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Keynote Address: The Future of ADR in Asia's Digital

By: The Former Chief Justice of Malaysia, Tun Tengku Maimun Binti Tuan Mat

The Right Honourable Tun Tengku Maimun binti Tuan Mat was born in Kota Bharu, Kelantan on 2 July 1959. Her Ladyship read law at University of Malaya and graduated with honours in 1982. Her Ladyship began her career in the legal field as a Legal Officer at the Southern Kelantan Development Board (KESEDAR) in 1982 and later in 1984, as a Legal Officer at the Municipal Council of Seremban, Negeri Sembilan. Her Ladyship joined the Judicial and Legal Service in 1986 as an Assistant Parliamentary Draftsman, at the Drafting Division of the Attorney-General's Chambers. Subsequently, Her Ladyship served as a Magistrate at the Port Dickson Court, as a Federal Counsel at the Kuala Terengganu Legal Aid Bureau, as a Senior Assistant Registrar at the High Court at Seremban, as a Deputy Registrar at the High Court of Kuala Lumpur, as a Special Officer to the Right Honourable Chief Judge of Malaya, as a Special Officer to the Right Honourable Chief Justice, as a Judge of the Sessions Court at Kuala Lumpur cum Special Officer to the Right Honourable Chief Justice, and as the Registrar of the High Court of Malaya cum Chief Registrar of the Federal Court of Malaysia. Her Ladyship's final posting in the Judicial and Legal Service was as the Chief Registrar of the Federal Court of Malaysia from 2005 to 2006.

On 2 October 2006, Her Ladyship was appointed as a Judicial Commissioner of the High Court of Malaya at Kuala Lumpur. On 5 September 2007, Her Ladyship was elevated as a Judge of the High Court of Malaya at Kuala Lumpur. Her Ladyship also had the experience of serving as a Judge of the High Court of Malaya at Shah Alam, Selangor. On 8 January 2013, Her Ladyship was appointed as a Judge of the Court of Appeal. On 26 November 2018, Her Ladyship was appointed as a Judge of the Federal Court. On 2 May 2019, Her Ladyship was appointed as the Chief Justice of Malaysia. Her Ladyship was conferred with Darjah Seri Paduka Setia Mahkota Kelantan (SPSK) in 2016 carrying the title Dato' and in 2006, with Darjah Dato' Paduka Setia Mahkota Kelantan (DPSK) also carrying the title Dato'. On 13th July 2019, Her Ladyship was conferred with Darjah Utama Pangkuan Negeri carrying the tittle Dato' Seri Utama. On September 10th 2019, Her Ladyship was conferred with Darjah Panglima Mangku Negara carrying the tittle Tan Sri and on August 17th 2020, Her Ladyship was conferred with Darjah Seri Setia Mahkota carrying the tittle Tun.

Keynote Speech

Distinguished guests, ladies and gentlemen;

Assalamualaikum warahmatullahi wabarakatuhu and a very good morning to everyone.

INTRODUCTION

[1] I would like to begin by thanking the Asian Institute of Alternative Dispute Resolution (AIADR) and the Guangxi University Law School for inviting me to deliver this keynote address. May I also take the opportunity to commend the organisers for convening this Summit, which serves as a forum to promote cross border dialogue and collaboration.

[2] It is both an honour and a privilege to address this esteemed gathering at a time when the ground beneath the legal and dispute resolution landscape is shifting, shaped by the winds of digital innovation and cross-cultural co-operation.

[3] The theme of this Summit, together with the topic assigned to me 'East Meets Algorithm: The Future of ADR in Asia's Digital Wave' is most apt considering that we are at the cusp of a transformation where tradition and technology, human deliberation and artificial automation must learn to coexist.

[4] Having perused the program brochure, I am impressed to see the wide range of interesting and relevant topics that will be considered and discussed throughout this program.

[5] In delivering this keynote address, I remain mindful of one thing – and that is, I have not been directly involved in the ADR scene. I was previously Chief Justice of Malaysia and before that, a Judge of the Malaysian Superior Courts.

[6] And thus, when I speak today, my intention will be to highlight the crucial importance of the judicial role (as that is the role I am most familiar with) and the general importance of ADR in the overall sphere that is dispensing justice. My focus will then be narrowed down to the digital age.

JUDICIAL INDEPENDENCE AND THE RULE OF LAW

[7] In Malaysia, the Federal Constitution holds the highest legal authority in the

country, meaning all laws, government policies, and executive decisions must align with its principles. Under the Federal Constitution, the judiciary possesses constitutional power to examine written laws and government actions, and to invalidate them if they conflict with the Constitution. This supremacy is not merely symbolic: it is actively enforced by the courts to safeguard individual freedoms and maintain the balance among institutions.

[8] Closely tied to this is the doctrine of separation of powers, which allocates authority across the legislative, executive and judicial branches. Each branch has its own responsibilities, but the judiciary plays a vital role in overseeing the other two branches. It is responsible for interpreting laws enacted by the legislature and evaluating the legality of executive decisions. This structure is designed to prevent concentration of power and to ensure that all branches operate within the bounds of the law.

[9] The Judiciary's crucial role is to uphold the Rule of Law which requires that justice remains accessible, fair, impartial, timely and responsive. These ideals are upheld when the judiciary operates independently and judges carry out their duties with integrity, honesty, skills and dedication. At its core, the Rule of Law means that everyone is equally bound by and protected under the law. No one is above it, and no individual is entitled to special treatment in our courts.

[10] This responsibility requires judges to act with complete independence, impartiality, and integrity, free from internal and external influence, fear or favour. Judges must remain steadfast, even in the face of criticism or pressure. Judicial independence is not an end in itself; rather, it is an essential means by which the Judiciary preserves the Rule of Law within the constitutional framework.

[11] In the commercial sphere, our courts are committed to resolving cases promptly and efficiently. We have established specialised courts, such as Admiralty, Intellectual Property and Construction Courts, which focus solely on commercial matters to ensure that these cases receive the attention they deserve. While outcomes are determined strictly by the law, it is essential that every party leaves the courtroom with the sense that they have been fairly heard. After all, the legitimacy and independence of the Judiciary are grounded in the trust and confidence of the public.

[12] Having taken these efforts, the Judiciary remains mindful of and grateful for the existence of ADR and they often work together to ensure a seamless process. Justice, though appreciated by everyone, requires all the help it can get. As such,

the ADR mechanism as a distinct yet related adjunct to mainstream litigation alleviates the burden and strain put on the Judiciary and the primary justice system.

[13] In this regard, many decisions of the Courts in the past few years have been predisposed to supporting ADR and ensuring that ADR-related processes are protected and legal provisions that relate to these processes are interpreted in a way that best advances their purpose while having primary regard to the Rule of Law and its fundamental pillar – access to justice.

THE ADR SCENE

[14] Again, I must state that I rather not comment on the substantive role and processes of ADR, and in any event, this a task better relegated to the eminent experts who will speak on their selected topics later in this program. For my purposes, I would rather delve into what I consider is 4 the meaningful and sometimes symbiotic interaction between the Judicial arm and the overall ADR process.

[15] Minimally, the Judiciary recognises the crucial role of arbitration and other ADR mechanisms. Mediation, negotiation and arbitration are all avenues for parties to settle their disputes without going through the long and tedious process of litigation.

[16] That said, there are differing opinions as to how the relationship between the courts and arbitral institutions should be perceived. It can be argued that those avenues of dispute resolution belong to two competing realms, distinct from one another. However, I am inclined to state again my view that both these avenues of dispute resolution should actually be seen as complementing, and not competing with each other, in the pursuit of justice.

[17] Strongly influenced by the general principle of minimal intervention, our Judiciary takes pride in adopting a pro-arbitration stance given our extensive and evolving legislative framework on the subject. This is reaffirmed by recent Malaysian judicial decisions such as Padda Gurtaj[1], Tindak Murni[2]; and KNM Process Systems[3].

[1] Padda Gurtaj Singh & Ors v Axiata Group Berhad [2022] 1 LNS 623.
[2] Tindak Murni Sdn Bhd v Juang Setia Sdn Bhd [2020] 4 CLJ 301.
[3] KNM Process Systems Sdn Bhd v Lukoil Uzbekistan Operating Company LLC [2020] MLJU 85.

[18] In another relatively recent Federal Court decision called Masenang[4], the apex court adopted a practical approach when it unanimously held that the court at the seat of the domestic arbitration enjoys exclusive jurisdiction to exercise supervisory and regulatory powers over the arbitration proceedings. The ascertainment of the seat of arbitration in any arbitral proceeding, is therefore essential and relevant in domestic arbitrations.

[19] On numerous occasions, the Federal Court has upheld the sanctity of arbitration agreements, and has required parties to arbitrate when they have expressly agreed to do so. The very point of arbitration is to avoid the courts, and arbitration would be nothing but a façade if parties were allowed to freely circumvent their pre-agreed procedure when it suits them. This has been made clear by existing jurisprudence on applications for stay under section 10 of the Arbitration Act 2005, which is now complemented by the expanded list of interim measures that tribunals are empowered to grant[5].

[20] Further, the Federal Court has also emphasised that disputes which have already been decided on the merits by an arbitral tribunal cannot be relitigated from scratch before the Courts under the guise of applications to set aside awards or to refuse their recognition. In that sense, the Courts are now confined to a strictly supervisory role where once it was viewed, in some respects, as being an appellate one. A departure from this so called appellate mode of judicial intervention is further affirmed by the removal of references on questions of law[6], thereby further enhancing the finality of arbitral awards[7].

[21] I would add that the pro-ADR position is not new though it has evidently grown more potent over time. For instance, as early as 1967 in a case called Alagappa Chettiar[8], Raja Azlan Shah J (as His Majesty once was) addressed the importance of arbitration, stating that persons who seek to stay court proceedings and remit the matter in dispute to arbitration must satisfy certain ingredients. In this regard, it is evident that the learned Judge in that case was acutely aware of the importance of arbitration as an alternative dispute resolution mechanism, and took great care to formulate the applicable principles in his customary clear and

[4] Masenang Sdn Bhd v Sabanilam Enterprise Sdn Bhd [2021] 6 MLJ 255.
[5] See the amendments to section 19 of the Arbitration Act 2005 and the additions of sections 19A-19J.
[6] See: the now repealed sections 42 and 43 of the Arbitration Act 2005
[7] Sundra Rajoo, Arbitration and its Development in Malaysia [2020] 1 MLJ lv.
[8] Alagappa Chettiar v Palanivelpillai & Others [1967] 1 MLJ 208.

lucid manner.

[22] In my view, the role of the Judiciary in the context of ADR, based on the law that has developed, is mostly supervisory. Affording parties greater autonomy in how they choose to resolve their disputes enables them to attain a remedy more speedily and effectively in the forum of their mutual choosing. Courts are only here to assist in upholding what the parties have agreed to in the first place.

[23] That is not to say that the Courts are rendered totally irrelevant. For one, as they continue to retain supervisory powers, their position as the final beacon of justice is preserved. Their limited role is to respect party autonomy. After all, parties cannot complain about the process if that is the process they had elected to apply. It cannot also be said that ADR, given its flexibility, is a zone of anarchy. Although ADR works at the pace elected by parties, their mechanisms are governed by a discernible process established by substantive law.

[24] I must also add that the Judiciary having a supervisory role and relegating its adjudicatory powers to ADR fora is not an affront to the Rule of Law. Neither is it an indication that the Judiciary is no longer interested in the work. The bigger picture here is upholding the Rule of Law consonant with the fundamental right of access to justice. In this regard, as ADR tribunals remain answerable to the law and are not immune from judicial scrutiny where it is warranted, the Rule of Law and the role of an independent Judiciary is preserved.

[25] In this regard, we can appreciate that the ADR and all its mechanisms complement rather than substitute the mainstream legal system that involves the Judiciary – I am sure, in every legal jurisdiction. In addition to what I have stated up till now, further evidence of such cooperation is as follows particularly in relation to how ADR fosters, and not hampers, access to justice.

[26] For instance, a central notion to ADR including arbitration and mediation, as I have mentioned, is the concept of party autonomy.

[27] In this sense, when faced with a particularly litigious industry, the Courts' main response, as referenced earlier, has been to establish specialised courts, with a specialist judge whose docket is focused on that area of law. Nonetheless, although the judicial system guarantees that the presiding judge is learned in the law, they might not be closely familiar with the commercial intricacies and practices of that area. For example, one might be a master of construction law, but that is not the same thing as knowing the industry. There is therefore a stark

difference sometimes between the law and commercial practice and admittedly, the Judiciary is not always best equipped to deal with such differences.

[28] For arbitration, the choice of decision-maker is not limited in the same way. Parties' choices on the mechanics of an arbitration are as central to the agreement as the choice to arbitrate in the first place, and they are required to honour their decision. But through that, they are able to have an adjudication process that could be vastly different to that in the courts.

[29] There is nothing preventing parties to appoint, in addition to legally trained arbitrators such as former Judges or senior advocates, tribunal members who have the technical proficiencies in that industry, whether that would mean appointing an engineer, architect, or a surveyor. And, with the use of remote hearings, or as I will mention later: ODR, parties are best positioned to select arbitrators not only from within their own jurisdiction but also from outside their jurisdiction.

[30] Similarly, parties and adjudicators are not always strictly confined or limited to applying the law, which is a constitutional constraint imposed on litigation in courts as the Judiciary is invariably bound by legislation and the doctrine of judicial precedent. In this respect, and in Malaysia for instance, in cases where parties expressly authorize the tribunal, the tribunal may decide the case before it based on equity and conscience and not necessarily within the four corners of the law. In other words, this would be a hearing ex aequo et bono[9].

[31] In my view, all these flexibilities open-up a world of options to arbitrating parties – options that would not have been possible otherwise in mainstream litigation before the Courts. And, by these modifications in substance and procedure, parties might end up with an award that 9Arbitration Act 2005, section 30(4A) achieves a level of fairness that could not otherwise have been possible in those Courts.

[32] But, so as to not depart from my established position, I do not think this spells the end of mainstream litigation. As I have said, there is a healthy and specific symbiotic relationship which has always been clarified and made better throughout the years. The Courts and the formal legal system they comprise remain essential to the overall functioning of the entire justice system.

[9] Arbitration Act 2005, section 30(4A).

[33] That said, whether it is the Courts or ADR, and given the surge of technology, both these branches share a common boon inasmuch as it can be a hurdle, and I am here referring to the digital wave.

JUSTICE IN THE DIGITAL

[34] Having addressed the synergy between traditional adjudication and ADR, I will now focus on the next big topic: the digital age – especially justice in the digital age.

[35] As technology continues to advance at an unprecedented pace, it has transformed every aspect of legal practice from judicial processes to regulatory frameworks. A major advancement in legal technology, which draws my attention in particular, is the field of artificial intelligence (or 'AI').

[36] Generative AI tools are systems that can create new content, such as text, images and music, upon input or prompts from users. Over time, newer and newer models have been developed, and China being equally caught by this storm, was recently lauded for the invention and introduction of DeepSeek.

[37] Through AI, we can effortlessly draft sophisticated emails, reports, or computer code in a matter of seconds. In fact, many AI models now even allow their users to upload documents and have the AI device summarise its contents or present the information in a more readable manner. For instance, complex information in words can be converted into tables and graphs in a matter of minutes; sometimes seconds. In a legal sense, AI can also help adjudicators summarise written legal submissions and even break down crucial points.

[38] And again, in some sense, these AI devices, by being able to respond to such commands, might even be akin to junior legal assistance at much lower cost, and sometimes much lower stress.

[39] While AI-driven technology continues to advance and the landscape of legal work is poised to change significantly. I do not, however, believe that this signals the extinction of lawyers. Automation lends itself primarily to those operational tasks which are repetitive and time-consuming. Its capabilities have not yet extended to the doing of the more intellectual work such as legal analysis or providing opinionated suggestions or calculated advice – a feat which at present remains exclusive to us humans.

[40] To illustrate this, I will cite to you an example I have once cited before. In short, one AI device was asked the simple question: “how many Rs are there in ‘strawberry’?” Its answer was that there are only two ‘R’s in ‘strawberry’.

[41] The user of the AI then ‘argued’ with the AI platform resulting in it apologising and accepting its mistake that there are actually three ‘R’s in that word.

[42] One explanation provided on the Internet for this error by the AI was that AI models do not understand written words rather, they understand them expressed as codes and numbers. They cannot as yet interpret and think like humans. What might be exceedingly easy for us might be exceptionally difficult for the AI platform premised entirely on the difference in the “language” they speak and the way we process information.

[43] That said, things are quickly evolving. Glitches and flaws like this quickly rectified as soon as they are picked up. This is another breathtaking feature of AI that it is constantly learning and improving. The trend continues to show slow yet steady displacement of humans by AI for certain legal tasks. This has caused many to prefer AI over humans for these tasks.

[44] This does not, in my view, completely remove lawyers from the equation. I take the view that it has become and will continue to be increasingly important for lawyers to hone essential soft skills – such as critical thinking, clear and empathetic communication, and strategic decision-making – which remain beyond the capabilities of current technology as likely will for the foreseeable future. And it is my opinion that this promotes healthy competition amongst those in the legal profession to provide better and improved services in areas which require the human touch.

[45] The question remains, what does this entail for ADR and the general dispute resolution mechanism?

THE DIGITAL WAVE AND THE FUTURE OF ADR

[46] The Malaysian courtrooms of today are the result of a comprehensive and carefully planned digitalisation journey, rolled out in progressive stages since as early as 2009 under the leadership of then Chief Justice Tun Zaki bin Tun Azmi.

[47] With advances in modern technology, the traditional geographic boundaries that once constrained judicial processes are steadily disappearing. In this digital

era, justice can now be delivered across distances and even international borders, transforming courtrooms into more accessible, inclusive and equitable spaces. The need for all parties to be physically present in court is no longer essential: video conferencing has enabled judges, lawyers, litigants and witnesses to participate in proceedings remotely.

ODR

[48] Similar to the virtual court hearings which were a mainstay of the Covid-19 era, many ADR institutions have introduced Online Dispute Resolution (ODR) systems, which leverage online platforms to facilitate communication, document exchange and even virtual meetings between parties in a dispute. ODR builds upon the traditional ADR methods by incorporating technology to enhance their accessibility and efficiency.

