

ARBITRATION IN CHINA AND ASEAN: ISSUES AND CHALLENGES

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ABSTRACT

This paper seeks to explore key issues and challenges impacting trade and business disputes between China and ASEAN countries. Arbitration has become increasingly popular as a dispute resolution mechanism in China and ASEAN, especially with the rise of cross-border transactions and foreign investment. However, there are several challenges and issues associated with arbitration in the region. One major challenge is the lack of uniformity and clarity in the legal framework. There is a diverse legal system in the region, and the inconsistency in the arbitration laws and regulations makes it difficult for parties to agree on the arbitration process. Another challenge is the shortage of qualified arbitrators in the region, which can lead to delays and affect the quality of arbitration awards. The cost of arbitration is also an issue, and the lack of transparency in the cost structure can create disputes between parties, further delaying the arbitration process. The lack of public awareness and education about arbitration is another challenge, which can lead to parties opting for traditional litigation methods. Finally, the lack of transparency in the arbitration process can create mistrust among parties, affecting the credibility of the process. Addressing these challenges will require collaboration between governments, arbitration institutions, and stakeholders in the region to ensure the effectiveness and efficiency of the arbitration process.

Keywords: China, ASEAN, Arbitration, Trade, Business, Regional Comprehensive Economic Partnership (RCEP)

INTRODUCTION AND CONTEXT

Arbitration is a dispute resolution process that provides parties with an alternative to litigation (Chan and Greenberg, 2016; Chen, 2021; Hoh, 2018; Tang et al., 2023). It is a confidential, flexible, and cost-effective method of resolving disputes. However, in China and ASEAN, arbitration faces several issues and challenges that can affect its efficiency and effectiveness.

The legal framework for arbitration in China and ASEAN is a major challenge. In China, the legal framework has undergone significant reform in recent years, but it still falls short of international standards. According to the China International Economic and Trade Arbitration Commission (CIETAC, 2022), the lack of clarity in the laws related to arbitration makes it difficult to enforce arbitral awards. The CIETAC (2022) has noted that “there are still a lot of uncertainties and inconsistencies in the relevant legal provisions, which makes the handling of arbitration cases difficult and unpredictable.”

Similarly, ASEAN has a fragmented legal framework for arbitration. Although some ASEAN member states have enacted their own arbitration laws, there is no unified framework for arbitration across



the region. This makes it difficult to enforce arbitral awards across borders and increases the risk of conflicting court decisions (Leng, 2019; Poudret and Besson, 2019; Qiao, 2017; Li, 2023).

According to a report by the Stockholm Chamber of Commerce, China is among the top 10 countries in the world for enforcement of foreign arbitral awards. The report ranked countries based on their compliance with the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The report stated that China has made significant progress in recent years in enforcing foreign arbitral awards, with courts generally being supportive of the enforcement of such awards (Leng, 2019; Li, 2023). However, the report also noted that enforcement can still be difficult in practice, particularly in cases where the losing party is a state-owned enterprise or where the award involves sensitive political issues (Chen, 2019; Tang et al., 2023).

In addition, a report by the Hong Kong International Arbitration Centre (HKIAC) found that there has been a significant increase in the number of cases involving Chinese parties that are resolved through arbitration. The report noted that in 2019, the HKIAC saw a 30% increase in the number of Chinese parties involved in arbitrations compared to the previous year (Duan & Zhang, 2020).

Overall, while there have been challenges with enforcement of foreign arbitral awards in China, the country has made significant progress in recent years and is considered to be a relatively favorable jurisdiction for enforcement. However, another challenge of arbitration in China and ASEAN is cultural. In some cases, cultural differences can lead to misunderstandings between parties and arbitrators. For example, in China, there is a cultural preference for mediation over arbitration. This means that parties may be more inclined to settle their disputes through mediation rather than arbitration, which can lead to delays in the arbitration process (Tang et al., 2023).

Similarly, in some ASEAN countries, there is a preference for local courts to resolve disputes, which can result in a lack of trust in the arbitration process. This lack of trust can make parties reluctant to engage in arbitration and may discourage foreign investors from investing in the region (Chan and Greenberg, 2016; Li and Wu, 2020; Li, 2023).

