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Building Beyond Boundaries

Capital Projects and Infrastructure in Thailand and ASEAN: Trends and Disputes

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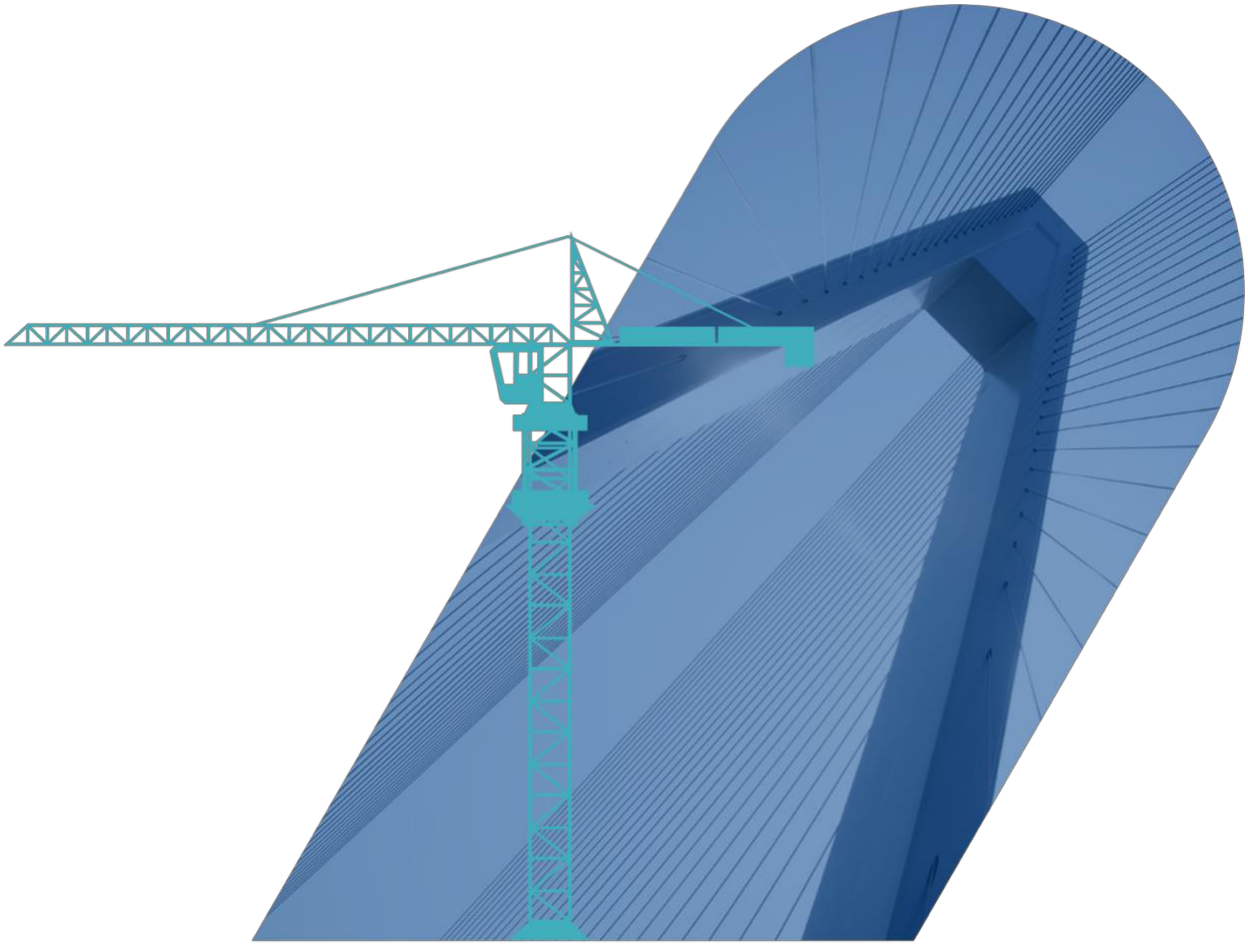

I. Foreword

After the pandemic-induced slowdown, infrastructure development across Southeast Asia has regained momentum, marked by surging investments and the launch of mega-projects. Thailand, for instance, recorded a 42% year-on-year increase in foreign direct investment during the first nine months of 2024, reaching THB 722.5 billion (approximately USD 21.6 billion). Across ASEAN, governments and private investors are channeling substantial funds into highways, rail networks, energy facilities, and digital infrastructure. The Asian Development Bank estimates that ASEAN economies will require at least USD 2.8 trillion in infrastructure investment by 2030[1] to sustain economic growth and achieve climate objectives. This unprecedented "infrastructure moment" presents immense opportunities but also intensifies the pressure on project delivery, giving rise to an increasing number of claims and disputes.

This briefing examines current industry trends in Thailand and ASEAN's capital projects, identifies the most common causes of construction disputes, and outlines strategic approaches—ranging from precise contract drafting to the application of emerging arbitration protocols—aimed at mitigating risks and ensuring more efficient dispute resolution.

