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Mandatory ADR in Emerging Equity Market: Adequacy Assessment and Institutional Design in the Philippines

Zenith J. Europa[*], Joaquin J. Panaligan[†], Caroline C. So[‡]

ABSTRACT

Mandatory alternative dispute resolution (ADR) is increasingly proposed in emerging capital markets to strengthen investor protection. Its legitimacy depends not on compulsion but on whether the forum is credible, accessible, and its outcomes enforceable. This article assesses the Philippine framework for investor–broker and broker–broker disputes against five criteria drawn from the financial ADR literature: procedural efficiency, accessibility, neutrality, enforceability, and investor-protection alignment. It uses an exploratory sequential mixed-methods design: ten semi-structured interviews with market and regulatory professionals; a survey of 50 respondents yielding eleven composite constructs; and doctrinal and comparative analysis of FINRA and Malaysia's Financial Markets Ombudsman Service. The framework fails on efficiency, accessibility, and neutrality, and only partially satisfies enforceability and investor-protection alignment. The interviews identify an enforcement–legitimacy gap: anticipated enforcement difficulty weakens confidence in redress before a dispute is pursued. Respondents prioritize independence from the exchange and its surveillance arm over faster judicial confirmation, inverting the conventional reform sequence. Principal component analysis identifies a dominant orientation accounting for 62.5 per cent of variance, suggesting respondents view reform as an integrated package rather than separable measures, though not that any measure would succeed. Support is strongly conditioned on bounded scope, with regulatory and criminal matters excluded. The article proposes a Capital Markets Arbitration Centre, pursued through parallel regulatory and legislative tracks, with an aggregate disclosure model reconciling arbitral confidentiality with the continuing obligations of listed issuers.

Keywords: capital markets; enforcement; investor protection; mandatory arbitration; philippines.

I. INTRODUCTION

The proposal that financial markets need specialized dispute resolution is no longer contested. What remains open is the question that follows it: where a jurisdiction elects to compel investors and intermediaries into a non-judicial forum, what must that forum look like before compulsion is defensible? The comparative literature is rich in description of mature systems and thin on the design conditions that make a mandatory regime legitimate in a market without one.[1]

The Philippines presents an unusually clean case. Republic Act No. 9285, the Alternative Dispute Resolution Act of 2004, declares ADR an integral component of the national justice system and adopts the UNCITRAL Model Law.[2] The securities regulator holds a broad investor-protection mandate under Republic Act No. 8799, the Securities Regulation Code.[3] Several sectors have built genuinely mandatory ADR architecture on those foundations: construction, public–private partnership contracts,

[*] Master in International Business Law (MIBL) Candidate, Asian Institute of Management (AIM), Makati City, Philippines. Correspondence e-mail: leuropa.mibl2026@aim.edu.
[†] Master in International Business Law (MIBL) Candidate, Asian Institute of Management (AIM), Makati City, Philippines.
[‡] Master in International Business Law (MIBL) Candidate, Asian Institute of Management (AIM), Makati City, Philippines.
[1] W. Blair, et al., "Arbitrating Financial Disputes — Are They Different and What Lies Ahead?", Arbitration International, Vol. 38, 2022, p. 3.
[2] Sections 2 and 19, Republic Act No. 9285 (Alternative Dispute Resolution Act of 2004).
[3] Section 4, Republic Act No. 8799 (Securities Regulation Code) 2000.

and the Wholesale Electricity Spot Market.[4] The capital market has none. Investor grievances disperse across administrative complaints to the Securities and Exchange Commission (SEC), informal proceedings before the Capital Markets Integrity Corporation (CMIC), settlement, and the courts, with no forum that is at once specialized, compulsory, and independent of the intermediaries whose conduct is in issue.

That gap raises a question with comparative purchase: is the deficit legislative, curable by mandating arbitration, or institutional, such that a mandate would leave it untouched? This article argues the latter, on evidence, and makes three contributions: an empirical adequacy assessment where the field has relied largely on doctrinal exposition;[5] an enforcement–legitimacy gap, in which the value of any outcome is discounted in advance by doubt about whether it can be enforced against a well-resourced adversary, carrying a counter-intuitive implication for reform sequencing; and a disclosure model reconciling arbitral confidentiality with the continuing obligations of listed issuers.