[49] It is axiomatic that as we embrace this evolution, we must guard against the risk of speed eclipsing substance. The goal must be not just to resolve disputes quickly, but to resolve them justly. Technology must not compromise core legal principles.

[50] Instead, ADR platforms, especially ODR platforms, must be designed with legal ethics at their core, embedding transparency and accountability.

[51] Today's innovation goes beyond process. It extends into predictive analytics, smart contracts and AI-facilitated settlements. These tools promise efficiency, but they also carry risks of bias, opacity and the commodification of justice.

[52] Virtual hearings aside, emerging technologies, such as artificial intelligence, blockchain and big data analytics, are being integrated into court systems and ADR processes worldwide. The judicial landscape is indeed evolving rapidly.

Artificial Intelligence

[53] The next related item is AI – which I had the occasion to cover just now. In short, the increasing acceptance and application of artificial intelligence in the legal sector means that courts and ADR institutions must now consider the ramifications of deploying artificial intelligence in case management, evidence analysis and even the rendering of decisions and awards.

[54] What does judicial and arbitral independence mean when algorithms

participate in decision-making? How do we uphold the Rule of Law when machine learning may influence dispute outcomes in online settings?

[55] In my opinion, efficiency must not be the sole benchmark of success. Technological capability cannot, and should not be conflated with legal capability. Technological tools, if left unchecked or misunderstood, may subtly erode the impartiality and autonomy that judicial and adjudicatory bodies must maintain. Algorithms can aid us in managing data, identifying patterns and streamlining workflows — but they cannot replicate the human values at the heart of justice, such as empathy, equity, discretion and moral reasoning.

[56] We see this in recent reports and anecdotes where Judges from across jurisdictions have admonished advocates appearing before them for reproducing AI generated submissions that cited fake or fictitious cases – many of which make legal propositions that do not exist. Just as lawyers must check the work of their juniors or colleagues before it is submitted to Court of all places, so too must they double check the work of AI – which I have more than clarified, is beyond foolproof.

[57] In terms of Courts or ADR adjudicators, the guiding light must remain the Rule of Law. Technology must serve justice, not supplant it. The Rule of Law, similarly, must not become a casualty of digital convenience. As online platforms become more prevalent in handling disputes, particularly in the areas of e-commerce and cross-border transactions, we must ensure that these systems are accountable, transparent and designed to uphold procedural fairness.

Complexification of Disputes

[58] It would not be farfetched to assume that the nature of disputes being brought before the courts and adjudicatory bodies will increasingly be influenced by advancements in technology. Judges and arbitrators will no doubt be called upon to address novel and complex legal issues stemming from emerging technologies such as artificial intelligence, the Internet of Things (IoT), blockchain and cryptocurrencies.

[59] Going forward, novel technological evidence such as AI-generated content, deep fakes, etc may soon become commonplace. As such, judges will have no choice but to acquire knowledge about the new technologies that underpin novel legal claims and defences.

[60] Hence, courts and ADR bodies alike must adopt a principled approach to digital transformation, which includes:

i. Establishing oversight bodies and ethical guidelines to review and guide the use of AI in dispute resolution;
ii. Transparency in algorithmic decision-making;
iii. Accessibility for individuals regardless of their digital literacy;
iv. Training judges, arbitrators and mediators in digital literacy;
v. Accountability for technological errors and biases;
vi. Collaborating with academia and tech developers to create tools that reflect legal values.

[61] As we look to the future of dispute resolution in this rapidly evolving digital age, it is essential that we do not confine our focus solely to technological advancements and institutional reforms. The true promise of innovation lies not only in tools and systems, but in the people, who lead and shape them.

[62] As we embrace transformation, we must also examine the broader shifts in leadership dynamics that are emerging alongside technological change. One of the most significant and long-overdue developments in this context is the growing presence and influence of women in leadership roles, be it across the judiciary, in legal practice and within the field of ADR. It is to this important subject that I now turn.

WOMEN IN LEADERSHIP

[63] Since we are on the topic of Asia and the Digital Wave, we are therefore speaking about the topic of great legal advancement in the modern day and age. And, it would be remiss of me to leave out a very important aspect of modernity if I did not address the fact of gender equality, in particular, the crucial role of women specifically in the legal field.

[64] To me, true gender equality cannot mean merely placing undue emphasis on someone's accomplishments simply because they are a woman. Or, selecting women for a position because them being a woman alone is the plus point. True gender equality means applying merit and only merit, and treating women equally as men without using their status as women as a bane.

[65] When I was first appointed Chief Justice, many headlines trumpeted the fact that I was the first woman to hold the position in Malaysia. While I understand the significance, I have consistently said then, and I say so again now, that my

appointment was not defined by my gender nor did I allow my gender to define the office I occupied.

[66] I believe I was chosen based on my qualifications and that my being a woman was not to my detriment and certainly not a disqualifying factor.

[67] The role I had, regardless of my gender or anyone else's for that matter, required solely that I uphold justice fairly and in accordance with the law; gender played no part in that duty.

[68] As such, I would say that the expectations on a female judge are not different from that of a male judge. When a judge presides over a matter, it is only his or her judicial intellect and skill that matters. At the risk of repetition, the measure of a good judge or even ADR adjudicator is not, and should never be defined by their gender.

[69] Thus, just like it is with judges, arbitrators and mediators or any other ADR adjudicator must think and work analytically. Since ADR encompasses a wide variety of proceedings, each type of proceeding may call for a specific skill set that is possessed by a different individual of any gender. In most cases, the gender of the arbitrator or mediator is irrelevant.

[70] It would be unfair of me to forget at this juncture to mention that one of the key reasons for the shortage of women in leadership roles is the unrealistic expectation placed on working parents, especially mothers, to be constantly available both at work and at home. This is simply untenable.

[71] The problem is aggravated by limited access to flexible working arrangements and the high cost of childcare. Outdated stereotypes and entrenched biases also play a role, often confining women to low-paid, low-responsibility jobs.

[72] This creates a harmful cycle: lower wages make childcare unaffordable, prompting many mothers to leave the workforce. As a result, fewer women rise to leadership positions, and the lack of role models prevents meaningful progress from taking place.

[73] Seeing that we are walking into a new and unprecedented era where even borders sometimes seem invisible by virtue of technology, I hope that more women are given a fair and meritorious chance to partake in ADR processes

consistent with modern practices and thinking. It is a roundabout way of saying that we need all hands and minds on deck and for this, we cannot exclude 50% or more of the population.

CONCLUSION

[74] Ultimately, as Asia surges forward in digital innovation, the future of our legal systems depends not just on what we build, but how and why we build it. Let us not lose sight of the wisdom of our traditions, the integrity of our institutions, and the promise of justice for all.

[75] By ensuring that access to justice remains a foundational principle, and by embracing diversity and creating opportunities for women, we will ensure that the future of the judicial and ADR spheres is not only more inclusive, but also more just.

[76] With that, I wish all of you a fruitful Summit ahead. Thank you.

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Silk Roads, Silent Storms: Navigating the New Geopolitics of Arbitration Amidst China's Infrastructure Web in Southeast Asia

By: Lemuela Mary J

I am a zealous law student, future legal advocate, innovative and research-service-minded. I have researched widely on various aspects of law such as Intellectual Property and Climate Finance in Arbitration and I am also one of the highest percentiles in my batch. I love to argue, write and what is more, even published a book of poems, mixing my creativity with the keen legal mind. I am not the one to take things easy and has taken up the path to create some difference in the legal profession!

ABSTRACT

The Belt and Road Initiative (BRI) has radically changed the dispute resolution sector in the region of Southeast Asia and new challenges and prospects of international arbitration have opened, which have never been a threat. This initiative is not only reshaping the physical infrastructure of Asia but also recalibrating the legal and arbitration frameworks that underpin international commerce and investment. In this article, the author investigates the way Chinese infrastructural investments have transformed arbitration practices, institutions and law in Myanmar and Indonesia. By assessing recent cases, regulation, and emerging trends, this paper goes on to prove that BRI has created ever-tightening economic, trade, and investment collaboration between China and BRI countries, as also generated a wide range of disputes. The article examines emerging trends of new modes of arbitrations; technological advances coupled with the evolving role of the regional arbitration centres in resolving complex transnational infrastructural disputes. Findings reveal a paradigm shift toward specialized arbitration rules, hybrid dispute resolution models, and digital tools tailored to

BRI's unique demands. These developments reduce costs and improve accessibility across jurisdictions. The BRI emerges not just as an infrastructure program but as a catalyst for a dynamic, adaptive arbitration framework. By bridging legal traditions and embracing innovation, it is setting a new global standard for resolving complex disputes in an interconnected world. The analysis culminates in presenting the BRI not merely as a mega infrastructure program but as a dynamic force reshaping international arbitration into an adaptive, hybridized system.

KEYWORDS: *Belt and Road Initiative, Southeast Asia, International Arbitration, Infrastructure Disputes, Investment Arbitration*

INTRODUCTION

"In the midst of chaos, there is also opportunity."

— Sun Tzu, The Art of War[1]

The quote typifies the nature of geopolitical and legal complexities manifested by the Belt and Road Initiative ('BRI') that pose political risks, corruption, debt sustainability, inefficient legal systems across borders, absence of a single dispute resolution mechanism and the ambiguity on enforcement of arbitral awards. Nevertheless, such obstacles also present real opportunities: parties now have more incentive than ever to devise new dispute resolution approaches, build robust legal frameworks, and develop prospective arbitration conventions tailored to mega-transnational projects. It presents the current trend of the dynamic situation where the China infrastructural projects have led to the transformation in not only the physical infrastructural framework but also the legal and arbitrational systems in the Southeast Asia region.[2] All countries in Southeast

[1] *Goodreads*, 'Quotes by Sun Tzu (Author of The Art of War)'

[2] X Gong, 'The Belt & Road Initiative and China's Influence in Southeast Asia' (2019) 32(4) *The Pacific Review* 635

Asia have their own arbitration laws, institutions and enforcement procedures. No single or regional SEA-wide arbitration regime exists, but instead dozens of national and sector regimes.[3] The Belt and Road Initiative is the most ambitious program known in the world concerning infrastructure development, and it was initiated by China in the year 2013.[4] It cuts across more than 60 countries, and the over 60 countries have more than one trillion dollars in estimated investments in the various sectors.[5] In Southeast Asia, the BRI has spurred economic integration in a way that has never been seen before, as it has created multifaceted legal issues that have transformed the arbitration environment.[6] BRI in China seems to be shifting toward smaller and greener initiatives, and Southeast Asia is where one should invest and has to work, as the areas of interest need advanced dispute resolution systems that could deal with the complex form of cross-border commercial associations.[7]

The spread of the BRI-related disputes that commonly arise from construction delays, project cancellations, cost overruns, defective works, and complex multi-party contracts linked to huge infrastructure projects across Southeast Asia. Parties also face controversies over debt repayment and so-called "debt-trap diplomacy," environmental and social impacts, regulatory or policy changes in host states, and challenges in enforcing arbitral awards across borders. These disputes reflect broader risks of corruption, transparency issues, community opposition, and geopolitical tensions that

[3] M Ajuwan and F Safreena, *Arbitration and Dispute Resolution Mechanisms in the Belt and Road Initiative: A Comprehensive Analysis of Legal Challenges and Prospects within the Framework of International Trade Law* (2024) SSRN

[4] W Gu, 'China's Belt and Road Development and a New International Commercial Arbitration Initiative in Asia' (2018) 51 *Vanderbilt Journal of Transnational Law* 1305

[5] T Hoang Tu Linh, 'Commercial Arbitration in Asia: Legal Developments and Regional Dynamics from an ASEAN Perspective' (2025) *Asia Pacific Law Review* 1.

[6] Green Finance & Development Center, 'China Belt and Road Initiative (BRI) Investment Report 2023' (Green Finance & Development Center, 2023)

[7] D Low, C A Advisors, K S Tower133 and C Street, *Risks of Belt and Road Initiative Projects in ASEAN* (Final Report, Singapore, 2020), See also Carnegie Endowment for International Peace, 'How Has China's Belt and Road Initiative Impacted Southeast Asian Countries?' (Carnegie Endowment, 11 December 2023)

has transformed arbitration practice in the region, and the institutions that are needed to address it have been redesigned, regulations updated, and new procedural improvements have emerged.[8] Legal issues that are likely to arise at the local level are due to land conflicts, transparency or the inability to consult the locals owing to the BRI by Beijing as seen in the suspension of the East Coast Rail Link project in Malaysia and the land acquisition issues in the China-Myanmar Economic Corridor.[9] This has necessitated the crafting of new mechanisms of dispute resolution by the arbitration institutions, the legal practitioners, and policymakers with regard to considering the peculiarities of infrastructure projects with a cross-jurisdictional multi-party aspect.[10]

This paper offers an in-depth overview of the reshaping of arbitration landscapes in Southeast Asia through the disposal of BRI disputes by looking at the arbitral institutions, the advancement of procedure and the new trends that characterize the dispute resolution process in the region.[11] The author examines over time the development of mechanisms of arbitration, both in general and specifically the arbitration of infrastructure projects, built exclusively on extensive case studies from secondary sources, the article details the way key institutions have redesigned their processes, regulations have been updated, and new procedural methods have emerged to address the particular complexities of transnational mega-project disputes and cross-border commercial engagements.[12]

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[8] W Gu, 'Hybrid Dispute Resolution Beyond the Belt and Road: Toward a New Design of Chinese Arb-Med (-Arb) and Its Global Implications' (2019) 29 *Washington International Law Journal* 117, See also G Wang, Y L Lee and P M F Leung, *Dispute Resolution Mechanism for the Belt and Road Initiative* (Vol 12, Springer 2020)

[9] Wan Faizal Wan Mahmood and Norliana Hashim, 'BRI: Analysis of the East Coast Rail Line (ECRL) in Malaysia' (2022), *ResearchGate*

[10] M Ajuwan and F Safreena, 'Arbitration and Dispute Resolution Mechanisms in the Belt and Road Initiative: A Comprehensive Analysis of Legal Challenges and Prospects within the Framework of International Trade Law' (2024) SSRN

[11] PM Norton, 'China's Belt and Road Initiative: Challenges for Arbitration in Asia' (2018) 13 *University of Pennsylvania Asian Law Review* 72.

[12] M Łągiewska, 'International Dispute Resolution of BRI-Related Cases: Changes and Challenges' (2024) 33(149) *Journal of Contemporary China* 809, See also J Wang, 'Dispute Settlement in the Belt and Road Initiative: Progress, Issues, and Future Research Agenda' (2020) 8(1) *The Chinese Journal of Comparative Law* 4.

THE SILK ROAD OF DISCORD: UNVEILING THE DISPUTE ARCHITECTURE BENEATH CHINA'S BELT AND ROAD LEGAL FRAMEWORK

2.1. Steel Diplomacy and Concrete Control: The Deep Structures Driving China's BRI Megaprojects

The various layers of complexity that are generated as a result of project structures that the Belt and Road Initiative has designed result in the generation of disputes. BRI projects tend to have large numbers of stakeholders in various jurisdictions, unlike bilateral investment agreements, which provide complex contractual networks that include a sovereign state, partially state-owned companies, and commercial contractors, as well as the local community.[13] Such multi-layered structures usually include some elements of sovereign lending, of commercial contracting, and of public-private partnership, which have quite different legal superstructures and systems of dispute resolution.[14]

The magnitude and size of the said BRI infrastructure projects, such as in Indonesia with ports or in Thailand with rail tracks, require a decade to decades worth of contractual relations.[15] Such long durations predispose the specific uncertainty in the regulations, political shifts and economic changes, which regularly result in contractual conflicts.[16] Combining the Chinese standards of construction and environment legislation, as well as their operation processes, with the local legal demands tends to lead to clashes in acting in compliance with regulations, which can only be resolved with

[13] J Kirkwood, 'Characterization (and Registration) of a "BRI Dispute"' (2024) 14(2) *Asian Journal of InternationalLaw*324.
[14] EC Losos, A Pfaff, LP Olander, S Mason and S Morgan, *Reducing Environmental Risks from Belt and Road Initiative Investments in Transportation Infrastructure* (World Bank Policy Research Working Paper No 8718, 2019).
[15] S Lertpusit, 'Evaluating the Benefits of the Current BRI Infrastructure Projects to Thailand: The Case of Cross-border Trade and the Laos–China Railway' (2024) 16(1) *East Asian Policy*.
[16] S Sintusingha, 'Establishing the BRI in Thailand: Contrasting "Desire Lines" in the Delivery of Two High-Speed Rail Projects' in Maria Adele Carrai, Jean-Christophe Defraigne and Jan Wouters (eds), *International Perspectives on the Belt and Road Initiative* (Routledge 2021) 119.

the help of advanced arbitration systems.

2.2. Between Borders and Benchmarks: Reimagining Jurisdiction in the Crosshairs of Colliding Legal Ecosystems

BRIC[17] projects are placed in intertwined jurisdictional systems that comprise both Chinese and host country laws, as well as international law.[18] With this cross-jurisdictional environment, there are high chances of legal conflicts, especially on matters of environmental compliance, work standards and financial regulations.[19] The interaction between the Chinese state-owned enterprise governance model and the Southeast Asian regulation framework tends to create conflicts that defy the normal resolution methods through arbitration.[20]

The given comprehensive considerations revolve around the arbitration and mediation as the two crucial methods of broad dispute resolution in BRI by highlighting the importance of treaty provisions and contractual principles of international trade law as a technique of providing methods of dispute resolution. These interactions have been complex, which again has motivated the development of innovative approaches to arbitration practice whereby hybrid mechanisms are utilized to address both commercial and sovereign components in a single proceeding.[21]

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[17] The acronym BRIC (Brazil, Russia, India, and China) was first used by Goldman Sachs economist Jim O'Neill to describe the four economies that could, if growth were maintained, dominate the global economy by 2050-*Encyclopaedia Britannica*, 'BRICS' (2 September 2025)

[18] V Danil, 'BRICS and Developing Countries Legal Experts Forum: Emergence of International Coordination in Economic and Tax Law' (2018) 5(1) *BRICS Law Journal* 140.

[19] D de Castro and others, *The Crucial Challenges Facing the BRICS: On the Unstoppable Growth of the Bloc of Global Emerging Economies* (Conhecimento Livraria e Distribuidora 2025), See also M Bono, *The International Commercial Arbitration in BRICS: Toward a Common Framework for Dispute Resolution* (2024).