II. Sector Snapshot: Growth Amid Rising Pressures

Southeast Asia is in the midst of a historic infrastructure build-out. Governments across the region have placed capital projects at the center of post-pandemic recovery strategies and long-term competitiveness agendas. Thailand illustrates this momentum: the construction sector is projected to expand by 4.6% in 2024, with growth averaging 3.2% annually through 2033[2]. Over the past decade, the country has invested close to THB 4 trillion (approximately USD 115 billion) in public works, from Bangkok's mass-transit expansions to the Eastern Economic Corridor (EEC). The EEC alone represents more than THB 600 billion (approximately USD 19 billion) in high-speed rail, airport, and logistics-hub developments, largely structured as public-private partnerships (PPPs)[3]. Similar national programs are underway in Indonesia, Vietnam, and the Philippines, encompassing new capitals, urban transit systems, and smart-city developments designed to accelerate growth and connectivity.

[1] GovInsider. (2025, September). *On the road to smoother journeys and greater sustainability*. Clarion Events Pte Ltd.
[2] Marketing & Communications. (2025, June 2). *Thailand infrastructure investment surge catalyzing economic growth*. Market Research Thailand.
[3] Ibid.

This wave of investment, however, is unfolding against mounting headwinds. Global inflation and commodity price volatility since 2021 have sharply increased material and labor costs. Supply-chain disruptions—initially triggered by COVID-19 and now compounded by geopolitical tensions—continue to delay equipment deliveries and project schedules. At the same time, projects are becoming more complex, integrating advanced technologies and sustainability requirements that challenge design, procurement, and execution. The outcome has been predictable: cost overruns, schedule slippage, and mounting financial strain for contractors. Margins remain thin, with more firms pursuing claims and arbitration to recover losses. Contract terminations and performance bond calls are rising across the region as owners and contractors alike wrestle with unmet obligations.

Yet opportunities remain abundant. The infrastructure gap is catalyzing innovative financing mechanisms—including green bonds and PPP models—that are reshaping delivery. Thailand alone has delivered roughly USD 28 billion in PPP projects over the past two decades. At the same time, demand for digital infrastructure is surging, with THB 15 billion (approximately USD 480 million) earmarked for 5G networks and smart-city projects by 2025. The global energy transition is also driving new investments in offshore wind, grid modernization, and transit electrification across ASEAN. Together, these trends point to a robust pipeline of capital projects, but one that will reward disciplined governance, contractual sophistication, and proactive risk management as much as engineering and financial execution.

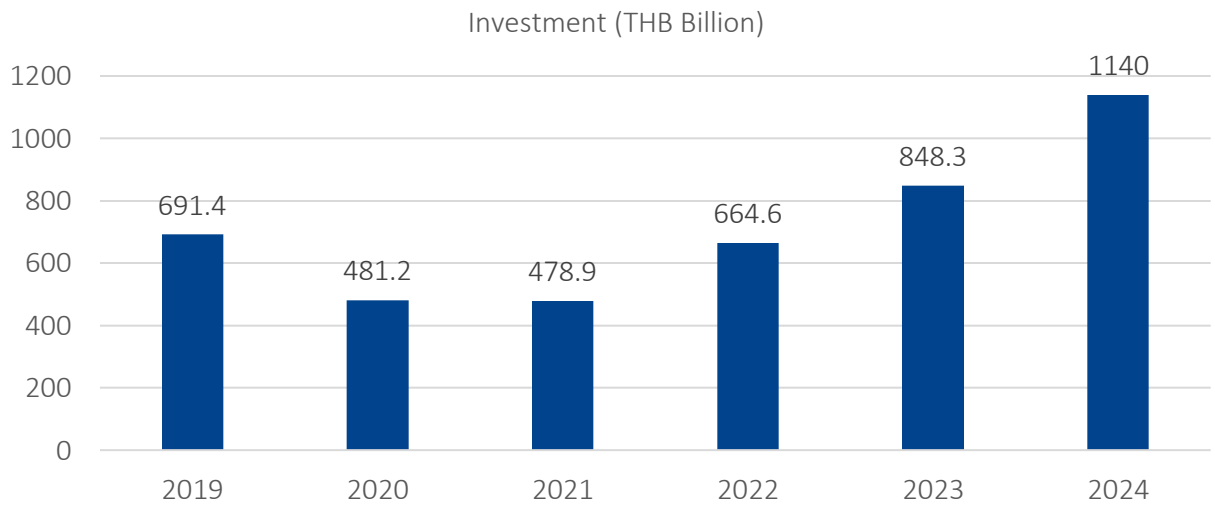

Figure 1. *Thailand's Annual Infrastructure Investment Pledges (2019–2024).*

Figure 1 shows Thailand's annual infrastructure investment pledges (2019–2024), revealing a U-shaped recovery: a sharp decline in 2020 followed by strong growth through 2024. Drawing on BOI press releases, the data highlights how Thailand's capital project pipeline has regained momentum after the pandemic slowdown.