1.1 Conceptual Framework and Philippine Context

a. The Mandatory Turn and the Transferable Design Features

Classical ADR theory locates legitimacy in consent.[6] Regulatory practice in consumer and financial markets has moved away from that account: mandatory and asymmetric participation triggers are now ordinary, justified by the argument that bargaining asymmetry between an intermediary and a retail claimant makes formal consent a poor proxy for real choice.[7] Critics answer that compulsion deprives weaker parties of access to courts and obscures systemic misconduct.[8]

The debate is mis-specified when framed as consent versus protection, because the jurisdictions usually cited as successful share less the mandatory feature than the scaffolding around it. FINRA operates the exclusive United States forum for customer–broker-dealer disputes, but the features making it tolerable are separable from its compulsory character: predominantly public arbitrator panels, determination on the papers for small claims, and a cost structure under which the industry rather than the claimant bears the burden.[9] Malaysia's Financial Markets Ombudsman Service (FMOS) compels member institutions to participate while leaving the consumer free to reject the outcome, and is funded by member levies.[10] The recurring features are four: regulatory coupling, so that non-compliance carries licensing consequences; accreditation of neutrals; subsidized or asymmetric cost allocation; and an

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[4] Section 4, Executive Order No. 1008 of 1985; Republic Act No. 11966 (Public-Private Partnership Code) 2023; Section 8.2, Wholesale Electricity Spot Market Dispute Resolution Manual 2024, under Republic Act No. 9136 (Electric Power Industry Reform Act) 2001.

[5] M. Yadav, G. Pathak and A. Ganesh, "Empirical Insights on Section 34 Challenges: The State, Judicial Delay, and India's Arbitration Credibility", Arbitration International, 2026, https://doi.org/10.1093/arbint/aiaf030.

[6] B. Alina and Z. Malik, "Promoting Asian Economic Development by Designing Culturally Conscious Alternative Dispute Resolution", Journal of Legal Studies, Vol. 29, 2022, p. 125.

[7] C. Hodges, I. Benöhr and N. Creutzfeldt, "Consumer-to-Business Dispute Resolution: The Power of CADR", ERA Forum, Vol. 13, 2012, p. 199; Articles 5 and 8, Directive 2013/11/EU [2013] OJ L165/63; Sections 225–226, Financial Services and Markets Act 2000 (United Kingdom).

[8] R. Delgado, "Alternative Dispute Resolution: A Critical Reconsideration", SMU Law Review, Vol. 70, 2017, p. 595; L. Enriques and S. Gilotta, "Disclosure and Financial Market Regulation" in The Oxford Handbook of Financial Regulation, compiled by N. Moloney, E. Ferran and J. Payne, Oxford: Oxford University Press, 2015.

[9] Rules 12200, 12403, 12800 and 12904, FINRA Code of Arbitration Procedure for Customer Disputes; J. Gross, "The Customer's Nonwaivable Right to Choose Arbitration in the Securities Industry", Brooklyn Journal of Corporate, Financial and Commercial Law, Vol. 10, 2016, p. 383; M.C. Turk, "FINRA Arbitration as Financial Regulation", Alabama Law Review, Vol. 77, 2025, p. 389.

[10] Financial Markets Ombudsman Service, "Terms of Reference", https://www.fmos.org.my, downloaded on the 12th of August 2026; M.I. Mohd Zain, N.E. Rahmat and I. Ilias, "The Role of Ombudsman: Resolving Financial Disputes in Malaysia", Conflict Resolution Quarterly, Vol. 40, 2022, p. 199.

enforcement linkage not wholly dependent on the ordinary courts.[11] A mandate without that scaffolding compels parties into a forum no more capable than the one it replaces.

