

Judicial approach to application and construction of Arbitration Act 2005 in Malaysia: introduction

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Introduction

This article is part of a series that considers how the courts in Malaysia have construed and interpreted sections 8, 37 and 42 of the 2005 Act.⁽¹⁾

Over the past few decades, Malaysia has sought to develop a refined and efficient system for alternative dispute resolution. Today, Malaysia has a relatively robust arbitration eco-system.

Background

In 1950, the Arbitration Ordinance 1950 (the 1950 Ordinance) replaced the 1890 Arbitration Ordinance for all the states of the then Federation of Malaya. The 1950 Ordinance was based on the English Arbitration Act 1889. British North Borneo and Sarawak adopted the English Arbitration Act 1952 as their respective ordinance in 1952. In 1963, North Borneo and Sarawak joined the Federation of Malaysia. On 1 November 1972, Malaysia adopted the arbitration laws prevailing in Sabah and Sarawak and these laws became known in Malaysia as the Arbitration Act 1952 (the 1952 Act), which is based on the English 1950 Act.

Arbitration Act 2005

Thereafter, an amendment to the 1952 Act on 1 February 1980 gave special status to arbitrations held under the Convention on the Settlement of Investment Disputes between the States of Nationals and other States 1965 under the United Nations Commission of International Trade Law (UNCITRAL) and the Rules of Arbitration for the Regional Arbitration Centre for Kuala Lumpur (KLRC) (now known as the Asian International Arbitration Centre (AIAC)). Pressure to replace the 1952 Act with the UNCITRAL Model Law by the Malaysian Bar Council and the arbitral community resulted in the enactment of the Arbitration Act 2005 (the 2005 Act). The 2005 Act, which was based largely on the UNCITRAL Model Law and the New Zealand Arbitration Act 1996, came into effect on 15 March 2006.

Amendments to 2005 act

There were still omissions in the 2005 Act, and the arbitral community, including the Malaysian Bar Council and the attorney general's chambers of Malaysia, collaborated to ensure that these omissions were addressed by way of the Arbitration (Amendment) Act 2011 (the 2011 Act) which came into effect on 1 July 2011.

Then, two pieces of legislation were passed in 2018 that made several key changes to arbitration in Malaysia under the scheme of the 2005 Act. The first was the Arbitration (Amendment) Act 2018 (No.1), which renamed the KLRC to the AIAC and stipulated that all legal references to the former KLRC (under the 2005 Act and the existing KLRC Rules) remain in full force subsequent to the name change.

The second amendment in 2018 was the Arbitration (Amendment) Act 2018 (No.2) (the 2018 Amendment Act), which brought significant changes to the substantive rules of law on arbitration under the scheme of the 2005 Act and came into force on 8 May 2018. The 2018 Amendment Act was passed with a view to ensuring that Malaysian arbitration laws reflect the 2006 amendments to the UNCITRAL Model Law, and mirror arbitral legislations of leading arbitral jurisdiction in the region and worldwide.

The principal amendments introduced by way of the 2005 Act were regarding sections 8, 10, 11, 30, 37, 39 and 42 of the 2005 Act. Section 8 of the 2005 Act deals with court intervention and the amendment made it clear that court intervention should be confined to situations specifically covered by the 2005 Act so that there would be no application of the common law or statutory concepts of inherent powers of a court of law. The amendment to section 10 of the 2005 Act was with regard to the court's power to grant a stay of court proceedings, while the amendment to section 11 of the 2005 Act addressed the court's power to grant interim relief, which would apply even if the seat of arbitration was a foreign one. Section 42 of the 2005 Act, which is premised on the 2011 amendment, was in respect of the reference of a question of law by a party to a court of law for determination.

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Endnotes

(1) For further details, see *Arbitration in Malaysia – A Practical Guide*, edited by Tun Arifin Zakaria, Sundra Rajoo and Philip Koh.



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