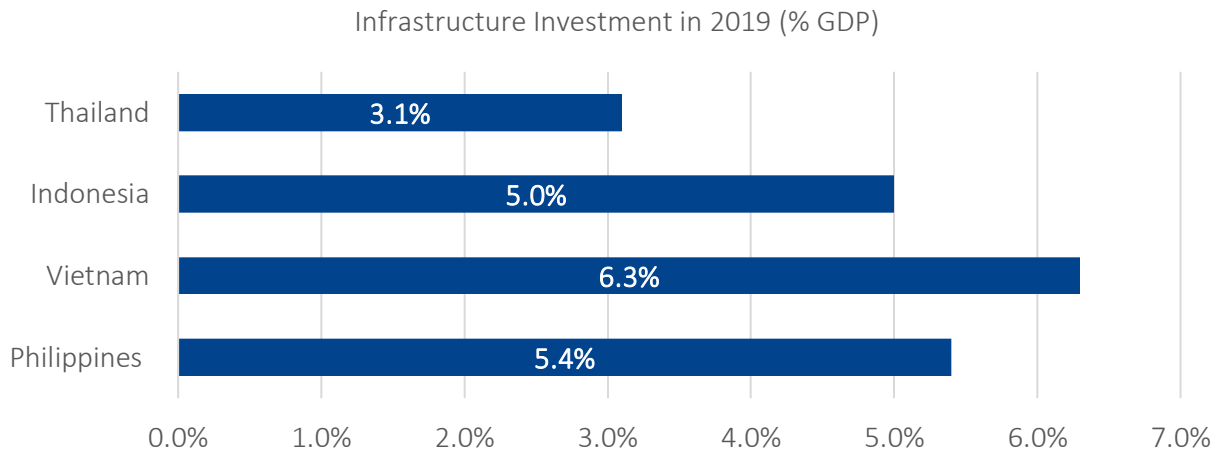

Figure 2. *ASEAN Infrastructure Investment in 2019 (% of GDP by Country).*

Figure 2 shows that Thailand's infrastructure spending, at 3.1% of GDP, lags behind peers like Indonesia (5%) and Vietnam (6.3%). Based on Global Infrastructure Hub and ASEAN data, the gap underscores both the urgency and opportunity for Thailand to scale up investment.

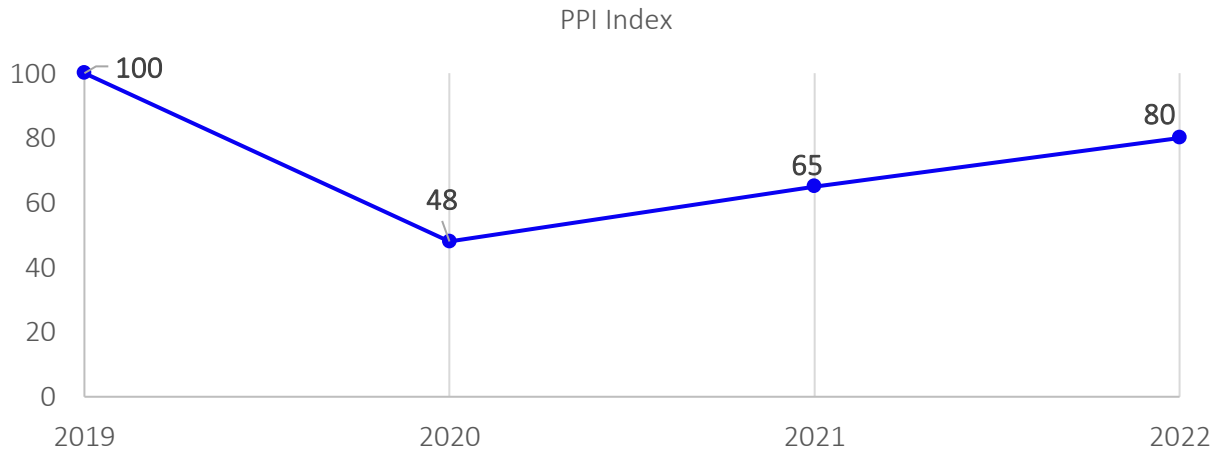

Figure 3. *COVID-19 Impact on Private Infrastructure Investment (ASEAN).*

The COVID-19 Impact on the PPI chart shows private participation in infrastructure dropped 52% in 2020, underscoring the region's vulnerability to shocks and the need for resilient financing (ADB/World Bank).

III. Dispute Trends: Lessons from Recent Cases in ASEAN

Against this backdrop, disputes in construction and infrastructure projects have risen in volume and value – and they often revolve around a few familiar themes. Understanding these common dispute flashpoints can help project leaders avoid repeating costly lessons:

- **Delay and Disruption Claims:** Large projects across Asia frequently run into schedule delays, triggering disputes over extensions of time and delay damages. Pandemic-related labor and supply shortages, regulatory holdups, or land acquisition issues have all caused projects to miss deadlines. In many recent cases, both owners and contractors ended up in arbitration fighting over who bears the time-related costs. Notably, a 2024 industry review observed that ongoing inflation and supply chain strains have increased project delays, and contractors are more readily filing claims to mitigate losses. The lesson is clear: when timelines slip, parties should proactively negotiate fair time/cost adjustments – otherwise, disputes are likely to escalate.

- **Variations and Scope Changes:** Changes in work scope (variations) are another leading cause of conflict. As projects evolve, design changes or unforeseen site conditions often require additional work. Disputes arise when parties fail to agree on whether a change is within the original scope and how much extra time or payment is due. Poor change-order management is a culprit: claims often become contentious because contract documents were unclear or had omissions, leaving room for interpretation. A consistent finding in dispute reports is that errors or ambiguities in contract documents (including specs and drawings) are a top cause of claims. The fix is preventative – rigorous design reviews and clear variation clauses can drastically reduce scope-related disagreements.