Mechanism choice cannot be deferred to practice. An FMOS-type determination binds the member institution but not the complainant; an arbitral award binds both and enters an established enforcement regime, confirmation under RA 9285 and, across borders, the New York Convention.[12] Administrative redress before a regulator is not adjudication between the parties at all: its sanctions run to the State.[13] The institution proposed below is accordingly an arbitral centre with a mediation antechamber, not an ombudsman.According to the Convention, the valid form of arbitration agreement is mainly divided into 2 (two) types: a) in the form of an arbitration clause inside a contract or a separate arbitration agreement, whereas the regarding contract or separate arbitration agreement has been signed by the parties; b) in the form of an arbitration clause inside a contract or separate arbitration agreement that is contained in an exchange of letters or telegrams, without requiring any of these documents to be signed by the parties.[14] However, many commercial parties have tried to implement this concept through different ways. In fact, the UML as well as many domestic arbitration laws in practice give less-strict approaches on what is deemed as a "written document" as an agreement to arbitrate.[15] Hence, there is still a conflicting stance on what is internationally agreed as a valid form of arbitration agreement.

b. Adequacy: Five Criteria

Adequacy is assessed against five criteria drawn from that literature: procedural efficiency, accessibility and cost, neutrality and fairness, enforceability, and investor-protection alignment. The threshold was fixed in advance of the evidence: a criterion is met where the framework satisfies it without further institutional change, partial where a foundation exists but is not operationalized, and not met where no functioning mechanism exists.

c. The Philippine architecture and its structural barriers

Three features structure the analysis. The first is regulatory fragmentation by drafting accident rather than design: the SEC's quasi-judicial jurisdiction over intra-corporate disputes passed to the regular courts in 2000, leaving settlement offers as its principal ADR instrument, oriented towards administrative disposition rather than investor restitution.[16] The Philippine Stock Exchange (PSE) and the CMIC, its surveillance arm since 2010, discipline issuers and trading participants, but neither is a restitution forum.[17] The second is sectoral asymmetry:

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[11] C. Hodges, I. Benöhr and N. Creutzfeldt, Op. Cit.; L. Abubakar and T. Handayani, "Integrated Alternative Dispute Resolution Institutions in the Financial Services Sector", Yustisia Jurnal Hukum, Vol. 10, 2021, p. 32.

[12] Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, 330 UNTS 3; Republic Act No. 9285, Op. Cit., Sections 40–44.

[13] Republic Act No. 8799, Op. Cit., Sections 54 and 63: an investor's recovery lies in the civil action preserved by Section 63. Court-annexed mediation under A.M. No. 01-10-5-SC-PHILJA is likewise a stage within litigation, producing no independently enforceable award.

[14] United Nations Conference on Trade and Development, "Dispute Settlement: International Commercial Arbitration – 5.2 the Arbitration Agreement", 2005, p. 3, https://unctad.org/system/files/official-document/edmmisc232add39_en.pdf; Article II(1) New York Convention 1958.

[15] Saracho Aguirre Jesús, "Validity of the Arbitration Agreement", https://jusmundi.com/en/document/publication/en-validity-of-the-arbitration-agreement-ground-to-refuse-recognition-and-enforcement-of-non-icsid-awards, downloaded on 22nd of August 2024; Article 7 Option I and Option II Model Law 1985.

[16] Republic Act No. 8799, Op. Cit., Sections 5, 5.2, 53 and 64; 2015 Implementing Rules and Regulations of the Securities Regulation Code.

[17] Philippine Stock Exchange, "Consolidated Listing and Disclosure Rules", Article VIII, Section 3, https://www.pse.com.ph, downloaded on the 12th of August 2026; Capital Markets Integrity Corporation, Rules on Complaints, Investigation and Disciplinary Proceedings, Sections 5–7, whose jurisdiction is over trading participants, not claims for restitution.

every functioning mandatory ADR mechanism in the Philippines was created by a dedicated sectoral instrument, not by RA 9285 operating alone.[18] The third is the exchange's revenue structure: the PSE's income depends on trading volume, so any proposal that it or the CMIC administer a mechanism against the participants generating that revenue encounters a conflict which governance can mitigate but not eliminate.

It would be natural to assume that a jurisdiction with an enforcement problem also has a doctrinal one. It does not, and that determines whether the remedy is textual amendment or institutional monitoring. The Special Rules of Court on Alternative Dispute Resolution state, in near-identical language across separate provisions, that a court reviewing an arbitral award shall not disturb the tribunal's determination of facts or interpretation of law.[19] Yet in Fruehauf Electronics Philippines Corp v Technology Electronics Assembly and Management Pacific Corp the Court of Appeals revisited the merits, and the Supreme Court reversed, warning that reviewing an award's correctness would expand the courts' jurisdiction without legislative warrant.[20] That the Court had to reiterate the identical principle eight years later, en banc, is itself the evidence.[21] The constraint lies in institutional habit, and the remedy must make departures auditable rather than merely prohibited.

