

## ANNEX II

### ORDER 69 ARBITRATION PROCEEDINGS\*

#### 1. *Interpretation (O. 69, r. 1)*

- (1) In this Order—
  - (a) “the 1952 Act” means the Arbitration Act 1952 [Act 93]; and
  - (b) “the 2005 Act” means the Arbitration Act 2005 [Act 646].
- (2) This Order applies to proceedings in the High Court.

#### 2. *Claims under the 2005 Act (O. 69, r. 2)*

- (1) In this Order, “arbitration claim” means any application to the Court under the 2005 Act, including a claim to—
  - (a) appoint an arbitrator under subsection 13(7) of the 2005 Act;
  - (b) decide on the challenge of an arbitrator under subsection 15(3) of the 2005 Act;
  - (c) decide on the termination of the mandate of an arbitrator under subsection 16(2) of the 2005 Act;
  - (d) appeal against the ruling of the arbitral tribunal on jurisdiction under subsection 18(8) of the 2005 Act;
  - (e) enforce interlocutory orders or directions of an arbitral tribunal made under section 19 of the 2005 Act;
  - (f) seek interlocutory orders or directions under section 11 of the 2005 Act;
  - (g) determine under section 41 of the 2005 Act, any question of law arising in the course of the arbitration proceedings;
  - (h) determine under section 42 of the 2005 Act, any question of law arising out of an award;
  - (i) set aside an award under section 37 of the 2005 Act;
  - (j) direct any matter in connection with bankruptcy proceedings under section 49 of the 2005 Act;
  - (k) enforce an award under section 38 of the 2005 Act;
  - (l) extend time under section 45 or 46 of the 2005 Act; and
  - (m) seek an order under subsection 44(4) of the 2005 Act where the arbitral tribunal withholds its award for non-payment of fees and expenses.
- (2) An application under subparagraph (1)(b) or (d) shall be made within thirty days from the receipt of a notice by the applicant of the decision or ruling of the arbitral tribunal.
- (3) An application under subparagraph (1)(b), (c), (g), (h), (i) or (m) shall be served on each arbitrator.

---

\* In effect 1 August 2012.

MALAYSIA

3. *Claims under the 1952 Act (O. 69, r. 3)*

- (1) In this Order, “arbitration claim” means any application to the Court under the 1952 Act, including a claim to—
  - (a) appoint an arbitrator under section 12 of the 1952 Act;
  - (b) revoke the authority of an arbitrator, or to order that an arbitration agreement shall cease to have effect, under section 25 of the 1952 Act;
  - (c) remove an arbitrator under subsection 24(1) of the 1952 Act;
  - (d) remit an award under section 23 of the 1952 Act;
  - (e) set aside an award under subsection 24(2) of the 1952 Act;
  - (f) decide any question of law arising in the course of the reference or award in the form of a special case stated, or to direct an arbitrator to state a case, under section 22 of the 1952 Act;
  - (g) enforce an award under section 27 of the 1952 Act; and
  - (h) to extend time under section 28 of the 1952 Act.
- (2) An application under subparagraph (1)(d) or (e) shall be made within forty-two days after the award is made and published.
- (3) An application under subparagraph (1)(b), (c), (d), (e) or (f) shall be served on each arbitrator.

4. *Starting the claim (O. 69, r. 4)*

- (1) An arbitration claim under rule 2 or rule 3 may be made using the originating summons procedure, and Form 5 shall be filed in the High Court. An arbitration claim originating summons shall—
  - (a) include a concise statement of—
    - (i) the remedy claimed; and
    - (ii) any question on which the applicant seeks the decision of the Court;
  - (b) state the grounds in support of the originating summons;
  - (c) show that any statutory requirements have been met;
  - (d) specify the section of the 1952 Act or the 2005 Act under which the claim is made;
  - (e) specify the respondents on whom the arbitration claim originating summons is to be served, stating their role in the arbitration; and
  - (f) identify against which, if any, respondents an order of costs is sought.
- (2) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his originating summons, including a copy of the arbitration agreement and the award, where relevant.
- (3) Unless the Court orders otherwise, an arbitration claim originating summons and the affidavit shall be served on the respondents specified in subparagraph (1)(e), within thirty days from the date of issue.
- (4) Where relevant, rules 5 to 8 shall additionally apply.