- **Payment Defaults and Financial Stress:** Payment disputes have long plagued the construction sector in ASEAN. It is not uncommon for contractors to face delayed interim payments or for owners to withhold funds due to cash flow problems. When projects hit trouble (e.g. cost overruns or financing issues), a cascade of non-payment can occur through the supply chain. In Thailand, this issue has been so persistent that a new draft law was introduced in 2024 to address non-payment of contractual debts in the construction industry. In turn, unpaid contractors may suspend work or terminate the contract, leading to legal showdowns. The recent uptick in insolvency filings by construction firms (some unable to absorb rising costs) has further complicated payment disputes. Early warning signs (like repeated late payments) should prompt immediate dialogue or use of mediation, before positions harden. Security of

payment mechanisms – such as adjudication or escrow arrangements – are increasingly seen as vital safeguards to keep cash flowing and projects moving.

- Termination and Project Abandonment: When relationships deteriorate, contract terminations become a nuclear option – and disputes over whether a termination was lawful can be high-stakes. There has been a steady increase in termination cases across Asia, frequently accompanied by calls on performance bonds or guarantees. Typical scenarios include owners terminating for prolonged delays or contractors walking off due to breach by the client (like non-payment). These cases illustrate the importance of following contract termination procedures to the letter. A wrongful termination (e.g. terminating without valid notice or reason) can leave the terminating party liable for damages. Conversely, a justified termination still often ends in arbitration to settle final accounts. The key takeaway: termination should be a last resort, and if unavoidable, parties must document default events and comply strictly with contract provisions to bolster their legal position.

- Enforcement Challenges: Finally, even after obtaining a favorable award or judgment, enforcing outcomes can be an ordeal in cross-border projects. ASEAN jurisdictions generally uphold international arbitration awards under the New York Convention, making arbitration the preferred mechanism for cross-border disputes in the region. However, enforcement against state-owned entities or assets can raise sovereign immunity issues, and local court proceedings (to set aside or resist enforcement) can delay relief. Some recent cases in Southeast Asia illustrate that an arbitral award is not truly "final" until it is converted into cash. For this reason, prudent contractors factor enforcement risk into their strategies from the outset, often by securing parent company guarantees or structuring settlements in ways that incentivize timely payment and reduce the likelihood of protracted enforcement battles.

Big picture: In Asia, most construction disputes arise from weaknesses in contract management—either a failure to abide by the contract or a failure to administer it effectively when unexpected events occur. Analyses consistently point to errors in contract documents, poor understanding of obligations, and weakly supported claims as leading causes. One survey[4] observed that the term most frequently cited by arbitrators when identifying the root causes of disputes was "*understand*": many parties failed to fully grasp contractual requirements or claims procedures, leading to conflicts that could have been avoided. The takeaway is clear—stronger front-end planning, clearer documentation, and more effective communication can prevent a substantial proportion of disputes from escalating.

[4] Arcadis. (2023, June 20). Embracing change, moving forward: Global construction disputes report 2023.

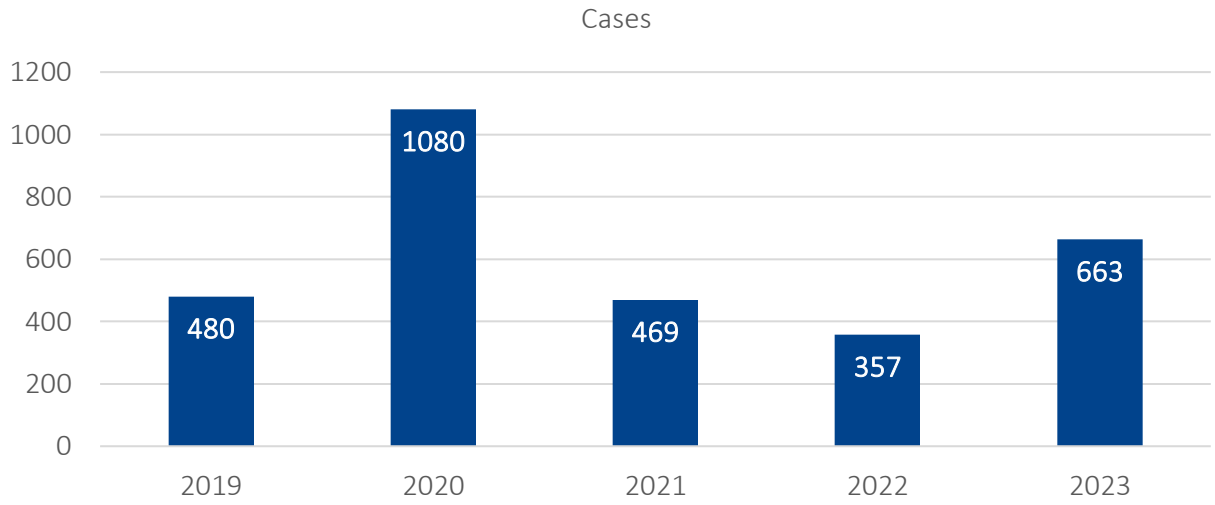

Figure 4. *International Arbitration Cases Involving Infrastructure (2019–2023).*

Figure 4 shows SIAC arbitration cases in infrastructure (2019–2023). Filings spiked in 2020 during pandemic stress, dipped, then rose again in 2023 as projects resumed—highlighting how disputes mirror cycles of disruption and recovery in regional capital projects.

