

PROTECTING CROSS BORDER COMMERCIAL RELATIONSHIP BETWEEN MALAYSIA AND CHINA AS A CASE STUDY: AN ALTERNATIVE DISPUTE RESOLUTION PERSPECTIVE

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ABSTRACT

The cross-border economic relationship experienced by Malaysia has seen continuous growth over the years, with China emerging as Malaysia's largest trading and business partner, as well as a significant source of foreign direct investment. However, this relationship has not been without its share of challenges and issues in the aspect of cross-border business, trade, and the formation and execution of commercial contracts and agreements between the involved parties. To ensure a comprehensive approach to compliance in cross-border commercial relationships, it is imperative to have effective dispute resolution mechanisms in place. Alternative dispute resolution (ADR) mechanisms, including negotiation, mediation, arbitration, online dispute resolution, and expert determination, can serve as valuable tools to address contractual issues and overcome legal comprehension challenges. These challenges often arise due to language barriers, cultural differences, and the existence of varying legal systems within the historical and contemporary legal norms and developments of both jurisdictions, which encompass civil and common law traditions. By employing these mechanisms, parties can find cost-effective, efficient, and flexible ways to resolve conflicts while preserving the long-term cross-border business relationships between two distinct legal environments. Alternative dispute resolution mechanisms hold the potential to enhance business, trade, and commercial interactions at various levels, encompassing both public and private ventures. Consequently, they can significantly improve cross-border compliance and contribute to creating a more stable and conducive business environment. By utilizing ADR methods, parties can navigate and resolve commercial and business disputes, thereby upholding the integrity of bilateral business arrangements and fostering enduring commercial interests over time. Embracing ADR mechanisms can serve as a means for China and Malaysia to fortify their trade and business partnerships and cultivate a more stable and holistic business environment, not only within the ASEAN region but also on a global scale.

Keywords: Cross-border commercial relationship, Alternative dispute resolution (ADR), Compliance, China, Malaysia

INTRODUCTION

China and Malaysia are significant economic powers in the Asia-Pacific area. The economic and commercial ties between these two nations have experienced considerable growth and development in recent decades, as the China Ministry of Foreign Affairs (2023) reported. The current Second Round of the ASEAN-China FTA 3.0 Upgrade Negotiations, which took place from 10-12 April 2023 in Bangkok, Thailand, highlights the necessity of upgrading the ASEAN-China Free Trade Area (ACFTA) to maintain its favourable status.

According to a report by Star (2023), bilateral trade between China and ASEAN has demonstrated a positive trend, despite the negative impact of the pandemic. Specifically, the trade volume has increased from US\$641.5 billion (RM2.9 trillion) in 2019 to US\$975.3 billion (RM4.4 trillion) in 2022.

According to a report by SCMP (2023), China is the primary trading partner and commercial marketplace for Malaysia. According to the Malaysia External Trade Development Corporation (2022), the bilateral trade volume between China and Malaysia in 2020 reached USD 123.3 billion. China was identified as the primary export destination for Malaysia and the second-largest origin of imports.

Chinese enterprises, including large corporations and small and medium-sized enterprises (SMEs), have established enduring interests in numerous commercial pursuits conducted within Malaysia (Trading Economics, 2023). Similarly, Malaysia regards China as a crucial economic collaborator in various significant ventures, including the East Coast Rail Link (ECRL) construction and the Forest City development in Johor Bahru (Reuters, 2023).

The bilateral ease-of-doing-business relationship between China and Malaysia has experienced fluctuations in recent years, as Business Today (2023) reported. The bilateral business partnership between China and Malaysia encompasses the cross-border implementation of contracts with contractual enforcement, as per the World Bank's report for the year 2023.

A significant concern pertains to establishing international business and commercial agreements and their execution, encompassing the fulfilment of contractual responsibilities by both parties (AP News, 2023). In order to tackle this matter, it is imperative to reassess the cross-cultural standards, comprehension, and correspondence among Malaysian and Chinese business entities at all levels (ASEAN, 2023).

Implementing cross-cultural training programs, two-way business exchange programs, and intercultural communication workshops has been identified as beneficial by Lin and Li (2019). However, it is essential to note that a distinct approach is necessary for legal comprehension in contractual commitment, as highlighted by ASEAN (2023). Disputes arise due to divergent legal interpretations about the nature, scope, and content of contracts or agreements, as posited by Harvard (2023). This phenomenon can be attributed to the legal terminology utilized by Chinese or Malaysian law firms, which possesses a range of legal connotations and implications in the

context of cross-border contract execution and enforcement. According to American Bar (2023), resolving this conflict frequently necessitates a meditative approach.

The prospect of circumventing expensive legal proceedings is quite attractive. Thus, the adoption of settlement as a course of action has facilitated the exploration of alternative dispute resolution (ADR) mechanisms (AIAC, 2023). Considering each respective country's varying cultural norms, legal obligations, and contractual requirements.

A *negotiation mechanism* is a viable option that can be prioritized as the primary choice or a more relaxed approach. Utilizing this alternative could serve as an initial measure to address the conflict. The negotiation process entails a face-to-face exchange of information and ideas between the parties to arrive at a mutually agreeable resolution. If the negotiation process proves unsuccessful, mediation may be employed as a secondary option after negotiation (AIADR, 2023).

According to the Malaysian Mediation Centre (2023), mediation is a process that entails the involvement of an impartial third party who facilitates communication between disputing parties to assist them in reaching a mutually acceptable agreement. If mediation proves unsuccessful, the subsequent course of action would be to pursue arbitration, as stated by HKIAC in 2023. Arbitration is a dispute resolution process wherein an impartial third party renders a final and binding decision.

In 2020, the Public Legal Service Administration of the Ministry of Justice of China reported that 259 arbitration commissions across the country processed 400,711 cases. Among these cases, 261,047 pertained to conventional commercial arbitration, while 139,664 were related to online arbitration. In 2020, the aggregate value of arbitration cases across the country amounted to 718.7 billion yuan, indicating a decline of 5.4% compared to the preceding year.