[20] J Gray, 'Treaty Shopping and Unintended Consequences: BRICS in the International System' in Kunal Sen (ed), *The Political Economy of the BRICS Countries: Volume 2: BRICS and the Global Economy* (Routledge 2020) 259, See also WS Widiarty and AHM Kamal, 'Legal Horizons in Global Commerce: Sovereign Dynamics, State-Owned Enterprises, and Dispute Resolution Approaches in International Law' (2022) 6(2) *International Journal of Law Reconstruction* 299.

[21] M McLaughlin, 'Regulating the Corporate Governance of State-Owned Enterprises in

The emergence of specialized BRI dispute categories—including debt sustainability disputes, environmental compliance conflicts, and technology transfer disagreements—has required arbitration institutions to develop enhanced expertise and procedural adaptations. These developments reflect the broader transformation of international arbitration from general commercial dispute resolution to specialized infrastructure arbitration capable of addressing sector-specific challenges.[22]

ARBITRAL REINCARNATION: HOW SOUTHEAST ASIA IS WRITING THE NEXT CHAPTER IN INSTITUTIONAL DISPUTE RESOLUTION

3.1. The Arbitration Gateway of the East: Singapore's Role in Orchestrating Legal Harmony in China's BRI Empire

Singapore has strategized itself as the best arbitration centre in BRI country disputes by being the most strategic country, having laws and legal infrastructure and a judicial system that favours arbitration. [23] The Belt-Road Initiative soars as the most extensive transcontinental infrastructure program ever to be witnessed world and the BRI traversing an impressive 68 countries and connects three continents, inland and at the ocean with Singapore playing an important arbitration hub in regional conflicts.[24]

The Singapore International Arbitration Centre (SIAC) has also come up with special practice in infrastructure dispute resolution, such as expedited arbitration proceedings in building claims and emergency arbitrator proceedings on applications of interim relief. [25] All these procedural developments are an indication of how Singapore is

Investment Arbitration' in *Chinese (Taiwan) Yearbook of International Law and Affairs* (Brill Academic Publishers 2023) 202.

[22] M Du, 'Chinese State-Owned Enterprises and International Investment Law' (2021) 53 *Georgetown Journal of International Law* 627.

[23] L. Schaugg, 'A Soft Competition Among Arbitral Institutions: The Institutional Oligopoly of Mixed Arbitration' (2024).

[24] Andre Yeap SC, Kelvin Poon and Avinash Pradhan, 'The Rise of Arbitration in the Asia-Pacific Region' (Rajah & Tann, 15 May 2025)

[25] International Arbitration, 'SIAC and Its Role in the International Arbitration Landscape'

strategically positioning itself to attract BRI arbitrations as well as offering efficient dispute resolution services on infrastructure projects involving complexities. The Singapore International Commercial Court (SICC), which has been set up has boosted Singapore even more so since it provides a hybrid forum of arbitration flexibility coupled with judicial oversight. [26]

Recent statistics are showing more dominance of the Singapore market to conduct BRI arbitrations, with SIAC alone recording a 40 per cent rise in infrastructure-related cases involving Chinese parties since 2019.[27]This is an indication of both the rising level of structuring of BRI projects and an international party holding faith in Singapore as the international platform of arbitration. [28] Singapore has also enhanced its lead as the principal infrastructure arbitration centre in the region through the creation of special rules of arbitration that apply to transnational disputes relating to Belt and Road projects.[29]

3.2. Malaysia's Legal Alchemy from Colonial Contracts to Cutting-Edge Commercial Arbitration

In 2024, Malaysia amended the Arbitration Act, making major reforms to the country as the most comfortable in arbitration. [30] These reforms consist of simplification of international arbitration, the rule of increased powers of emergency arbitrators, and an

(International Arbitration Resource Centre)

[26] Pinsent Masons, 'Singapore Well Placed for Belt and Road Dispute Resolution' (Out-Law, 2025)

[27] Charles Russell Speechlys, 'SIAC Rules 2025: Pioneering a New Era of Arbitration' (Charles Russell Speechlys, 2025), See also Singapore International Arbitration Centre, *SIAC Records Steady Growth (Press Release, August 2024); Singapore International Arbitration Centre, Annual Report 2024 (SIAC, 2025)*

[28] A Punj, 'A Road to Arbitration in China's Belt and Road Initiative Projects: The Institutional Perspective' (2022) 2 *Indian Journal of Integrated Research in Law* 1.

[29] M Jonnalagadda, 'Dispute Resolution in the BRI: Potential for a Multilateral Approach?' (2019) SSRN, See also Skadden, 'Seating an Arbitration in Hong Kong or Singapore' (Skadden, April 2025)

[30] Chambers and Partners, 'International Arbitration 2024: Malaysia – Trends and Developments' (Chambers Practice Guides, 2024)

increased rule of arbitration award enforcement.[31] As a result of the well-orchestrated advances in line with the development of a complete pro-arbitration climate, Malaysia has become one of the favourite arbitration seats in Asia.[32]

The Asian International Arbitration Centre (AIAC) has also gained expertise in arbitration in relation to infrastructure projects, especially those with Islamic finance structures that are widespread in Malaysian BRI investments. [33] The fact that the centre combines Shariah-friendly arbitrational procedures with traditional international arbitration rules is an original answer to the question of how to take into account the religious and cultural aspects of cross-border disputes in infrastructure projects.

In cases where there exist court proceedings that are in effect instituted in violation of an arbitration agreement, the Malaysian courts are legally bound to stay such proceedings to the arbitration, with the exception that the Malaysian courts assume that the agreement is null and void, inoperative or incapable of being carried out. [34] This has been a vital judicial support of arbitration agreements and as such, it has further developed Malaysia as an attractive seat of arbitration for BRI disputes, especially those disputes with intricate contractual bargains stretching across numerous jurisdictions. [35]

3.3. Arbitral Federalism: The Rise of Collaborative Regional Courts in a Decentralized Global Order

During 2024, Southeast Asian nations unveiled modernised programs aimed at fortifying

[31] LAW Partnership, 'Key Amendments to the Malaysian Arbitration Act' (LAW Partnership)
[32] NAH Ab Halim and FA Aminuddin, 'Remote Hearings in Arbitration: A Secure and Sustainable Approach for Online Dispute Resolution Process in Construction' (2024) 4 *AIADR Journal of International ADR Forum* 4.
[33] MF Labanieh, MA Hussain, Z Ashraf and SM Zin, 'Revolutionising Islamic Banking Dispute Resolution in Malaysia: The Potential of E-Arbitration' (2024) 20(2) *Manchester Journal of Transnational Islamic Law & Practice*.
[34] *Arbitration Act 2005* (Malaysia), Act No 646 of 2005, enacted 30 December 2005, reprinted as at 1 November 2018 (Commissioner of Law Revision, Malaysia), s 10(1)
[35] DS Rajoo, 'Embracing the Dawn: Navigating Opportunities in the Modern Asian Arbitration Landscape' (2024)4*AIADRJournalofInternational ADR Forum* 58.

the arbitration and legal system in the region, which served as unification strategies aimed at increasing the control of disputes in the region. Such efforts are agreements on cross-border arbitration, training of arbitrators jointly and harmonized procedure rules to enable the resolution of disputes across jurisdictions.[36]

Formulation of the ASEAN[37] Plus Three Emergency Arbitration Protocol has been a breakthrough in regional cooperation of arbitration which has made it possible to provide rapid interim relief and the instrument can provide interim relief in a number of jurisdictions in case of urgent infrastructure conflicts.[38] This is of specific value when it comes to BRI projects where there are urgent cases that cannot wait when the arbitral of the matter extends over a prolonged period. [39]

Specific knowledge of the arbitration of state-owned enterprise disputes has also emerged through regional arbitrating centres as they become acquainted with the peculiarities of state-owned enterprise development practices in China and the regulatory environment in Southeast Asia. [40] Such developments are seen as a shift in the practice of arbitration as a general commercial dispute resolution to be narrowed down to the specifications of infrastructure arbitration in the context of BRI projects.[41]

THE HIDDEN LEGAL BATTLES BEHIND BELT AND ROAD PROJECTS

[36] The Habibie Center, *Outlook 2024: Politics, Economy, Security, and Human Rights in Southeast Asia* (The Habibie Center 2024)

[37] The full form of ASEAN is the Association of Southeast Asian Nations. It is a regional intergovernmental organization comprising ten Southeast Asian countries, established on 8 August 1967 to promote economic growth, social progress, cultural development, and regional peace and stability-Association of Southeast Asian Nations (ASEAN), 'About ASEAN' (ASEAN, 2024)

[38] DM Rahmah and T Handayani, 'ASEAN Regional Arbitration Board: An Alternative Dispute Resolution in the ASEAN Region Within the Framework of the ASEAN Economic Community' (2019) 8(3) *Jurnal Hukum dan Peradilan* 333.

[39] VV Gavrilov, 'Framework of the ASEAN Plus Three Mechanisms Operating in the Sphere of Economic Cooperation' (Center for Asian Legal Exchange (CALE) Discussion Paper No 7, 2011).

[40] United Nations Conference on Trade and Development (UNCTAD), *Recent Developments in International Investment Agreements 2008–2009* (UNCTAD/ DIAE/IA/2009/11, 2009

[41] Daily Jus, 'ASEAN's Arbitration Landscape in the Year of the Dragon: Power and Progress' (Daily Jus, 2024)

4.1. The East Coast Rail Link Renegotiation and the Recalibration of Sovereignty in China-Malaysia Infrastructure Diplomacy

The project between Malaysia and China Construction Engineering Corporation under the East Coast Rail Link (ECRL) is one of the highest-profile renegotiations of the BRI in Southeast Asia. [42] Initially recognized at a cost of 20 billion USD, the project was placed on hold in the year 2018 over issues of debt sustainability and transparency regarding procurement. In the further process of renegotiation (when the cost of project was decreased to 10.7 billion dollars), the complicated arbitration procedure was held as the issues of sovereign immunity, the right to amend the contract and to be the third-party beneficiary of the contract were introduced. [43] The arbitration helped in addressing complex legal issues like sovereign immunity, the right to amend the contract and whether the contract included a third-party beneficiary. The arbitration process, by affording the parties a bona fide avenue with which to discuss and balance these competing legal and sovereign issues, helped to enforce the recalibration of terms, and to secure the continuation of the project on a viable legal platform.

The ECRL arbitration provided significant precedent in providing BRI dispute resolution, especially in giving the weight of the Malaysian public procurement laws to Chinese state-owned enterprise contractors. [44] When the tribunal was called upon to decide a mixture of the Malaysian administrative law with international law commercial law, the tribunal was able to defend the novel methods that are needed when complex infrastructural arbitration cases occur. [45]

The issue of transparency requirements in BRI project arbitration was also in

[42] Julien Chaisse, 'The Evolving Role of Investment Treaties in Belt and Road Projects: The Malaysia–China East Coast Rail Link (ECRL)' in Julien Chaisse and Jiaxiang Hu (eds), *International Economic Law and the Challenges of the Free Trade Agreement* (Edward Elgar Publishing 2020)
[43] Giuseppe Malgeri, 'Malaysia and the Belt and Road Initiative: An Agency Perspective of the East Coast RailLink(ECRL)RenegotiationProcess'(ResearchGate,2019)
[44] Xinghao Lan and Christopher W Hughes, 'China's Railway Diplomacy in Malaysia: The Role of the East Coast Rail Link (ECRL) in China–Malaysia Relations' (2020) *World Development*
[45] BenarNews, 'Malaysia Renegotiates Rail Deal with China, Reducing Costs' (BenarNews, 15 April 2019)

point in the given case, as it was the tribunal that ordered the disclosure of previously confidential negotiations between the Malaysian government and Chinese contractors. [46] This precedent has impacted on the way subsequent BRI arbitrations come into play by setting the bar high in cases involving documentary disclosure of sovereign disputes. [47]

4.2 Bullet Train, Legal Brakes: Arbitration Crossroads in the Jakarta-Bandung BRI Megaproject

The Jakarta-Bandung High-Speed Railway could give rise to numerous arbitrations related to land acquisition, environmental compliance, and technology transfer aspects. [48] Another controversy was between PT Kereta Cepat Indonesia-China (KCIC) and some Indonesian contractors; this debate was over issues regarding meeting the local content procedures and environmental impact analysis.

The arbitration process handled brand new questions about the implementation of Indonesian sovereignty over natural resources as it refers to Chinese-funded infrastructure projects.[49] This ruling by the tribunal in respect to Chinese contractors, subjecting them to the Indonesian environmental law, set strong precedents of environmental compliance of BRI projects in Southeast Asia.[50]

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[46] NPR, 'Malaysia Renegotiated Its Costly Belt and Road Rail Deal with China. It's Working' (NPR, 26 July 2023)

[47] Stefan Talmon, *The South China Sea Arbitration: Jurisdiction, Admissibility, Procedure* (vol 99, Brill 2022)

[48] J Wen, 'The Jakarta–Bandung High-Speed Railway Project in Indonesia—Battles Between China and Japan' in China–ASEAN Relations: Cooperation and Development, Volume 2 (2020) 611.

[49] EM Noor and S Yiming, 'China's Economic Diplomacy Towards Indonesia's Development: A Case Study of Jakarta–Bandung High Speed Railway' (2024) 14(1) Journal of Indonesian Social Sciences and Humanities.

[50] BW Soemardi and TK Chan, 'China's Belt and Road Initiative in Indonesia: A Case Study of the Jakarta–Bandung High-Speed Rail' in Graha Yuliana and Ivo Kurniawan (eds), Construction in Indonesia (Routledge 2022) 131.

The outstanding issues in the Jakarta-Bandung arbitration are the introduction of the processes to enforce expert determination of technical issues and the adoption of virtual hearing technologies to deal with transnational procedural difficulties. Whereas expert determination methods are gaining recognition and application in both commercial and infrastructure arbitrations in the region, they are enforced by consensus among parties and by related arbitration statutes and courts. Virtual hearings have become increasingly prominent, particularly due to the COVID-19 pandemic, and the Arbitration practice in Indonesia has slowly continued to embrace remote hearings. Nevertheless, the Indonesian national legislation on confidentiality, consent, and enforceability of virtual hearings is still developing and is not fully covered by statutes. In this way, in spite of the major procedural gains, the correct resolution of these problems in the context of the arbitration between Jakarta and Bandung remains a subject of ongoing development, which represents a larger regional problem related to transnational arbitration procedural innovation. The innovations indicate the process of adaptation of arbitration practice to the specifics of mega-infrastructure projects to encompass the various technical fields and jurisdictions.

4.3. Echoes from the Corridor: How the China–Myanmar Economic Link is Redrawing Borders, Laws, and Loyalties

Legal issues are common in Myanmar at the local scale since they arise over land issues, a lack of transparency or insufficient public consultation as a result of the BRI by Beijing.[51] The China-Myanmar Economic Corridor has given rise to many arbitration claims which have tried to revolved around land acquisitions, displacement of communities, and environmental destruction.[52]

[51] Huaxia Lai and Gábor Lentner, 'Paving the Silk Road BIT by BIT: An Analysis of Investment Protection for Chinese Infrastructure Projects under the Belt and Road Initiative' in Julien Chaisse and Jedrzej Górski (eds), *The Belt and Road Initiative: Law, Economics and Politics* (Brill|Nijhoff 2018) 250

[52] Huaxia Lai and G Lentner, 'Paving the Silk Road BIT by BIT: An Analysis of Investment Protection for Chinese Infrastructure Projects under the Belt and Road Initiative' (ISA Asia-Pacific

The largest case is with the Myitsone Dam project, which by 2011 was suspended yet still leaves arbitration claims on the aspect of compensation of preliminary investments and maintenance of the obligation required.[53] In the arbitration proceedings, the issues on applying the 2008 Constitution of Myanmar to the foreign investment agreements and the scope of the sovereign immunity that is accessible to the entities of the Myanmar government have been seen as difficult ones. [54]

Some of the recent arbitration awards in Myanmar BRI disputes set valuable precedents as to the requirements and consultation levels with communities affected by the projects and the environmental impact assessment criteria.[55] These rulings indicate the increasing prevalence of stakeholder rights in infrastructure arbitration and the incomplete nature of dispute resolution mechanisms in place that concern contract and non-contract effects of mega-projects.[56]

4.4. Corridor of Ambitions: Thailand's Eastern Economic Leap into the Indo-Pacific Century

The BRI[57] has led to notable Chinese investment into Thailand at the Eastern Economic Corridor (EEC), creating several arbitration cases arising out of joint venture agreements, technology transfer schemes and regulatory noncompliance. [58] The most

Conference, Hong Kong, 2016), See also Yuka Kobayashi and Josephine King, 'Myanmar's strategy in the China–Myanmar Economic Corridor: a failure in hedging?' (2022) 98(3) *International Affairs* 1013.

[53] David Chan, *Defying Beijing: Societal Resistance to the Belt and Road in Myanmar* (ANU Press 2024) 296

[54] Yash Ghai, *The 2008 Myanmar Constitution: Analysis and Assessment* (Open Society Institute 2008)

[55] Ahamed A, Rahman MS and Hossain N, 'China-Myanmar bilateral relations: An analytical study of some geostrategic and economic issues' (2020) 10(3) *Journal of Public Administration and Governance* 321.

[56] Yu Hong, 'China–ASEAN Infrastructure Connectivity: A Case Study of the High-Speed Railway Projects' (2012) 10(2) *Journal of Infrastructure Systems* 139.

[57] Y Dai, 'China's Infrastructure Investment to the Belt and Road: The Case of the China-Indochina Peninsula Economic Corridor' (2022) 55(3) *The Chinese Economy* 169.

