration institution in the region.

Other GCC countries have also made significant advancements. In November 2022, the Saudi Centre for Commercial Arbitration (SCCA) expanded its reach by opening a branch in the Dubai International Financial Centre (DIFC),[33] aiming to offer a full range of alternative dispute resolution (ADR) services. The SCCA also established an independent court responsible for resolving technical and administrative issues in cases it administers.[34] Similarly, the Oman Commercial Arbitration Centre (OAC) introduced new arbitration rules in 2021 and entered

[29] The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention), 7 ILM 1046 (1968)
[30] Jayasinghe, R., Dahanayake, R., & Edirisinghe, V. (2022), Challenging Arbitral Awards in the Construction Industry
[31] The main act establishing the DIAC is, Decree No. (34) of 2021 Concerning the Dubai International Arbitration Centre which can be found here: (last accessed 15/11/2024), https://dlp.dubai.gov.ae/Legislation%20Reference/2021/Decree%20No.%20(34)%20of%202021.pdf
[32] Dubai International Arbitration Centre, Arbitration Rules 2022, (last accessed 15/11/2024), https://www.diac.com/wp-content/uploads/2023/05/DIAC-2022-Rules-EN.pdf
[33] SCCA Opens the Doors of its Dubai Office to Businesses , Published Date: 02/02/2023 (last accessed 15/11/2024), https://sadr.org/news-details/217?lang=en
[34] The New Saudi Center for Commercial Arbitration Rules 2023: What's in Store, 2023, (last accessed 15/11/2024), https://arbitrationblog.kluwerarbitration.com/2023/05/22/the-new-saudi-center-for-commercial-arbitration-rules-2023-whats-in-store/

into a partnership with the Chartered Institute of Arbitrators (CIArb) to strengthen the OAC's role as a reliable dispute resolution hub.[35] Following this trend, the Bahrain Chamber of Dispute Resolution implemented updated arbitration rules in 2022.[36]

These changes reflect a growing regional commitment to arbitration as a preferred method of dispute resolution, reducing reliance on local courts. This shift has sparked competition among GCC countries to establish themselves as the preferred arbitration venues, which may ultimately benefit parties by attracting more international participants, enhancing market capacity, and boosting the quality of dispute resolution services.

4.3. Arbitration Development in India

In 2016, Indian Prime Minister Narendra Modi announced his government's intention to integrate arbitration into its ease-of-doing-business framework, signaling a strategic move to foster a supportive environment for alternative dispute resolution (ADR). Speaking at the Global Conference on the National Initiative towards Strengthening Arbitration and Enforcement in India, Modi emphasized the goal of building a "vibrant ecosystem" for ADR—including arbitration, mediation, and conciliation—which he argued would not only reassure investors but also elevate India's profile as a global arbitration hub.[37]

Now, eight years since that ambitious vision was set forth, it's worth assessing how much progress India has made toward realizing it. Has the country managed to streamline its processes and create a robust arbitration framework? Over the years, arbitration centres have been established in different parts of the country. India's arbitration landscape has seen substantial development over the years, marked by the establishment of various arbitration centers across the country.

[35] Herbert Smith Freehills 2024, Inside Arbitration: MENA and arbitration in 2022 – Change, development and uncertainty, March 2023, (last accessed 15/11/2024), https://www.herbertsmithfreehills.com/insights/2023-03/inside-arbitration-mena-and-arbitration-in-2022-%E2%80%93-change-development-and-uncertainty

[36] Ibid

[37] Indian prime Minister Narendra Modi, Valedictory speech at National Initiative towards Strengthening Arbitration and Enforcement in Indi, 2016, (last accessed: 15/11/2024) https://www.pmindia.gov.in/en/news_updates/valedictory-speech-by-prime-minister-at-national-initiative-towards-strengthening-arbitration-and-enforcement-in-india/

The Indian Council of Arbitration (ICA)[38] was founded in 1965 in New Delhi, laying the groundwork for institutional arbitration in India. Four decades later, the Nani Palkhivala Arbitration Centre[39] opened in 2005 in Chennai, followed by the Delhi International Arbitration Centre in 2009.[40]

In 2016, the Mumbai Centre for International Arbitration (MCIA)[41] was launched to further support India's growing arbitration needs. More recently, in 2021, the Indian Arbitration and Mediation Centre was established in Hyderabad[42], marking yet another milestone in India's commitment to expanding its ADR infrastructure. Additionally, the government has designated the India International Arbitration Centre (IIAC) in New Delhi[43] as an institution of national importance, aiming to position the city as a leading international arbitration hub. These developments reflect India's ongoing efforts to strengthen its dispute resolution framework and enhance its global reputation in arbitration.

While numerous arbitration institutes have been established across India, the critical question remains: what has the actual uptake and utilization of these centers been like? Recent data indicates that their uptake has been promising and is steadily increasing. For example, the Mumbai Centre for International Arbitration (MCIA), within just six years of its establishment, has administered disputes with a total value exceeding USD 1 billion and recorded a 20% rise in cases in 2022 alone.[44] Similarly, the International Arbitration and Mediation Centre in Hyderabad, established just two-and-a-half years ago, has handled 52 cases worth USD 785 million,[45] signalling growing trust from Indian parties in institutional arbitration for domestic cases.

[38] The Indian Council of Arbitration (last accessed 15/11/2024), https://icaindia.co.in/about
[39] Nani Palkhivala Arbitration Centre (last accessed 15/11/2024) https://www.nparbitration.net/AboutUs/About
[40] Delhi International Arbitration Centre (last accessed 15/11/2024) https://dhcdiac.nic.in/
[41] Mumbai Centre for International Arbitration (MCIA) (last accessed 15/11/2024) https://mcia.org.in/
[42] Indian Arbitration and Mediation Centre (IAMC) Hydrabad, https://iamch.org.in/about
[43] International Arbitration Centre (IIAC) (last accessed 15/11/2024) https://indiaiac.org/arbitration/about_center
[44] Weighed down, Indian Business Law Journal (last accessed 1511/2024) https://law.asia/indian-arbitration-hub-progress/
[45] Ibid

The Delhi International Arbitration Centre also highlights this trend, having managed 8,000 cases in 2023. [46] Additionally, specific mandates have encouraged greater uptake. In 2016, Maharashtra implemented an institutional arbitration policy requiring that all state government contracts over INR 50 million include an institutional arbitration clause.[47] The Securities and Exchange Board of India (SEBI) introduced a similar mandate in July 2023, requiring disputes with certain market institutions or participants to be resolved through either online dispute resolution or Indian-administered institutional arbitration.[48]

5. MEDIATION

5.1 What is Mediation?

Mediation refers to a process, which is usually conducted in private, whereby disputing parties meet and endeavour, with the facilitation of a mediator, to reach an agreement for the resolution of their dispute. The process is one that seeks the resolution of a dispute through consensus, as opposed to adjudication by a third party. A mediator will try to facilitate the reaching of a settlement agreement, but the mediator himself does not make a decision on the underlying dispute so as to bind the parties unless agreed by the parties[49].

One of the attractions of mediation is that it has the potential to produce a consensus between disputing parties, and thereby end their dispute. If a settlement is reached before proceedings are brought, or even after the commencement of proceedings, the parties will have avoided expending further valuable time and resources on litigation, and obtained the commercial certainty of an agreed outcome. A settlement agreement from a mediation which requires one party to pay a sum of money to another may be capable of international enforcement under the United Nations Convention on International Settlement

[46] Delhi International Arbitration Centre, Statistics (last accessed 15/11/2024)https://dhcdiac.nic.in/statistics-2/

[47] Indian Express Newsite (last accessed: 15/11/2024) https://indianexpress.com/article/business/economy/maharashtra-government-makes-institutional-arbitration-mandatory-for-contracts-above-rs-5-crore-4604321/)

[48] Securities and Exchange Board of India, SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/131 (last accessed: 15/11/2024) https://www.sebi.gov.in/legal/circulars/jul-2023/online-resolution-of-disputes-in-the-indian-securities-market_74794.html?landing_page=learning-center%2Fshare-market%2Fwhat-is-market-value-how-to-calculate-shares-meaning-formula-ratio

[49] Julian Bailey, Construction Law, Vol III (3rd edn, London Publishing Partnership 2020)

Agreements Resulting from Mediation (2018) also known as the Singapore Convention.

The advantages of mediation include the following[50]:

a. Informality and flexibility: The process of mediation can be adjusted to suit the parties' needs
b. Speed and economical: Compared to litigation and arbitration, mediation is less expensive and takes a shorter time to resolve the dispute.
c. Confidential: Matters discussed during mediation are confidential. Therefore, parties need not worry that whatever is discussed during mediation will be disclosed to a third party.
d. Wide range of settlement options available: As opposed to litigation and arbitration, the outcome that can be reached in mediation is much more flexible and is not confined to only monetary settlements. It may include payment in kind.
e. Maintains business relationship: Mediation can maintain the business relationship between the parties as compared to litigation and arbitration, whereby parties are usually hostile towards one another.
f. Conducted on a without prejudice basis: Mediation is conducted on a without prejudice basis. Nothing said in the mediation can be used against the parties subsequently in court and/or arbitration should the mediation fails. This gives parties more freedom to express their concerns and viewpoints for purpose of settlement.
g. Settlement premised on the interest of the parties: Mediation often leads to an agreed settlement between the parties based on the interests of the parties rather than imposed award or judgment based on the rights and obligations of the parties.