The enforcement of arbitral awards is another challenge in China and ASEAN. In China, the enforcement of arbitral awards can be difficult due to the lack of clarity in the legal framework. There have been cases where Chinese courts have refused to enforce foreign arbitral awards, citing public policy concerns.

Similarly, in some ASEAN member states, there have been instances of courts refusing to enforce arbitral awards. For example, in Indonesia, there have been cases where courts have refused to enforce arbitral awards on the basis of public policy concerns.

Transparency is another issue that affects arbitration in China and ASEAN. In some cases, arbitration proceedings may be conducted in a non-transparent manner, which can erode the parties' trust in the process. In China, for example, there have been cases where arbitrators have been accused of corruption or bias (Li, 2023).

Similarly, in some ASEAN countries, there is a lack of transparency in the arbitration process. This can make it difficult for parties to understand the basis for the arbitrator's decision and can reduce their confidence in the process.

Arbitration in China and ASEAN faces several challenges and issues, including a fragmented legal framework, cultural issues, enforcement of arbitral awards, and transparency concerns. These challenges can affect the efficiency and effectiveness of the arbitration process and can discourage foreign investors from investing in the region.



However, efforts are being made to address these challenges (Chan and Greenberg, 2016; Li, 2023). For example, China has been undertaking significant legal reforms to improve the legal framework for arbitration, and ASEAN is working towards greater harmonization of its arbitration laws. Additionally, initiatives such as the Belt and Road Initiative may create opportunities for increased cooperation and harmonization of arbitration practices between China and ASEAN member states.

The legal systems in the ASEAN region are diverse, and there is a lack of uniformity in the arbitration laws and regulations. This can create confusion and uncertainty, making it difficult for parties to agree on the arbitration process (Wu, 2019; Li, 2023). There is a shortage of qualified arbitrators in China and ASEAN, which can lead to delays in the arbitration process and affect the quality of the arbitration awards. (Koh, 2018).

The high costs of arbitration can deter parties from opting for arbitration as a dispute resolution mechanism, particularly small and medium-sized enterprises (SMEs). Moreover, the lack of transparency in the cost structure of arbitration can lead to disputes between parties, further delaying the arbitration process (Chen & Lin, 2018; Tang et al., 2023). Many businesses and individuals in China and ASEAN are not aware of the benefits of arbitration, and there is a lack of understanding of the arbitration process. This can lead to parties opting for traditional litigation methods, which can be more time-consuming and expensive (Ho, 2019; Li, 2023).

Furthermore, The lack of transparency in the arbitration process can create doubts and mistrust among parties, particularly in cases involving state-owned enterprises (SOEs) or government-related disputes. The lack of transparency can also lead to suspicions of corruption and influence peddling, further affecting the credibility of the arbitration process (Duan & Zhang, 2020; Li, 2023).

On the other hand, the Regional Comprehensive Economic Partnership (RCEP) is a trade agreement between 15 countries in the Asia-Pacific region, including China and ASEAN member states. The agreement was signed in November 2020 and came into effect in January 2021. RCEP aims to promote trade and investment among member states by reducing tariffs, enhancing economic cooperation, and improving the business environment (Chan and Greenberg, 2016; Tang et al., 2023).

Arbitration is an important part of the RCEP agreement. The agreement provides for the settlement of disputes between investors and member states through the use of investor-state dispute settlement (ISDS) mechanisms. These mechanisms allow investors to seek compensation from member states for any losses suffered as a result of government actions that violate RCEP rules.

Arbitration in RCEP is subject to certain rules and procedures. For example, the agreement provides for the establishment of a roster of arbitrators who will hear disputes under the ISDS mechanism (Tan and Koh, 2019; Wang and Xia, 2018). The arbitrators must be independent and impartial and must have expertise in international law and investment.

One of the main benefits of arbitration in RCEP is that it provides investors with a neutral forum for resolving disputes. This can be particularly important in China and some ASEAN member states, where the courts may not be seen as independent or impartial. Arbitration can also be faster and more flexible than litigation, which can help to resolve disputes more quickly and reduce costs.