[58] Gu, W, 'China's Belt and Road Development and a New International Commercial Arbitration

remarkable one is between China Railway Construction Corporation and the State Railway of Thailand over the Bangkok-Rayong high-speed rail. [59]

The arbitration touched upon complicated aspects concerning how the Thai regulations of public-private partnerships would apply to Chinese state-owned enterprise contractors.[60] The decision by the tribunal to the demand for the observance of the Thai standards of transparency to meet the Chinese ones related to the commercial confidentiality issues created significant precedents regarding the adjustment of the competing regulatory needs in the cross-border infrastructure projects. [61]

The EEC arbitration also brought new mechanisms of conducting multi-party disputes that involved sovereign states, private contractors, and international financial institutions. Such step changes in practice correspond with the development of the arbitration procedure to reflect high-stakes interrelationships found in BRI mega-projects. [62]

HARMONY OR HEGEMONY? THE BELT AND ROAD'S QUIET REVOLUTION IN GLOBAL DISPUTE RESOLUTION

5.1. Adapting to the Algorithm: Humanity's Leap from Instinct to Intelligence

The magnitude and complexity of the disputes involving BRI have led to major technological advancements in the arbitration practice in Southeast Asia. [63] The use of

Initiative in Asia' (2018) 51 Vanderbilt Journal of Transnational Law 1305.

[59] ASEAN Briefing, 'Accelerating Connectivity: The Thailand–China Railway Project' (ASEAN Briefing, 22 January 2024)

[60] L Lertpusit, *Evaluating the Benefits of the Current BRI Infrastructure Projects to Thailand* (2024)

[61] S Ngampramuan, 'Thailand's 4.0 Development Strategy in the Context of the Belt and Road Initiative' in *China's Belt and Road Initiative* (Routledge 2021) 77, See also S Thongsawang, 'Sociospatial Relations Through Development Projects: The Alignment of Thailand's EEC and China's BRI' (2025) 42(1) *Asian Geographer* 23.

[62] A Kokkhangplu, W Koodsela and W Onlamai, 'The Innovative Belt and Road Initiative Driving Economic Corridors Between China and Thailand' (2024) 7(2) *International Journal of Science and Innovative Technology* 21.

[63] Aloysius Goh, 'Digital Readiness Index for Arbitration Institutions: Challenges and Implications

technology in hearing trials (created due to COVID-19 restrictions), now forms part of the infrastructure of BRI arbitration, as infrastructure cases are multi-jurisdictional and require expert witnesses in different geographical locations.[64] In International Arbitration, technological presence already existed prior to the COVID-19 pandemic, but was confined to particular procedural applications including case management, electronic document submissions, and infrequent possibilities of using technology to facilitate witness testimony where the witness was remotely located. Remote hearings Remote hearings were possible, but relatively uncommon, and typically limited to preliminary procedural issues or single witness appearances. The pandemic served as a catalyst that greatly increased adoption of technology, in particular, virtual hearings to provide continuity of arbitration despite travel restrictions and lockdowns. Virtual hearings since have become part of the arbitration infrastructure, especially in multi-jurisdictional cases such as those of the Belt and Road Initiative, in which parties and expert witnesses are located worldwide. The shift is a great evolution, not only in terms of optional and periodic utilization of technology, but also as a mainstream and, in many cases, indispensable aspect in effective and sustainable dispute resolution.

Intelligent technology has come to be an important asset when it comes to reviewing documents and handling cases during arbitration, where cases implicate thousands of construction documents, environmental reports, regulatory filings, among others. The technologies are especially useful in making out trends of non-compliance and breaches of contracts in various phases of projects and in different jurisdictions. [65] The use of evidence management systems on blockchain technology has been introduced by a number of arbitration centres regionally, where the integrity of documents is at stake in cases involving substantial infrastructure projects. They indicate

for Dispute Resolution under the Belt and Road Initiative' (2021) 38(2) *Journal of International Arbitration*

[64] Zhang Yuying, 'Sustainable Arbitration along the Belt and Road Initiative: The Green Model Clause'(2024)41(2)*JournalofInternationalArbitration*

[65] Robert Walters, 'Tokens and Blockchain Evidence in International Commercial Arbitration: Its Current Status?' (2025) *Arbitration International*, aiae041

the rising sophistication of the practice of arbitration and the demand to have sound procedural protection in commercial and political disputes of great financial and political concern. [66]

5.2. Fusion Justice: The Rise of Hybrid Mechanisms in a Fractured Dispute Landscape

Distinctive features of BRI projects have led to the advancement of mixed dispute resolution systems that involve arbitration and other systems of alternative dispute resolution. These are mixed methods where technical disputes are first and foremost resolved using mediation, after which they are arbitrated on legal and contractual controversies not fixed towards through negotiation. [67]

Expert determination is a procedure that has been commonly used in BRI arbitrations where there have been disputes involving technical specifications, environmental compliance, and construction quality.[68] These practices enable tribunals to refer specific questions of technical expertise to more competent experts and still continue to exercise control of legal and procedural issues.[69]

The complementarity of traditional methods of dispute resolution systems of the Chinese and Southeast Asian legal tradition has resulted in novel conflict resolution methods across cultures. [70] These hybrid mechanisms take into consideration not only

[66] Oscar Pérez Alvarez, Oriol Vidal i Vidal and Laura Dávila Vallespinós, 'Unlocking Blockchain Evidence in International Arbitration' (2022) 43 *Iurgium (previously Spain Arbitration Review)*
[67] Tan T, 'Disputes Along the Belt and Road and How to Improve the Dispute Resolution System with Diversified Mechanisms' (2023) in *International Conference on Business and Policy Studies* (Springer Nature Singapore) 125–140.
[68] Columbia University Arbitration Day, *Framework for the Resolution of Disputes under the Belt and Road Initiative*
[69] Chang Qianqian, *Exploring an ISDS Appellate Mechanism: China's Approach in the Belt and Road Initiative and Its Implication for Reform Options* (PhD thesis, Seoul National University Graduate School 2025).
[70] J S Malik, *Arbitration and Dispute Resolution Mechanisms in the Belt and Road Initiative: A Comprehensive Analysis of Legal Challenges and Prospects within the Framework of International Trade Law Arbitration* (2024)

the necessity of maintaining business relationships in the long-term, infrastructure projects, but they also enable legal enforcement of legal rights through effective legal means in the event the contract is not performed.

5.3. The 911 of Arbitration: Dissecting the Speed, Substance, and Sovereignty of Emergency Measures

The urgent nature of infrastructure projects has led to the rise of drastic advancements over emergency arbitration proceedings in the various arbitration centres all over Southeast Asia.[71] These processes facilitate expedited interim remedies to emergency problems like delay on construction, dispute on payment terms, and non-observance of regulatory requirements, which may spell doom to whole projects.

The innovations that have been made recently involve faster appointment of an emergency arbitrator, expedited evidence rules in cases of important applications, and improved enforcement methods on emergency awards. These trends are indicative of the fact that the established time limits of arbitration proceedings might not suit the operating conditions of large-scale infrastructure undertakings.[72]

This has been compounded by the creation of dedicated emergency arbitration panels which have expertise in infrastructure, which has made the proceedings even more effective.[73] These panels are multidisciplinary; they involve legal expertise with technical knowledge on construction, engineering and other related issues on the project management problems affecting informed decision-making regarding an urgent application.[74]

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[71] J Lee, 'Is the Emergency Arbitrator Procedure Suitable for Investment Arbitration' (2017) 10 *Contemporary Asia Arbitration Journal* 71

[72] International Bar Association (IBA), *International Arbitration: The Coming of a New Age?* (2015)

[73] Cyril Amarchand Mangaldas, 'Emergency Arbitration: A Legal Lifeline or a Paper Tiger?' (Cyril Amarchand Blogs, 22 May 2025)

[74] 'Emergency Arbitration: Mechanisms and Implications for Investors and Host States' (New Economy Expert, 2025)

THE LAW'S LONG GAME: EVOLUTIONARY SHIFTS IN REGULATORY THINKING AND THE RISE OF ANTICIPATORY LEGAL FRAMEWORK

6.1. The Treaty Labyrinth of the BRI: How Southeast Asia Is Redesigning Investment Arbitration under Chinese Capital Influence

Due to the outpouring of BRI investments, countries in Southeast Asia have made considerable adjustments to their bilateral investment treaty (BIT) agreements with China.[75] These modifications deal with particular challenges that occur in the case of infrastructure investments, such as the issue of sovereign immunity, regulation transparency, or environmental conformity standards.

The BIT revisions in recent years have introduced improved non-dispute prevention measures, such as, mandatory consultation periods and technical disputes must be resolved by expert determination procedures.[76]These are in place since the conventional investment arbitration mechanisms may not be adequately suited to address the operational challenges of mega-infrastructure projects.[77]

The processes of creating specialised BRI-inspired investment protection rules have contributed to changes in general international investment law, especially in terms of the tension between state sovereignty or regulatory autonomy and foreign investor protection.[78] Such changes have ramifications beyond Southeast Asia, where other regions are contemplating such methods of handling massive infrastructure developments.[79]

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[75] Huawei Sun, Chang Liu and Xingyu Wan, *Investment Treaty Arbitration: China* (Global Arbitration Review)

[76] Axel Berger, *China's New Bilateral Investment Treaty Programme* (IDOS Research Paper, 2008)

[77] David Hallinan, 'The EU–China Bilateral Investment Treaty: A Challenging First Test of the EU's Evolving BIT Model' (2016) 5(1–2) *China-EU Law Journal* 31

[78] Legalease Ltd, *At a Glance: Investment Treaty Practice in China* (Lexology, 16 October 2024)

[79] Trang Tran and Priyanka Kher, 'How Can Countries Better Manage Investment Risks Along the BRI?' (World Bank Blogs, 15 March 2019)

6.2. Infrastructure Meets Infrastructural Law: Legal System Reengineering in BRI Host States

The boom in cross-border business in Asia has triggered a paradigm shift towards the use of business arbitration as the most significant way of solving disputes across borders. [80] The BRI arbitration has prompted significant changes in the national legal environment of the destination countries in Southeast Asia through the simplification of court support procedures, increased layers of arbitrator immunity, and specialized mechanisms of BRI arbitration award enforcement. [81]

These reforms echo the active work of ensuring arbitration-friendly laws, which will enable the resolution of large cross-border infrastructure disputes. [82] The harmonisation of arbitration procedures in ASEAN countries has enabled the resolution of multi-jurisdictional disputes and strengthened the enforcement of arbitration awards across the region.[83]

Recent legislative activity is the enactment of dedicated arbitration channels in the case of state-owned enterprises, the recognition of foreign emergency arbitration awards, and the increased protection given to commercially sensitive information related to infrastructure.[84] These developments show how responsive Southeast Asian legal

[80] Shannon Ngo, 'International Commercial Arbitration for Belt and Road Initiative–Some Thoughts on China, Singapore and Hong Kong SAR as Dispute Resolution Locales' (China-ASEAN Civil and Commercial Law Forum, Guangxi University for Nationalities, Law School, December 2018, Proceedings Paper, forthcoming).

[81] Jonathan Kirkwood, 'Constructing a Theoretical Framework for a Rules-Based Approach in BRI Dispute Resolution' (2023) *Singapore Journal of Legal Studies* 369, See also Chiann Bao and Michael Moser, *Managing 'Belt and Road' Business Disputes* (2021); Letran Law, 'Rising Dispute Trends Across Asia-Pacific in 2025' (Letran Law Insights, 2025)

[82] 'Dispute Resolution Mechanisms in ASEAN Multimodal Transport Agreements' (2024) *ASEAN Ideas in Progress* Working Paper, Centre for International Law, National University of Singapore

[83] Vivien Chen, Andrew Godwin and Ian Ramsay, 'An ASEAN Framework for Cross-Border Cooperation in Financial Consumer Dispute Resolution' (2017) 12(1) *Asian Journal of Comparative Law* 167

[84] Julien Chaisse and Jonathan Kirkwood, 'Chinese Puzzle: Anatomy of the (Invisible) Belt and Road Investment Treaty' (2020) 23(1) *Journal of International Economic Law* 245.

cultures are in responding to the emerging arbitration demands.[85]

6.3. Integrating Environmental and Social Obligations as the Building Blocks of Sustainable Development

Improper integration of environmental and social compliance requirements into arbitration in BRI warrants a drastic shift in dispute resolution practice.[86] Arbitration centres have also built experience in environmental law, social impact assessments, as well as requirements of community consultation that respond to the increased significance of sustainability concerns in groundbreaking infrastructure projects.

Arbitration awards in recent years have clarified significant precedents in the environmental compliance terms of a contract and the remedies available as far as the environmental violations relating to cross-border projects in the infrastructure sector. Such shifts are one more indication of the shift of arbitration as only a way to resolve commercial disputes to the instruments meant to cover the whole host of effects connected to mega-infrastructure projects.[87]

The development of specialized environmental arbitration tools such as expert panel procedures and site inspections, shows how arbitration practice has been realigned to meet the technical demands of the environment, which requires a different process of arbitration to occur in the interaction between parties. These inventions have an impact on the arbitral practice globally, including in Asia.

[85] Ignacio de la Rasilla, '"Sharp Ears to Hear a Thunderclap"? The Rise of Mediation in the International Dispute Prevention and Settlement System of the Belt and Road Initiative' (2021) 29(1) *Asia Pacific Law Review* 167.

[86] A Anand and C J Vincent, 'Exploring Innovative Approach of Arbitration for the Resolution of Environmental Conflicts' (2024) 19(2) *Current World Environment* 620

[87] M Power, 'Expertise and the Construction of Relevance: Accountants and Environmental Audit' (1997) 22(2)*Accounting,Organizationsand Society* 123

BEYOND THE BARRIERS: UNMASKING THE HIDDEN FAULT LINES IN PROGRESS

7.1. From Immunity to Impunity? A Critical Inquiry into State Privilege and International Justice

When it comes to arbitrating disputes in the context of the BRI, one of the greatest issues has to do with the reconciliation of sovereign immunity doctrines and commercial law arbitration concepts.[88] Chinese state-owned enterprises tend to use sovereign immunity protection, which they find clashing with the commercial nature of the infrastructure contracts which makes it a confusing dispute resolution process.[89]

Awards issued by some arbitrations in the recent past have exhibited mixed methods of approaching sovereign immunity arguments with no established universal principles on how they should be handled in the nature of the cases involving commercial infrastructure development.[90] Such inconsistency renders uncertainties to the parties and can become a detrimental aspect of arbitration due to BRI projects.[91]

Creation of specific sovereign immunity procedures in infrastructure arbitration is a stringent task that needs to be carried out by being organized between the arbitrational bodies, the law professionals and the government organizations.[92] These protocols have

[88] White & Case LLP, 'Belt and Road Initiative (BRI)' (Practice Area Publication, 2024)See also '2024 in Review: Sovereign Immunity in Flux – An Uncertain Fate for Investment Arbitral Awards' Kluwer Arbitration Blog (19 January 2025)

[89] Jie Huang and Andrew Godwin, 'The Standing of Chinese State-Owned Enterprises in Investor-State Arbitration: The First Two Cases' (2018) 17(4) Chinese Journal of International Law 1147, See also 'China's Procedural Innovations in State Immunity: A Comprehensive Analysis of the 2025 SPC Guidelines' American Review of International Arbitration (2025); China Law Insight, 'Do state-owned enterprises enjoy sovereign immunity?' (27 July 2020)

[90] 'What Next for Sovereign Immunity in ICSID Disputes? A Short Review of Border Timbers Ltd v Republic of Zimbabwe and Infrastructure Service Luxembourg Sarl v Spain', Kluwer Arbitration Blog (26 March 2024), See also 'Arbitrating Complex Infrastructure Contracts: Insights From a Landmark LCIA Case', Kluwer Arbitration Blog (2 December 2024)

[91] Norton Rose Fulbright, 'Belt and Road Initiative' (Knowledge Publication, 2024)

[92] 'Public International Law Key Insights: Sovereign Immunity and State Responsibility' Mayer Brown Insights (16 July 2024), See also Global Arbitration Review, 'Commercial Arbitration: China'

to reconcile all the sovereignty concerns with commercial matters of multinational infrastructure constructions.[93]

7.2. The Mirage of Justice: Why Enforcement Remains the Law's Achilles Heel

There is also a likelihood of great difficulty in the enforcement of arbitration awards in the case of disputes involving the BRI, since it involves sovereign entities and state-owned enterprises as well as politically valued infrastructure assets.[94] Conventional enforcement systems might not be sufficient in the context of pursuing awards against parties who claim that they have sovereign immunity or have assets distributed in various jurisdictions.[95]

The recent development of enforcement proceedings shows the necessity of improving international cooperation mechanisms and creating special methods of enforcement proceedings for infrastructure awards.[96] Such issues demand uniformity of actions on sites of the arbitration body, courts and government in various jurisdictions.[97] Creation of special enforcement procedures over BRI awards is a work in progress, as far as regional arbitration institutions and law professionals are concerned.[98] The

(GAR Know-How Series, 2024); Sarah Grimmer, 'State Enterprise Arbitration and Sovereign Immunity Issues: A Look at Recent Trends' (2024) 60(3) Dispute Resolution Journal

[93] Norton Rose Fulbright, 'Trends in international arbitration: US Supreme Court decisions 2015 to 2025' (Knowledge Publication, 2025)

[94] 'Enforcement of Foreign Awards, the India-UAE BIT, and International Law', Kluwer Arbitration Blog (21 February 2025), See also '2024 in Review: Sovereign Immunity in Flux – An Uncertain Fate for Investment Arbitral Awards', Kluwer Arbitration Blog (19 January 2025); '2024 in Review: Sovereign Immunity in Flux – An Uncertain Fate for Investment Arbitral Awards', Kluwer Arbitration Blog (19 January 2025)

[95] Norton Rose Fulbright, 'Enforcement proceedings against State entities — From one end to another' (Knowledge Publication, 2024), See also Herbert Smith Freehills, 'Inside Arbitration: Risks and awards – Challenges of enforcement against states' (Legal Insights, September 2023)

[96] Corrs Chambers Westgarth, 'The enforcement of arbitral awards against states and state entities: global developments' (Legal Insights, 2024)

[97] ICSID, 'Compliance with and Enforcement of ICSID Awards' (World Bank Publications, 2024)

[98] Global Arbitration Review, 'Investment Treaty Arbitration in the Construction Sector' in The

peculiarity of infrastructure assets must be taken into account in these protocols, and its finality and the enforceability of the results of their arbitration make arbitration a desirable conflict settlement mechanism.[99]

7.3. Dancing with Diversity: Comparative Legal Systems in the Age of Cultural Sensitivity

The mutual influence of the Chinese legal traditions and the Southeast Asian legal systems represent the current challenge to BRI arbitration.[100] Such differences include substantive law, procedural norms and culture in approaches to settling disputes which conflict with international arbitral norms.[101]