5. *Application to set aside an award (O. 69, r. 5)*

- (1) Subject to subparagraph (2), an application to the Court to set aside an award under section 37 of the 2005 Act may be made—
  - (a) at any time within ninety days from the date on which the applicant received the award; or
  - (b) if a request has been made to the arbitral tribunal for a correction or interpretation of the award or for an additional award under section 35 of the

MALAYSIA

Act, at any time within ninety days after the request has been disposed off by the arbitral tribunal.

- (2) An application to the Court to set aside an award on the ground that the award was induced or affected by fraud or corruption may be made within ninety days after the alleged fraud or corruption became known to the party making the application.
- (3) In every application to set aside an award, the originating summons shall, in addition to matters stated in rule 4(1)—
  - (a) give details of the award challenged;
  - (b) identify which part or parts of the award are challenged; and
  - (c) specify the grounds for the challenge.
- (4) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his writ, including a copy of the arbitration agreement and the award.
- (5) The originating summons and affidavit shall be served on each arbitrator and the respondents.

6. *Application to refer questions of law arising out of an award (O. 69, r. 6)*

- (1) A reference of any question of law to the Court under section 42 of the 2005 Act may be made at any time within forty-two days of the publication and receipt of the award.
- (2) In every application for reference of a question of law under section 42 of the 2005 Act the originating summons shall, in addition to the matters stated in rule 4(1)—
  - (a) identify the question of law arising out of the award which is sought to be determined;
  - (b) state the grounds on which reference is sought; and
  - (c) give particulars of each ground on which it is contended that the arbitral tribunal erred in law, with references to the paragraphs or passages of the award where each alleged error is to be found.
- (3) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his originating summons, including a copy of the arbitration agreement and the award.
- (4) The originating summons and affidavit shall be served on each arbitrator and the respondents.

7. *Preliminary question of law (O. 69, r. 7)*

- (1) An application under section 41 of the 2005 Act to determine any question of law arising in the course of the arbitral proceedings shall, in addition to the matters stated in rule 4(1)
  - (a) be made either with
    - (i) the agreement in writing of all the parties to the arbitral proceedings; or
    - (ii) the permission in writing of the arbitral tribunal; and
  - (b) identify the question of law to be determined.
- (2) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his originating summons, including a copy of the arbitration agreement and the written agreement or permission under subparagraph (1)(a).

MALAYSIA

- (3) The originating summons and affidavit shall be served on each arbitrator and the respondents.

8. *Enforcement of awards (O. 69, r. 8)*

- (1) An application for permission to enforce an award in the same manner as a judgment or an order may be made without notice in an arbitration claim originating summons.
- (2) The arbitration claim originating summons shall
  - (a) state the name and the usual or last known place of abode or business of the applicant, and the respondent against whom it is sought to enforce the award, respectively; and
  - (b) state either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.
- (3) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his originating summons, including exhibiting the original arbitration agreement and the duly authenticated original award or, in either case, a duly certified copy thereof and where the award or agreement is in a language other than the national language or English, a translation of it in the English language, duly certified as a correct translation by a sworn translator or by an official or by a diplomatic or consular agent of the country in which the award was made.
- (4) The Court may specify parties to the arbitration on whom the arbitration claim originating summons shall be served.
- (5) With the permission of the Court, the arbitration claim originating summons may be served out of the jurisdiction irrespective of where the award is, or is treated as, made.
- (6) An order giving permission to enforce the award shall
  - (a) be drawn up by the applicant; and
  - (b) be served on the respondent by
    - (i) delivering a copy to him personally; or
    - (ii) sending a copy to him at his usual or last known place of residence or business.
- (7) Within fourteen days after service of the order giving permission to enforce the award or, if the order is to be served out of the jurisdiction, within such other period as the Court may set—
  - (a) the respondent may apply to set aside such order; and
  - (b) the award shall not be enforced until—
    - (i) after the expiration of that period; or
    - (ii) if the respondent applies within that period to set aside, until after the application made by the respondent has been finally disposed of.
- (8) The order giving permission for enforcement shall contain a statement of the right to make an application to set aside the order.
- (9) Where a body corporate is a party, any reference in this rule to a place of residence or business shall have effect as if the reference were to the registered or principal address of the body corporate.
- (10) Where the award sought to be enforced is in the nature of an interim injunction under subsection 13(6) of the 1952 Act or subsection 19(1) of the 2005 Act, the order shall be granted only if the applicant undertakes to abide by any order the