II. RESEARCH METHOD

2.1 Design and dataset

The study uses an exploratory sequential mixed-methods design, the qualitative strand preceding and informing the quantitative. The survey corroborates the interview-derived constructs rather than independently testing causal effects or population prevalence.

Ten semi-structured key-informant interviews were conducted in April and May 2026. Informants were purposively selected across three groups: five arbitration and disputes practitioners, including a partner in the Singapore office of a global firm and a former in-house counsel to a listed conglomerate; one non-lawyer regulatory-policy officer from the Office for Alternative Dispute Resolution (OADR); and four market-side professionals in brokerage, fund management, and advisory roles, with five to 19 years of experience. Nine were recorded sessions of 60 to 90 minutes and the tenth was completed in writing, yielding transcripts of approximately 47,000 words; the later interviews did not materially extend the code structure. Participants are identified as Participants 1 to 10.

A structured survey, piloted before fielding in June 2026, yielded 50 complete responses. Nine interview themes became Likert-item blocks, producing eleven composite constructs measured on a four-point scale without a neutral midpoint, as reported in Table 1. Respondents were split evenly between lawyers and non-lawyers (25 each) and near-evenly by ADR-practice experience (24 practitioners, 26 non-practitioners); 48 per cent were affiliated with capital-market firms, 24 per cent with law firms, and 20 per cent with the Department of Justice or the SEC. The doctrinal analysis examined RA 9285, RA 8799 and its implementing rules,

[18] Executive Order No. 1008, Op. Cit.; Republic Act No. 11966, Op. Cit.; Intellectual Property Office of the Philippines Memorandum Circular No. 2018-008; Department of Justice Department Circular No. 31 of 2023.
[19] Rules 11.9 and 19.10, Special Rules of Court on Alternative Dispute Resolution, A.M. No. 07-11-08-SC.
[20] Fruehauf Electronics Philippines Corp. v. Technology Electronics Assembly and Management Pacific Corp., G.R. No. 204197 (Supreme Court, 23 November 2016).
[21] Bases Conversion and Development Authority v. CJH Development Corp., G.R. No. 219421 (Supreme Court en banc, 3 April 2024).

Executive Order No. 1008, the CMIC Rules, the Special ADR Rules, and FINRA Rules 12000 and 13000.

2.2 Analytical framework

Transcripts were analysed through a hybrid inductive–deductive process combining Braun and Clarke's six-phase thematic analysis with open, axial, and selective coding, generating approximately 65 codes consolidated into 42 within eleven parent nodes, from which selective coding identified a single core category. Code frequency is reported as a source count rather than a reference count. Quantitative analysis is exploratory throughout, and internal consistency was assessed before any item block was used as a composite. Associations with the ordinal support outcome were tested by Spearman's rank correlation and group differences by Mann–Whitney U and Kruskal–Wallis, these procedures suiting ordinal composites and small, unequal groups. Principal component analysis examined dimensional structure, k-means clustering explored attitudinal segments, logistic regression examined predictors of unconditional support, and a Friedman test ranked four safeguards.

2.3 Limitations

The sample of 50 is adequate for descriptive statistics, reliability analysis, and bivariate testing but small for eleven simultaneous predictors, so the raw logistic specification is exploratory. Two constructs — legal viability and the confidentiality–transparency tension — returned internal consistency below conventional thresholds; findings involving them are directional. Neither the SEC nor the CMIC publicly disaggregates complaint data, so records-based benchmarking was impossible and the empirical strands measure informed professional perception rather than verified institutional performance — itself a finding about sectoral transparency. No capital-market regulator official and no retail investor is represented among the informants, so the findings describe this professional population and do not support generalization to the investing public. Because one member of the research team holds a policy position in a public institution whose mandate is engaged by the reform proposed, that affiliation was disclosed to every informant and material from connected informants was cross-checked against unaffiliated ones.

III. DISCUSSION AND RESULTS

3.1 Adequacy against the five criteria

Table 1 reports reliability, descriptives, and association with support for all eleven constructs.