5.2 The relevance of Mediation in Construction Dispute

Although there are no statistics, there are large number of disputes in building contracts that never reach arbitration or litigation. The parties will try to avoid allowing disputes fester until they mature into a state in which third-party intervention becomes the only available option. In recent years, employers and contractors have started to appreciate that it is better to protect their interests,

[50] Sundra Rajoo, Standard Form of Building Contracts Compared, Vol 2 (3rd edn, Lexis Nexis 2022) 1863

not merely to defend their legal rights. This attitude has given impetus to the use of mediation in certain kinds of cases susceptible to compromise solution.

Mediation is commonly adopted in various standard form of contracts due to its non-adversarial nature. For instance, JCT (2017) Section 9 provides that:

> "Subject to Article 7, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation."

Similarly, FIDIC Red Book (2017), Clause 21.5 states that:

> "Where a NOD has been given under Sub-Clause 21.4 [Obtaining DAAB's Decision], both parties shall attempt to settle the Dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the twenty-eight(28th) day after day on which this NOD was given, even if no attempt at amicable settlement has been made"

In line with the *Guidance for the Preparation of Particular Conditions*, the guide expands on the requirements for amicable settlement under Clause 21.5, specifying that such settlement may include mediation.

Now that we understand the use of mediation in construction disputes, let's delve into the development of mediation in India and Middle East.

5.3 Development of Mediation in India[51]

Mediation gained popularity as an ADR mechanism India with the re-introduction of Lok Adalat in the Indian Judicial system. Enacted in 1987, the Legal Services Authority Act gave a statutory status to the Lok Adalat in India for the first time. Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/ cases pending in the court of law or at pre-litigation stage are

[51] Mekhla chakraborty, 'DEVELOPMENT OF MEDIATION IN INDIA : A BRIEF HISTORY' (*VIA Mediation & Arbitration Centre*, -
) <https://viamediationcentre.org/readnews/ODc=/DEVELOPMENT-OF-MEDIATION-IN-INDIA-A-BRIEF-HISTORY> accessed 19 November 2024

settled/compromised amicably. Under the Legal Service Authorities Act 1987, the decision made by the Lok Adalats is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law. If the parties are not satisfied with the award of the Lok Adalat though there is no provision for an appeal against such an award, but they are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a case by following the required procedure, in exercise of their right to litigate.

Furthermore, the terms 'mediation' and 'conciliation', whose usages were considered to be synonymous previously, received significant distinctions in their usages when the Arbitration and Conciliation Act was enacted in 1996. Not only did the act lay down a clear definition for conciliation but also consolidated the laws relating to domestic arbitration in India. The mediator, unlike the conciliator, does not take an active part in the mediation process and thus, the terms cannot be used as a substitute for each other.

The development of mediation as an ADR mechanism can also be attributed to section 89 of the Civil Procedure Code(CPC), 1908 which was inserted by the CPC (Amendment) Act, 1999 with prospective effect from 1/7/2002. This section allows courts to encourage alternative dispute resolution (ADR) processes to settle conflicts outside of court. In light of this development, the Hon'ble Supreme Court in the case of *Salem Advocates Bar Association vs. Union of India*[52] made it mandatory for the courts to refer cases to the alternative forums. To quote from the judgment:

> *" It is quite obvious that the reason why Section 89 has been inserted is to try to see that cases, which are filed in court need not necessarily be decided by the court itself. Keeping in mind the laws delays and the limited number of Judges which are available, it has now become imperative that resort should be had to Alternative Dispute Resolution Mechanism with a view to bring to an end litigation between the parties at an early date. The Alternative Dispute Resolution (ADR) Mechanism as contemplated by Section 89 is arbitration or conciliation or judicial settlement including settlement through Lok Adalat or mediation. Sub-section (2) of Section 89 refers to different Acts in relation to arbitration, conciliation or settlement through Lok Adalat, but with regard to mediation Section 89(2) (d)*

[52] **AIR 2005 SUPREME COURT 3353, (2005) 4 BOM CR 839**

provides that the parties shall follow the procedure as may be prescribed. Section 89(2)(d), therefore, contemplates appropriate rules being framed with regard to mediation."

This case is a landmark case for the development of mediation in India.

Since then, the judges of the Supreme Court have contributed significantly towards the development of mediation as an ADR mechanism. Under Hon'ble Mr. Justice R C Lahoti, a Mediation and Conciliation Committee was established and in a Project on Mediation was also initiated in Delhi in the year 2005. In the same year, A Permanent Mediation Centre was inaugurated at the Tis Hazari court complex and judicial mediation was started at the Karkardooma court complex. Two mediation centres were also inaugurated, one at the Karkardooma court complex in Delhi and another at the Patiala court in 2015.

In 2019, the push of mediation in India continued with India being the signatory country of the United Nations Convention on International Settlement Agreements Resulting from Mediation ('Singapore Convention on Mediation').

Resulting to this, India introduced its first ever independent legislation on mediation, the Mediation Act 2023[53]. The Mediation Act provides for a comprehensive framework to promote and invigorate mediation as a successful mode of alternative dispute resolution. Some of the notable characteristics of the Mediation Act are as follow:

- voluntary option to parties to mediate any civil and commercial disputes before instituting any legal proceedings in court whether or not any mediation agreement exists;
- a provision for the parties to seek interim relief in exceptional circumstances from a court or tribunal having competent jurisdiction before the commencement of, or during the continuation of the mediation proceedings;
- every mediation to be undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of

[53] Payel chatterjee, shuchita choudhry, 'India: The Mediation Act 2023 - will the ADR wave pick up momentum?' (*International Bar Association: the global voice of the legal profession*, 11 March 2024) <https://www.ibanet.org/india-mediation-act-2023-will-the-ADR-wave-pick-up-momentum> accessed 19 November 2024

the dispute, except in cases where parties mutually agree to conduct the mediation at any place outside of the territorial jurisdiction or online;
- setting up a Mediation Council of India with functions such as registration of mediators, train and certify mediators and setting out standards of professional and ethical conduct of mediators;
- limiting the grounds of challenge to a mediation agreement to fraud, corruption, impersonation and where the mediation was conducted in disputes not fit for mediation;
- provision for community mediation that may be attempted to settle disputes likely to impact peace and harmony amongst residents of a community; (ix) obligation to maintain confidentiality; and lastly
- extending application to international mediations (where one party is a foreign party) conducted in India, amongst several others.

In conclusion, mediation in India has evolved through key legislative and judicial milestones, including the reintroduction of Lok Adalats, the enactment of Section 89 of the CPC, and the establishment of mediation centers. The 2023 Mediation Act, along with India's accession to the Singapore Convention on Mediation, marks a significant step in formalizing and promoting mediation as a mainstream alternative dispute resolution mechanism. These developments have strengthened India's mediation framework, making it an efficient, accessible, and globally recognized method for resolving civil and commercial disputes.

5.4 Development of Mediation in Middle East[54]

Mediation has long been a part of the Middle East's history, practiced for centuries as a method of resolving disputes. The tradition of involving a neutral third party for impartial decision-making is deeply embedded in Arabic and Islamic customs, and it has historically been used to settle conflicts between tribes and neighbouring nations.

Even in modern times, mediation continues to be a favored approach in the Middle East, supported by Islamic law, which encourages resolving disputes

[54] Nadja alexander, bill marsh, 'The History Of Mediation In The Middle East And Its Prospects For The Future' (*Kluwer Mediation Blog*, January 23,2018) <https://mediationblog.kluwerarbitration.com/2018/01/23/history-mediation-middle-east-prospects-future/#:~:text=Mediation%20has%20not%20only%20historically,conciliation%20via%20third%2Dparty%20interventions.> accessed 19 November 2024

through direct negotiation or third-party conciliation. For example, Jordan's **Law on Mediation for the Resolution of Civil Disputes**, enacted in 2006, allows judges to refer disputes to mediators with the parties' agreement. Similarly, the UAE has developed mediation frameworks, including Dubai's Mediation Centre established under Law No. 16 of 2009. The DIFC Courts incorporate mediation within their legal processes, promoting its advantages as an alternative dispute resolution method. The DIFC-LCIA Arbitration Centre, launched in 2008, also offers mediation services under the LCIA rules.

Qatar has also taken significant steps to institutionalize mediation. The **Qatar International Center for Conciliation and Arbitration (QICCA)** was established in 2006 and introduced Conciliation Rules in 2012, based on the UNCITRAL Conciliation Rules. These efforts, along with international organizations like the International Mediation and Arbitration Center (IMAC), demonstrate a push to encourage mediation as a dispute resolution method in the region. However, compared to arbitration, which aligns more closely with international standards, mediation in the Middle East has developed in ways that reflect its unique cultural and procedural context.

One of the key differences between mediation in the Middle East and the West lies in the role of the mediator. In Arab and Islamic traditions, the mediator's status, reputation, and the respect they command are vital to achieving a resolution. Unlike Western mediators, who are neutral facilitators, Middle Eastern mediators adopt a more active and evaluative role, often acting as fact-finders and solution-providers. This reflects the cultural expectation that the mediator has the answers and is instrumental in shaping the settlement. Additionally, while Western mediators focus on legal procedures, Middle Eastern mediators are expected to have a deep understanding of the conflict's background and nuances.

The objectives of mediation also differ significantly. In Western contexts, the focus is often on maximizing individual or group interests, with outcomes framed as win/lose or win/win. In contrast, Middle Eastern mediation prioritizes restoring relationships and maintaining social harmony, reflecting the communal nature of the culture. The mediator seeks to repair broken ties not only between the disputing parties but also within the broader community.