The arbitration commissions primarily handle various types of cases, with financial cases comprising the majority at 56.32% of the total national cases. Other types of cases include real estate cases (9.5%), buying and selling cases (4.74%), traffic accident compensation cases (3.58%), and construction engineering cases (3.33%).

The objective figure for financial cases was 204.8 billion yuan, constituting 28.5% of the aggregate number of cases in the country. The specified figures for the transfer of equity, construction undertakings, and trading classifications were RMB 105.8 billion yuan, RMB 101.9 billion yuan, and RMB 48.7 billion yuan, correspondingly.

Construction engineering cases were predominantly handled by arbitration commissions, with 257 institutions accounting for 99% of the cases across various types. The financial cases were handled by 222 arbitration commissions, which constituted 86% of the total number of institutions. Real estate cases constituted 90% of the institutions handled by the 232 arbitration commissions. Ninety-six per cent of the total number of institutions were represented by the 249 arbitration commissions responsible for handling trading cases. The leasing cases were predominantly handled by 238 arbitration commissions, constituting 92% of the overall number of institutions.

The majority of institutions, precisely 63%, were represented by the 162 arbitration commissions in handling equity transfer cases. The land transaction cases were handled by 113 arbitration commissions, constituting 44% of the overall number of institutions. The insurance cases were

processed by 113 arbitration commissions, constituting 44% of the overall number of institutions. Of the total number of institutions, 67% were accounted for by property cases, which 173 arbitration commissions handled. Nine arbitration commissions were responsible for adjudicating agricultural production and management cases, constituting 4% of the overall number of institutions.

Nineteen arbitration commissions were responsible for handling e-commerce cases, constituting 7% of the overall number of institutions. Thirty-seven arbitration commissions were responsible for adjudicating cases related to compensation for traffic accidents, constituting 14% of the overall number of institutions. The medical dispute compensation cases were handled by 17 arbitration commissions, constituting 7% of the overall number of institutions. The intellectual property cases are handled by 42 arbitration commissions, constituting 16% of the total number of institutions.

Ensuring compliance with local laws and regulations specified within the contractual agreements is crucial to fostering harmonious compliance in the cross-border commercial relationship between China and Malaysia. Stakeholders must acknowledge the extensive legal obligations involved in cross-border business transactions to execute them effectively by the objectives outlined in the agreements.

This entails implementing tangible measures to guarantee complete adherence to the domestic legislation of both parties. The compliance process may encompass a diverse range of additional legal frameworks, including but not limited to environmental regulations, antitrust legislation, employment statutes, and safeguards for intellectual property. Noncompliance with local laws and regulations can frequently result in business interruption, legal conflicts, and harm to the reputation of cross-border business partnerships (Wen & Lu, 2020).

The commercial relationship between China and Malaysia across borders presents noteworthy prospects and, concurrently, implementation difficulties for both entities (Star, 2023). The appropriate utilization of ADR mechanisms can promote cross-cultural understanding and enhance legal comprehension among stakeholders and law firms representing contracting parties. This, in turn, can foster harmonious business relationships between countries.

LITERATURE REVIEW

The commercial relationship between China and Malaysia across borders has a lengthy historical background that can be traced back to the early period of the Malacca Sultanate. The diplomatic relations between the two nations have been maintained nearby, and their trade and investment connections have experienced steady growth over time (Kishore, R., & Aron, 2018; Wang, F., & Li, 2020). In 2019, the bilateral trade between Malaysia and China amounted to US\$108.6 billion, making China Malaysia's primary trading partner. Chinese firms have made significant investments in Malaysia's infrastructure and real estate sectors, making China one of the country's primary sources of foreign direct investment (Lee & Chiu, 2022; Fung, 2019; Wu & Zhou, 2019; Ng, 2019; Shen & Cao, 2020).

China considers Malaysia a significant trading ally within the Southeast Asian region. Malaysia significantly contributes to the global palm oil, rubber, and electronics markets, essential

commodities for China's manufacturing sector. Malaysia is a gateway to other Southeast Asian markets, rendering it a compelling investment destination for Chinese enterprises (Lee, 2017; Wang & Zhu, 2019).

The bilateral commercial ties between China and Malaysia have encountered specific difficulties. The escalation of tensions between Malaysia and China has been attributed to the increase in the importation of low-cost Chinese goods into Malaysia in recent years. Furthermore, apprehensions have been raised regarding the ecological ramifications of Chinese investment initiatives in Malaysia, specifically forest preservation (Cho & Lee, 2017; Li & Zhang, 2019).

Notwithstanding the obstacles above, the transnational business association between China and Malaysia remains a significant catalyst for economic advancement in both nations (Liu & Liu, 2021; Siah & Ng, 2023). China and Malaysia have implemented measures to reinforce their commercial and financial relations, encompassing the endorsement of the China-Malaysia Comprehensive Strategic Partnership 2013. The partnership seeks to augment collaboration in commerce, investment, and cultural interchange domains. China holds the position of being the primary trading partner and foreign investor in Malaysia.

Within the ASEAN region, Malaysia holds the distinction of being China's primary trading partner. In 2019, the two nations engaged in bilateral trade that amounted to 119.3 billion US dollars. It is noteworthy that Malaysia's exports to China constituted 16.9% of Malaysia's total exports. The primary commodities that Malaysia exports to China are palm oil, electronic goods, and natural rubber. According to Huang and Guo (2019) and Rabello and Falcao (2017), significant imports from China to Malaysia comprise electronic products, machinery, and equipment.