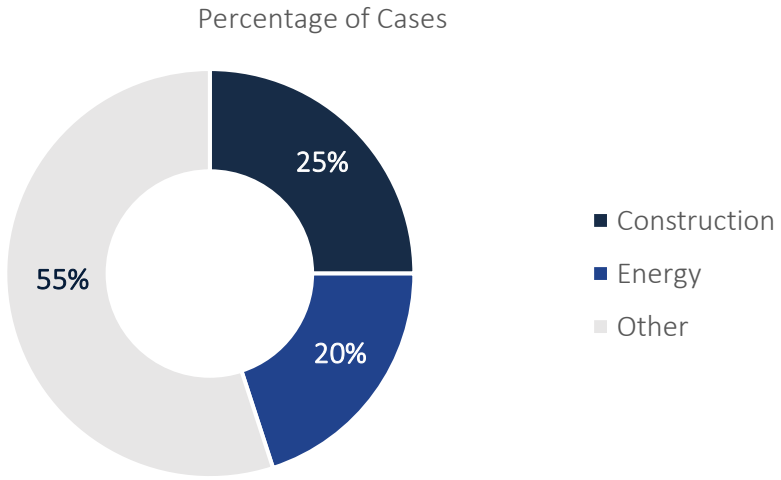

Figure 5. *Breakdown of Disputes by Sector (Construction/Energy vs Others).*

Figure 5 breaks down disputes by sector, showing that construction and energy consistently dominate arbitration caseloads. According to ICC statistics, these sectors account for 45% of new cases annually—underscoring the central role of infrastructure projects in driving global dispute volumes.

IV. Mastering the Drafting of Multi-Tier Dispute Resolution Clauses

Most major project contracts today incorporate multi-tier dispute resolution clauses—commonly structured as "*negotiate, then mediate, then arbitrate*"—to encourage amicable settlement before adversarial proceedings. These so-called "*ADR step-clauses*" can be highly effective tools, but they carry significant risks if not drafted with precision. Recent cases in Singapore and other jurisdictions have underscored several recurring drafting pitfalls—along with practical solutions to address them:

- Ambiguity in Steps and Timeframes: Vague language such as "partners shall first endeavor to settle amicably" often creates confusion: one party may rush to arbitration while the other insists the amicable phase was not respected. *Pitfall:* no clear trigger for escalation. *Practical fix:* spell out concrete steps and time-limits—for example, "*senior executives from each side shall meet at least once within 14 days of a dispute notice; if no settlement is reached within 30 days of notice, either party may proceed to mediation under XYZ Center; if unresolved after 60 days, the dispute shall be referred to arbitration.*" By establishing firm timelines triggered by a clearly defined, evidenced event (such as a written dispute notice) and setting out precise procedural steps, the clause minimizes ambiguity and leaves little room for delay tactics.

- Enforceability and Good Faith Obligations: Courts in multiple jurisdictions (England, Singapore, Hong Kong) now enforce clearly drafted multi-tier clauses, treating the pre-arbitration steps as binding conditions precedent to arbitration. However, if the clause is too subjective – e.g. requiring parties to negotiate "*in good faith*" without objective criteria – one party may allege that the other failed to negotiate in good faith or without genuine effort. *Pitfall:* one party tries to bypass a step or sabotages it, then the other challenges the arbitral tribunal's jurisdiction for not completing the steps. *Practical fix:* Draft the clause with unambiguous language regarding the binding nature of each step. For example, specify that mediation must take place before arbitration may be commenced. It is also advisable to include a provision that if a party refuses to participate in, or obstructs, the preliminary steps, those obligations shall be deemed fulfilled, allowing the dispute to proceed without undue delay.

- Choosing the Right ADR Institutions: Another common pitfall is the failure to specify how negotiation or mediation is to be conducted. A clause that merely states "*the parties shall mediate*" without designating a mediation provider or applicable rules may result in disputes over the process itself. *Practical fix:* name a reputable institution or specify a set of rules (e.g., "*mediation under Singapore Mediation Centre Rules*") to ensure the clause is workable when a

dispute arises. It is also advisable to align the clause with any relevant industry schemes—for instance, many construction contracts reference Dispute Boards or adjudication as a first tier, particularly for long-term projects. Consistency and clarity at this stage help avoid an "*agreement to agree*" problem that could render the step unenforceable.

In essence, multi-tier dispute resolution clauses should be drafted with the same precision as any other critical contract term. Leading arbitration practitioners emphasize the importance of making the escalation process clear in both scope and sequence, so that a tribunal can readily determine whether the required steps have been observed. The benefits are substantial: well-crafted clauses encourage early settlement—saving both time and cost—and, if unsuccessful, still channel the parties into arbitration without procedural disputes. As courts in many jurisdictions increasingly uphold these clauses as binding, they should not be treated as boilerplate. Careful drafting at the outset—defining timeframes, ADR mechanisms, and conditions—can later prevent jurisdictional challenges and months of delay in dispute resolution.

V. A New Tool for Distressed Projects: SIAC's RIA Protocol

When an infrastructure project encounters financial distress or a contractual party enters insolvency, disputes become even more complex. Insolvency proceedings can freeze projects and disrupt dispute resolution, as court-administered insolvency regimes often impose moratoriums that suspend arbitration. To address this intersection of arbitration and insolvency, the Singapore International Arbitration Centre (SIAC) has introduced a first-of-its-kind framework: the Restructuring and Insolvency Arbitration Protocol (RIA Protocol), effective 26 August 2025[5]. This innovative mechanism is expected to be a game-changer, enabling insolvency-related disputes to be resolved more swiftly and fairly through arbitration.