Procedurally, mediation in the Middle East often occurs alongside formal legal proceedings, unlike in the West, where it usually serves as an alternative to court cases. This procedural overlap means mediators in the region may be required to testify in court about agreements they facilitated. Moreover, mediated agreements in some countries must conform to Shari'a principles, which can complicate the process. For example, the prohibitions on **riba** (usury) and **gharar** (uncertainty) pose challenges in commercial disputes, as these principles restrict interest-based and speculative transactions.

Despite its strong cultural and historical foundation, mediation has not seen widespread institutional growth in the Middle East. Factors such as a lack of trained mediators, concerns about impartiality, and the absence of a comprehensive legislative framework regulating mediator ethics and qualifications have hindered its broader adoption. Addressing these challenges by developing training programs, implementing ethical standards, and aligning institutional frameworks with international practices could lead to a significant increase in the use of mediation in the region. With its deep cultural resonance, mediation holds great potential as an effective and harmonious dispute resolution method in the Middle East.

6. DISPUTE BOARD

6.1 What is Dispute Board?

A dispute board, sometimes also referred to as a dispute resolution board, dispute adjudication board or dispute review board, or a similar name, is a board of usually three respected and impartial persons who, under a construction or engineering contract, are charged with giving either a non-binding recommendation or a binding decision as to the resolution of disputes that arise during the course of a project. Dispute boards are often established at the outset of a project rather than when disputes arises. One of the perceived advantages of using a "standing" dispute board is that it may curb any incipient disputes, perhaps even by filling in gaps in the parties' contract, where ambiguities have arisen[55].

[55] Julian Bailey, Construction Law, Vol III (3rd edn, London Publishing Partnership 2020)

Dispute Adjudication Boards (DABs) are used increasingly in international construction and engineering projects. Adjudicating a dispute pursuant to a DAB may be precondition to either party commencing an arbitration of the dispute. For instance, the overall general dispute resolution structure in FIDIC Red Book (2017) is that firstly, the parties must refer all the disputes to Dispute Avoidance/Adjudication Board (DAAB) for adjudication. The DAAB consists of an odd number of person(s). The parties can pre-agree the number of the DAAB as one or three members. In the event that the parties fail, the default number of the DAAB is three members.

The parties have the option to request the DAAB to provide assistance in an attempt to resolve any issue or disagreement. Alternatively, the DAAB may also take the initiative to invite the parties to make such requests for the DAAB to render assistance.
Where a DAB makes a decision that is binding on the parties there may be an issue as to how the DAB's decision is to be enforced if a party fails to comply with it. In domestic, the DAB's decision may be enforceable through the national courts as a binding contractual determination of rights and obligations. In international contracts the usual mechanism for enforcing a DAB's decision will be for the successful party to commence an arbitration, and to obtain an award that can be enforced against the unsuccessful party.

Some of the benefits of dispute boards are as follows[56]:

- DAAB procedures settle disputes within a specified period, which can take as little as a few months. For instance, the DAAB has 84 days to decide a dispute. Such procedures allow the parties to resolve disputes quickly, and help focus the parties on the key issues.
- DAABs provide a definitive decision. The parties will obtain a determination of their dispute that is contractually binding (albeit, not directly enforceable in the same way as a court judgment or arbitral award). The DAAB's decision is binding on both parties who "*shall promptly comply with it whether or not a Party gives a NOD* [Notice of Dissatisfaction]".[3] The decision is also binding on the Engineer.[4]

[56] Guillaume hess, randall walker, 'Dispute boards – a globally growing popularity, but limited use in the Middle East' (*JD Supra*, September 14, 2022) <https://www.jdsupra.com/legalnews/dispute-boards-a-globally-growing-2893008/> accessed 19 November 2024

- A standing DAAB will often make regular site visits, periodically review communications between the parties, and deal with issues as and when they arise. Through their familiarity with the project and the parties, a standing DAAB may be called upon to express an informal opinion on a particular matter as well as formally resolve disputes that are referred to it. This may be especially important in the context of disputes stemming from the effects of COVID-19 and the war in Ukraine, which may cause a series of associated issues as these crises develop.
- DAABB procedures generally allow for relatively detailed submissions. While the hearings are very different to those in arbitral and court proceedings (for example, more informal), the written submissions are often extensive and detailed so as to ensure a thorough presentation of each party's positions.
- DAABs have relatively flexible procedures and evidential rules, which helps to accommodate a shorter procedure, and facilitates the resolution of matters that are evolving in real time.

6.2 The Development of Dispute Board in Middle East[57]

Although Dispute Adjudication Boards (DABs) have proven successful in many jurisdictions globally, their adoption in the Middle East, particularly in the United Arab Emirates (UAE), has been relatively slow. Several factors may explain this hesitancy.

While FIDIC standard form contracts are among the most commonly used in the Middle East, many construction contracts in the UAE are still based on the older 1987 FIDIC suite, which does not include provisions for DABs. Even in cases where the 1999 FIDIC forms—featuring DAB clauses—are used, employers frequently opt to remove these clauses. Proponents of DABs argue that this practice forfeits an opportunity for efficient and cost-effective dispute resolution, leaving parties to rely on arbitration or litigation, which are often more time-consuming, expensive, and potentially harmful to business relationships.

Cultural preferences within the UAE construction sector also play a significant role. There is a tendency to defer addressing disputes until project completion rather than resolving them as they arise. This approach, possibly driven by

[57] Ibid.

skepticism, reflects a greater reliance on engineers employed by the parties to make determinations under the 1987 FIDIC framework rather than seeking the input of an independent DAB. Furthermore, there is a perception that the DAB process may favor contractors over employers. Consequently, many employers and their consultants in the UAE have been reluctant to embrace DABs, leading to limited familiarity with the process and its benefits.

Despite these challenges, the UAE federal government has shown some support for DABs. Under the Federal Arbitration Law, partial or interim awards can be enforced in UAE courts. This provision creates the possibility of an arbitral tribunal recognizing a DAB decision as an interim or partial award, which can then be enforced through the legal system.

The promise of timely and cost-effective dispute resolution has prompted some localized adoption of DABs. Notably, the Emirate of Abu Dhabi mandates their use in standardized construction contracts for government-led projects, showcasing a measured but meaningful step toward integrating DABs into the region's construction industry.

6.3 The Development of Dispute Board in India[58]

Dispute Boards were introduced in India in 1994, with efforts to enhance their functionality gaining momentum in 2016 when the World Bank collaborated with the Indian Council of Arbitration (ICA), a body affiliated with the Federation of Indian Chambers of Commerce & Industry. This partnership aimed to make Dispute Boards more effective and widely accepted in India. To uphold high standards in their application, the ICA developed a **Standard Operating Procedure for Institutional Dispute Board Services (SOP),** specifically tailored to construction disputes. Additionally, nearly 200 experts from various fields were empanelled and trained as potential board members.

Despite these initiatives, the implementation of Dispute Boards in India has largely been ineffective. While they have been utilized in prominent projects such as the Chennai Metro Rail Project and the Indian Railways' freight corridor project, Dispute Boards have not gained significant traction. Their decisions and

[58] Kaira pinheiro, 'Disputes Boards: An Overview of the Asia-Pacific Region' (*Australian Dispute Centre*, -) <https://disputescentre.com.au/disputes-boards-an-overview-of-the-asia-pacific-region/> accessed 19 November 2024

recommendations are frequently rejected or challenged through arbitration or litigation, leading to delays and increased costs. Enforcement of a Dispute Board's decision, whether through arbitration (when contractually agreed) or court intervention, often exacerbates delays and undermines the efficiency of the system.

Several other factors contribute to the system's challenges. Delays in constituting Dispute Boards, along with concerns about the qualifications and expertise of board members, have eroded confidence in the process. Furthermore, Dispute Boards themselves have sometimes been slow to resolve disputes, failing to adhere to the timelines stipulated in contracts. These inefficiencies have led to resistance among contracting parties, even in cases where the use of Dispute Boards is mandatory, with many attempting to avoid or bypass the process altogether.

7. EXPERT DETERMINATION

7.1 What is Expert Determination?[59]

An expert determination agreement is an agreement, for which there are no particular legal formalities, between two or more parties that a person is to make a determination concerning factual and/or legal matters that have not been agreed by the parties. The decision of the expert is often agreed to be binding, although it need not be. In construction and engineering projects, expert determination may be used to provide a valuation or measurement of work performed, an assessment of the quality of work performed, or a determination of other factual or legal matters in dispute.

Expert determination is a consensual process, and contracting are generally unfettered as to the matters that they may choose to have resolved by way of expert determination. An expert may be tasked with considering a specific matter, such as a contractor's entitlement to an extension of time. Alternatively, an expert determination agreement may be broadly worded provision in a contract that requires any dispute arising under the contract or relating to the contract to be decided by expert determination. An expert determination clause could, therefore, permit the expert to consider such a matter as whether the terms of

[59] Julian Bailey, Construction Law, Vol III (3rd edn, London Publishing Partnership 2020)

the applicable contract ought to be rectified. An expert determination agreement may confer powers on the expert not only to make a decision on the substantive matters in dispute, but also to decide upon incidental matters such as how the cost associated with the expert determination will be borne. If there is any dispute or disagreement over the scope of an expert's powers, the final resolution of that dispute is usually a matter for the court, and not the expert himself.

7.2 The development of expert determination in India & Middle East[60]

In India, expert determination lacks a formal statutory framework unlike arbitration. The basic difference between arbitrations and other ADR mechanisms such as expert determination is that the obligation to act judicially applies with greater vigour to arbitration. A decision from Expert Determination do not have statutory recognition and are merely contractually binding. If the decision is neither challenged nor set aside then an arbitration proceeding would have to be initiated for a declaratory relief that the decision be converted into an arbitral award. In other cases (in the absence of an arbitration clause), civil proceedings would have to be brought for a decree in terms of the decision sought to be enforced.