MALAYSIA

Court or the arbitral tribunal may make as to damages. The order shall be enforceable immediately, and subparagraph (7)(b) shall not apply.

*9. Registration in High Court of foreign awards (O. 69, r. 9)*

Where an award has, under the law in force in the place where it was made become enforceable in the same manner as a judgment given by a Court in that place, an applicant may enforce the award in the manner provided for under rule 8.

*10. Stay of legal proceedings (O. 69, r. 10)*

- (1) An application seeking a stay of legal proceedings under section 10 of the 2005 Act shall be served on all parties to those proceedings who have given an address for service.
- (2) A copy of an application under paragraph (1) shall be served on any other party to the legal proceedings (whether or not he is within the jurisdiction) who has not given an address for service, at—
  - (a) his last known address; or
  - (b) a place where it is likely to come to his attention.
- (3) Where a question arises as to whether—
  - (a) an arbitration agreement has been concluded; or
  - (b) the dispute which is the subject matter of the proceeding falls within the terms of such agreement,

the Court may decide that question or give directions to enable it to be decided and may order the proceeding to be stayed pending its decision.

*11. Application to extend time (O. 69, r. 11)*

- (1) An application to extend time under section 46 of the 2005 Act for making an award may be made—
  - (a) by the arbitral tribunal, upon notice to the parties; or
  - (b) by any party to the proceedings, upon notice to the arbitral tribunal and the other parties.
- (2) An application made under section 45 or 46 of the 2005 Act shall be served on all the other parties to the arbitration proceedings, including the arbitral tribunal in cases where the application is not made by the arbitral tribunal.
- (3) Order 3, rule 5 shall apply to this Order.

*12. Service out of the jurisdiction (O. 69, r. 12)*

- (1) The Court may give permission to serve an arbitration claim originating summons out of the jurisdiction if—
  - (a) the applicant seeks to set aside an award or a reference on a question of law arising out of an arbitration award made within the jurisdiction; or
  - (b) the applicant seeks some other remedy or requires a question to be decided by the Court affecting an arbitration agreement, or an arbitration, whether or not the arbitration is held within the jurisdiction and whether or not the arbitration has started, or an arbitration award, whether or not made within the jurisdiction.
- (2) An application for permission under paragraph (1) shall be supported by written evidence
  - (a) stating the grounds on which the application is made; and

MALAYSIA

- (b) showing in what place or country the person to be served is to be found or probably may be found.

*13. Notice (O. 69, r. 13)*

Where notice shall be given to an arbitrator or any other person it may be given by sending him a copy of—

- (a) the arbitration claim originating summons; and
- (b) any affidavit of written evidence in support.

*14. Subpoena (O. 69, r. 14)*

Order 38, rules 13 to 23 shall apply in relation to the issue of subpoena and the taking of evidence for arbitration proceedings under section 13 of the 1952 Act or section 29 of the 2005 Act as they apply in relation to proceedings in the Court.