Table 1. Survey constructs: internal consistency, descriptive statistics, and association with support for mandatory ADR (N = 50)

Construct	Items	α	M	SD	ρ with support	p
Investor protection benefits	5	.91	3.01	.69	.529	<.001
Exclusions from mandatory ADR	3	.79	2.92	.70	.515	<.001
Institutional model / SRO	6	.83	2.81	.57	.494	.0003
Specialized tribunal design	8	.82	2.98	.54	.486	.0003
Confidentiality–transparency tension	4	.44	2.62	.46	.444	.0012

Applicability across dispute types	7	.86	2.95	.57	.442	.0013
Legal viability	6	.41	2.62	.38	.441	.0013
Judicial review and finality	6	.85	3.05	.58	.355	.0115
Procedural safeguards	6	.88	3.10	.62	.341	.0153
Perceived efficiency	6	.59	2.94	.41	.256	.0722
Familiarity with ADR concepts	8	.94	3.18	.62	.214	.1363

Note. Scale runs from 1 (strongly disagree) to 4 (strongly agree), no neutral midpoint. α is Cronbach's alpha; ρ is Spearman's rank correlation with the ordinal support outcome. No adjustment is made for multiple testing given the exploratory purpose.

Procedural efficiency: not met. The construct is the second weakest on reliability (α = .59) and one of only two showing no significant association with support (ρ = .256, ns): its item block mixes a judgment about the current system's inadequacy with one about ADR's comparative advantage, and respondents do not hold these as one attitude. Dissatisfaction with the status quo is not what drives support for compulsion. The qualitative data is convergent: Participant 1 contrasted five to ten years for court litigation against roughly six months for an ADR track, and Participant 5 characterized the consequence of failing to reform as a paper arbitral award, one that exists formally but cannot be enforced in commercially viable time.[22]

Accessibility and cost: not met. Investor protection benefits returned the highest reliability (α = .91) and is the strongest correlate of support (ρ = .529, $p < .001$). Participant 6 located FINRA's critical innovation not in its mandatory character but in its asymmetric cost structure: because the broker-dealer shoulders the costs, the design does not deter retail filings. Participants 7 and 10 described most trading disputes as resolving informally within hours or days inside a small professional community. The inference — and it is an inference, since no data on unformalized retail grievances exists — is that informal resolution may serve institutional counterparties while leaving retail grievances uncaptured, which is precisely the population a subsidized mechanism exists to serve.

Neutrality and fairness: not met. The two constructs bearing on this criterion are among the four strongest correlates of support: institutional model and SRO design (ρ = .494) and tribunal design (ρ = .486). Participant 6 framed the objection structurally — the exchange earns from trading, so anything forming part of it carries a conflict — and Participant 10, a market-side fund manager with no connection to him, arrived at the identical concern about capture. An inadequate roster compounds it: below roughly ten accredited arbitrators, a retail claimant may appear once in several years while dealer-brokers appear repeatedly.

Enforceability: partial. The judicial review and finality construct is well measured (α = .85) and significantly associated with support (ρ = .355), and the Special ADR Rules and RA 9285 supply a sound framework for limited review. The bottleneck is implementation: the standard is unambiguous and has nonetheless required reaffirmation twice at the highest level. As Participant 5 put it, even where a court recognizes an award, if enforcement takes six years the claimant holds a paper award.

[22] No Philippine court publishes disposition-time data for capital-market disputes; the five-to-ten-year range is informant estimation (Participants 1 and 5), not a verified statistic. See Supreme Court of the Philippines, Strategic Plan for Judicial Innovations 2022–2027, 2022; and FINRA, "Dispute Resolution Statistics", https://www.finra.org/arbitration-mediation/dispute-resolution-statistics, downloaded on the 12th of August 2026.

Investor-protection alignment: partial. The final policy position confirms the mandate: 35 respondents (70 per cent) support mandatory ADR clauses in standard capital-market contracts unconditionally, 13 (26 per cent) subject to safeguards, and two (4 per cent) oppose. The reform question here is one of design, not whether reform is warranted. FINRA and FMOS each embed a dedicated mechanism directed at four or five criteria; the Philippine baseline embeds none directed at efficiency or retail cost. The deficiency is not that the courts perform somewhat worse on this class of dispute, but that they are structurally unsuited to it across nearly every criterion.