In order to tackle the obstacles above and foster amicable adherence in the transnational business association between China and Malaysia, alternative dispute resolution (ADR) mechanisms may be employed. According to Wen and Lu (2020), Alternative Dispute Resolution (ADR) mechanisms, including negotiation, mediation, arbitration, online dispute resolution, and expert determination, offer a flexible, cost-effective, and efficient approach to resolving disputes while maintaining positive business relationships. In 2018, the Malaysia-China Chamber of Commerce initiated the establishment of a mediation centre in Kuala Lumpur, which serves as a forum for businesses to settle their disputes through mediation. The objective of this endeavour was to facilitate increased comprehension and confidence among Malaysian and Chinese enterprises and augment cross-border adherence, as reported by The Star in 2018.

The bilateral commercial ties between China and Malaysia offer considerable prospects but also entail obstacles that require attention. Alternative Dispute Resolution (ADR) mechanisms can serve as a viable solution for addressing these challenges and promoting amicable adherence in the bilateral relationship, ultimately yielding mutual benefits for both nations and augmenting their commercial and financial connections.

As per the 2020 National Arbitration Cases Report released by the Public Legal Service Administration of the Ministry of Justice of China, 2021 witnessed a 3% rise in the total number of cases handled by 270 arbitration commissions nationwide, amounting to 415,889. The aggregate

sum in these instances amounted to 8593.1 billion yuan, exhibiting a year-over-year escalation of 19.6%. Among these instances, the conventional commercial arbitration cases constituted 268,879, were resolved by 55 arbitration commissions, and handled 147,010 cases.

The predominant cases in China were financial, constituting 50.18% of the overall cases, and real estate and sales cases, followed by 8.94% and 5.68%, respectively. Regarding the subject matter of the diverse cases, the maximum number of financial cases targeted was 240.5 billion yuan, representing 27.99% of the overall number of national cases.

Regarding the categories of cases addressed by arbitration commissions, it was found that construction engineering cases were processed by 260 arbitration commissions, representing 96% of the overall number of establishments. The resolution of financial cases was undertaken by 217 arbitration commissions, constituting 80% of the overall number of institutions. Similarly, real estate cases were addressed by 232 arbitration commissions, representing 86% of the total number of institutions.

In 2021, a total of 2,691 cases about foreign affairs were processed by 65 arbitration commissions throughout the country. Among these cases, 1,107 were related to Hong Kong, 98 were related to Macao, 134 were related to Taiwan, and the remaining 1,352 were associated with other foreign affairs.

The report indicates a growing trend in China towards using arbitration as a mechanism for dispute resolution, as evidenced by a rising number of cases processed annually. The prevalence of financial and construction engineering cases within the purview of arbitration commissions is notable. How cases about Hong Kong, Macao, Taiwan, and foreign affairs are managed indicates China's increasing internationalization and interaction with the worldwide populace.

Establishing a unified compliance framework for cross-border commercial transactions between China and Malaysia is imperative to facilitate a favourable atmosphere for trade and investment activities between the two nations (Teh & Tan, 2019). ADR mechanisms can serve as a viable means of resolving disputes arising from the relationships above.

It is crucial to recognize the prevalent legal and regulatory challenges that impact transnational business dealings between China and Malaysia. Several factors that can vary across different jurisdictions are contract law, intellectual property rights, and regulatory compliance. Disparities of this nature can result in misinterpretations and conflicts among enterprises from the respective nations (Kuo & Kuo, 2020; Leow, 2021).

In order to tackle these concerns, alternative dispute resolution (ADR) methods such as mediation, arbitration, and conciliation can be employed to settle conflicts economically and expediently. One method of resolving disputes is through mediation, which entails the involvement of an impartial third party who assists in facilitating negotiations between the conflicting parties. The utilization of this approach has the potential to maintain the relationship between the involved parties, in contrast to a conventional court-based approach that may be confrontational and detrimental to the parties' relationship.

In contrast, arbitration is a comparatively structured method of resolving disputes wherein the parties mutually consent to refer their disagreement to an impartial third party (an arbitrator) who

renders a conclusive verdict. Commercial entities frequently favour arbitration because of its confidential nature and the option to choose an arbitrator with expertise in the particular domain of contention.

Conciliation is a form of Alternative Dispute Resolution (ADR) that can be employed to settle conflicts between commercial entities hailing from China and Malaysia. The conciliation process involves an impartial third party who facilitates the parties in achieving a mutually agreeable resolution. The methodology above is especially advantageous in transnational conflicts, where discrepancies in cultural and linguistic backgrounds may impede the bargaining process.

The achievement of compliance harmonization in cross-border commercial relationships between China and Malaysia necessitates a joint endeavour from both nations. Utilizing Alternative Dispute Resolution (ADR) mechanisms can serve as a professional approach to settling disputes promptly and economically, augmenting the general commercial climate for international trade. The sources cited in the text are Lu and Gao's Gao's 2019 publication and Wen and Lu's Lu's 2020 publication. The literature suggests that there exists a longstanding relationship between China and Malaysia in the context of cross-border commercial and trade relations, as evidenced by the works of Jiang and Zhang (2019), Liu and Zhang (2018), Zou and Yin (2018), Chen and Chen (2020), and Lee (2017). The economy of China has experienced substantial expansion throughout its history and presently holds the position of the second-largest global economy. On the contrary, Malaysia has positioned itself as a prominent participant in the Southeast Asian locality, featuring a multifaceted and vigorous economy. The escalation of trade and investment activities between the two nations is likely to give rise to conflicts, necessitating the establishment of efficient dispute-resolution mechanisms to promote seamless adherence to cross-border business dealings.

The trade association encounters specific difficulties, such as conflicts that may emerge due to variations in legislation, regulations, and customary practices. Resolving such disputes via conventional litigation can be a protracted and costly process, frequently culminating in an unfavourable resolution for all parties involved. Alternative dispute resolution (ADR) mechanisms have become progressively prevalent as an efficacious approach to settling commercial disputes among parties hailing from diverse jurisdictions. This assertion is supported by various studies (Li & Gao, 2019; Chen & Xie, 2019; Li & Lu, 2020; Ortolani, 2019; Li & Zhang, 2020).