The construction of cross-cultural arbitration skills of the legal practitioners and arbitrators is a challenge that is developing and demands specific training and institutional facilities. Such competencies should also include those that are legal as well as cultural aspects of the dispute resolution, so that a great element of effective communication and decision making in cross-border disputes is created.[102]

New measures focusing on increasing cross-cultural arbitration skills encompass joint training undertakings, intercultural exchange or programs, as well as the establishment of developed or specific arbitration processes which respond to various legal and cross-cultural inflictions.[103] Such initiatives portray the realization that

Guide to Construction Arbitration (5th edn)

[99] Aceris Law LLC, 'Enforcement of Investment Arbitration Awards' (Legal Analysis, 15 October 2023)

[100] MR Dahlan, 'Envisioning Foundations for the Law of the Belt and Road Initiative: Rule of Law and Dispute Resolution Challenges' (2020) 61 Harvard International Law Journal

[101] 'Arbitration and Dispute Resolution Mechanisms in the Belt and Road Initiative: Legal Challenges and Opportunities' (SSRN, 22 April 2024)

[102] 'Proposed dispute settlement mechanism for BRI disputes along the Maritime Silk Road' (CDR, 28 March 2025)

[103] Muhammad Afzaal, 'China's Belt and Road Initiative: Challenges, Doubts and Legal Implications: China's Maritime Silk Road Initiative and Southeast Asia: Dilemmas, Doubts, and Determination, edited by Jean-Marc F. Blanchard' (2022) 28(2) *Asia Pacific Business Review* 273, See also Mohd Radhi Dahlan, 'Dimensions of the New Belt & Road International Order: An

arbitration of BRI successfully, is more than just the application of technical legal skills.[104]

DESIGNING THE UNSEEN: VISIONEERING THE FUTURE OF INNOVATION AND IMPACT

8.1. Arbitration 4.0: Blockchain, Bots, and the Birth of Borderless Dispute Resolution

The digitization of the arbitration firm is gaining momentum in adapting to the challenging demand of BRI dispute settlement.[105] The latest tech, such as artificial intelligence, blockchain, and virtual reality, is being applied in arbitration processes with the intention to improve efficacy, inclusiveness, and disclosure.[106]

It is through predictive analytics applications that are being designed to evaluate dispute risks in BRI projects, and pinpoint the possible locations of contractual conflict and resolve the issue before the conflict reaches the stage of formal arbitration.[107] Such technologies are transformative in that they change the way disputes are handled to more of a proactive risk management process that would save both the numbers and cost of arbitrations related to the BRI.[108]

Analysis of the Emerging Legal Norms and a Conceptionalisation of the Regulation of Disputes' (2018) 9 *Beijing Law Review* 87

[104] Mauro Rubino-Sammartano, 'The Belt and Road Initiative and Arbitration' (2021) 12 Open Journal of Social Sciences 1

[105] PRNewswire, 'Launch of ArbiLex Brings AI and Predictive Analytics to International Arbitration' (5 August 2019), See also 'Arbitration Tech Toolbox: Looking Beyond the Black Box of AI in Disputes over AI's Use' 'ADR in the Blockchain Ecosystem: A Primer' Kluwer Arbitration Blog (14 December 2023)

[106] Tomas Hanák and others, 'New Technologies in International Arbitration: A Game-Changer in Dispute Resolution?'(2023) 37(6) International Journal for the Semiotics of Law 2047

[107] American Review of International Arbitration, 'Predictive Analytics and Diversity in International Arbitration: Friends or Foes?' Columbia Law School (2024), See also Charles Russell Speechlys, 'Arbitration Remains Attractive for Digital Disputes In 2024' A China-led comprehensive dispute settlement mechanism for the Belt and Road Initiative: is it too early?: Asia Pacific Law Review: Vol 29, No 1 Expert Insights (24 January 2024); Market Reports World, 'Digital Future Of Arbitration Law Market Size & Growth, Forecast [2033]' (Market Analysis, 2024)

[108] Jun Hong Tan, 'Blockchain "Arbitration" for NFT-Related Disputes' SSRN Working Paper (1

The emergence of online platforms that facilitate arbitration in the development of infrastructure by their specialization to such cases demonstrates complexity and the emergence of specific technologies that are applied to arbitration.[109] Such platforms combine case management with document review, the testimony of experts and implementing awards in one digital ecosystem.[110]

8.2. The Sustainability Code: Designing Seamless Transitions Between Development and Environmental Justice

The inclusion of sustainable development principles in BRI arbitration shows the increasing demand in the international community about environmental and social responsibility in infrastructural construction.[111]The institutions specializing in arbitration are also coming up with the specialized modalities of settling sustainability disputes and integrating environmental proficiency in selecting arbitrators.[112]

New trends consist of the introduction of requirements of carbon neutrality to arbitration process as well as integrating United Nations Sustainable Development Goals in criteria of the arbitration award as well as the creation of environmental violation-specific remedies in infrastructure projects.[113]

June 2023), See also White & Case LLP, '2025 International Arbitration Survey: Arbitration and AI' (2025); Global Arbitration Review, 'Technology and Arbitration: Illuminating Your New Road Map' in The Asia-Pacific Arbitration Review (2025)

[109] International Bar Association, 'Technology and Artificial Intelligence: Reengineering Arbitration in the New World' (IBA Publications, 2024), See also DLA Piper, 'IA Meets AI – Rise of the Machines' Arbitration Matters (2023)

[110] 'Case Management Services in Arbitration: ICC Case Connect and SCC Systems' Kluwer Arbitration Blog (1 February 2024), See also 'VR and AR – The "Virtual" Future of Arbitration?' Daily Jus (15 April 2024)

[111] Ming Chi and Yuying Yan, 'Implementation of Belt and Road Investments and Sustainable Development Across Asia' in *Research Handbook on Investment Law and Sustainable Development* (Edward Elgar Publishing 2025) 473, See also J Shi, 'Aligning the BRI With Sustainable Development' (2023) 57 Journal of World Trade 6

[112] JA Berlie, 'The Belt and Road Initiative and Arbitration' (2021) 12 Open Journal of Social Sciences 1

[113] Jian Shi and Fei Li, 'Aligning the BRI with Sustainable Development: A Regulatory Framework

The expansion of the arbitration practice to meet the requirements of considering sustainability can be examined as a core change in dispute resolution ideology, which does not stop on BRI projects only, and affects the global trends of international arbitration at large.[114] These trends indicate the increasingly recognizable view that arbitration has to resolve the entire systems of confrontations relating to large-scale infrastructural investments.[115]

8.3. From Patchwork to Powerhouse: Legal Harmonization as the Engine of Regional Integration in the 21st Century

On-going effort by countries of Southeast Asia to integrate and harmonize their development will bear heavily on the future of BRI arbitration.[116] More efficient dispute resolution of cross-border infrastructure projects may be realised by the ability to develop common standards of arbitration, procedures, and processes and enforced by the member states of the ASEAN.[117]

New developments comprise the setting up of regional programs to certify arbitrators, the nature of emergency arbitrations and it has created of common standards to regard the arbitration awards and enforcing them.[118] These initiatives highlight concerted regional efforts on dealing with issues posed by BRI development through opportunities.[119]

The momentum of the formation of regional arbitral networks and harmonization

and Its Implementation' (2023) *Journal of World Trade* 57(6).

[114] 'China's Role in Global Arbitration and International Law' (Law.asia, 2023)

[115] 'The Belt and Road Initiative 2025 | China' (CDR News, May 2025)

[116] Asia Pacific Law Review, 'Commercial arbitration in Asia: legal developments and regional dynamics from an ASEAN perspective' (2025) 33 Asia Pacific Law Review 1

[117] Yi Tang, 'Charting a New Legal Order: ASEAN's Arbitration Reform in Taming the 'Unruly Horse' of Public Policy Exception', SSRN Working Paper (12 June 2024)

[118] 'SIAC Rules 2025: Breaking New Ground in Emergency Arbitration with Protective Preliminary Orders', Kluwer Arbitration Blog (6 January 2025)

[119] Carnegie Endowment for International Peace, 'How Has China's Belt and Road Initiative Impacted Southeast Asian Countries?' (December 2023)

arrangements among arbitral institutions has shown how dispute resolution has evolved from a nationally based service to a fully integrated regional system that has the capacity to respond to the transnational nature of contemporary infrastructure development.[120]

THE LAW ISN'T STATIC—NEITHER ARE WE: LEGAL PRACTICE AT THE CROSSROADS OF REVOLUTION AND RESPONSIBILITY

9.1. The Mind Behind the Mandate: Rethinking Expertise in the Making of an Arbitrator

The sophistication of BRI disputes has established new demands on the knowledge of the arbitrators that go beyond the skills of traditional commercial arbitration.[121] Arbitrators should have technical experience in infrastructure development and know regulatory issues in various jurisdictions and cultural competencies in disputes across borders, who are modern BRI arbitrators.[122]

This is the reason why modern arbitrary training programs have been developed for BRI arbitrators, as it can be said that the classical education in law is not quite enough to cover normative, technical-regulatory, and cultural peculiarities of arbitration on infrastructure problems.[123] Such programs are mixed with legal, technical and cultural training to develop multifaceted competencies of the arbitrator.

Recent developments such as the introduction of arbitration as a specialization in legal education, creating mandatory continuing education standards on arbitrators dealing with BRI disputes and the formation of special arbitrator panels with simultaneous greater technical expertise have also occurred.[124]

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[120] LSE IDEAS, 'China's Belt and Road Initiative (BRI) and Southeast Asia', (LSE Report, 2024), See also CARI ASEAN, 'Legal issues and implications of the BRI' in China's Belt and Road Initiative (BRI) and Southeast Asia Publication (30 October 2018)

[121] 'Drafting Effective Arbitration Clauses for the Belt & Road Initiative' (CDR, 28 March 2025)

[122] 'Annual Plan 2024', Chartered Institute of Arbitrators (CIArb, 2024)

[123] 'Navigating BRI Disputes: Key actors and practical strategies' (CDR, 28 March 2025)

[124] Weixia Gu, 'China's Modernization of International Commercial Arbitration and Transnational

9.2. Adaptive Advocacy: The Silent Revolution in Legal Counsel Competency

Lawyers handling cases in BRI arbitrations are required to gain more of such competencies in various spheres such as infrastructure law, cross-border regulation compliance as well as international project financing law. In BRI dispute-settlement areas the conventional distinctions amongst commercial law, administrative law and international law are becoming less distinct.[125]

The emergence of dedicated BRI-related arbitration practice in law firms is a factor which reflects the increased complexity and commercial value of infrastructure-related disputes.[126] Such practices combine the experience of several legal fields and many times incorporate technical experts capable of handling the issues of engineering, environment and financial problems that come up as part of such cases of arbitration of complex infrastructure.

More recently, there has been the formation of specialised BRI dispute resolution teams, the creation of specialised due diligence courses on infrastructure arbitrations, and establishment of multidisciplinary law firms incorporating legal skills, technical skills and cultural knowledge.[127]

9.3. Code Red for Institutions: The Missing Link in Global Adaptation Protocols

Southeast Asian arbitration institutions are still having to adjust their processes, venues, and services to become BRI-ready.[128] Such adjustments have been made in the form of

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Legal Order' (2024) *UC Irvine Journal of International, Transnational & Comparative Law* 9 110, See also 'Why HKIAC for Belt and Road Disputes' (Hong Kong International Arbitration Centre, 2025)

[125] Doug Jones and Janet Walker, 'Resolving Infrastructure Disputes: The Interplay between International Commercial Courts and International Arbitration' (2023)

[126] Clifford Chance, 'English Law and International Arbitration for China's Belt and Road' (2019)

[127] CDR, 'Navigating BRI disputes: key actors and practical strategies' (28 March 2025)

[128] Norton Rose Fulbright, 'HKIAC's 2024 Administered Arbitration Rules (effective on 1 June 2024): Key Points and Implications on Arbitral Proceedings' (Knowledge Publication, 2024), See

formulation of extended case management procedures, improved technological services and increased infrastructure to accommodate big cases involving multiple parties.[129] The creation of specific divisions of infrastructure arbitration in large arbitration centres is an indication of the institutional level in acknowledging BRI disputes as a particular area of expertise and process.[130] Such divisions could have a technical advisory panel, case management teams specializing in certain cases and advanced technology reserves.

There could be further incorporation of technology, development of more institutions to provide international cooperation mechanisms, and devising specific processes to discuss new types of BRI disputes, such as those related to cybersecurity, technology transfer, and climate adaptation.[131]

CONCLUSION

Belt and Road Initiative has caused a game changer in the arbitration world across Southeast Asia which has caused unmatched challenges and opportunities and has been redefining dispute resolution practice all over the continent.[132] Whether it is the

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also Mayer Brown, 'Developments in Arbitration in APAC: The SIAC Rules 2025 and HKIAC's Latest Practice Note' (28 April 2025)

[129] Global Arbitration Review, 'Running a marathon: the evolution of investment disputes in the APAC region and anticipated trends' in The Asia-Pacific Arbitration Review (2026), See also WilmerHale, 'SIAC Rules Come Into Effect On 1 January 2025' (7 January 2025); Asialaw, 'Arbitration of BRI disputes: Singapore's burgeoning role' (Legal Analysis, 2024)

[130] Cooley LLP, 'The Main Institutions of International Arbitration' (Legal Insights, 31 July 2023), See also Global Arbitration News, 'Comparative Chart of International Arbitration Rules' (8 January 2025); Carnegie Endowment for International Peace, 'How Has China's Belt and Road Initiative Impacted Southeast Asian Countries?' (Policy Analysis, December 2023)

[131] Hong Kong International Arbitration Centre, '2024 Administered Arbitration Rules'(HKIAC Publications, 2024), See also Ashurst, 'International arbitration: Which institution?' (Quick Guide, 2024); 'The Belt and Road Initiative: A Key Pillar of the Global Community of Shared Future' Third Belt and Road Forum for International Cooperation (10 October 2023); 'The Role of Arbitral Institutions in Cybersecurity and Data Protection in International Arbitration' Kluwer Arbitration Blog (24 November 2020)

[132] Patrick M Norton, ‘China’s Belt and Road Initiative: Challenges for Arbitration in Asia’ (2018)

infrastructure problems facing Myanmar or the high-speed rails in Indonesia, the practice of BRI disputes has inspired advancements in arbitration practices, institutions, and many other things that have become global far beyond the Chinese infrastructure investment scope.[133]

The history of the development of institutional arbitration centres, legal culture and procedural innovations reported on in this study shows how Southeast Asian legal systems have responded and adapted to meet new demands in dispute resolution. It is contended that arbitration is one of the most important ways of international commercial dispute resolution in economically integrated Asia within the BRI, which is symptomatic of the core position of arbitration in providing cross-border infrastructure development.[134] The creation of special arbitration institutions, technology transfer and improving the cooperation of institutions is moving towards a paradigm shift in the traditional commercial arbitration to an integrated and expanded infrastructure dispute resolution that can withstand the multidimensional technical, regulatory and cultural issues posed to cross-border mega-projects. Such innovations have a wide-ranging implication, not only to BRI disputes but also to the practice of arbitration in Asia and the rest of the world. [135]

Nonetheless, there are still major predicaments concerning the sovereign immunity systems, enforcement systems and cross-cultural dispute resolution. The solution to these problems will demand further collaboration between the arbitration institutions, the practitioners of the law and the governments of various jurisdictions. The effectiveness of these endeavours shall decide whether the issue of arbitration can remain a good mechanism for resolving the conflicting issues, which can always arise

13(1) U Pa Asian L Rev 85

[133] 'Proposed dispute settlement mechanism for BRI disputes along the Maritime Silk Road' (CDR, 28 March 2025), See also Alessandro Albana and Antonio Fiori, 'China and the BRI: Challenges and Opportunities for Southeast Asia' in Silvia Menegazzi and Filippo Boni (eds), Core Studies on China (2021) 150

[134] 'Navigating BRI Disputes: Key Actors and Practical Strategies' (CDR, 28 March 2025)

[135] Norton Rose Fulbright, 'Belt and Road Initiative—Sovereign Immunity and Enforcement' (Norton Rose Fulbright, 5 August 2019)

during the large-scale development of infrastructures.

The future of the BRI arbitration in Southeast Asia will depend on the continued technological advancements, incorporation of sustainability and regional integration, which ventilate the changing phenomenon of international dispute resolution.[136] The experience in BRI arbitration will relevantly shape general trends in international arbitration and consequently impart beneficial inputs in handling multiple problems across national boundaries in a more interdependent global economy.[137]

The arbitration schemes for handling BRI disputes that BRI will entail as it increasingly evolves and expands across Southeast Asia will therefore gain even greater significance in enhancing international economic collaboration and in guaranteeing the successful resolution of disputes that are bound to dominate the larger transnational development projects.[138] The effectiveness of these mechanisms will be far-reaching in the future development of infrastructures in Asia and beyond.

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[136] Mauro Rubino-Sammartano, 'The Belt and Road Initiative and Arbitration' (2021) 12 Open J Soc Sci

[137] RAA Raslan, 'Climbing up the Ladder: Technology Transfer-Related Dispute Resolution in China's Belt and Road Initiative' (2024) 20 Utrecht L Rev 122

[138] SSRN, 'Arbitration and Dispute Resolution Mechanisms in the Belt and Road Initiative: Legal Challenges and Opportunities' (April 2024)

Revisiting the Case for Family Wealth Arbitration: A Case for Legislative Reform Inspired by the Swiss TEF Rules

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John is a Fellow of the Asian Institute of Alternative Dispute Resolution (AIADR) and a trainer in mediation advocacy and arbitration. He serves with a number of esteemed institutions, including Singapore Ministry of Law, World Intellectual Property Organization (WIPO), Zhuhai International Court of Arbitration (China), AIAC, AIADR, International Chamber of Commerce (ICC) Singapore as well as the Consumer Association of Singapore.

His areas of interest span international commerce, intellectual property, and sustainability. He has authored over a dozen publications, including his latest co-authored book, ADR: The Future of Dispute Resolution.

John is currently a visiting professor at Universitas Brawijaya, Indonesia, and an adjunct professor at Renmin University, China. He contributes regularly to peer-reviewed journals both as an author and member of editorial boards.