Similarly, the use of expert determination in EPC contracts has been quite popular in the Middle East, especially in the Kingdom of Saudi Arabia. The enforcement of an expert's decision usually depends upon what is agreed between the parties in the terms of reference. Generally, most expert determinations are non-binding in nature. In some instances where it is agreed by the parties that the award is binding then it can usually be enforced through court proceedings. However, it is not certain that expert's decision can be binding. For instance, in a ruling in 2014 in Petition No 739/2013 Commercial, the Abu Dhabi Court of Cassation[61], the Court reached a decision to dismiss the cassation petition reasoning that the role of the expert was not to adjudicate a legal matter, but to determine whether the contractor was to be entitled to an extension of time and additional costs and that such matter did not involve any legal issues. The Court stated that the decision could not be construed as an arbitration award in legal terms because it lacked the requirements of an arbitration award such as a copy of the arbitration clause, a summary of the parties' statements, legal reasoning, disposition, place and date

[60] ADR in Construction in India, author by Summet Kachwaha
[61] https://www.mondaq.com/arbitration-dispute-resolution/617228/cassation-court-rules-that-expert-determination-in-a-construction-dispute-is-not-enforceable

of issuance, name of arbitrator, any absence of due process, and the respect for the adversarial principle.

In India and the Middle East, expert determination can be enforced by initiating fresh legal proceedings for breach of the contractual agreement to abide by the expert's decision. However, unlike arbitration, it is not automatically enforceable as a matter of right. To gain such enforceability, the expert determination must be incorporated into an arbitral award or a court decree.

8. CONCLUSION

In conclusion, arbitration remains the predominant method for resolving construction disputes in India and the Middle East. However, the landscape is evolving, with an increasing emphasis on mediation, particularly in India following the enactment of the Mediation Act 2023, which seeks to institutionalize and promote its use. Additionally, alternative methods such as Dispute Boards and Expert Determination are gaining traction in construction contracts as preventive measures to manage disputes. While expert determination is widely incorporated into construction agreements, the adoption of Dispute Boards remains relatively slow, reflecting a cautious approach in adapting newer mechanisms.

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Arbitration in the ASEAN Region

By: ***Datuk Professor Sundra Rajoo and Jashveenjit Singh***

Datuk Professor Sundra Rajoo is a distinguished figure in the field of international arbitration, construction law, and dispute resolution, with over three decades of expertise. He has served as arbitrator in over 300 cases, including high-value and complex disputes under leading arbitration institutions such as the ICC, SIAC, HKIAC, PCA, LCIA, and AIAC. A Chartered Arbitrator and Fellow of multiple arbitration institutes worldwide, he is a Registered Architect, Town Planner, and Advocate & Solicitor of the Malaysian Bar. His academic credentials include an LLB (Hons), MSc in Construction Law & Arbitration, MPhil in Law, and an Honorary Doctor of Laws (LLD) from Leeds Beckett University.

Datuk Professor Sundra has held leadership roles as Director of the Asian International Arbitration Centre (AIAC) (2010–2018, 2023–2024), Founding and Current President of AIADR, and President of the Chartered Institute of Arbitrators (2016). He is currently an Honorary Professor of Law at Manipal Law School, Visiting Professor at Guangxi University, and Research Fellow at Hainan University. He is widely recognized for his contributions to arbitration law through numerous publications, including "Law, Practice and Procedure of Arbitration" (Lexis Nexis), "UNCITRAL Model Law & Arbitration Rules" (Sweet & Maxwell), and "Arbitration in Malaysia: A Practical Guide". With his extensive practical experience, academic expertise, and leadership in arbitration institutions, Datuk Professor Sundra Rajoo is a highly respected authority in international arbitration and dispute resolution.

Jashveenjit Singh Gill is a driven and ambitious legal professional with a strong academic background and practical experience. He graduated with Honors from the University of London with an LL.B degree and is currently working as a Head of Secretariat at The Asian Institute of Alternative Dispute Resolution (AIADR). Jashveenjit is passionate about the legal field and has a keen interest in alternative dispute resolution. During his time at AIADR, he has assisted the Professional Development and Education Committee of AIADR on developing numerous ADR training modules with a particular focus on Arbitration and Mediation.

Abstract

Arbitration stands as a cornerstone of dispute resolution, offering a nuanced and flexible alternative to traditional legal proceedings. Within the dynamic landscape of the ASEAN region, where diverse legal systems and cultural nuances intersect, the practice of arbitration assumes particular significance. This lecture aims to navigate the multifaceted terrain of arbitration within the ASEAN context, offering a comprehensive overview of its key components and intricacies.

A. Introduction to Arbitration

1. The primary question we should ask ourselves is, what is Arbitration? According to Redfern & Hunter[1], Arbitration is essentially a very simple method of resolving disputes. Disputants agree to submit their disputes to an individual whose judgment they are prepared to trust. Each puts its case to this decision maker, this private individual—in a word, this 'arbitrator'. He or she listens to the parties, considers the facts and the arguments, and makes a decision. That decision is final and binding on the parties—and it is final and binding because the parties have agreed that it should be, rather than because of the coercive power of any state.[2] It's sometimes suggested that international commercial arbitration is a product of the 20th century.[3] However, historical evidence shows that arbitration has been used for resolving international and cross-border business disputes for many centuries. Back then, the distinction between arbitration and other dispute resolution methods wasn't always clear.[4] Arbitration sometimes resembled a state-sponsored or compelled alternative to legal proceedings or non-binding conciliation.

2. Ancient societies didn't have legal systems like today's,[5] but they did use respected citizens to settle civil matters on behalf of the state. Despite the

[1] Redfern and Hunter on International Arbitration (6th Edn, 2015) at para 1.04
[2] Ibid; See also Williams & Kawharu on Arbitration (2011) at para 1.1.1. and G Born, International Commercial Arbitration (2nd Edn, 2014) at p 69
[3] Shalakany, Arbitration and the Third World: A Plea for Reassessing Bias Under the Specter of Neoliberalism , 41 Harv. Int'l L.J. 419, 430 (2000)
[4] Gary B. Born International Commercial Arbitration (Wolters Kluwer, 3rd ed., 3 volumes, 2021)
[5] D. Roebuck, Ancient Greek Arbitration 46-47 (2001). *Indeed, "litigation" in many historical settings bore little resemblance to contemporary processes, making the categorization of*

lack of clarity in ancient times, there's ample evidence of alternative dispute resolution mechanisms for commercial disputes, often resembling modern arbitration.[6] For example, China has a rich history of using conciliation and arbitration to resolve disputes, which is rooted in the Confucian principle of harmony.[7] During the Qing dynasty, there are accounts of property disputes being settled by a group of six relatives and friends who carefully examined the issue and reached a compromise. This compromise was then endorsed by a local court[8].

3. In an era where economic growth and cross-border transactions propel businesses forward, the inevitability of disputes becomes more pronounced than ever. It is against this backdrop that the role of arbitration, particularly in the international arena, assumes paramount significance. In a revealing 2021 survey, a staggering 90% of respondents expressed their preference for international arbitration as the method of choice in resolving cross-border disputes. [9] This statistic underscores the undeniable influence and acceptance of arbitration as a linchpin in the realm of alternative dispute resolution.

Overview of the ASEAN Region

4. Before we look at the legal framework for Arbitration in the Asian Region, let us briefly examine what is the ASEAN Region and why it is an important partner to China. The Association of Southeast Asian Nations (ASEAN) is an intergovernmental organization of ten Southeast Asian countries: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore,

arbitration as "alternative" dispute resolution misleading.

[6] Supra n4

[7] International Commercial Arbitration in China: History, New Developments and Current Practice , 28 J. Marshall L. Rev. 539, 540 (1995)

[8] Wang, The Unification of the Dispute Resolution System in China: Cultural, Economic, and Legal Contributions , 13(2) J. Int'l Arb. 5, 8-9 (1996).

[9] White & Case and Queen Mary University of London, '2021 International Arbitration Survey: adapting arbitration to a changing world' (2021) https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf

Thailand, and Vietnam.[10] As key partners, China and ASEAN share a vested interest in deepening their cooperation and collaboration. ASEAN-China Dialogue Relations commenced when H.E. Qian Qichen, the then Foreign Minister of the People's Republic of China, attended the opening session of the 24th ASEAN Ministerial Meeting in July 1991 in Kuala Lumpur as a guest of the Malaysian Government. He expressed China's keen interest to cooperate with ASEAN for mutual benefit. Subsequently, China was accorded full Dialogue Partner status at the 29th AMM in July 1996 in Jakarta, Indonesia.[11]

5. China has retained its position as ASEAN's largest trading partner since 2009. Trade between ASEAN and China has more than doubled since 2010, from USD 235.5 billion to USD 507.9billion in 2019 (18% of ASEAN's total) and almost quadrupled since the entry into force of the ASEAN-China Trade in Goods Agreement in 2005.[12] The surge in international trade and investment brings with it the inherent risk of increased disputes. Diverse legal systems, regulatory landscapes, and commercial practices among trading partners often sow seeds of misunderstanding, dispute, and legal ambiguity. In this context, the necessity for a comprehensive legal framework for arbitration in ASEAN becomes increasingly evident. Given that arbitration stands out as the preferred method for resolving disputes in international commerce, it assumes heightened importance in the ASEAN region.[13]