The divergence in legal frameworks and cultural values poses a significant obstacle to the cross-national business partnership between China and Malaysia. China and Malaysia have different legal systems, with China following a civil law system and Malaysia following a standard law system. This divergence in legal frameworks may lead to potential ambiguities and misinterpretations for enterprises conducting business activities in both nations. Wen and Lu (2020) have noted that cultural disparities may impact business operations, communication, and conflict resolution methods.

Even with the solid economic interdependence between the nations, transnational business interactions encounter impediments such as divergent cultural norms, linguistic obstacles, and disparities in legal and regulatory structures. The challenges above may lead to contractual disagreements among the involved parties from both nations.

Dispute Settlement Approaches

Dispute Settlement Approaches or also commonly known as ‘Alternative dispute resolution (ADR)’ mechanisms provide a viable alternative to traditional litigation for resolving commercial disputes. ADR refers to a range of methods for resolving disputes between parties, such as mediation, arbitration, and adjudication. The use of ADR mechanisms is increasing globally, as they are often faster, less expensive, and more flexible than traditional litigation. In cross-border disputes, ADR mechanisms offer several advantages, including the ability to choose neutral decision-makers and the flexibility to accommodate cultural and legal differences. Alternative Dispute Resolution (ADR) mechanisms can be used to facilitate harmonious compliance in cross-border commercial relations between China and Malaysia. The following are some of the ADR mechanisms that can be applied subject to suitable contractual case and situation.

Negotiation

Negotiation is a process in which parties communicate directly to resolve their dispute. Negotiation can be an effective means of resolving disputes in cross-border commercial relations, particularly where there are misunderstandings or differences in business practices and customs (Liu & Li, 2020; Loh & Su, 2018; Shen & Chen, 2020). Negotiation can help parties to reach a mutually beneficial solution and can be a cost-effective and efficient means of resolving disputes. Given the language barrier between China and Malaysia, negotiation can be facilitated using interpreters or bilingual negotiators.

Mediation

Mediation is a voluntary process whereby a neutral third party (the mediator) assists parties in resolving a dispute by facilitating communication and negotiation between them. The mediator does not have the power to decide but helps parties to reach a mutually acceptable solution. Mediation is a flexible and informal process that can be tailored to the needs of the parties. It is particularly useful in cross-border disputes, where parties may have different cultural and legal backgrounds (Xu & Chen, 2019; Clifford Chance, 2019). Again, mediation is a non-binding process in which a neutral third party facilitates communication between parties and helps them reach a mutually acceptable resolution. Mediation is a confidential process that can be particularly effective in preserving business relationships. Mediation can be conducted in person or online, making it a flexible and convenient means of resolving disputes.

Arbitration

Arbitration is a private, binding process where parties agree to submit their dispute to a neutral third party (the arbitrator) who makes a final and binding decision. The arbitrator is chosen by the parties or a designated body and has expertise in the relevant field. The decision is usually enforceable under the New York Convention on the Recognition and Enforcement of Foreign

Arbitral Awards, which has been ratified by both China and Malaysia. Arbitration offers the advantages of flexibility, privacy, and expertise in the relevant field.

Adjudication

Adjudication is a process where a neutral third party (the adjudicator) makes a binding decision on a dispute between parties. Adjudication is like arbitration but is often used in the construction industry. Adjudication can be a quick and cost-effective means of resolving disputes in the construction industry, where time is of the essence.

Online Dispute Resolution

Online Dispute Resolution (ODR) is a process of resolving disputes using online technology. ODR can be particularly effective in cross-border commercial relations, where parties may be in different countries and may find it difficult or costly to travel for in-person dispute resolution. ODR can include a range of mechanisms, including online negotiation, mediation, and arbitration.

Expert Determination

Expert determination is a process in which parties agree to have their dispute resolved by an expert in a particular field. The expert's decision is binding on the parties and can provide a cost-effective and efficient means of resolving disputes where there are technical or specialized issues involved. Moreover, effective dispute resolution mechanisms are crucial to Harmonising compliance in cross-border commercial relations between China and Malaysia. ADR mechanisms, including negotiation, mediation, arbitration, online dispute resolution, and expert determination, can be used to overcome challenges such as the language barrier, cultural differences, and differing legal systems. These mechanisms can provide parties with a cost-effective, efficient, and flexible means of resolving disputes, while also preserving business relationships. By adopting ADR mechanisms, China and Malaysia can strengthen their trade and investment ties, enhance cross-border compliance, and foster a more stable and predictable business environment.

Harmonising Compliance in Cross-Border Commercial Relationships

Cross-border commercial relationships are an essential part of the global economy, as they help businesses access new markets, resources, and customers. However, these relationships can also be challenging to manage due to differences in legal systems, cultural norms, and business practices. One critical aspect of managing cross-border commercial relationships is ensuring compliance with local laws and regulations. This paper discusses the challenges of compliance in cross-border commercial relationships and suggests alternative dispute resolution (ADR) mechanisms to promote harmonious compliance.

Compliance refers to the adherence to laws, regulations, and cultural practices in cross-border commercial relationships. Harmonising compliance is essential to reducing the likelihood of disputes arising between parties from different jurisdictions. Harmonising compliance involves reconciling differences in laws, regulations, and cultural practices to create a level playing field

for all parties. This can be achieved through the adoption of international standards and codes of conduct, which are recognized and adhered to by all parties.

The increasing globalisation of the world economy has led to the growth of cross-border trade and investment between countries. However, such growth has also led to an increase in commercial disputes that often arise between parties from different jurisdictions. These disputes can be complicated and time-consuming and may involve substantial costs and risks. As a result, it is essential to have effective mechanisms for resolving these disputes.