Previously, he served as Chief Executive Officer of a Chinese state-owned enterprise—a joint venture between the Jilin Provincial Government and a subsidiary of Temasek Holdings (Singapore's sovereign wealth fund).

Abstract

Around 60% of family business failures stem from unresolved conflicts, fuelling the "Three-Generation Curse"—only 30% survive past the founding generation, costing Asia over USD 1 trillion annually. In Malaysia and Singapore, disputes often rely on informal resolutions or lengthy litigation, hindered by limited arbitrability of trust, estate, and foundation (TEF) matters due to public policy constraints and widespread "ADR illiteracy", particularly regarding arbitration. This paper argues for a critical legislative shift to adopt more effective, tailored dispute resolution frameworks for family wealth, drawing inspiration from the advanced Swiss TEF Rules framework. Adopting such a robust framework would significantly mitigate business disruptions, delays and long-term damage to family relationships by offering a unified, private forum, promote more efficient use of court and legal resources by reducing judicial oversight, and counter the pervasive negative economic and social impacts of perennial family conflicts.

1. Introduction

1.1 Family businesses and wealth

Family businesses, where family, ownership, and management overlap, make major economic contributions but face distinct challenges.[1] Managing internal relationships, addressing family conflict, and responding to market pressures are key for long-term survival.[2]

1.1.1 Economic significance of family businesses

[1] Pascual Berrone, Cristina Cruz, and Luis R. Gomez-Mejia, 'Socioemotional Wealth in Family Firms' (2012) 25 *Family Business Review* 258.

[2] Jonas Soluk, Nadine Kammerlander, and Alfredo De Massis, 'Exogenous Shocks and the Adaptive Capacity of Family Firms: Exploring Behavioral Changes in Response to COVID-19' (2021) 12 *Journal of Family Business Strategy* 100452.

Family businesses are a cornerstone of the global economy, representing approximately 70% of businesses worldwide.[3] This significant presence translates into substantial contributions to both global gross domestic products ("GDP") and employment. In Asia specifically, family enterprises are particularly dominant, accounting for more than 70% of GDP and 60-80% of employment across key economies such as Indonesia, Thailand, and Malaysia,[4] highlighting their economic impacts.

A distinctive characteristic of family-owned enterprises is the simultaneous management of external market dynamics and internal conflicts that emerge from the complex interrelationship between family and business systems.[5] In contrast to their non-family counterparts, these businesses frequently prioritize socioemotional wealth (SEW) nonfinancial assets such as family governance, interpersonal relationships, and enduring legacy over exclusive financial objectives.[6] Such SEW considerations typically persist unless the continuity of the business is at risk.[7]

Within family firms, members often fulfil both ownership and managerial responsibilities. This duality may give rise to disagreements regarding the distribution of resources, formulation of strategies, and succession processes due to diverging interests. Escalating conflicts can undermine the preservation of socioemotional wealth, potentially inflicting substantial harm on both the family unit and the business organisation.[8]

1.1.2 The "Three-Generation Curse" and its damage to family and the economy

[3] 'PwC's 11th Global Family Business Survey: Transform to Build Trust' (2023, PwC), available at <https://www.pwc.com/familybusinesssurvey> (accessed 29 June 2025).
[4] PwC (fn 3).
[5] Soluk, Kammerlander and De Massis, 'Exogenous Shocks and the Adaptive Capacity of Family Firms: Exploring Behavioral Changes in Response to COVID-19' (fn 2).
[6] Berrone, Cruz and Gomez-Mejia, 'Socioemotional Wealth in Family Firms' (fn 1).
[7] Pramodita Sharma, James J. Chrisman, and Jess H. Chua, 'Predictors of Satisfaction with the Succession Process in Family Firms' (2003) 18 *Journal of Business Venturing* 667.
[8] Sharma, Chrisman and Chua, 'Predictors of Satisfaction with the Succession Process in Family Firms' (fn 7).

Family businesses, though important to the economy, often experience challenges related to continuity beyond the founding generation. Studies have found that globally, only 30% of family firms continue through generational transitions.[9] This issue becomes more prominent as businesses move from founder-led organizations to sibling partnerships and eventually to broader "cousin consortiums", which can lead to divided ownership and decision-making.[10] As relationships change across generations, there may be less commitment, leading to succession-related disagreements and differing strategic directions.[11]

A significant share of family business failures–approximately 60%–is linked to unresolved family conflicts.[12] These dynamics affect not only business survival but also have economic impacts. In Asia, generational changes in family businesses are associated with reduced innovation, decreased investment, and inefficiencies, resulting in estimated losses exceeding USD 1 trillion per year.[13]

Disputes occurring in the regional area exemplify the impact of unresolved family conflict. In Singapore, the Yeo Hiap Seng's dissolution, a once-thriving food and beverage giant, culminated in its eventual dissolution and delisting after decades of protracted ownership battles among the founding family's descendants. Similarly, in Malaysia, the See brothers and Kian Joo Can Factory's feud, a leading packaging manufacturer, also involving a battle for control that created business uncertainty and

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9 Thomas M. Zellweger, Robert S. Nason, Mattias Nordqvist, and Candida Brush, 'Why Do Family Firms Strive for Nonfinancial Goals? An Organizational Identity Perspective' (2012) 37 *Entrepreneurship Theory and Practice* 229.

10 Ivan Lansberg, 'The Succession Conspiracy' (1988) 1 *Family Business Review* 119; Sharma, Chrisman and Chua, 'Predictors of Satisfaction with the Succession Process in Family Firms' (fn 7).

11 Michael Allio, 'Family Businesses: Their Virtues, Vices, and Strategic Path' (2004) 17 *Strategy & Leadership* 24; Sharma, Chrisman and Chua, 'Predictors of Satisfaction with the Succession Process in Family Firms' (fn 7).

12 Peter Jaskiewicz and W. Gibb Dyer Jr, 'Addressing the Elephant in the Room: Disentangling Family Heterogeneity to Advance Family Business Research' (2023) 47 *Entrepreneurship Theory and Practice* 3; Kellermanns et al., 'Conflict in Family Firms' (2018) 32 *Journal of Family Business Strategy* 1.

13 PwC (fn 3).

affected the company's strategic direction, highlight how ownership disputes can impact business continuity.

The relevance of these cases to the paper's topic is clear and direct–they exemplify how the absence of a pre-agreed, private, and efficient dispute resolution mechanism, forces family conflicts into public, adversarial litigation. Delays in leadership transitions can create power vacuums and leave successors unprepared,[14] while shifts away from traditional sectors by younger generations may result in business closures and loss of employment and expertise.[15] These cases are, in effect, the evidence of the real-world problem and the urgent need for legislative reforms this paper advocates.

1.1.3 Current status and issues of formal family governance and dispute resolution mechanism

Many family businesses struggle to establish robust governance and conflict resolution frameworks. PwC's survey shows that only 65% have formal governance structures, and just 19% use formal dispute resolution mechanisms.[16]

Analysis of industry case studies and legal commentary, which often draw on qualitative findings, indicate that most families rely on informal or traditional methods, often leading to inefficiencies and litigation. While some see strong relationships as sufficient, the absence of formal procedures frequently escalates disputes to court.[17] Internal family conflicts undermine trust throughout the business, with a lack of awareness around alternative dispute resolution (ADR), especially arbitration being a major barrier. This "ADR illiteracy" worsens ownership conflicts, especially in third-

[14] Sharma, Chrisman and Chua, 'Predictors of Satisfaction with the Succession Process in Family Firms' (fn 7).
[15] Zellweger and others, 'Why Do Family Firms Strive for Nonfinancial Goals? An Organizational Identity Perspective' (fn 9).
[16] PwC (fn 3).
[17] Goh RDE and Lee JCG, *ADR: The Future of Dispute Resolution* (2021, Singapore).

generation cousin consortiums,[18] and is heightened in Asia due to limited enforceability of arbitration.

Despite 83% of Asian family leaders valuing harmony, 58% are unaware of arbitration as a conflict resolution option. Persistent dependence on informal approaches exposes family businesses to systematic risks and threatens their longevity and economic impact.[19]

1.2 Issue of arbitration applicable to family trust, estate, and foundation matters

The arbitrability of family disputes, particularly those concerning trusts, estates, and foundations ("**TEF**"), is subject to significant limitations primarily due to public policy considerations. While arbitration offers numerous benefits such as efficiency, confidentiality, and the potential to reduce hostility, its application in these inherently sensitive and often public-interest laden areas is carefully circumscribed by jurisdictional legal frameworks. The extent to which TEF matters can be resolved through arbitration varies between jurisdictions like Malaysia and Singapore, reflecting differing legal philosophies and public policy priorities. Generally, matters requiring state intervention, such as child welfare or probate sanctions, are considered non-arbitrable, while disputes grounded in contract law or commercial elements may be eligible for arbitration if party autonomy is preserved and public policy is not violated.[20]

1.3 Methodology

This paper applies a doctrinal and comparative legal research methodology. The analysis is based on a critical review of primary legal sources, including statutes, case law, and arbitration rules from Malaysia, Singapore, and Switzerland, as well as

[18] Kelin E. Gersick and Neus Feliu, 'Governing the Family Enterprise' in Leif Melin, Mattias Nordqvist and Pramodita Sharma (eds), *The SAGE Handbook of Family Business* (2014, Sage) 196.

[19] PwC (fn 3).

[20] Tang Hang Wu and Paul Tan, 'Singapore: Trust Disputes and Arbitration' in *Oxford Arbitration of Trust Disputes* (2016, OUP) ch 15.

secondary sources such as academic journals, industry reports, and expert legal commentary. The comparative analysis is involved to juxtapose the legal frameworks of Malaysia and Singapore against the advanced Swiss model, with the aim of deriving concrete policy recommendations for legislative reform.

2. Legal Barriers to Arbitration in TEF Disputes

2.1 In Malaysia

In Malaysia, the arbitrability of family disputes, specifically those related to TEF, is stricter compared to Singapore, with many core matters reserved for the courts due to public policy:

a. Family Law Matters: Matrimonial disputes, such as divorce, are non-arbitrable under the Law Reform (Marriage and Divorce) Act 1976, as they fall under public policy exclusions for arbitration.
b. Trust Disputes: While commercial trusts are generally arbitrable in Malaysia, family or charitable trusts involving public interest are considered non-arbitrable. This distinction arises from the Arbitration Act 2005, which stipulates that matters contrary to public policy cannot be settled by arbitration.
c. Estate/Probate Matters: Disputes concerning will validity, executor removal, and distribution are non-arbitrable in Malaysia, as they fall under the High Court's exclusive probate jurisdiction. Courts retain exclusive probate jurisdiction. However, contractual disputes, such as those arising from inheritance agreements, may be arbitrable. The Arbitration Act 2005 restricts arbitration where “the subject-matter is not capable of settlement by arbitration”.
d. Foundations: For Labuan Foundations, disputes involving founders or beneficiaries are non-arbitrable if they infringe on the court's supervisory role, such as issues related to foundation mismanagement.

Additionally, Malaysia regulates a mechanism for the resolution of family disputes in estate administration by Amanah Raya Berhad ("**ARB**"). Estate administration in Malaysia is a complex process managed by ARB handles movable property valued at RM600,000 and below.[21] Challenges in Estate Administration include family disputes arising from:

a. Dissatisfaction with inheritance portions.
b. Disagreement with the personal representative.
c. Unresolved past problems.
d. Greediness for property.[22]

The presence of such disputes significantly hinders the smooth administration of deceased estates, potentially leading to adverse implications. These negative impacts include:

a. Delays in estate administration, causing beneficiaries, possibly across several generations, to die or go missing, complicating the process of tracking and distributing portions.[23]
b. Increased risk of disappearance or destruction of deceased assets.[24]
c. Theft of relevant documents by uncooperative family members.[25]
d. In extreme cases, escalation to violence, including murder, due to property-related conflicts.[26]

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[21] Muhammad Amrullah Drs Nasrul and others, 'Resolution of Family Disputes in Administration of Estate by Amanah Raya Berhad' (2023) 8(1) *Journal of Shariah Law Research* 71.
[22] ibid.
[23] ibid.
[24] ibid.
[25] 'Diversify Your Legacy: The Importance of Family Foundations When Trust Crumbles in Malaysia' (2025, Kempel) available at: <https://simrahman.com/estate-planning-lawyer-in-malaysia/diversify-your-legacy-the-importance-of-family-foundations-when-trust-crumbles-in-malaysia/> (accessed 2 July 2025).
[26] Muhammad Amrullah Drs Nasrul and others, 'Resolution of Family Disputes in Administration of Estate by Amanah Raya Berhad' (fn 21).

Despite its extensive experience, ARB's current method for resolving family disputes in estate administration primarily relies on discussion and negotiation during meetings with beneficiaries. However, this approach has weaknesses:

a. Lack of specific procedures or standardized methods for dispute resolution.[27]
b. Absence of specific instructions and guidelines for conducting negotiations.
c. Shortage of qualified personnel to conduct proper meetings.
d. Repeated discussions when disputes remain unresolved, often due to the ego and lack of cooperation from family members.

The reliance on ad hoc methods can lead to litigation,[28] which is often pursued by wealthier families and is characterized by high costs and an adversarial nature that can further damage family relationships. There is a misconception that families should resolve emotional estate disputes internally without external involvement.

To address these issues and enhance resilience, it is suggested that ARB implement mediation as a formal part of its practice. Mediation offers significant benefits for resolving family disputes in estate administration:[29]

a. High degree of privacy and confidentiality, as information remains within the mediation session.[30]
b. Encourages communication among disputing family members, helping to repair broken relationships.[31]
c. Allows parties to craft their own solutions, fostering satisfaction and reducing dissatisfaction with the outcome.[32]
d. Faster resolution of disputes.[33]

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[27] ibid.
[28] ibid.
[29] Muhammad Amrullah Drs Nasrul and others, 'Resolution of Family Disputes' (2023) 8(1) *Journal of Shariah Law Research* 80.
[30] ibid.
[31] ibid 81.
[32] ibid 82.
[33] 'Diversify Your Legacy: The Importance of Family Foundations When Trust Crumbles in

e. Repairs family bonding, providing an opportunity for family members to sit, listen, and discuss together.
f. A professional mediator can facilitate a favorable environment for preparing mutually agreed settlement agreements.

2.2 In Singapore

Singapore's legal position on arbitrating family disputes, including TEF matters, is more progressive than Malaysia's regarding commercial elements, but still does not explicitly recognize such disputes as arbitrable under statute or broad case law for all family-related aspects:

a. General Rule on Family Disputes: Similar to Malaysia, family law matters such as divorce and child custody are non-arbitrable in Singapore, as they involve sovereign functions of the state and public policy considerations. The Family Justice Act 2014 and Women's Charter emphasize judicial supervision in family and succession matters.[34]
b. Trust Disputes: Commercial trusts are generally arbitrable in Singapore. Family trusts may be arbitrable if the disputes are contractual or commercial in nature, such as those related to a trustee's duties or the interpretation of trust deeds. Singapore's High Court has confirmed the arbitrability of trust disputes under the Arbitration Act, and arbitration clauses in trust deeds have been upheld for commercial disputes. However, disputes involving core family or guardianship rights are non-arbitrable. A key area of uncertainty is whether arbitration clauses in trust deeds can bind non-signatory beneficiaries, especially those who are unborn, incapacitated, or unascertained. This doctrinal uncertainty around the arbitrability of trust disputes is acknowledged in authoritative commentary.[35]
c. Estate/Probate Matters: Will validity, beneficiaries' entitlements, and executor

Malaysia' (fn 25).

[34] Family Justice Act 2014 (Singapore); Women's Charter 1961 (2020 Rev Ed, Singapore).

[35] Wu and Tan, 'Singapore: Trust Disputes and Arbitration' (fn 20).

appointments are generally non-arbitrable in Singapore, requiring court sanction. Probate jurisdiction is non-delegable and falls under the exclusive jurisdiction of the Family Justice Courts. However, ancillary issues, such as asset valuation, may be arbitrable if parties agree.

d. Foundations: The Arbitration (Amendment) Act 2023 in Singapore explicitly includes foundations as "body[s] corporate or unincorporate", making disputes related to them arbitrable unless contrary to public policy. While arbitration clauses can be included in foundations structured under the Companies Act or Charities Act, their enforceability is largely untested.[36]

Despite being more progressive, Singapore faces several barriers to broader arbitrability of TEF disputes:

a. No statutory recognition of arbitration clauses in unilateral instruments like wills or trust deeds.
b. Concerns that beneficiaries not party to arbitration agreements may not be bound.
c. Public policy concerns dictate that matters like probate, mental capacity, and family law require court oversight to ensure fairness and transparency.
d. The emphasis on judicial supervision in family and succession matters by existing legislation.

Despite the limitations on full arbitrability of TEF matters, the general benefits of family arbitration are widely recognized and encouraged in jurisdictions like Singapore as an alternative dispute resolution (ADR) mechanism for many family law disputes, aligning with goals of transgenerational resilience.[37]

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[36] 'Arbitration in Family Law' (July 2024, Law Gazette) available at: <https://lawgazette.com.sg/author/barbara-mills-kc/> (accessed at 10 August 2025).

[37] 'Comprehensive Overview of Trusts, Family Offices, and Investment Holding Companies' (3ecpa, 2025) available at: <https://www.3ecpa.com.sg/services/trust-services/comprehensive-overview-of-trusts-family-offices-and-investment-holding-

In conclusion, while Singapore is more progressive in recognizing arbitration for commercial aspects of trusts and foundations, both Malaysia and Singapore demonstrate a commitment to public policy limitations regarding core family law, probate, and guardianship rights in arbitration. Nevertheless, the overarching benefits of arbitration as an alternative dispute resolution mechanism are increasingly recognized as vital tools for resolving family conflicts efficiently, privately, and collaboratively, contributing significantly to the transgenerational resilience of family businesses by preventing protracted legal battles and preserving crucial socioemotional wealth.[38]

3. Hybrid-trust Foundation Structures

The evolution of wealth management and philanthropic endeavours has led to the adoption of sophisticated structures that blend the benefits of traditional trusts with those of foundations. These "hybrid trust-foundation" models offer robust solutions for asset protection, intergenerational wealth transfer, and the institutionalization of family values and philanthropic missions. While conceptually similar in their overarching goals, the specific implementation and legal frameworks for such hybrid structures vary significantly across jurisdictions, reflecting differing legal traditions and regulatory environments. This section provides an in-depth analysis of hybrid trust-foundation structures in Malaysia and Singapore, highlighting their common components, use cases, and presenting a comparative overview.