However, there are also some challenges to arbitration in RCEP. One challenge is the lack of clarity in the agreement's provisions on ISDS. The RCEP agreement has been criticized for not providing enough safeguards to protect the right of governments to regulate in the public interest. Some civil society groups have argued that the ISDS mechanism in RCEP could be used by investors to



challenge legitimate public policies, such as those related to environmental protection or public health (Chan and Greenberg, 2016; Li, 2023).

Another challenge is the lack of transparency in the ISDS mechanism. The arbitration proceedings are conducted behind closed doors, and the decisions of the arbitrators are not made public. This can make it difficult for the public to understand the basis for the arbitrator's decision and can reduce trust in the process (Li and Wu, 2020; Tang et al., 2023).

Overall, arbitration is an important part of the RCEP agreement, which aims to promote trade and investment among member states. While arbitration can provide a neutral forum for resolving disputes, there are also challenges to its use, such as the lack of clarity in the ISDS provisions and the lack of transparency in the arbitration process (Li and Wu, 2020; Li, 2023). As the RCEP agreement is implemented, it will be important to address these challenges to ensure that arbitration is an effective tool for resolving disputes between investors and member states.

LITERATURE REVIEW

Arbitration in China and ASEAN has been an evolving area of law and practice. The Regional Comprehensive Economic Partnership (RCEP) agreement, signed in 2020, includes provisions on arbitration for the settlement of disputes between investors and member states. However, there are challenges to the use of arbitration in this region, including concerns over transparency, independence, and the potential for ISDS to undermine public policy (Roberts, 2021; Tang, 2023).

One of the main challenges to arbitration in China and ASEAN is the perception of bias or lack of independence in the local courts (Ali and Phan, 2020; Chan, 2019). In China, for example, the judiciary is subject to political influence, and some foreign investors may be reluctant to use the domestic courts for dispute resolution. This has led to an increase in the use of international arbitration in China, as foreign investors seek a neutral forum for dispute resolution (He and Zhang, 2019; Li and Wu, 2020). However, there are also concerns over the quality and independence of Chinese arbitrators, as well as the enforceability of arbitral awards in China.

In ASEAN, the quality and independence of the judiciary varies from country to country. Some ASEAN member states, such as Singapore, have established themselves as arbitration hubs with modern arbitration laws and a supportive legal environment. Other countries, such as Cambodia and Myanmar, have less developed legal systems and may face challenges in attracting foreign investors to use arbitration as a means of dispute resolution (Li and Wu, 2020; Li, 2023).

The RCEP agreement seeks to address some of these challenges by providing for the use of ISDS mechanisms to settle disputes between investors and member states. However, there are concerns that the ISDS provisions in RCEP may not provide enough safeguards to protect the right of governments to regulate in the public interest (Chan and Greenberg, 2016; Li, 2023).

One of the main criticisms of ISDS is that it allows investors to challenge legitimate public policies, such as those related to environmental protection or public health.

Some civil society groups have argued that the use of ISDS could undermine the ability of governments to regulate in the public interest. In response to these concerns, the RCEP agreement includes provisions on the right to regulate, which state that nothing in the agreement should be construed as preventing member states from taking measures to protect public health, safety, and the environment (Li and Wu, 2020; Tang et al., 2023).

While arbitration is generally considered to be more efficient and flexible than litigation, there are concerns that the process is opaque and may not provide sufficient safeguards for parties or the public. In the context of ISDS, the lack of transparency has been a particular concern, as the



proceedings are conducted behind closed doors, and the decisions of the arbitrators are not made public (Li, 2023).

In response to these concerns, some countries in the region have taken steps to increase transparency in arbitration proceedings. Singapore, for example, has established the Singapore International Arbitration Centre (SIAC), which provides for greater transparency in arbitration proceedings, including the publication of certain arbitral awards. The SIAC also has a Code of Ethics for arbitrators, which includes requirements for independence and impartiality (Li and Wu, 2020; Li, 2023).

Overall, arbitration in China and ASEAN is an important tool for resolving disputes between investors and member states. While there are challenges to the use of arbitration, particularly in the context of ISDS, there are also opportunities to address these challenges and ensure that arbitration remains an effective means of dispute resolution in the region (Voon, 2019; Tang et al., 2023).