A Look at Arbitration in Selected ASEAN Member States

6. Indeed, Let's embark on a comparative analysis of some of the legal framework governing arbitration within ASEAN Region. One of the most effective ways to evaluate the efficacy of this framework is by scrutinizing the recognition and enforcement procedures of its Arbitral Awards. No official reports or statistics evaluate the effectiveness of enforcement of international

[10] For more info on ASEAN visit: https://asean.org/about-us/
[11] For more info on China – Asean Relations visit: https://asean.org/our-communities/economic-community/integration-with-global-economy/asean-china-economic-relation/
[12] Ibid
[13] Thuy Dung, T. Regional Arbitration for ASEAN in the Context of Regional Integration

arbitral awards in the ASEAN area separately.[14] However, in 2018, Herbert Smith Freehills conducted a survey on the occasion of the 60th anniversary of the New York Convention.[15] The findings echoed the sentiment that among ASEAN countries, 91.02% of participants regarded the Singapore courts as highly or very effective in enforcing international arbitral awards.[16] Nearly all respondents expressed a strong likelihood of recommending enforcement in Singapore. Following Singapore, Malaysia also received recognition, with close to 69% of participants viewing its courts as generally effective in enforcing international arbitral awards.[17]

7. Although the enforcement approach of courts in other Southeast Asian countries may not match Singapore's and Malaysia's level of advancement, there has been notable progress over the years, particularly in Thailand and the Philippines.[18] Courts in these countries are increasingly adept at recognizing arbitral awards. However, the survey revealed that the Indonesian and Vietnamese courts are perceived as the least effective compared to jurisdictions like Singapore or Malaysia.[19] Although all ASEAN member states are signatories of the 'New York Convention'[20], variations in perception can be traced to differing approaches by local courts and the diverse arbitration domestic legislation adopted by each member state. For instance, while countries like Singapore and Malaysia have arbitration laws closely aligned with the 'UNCITRAL Model Law'[21], others such as Indonesia have significant variations. Therefore, let us examine some of these member states to get a better understanding of the development of Arbitration within the region.

[14] Ibid
[15] The enforcement of arbitral awards: An ASEAN case study : https://www.herbertsmithfreehills.com/insights/2018-07/the-enforcement-of-arbitral-awards-an-asean-case-study. See also : file:///C:/Users/user1/Downloads/Inside%20Arbitration_Issue%206_2.pdf
[16] Ibid
[17] Ibid
[18] Ibid
[19] Ibid
[20] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)
[21] UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006

Singapore

8. In Singapore, two main pieces of legislation govern all arbitration proceedings seated in Singapore. These are the Arbitration Act 2001 (AA)[22] and the International Arbitration Act 1994 (IAA)[23], both of which are aligned with the UNCITRAL Model Law. Singapore has consistently ranked among the top five seats of Arbitration since 2015 with the Singapore International Arbitration Centre (SIAC) being counted as one of the top 5 most preferred Arbitral Institution[24].

9. Singapore's ascent to becoming a premier arbitration hub can be attributed to several key factors. Firstly, its strategic location in Southeast Asia, a bustling economic hub connecting the East and West, makes it an ideal meeting point for parties from diverse jurisdictions. Additionally, Singapore boasts low income-tax rates, no capital gains levies, and incentives for multinational corporations to establish their Asian headquarters there[25]. Its stable political environment and robust legal system further enhance its appeal. Singapore consistently ranks highly in global indices, such as the Corruption Perception Index and the Rule of Law Index, [26] instilling confidence in international players seeking to invest, finance, trade, and centralize their businesses in the Southeast Asian region.

10. Indeed, Singapore's status as a "safe seat" in international arbitration is another crucial aspect contributing to its prominence.[27] In the resolution of international disputes, parties prioritize various facets of arbitration, including respect for arbitration agreements and arbitrator authority, neutrality, enforcement of awards, and confidentiality.[28] Singapore's legal framework and judiciary have established a solid reputation for upholding these

[22] Arbitration Act 2001: https://sso.agc.gov.sg/Act/AA2001
[23] International Arbitration Act 1994 https://sso.agc.gov.sg/Act/IAA1994
[24] Supra n9
[25] Chanjaroen, C. Chan and D. Ramli, 'Financial Firms Are Flocking to Singapore But Hong Kong Keeps Its Edge' in TIME : https://time.com/6321258/singapore-hong-kong-asia-finance-hub/
[26] Transparency International, '2022 Corruption Perceptions Index: Singapore' (2022) https://www.transparency.org/en/cpi/2022/index/sgp
[27]Current Perspectives on The Choice of Singapore Jurisdiction and Governing Law In Cross-Border Transactions In Asia, [2022] SAL Prac 19
[28] Supra n9

principles, further bolstering its appeal as a trusted destination for arbitration.[29]

11. Cases like CHY v CIA[30] highlights the pro-arbitration stance and minimal intervention approach of the Singapore courts, underscoring the stringent criteria necessary to justify intervention in setting aside arbitral awards in Singapore. Specifically, the case emphasizes that Singapore courts are reluctant to disturb an arbitral tribunal's factual findings unless there are compelling reasons such as fraud. Furthermore, the courts treat an arbitral tribunal's determinations of foreign law as factual rather than legal findings. This indicates the significant challenge faced by applicants seeking to set aside arbitral awards in Singapore on the grounds that the award violates Singapore's public policy by contravening foreign law.

12. It's worth noting that while Singapore and the SIAC may appear appealing, their attractiveness comes at a premium. The SIAC's administration and arbitrator fees are on the higher end of the spectrum, with a minimum administration fee of USD $2,800 and USD $4,600 for arbitrators.[31] This is nearly double the cost compared to other ASEAN member states such as the Thailand International Arbitration Center (TIAC), which has an administrative fee of only USD $1,400,[32] or the Asian International Arbitration Center (AIAC) in Malaysia, with an administrative fee of USD $2,050.[33] Considering the cost factor, it's prudent to explore alternative options within other ASEAN member states that offer a favourable legal framework and judiciary known for being arbitration-friendly, as an alternative to Singapore.

Malaysia

13. The primary legislation governing both domestic and international arbitration in Malaysia is the Arbitration Act 2005, as amended by the Arbitration

[29] Jana Lamas de Mesa, International Arbitration Outlook, Uría Menéndez, n.º 12 (2023)
[30] CHY and another v CIA [2022] SGHC(I) 3
[31] https://siac.org.sg/siac-schedule-of-fees
[32] Thailand Arbitration Center Rules on Arbitration B.E. 2558 : https://thac.or.th/wp-content/uploads/2021/05/THAC-Arbitration-Rules-14.05.21-Revised.pdf
[33] AIAC Arbitration Rules 2023: https://admin.aiac.world/uploads/ckupload/ckupload_20230825011746_12.pdf

(Amendment) Act 2018.[34] This Act closely mirrors the UNCITRAL Model Law,[35] with Part II, comprising sections 6 to 39, closely following the structure and content of sections 3 to 36 of the Model Law, albeit with minor variations. However, Part III and Part IV of the Arbitration Act contain certain sections that are not present in the Model Law. The Act establishes a distinction between domestic and international arbitration.

14. Furthermore, As mentioned above, the principle of minimal judicial intervention and strong judicial support in arbitration is a cornerstone and widely acknowledged principle crucial for fostering the growth of an arbitration industry within a country. The 2018 Amendment Act[36] aligns with the principle of minimal judicial intervention in arbitral proceedings. One of the significant amendments introduced by the Amendment Act is the complete repeal of Sections 42[37] and 43. This decision stemmed from the concurrent court jurisdiction to set aside an award under Section 37 and Section 42. The presence and utilization of such concurrent jurisdiction could

[34] Arbitration Act 2005 (Laws of Malaysia Act 646)
[35] Supra n21
[36] The Arbitration (Amendment) (No. 2) Act 2018
[37] See Section 42 of the Arbitration Act 2005, before the amendments:

Section 42:

(1) Any party may refer to the High Court any question of law arising out of an award.

(1A) The High Court shall dismiss a reference made under subsection (1) unless the question of law substantially affects the rights of one or more of the parties.

(2) A reference shall be filed within forty-two days of the publication and receipt of the award, and shall identify the question of law to be determined and state the grounds on which the reference is sought.

(3) The High Court may order the arbitral tribunal to state the reasons for its award where the award—
(a) does not contain the arbitral tribunal's reasons; or
(b) does not set out the arbitral tribunal's reasons in sufficient detail

(4) The High Court may, on the determination of a reference —
(a) confirm the award;
(b) vary the award;
(c) remit the award in whole or in part, together with the High Court's determination on the question of law to the arbitral tribunal for reconsideration; or
(d) set aside the award, in whole or in part.

have led to (a) unwarranted challenges to the finality of the award, and (b) potentially encouraged procedural abuse. Such circumstances would have been contradictory to the Government's policy of positioning Malaysia as a secure arbitration jurisdiction.

15. Indeed recent court decisions in Malaysia have reinforced the view that Malaysia is indeed a 'safe seat' for arbitration. For example, in the case of Felda Investment Corporation Sdn Bhd v. Synergy Promenade Sdn Bhd,[38] the party involved in arbitration sought an anti-arbitration injunction from the court. However, the court ruled that a higher threshold needed to be met, requiring the petitioner to demonstrate that continuing with the arbitration would be "oppressive, vexatious, unconscionable, or an abuse of process." Since the applicant failed to prove how the arbitration proceedings would be oppressive to them, the court dismissed the application for an anti-arbitration injunction.