One significant challenge of compliance in cross-border commercial relationships is differences in legal systems and regulations. Each country has its laws and regulations that businesses must comply with, and failure to do so can lead to legal disputes and damage business relationships. For example, China operates under a civil law system, while Malaysia has a common law system, which can create uncertainty and misunderstandings for businesses operating in both countries. Another challenge is cultural differences, which can affect business practices, communication, and dispute resolution approaches.

Each country has its cultural norms and values that businesses must navigate to foster a harmonious relationship. For instance, Chinese business culture emphasizes building personal relationships before engaging in business, while Malaysian business culture values professionalism and formal communication.

Harmonising Compliance Challenges in Cross Border Transactions

The first challenge of harmonising compliance in China and Malaysia cross-border commercial relationships is the different legal systems and cultural backgrounds. China operates under a civil law system, while Malaysia operates under a common law system. The difference in legal systems can lead to differences in interpretation and application of laws, leading to potential legal disputes. Furthermore, the cultural differences between China and Malaysia can also affect how business is conducted and how disputes are resolved (Yu, 2019; Chen & Duanmu, 2022).

The second challenge is the lack of mutual recognition of legal and regulatory requirements between the two countries. This can lead to legal uncertainty and inconsistency in the application of laws, which can be a barrier to effective cross-border trade and investment. For example, China has strict rules on data protection, while Malaysia has more relaxed regulations. This difference can create challenges for businesses that operate in both countries, and there is a need for harmonisation of legal and regulatory requirements (Zhang, 2019).

The third challenge is the lack of effective alternative dispute settlement mechanisms. The traditional court system can be slow, expensive, and unfamiliar to foreign parties. Moreover, language and cultural barriers can make it challenging for foreign parties to navigate the legal system effectively. This can lead to a lack of confidence in the legal system, and parties may be reluctant to engage in cross-border commercial relationships as a result. Therefore, there is a need for alternative dispute settlement mechanisms that are faster, cheaper, and more accessible to parties from different jurisdictions.

Again, Harmonising compliance in cross-border commercial relationships between China and Malaysia is crucial to ensure that businesses operating in both countries adhere to local laws and regulations. However, several challenges make it difficult to achieve harmonious compliance in these two countries.

Differences in legal systems and regulations

China and Malaysia have different legal systems and regulations, which can create uncertainties for businesses operating in both countries. China operates under a civil law system, while Malaysia has a common law system. In a civil law system, laws are codified and based on statutes and regulations. In contrast, a common law system relies on judicial precedent and case law to interpret laws. The differences in legal systems and regulations can lead to misunderstandings and misinterpretations of the law, which can cause compliance issues for businesses. For instance, Chinese law requires businesses to obtain specific licenses and permits before they can operate, while Malaysian law requires businesses to register with the Companies Commission of Malaysia (CCM) before they can start operating.

Cultural differences

China and Malaysia have different cultures, which can influence business practices, communication, and dispute resolution approaches. Understanding and navigating these cultural differences is crucial to promoting harmonious compliance in cross-border commercial relationships. Chinese business culture emphasizes building personal relationships before engaging in business. Business partners must establish trust and familiarity before discussing business matters.

In contrast, Malaysian business culture values professionalism and formal communication. Business partners are expected to adhere to formal communication channels and respect hierarchy and authority. These cultural differences can affect compliance with local laws and regulations. For instance, in China, business relationships are often built on *guanxi* (personal connections). These connections can be used to gain favours or preferential treatment, which may not be compliant with local laws and regulations.

Language barriers

Language barriers can also create challenges for businesses operating in both China and Malaysia. China's official language is Mandarin, while Malaysia's official language is Bahasa Malaysia. English is also widely spoken in Malaysia, but it may not be the primary language used in business transactions. Language barriers can make it difficult for businesses to understand local laws and regulations, leading to compliance issues. For instance, Chinese laws and regulations are often written in Mandarin, which can be challenging for non-native speakers to understand. Similarly, Malaysian laws and regulations may be written in Bahasa Malaysia, which can create challenges for businesses that do not speak the language.

Harmonising compliance in cross-border commercial relationships between China and Malaysia requires businesses to navigate differences in legal systems, cultural norms, and language barriers. To achieve harmonious compliance, businesses must invest in cross-cultural training, engage local legal experts and compliance consultants, and use alternative dispute resolution mechanisms to resolve disputes. By promoting cross-cultural understanding and adhering to local laws and regulations, businesses can foster a harmonious relationship that benefits both parties.

The Way Forward in Commercial disputes Settlements

Alternative dispute resolution mechanisms offer an alternative to the conventional judicial system for resolving conflicts. Arbitration proceedings are typically characterised by swifter, more cost-effective, and more adaptable dispute resolution mechanisms than traditional court proceedings, which can be customised to cater to the unique requirements of the concerned parties. Alternative dispute settlement mechanisms can prove beneficial in addressing the difficulties arising from varying legal systems, the absence of mutual recognition of legal and regulatory prerequisites, and ineffective dispute resolution mechanisms in cross-border commercial relationships.

Arbitration has emerged as a viable alternative dispute resolution mechanism in contemporary times. Arbitration is a confidential method of dispute resolution whereby involved parties mutually consent to refer their disagreements to an arbitrator or a group of arbitrators who will render a final and enforceable verdict. Arbitration proceedings may vary in regulations and methodologies and are frequently customised to suit the requirements of the concerned parties. Arbitration possesses the advantage of being comparatively expeditious and adaptable in comparison to the judicial system. In addition, it is worth noting that arbitration awards have considerable enforceability in foreign jurisdictions under the New York Convention. This renders it a compelling alternative for resolving disputes that transcend national borders.

Mediation is an additional mechanism for resolving disputes. Mediation is a consensual method of conflict resolution whereby involved parties collaborate with an impartial intermediary to facilitate discussions and arrive at a mutually agreeable resolution. Mediation has been identified as a valuable tool for resolving disputes where the parties involved are vested in maintaining ongoing business relationships. A notable benefit of mediation is its comparatively expedited and cost-effective nature in contrast to arbitration or litigation. Furthermore, the collaborative nature of the process can aid in maintaining enduring business relationships among the involved parties. Using alternative dispute settlement mechanisms effectively can facilitate harmonising compliance in cross-border commercial relationships between China and Malaysia. Alternative dispute settlement mechanisms can promote compliance in cross-border commercial relationships through various means.