In China, there are concerns about the judicialization of arbitration, or the growing tendency for arbitration to be handled by the courts rather than independent arbitrators. This can lead to a lack of impartiality and increase the influence of the state on arbitration decisions (Chen, 2021). However, the establishment of the China International Commercial Court has provided a new option for international commercial dispute resolution, which may help address these concerns (Qiao, 2017).

The Regional Comprehensive Economic Partnership (RCEP) is a free trade agreement signed between 15 countries in the Asia-Pacific region, including China and ASEAN member states. The agreement includes provisions related to investor-state dispute settlement (ISDS), which allow investors to bring claims against host states for breaches of the agreement. However, concerns have been raised about the legitimacy of ISDS mechanisms and their impact on the ability of states to regulate in the public interest (Roberts, 2021; Voon, 2019).

The Belt and Road Initiative, which aims to increase infrastructure investment and economic connectivity across Asia and beyond, has also had an impact on arbitration in the region. Some have suggested that the Initiative may lead to an increase in cross-border disputes and an opportunity for international commercial arbitration to play a greater role in resolving these disputes (Leng, 2019; Li, 2023).

Another challenge in the region is the lack of harmonization between different legal systems, which can create uncertainty for parties involved in cross-border disputes. This has led some to call for the development of a regional arbitration center to provide a neutral and standardized forum for resolving disputes (Chan and Greenberg, 2016; Li and Wu, 2020; Li, 2023).

Overall, arbitration in China and ASEAN faces a range of challenges and opportunities, including issues related to the judicial system, investor-state dispute settlement, and the impact of initiatives such as the Belt and Road Initiative. Addressing these challenges will be important for promoting economic growth and stability in the region, and ensuring that international commercial arbitration can continue to play a valuable role in resolving cross-border disputes (Wang and Xia, 2018; Tang et al., 2023).

Besides this, arbitration in China and ASEAN has undergone significant developments and challenges in recent years, with the rise of economic globalization and increasing international trade and investment. This has led to the need for a robust and effective dispute resolution mechanism that can provide a fair and efficient resolution of disputes. The following is an in-depth analysis of the



issues and challenges of arbitration in China and ASEAN, with citations and references (Chen, 2021; Li, 2023).

THE PERCEPTION OF PRACTITIONERS

Arbitration in ASEAN has been facing several challenges, one of which is the perception of practitioners. In a recent study by Ali and Phan (2020), practitioners in ASEAN were surveyed about their perception of arbitration. The study found that practitioners perceived the arbitration process to be time-consuming, expensive, and often not effective in resolving disputes. Moreover, the study found that the lack of transparency in the process and the limited availability of trained arbitrators were also significant challenges.

In China, arbitration has been perceived positively by practitioners. Chan (2019) notes that the growth of arbitration in China has been remarkable, with the number of cases increasing significantly over the past decade. Chinese practitioners consider arbitration to be an efficient and effective method of dispute resolution, especially in the context of international commercial disputes (Chen, 2019; Voon, 2019).

JURISDICTION OF COURTS

Another issue facing arbitration in China and ASEAN is the jurisdiction of courts. He and Zhang (2019) discuss the jurisdiction of China's Belt and Road courts over international commercial disputes. They note that while the jurisdiction of these courts is broad, there are several challenges that need to be addressed, such as the recognition and enforcement of foreign judgments and the compatibility of the Belt and Road courts with existing international dispute resolution mechanisms (Roberts, 2021; Li, 2023).

In ASEAN, the jurisdiction of courts over arbitration has also been a challenge. Li and Wu (2020) note that while many ASEAN countries have adopted the UNCITRAL Model Law on International Commercial Arbitration, the enforcement of arbitral awards still faces challenges. In some ASEAN countries, there is limited recognition and enforcement of foreign arbitral awards, which can discourage parties from choosing arbitration as a dispute resolution mechanism (Roberts, 2021; Li, 2023).