16. In another case, Tindak Murni Sdn Bhd v Juang Setia Sdn Bhd[39], one of the contracting parties initiated court proceedings, notwithstanding the existence of an arbitration clause. As no appearance was entered by the other party, judgment in default was obtained. The Federal court held that the arbitration should take precedence as there was a valid arbitration agreement, and that the Court judgment in default that had been obtained should have been set aside with the dispute referred to arbitration in line with Section 10 of the 2005 Act. This case reinforces the pro-arbitration stance of the Malaysian Judiciary.

17. The last significant case is the case of Master Mulia Sdn Bhd v Sigur Rus Sdn Bhd.[40] In determining whether the court should set aside an arbitral award, the Federal Court outlined eight key guiding principles concerning the exercise of the court's residual discretion. These principles require the court to assess which rule of natural justice was violated and the seriousness of the breach, particularly in terms of its impact on the outcome of the arbitral proceedings. If the breach is deemed immaterial, the court may refuse discretion; however, if it is found to be material and could have influenced the

[38] [2020] MLJU 1465 (HC)
[39] [2020] MLJU 232
[40] [2020] 12 MLJ

outcome, the award may be set aside. Importantly, the Federal Court clarified that while materiality must be proven, prejudice is not a prerequisite for setting aside an award based on a breach of natural justice. This ruling serves as a reminder that a court retains discretion in deciding whether to set aside an arbitral award, even when grounds for challenge under section 37 of the Act have been established.

18. Backed by robust judicial support, Malaysia stands out as an attractive arbitration seat, owing to the presence of expert arbitral institutions equipped with modern rules and facilities. Among these institutions, prominent ones include the Asian International Arbitration Centre (AIAC)[41], the Malaysian Institute of Arbitrators (MIArb) [42], and the newly established Borneo International Centre for Arbitration and Mediation (BICAM).[43] However, the Asian International Arbitration Centre (AIAC), formerly known as KLRCA, holds the primary position as the main arbitration institution in Malaysia. Established in 1978 under the Asian-African Legal Consultative Organization, comprising 47 member states from the region, AIAC has recently released its latest versions of arbitral rules in 2023.[44] This update reflects AIAC's commitment to modernizing its rules further, aiming to enhance efficiency and cost-effectiveness in arbitration proceedings.

Thailand

19. Let's explore Thailand, an ASEAN member state that has made significant strides in positioning itself as a prominent player in international commercial arbitration. The primary legislation governing arbitration in Thailand is the Thai Arbitration Act which is based on the Model law.[45] In 2019, amendments were introduced to this Act aimed at facilitating the involvement of foreign arbitrators and lawyers in arbitration proceedings conducted in Thailand.[46]

[41] The Asian International Arbitration Centre (Website): https://www.aiac.world/
[42] Malaysian Institute of Arbitrators https://www.miarb.com/
[43] Borneo International Centre for Arbitration and Mediation (BICAM) https://www.bicam.org/
[44] Supra n33
[45] Thai Arbitration Act BE 2545 (AD 2002)
[46] Arbitration Act (No. 2) B.E. 2562 (The Ammendment) (see original text in Thai : https://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/049/T_0062.PDF?fbclid=IwAR1jrocgbpQtHNx6dJtMvMemOWna3uIuUhYtbwivDfwgN8omrM8zja2TFyc)

20. Prior to these amendments, foreign arbitrators and representatives faced cumbersome procedures under Thai immigration law to obtain work permits for their participation in arbitration proceedings within Thailand. With the amendments to the Thai Arbitration Act, foreign arbitrators and representatives now have the option to apply for a certificate from either the Thai Arbitration Institute or the Thailand Arbitration Centre. This certificate enables foreign arbitrators or representatives to carry out their duties throughout the duration of the arbitration proceedings, as a work permit will be issued based on this certificate.[47] Additionally, the certificate grants permission for foreign arbitrators or representatives to temporarily enter and reside in Thailand for the specified duration outlined in the certificate. To clarify, the Amendment is not restricted to arbitrations conducted solely under the THAC or TAI rules. Both the THAC and the TAI have expressed their readiness to issue Certificates for arbitrations conducted under other institutional rules or in ad hoc settings, as long as the hearings take place at either the THAC or TAI premises.[48]

21. Pro-arbitration changes are also seen at the judiciary level. Previously the Thai courts, particularly the Administrative Court, have often given the concept of "public order and good morals of the people"[49] an overly broad interpretation to set aside high-profile arbitration awards involving the State or State-related entities.[50] The Thai courts surprising and vague reasoning in such cases has undermined investors' confidence in Thailand's dispute resolution system. However, the recent case of the Supreme Administrative Court Decision No. 672/2566 (2023)[51] showcases a positive trend indicating that Thai courts are moving towards a more arbitration-friendly stance.

[47] Ibid, See Section 23
[48] Vanina Sucharitkul, Thawing the Restrictions on International Arbitration in Thailand (2019), Kluwer Arbitration Blog: https://arbitrationblog.kluwerarbitration.com/2019/12/17/thawing-the-restrictions-on-international-arbitration-in-thailand/
[49] Supra n46, See Section 44(2)(b) of the Thai Arbitration Act 2002 empowers the court to set aside an award if "the recognition or enforcement of the award is contrary to public order or good morals."
[50] Vanina Sucharitkul, Thai Administrative Court Overturns an Arbitration Award against the Government (2014), Kluwer Arbitration Blog: https://arbitrationblog.kluwerarbitration.com/2014/10/09/thai-administrative-court-overturns-an-arbitration-award-against-the-government/
[51] Supreme Administrative Court Decision No. 672/2566 (2023) http://deka.supremecourt.or.th/,

22. The Supreme Administrative Court provided a detailed explanation of the term "public order and good moral" in the context of arbitration proceedings. It clarified that this term, as used in the Act, differs from its usage in other laws, such as the Civil and Commercial Code. The court emphasized the Act's aim to minimize court intervention in arbitration, indicating that the term shouldn't be exploited to challenge unfavourable arbitral awards. For a violation of "public order and good moral" to be established, it must be shown that the award is based on facts or legal applications that undermine fundamental legal principles or common fairness. Examples include awards involving illegal activities like drug trafficking or corruption. In the case at hand, the court rejected the appeal by State Enterprise M, stating that its arguments were merely against the arbitrator's interpretation of the contract and did not violate public order or good moral. This decision reflects the court's noninterventionist stance towards arbitration awards, aligning with the Act's spirit and international standards.

23. Furthermore, the Supreme Court has also adopted a noninterventionist approach when reviewing the merits of cases, as demonstrated in Supreme Court Decision No. 5560-5563/2562 (2019)[52]. In this decision, the Court clarified that the term "public order and good moral" pertains specifically to the protection of public benefits, public services, or the common good. It does not extend to private benefits sought by parties involved in arbitration proceedings. Despite past negative perceptions, recent legislative improvements and enforcement decisions in Thailand signal a shifting attitude towards arbitration, both within the judiciary and the government. This trend is likely to further enhance Thailand's reputation as a favourable destination for arbitration.

Indonesia

See also: Pisut Attakamol, Pumma Doungrutana, Baker McKenzie International Arbitration Yearbook 2023-2024-Thailand (2024)

[52] Ibid

24. Let's shift our focus from arbitration-friendly member states within ASEAN to one that still has significant room for improvement. Arbitration in Indonesia is primarily governed by Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution[53] ("Law No. 30 of 1999"). Additionally, Indonesia is a party to the New York Convention, which means that international arbitral awards are acknowledged and enforceable within the country. It's important to highlight that Indonesia's Law No. 30 of 1999 differs from the UNCITRAL Model Law since Indonesia has not formally adopted the latter.[54] This differences can lead to a number of difficulties for example, Article 67(2)(c)[55] requires any application for enforcement of an international award to be accompanied by "a certification from the diplomatic representative of the Republic of Indonesia in the country in which the International Arbitration Award was rendered stating that such country and the Republic of Indonesia are both bound by a bilateral or multilateral treaty on the recognition and implementation of International Arbitration Awards."

25. In practice, many diplomatic missions are unaware of this requirement, leading to confusion and difficulty in complying with such requests.[56] This can result in significant time and legal expenses to obtain the necessary certificate. However, it is arguable that such a certificate is redundant, as the information it verifies can be easily accessed online.[57] Specifically, Indonesia is a party only to the New York Convention, which maintains a public list of signatory states on its website.[58] While this requirement may have been relevant at the time of drafting in 1999, it is now deemed unnecessary, inefficient, and should be removed from the law.[59] Notably, the prior provision, Article 66, already mandates that for enforceability, an arbitral award must originate from a country that, along with Indonesia, is a signatory to a treaty

[53] Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution: https://bphn.go.id/data/documents/arbitrationindonesia.pdf, See also: https://bphn.go.id/
[54] Setyawati Setyawati, Critical Review on Indonesia's Drawbacks as a Preferable Seat of Arbitration (2013)
[55] Supra n53, See Article 67(2)(c)
[56] Karen Mills, What you need to know to arbitrate in Indonesia (2022), Legal One Article: https://www.legaloneglobal.com/articles/What-you-need-to-know-to-arbitrate-in-Indonesia-1654585740428
[57] Ibid
[58] For full list of signatories see: https://www.newyorkconvention.org/list+of+contracting+states
[59] Supra n56

on recognition and enforcement of international arbitration awards.[60] Given the accessibility of this information online, the need for additional proof beyond a cursory internet search is no longer warranted.