Using alternative dispute resolution mechanisms holds significant potential in facilitating the harmonisation of compliance in cross-border commercial transactions between China and Malaysia. The above mechanisms offer heightened adaptability, financial feasibility, and productivity in settling conflicts, and this can contribute to preserving and enhancing commercial connections among the involved parties.

The principal benefit of alternative dispute resolution mechanisms lies in their capacity to maintain the commercial relationship between the involved parties. A good business rapport is imperative for the sustained prosperity of cross-national commercial partnerships. The litigation process can be protracted and expensive, potentially leading to a deterioration of the interpersonal dynamic between the involved parties. In contrast to traditional legal proceedings, alternative dispute settlement mechanisms facilitate collaboration between parties to reach a mutually acceptable resolution. This approach can effectively maintain favourable business relationships and foster adherence to regulations harmoniously.

An additional benefit of alternative dispute resolution mechanisms is their capacity to offer a customised resolution to the conflict. Cross-border commercial relationships may give rise to disputes stemming from various factors such as cultural disparities, linguistic obstacles, and regulatory complexities. Tailored alternative dispute resolution mechanisms can be employed to tackle particular issues, resulting in a more proficient and productive dispute settlement.

Alternative dispute resolution mechanisms such as mediation, arbitration, conciliation, and negotiation are frequently employed in cross-border commercial relationships between China and Malaysia. Mediation is a viable option for resolving conflicts about a breach of contract, intellectual property, and other commercial matters. Arbitration is a frequently employed mechanism in international commercial transactions owing to its efficacy by global legal frameworks. It is a viable option for resolving trade, investment, and other commercial conflicts.

In order to guarantee the efficacy of the aforementioned alternative dispute resolution methods, it is imperative to ensure that their conception and execution are attuned to the cultural and legal disparities among the involved parties. The task at hand is guaranteeing the suitability of the language employed while resolving disputes and verifying that the arbitrators or mediators possess proficiency in the pertinent cultural and legal frameworks.

In addition, utilising alternative dispute resolution mechanisms can significantly impact achieving conformity in transnational business dealings between China and Malaysia. The mechanisms above offer a heightened level of flexibility, cost-effectiveness, and efficiency in resolving disputes, thereby contributing to the preservation and enhancement of business relationships among the involved parties. Developing and executing these mechanisms in a culturally and legally sensitive manner is crucial to guaranteeing their efficacy.

RESEARCH MATERIALS AND METHODOLOGY

A few steps in methodology can be used to conduct a literature review on harmonising compliance in cross-border commercial relationships between China and Malaysia. The first step is identifying relevant academic databases such as Google Scholar, JSTOR, ProQuest, and EBSCOhost. These databases will access academic articles, books, and other scholarly publications. The next step is to conduct a search using relevant keywords such as “cross-border commercial relationships,” “China and Malaysia,” “compliance,” and “alternative dispute resolution.” This will help identify relevant articles and publications. After searching, the articles and publications must be screened for relevance. This involves reading the abstract and introduction of each article to determine

whether it addresses the research question. Once relevant articles have been identified, they must be read and summarised. This involves identifying each article's key findings, themes, and arguments and summarising them clearly and concisely. After summarising each article, the findings must be analysed and synthesised. This involves identifying common themes and trends across the literature and drawing conclusions based on the findings. Finally, the literature review should identify any gaps in the literature and suggest areas for future research. This can help inform future research in this area and identify potential avenues for further investigation.

Overall, this methodology will help to identify relevant literature on Harmonising compliance in cross-border commercial relationships between China and Malaysia, summarise critical findings, and identify gaps in the literature. By synthesising the findings from multiple sources, this literature review can provide valuable insights into the challenges and opportunities for promoting harmonious compliance in cross-border commercial relationships between China and Malaysia.

ANALYTICAL FINDINGS AND OBSERVATIONS

Harmonising compliance in cross-border commercial relationships between China and Malaysia can take time and effort. However, alternative dispute resolution mechanisms can play a crucial role in overcoming these obstacles, according to the findings of the cited studies and articles.

The studies demonstrate that differences in legal systems, language barriers, cultural differences, and a lack of trust can impede compliance and result in disputes. However, alternative dispute resolution mechanisms, such as arbitration, mediation, and online dispute resolution, can offer parties greater flexibility, greater confidentiality, and a faster resolution than traditional litigation. Several studies have focused on using alternative dispute resolution mechanisms in China-Malaysia e-commerce cross-border disputes. According to these studies, online dispute resolution and alternative dispute resolution mechanisms can effectively resolve disputes originating from cross-border e-commerce transactions.

Literature suggests that alternative dispute resolution mechanisms can aid in harmonising compliance in cross-border commercial relationships by providing a more efficient and effective means of resolving disputes while fostering cooperation and preserving business relationships between parties.

Literature on harmonising compliance in cross-border commercial relationships between China and Malaysia offers numerous insights into the challenges and potential solutions. The disparity between the two countries' legal systems is cited as one of the most significant obstacles in the literature. China's legal system, for instance, is based on civil law, whereas Malaysia's is based on common law. These distinctions may result in misunderstandings and disputes between parties.

Another area for improvement is the language barrier, which can lead to misunderstandings and confusion between parties. In addition, cultural differences between China and Malaysia can impede comprehension and implementation of compliance requirements.

Lack of trust between parties can also be a significant obstacle. Establishing a harmonious cross-border commercial relationship requires the establishment of mutual trust. Trust is necessary for parties to be willing to comply with one another's requirements, resulting in disputes.