3.2 The enforcement–legitimacy gap

Selective coding across eight of the ten transcripts identified a core category organizing nearly every parent node: the perceived value of any dispute resolution mechanism, formal or informal alike, discounted in advance by doubt about whether an outcome can be enforced against a well-resourced, well-connected, or simply unwilling adversary. An ADR institutional figure, a disputes partner, and a fund manager produced the same diagnosis independently.

This explains an otherwise puzzling feature of the quantitative data. If dissatisfaction with the current system drove support for reform, perceived efficiency would correlate with support; it does not ($\rho = .256$, ns). If unfamiliarity drove resistance, familiarity would; it does not either ($\rho = .214$, ns). What correlates strongly is confidence in the protective purpose of the mechanism and in the boundaries of its scope. Practitioners are not weighing a slow forum against a fast one; they are weighing whether any forum's output will bind. An enforcement problem understood as a court-speed problem invites a court-speed solution, and respondents do not understand it that way.

3.3 Independence and the self-regulatory conflict

The most robust institutional finding is that the mechanism must be independent of the exchange, its surveillance arm, and any entity whose revenue depends on trading volume. Asked which institutional model is most appropriate ($n = 49$), 44 per cent preferred an independent, SEC-supervised body on the CIAC model; 20 per cent a joint OADR–SEC body; 20 per cent a private arbitral institution accredited by the SEC; 6 per cent a division within the SEC; and 4 per cent a mechanism administered by the exchange.

The exchange-administered model — cheapest to implement, because the infrastructure already exists — attracted two respondents, and non-lawyers converge on the independent model more strongly than lawyers (16 of 25 against six of 25), so the structural conflict identified qualitatively is not confined to the lawyers. Stated preference indicates what the community would find acceptable, not that the preferred model would perform better.

3.4 The structure of stakeholder support

Because the eleven constructs are uniformly and often strongly inter-correlated, principal component analysis was run on the standardized composites. The first component alone accounts for 62.5 per cent of total variance — roughly six times the second component's 10.0 per cent — with every construct loading positively and narrowly, from .21 to .34. The reading offered here is a general orientation along which respondents range from cautious to supportive across every design question at once, rather than trading off one feature against another. Principal component analysis describes how attitudes co-vary, not why, and a common-method component cannot be excluded.

K-means clustering recovered two segments, the cautious one — 52 per cent of the sample — not opposed to reform but concentrating its conditionality on exclusions, investor protection, and

procedural safeguards. Re-estimated on the first four principal components, the first component predicts unconditional support highly significantly ($b = 0.74$, $SE = 0.22$, $p < .001$) while smaller components do not; since predictor and outcome are attitudes on the same instrument, this describes the internal coherence of stated positions, not causal structure. Respondents also ranked four procedural safeguards from most to least important, and a Friedman test confirmed they are not regarded as equally important, $\chi^2(3) = 23.57$, $p < .001$: constitutional due process and party autonomy first (mean rank 2.00), institutional independence from the exchange and industry actors second (2.27), neutral arbitrator selection with transparent conflict rules third (2.53), and limited judicial review with fast-track enforcement last (3.20).

The ordering is the empirical foundation of this article's sequencing argument. Practitioners who describe enforcement as the central problem nonetheless rank the court-side remedy last, behind three safeguards concerned with the forum's own legitimacy and independence. Read with the enforcement–legitimacy gap the position is coherent rather than contradictory: enforcement failure is understood as a symptom of institutional weakness, and accelerating judicial confirmation of awards from a forum that is not trusted addresses the symptom rather than its cause. Lawyers and non-lawyers differ significantly on only one construct, familiarity with ADR concepts ($p < .001$): on substantive design questions, confidence tracks hands-on ADR practice, not legal qualification.

3.5 Scope and the confidentiality–disclosure clash

Support for compulsion is almost as strongly tied to confidence that the mechanism will be bounded as to confidence in its protective purpose. Exclusions from mandatory ADR is the second-strongest correlate of support ($\rho = .515$, $p < .001$), and applicability across dispute types is also significant ($\rho = .442$). Support for mandatory arbitration here is not support for arbitrating everything. Participant 4 drew the line: purely contractual matters between client and broker are suitable, but anything with a public-interest or compliance dimension belongs with the regulatory authority, insider trading carrying criminal liability besides. Participant 6 added that a party who can afford to bring its own claims should be permitted to opt out, preserving the protective rationale for compulsion, which is directed at asymmetry, while removing it where asymmetry is absent. The evidence supports a tiered mandate.