26. The arbitration law in Indonesia could also be strengthened in several key areas. Firstly, there's a need to bolster confidentiality provisions beyond merely closing hearings to the public.[61] Additionally, the requirement for disclosure of third-party financing would enhance transparency and mitigate potential conflicts of interest.[62] Furthermore, while the law sets out criteria for the Statement of Claim, similar guidelines for the Statement of Defence would promote consistency and fairness in presenting arguments.[63] Finally, the arbitration law in Indonesia contains various time limits, some of which may be subject to waiver. However, it could be beneficial to include a general provision allowing parties to waive or adjust any time limit, within reasonable bounds given the principle of party autonomy, which enables parties to diverge from procedural matters by mutual agreement. [64]

27. Following that, the next challenge facing Indonesia is in the judiciary. Defining 'public policy' has been a challenge in Indonesia when it comes to enforcing international arbitration awards. The Arbitration Law states that awards can't be enforced if they go against 'public policy,' but it doesn't define what public policy means.[65] This lack of clarity led to confusion in cases like Astro Nusantara BV vs. PT Ayunda Prima Mitra.[66] In this case, the Central Jakarta District Court said that a ruling by a Singapore arbitration tribunal went against 'public policy' because it stopped PT Ayunda Prima Mitra from defending itself in an Indonesian court. The Supreme Court agreed, saying

[60] Supra n53, See Article 66(a)
[61] Supra n53, See Article 27 “All hearings of arbitration disputes shall be closed to the public”
[62] For example, see: Hong Kong Arbitration Ordinance (Cap. 609 of the Laws of Hong Kong) Part 10A
[63] Supra n53, See Article 38
[64] Supra n56
[65] Supra n53, See Article 66(c)
[66] Astro Nusantara Bv et al v PT Ayunda Primamitra, The Supreme Court Decision No. 01 K/Pdt.Sus/2010, https://putusan3.mahkamahagung.go.id/direktori/putusan/0c04cf6239c146bd6c7e22820b4f6c19.html

that the ruling interfered with Indonesia's sovereignty.[67] Unfortunately, neither court explained exactly what 'public policy' meant in this context.

28. In an effort to make Indonesia a more arbitration friendly jurisdiction, On 17 October 2023, the Supreme Court of the Republic of Indonesia enacted the Supreme Court Regulation No. 3 of 2023[68] ("Perma 3/2023"). It's widely believed that this regulation is one of the most progressive steps taken by the Supreme Court in recent years to tackle the significant lack of comprehensive arbitration regulations.[69] One of the notable features of Perma 3/2023 is the re-introduction of the definition of "public order" or "public policy" (ketertiban umum).[70] In this context, the Supreme Court regulation defines public policy anything which constitutes the foundations required for the implementation of the legal, economic and socio-cultural system of the Indonesian society and nation.[71] A similar definition was previously used in Regulation No. 1 of 1990, which set out procedural guidance for the recognition and enforcement of foreign awards issued by the Supreme Court prior to enactment of the Arbitration Law (Law No. 30 of 1999)[72] While there is optimism that with the introduction of Perma 3/2023, the Indonesian courts will start adopting a pro-enforment stance when it comes to interpreting "public policy" as a ground to resist enforcement, it is yet to be seen if it will have the kind of impact that is hoped for.

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[67] Ibid

[68] Supreme Court Regulation No. 3 of 2023 on the Appointment of Arbitrator by Court, Repudiation Rights, Examination on the Enforcement and Annulment Petition of Arbitral Awards ("Perma 3/2023") https://kepaniteraan.mahkamahagung.go.id/images/laporan_tahunan/FA_RINGKASAN_EKSEKUTIF_2023-EN-low.pdf See also : https://jdih.mahkamahagung.go.id/legal-product/perma-nomor-3-tahun-2023/detail (Bahasa Indonesia)

[69] Many Indonesia based law firms reporting on the new regulation, See : https://www.ahp.id/a-new-dawn-for-arbitration-in-indonesia-under-supreme-court-regulation-no-3-of-2023/#_ftn1 (Assegaf Hamzah & Partners), See also : https://www.makarim.com/news/update-on-the-indonesian-arbitration-law-supreme-court-regulation-no-3-of-2023-sc-regulation-3-2023 (Makarim & Taira S), See also : https://www.karimsyah.com/newsletter/arbitration-series-supreme-court-regulation-no-3-of-2023-a-welcomed-update-on-indonesian-arbitration-regime (KarimSyah Law Firm)

[70] Supra n68, See Chapter 1, Article 1(9)

[71] Ibid

[72] Unveiling Supreme Court Regulation No. 3 of 2023: Does It Really Bring Indonesia Closer to Becoming an Arbitration-Friendly Jurisdiction? (2024)

Challenges Chinese parties face when dealing with ASEAN member states

Fragmented Legal Framework

29. "Despite comprising only ten member states, the Association of Southeast Asian Nations (ASEAN) exhibits a diverse array of legal traditions and systems.[73] Countries formerly colonized by France or the Netherlands typically operate under civil law systems, while those influenced by Britain or the US, such as the Philippines, tend to have common law elements, resulting in either a common law jurisdiction like Singapore or a mixed legal system.[74] Consequently, the ASEAN region presents a blend of civil law, common law, and mixed legal systems, leading to a fragmented legal landscape that poses challenges for Chinese businesses and practitioners seeking arbitration. For instance, while all ASEAN member states are signatories to the New York Convention[75], not all have legislation adopting the UNCITRAL Model Law[76], resulting in varying procedural and substantive aspects across jurisdictions. As highlighted, Article 67(2)(c) of Indonesia's Arbitration Law (Law No. 30 of 1999)[77] which does not adopt the model law, mandates that any application for enforcing an international award must include a certification from the Indonesian diplomatic representative in the country where the award was rendered, confirming both countries' adherence to a bilateral or multilateral treaty on recognition and enforcement of international arbitration awards. This requirement differs from the arbitration laws of other ASEAN member states like Malaysia and Thailand.

30. Furthermore, as discussed above, even when the legal systems may be similar, such as majority of the legal systems have the option of refusing the

[73] Tran Hoang Tu Linh & Bui Trung Hieu, Third-Party Funding in Commercial Arbitration In ASEAN: Dealing With Conflicts Of Interest, 16(1) CONTEMP. ASIA ARB. J. 97 (2023)
[74] Ibid
[75] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) : https://www.newyorkconvention.org/english
[76] 6 of the 10 ASEAN Countries adopt Model Law (Brunei Darussalam, Cambodia, Malaysia, Myanmar, Philippines, Singapore, Thailand) https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status
[77] Supra n53, See Article 67(2)(c)

recognition and enforcement of Arbitration Awards based on the grounds of Public Policy which reflects the grounds provided for by the New York Convention, the application by the local judiciary of the concept of public policy in itself may not be consistent.[78] The definition and span of the public policy concept itself falls to different interpretations as amongst legal systems. The civil law conception of public policy, is frequently viewed as being wider in application as compared to the traditionally restrictive interpretations to public policy under common law systems.[79] Although it is generally agreed that public policy grounds are usually narrowly interpreted, it does leave room for abuse and protectionism.[80]

Language Barrier

31. Next is the issue of language, Southeast Asia, with a population of 585,743,000, is home to 1,254 living languages, categorized as 82 institutional languages, 214 developing languages, 437 vigorous languages, 412 languages in trouble, and 109 dying languages (Lewis, et.al.).[81] Each ASEAN country has its own national language officially recognized by its government. The official languages of these ASEAN countries are provided in the table below:[82]

Member State	Language Most Widely Spoken
Brunei	Malay
Cambodia	Khmer
Indonesia	Bahasa Indonesia
Lao PDR	Lao
Philippines	English & Filipino (based on Tagalog)

[78] China's Belt and Road Development and A New International Commercial Arbitration Initiative in Asia", 51(5) Vanderbilt Journal of Transnational Law (2018), pp. 1305-1352
[79] Ibid
[80] International Sales Law and Arbitration: Problems, Cases, and Commentary. Chapter 10 – Arbitration as a Final Reward: Challenges and Enforcement. Jack M. Graves and Joseph F. Morrissey, p 468 & p 477
[81] R. Pramesa Narakusumo and R A Disyacitta Nariswari, Language as a Challenge in Constructing ASEAN Community (2013)
[82] Ibid, See also : https://libguides.bournemouth.ac.uk/ASEAN

Myanmar	Burmese
Malaysia	Malay, English, Mandarin and Tamil
Vietnam	Vietnamese
Singapore	Malay, English, Mandarin and Tamil
Thailand	Thai

32. While English serves as the dominant language in international arbitration, it's not the primary mode of communication for most ASEAN member states, nor is it for China. This linguistic diversity can present challenges for Chinese parties and arbitrators in various aspects of the arbitration process. Prof. Dr. Stephan Wilske in his paper provides a number of challenges that arises due to this linguistic diversity which extends to issues involving documents and witnesses.[83] As Geoffrey Sant explains, when an attorney conducts an English-language deposition of a Chinese-speaking witness through an interpreter, “there is near certainty that significant miscommunication will occur”.[84] For example, In Chinese, verbs typically remain uninflected, meaning they don't change to indicate tense, including the distinction between present and past tense.[85] Additionally, Chinese nouns typically lack singular and plural forms.[86] Moreover, in spoken Chinese, there's no explicit differentiation between "he," "she," and "it" when pronouns are used—if they are used at all.[87] Consequently, interpreters often need to make assumptions about the speaker's intended meaning repeatedly during conversations or depositions, which can lead to errors as some of these assumptions may be incorrect.[88]

Cultural Differences

33. Cultural differences between China and ASEAN member states can significantly influence various aspects of business practices, communication,

[83] Stephan Wilske, Linguistic and Language Issues In International Arbitration—Problems, Pitfalls and Paranoia, 9(2) CONTEMP. ASIA ARB. J. 159 (2016)
[84] Geoffrey Sant, Commentary: Overcoming Language Traps in Depositions of Chinese-speaking Witnesses, 24(2) NYSBA INT’L L. PRACTICUM 100, 100 (2011)
[85] Ibid
[86] Ibid
[87] Ibid
[88] Ibid

and dispute resolution methods.[89] A notable case in point is the Jakarta-Bandung High-Speed Rail project in Indonesia, where land acquisition has posed a significant challenge[90]. Previous studies have underscored land-related issues as a major impediment to infrastructure development in Indonesia, reflecting broader challenges related to land tenure and agrarian reform in the country. In contrast to China, where central authorities allocate land for projects, in Indonesia, developers must engage in direct negotiations with landowners. These negotiations often prove protracted and difficult due to issues such as a lack of land registration and conflicting claims of ownership. Chinese companies, being unfamiliar with this process, may encounter misunderstandings when dealing with Indonesian stakeholders.[91]In Indonesia, relying solely on political leaders' authority did not yield the desired results. Some landowners refused to sell their land, while others demanded exorbitant prices. Chinese firms sought to expedite the process, but the Indonesian government couldn't resolve all land-related issues promptly. Consequently, these challenges led to increased project costs and construction delays.