Alternative dispute resolution mechanisms, such as arbitration, mediation, and online dispute resolution, have been proposed as potential solutions to the difficulties posed by Harmonising compliance in cross-border commercial relationships. Compared to traditional litigation, these mechanisms provide parties with greater flexibility, confidentiality, and a faster resolution. In addition, they allow parties to maintain business relationships and avoid destructive and expensive legal conflicts.

According to studies, alternative dispute resolution mechanisms are effective in resolving disputes originating from cross-border e-commerce transactions between China and Malaysia. These mechanisms provide a cost-effective and expedient dispute resolution, enhancing compliance and fostering cooperation among parties.

Literature on the subject emphasises the difficulties of harmonising compliance in cross-border commercial relationships between China and Malaysia, such as differences in legal systems, linguistic barriers, cultural differences, and a lack of trust. Alternative dispute resolution mechanisms such as arbitration, mediation, and online dispute resolution have been proposed as potential solutions to these challenges, as they provide parties with an efficient and effective means of resolving disputes while preserving business relationships.

In addition to the difficulties and potential solutions, the literature discusses the significance of international law and regulations in Harmonising compliance in cross-border business relationships. International regulations, such as the United Nations Convention on Contracts for the International Sale of Goods (CISG), provide a legal framework for international commercial transactions and assist in reducing the disparities between national legal systems.

Furthermore, the literature emphasises the significance of cross-border cooperation and communication between parties to achieve harmonious compliance. This includes establishing direct channels of communication and fostering a culture of compliance.

In addition, several studies have highlighted the importance of technology in enhancing cross-border compliance and resolving disputes. Using blockchain technology, for instance, can provide a secure and transparent platform for cross-border transactions, thereby reducing the risk of deception and disputes. Similarly, artificial intelligence (AI) and machine learning algorithms can assist with identifying compliance risks and predicting potential disputes.

Lastly, the relevant literature suggests that effective Harmonisation of compliance in cross-border commercial relationships between China and Malaysia requires a collaborative effort from various stakeholders, including government agencies and industry associations. Developing a framework for cross-border compliance and dispute resolution recognised and approved by both countries can contribute to promoting a more harmonious and stable business climate.

CONCLUSION AND RECOMMENDATION

In conclusion, Harmonising compliance in cross-border commercial relationships between China and Malaysia is a complex and challenging task. The differences in legal systems, language barriers, cultural differences, and lack of trust are significant barriers that need to be addressed. Alternative dispute resolution mechanisms such as arbitration, mediation, and online dispute

resolution have been proposed as potential solutions to these challenges, providing parties with an efficient and effective way to resolve disputes while maintaining their business relationships. International regulations, cross-border cooperation and communication, and technology can also play a crucial role in achieving harmonious compliance.

Based on the literature, several recommendations can be made to improve compliance in cross-border commercial relationships between China and Malaysia. Firstly, it is essential to establish a clear framework for cross-border compliance and dispute resolution that is recognized and accepted by both countries. This framework should address the differences in legal systems and cultural differences and promote a culture of compliance and trust.

Secondly, alternative dispute resolution mechanisms such as arbitration, mediation, and online dispute resolution should be encouraged and made more accessible to businesses. This includes promoting awareness and education on the benefits of these mechanisms and reducing the costs and barriers to access.

Thirdly, cross-border cooperation and communication should be promoted between businesses, industry associations, and government agencies. This includes establishing clear communication channels, building trust between parties, and sharing best practices and compliance knowledge.

Finally, the use of technology should be encouraged to improve cross-border compliance and dispute resolution. This includes the use of blockchain technology, AI, and machine learning algorithms to identify compliance risks and predict potential disputes.

Overall, the Harmonisation of compliance in cross-border commercial relationships between China and Malaysia is a challenging but necessary task for promoting a more harmonious and stable business environment. The recommendations provided in this essay can help to address the challenges and promote compliance, cooperation, and trust between parties.

Differences in legal systems, regulations, and cultural norms hinder China and Malaysia's cross-border commercial relationships. These obstacles can result in legal ambiguity, disputes, and regulatory noncompliance, significantly affecting businesses. In order to overcome these obstacles, this article proposes several measures that can promote compliance and effective dispute-resolution mechanisms between China and Malaysia.

The recommendations include the following:

- encouraging multi-stakeholder initiatives,
- promoting the use of standard contract terms,
- enhancing the capacity for alternative dispute resolution,
- promoting cross-border due diligence, and
- devising a cross-border compliance certification program.

These measures can assist in reducing legal uncertainty, promoting compliance, and establishing a standard applicable to businesses operating in China and Malaysia.

Harmonizing compliance in cross-border commercial relationships between China and Malaysia has extensive and significant repercussions. By promoting compliance and providing effective dispute resolution mechanisms, businesses can establish more stable and mutually beneficial

relationships, improve legal certainty, enhance regulatory cooperation, improve access to justice, and enhance their reputations.

Harmonizing compliance between China and Malaysia significantly impacts the quality of business relationships. By fostering compliance and providing effective dispute-resolution mechanisms, businesses in both nations can establish more stable and mutually beneficial relationships, which can increase trade and investment. Another implication of harmonizing compliance is increased legal certainty, as businesses can reduce legal uncertainty and improve predictability, thereby reducing the risks associated with cross-border transactions and fostering a more secure business environment.

Harmonizing compliance can also enhance regulatory cooperation between China and Malaysia, resulting in increased convergence in regulatory frameworks and the development of common standards, facilitating cross-border transactions, and encouraging trade and investment. Alternative dispute resolution mechanisms can provide businesses with effective and efficient dispute resolution mechanisms, thereby enhancing access to justice, particularly for small and medium-sized businesses that may lack the resources to pursue complex litigation.

Businesses that promote compliance and utilize effective dispute-resolution mechanisms can enhance their reputation and increase consumer, partner, and stakeholder confidence. This can aid in attracting new business opportunities and fostering long-term expansion.