What is it? The SIAC RIA Protocol is an opt-in set of rules tailored for insolvency-related disputes. It covers not only disputes arising *from* insolvency or debt restructuring laws, but also conflicts connected to ongoing or anticipated insolvency proceedings, and even business disputes where insolvency risk looms (e.g. a contractor on the verge of bankruptcy). In practice, parties can agree (in their contracts *or even after a dispute arises*) to conduct their arbitration under this Protocol if they want the benefits of a specialized, expedited process for a distressed situation.

[5] Singapore International Arbitration Centre. (2025, August 26). *SIAC launches Restructuring and Insolvency Arbitration Protocol* [Press release]. Retrieved October 2, 2025

How does it work? The Protocol builds on SIAC's normal rules but modifies them for speed and coordination. Key features include:

- Fast-Track Timeline: Urgency is paramount when a company is insolvent or a project is stalled. Under the Protocol, a respondent must submit its response to the notice of arbitration within 7 days (significantly shorter than the usual period[6]). Tribunals are encouraged to render a final award within 6 months of their constitution—a remarkable compression for complex disputes. To meet this timeline, arbitrators may streamline procedures (e.g., limiting discovery and tightening hearing schedules) while still observing due process. In particularly complex cases, the tribunal may, in consultation with the parties and SIAC, allow a longer period, but the presumption remains in favor of expedited resolution.

- Specialist Arbitrators and Sole Panels: The default is a sole arbitrator (unless the case really warrants three), which saves time and cost. SIAC has even created a Specialist Panel of arbitrators experienced in restructuring/insolvency to assist parties, though using a panel member is optional. These measures ensure the tribunal has the right expertise and can be appointed promptly (with truncated timelines for appointments and challenges of arbitrators).

- Coordination with Courts and Creditors: Perhaps the most innovative aspect is the Protocol's focus on aligning the arbitration with any ongoing insolvency proceedings. The tribunal is required to hold a case management conference within 7 days of formation to discuss how the arbitration will mesh with related court cases or creditor processes. For example, if a company is under judicial management or administration, the arbitration might need to dovetail with court timetables. The Protocol explicitly encourages consideration of joinder of relevant third parties (such as creditors or insolvency office-holders) where appropriate. It also addresses confidentiality in a nuanced manner: parties may agree to share certain arbitration information with the insolvency court (e.g., a redacted award or the status of proceedings) without breaching confidentiality. This approach ensures that the outcome of the arbitration can be integrated into the broader restructuring—for example, an award on a disputed claim may be recognized within the insolvency estate.

- Optional Mediation Window: Acknowledging that distressed scenarios often settle if given a chance, the Protocol lets the arbitral tribunal pause proceedings for mediation if both parties request it. They can suspend the arbitration for up to three weeks (extendable) to attempt a

[6] The SIAC 2025 Rules (Art. 7.1) provide a 14-day period for responses.

mediated settlement. If a deal is reached, the tribunal can quickly convert it into a consent award – making it enforceable like any other award. This feature provides a formal avenue for last-minute negotiations without losing the arbitration's momentum.

- **Arbitrability and Legal Waivers:** A key concern in insolvency disputes is whether certain matters are "arbitrable," given the involvement of public court processes and collective creditor interests. The Protocol addresses this by requiring parties to waive objections to arbitrability to the fullest extent permitted by law. By opting in, parties consent to the tribunal's authority to decide insolvency-related disputes, subject to any mandatory domestic law.

Implications for distressed projects and supply chains: The new Protocol offers a lifeline for troubled projects. If a major contractor enters restructuring with unpaid subcontractors and suppliers, disputes that would traditionally stall for years can instead be consolidated and resolved within months. Awards issued under the RIA Protocol can feed directly into restructuring plans or insolvency distributions, providing clarity for all stakeholders. By bridging arbitration and insolvency, it ensures one process does not derail the other. For supply chains, it means bankruptcy need not condemn counterparties to protracted litigation; they retain a swift, enforceable path to protect their rights.

In sum, SIAC's RIA Protocol reflects arbitration's evolution to meet real-world needs. By providing a specialized framework for insolvency-related disputes, it addresses a longstanding gap in the construction sector, where distressed projects often languish unresolved. Launched in August 2025, its uptake will be closely watched, but if successful, it could set a new standard for resolving claims efficiently in financially distressed projects.