34. Furthermore, these cultural differences can also be observed in the methods for resolving dispute. For example, in China, there's a cultural inclination towards favouring mediation over arbitration.[92]Mediation holds a deep-rooted tradition in China, stemming from a cultural emphasis on fostering amicable resolutions and steering clear of confrontation. This aligns with Confucian values that historically shaped political philosophy in pre-Communist China.[93] Within this framework, disputes are viewed as disruptive to the harmony that underpins social interactions. Consequently, the Chinese approach posits that when a dispute is unavoidable, it becomes crucial for parties, either

[89] Harmonising Compliance In China And Malaysia Cross Border Commercial Relationship: An Alternative Dispute Resolution Perspective Russian Law Journal Volume XI (2023) Issue 9s
[90] Salim, W., & Negara, S. (2018). Infrastructure development under the Jokowi administration: Progress, challenges, and policies. Journal of Southeast Asian Economies, 35(3), 386–401
[91] Research in Globalization: Volume 3, December (2021). 100074, Challenges faced by Chinese firms implementing the 'Belt and Road Initiative': Evidence from three railway projects
[92]Gabrielle Kaufmann-Kohler and Fan Kun, Integrating Mediation into Arbitration: Why It Works in China (2008)
[93] Ibid

independently or with the guidance of a mediator, to promptly address the underlying issues in a cooperative manner to prevent escalation.[94]

35. This divergence from the Chinese approach to mediation is evident in the majority of ASEAN member states, as reflected in their engagement with the Singapore Convention[95]. Among the ten member states, only four have signed the convention, and notably, only Singapore has ratified it.[96] This indicates a disparity in the level of acceptance and adoption of mediation as a preferred method of dispute resolution across the ASEAN region compared to China's cultural inclination towards mediation. Take Malaysia for example, in a recent study, it was found that more than half of the respondents had a low regard towards community mediation.[97] Where else grassroots mediation in China has seen success rates of upwards of 96%[98] and assist in upholding stability within China's rural population of over 500 million people.[99]

Suggestions to Overcome the Challenges

How To Overcome Language and Cultural Barriers

[94] Ibid
[95] United Nations Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention on Mediation")(2019)[Note: The Singapore Convention on Mediation ("SCM") applies to international settlement agreements resulting from mediation, concluded by parties to resolve a commercial dispute. It provides a harmonised framework for the enforcement and invocation of international settlement agreements resulting from mediation.]
[96] See: https://singaporeconvention.org/jurisdictions
[97] Sa'odah Ahmad, Rojanah Kahar and Muslihah Hasbullah. 2022. Knowledge, attitude and practice of community mediators in Malaysia. Kajian Malaysia 40(2), p60
[98] Hongwei Zhang, "Revisiting people's mediation in China: practice, performance and challenges" Restorative Justice vol.1, no.2(2013), p250
[99] 2010 PRC Mediation Law : http://www.cspil.org/Uploadfiles/attachment/Laws%20and%20Regulations/%5ben%5dguojifalvwenjian/PeoplesMediationLawofthePeoplesRepublicofChina.pdf, See also : https://imimediation.org/2020/06/17/grassroots-mediation-in-china/#_ftn4

36. The Belt and Road Initiative (BRI) offers valuable insights into the importance of addressing language and cultural barriers to facilitate international cooperation and understanding.[100] Drawing from these lessons, establishing a similar initiative focused on eliminating language and cultural barriers within the China-ASEAN Arbitration framework can yield significant benefits.[101] For instance, a collaborative network could be established by bringing together representatives from arbitration institutions, legal experts, language educators, cultural organizations, and government officials from both China and ASEAN countries. This network would be dedicated to addressing language and cultural barriers in arbitration.[102] Furthermore, China and ASEAN should develop online resources and platforms for sharing best practices, case studies, and educational materials related to language and cultural aspects of arbitration within the China-ASEAN context. These resources can be accessible to arbitration practitioners and legal professionals to support their ongoing learning and development. Institutions like the Asian Institute of Alternative Dispute Resolution,[103] which seeks to act as a platform for members to converge on international practices, build capacity, and offer opportunities for all stakeholders in the economy to resolve disputes and navigate projects and investments, with a particular focus on Asia,[104] could play a crucial role in supporting these initiatives.

Harmonizing Laws

37. In light of the challenges posed by the fragmented legal systems of the ASEAN member states, it is imperative to prioritize the harmonization of laws within the region. This concerted effort towards harmonization can significantly alleviate many of the issues and uncertainties that Chinese parties encounter when engaging in arbitration within ASEAN jurisdictions.[105]

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[100] Yue Zhao, Language strategies along the One Belt One Road Initiative,(2022)
[101] See: Network formed under BRI to help tackle language barriers, http://ningbo.chinadaily.com.cn/2023-10/17/c_931211.htm
[102] This network would be similar to the one that's initiated under the Belt and Road Initiative as reported here: https://asianews.network/network-formed-under-bri-to-help-tackle-language-barriers/ , See also: https://www.chinadaily.com.cn/a/202310/17/WS652d61a1a31090682a5e8d81.html
[103] See: https://aiadr.world/
[104] See: https://aiadr.world/about-us/
[105] Erman Rajagukguk, Harmonization of Law in ASEAN Countries Towards Economic Integration, Jurnal Hukum Internosional, Volume 9 Issue 4 (2012)

By harmonizing laws, ASEAN member states can establish a cohesive legal framework that fosters greater predictability, consistency, and fairness in arbitration proceedings which will result in greater economic benefits.[106] Furthermore, harmonization efforts should extend beyond statutory laws to encompass judicial interpretations and practices. Collaboration among judiciaries from different ASEAN member states is essential to harmonize interpretations of respective laws and ensure consistency in the application of law across jurisdictions.[107] This collaborative approach can help eliminate disparities in legal interpretations, mitigate jurisdictional conflicts, and promote a unified approach to resolving disputes through arbitration.[108] Crucially, the involvement of the judiciary of China in these harmonization efforts is paramount. As a major stakeholder in arbitration within ASEAN, China's input and collaboration are indispensable for achieving meaningful harmonization outcomes.

Conclusion

38. The ASEAN region has witnessed a notable shift towards embracing arbitration as a preferred method for resolving disputes. This trend reflects the recognition among member states of the efficiency, flexibility, and neutrality offered by arbitration proceedings. As a result, many jurisdictions within ASEAN have enacted laws and regulations aimed at promoting and facilitating arbitration, signaling a positive trajectory for the practice in the region. However, the fragmented legal framework across ASEAN member states presents a significant hurdle to the seamless conduct of arbitration proceedings. Divergent legal systems, procedural rules, and substantive laws can complicate matters for parties engaged in arbitration, leading to uncertainties and delays. Moreover, linguistic and cultural differences further

[106] Dian Maris Rahmah and Tri Handayani, ASEAN Regional Arbitration Board: An Alternative Dispute Resolution In The ASEAN Region Within The Framework Of The ASEAN Economic Community, Jurnal Hukum dan Peradilan, Vol. 8, no. 3 (2019)
[107] See Media Release: The Sixth Singapore-China Legal and Judicial Roundtable: https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release-the-sixth-singapore-china-legal-and-judicial-roundtable, A similar co-operation could be had between judiciaries of the ASEAN Member states.
[108] Ibid

exacerbate these challenges, potentially impeding effective communication and understanding among parties involved.

39. Despite these obstacles, there is considerable potential for overcoming them through harmonization efforts and deeper cooperation among ASEAN member states. Harmonizing laws and procedural rules related to arbitration can create a more uniform and predictable legal landscape, facilitating smoother arbitration proceedings across jurisdictions. Additionally, fostering greater collaboration among judiciaries and legal practitioners can help bridge linguistic and cultural gaps, enhancing communication and mutual understanding. In conclusion, while challenges persist, by working collaboratively, ASEAN member states can unlock the full potential of arbitration and foster a more conducive environment for resolving disputes effectively and efficiently.

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The Secretariat
Asian Institute of Alternative Dispute Resolution
No.28-1, Medan Setia 2, Bukit Damansara
50490, Kuala Lumpur, Malaysia
T: (+60) 3 2300 6032
Email: thesecretariat@aiadr.world
URL: https://aiadr.world