Harmonizing compliance in cross-border commercial relationships between China and Malaysia through alternative dispute resolution mechanisms is crucial for developing a more harmonious and stable business environment. The recommendations discussed in this article can aid in addressing the difficulties of harmonizing compliance and promoting effective dispute-resolution mechanisms between the two countries, resulting in improved business relationships, greater legal certainty, enhanced regulatory cooperation, improved access to justice, and a strengthened reputation.

Harmonising compliance in cross-border commercial relationships between China and Malaysia through alternative dispute settlement mechanisms is a complex and multifaceted issue that requires careful consideration. However, the potential benefits of promoting compliance and resolving disputes through alternative mechanisms are significant and can have far-reaching implications for businesses in both countries.

One of the most important implications of harmonising compliance is the potential to improve business relationships between China and Malaysia. By promoting compliance and providing effective mechanisms for resolving disputes, businesses can build more stable and mutually beneficial relationships, which can lead to increased trade and investment and a more harmonious business environment.

Another key implication of harmonising compliance is the potential to improve legal certainty and predictability. This is particularly important for cross-border transactions, which can be complex and risky. By promoting the use of standard contract terms and alternative dispute settlement mechanisms, businesses can reduce legal uncertainty and improve predictability, which can help to reduce the risks associated with cross-border transactions.

Harmonising compliance can also promote greater regulatory cooperation between China and Malaysia. This can lead to increased convergence in regulatory frameworks and the development of common standards, which can facilitate cross-border transactions and promote trade and investment. In addition, by promoting compliance and providing effective mechanisms for resolving disputes, businesses can enhance their reputation and build greater trust with customers, partners, and other stakeholders, which can attract new business opportunities and promote sustainable growth.

However, there are also challenges and limitations to harmonising compliance in cross-border commercial relationships. For example, differences in legal and regulatory frameworks between China and Malaysia can make it difficult to harmonise compliance standards. In addition, cultural and linguistic differences can also pose challenges to effective dispute resolution.

To address these challenges, it is important to promote greater awareness and understanding of alternative dispute settlement mechanisms among businesses and legal professionals in both China and Malaysia. This can include promoting the use of standard contract terms, providing training and education on alternative dispute settlement mechanisms, and encouraging greater cooperation and communication between businesses and legal professionals.

In conclusion, Malaysia are in want of policies to support Alternative Dispute Resolution (ADR) that are crucial to promote efficient and effective methods of resolving disputes outside of the traditional court system. Some key policies and initiatives that can support ADR in Malaysia can be done through the legal framework reform. There is a need to establish a comprehensive legal framework that recognizes and enforces ADR processes, including arbitration, mediation, and negotiation. This framework should ensure that ADR awards and settlements are enforceable and binding.

There is need for more promotion and education to develop public awareness campaigns and educational programs to inform individuals and businesses about the benefits of ADR and the various options available. This could include seminars, workshops, and online resources. Mandatory Mediation can be consider being made a mandatory step before initiating court proceedings for certain types of disputes. This encourages parties to explore ADR options before resorting to litigation. Even the Court-Connected ADR can be integrate with ADR processes into the court system by establishing specialized ADR divisions collaborating with the public and the judiciary. This can streamline the referral of cases to ADR and provide support for ADR proceedings.

There is a necessity for regulation and accreditation towards the implement regulations and accreditation standards for ADR practitioners, ensuring that they meet certain qualifications and ethical standards. This enhances the credibility of ADR processes. This can be done by supporting the ADR industry such as AIADR which is also known as the Asian Institute of Alternative Dispute Resolution. AIADR is the first not-for-profit member-based Institute for Alternative Dispute Resolution forum. The Institute was launched in April 2018 by His Excellency Prof Dr. Kennedy Gastorn, Secretary-General of the Asian-African Legal Consultative Organisation (AALCO), Datuk Professor Sundra Rajoo, President of the Council of the AIADR and Dato' Quek Meng

Ngee as the Vice President of the Council of the AIADR. Such movement and should be led by the ADR industry for the ADR industry and supported by the regulators. Creating a symbiont ADR environment and not a subservient industry in order to promote the very idea of Laissez-faire or the New Deal for Business.

Online Dispute Resolution (ODR) is the way forward to protect minor investor and consumer for cross border economy. There is an urgent need to invest in technology and infrastructure to support ODR platforms, making it easier for parties to engage in ADR processes remotely, particularly in the digital age. This will translate the new deal for business to be one of cost-effective access. There are need for support and policies to create mechanisms to make ADR more cost-effective for all parties, including fee structures that are reasonable and affordable. This can include subsidies for low-income individuals or small businesses or making ODR compulsory for all ecommerce in Malaysia.

With ADR in place, business confidentiality is ensured and proceedings and records to encourage open and honest discussions during the resolution process for all cross border commerce, building the trust deficit in Malaysia business environment. This is ultimately can be achieved by aligning Malaysian ADR policies with international standards to promote the use of Malaysia as a hub for international arbitration and mediation.

There is a need for government support to actively support ADR initiatives through government-funded programs, grants, and incentives for organizations and institutions involved in ADR promotion and research. Needless to say research and development is the key in the field of ADR to continuously improve the effectiveness and efficiency of these processes. By implementing these policies and initiatives, Malaysia can create a more conducive environment for ADR, making it an attractive and accessible option for individuals and businesses to resolve disputes efficiently and cost-effectively. This, in turn, can contribute to a more robust and harmonious legal and business environment in the country. Harmonising compliance in cross-border commercial relationships between China and Malaysia through alternative dispute settlement mechanisms is an important and complex issue that requires careful consideration. However, the potential benefits of promoting compliance and resolving disputes through alternative mechanisms are significant and can have far-reaching implications for businesses in both countries. By promoting compliance and providing effective mechanisms for resolving disputes, businesses can build more stable and mutually beneficial relationships, improve legal certainty and predictability, enhance regulatory cooperation, improve access to justice, and enhance their reputation.

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