DISTINCTIVE LEGAL FRAMEWORK

The legal framework for arbitration in China and ASEAN has also been a significant challenge. Wang and Xia (2018) discuss the legal framework of China's Belt and Road Initiative and note that while the legal framework is extensive, there are several challenges that need to be addressed. For example, there is a lack of clarity on the application of foreign law and the enforcement of foreign arbitral awards. Moreover, the lack of uniformity in the legal systems of countries participating in the Belt and Road Initiative can create difficulties in enforcing arbitral awards (Voon, 2019).

In ASEAN, the legal framework for arbitration has also faced challenges. Tan and Koh (2019) discuss the RCEP and investor-state dispute settlement and note that the RCEP contains provisions for investor-state dispute settlement, but these provisions are limited in scope and may not be effective in resolving disputes. Moreover, the lack of transparency in the arbitration process can create challenges for investors seeking to resolve disputes.

Also, arbitration in China and ASEAN has faced several challenges, including the perception of practitioners, the jurisdiction of courts, and the legal framework. These challenges need to be addressed to ensure that arbitration remains an efficient and effective method of dispute resolution in the region. Moreover, the growing importance of economic globalization and international trade and investment highlights the need for a robust and effective dispute resolution



mechanism that can provide a fair and efficient resolution of disputes (Chen, 2021; Tang et al., 2023).

QUALITATIVE RESEARCH METHODOLOGY

The purpose of this research is to identify the issues and challenges of arbitration in China and the ASEAN region. The study aims to explore the reasons for these issues and challenges and suggest potential solutions. The research methodology will involve a systematic review of the relevant literature, case studies, and interviews with experts in the field. To conduct a thorough analysis of the issues and challenges of arbitration in China and ASEAN, the following methodology can be proposed in the following discussion.

Literature Review

Conduct a comprehensive literature review of relevant academic articles, reports, and books on arbitration in China and ASEAN. This will help identify the key issues and challenges facing arbitration in the region.

Comparative Analysis

Conduct a comparative analysis of the legal framework and arbitration practices in China and ASEAN with other jurisdictions, such as Europe and North America. This will help to identify the best practices and potential solutions that can be adopted to improve the arbitration process in China and ASEAN.

Policy Analysis

Analyze the policies and regulations governing arbitration in China and ASEAN to identify potential barriers and challenges to the arbitration process and identify areas where policy reforms can be implemented to improve the arbitration process.

The research design for this study will be based on a mixed-methods approach. The first phase of the study will involve a systematic review of the literature on arbitration in China and ASEAN. The search will include academic articles, books, and reports from reputable sources. The review will focus on identifying the key issues and challenges faced by arbitration practitioners in the region.

The data collected from the various literature review, which will focus on identifying the key issues and challenges of arbitration in China and ASEAN and the reasons for these challenges. The analysis will also explore potential solutions to these challenges.

The research will adhere to ethical guidelines, including informed consent, confidentiality, and privacy. Participants in the study will be informed of the purpose of the study, their rights as participants, and the potential risks and benefits of participation. Participants will also have the option to withdraw from the study at any time. The research will also comply with relevant data protection and privacy regulations.

This research methodology outlines an approach to identify the issues and challenges of arbitration in China and ASEAN. The study aims to provide a comprehensive analysis of the reasons for these challenges and suggest potential solutions. The study will contribute to the literature on arbitration in the region and provide practical recommendations for practitioners in the field. By combining these research methods, a comprehensive analysis of the issues and challenges of arbitration in China and ASEAN can be conducted, providing insights into the effectiveness of the arbitration process and identifying potential solutions to address the challenges faced by arbitration practitioners in the region.



SPECIAL FINDINGS AND DISCUSSION

Arbitration is a form of alternative dispute resolution (ADR) where parties agree to settle their disputes outside of the court system. It is often used in international trade and investment as it provides a neutral and private way of resolving disputes. However, there are several issues and challenges that arise when using arbitration in China and ASEAN (Chen, 2021; Tang et al., 2023).

In China, one of the main issues with arbitration is the perceived lack of independence and impartiality of arbitrators. This is partly due to the fact that arbitrators are often appointed by the parties themselves, which can create a conflict of interest. There have also been cases where arbitrators have been accused of being influenced by local governments or other powerful entities (Wang and Xia, 2018; Li, 2023).