A collision the comparative literature has not addressed arises wherever a listed issuer is party to a confidential proceeding. Arbitral confidentiality is a principal reason parties select the forum, yet Philippine listed companies are bound to continuing disclosure obligations administered jointly by the exchange and the regulator.[23] Participant 3, who has managed disclosure inside a listed conglomerate, put it directly: a party wants confidentiality, which is why it chose ADR, and then finds the disclosure requirement engaged immediately. Participant 6 supplied the key that converts this into a design problem: arbitration is private but not inherently confidential, so the two obligations can be reconciled at the level of what is disclosed. That this remains contested shows in the data: the construct returned the joint-lowest mean and second-weakest reliability ($\alpha = .44$) while still correlating significantly with support ($\rho = .444$).

IV. CONCLUSION

This article examined whether the shortfall in the Philippine capital market's dispute-resolution architecture is legislative or institutional. The evidence indicates that the more immediate deficit is

[23] Philippine Stock Exchange, Op. Cit., operating alongside the current-report requirement under Rule 17.1 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code and SEC Form 17-C — a joint exchange and regulator obligation, not a rule of the exchange alone.

institutional. The existing framework does not meet the criteria of procedural efficiency, accessibility, or neutrality, and only partially meets those of enforceability and investor-protection alignment. The legal framework for arbitration and investor protection is substantial, but it has not produced a forum that is specialized, compulsory where appropriate, and structurally independent of the intermediaries whose conduct is in issue.

Three findings have wider relevance for emerging markets. The enforcement–legitimacy gap explains how formal legal adequacy may coexist with practical distrust: where parties anticipate difficulty enforcing an outcome, procedural rights have limited persuasive force. The data qualify the intuitive view that faster judicial confirmation should be the first reform priority, respondents treating institutional independence and neutral appointment as more important. And support was strongly conditioned by scope, making a defined dispute taxonomy with regulatory and criminal carve-outs a condition of acceptability rather than a technical detail.

The article does not claim that a compulsory regime meeting these conditions would necessarily earn legitimacy or improve outcomes; that can only be tested once an institution operates. It does identify the minimum design conditions that make compulsion normatively defensible on the present evidence: operational independence from the industry, a bounded and transparent jurisdiction, a sufficiently broad roster of neutrals, and an access-to-justice architecture that does not transfer the cost of redress to retail claimants. Testing them will require what this study could not obtain: disaggregated complaint data, a retail investor survey, and a feasibility study. Without those safeguards, mandatory arbitration risks merely relocating disputes into a forum whose credibility remains in doubt.

4.1 Recommendations

The recommendations are normative proposals informed by the evidence, not solutions the evidence validates: the study does not test any institution's performance, because the institution proposed does not exist to be tested. Because attitudes are organized around a single dominant orientation, a coherent package is more likely to succeed than isolated fixes.

Whether such a regime can be created by rule alone or requires legislation is contested in the data and in the law. Section 5(n) of the Securities Regulation Code grants the SEC powers implied from or incidental to its express powers, and in Philippine Airlines v Civil Aeronautics Board the Court held that a body's power to regulate proceedings before it is reasonably implied from its adjudicatory jurisdiction.[24] But bodies exercising quasi-judicial power must be created by statute, because adjudication between private parties is an exercise of sovereign judicial power delegable only by legislative act,[25] and compelling parties who have not agreed to arbitrate restricts access to the courts in a manner only a statute can validly impose.[26] Regulatory authority suffices for the contractual perimeter, but not to create an independent adjudicatory institution or to compel parties outside it. The two tracks should therefore run in parallel.

First, establish a Capital Markets Arbitration Centre — an arbitral institution with a mediation antechamber — as a body corporate on the CIAC analogy, supervised by the SEC but operationally and financially autonomous, its charter precluding the exchange and its surveillance arm from administrative authority, budgetary control, or any role in arbitrator selection where their members are

[24] Republic Act No. 8799, Op. Cit., Section 5(n); Philippine Airlines, Inc. v. Civil Aeronautics Board, G.R. No. 119528 (Supreme Court, 26 March 1997).