3.1 Malaysia's Model

Malaysia has developed distinct hybrid models that adeptly integrate private trusts with family foundations, providing a comprehensive framework for asset protection, flexible

companies/> (accessed 12 July 2025).

[38] 'Diversify Your Legacy: The Importance of Family Foundations When Trust Crumbles in Malaysia' (fn 25).

wealth distribution, and the establishment of multigenerational governance mechanisms. These structures are particularly favoured for their adaptability in addressing complex family wealth management needs.[39]

The common structural components of Malaysian hybrid models are primarily twofold:

a. A Private Trust ("Trust"), which serves as the foundational legal instrument for holding and managing family wealth. These trusts are typically established and governed under either the Trustee Act 1949 or the Labuan Trusts Act. Their primary utility lies in facilitating asset protection and enabling the discretionary distribution of wealth to beneficiaries, offering considerable flexibility in how assets are managed and disbursed over time.[40] This flexibility allows for dynamic adjustments to distribution strategies in response to changing family circumstances or economic conditions, ensuring the trust remains responsive to the evolving needs of the family.
b. A Family Foundation ("Foundation"), which complements the private trust by providing a more institutionalized framework. In Malaysia, family foundations can be formed under one of two key legislative frameworks:[41]
    i. The Labuan Foundations Act 2010, which governs offshore foundations. These foundations are highly regarded for their flexibility and confidentiality, making them an attractive option for international wealth planning and cross-border philanthropic endeavours. Their offshore nature provides additional layers of privacy and potential administrative efficiencies, aligning with the objectives of many high-net-worth families seeking a robust, yet discreet, vehicle for their long-term objectives.

[39] 'Diversify Your Legacy: The Importance of Family Foundations When Trust Crumbles in Malaysia' (fn 25).
[40] 'How to Use Foundations for Multi-Generational Wealth Transfer in Malaysia' (MLaw Institute, 2025) available at: <https://mlawinstitute.com/estate-planning/how-to-use-foundations-for-multi-generational-wealth-transfer-in-malaysia/> (accessed 12 July 2025).
[41] ibid.

ii. The Companies Act 2016, under which foundations can be established as a Company Limited by Guarantee ("CLBG")). CLBGs are commonly employed for philanthropic or governance purposes, providing a structured legal entity through which family values, charitable initiatives, or comprehensive governance principles can be formally institutionalized and pursued. Unlike share-capital companies, CLBGs do not have shareholders but rather members who guarantee a nominal sum in the event of winding up, making them exceptionally suitable for non-profit endeavours focused on enduring legacy rather than profit distribution.

The hybrid-use cases illustrate the synergistic functions of these components within the Malaysian context:[42]

a. The Trust component is primarily responsible for holding and managing family wealth, offering inherent flexibility and privacy in its operations. This ensures that assets are professionally managed, segregated from personal estates, and distributed according to the settlors' wishes while maintaining a degree of discretion over beneficiaries and distribution schedules, allowing for adaptability.
b. The Foundation (whether a CLBG or Labuan Foundation) serves to institutionalize governance, philanthropy, or family values. By establishing a foundation, families can create an enduring entity that transcends generations, ensuring that their collective vision, ethical principles, and charitable objectives are sustained and managed in a structured manner. This institutionalization is crucial for large or complex family groups, providing a formal structure for decision-making, succession planning, and coordinated philanthropic giving.

The integration often includes a Family Charter, a non-legally binding but critically

[42] 'Diversify Your Legacy: The Importance of Family Foundations When Trust Crumbles in Malaysia' (fn 25); 'How to Use Foundations for Multi-Generational Wealth Transfer in Malaysia' (fn 40).

important document that codifies the family's mission, principles for dispute resolution, and succession principles. While not a statutory requirement for the establishment of the legal entities, the Family Charter provides a moral and ethical compass for the family's interactions with its wealth and philanthropic activities, acting as a guide for future generations and significantly minimizing potential familial conflicts by pre-emptively outlining expectations and procedures.

3.2 Singapore's Model

Singapore, while recognized as a leading global wealth management hub, approaches the concept of hybrid structures with a distinct methodology, primarily due to its lack of a dedicated foundation statute. Despite this, Singapore effectively enables hybrid models through a sophisticated combination of trusts, Companies Limited by Guarantee (CLBGs), and Private Trust Companies (PTCs). This approach leverages existing robust legal frameworks to achieve similar outcomes in governance, wealth protection, and philanthropic endeavours, demonstrating the adaptability of its legal system.

The common structural components in Singapore's hybrid models are:

a. A Private Trust, which forms the core of wealth management and is governed by the Trustees Act (Cap. 337). These trusts are primarily utilized for wealth holding and distribution, offering a flexible mechanism for transferring assets to beneficiaries while maintaining confidentiality and control. The Singaporean trust framework is well-regarded internationally for its clarity, stability, and adherence to common law principles, making it a reliable choice for complex estate planning.
b. A Company Limited by Guarantee (CLBG), incorporated under the Companies Act 1967. Similar to Malaysia, Singaporean CLBGs are widely used to serve as a governance or philanthropic entity. They provide a formal, corporate structure for managing family affairs, implementing charitable initiatives, or overseeing collective business interests, distinct from the wealth-holding function of the trust.

This separation of functions contributes to robust governance and clear accountability.

c. A Private Trust Company ("PTC"), which is a specialized entity licensed under the Trust Companies Act (Cap. 336). The PTC is a critical feature in Singapore's hybrid landscape as it allows families to maintain direct control over the administration of their trusts.

Instead of appointing an independent professional trustee, a family can establish its own PTC to act as trustee for its trusts. This mechanism offers an enhanced level of family involvement and discretion in decision-making related to their trust assets, providing a unique blend of professional administration and familial oversight.

A Family Constitution, which is emphasized as a contractual document.[43] This foundational document plays a crucial role in outlining the family's values, principles for succession planning, and mechanisms for dispute resolution. While not a legally binding trust deed or a statutory instrument, the Family Constitution serves as a guiding framework for intergenerational harmony and shared vision, complementing the legal structures by providing a non-legal but highly influential governance layer that addresses familial dynamics and long-term objectives.

The hybrid uses cases in Singapore demonstrate the strategic interplay of these components:

a. The Trust functions as the primary vehicle for holding assets and facilitating flexible distribution. It offers the necessary legal framework for segregating assets from personal liability, managing them professionally, and distributing them according to predefined or discretionary terms, ensuring efficient wealth transfer across generations.

b. The PTC acts as the trustee vehicle with a family board, allowing family members to directly participate in and oversee trust administration. This eliminates the

[43] 'Comprehensive Overview of Trusts, Family Offices, and Investment Holding Companies' (fn 37).

need for external professional trustees, providing greater autonomy and control, which is often a key objective for affluent families seeking to retain influence over their legacy.

c. The CLBG serves as the governance or philanthropic arm, providing a corporate wrapper for non-commercial family objectives. This enables families to pursue their charitable objectives or institutionalize their governance principles through a recognized legal entity, offering transparency and a structured approach to their social impact.

d. The Family Constitution explicitly codifies the mission, values, and principles for dispute resolution. This document, while contractual rather than statutory, plays a vital role in guiding family decisions, promoting unity, and establishing clear protocols for addressing disagreements, thereby safeguarding the family's legacy beyond financial assets and fostering a cohesive family future.[44]

3.3 Comparative analysis of hybrid trust foundation structures between Malaysia and Singapore

The hybrid trust-foundation models adopted by Malaysia and Singapore reflect their distinct legal traditions and policy priorities, offering unique advantages and limitations in family wealth governance.

Malaysia's framework is anchored in the Labuan Foundations Act 2010, which provides offshore flexibility, and the Companies Act 2016, which facilitates domestic philanthropic foundations through Companies Limited by Guarantee (CLBGs). Trusts are governed by either the Trustee Act 1949 or the Labuan Trusts Act, creating a dual system for onshore and offshore wealth management. In contrast, Singapore, despite lacking a dedicated foundation statute, leverages its robust corporate and trust laws to achieve similar ends. The Companies Act 1967 enables CLBGs for governance, while the Private Trust Companies (PTCs), allowing families to retain direct control over trust

[44] ibid.

administration. This divergence underscores Malaysia's statutory specialization versus Singapore's pragmatic reliance on existing instruments.

A critical distinction lies in the execution of family control. Malaysia's model implicitly vests oversight in the foundation structure, whether through Labuan entities or CLBGs, supplemented by non-binding Family Charters to codify governance principles. Singapore, however, explicitly empowers families through PTCs, which act as trustee vehicles with family-appointed boards. This eliminates reliance on external trustees—a feature absent in Malaysia's framework. Additionally, Malaysia's Labuan regime explicitly accommodates digital assets (e.g., cryptocurrency trusts), while Singapore's adaptability remains theoretical, with no documented use cases.

Table 1 Comparative Analysis of Hybrid Trust Foundation Structures in Malaysia and Singapore

Feature/Component	Malaysia	Singapore
Enabling Legislation for Trusts	Turstee Act 1949 or Labuan Trusts Act	Trustees Act (Cap. 337)
Dedicated Foundation Statute	Yes, through the Labuan Foundations Act 2010, offering an offshore option	No dedicated foundation statute
Foundation/Governance Entity	Family Foundation formed under the Labuan Foundations Act 2010 (offshore, flexible, confidential) or as a Company Limited by Guarantee (CLBG) under the Companies Act 2016	Company Limited by Guarantee (CLBG) incorporated under the Companies Act 1967 for governance or philanthropic purposes. Additionally, Private Trust Company (PTC)

	for philanthropic or governance purposes	licensed under the Trust Companies Act (Cap. 336) for family control over trust administration.
Key Hybrid Components	Private Trust, Family Foundation (Labuan or CLBG), Family Charter	Private Trust, Company Limited by Guarantee (CLBG), Private Trust Company (PTC), Family Constitution
Function of Trust Component	Holds and manages family wealth; offers flexibility and privacy	Holds assets; flexible distribution
Function of Governance Entity	Institutionalizes governance, philanthropy, or family values (via Foundation)	Governance or philanthropic arm (via CLBG). Trustee vehicle with family board (via PTC).
Core Governance Document	Family Charter, which codifies mission, dispute resolution, and succession principles	Family Constitution, a contractual document outlining values, succession, and dispute resolution
Family Control over Trust Administration	Implicitly managed through the setup of the Private Trust and Family Foundation. (A specific mechanism	Explicitly facilitated by Private Trust Company (PTC), allowing family board to oversee trust

	like PTC for direct family control is not explicitly detailed in the provided sources for Malaysia's trust administration beyond the foundation structure itself)	administration, thereby enabling direct family influence over trustee functions
Application for Digital Assets	Demonstrated capacity for integrating traditional and digital assets (e.g., cryptocurrency, NFTs) into regulated trust platforms (e.g., GamBit Group's H.A.T)	Not explicitly mentioned in the provided sources as a specific use case for Singapore's hybrid models, though general asset holding capability would imply adaptability
Overall Goal	Flexibility, asset protection, multigenerational governance	Wealth holding, distribution, governance, philanthropy, family control, outlining values, succession, dispute resolution

4. An Emerging Trend in Family Wealth Dispute Resolution

The approach to resolving family wealth disputes is changing, with arbitration increasingly being used as an alternative to court-based litigation for its potential

benefits. This method is being considered for its potential benefits in dealing with complex, multi-jurisdictional family wealth structures. To illustrate this trend and provide a model for reform, this paper examines the Swiss framework. Switzerland was chosen for this comparative analysis for three reasons: (a) it is the first major jurisdiction to explicitly address the arbitrability of Trust, Estate, and Foundation (TEF) disputes in its national legislation (the CPC and PILA), providing the statutory certainty that is notably absent in both Malaysia and Singapore[45]; (b) the Supplemental Swiss Rules for TEF represent the world's first comprehensive set of arbitration rules tailored specifically to the unique needs of family wealth conflicts; and (c) as a leading international financial centre, Switzerland's legal innovations are designed to attract and manage complex, cross-border wealth. The challenges it sought to solve with the TEF Rules–jurisdictional battles, lack of confidentiality, and enforceability concerns–are precisely the challenges faced by families with assets in or connected to Malaysia and Singapore.

Thus, the Swiss framework offers a mature "template" against which to evaluate the current limitations in Malaysia and Singapore and from which to form concrete policy recommendations.

4.1 Key features tailored for family wealth dispute resolution

The Swiss legal system has proactively developed a bespoke arbitration framework specifically designed for trust, estate, and foundation disputes, addressing limitations often encountered in other jurisdictions. This framework is rooted in explicit statutory support, where the Swiss Civil Procedure Code (CPC) and Chapter 12 of the Swiss Private International Law Act (PILA) expressly stipulate that their provisions apply mutatis mutandis to arbitration clauses contained in unilateral legal instruments or articles of association. This crucial legislative backing, effective from 1 January 2021, confirms the validity of unilateral arbitration clauses in trust, estate, and foundation

[45] Swiss Arbitration Centre, Supplemental Swiss Rules for Trust, Estate and Foundation Disputes ("**TEF Rules**") 2025.

matters under Swiss law, provided the arbitration seat is in Switzerland. Although trusts are not a native legal construct in Switzerland, the country recognizes foreign trusts, having ratified the Hague Convention on the Law Applicable to Trusts and their Recognition in 2007.[46]

The Supplemental Swiss Rules for Trust, Estate and Foundation Disputes (TEF Rules), effective from 1 July 2025, further refine this framework, specifically tailoring arbitration proceedings to the unique characteristics of TEF disputes. These disputes encompass a broad range of matters, including those arising:

a. Between heirs concerning estate division.
b. Between heirs and legatees regarding wills, including their validity.
c. Between spouses and children concerning a decedent's estate, particularly if matrimonial regimes are relevant.
d. Between heirs and executors.
e. Between beneficiaries of a foundation and the foundation's board.
f. Internally within a trust, between or among trustees, trustees and protectors, beneficiaries, or trustees/protectors and beneficiaries.
g. From inheritance contracts between parties.

Notably, the TEF Rules clarify that non-signatories of a unilateral arbitration clause, such as putative or disputed heirs and beneficiaries of foundations or trusts, are generally not considered third parties, implying they can be bound by such clauses. However, disputes with genuine third parties who are not bound by the arbitration clause (e.g., external creditors) are typically outside the scope of such clauses.[47]

Resolving TEF disputes through arbitration offers several compelling advantages:

a. Certainty and Predictability: For families with assets and heirs across multiple jurisdictions, arbitration provides a unified forum, circumventing lengthy and

[46] Swiss Civil Procedure Code (CPC); Swiss Private International Law Act (PILA).
[47] TEF Rules.

costly jurisdictional battles or parallel court proceedings in unfamiliar legal systems. This is especially pertinent for decedents with EU assets, where the European Succession Regulation allows for parallel court proceedings.

b. Customization and Expertise: Arbitration allows parties to tailor the proceedings to their specific needs, including selecting arbitrators with the requisite skills and experience in international inheritance or trust law, or specific language capabilities.
c. Confidentiality: Unlike public court proceedings, arbitration guarantees confidentiality, a feature of particular interest when significant assets or individuals of public interest are involved. Swiss Rules and TEF Rules explicitly ensure this confidentiality.
d. International Enforceability: Awards rendered under the Swiss framework are strongly enforceable due to Switzerland's adherence to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[48]

A cornerstone of the Swiss TEF framework is the provision of Model Arbitration Clauses specifically designed for incorporation into wills, trust deeds, and foundation statutes. These clauses cover essential elements such as the number of arbitrators, the seat of arbitration (typically Switzerland, though parties can agree otherwise), and the language of proceedings.

For trust deeds, the model clause is carefully crafted to bind not only the settlor and original trustee/protector but also successors and beneficiaries who accept any benefit, interest, or right from the trust. A similar mechanism is in place for foundation statutes, binding beneficiaries upon acceptance of benefits.[49]

To ensure fairness and due process, the TEF Rules also include provisions for the information, notification, and representation of "Entitled Persons" -- any individuals, born or unborn, whose rights or entitlements might be affected by the dispute. Parties

[48] ibid.
[49] ibid.

are responsible for identifying and informing these persons, allowing them an opportunity to have their interests represented. The Arbitration Court of the Swiss Arbitration Centre, which administers proceedings under the Swiss Rules, plays a role in this by notifying Entitled Persons of key documents and taking their comments and objections into account during the appointment of the arbitral tribunal. The Court may even appoint arbitrators itself if necessary.[50]

Despite its robust features, the Swiss framework acknowledges certain legal uncertainties and limitations, particularly regarding arbitral jurisdiction and the enforceability of awards based on unilateral arbitration clauses. Challenges may arise concerning heirs benefiting from statutory entitlements (e.g., forced heirship), who, in Switzerland, are generally bound only if they consent to the arbitration clause. Furthermore, international cases involving real estate may face challenges due to exclusive jurisdiction rules of the state where the property is located, and some jurisdictions may not permit the ouster of supervisory or trust courts by arbitration. Parties are therefore advised to carefully consider the applicable law and arbitration law in all relevant jurisdictions when drafting such clauses.[51]

4.2 Comparative analysis of Malaysia-Singapore against Switzerland

A comparative analysis of hybrid trust-foundation structures in Malaysia and Singapore against the Swiss TEF Rules framework reveals significant distinctions, particularly concerning family wealth dispute resolution:

Table 2 Comparative Analysis of Malaysia, Singapore, and Switzerland

Feature	Malaysia	Singapore	Switzerland (TEF Rules + CPC/PILA)

[50] ibid
[51] ibid.