Another challenge in China is the enforcement of arbitral awards. Although China is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, there have been instances where Chinese courts have refused to enforce awards, particularly if they involve sensitive issues such as state-owned enterprises.

In ASEAN countries, one of the challenges with arbitration is the lack of uniformity in laws and regulations across the region. This can make it difficult to predict the outcome of disputes and can lead to forum shopping, where parties choose a particular jurisdiction based on their perception of the outcome (Wang and Xia, 2018; Chen, 2021; Li, 2023).

Also, Unlike court proceedings, which are generally open to the public, arbitration is a private process, and there is often limited access to information about the proceedings and the awards that are issued.

Overall, while arbitration can be an effective way to resolve disputes, there are several issues and challenges that need to be addressed in order to ensure that it is a fair and reliable process.

In China, the perceived lack of independence and impartiality of arbitrators is a significant issue that affects the credibility of the arbitration process. This issue arises because arbitrators are often selected by the parties themselves, which can create a perception of bias or partiality. This is because arbitrators may be hesitant to rule against the party that appointed them for fear of damaging future business relationships (Chen, 2021; Tang et al., 2023).

Additionally, there have been cases where arbitrators in China have been accused of being influenced by local governments or other powerful entities. This can be especially problematic in cases involving state-owned enterprises, where there may be pressure to rule in favor of the state-owned enterprise.

Another challenge in China is the enforcement of arbitral awards. While China is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, there have been instances where Chinese courts have refused to enforce awards, particularly if they involve sensitive issues such as state-owned enterprises or national security concerns.

In ASEAN countries, the lack of uniformity in laws and regulations is a significant challenge that can create uncertainty and unpredictability for parties involved in arbitration. Each country in the region has its own legal system and approach to arbitration, which can make it difficult for parties to know how disputes will be resolved. This can lead to forum shopping, where parties choose a particular jurisdiction based on their perception of the outcome (Chen, 2021; Tang et al., 2023).

Another issue in ASEAN is the lack of transparency in the arbitration process. Unlike court proceedings, which are generally open to the public, arbitration is a private process, and there is



often limited access to information about the proceedings and the awards that are issued. This can make it difficult for parties to evaluate the fairness of the process and can reduce confidence in the outcome.

Arbitration is an increasingly popular method of resolving disputes in China and the ASEAN (Association of Southeast Asian Nations) region. However, there are still several issues and challenges that can arise in the arbitration process.

Arbitration is a form of alternative dispute resolution that involves the use of an impartial third party to resolve disputes between parties. It has become increasingly popular in recent years due to its potential to provide a faster, more efficient, and less costly alternative to traditional litigation. However, there are several challenges to arbitration in China and the ASEAN region that need to be addressed in order to ensure that it is a fair and effective process for all parties involved.

The lack of transparency in the arbitration procedure in China and ASEAN is one of the greatest obstacles (Wang and Xia, 2018; Chen, 2021; Li, 2023). This can include insufficient disclosure of information by parties or arbitrators, limited access to information about the arbitration process, and the absence of published decisions or awards. Lack of transparency can raise questions about the arbitrators' independence and impartiality, as well as the process's equity. This can also make it challenging for parties to evaluate the efficacy of their case and make informed decisions regarding the arbitration procedure.

The limited expertise of arbitrators in certain areas, particularly in complex or specialized areas such as intellectual property or international commerce, is an additional difficulty in arbitration in China and ASEAN. This can result in decisions that are inadequate or erroneous, and it can also make it difficult for parties to find arbitrators suited to their disputes. It is crucial to ensure that arbitrators are well-trained and have adequate knowledge in the relevant fields to make informed decisions and ensure a fair process (Wang and Xia, 2018; Chen, 2021).

In China and some ASEAN countries, enforcement of arbitral awards can be difficult, especially if one party is based in a jurisdiction with a poor track record of enforcing foreign judgments or awards. This can create uncertainty for the parties and reduce the desirability of arbitration. It is crucial to establish effective mechanisms for the enforcement of arbitral awards in order to guarantee the reliability of the process.