[25] Article VIII, Section 1, Constitution of the Republic of the Philippines 1987; Cariño v. Commission on Human Rights, G.R. No. 96681 (Supreme Court, 2 December 1991), holding that the power to adjudicate must be conferred by law.

[26] Article VI, Sections 22–23, Constitution of the Republic of the Philippines 1987; Ople v. Torres, G.R. No. 127685 (Supreme Court, 23 July 1998); Del Monte Corporation-USA v. Court of Appeals, G.R. No. 136154 (Supreme Court, 7 February 2001); Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc., G.R. No. 175404 (Supreme Court, 31 January 2011).

parties. Governance should rest with a board nominated by the regulator with a supermajority of independent practitioners. This is the model a plurality of the surveyed community prefers; the step from preference to performance is an argument this article makes rather than a finding it reports.

Second, build the arbitrator roster as a precondition of launch. Below roughly ten accredited arbitrators, the gap in appearance frequency between occasional retail claimants and repeat institutional respondents creates familiarity risk no disclosure rule cures. The OADR, which holds the accreditation mandate under RA 9285, and the SEC should jointly certify a minimum cohort before the Centre accepts its first case.[27]

Third, sequence enforcement reform around institutional independence first and court-side speed second — the article's principal departure from the conventional prescription. Court-side measures should launch alongside the institution, not instead of it: a Supreme Court issuance designating a dedicated division within the commercial courts for confirmation proceedings, and regulatory authority to impose licensing sanctions for non-compliance with a confirmed award. Because the compliance gap is institutional rather than textual, the useful refinement is narrow: any decision vacating, modifying, or refusing to confirm an award should state on its face which enumerated ground under the Special ADR Rules it invokes and how the facts satisfy it. That makes departures auditable without altering the substantive standard.

Fourth, fix a tiered dispute taxonomy on the face of the statute, since bounded scope is nearly as strong a correlate of support as protective purpose: simple retail client–broker disputes to an expedited mediation track, with residual determination on the papers where mediation fails; complex platform-mediated and institutional disputes to full arbitration; and regulatory, compliance, and criminal matters excluded and retained by the regulator, with an opt-out for sophisticated parties above a defined threshold.

Fifth, legislate an access-to-justice architecture on the FINRA model, the recommendation with the least room for compromise: a cost-subsidy requiring broker-dealers to fund administrative and arbitrator fees for retail claims below a defined threshold; an expedited small-claims mediation track with a flat institutional fee; and authorization of third-party funding subject to disclosure preventing funder influence over case strategy. The CIAC recovers cost through a statutory fee table rather than annual appropriation, and a centre funded on the same model would need public funding only for stand-up costs.[28]

Sixth, resolve the confidentiality–disclosure clash on an aggregate model. Treating any proceeding involving a listed company as a disclosable material transaction is the design most likely to produce market-signalling harm, telling the market exactly which issuer faces exactly which dispute at the moment it is least able to explain it. An aggregate model resolves this more cleanly and has a doctrinal home every listed issuer already uses: Philippine Accounting Standard 37, adopted from IAS 37, requires disclosure of contingent liabilities by class in aggregate rather than case by case, and its seriously-prejudicial exemption permits an issuer to withhold case-specific substance while disclosing that a category of exposure exists.[29] Volkswagen AG discloses an aggregate figure for investor litigation on exactly that basis.[30] The statute should rest on one principle — aggregate disclosure of exposure,

[27] Republic Act No. 9285, Op. Cit., Sections 49–50.
[28] Construction Industry Arbitration Commission, Revised Rules of Procedure Governing Construction Arbitration, Op. Cit., schedule of fees.
[29] International Accounting Standards Board, IAS 37: Provisions, Contingent Liabilities and Contingent Assets, IFRS Foundation, 2024, paras. 86 and 92, adopted in the Philippines as Philippine Accounting Standard 37; Section 52.1.1.4, 2015 Implementing Rules and Regulations of the Securities Regulation Code.
[30] Volkswagen AG, Annual Report 2023, notes to the consolidated financial statements (litigation and legal risks); Coloplast A/S, Annual Report 2019/2020, note 20 (other provisions).

case-specific confidentiality of substance — with final awards published anonymized on a public register.

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