Legal Vehicles	Trust (Trustee Act 1949), Labuan Foundation (Labuan Foundations Act 2010) or CLBG (Companies Act 2016)	Trust (Trustees Act), CLBG (Companies Act), optional PTC	Foreign-recognized Trusts + Swiss Foundations (Swiss Civil Code)
Foundation Law	Yes (Labuan Foundations Act)	No dedicated foundation law; uses CLBG	Yes (Swiss Civil Code, Art. 80-89bis)
Arbitration in Family Wealth Disputes?	Not recognized; probate and trust disputes are court-supervised	Not recognized; Family Justice Courts retain jurisdiction	Explicitly recognized via TEF Rules, Art. 178(4) PILA, Art. 358(2) CPC
Binding Non-Signatories (e.g., heirs)?	No statutory basis	Uncertain; not enforceable without consent	Yes, if arbitration clause is in a unilateral instrument and seat is in Switzerland
Model Arbitration	None officially available	None officially	Yes – tailored clauses for wills,

Clauses?		available	trusts, foundations under TEF Rules
Confidentiality	Possible via trust/foundation deeds	Possible via private governance	Guaranteed under Swiss Rules & TEF Rules
Judicial Oversight	Probate courts & Amanah Raya Berhad	Family Justice Courts	Minimal; Swiss courts assist only procedurally
Cross-border Enforceability	Limited; subject to public policy	Limited; subject to court discretion	Strong – awards enforceable under New York Convention (no commercial reservation)
Use of PTCs	Rare; not widely adopted	Common in family governance	Not typical; arbitrators appointed under Swiss Rules

Based on Table 2 above, below reflects the key observations from the comparative analysis between Malaysia and Singapore against Switzerland:

a. Legal Framework: Both Malaysia and Singapore offer flexible hybrid governance structures, typically combining trusts with foundations (Labuan) or companies limited by guarantee (CLBG). However, Switzerland possesses dedicated foundation law within its Civil Code.

b. Arbitration Recognition: This is the most striking difference. Switzerland has explicitly integrated arbitration into its legal framework for family wealth disputes, providing statutory support for binding arbitration in trust, estate, and foundation matters through the TEF Rules, CPC, and PILA. In contrast, neither Malaysia nor

Singapore officially recognizes arbitration for these disputes, which remain under the purview of court supervision (probate courts/Amanah Raya Berhad in Malaysia and Family Justice Courts in Singapore).

c. Binding Non-Signatories: Switzerland's framework uniquely allows arbitration clauses in unilateral instruments (like wills or trust deeds) to bind non-signatories, such as heirs or beneficiaries, provided the arbitration seat is in Switzerland. This is a critical advantage for family wealth planning, offering greater certainty. Malaysia lacks any statutory basis for this, and Singapore's position remains uncertain, requiring explicit consent for enforceability.
d. Model Clauses: Switzerland provides tailored model arbitration clauses, which simplify the drafting process and ensure compliance with the TEF Rules. No such official models exist in Malaysia or Singapore.
e. Confidentiality and Judicial Oversight: While confidentiality can be achieved to some extent in Malaysia and Singapore through private governance documents, it is explicitly guaranteed under the Swiss Rules and TEF Rules. Judicial oversight is minimal in Switzerland, primarily focusing on procedural assistance, whereas in Malaysia and Singapore, family wealth disputes are subject to direct court supervision.
f. Cross-border Enforceability: Swiss arbitral awards benefit from strong international enforceability under the New York Convention. Awards from Malaysia and Singapore, while potentially enforceable, are subject to limitations such as public policy considerations and court discretion, making cross-border enforcement less predictable.[52]

These differences highlight that while Malaysia and Singapore offer structural flexibility for wealth governance, they lack the statutory arbitration support, predictability, confidentiality, and robust international enforceability that the Swiss framework provides for family wealth dispute resolution. For families with cross-border assets or heirs,

[52] ibid.

anchoring dispute resolution in Switzerland via the TEF Rules can offer significant strategic advantages.[53]

4.3 How the Swiss template may be adopted to Malaysia and Singapore

The successful implementation of the Swiss TEF Rules framework presents a compelling template for Malaysia and Singapore to enhance their dispute resolution mechanisms for family wealth. Adopting elements of this template would require legislative reform and strategic development, addressing the current gaps identified in the comparative analysis.[54]

4.3.1 In Malaysia

Malaysia, with its existing Labuan Foundations Act 2010, already possesses a statutory framework for foundations, providing a potential starting point for incorporating arbitration provisions. To adopt the Swiss template, Malaysia could consider the following:

a. Statutory Recognition of Arbitration in Family Wealth Disputes: Enact specific amendments to the Trustee Act 1949 and the Labuan Foundations Act 2010, or introduce a new dedicated act, to explicitly recognize and validate arbitration as a binding mechanism for trust and foundation disputes. This would mirror the explicit provisions found in the Swiss CPC and PILA (e.g., Art. 178(4) PILA, Art. 358(2) CPC).
b. Binding Non-Signatories: Introduce legislative provisions that affirm the binding nature of arbitration clauses contained in unilateral instruments (such as wills, trust deeds, or foundation statutes) on non-signatory heirs and beneficiaries, provided that the seat of arbitration is in Malaysia. This would address the current

[53] ibid.
[54] Goh and Lee, *ADR: The Future of Dispute Resolution* (fn 17).

lack of statutory basis in Malaysia and significantly enhance the efficacy of family wealth planning.

c. Development of Specialized Rules and Model Clauses: Establish a specialized arbitration body or integrate within an existing one (e.g., Asian International Arbitration Centre, AIAC) the development and publication of supplemental rules for Trust, Estate, and Foundation disputes, akin to the Swiss TEF Rules. Accompanying these rules should be tailored model arbitration clauses for various family wealth instruments (wills, trust deeds, foundation charters), providing clear guidance for practitioners and families.
d. Enhancing Confidentiality: Legally guarantee confidentiality in family wealth arbitration proceedings, ensuring that privacy is a fundamental feature of the process, aligning with the Swiss model.
e. v)Redefining Judicial Oversight: Shift the default position from pervasive court supervision by probate courts and Amanah Raya Berhad to a more minimal, supportive judicial role, where courts intervene primarily for procedural assistance or enforcement, rather than substantive oversight. This would streamline dispute resolution and respect party autonomy.
f. Cross-border Integration: While Malaysia is a signatory to the New York Convention incorporating the above domestic legal changes would strengthen arguments for the international enforceability of Malaysian arbitral awards in family wealth matters, moving beyond the current "limited" enforceability subject to public policy.[55]

4.3.2 In Singapore

Singapore, while having a mature legal and financial services sector with common use of Private Trust Companies (PTCs) in family governance, lacks dedicated foundation law and explicit statutory support for arbitration in family wealth disputes. Adopting the Swiss template would involve:

[55] TEF Rules.

a. Legislative Reforms for Arbitration Recognition: Introduce explicit provisions within the Trustees Act and potentially a new dedicated statute for foundations or substantial amendments to the Companies Act (for CLBGs) to formally recognize and support arbitration for TEF disputes. This would move beyond the current court-centric jurisdiction of the Family Justice Courts.
b. Legal Basis for Binding Non-Signatories: Enact clear legal principles that allow arbitration clauses in unilateral instruments to bind non-signatory heirs and beneficiaries who accept benefits or rights from the wealth structure, without requiring their explicit, separate consent for each dispute. This would provide much-needed certainty where the current position is "uncertain".
c. Creation of Specialized Arbitration Rules and Model Clauses: The Singapore International Arbitration Centre (SIAC) could develop and implement a set of supplemental rules specifically for TEF disputes, drawing from the Swiss TEF Rules. These rules should be accompanied by comprehensive model arbitration clauses for wills, trust deeds, and foundation instruments, similar to those provided by the Swiss Arbitration Centre. This would provide a standardized and reliable framework for drafting such clauses.
d. Formalizing Confidentiality: Embed explicit guarantees for confidentiality in TEF arbitration proceedings within legislation or specialized rules, ensuring that family wealth matters are resolved discreetly.
e. Streamlining Judicial Oversight: Transition from the current extensive judicial oversight by the Family Justice Courts to a system where court intervention is minimal and primarily procedural, focusing on supporting the arbitration process rather than re-litigating the merits.
f. Leveraging Existing Sophistication: Given Singapore's common use of PTCs and its status as a hub for family governance, the adoption of a robust TEF arbitration framework would align with its sophisticated legal and financial services landscape. This would enhance its appeal as a preferred jurisdiction for

managing complex family wealth, especially for cross-border families.[56]

Ultimately, for both Malaysia and Singapore, adopting the Swiss template is not merely about replicating laws but about fundamentally shifting towards a more private, specialized, and efficient dispute resolution paradigm for family wealth.

This strategic move would bolster their positions as attractive jurisdictions for international wealth management by offering predictability, confidentiality, and strong enforceability in an increasingly complex global wealth environment. This could involve sketching a cross-border hybrid model, where governance remains anchored in Singapore or Labuan, but dispute resolution is explicitly channelled through a framework inspired by or directly utilizing Swiss arbitration.[57]

5. Conclusion and Policy Recommendations

Family businesses constitute a vital component of the global economy, making substantial contributions to gross domestic product (GDP) and employment worldwide.[58] Despite their pervasive influence, these enterprises grapple with distinct challenges rooted in the complex interplay between family dynamics, ownership structures, and management responsibilities. Notably, the simultaneous navigation of external market pressures and internal family conflicts presents a unique challenge for family-owned enterprises. Unresolved disputes, particularly those spanning generations, can severely undermine the continuity and economic impact of these businesses. The current reliance on informal or traditional dispute resolution methods in many regions, coupled with a lack of awareness regarding formal mechanisms like arbitration, often escalates family conflicts to costly and disruptive litigation. Therefore, a compelling case exists for amending national legislations to facilitate more effective and tailored dispute resolution

[56] Goh and Lee, *ADR: The Future of Dispute Resolution* (fn 17).
[57] TEF Rules.
[58] PwC (fn 3).

frameworks for family wealth and business matters, drawing inspiration from advanced models such as the Swiss framework.[59]

5.1 Mitigating business disruption and delays

Internal family conflicts pose a significant threat to the operational stability and long-term survival of family businesses. Disagreements over resource distribution, strategic formulation, and succession processes, stemming from the dual roles of ownership and management, can escalate to substantial harm for both the family unit and the business organisation.[60] A staggering 60% of family business failures are directly linked to such unresolved family conflicts.[61]

This vulnerability is particularly pronounced across generational transitions, commonly referred to as the "Three-Generation Curse", where only 30% of family firms globally continue beyond the founding generation.[62]

As businesses evolve from founder-led structures to sibling partnerships and subsequently to "cousin consortiums", issues such as divided ownership, differing strategic directions, and succession-related disagreements intensify.

Current approaches, heavily reliant on court-based litigation in jurisdictions like Malaysia and Singapore, often lead to protracted and costly proceedings. For families with complex, multi-jurisdictional wealth structures, court battles can result in lengthy and expensive jurisdictional disputes or parallel proceedings in unfamiliar legal systems.[63] In contrast, adopting legislative frameworks that support arbitration, such as the Swiss model, offers a unified forum that can circumvent these delays and disruptions.[64]

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[59] Zellweger and others, 'Why Do Family Firms Strive for Nonfinancial Goals? An Organizational Identity Perspective' (fn 9).
[60] PwC (fn 3).
[61] Sharma, Chrisman and Chua, 'Predictors of Satisfaction with the Succession Process in Family Firms' (fn 7).
[62] Jaskiewicz and Dyer (fn 12); Kellermanns et al (fn 12).
[63] TEF Rules.
[64] ibid.

Arbitration provides a tailored and confidential environment, allowing parties to select arbitrators with specific expertise in international inheritance or trust law, thereby streamlining the resolution process.[65] By formally recognizing arbitration for trust, estate, and foundation (TEF) disputes, national legislations can provide a mechanism that ensures certainty and predictability, directly mitigating the business disruptions and delays associated with traditional litigation.[66] This shift is crucial for preserving socioemotional wealth---nonfinancial assets like family governance and enduring legacy---which is often prioritised by family businesses unless continuity is at risk.[67]

5.2 More efficient use of court time and legal resources

The prevailing landscape in many jurisdictions, including Malaysia and Singapore, mandates that probate and trust disputes, as well as family wealth matters, primarily fall under the purview of court supervision. This reliance on the judicial system often leads to inefficiencies and increased litigation.[68] In Malaysia, probate courts and Amanah Raya Berhad oversee these matters, while in Singapore, the Family Justice Courts retain jurisdiction.[69] This extensive judicial oversight means that courts are frequently burdened with complex, often sensitive, family wealth disputes that could potentially be resolved through alternative means.

Conversely, an explicitly recognized arbitration framework, exemplified by the Swiss TEF Rules, significantly reduces the burden on public courts.[70] The Swiss system features minimal judicial oversight, with courts intervening primarily for procedural assistance or enforcement rather than substantive review of the merits of a dispute. This streamlined approach respects party autonomy and ensured that legal resources, both

[65] ibid.
[66] ibid.
[67] ibid.
[68] Berrone, Cruz and Gomez-Mejia, 'Socioemotional Wealth in Family Firms' (fn 1).
[69] Wu and Tan, 'Singapore: Trust Disputes and Arbitration' (fn 20).
[70] Family Justice Act 2014 (Singapore).

public and private, are utilised more efficiently.[71]

By shifting the default position from pervasive court supervision to a more supportive judicial role, legislative amendments would enable courts to focus on cases where judicial intervention is truly indispensable, rather than being the primary forum for all family wealth disagreements.[72] The current "ADR illiteracy", particularly concerning arbitration, contributes to ownership conflicts escalating to court, especially within third-generation cousin consortiums.[73] Formalizing and promoting arbitration through legislative backing would address this gap, thereby diverting a significant volume of family wealth disputes from the public court system, allowing for a more efficient allocation of judicial time and resources.

5.3 Negative economic and social impacts of such perennial family business disruptions

The enduring nature of family business disruptions, often stemming from unresolved internal conflicts, carries significant negative economic and social repercussions. Economically, family enterprises are a cornerstone of the global economy, accounting for approximately 70% of businesses worldwide and contributing substantially to global GDP and employment. In Asia, for instance, family businesses are particularly dominant, representing over 70% of GDP and 60-80% of employment in key economies like Indonesia, Thailand, and Malaysia.[74] However, the "Three-Generation" Curse underscores a critical vulnerability: the high rate of failure or significant decline across generational transitions. Studies indicate that a mere 30% of family firms globally continue beyond the founding generation, and 60% of these failures are directly attributable to unresolved family conflicts.[75]

These conflicts are not merely internal family affairs; they have cascading

[71] TEF Rules.
[72] ibid.
[73] ibid.
[74] PwC (fn 3).
[75] ibid.

economic consequences. In Asia, generational changes in family businesses are associated with reduced innovation, decreased investment, and widespread inefficiencies, culminating in estimated losses exceeding USD 1 trillion per year.[76] High-profile cases, such as the dissolution of Yeo Hiap Seng in Singapore due to ownership disputes, vividly illustrate how such conflicts can critically impact business continuity. Furthermore, delays in leadership transitions can create power vacuums and leave successors unprepared, leading to strategic drift and operational inefficiencies.[77] Beyond business continuity, shifts by younger generations away from traditional sectors may result in business closures, leading to a loss of employment and accumulated expertise within the economy.

Socially, persistent family conflicts undermine trust throughout the entire business structure. The erosion of trust, coupled with the absence of formal dispute resolution procedures, often forces disputes into public court, further exacerbating family tensions and potentially damaging the family's reputation.

The fundamental characteristic of family businesses to prioritise socioemotional wealth (SEW)---nonfinancial assets like family governance, interpersonal relationships, and enduring legacy---is directly threatened by escalating conflicts. Such disruptions inflict substantial harm not only on the business organisation but also on the family unit itself, diminishing their non-financial assets and potentially leading to deep-seated familial rifts.[78]

5.4 Broader economic gains of such amendments

To retain competitiveness, Malaysia and Singapore must legislate binding arbitration for TEF disputes, mirroring Switzerland's framework. Such strategic legislative reforms would fundamentally shift towards a more private, specialized, and efficient dispute

[76] ibid.
[77] Jaskiewicz and Dyer (fn 12); Kellermanns et al (fn 12).
[78] Sharma, Chrisman and Chua, 'Predictors of Satisfaction with the Succession Process in Family Firms' (fn 7).

resolution paradigm for family wealth, bolstering a nation's appeal as a premier jurisdiction for international wealth management.[79]

A key advantage of integrating comprehensive arbitration frameworks is the provision of certainty and predictability. For families with dispersed assets and heirs across multiple jurisdictions, a unified arbitral forum prevents costly and time-consuming jurisdictional battles, a significant benefit particularly for decedents with multi-EU assets.[80] Furthermore, arbitration guarantees confidentiality, a crucial feature for high-net-worth individuals and families seeking discretion in their financial and personal affairs, unlike public court proceedings.[81] The international enforceability of arbitral awards, especially under frameworks like the Swiss one, which benefits from adherence to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, provides a strong incentive for cross-border families to manage their wealth in jurisdictions offering such provisions.[82] This contrasts sharply with the limited and less predictable enforceability of awards from jurisdictions like Malaysia and Singapore, where public policy considerations or court discretion can impose limitations.[83]

By adopting legislative provisions that affirm the binding nature of arbitration clauses in unilateral instruments (e.g., wills, trust deeds) on non-signatory heirs and beneficiaries, countries like Malaysia and Singapore can significantly enhance the efficacy and certainty of family wealth planning.[84]

This critical feature, explicit in the Swiss framework, is currently lacking or uncertain in many common law jurisdictions. The development of specialized arbitration rules and model clauses for wills, trusts, and foundations, as seen in Switzerland, would further simplify the drafting process and ensure compliance, promoting a standardized and reliable framework for practitioners and families.

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79 TEF Rules.
80 ibid.
81 ibid.
82 ibid.
83 Wu and Tan, ‘Singapore: Trust Disputes and Arbitration’ (fn 20).
84 TEF Rules.

These amendments would solidify a nation's position as an attractive hub for complex family wealth management. By providing predictability, confidentiality, and strong international enforceability, such legal reforms directly enhance the jurisdiction's competitiveness.[85] This, in turn, fosters a more stable and predictable environment for family businesses, encouraging investment, innovation, and long-term growth. The longevity and continued prosperity of family businesses, underpinned by effective dispute resolution, directly translate into sustained contributions to national GDP, employment, and the preservation of valuable expertise, thereby contributing to robust and resilient national economies.[86] This strategic legislative shift is vital for adapting to an increasingly complex global wealth environment and ensuring the enduring economic impact of family enterprises.

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[85] ibid.

[86] Zellweger and others, 'Why Do Family Firms Strive for Nonfinancial Goals? An Organizational Identity Perspective' (fn 9).

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