In China and ASEAN, cultural differences can also have an effect on the arbitration process. Significant cultural differences can exist between parties, which can influence how they perceive the process and approach negotiations (Li and Wu, 2020; Li, 2023). Some parties may place a greater emphasis on personal relationships or informal negotiations, whereas others may favor a more formal and structured approach. These differences can make it challenging to find a solution to a dispute that is acceptable to both parties and can lead to misunderstandings or disagreements between the parties (Chan and Greenberg, 2016; Tang et al., 2023).

In China and ASEAN arbitration, cost can be a significant barrier for lesser or less well-funded parties. Arbitration can be a costly procedure, especially if parties must travel to attend hearings or retain expert witnesses. This can make it challenging to justify the costs of arbitration in comparison to other dispute resolution methods. It is essential to ensure that the costs of arbitration are reasonable and proportional to the size and complexity of the dispute, and that the parties are aware of these costs prior to initiating the arbitration procedure.



To ensure that arbitration is an equitable and efficient means of resolving disputes between China and ASEAN, it will be essential to address these obstacles. To address the lack of transparency, it is crucial to establish clear rules and procedures for the disclosure of information by parties and arbitrators, and to ensure that as many decisions and awards as feasible are published. This will increase confidence in the process and ensure that all parties have access to the necessary information to make informed decisions (Wang and Xia, 2018; Li, 2023).

It is crucial to establish training programs and professional standards for arbitrators, particularly in specialized areas such as intellectual property or international trade, in order to resolve the limited expertise of arbitrators. This will ensure that arbitrators have the knowledge necessary to make informed decisions and provide an equitable process for all parties. To address the issue of enforcement, it is necessary to establish effective domestic and international mechanisms for the enforcement of arbitral awards.

CONCLUSION AND RECOMMENDATION

Arbitration in China and ASEAN has faced a number of challenges and issues that have hindered its effectiveness as a dispute resolution mechanism. One of the main challenges that arbitration faces in both regions is the lack of transparency in the arbitration process. In China, the arbitration system is not as transparent as it could be, with many arbitrators and institutions operating in secrecy.

This lack of transparency can lead to suspicions and doubts about the integrity of the arbitration process and the impartiality of the arbitrators. In ASEAN, there is also a lack of transparency around the selection of arbitrators, which can lead to a lack of confidence in the process. The lack of transparency in the arbitration process can make it difficult for parties to fully understand the basis of the arbitrator's decision and can lead to suspicions about the fairness of the process.

In China, for example, there have been concerns about the lack of disclosure of information about arbitrators and their qualifications, which can make it difficult for parties to assess their suitability for a particular dispute. Similarly, in some ASEAN countries, there may be limited access to information about the arbitration process, which can create barriers to understanding for parties who are not familiar with the system.

Another challenge for arbitration in China and ASEAN is limited enforceability. In China, arbitration awards are sometimes difficult to enforce due to a lack of clarity in the law. The legal system in China is complex, and it can be challenging for foreign investors and businesses to navigate the legal landscape.

As a result, many arbitration awards are not enforced, which can discourage parties from using arbitration as a dispute resolution mechanism. In ASEAN, there is a lack of uniformity in the enforcement of arbitration awards across the different countries, which can also discourage parties from using arbitration as a means of resolving disputes.

The limited expertise of arbitrators in certain areas can be a particular challenge in complex or specialized areas such as intellectual property or international trade. In China, for example, there have been concerns about the qualifications and expertise of arbitrators in certain areas, particularly as the country's economy has become more diversified and specialized. Similarly, in some ASEAN countries, there may be limited expertise in certain areas of the law, which can make it difficult to find suitable arbitrators for particular disputes.

The enforcement of arbitral awards can be a challenge in both China and some ASEAN countries, particularly if one party is based in a jurisdiction that does not have a strong record of enforcing



foreign judgments or awards. This can create uncertainty for parties and make arbitration a less attractive option. In China, there have been concerns about the ability of foreign parties to enforce arbitral awards against Chinese companies, particularly if the award is perceived as being against the national interest.

Cultural differences can also pose a challenge for arbitration in China and ASEAN. These differences can affect the selection of arbitrators, the interpretation of evidence, and the expectations of the parties involved. For example, in China, the concept of “face” is very important, and it can be challenging for foreign parties to understand and navigate this cultural norm. In ASEAN, there are many different cultures and languages, which can make it difficult for parties to communicate effectively and for arbitrators to make informed decisions.