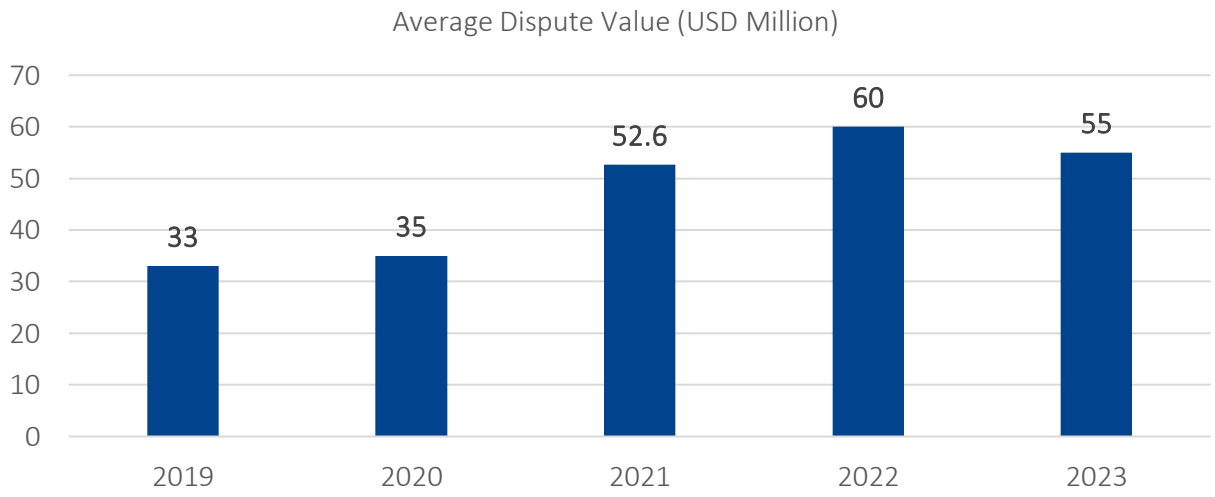

Figure 6. *Average Dispute Value in Construction Arbitration.*

VI. Dispute Avoidance and Risk Mitigation Strategies

While formal dispute resolution (like arbitration) is a critical safety net, the best dispute is one that never happens. Project owners and leaders in ASEAN's infrastructure sector are increasingly adopting proactive measures to detect and defuse conflicts early. Here are key strategies and "playbook" tools that have emerged as best practices:

- **Rigorous Contract Administration:** Many disputes can be traced back to poor record-keeping or neglecting contract procedures (for example, not issuing timely notices of delay or change). Instituting a disciplined contract administration regime is fundamental. This means tracking every variation, delay event, and payment milestone in real time, and ensuring formal notices and responses are exchanged as required. By keeping an accurate paper trail, parties lay the groundwork for either amicable settlements or a strong position if a dispute proceeds. As one global expert noted, better contract administration and robust documentation are essential to mitigate the most common causes of disputes. In practice, this could involve digital project management systems and regular contract compliance audits during the project.

- **Early Risk Detection & Claim Neutralization:** Projects benefit from proactive systems to detect potential disputes at an early stage. Periodic risk reviews by project managers can identify warning signs—such as schedule slippage, cost overruns, or uncooperative subcontractors—before they escalate. Some organizations now apply data analytics (e.g., tracking RFI trends or schedule float erosion) to flag emerging risks. The objective is to resolve issues informally at the project level: a struggling subcontractor may be supported through renegotiated terms, while excessive claim rejections by an owner's representative may warrant executive intervention. The earlier a potential dispute is recognized, the greater the likelihood of negotiated resolution—or at least of controlling the narrative and evidence. In Asia, projects that employ standing Dispute Boards or neutral facilitators report significantly fewer arbitrations, as issues are addressed and resolved in real time on site.

- **Notice Discipline and Procedural Strategy:** Virtually all construction contracts in ASEAN (whether FIDIC-based, government standard forms, or bespoke) have notice requirements for claims. Complying with these to the letter is not just legal fence-sitting – it's a strategic way to keep the other party engaged. A proper notice of delay or force majeure, for example, forces the issue onto the table early and opens a channel for resolution (or at least negotiation of an interim solution). It also preserves the party's rights. Being procedurally proactive – following

up on unanswered notices, seeking determinations from the engineer or contract administrator where applicable – can prevent disputes from festering. In contrast, failing to give notice can forfeit legitimate claims and later spark disputes about waiver. A well-run project will have a "*claims calendar*" and accountability for issuing and responding to notices within contractually mandated timeframes.

- Mediation and Settlement Pathways: Not every conflict needs to end up in court or arbitration. Leading organizations have escalation pathways that emphasize mediation or executive negotiation at early stages. This might mean engaging an independent mediator as soon as a claim is quantified, rather than after a year of fighting. The new "*Arb-Med-Arb*" protocols (like those by SIAC and SIMC in Singapore) formally blend mediation into the arbitration process, allowing parties to pause and attempt settlement with the help of a neutral. Even without formal protocols, parties can agree to mediate – and studies show mediation success rates are high in commercial disputes. The key is a mindset shift: settlement efforts should be viewed not as a sign of weakness, but as a project management tool. Culturally, this approach is gaining traction in ASEAN as businesses recognize the value of swift, amicable resolutions. Where settlements are achieved, they can be recorded as enforceable agreements or consent awards, ensuring finality.

- Evidence and Expert Strategy: When disputes appear unavoidable, thorough preparation is critical to both outcome and cost. Effective project leaders establish an evidence strategy early—identifying key facts and maintaining organized records such as site logs, meeting minutes, and correspondence to support their position. Leveraging digital project management tools that time-stamp decisions and changes can also create a reliable evidentiary record. In parallel, engaging independent experts—such as planning engineers for delays or quantum specialists for cost assessments—during the project can help address technical disagreements before they escalate. In some cases, jointly appointing a neutral expert to determine the cause of a delay may facilitate settlement. Likewise, the use of real-time expert determination or dispute adjudication boards on major projects has proven effective in resolving issues at an early stage by providing authoritative interim decisions that parties often accept.

Leadership and culture are central to dispute avoidance. Companies that embed it as a core value—by training managers in negotiation, strengthening contract management, and rewarding early resolution—experience fewer escalations. Despite growing complexity, the average duration of major

construction disputes globally remains about 14 months, partly because parties often choose settlement over litigation. Fostering a culture of early resolution and open communication enables stakeholders in Thailand and ASEAN to safeguard both margins and relationships.

VII. Conclusion: From Lessons Learned to Best Practice

Southeast Asia's infrastructure ambitions are vast—and within reach. Realizing them, however, will depend not only on mobilizing capital and delivering transformative projects but also on applying lessons from past disputes. The trajectory is clear: massive investment pipelines and ambitious national programs, counterbalanced by inflationary pressures, supply chain volatility, and project complexity. Disputes are inevitable, but they need not derail outcomes. By identifying common triggers—such as delays, change orders, and payment defaults—and addressing them early through stronger contracts and proactive management, stakeholders can significantly reduce friction. Where disputes do arise, mechanisms such as multi-tier clauses and specialized frameworks like SIAC's Restructuring and Insolvency Arbitration Protocol offer efficient resolution pathways that preserve business continuity.

A "*no regrets*" strategy for industry leaders is to institutionalize dispute prevention as rigorously as safety or quality controls. This requires well-drafted contracts, balanced risk allocation, early-warning systems for project stress, and a culture of open dialogue when tensions emerge. For owners, developers, CEOs, lenders, and government partners, dispute readiness is no longer the exclusive domain of legal teams—it is a core element of strategic project execution. Encouragingly, there has been no structural decline in the construction and infrastructure sector's ability to create long-term value. The true winners, however, will be those who combine technical delivery with disciplined risk and dispute management.

Thailand and its ASEAN peers now stand on the threshold of an infrastructure renaissance. By pairing engineering excellence with foresight in governance and dispute resolution, they can ensure today's investments become tomorrow's productive assets—rather than tomorrow's contested claims. Put simply, mitigating and managing disputes is as vital as pouring concrete. With the right frameworks, capabilities, and mindset, leaders can safeguard margins, accelerate delivery, and sustain Southeast Asia's development momentum.

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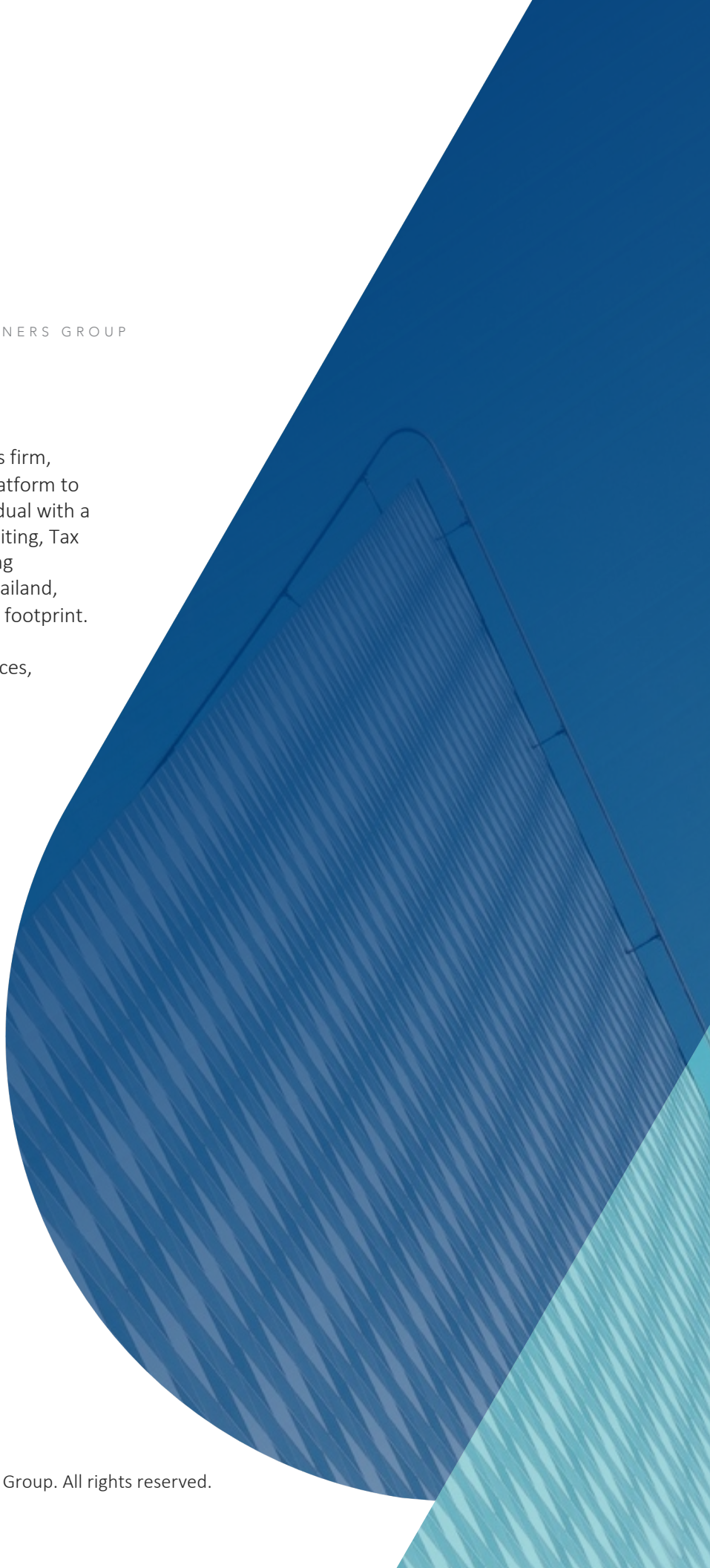

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