There is also a lack of expertise in some areas of arbitration in China and ASEAN. This can be due to a lack of training and education in these areas, as well as a lack of experience among arbitrators and institutions. For example, intellectual property disputes are becoming increasingly common in China and ASEAN, but there is a shortage of arbitrators who have expertise in this area.

This can lead to suboptimal outcomes for parties involved in these disputes. Cultural differences between parties can impact the arbitration process in China and ASEAN. For example, in China, personal relationships and informal negotiations can be an important part of the process, while in other countries, a more formal and structured approach may be preferred. This can create challenges in finding a mutually acceptable way to resolve disputes and can make it difficult for parties to navigate the arbitration process.

Arbitration can be an expensive process, particularly if parties are required to travel to attend hearings or engage expert witnesses. This can be a significant barrier for smaller or less well-funded parties, and can also make it difficult to justify the costs of arbitration compared to other methods of dispute resolution. In China, for example, there have been concerns about the high costs of arbitration and the lack of funding options for parties who cannot afford to pay.

Despite these challenges, there are efforts underway to address them and improve the effectiveness of arbitration in China and ASEAN. For example, in China, there have been recent changes to the arbitration law that aim to improve transparency and enforceability. The Chinese government has also established a number of specialized arbitration institutions to handle disputes in specific industries, such as the China International Economic and Trade Arbitration Commission (CIETAC, 2022) for international commercial disputes.

In ASEAN, there are efforts underway to establish a regional arbitration center that would provide a uniform set of rules and procedures for arbitration across the different countries. To address these challenges, there have been efforts to promote transparency in the arbitration process, improve the qualifications and expertise of arbitrators, and develop mechanisms for enforcing arbitral awards.

In some cases, alternative dispute resolution methods such as mediation or conciliation may be used to help parties find a mutually acceptable solution. Overall, while there are certainly challenges to arbitration in China and ASEAN, there are also many opportunities for continued growth and improvement in this area.

In conclusion, while arbitration has become an increasingly popular method of dispute resolution in China and ASEAN, there are still many challenges that need to be addressed in order to improve the process and make it more effective for all parties involved.



Transparency, enforceability, cultural differences, and expertise are among the main challenges that need to be addressed. Nonetheless, there are positive developments in both China and ASEAN, and there is hope that these challenges can be overcome through cooperation and collaboration among stakeholders. Based on the challenges and issues discussed, there are several recommendations that could help improve the effectiveness of arbitration in China and ASEAN.

Enhance transparency

One of the key ways to improve the effectiveness of arbitration in China and ASEAN is to enhance transparency in the arbitration process. This could be achieved by improving disclosure requirements for arbitrators and institutions, making arbitration proceedings more accessible to the public, and establishing a set of ethical standards for arbitrators.

Strengthen enforceability

Another way to improve the effectiveness of arbitration in China and ASEAN is to strengthen the enforceability of arbitration awards. This could be achieved by improving the legal framework for arbitration and enforcing arbitration awards more consistently across the different countries in ASEAN.

Promote cultural understanding: Cultural differences can pose a challenge for arbitration in China and ASEAN, so promoting cultural understanding among arbitrators, parties, and institutions is essential. This could be achieved by providing training and education on cultural norms and practices, and by encouraging greater cross-cultural collaboration and exchange.

Enhance expertise


To improve the effectiveness of arbitration in China and ASEAN, there is a need to enhance expertise in certain areas, such as intellectual property disputes. This could be achieved by providing specialized training and education for arbitrators in these areas, as well as promoting greater collaboration between institutions and experts in different fields.

Encourage cooperation and collaboration: Finally, it is important to encourage greater cooperation and collaboration among stakeholders in the arbitration process, including arbitrators, parties, and institutions. This could be achieved by establishing a network of arbitration institutions and experts in China and ASEAN, and by promoting greater dialogue and exchange among these stakeholders.

By implementing these recommendations, it is possible to overcome the challenges and issues that currently face arbitration in China and ASEAN, and to promote a more effective and efficient system of dispute resolution that benefits all parties involved.

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