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ARBITRATION ACT 2005

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ARBITRATION ACT 2005

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ARBITRATION ACT 2005

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LAWS OF MALAYSIA**Act 646****ARBITRATION ACT 2005**

An Act to reform the law relating to domestic arbitration, provide for international arbitration, the recognition and enforcement of awards and for related matters.

[15 March 2006; P.U. (B) 65/2006]

ENACTED by the Parliament of Malaysia as follows:

PART I**PRELIMINARY****Short title and commencement**

1. (1) This Act may be cited as the Arbitration Act 2005.
- (2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“award” means a decision of the arbitral tribunal on the substance of the dispute and includes any final, interim or partial award and any award on costs or interest but does not include interlocutory orders;

“High Court” means the High Court in Malaya and the High Court in Sabah and Sarawak or either of them, as the case may require

“Minister” means the Minister charged with the responsibility for arbitration;

“State” means a sovereign State and not a component state of Malaysia, unless otherwise specified;

“presiding arbitrator” means the arbitrator designated in the arbitration agreement as the presiding arbitrator or chairman of the arbitral tribunal, a single arbitrator or the third arbitrator appointed under subsection 13(3);

“arbitration agreement” means an arbitration agreement as defined in section 9;

“party” means a party to an arbitration agreement or, in any case where an arbitration does not involve all the parties to the arbitration agreement, means a party to the arbitration;

“seat of arbitration” means the place where the arbitration is based as determined in accordance with section 22;

“international arbitration” means an arbitration where—

- (a) one of the parties to an arbitration agreement, at the time of the conclusion of that agreement, has its place of business in any State other than Malaysia;
- (b) one of the following is situated in any State other than Malaysia in which the parties have their places of business:
 - (i) the seat of arbitration if determined in, or pursuant to, the arbitration agreement;
 - (ii) any place where a substantial part of the obligations of any commercial or other relationship is to be

performed or the place with which the subject matter of the dispute is most closely connected; or

- (c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one State;

“domestic arbitration” means any arbitration which is not an international arbitration;

“arbitral tribunal” means a sole arbitrator or a panel of arbitrators.

- (2) For the purposes of this Act—

- (a) in the definition of “international arbitration”—

- (i) where a party has more than one place of business, reference to the place of business is that which has the closest relationship to the arbitration agreement; or

- (ii) where a party does not have a place of business, reference to the place of business is that party’s habitual residence;

- (b) where a provision of this Act, except section 3, leaves the parties free to determine a certain issue, such freedom shall include the right of the parties to authorize a third party, including an institution, to determine that issue;

- (c) where a provision of this Act refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, that agreement shall include any arbitration rules referred to in that agreement;

- (d) where a provision of this Act refers to a claim, other than in paragraphs 27(a) and 34(2)(a), it shall also apply to a counterclaim, and where it refers to a defence, it shall also apply to a defence to that counterclaim.

Application to arbitrations and awards in Malaysia

3. (1) This Act shall apply throughout Malaysia.

(2) In respect of a domestic arbitration, where the seat of arbitration is in Malaysia—

(a) Parts I, II and IV of this Act shall apply; and

(b) Part III of this Act shall apply unless the parties agree otherwise in writing.

(3) In respect of an international arbitration, where the seat of arbitration is in Malaysia—

(a) Parts I, II and IV of this Act shall apply; and

(b) Part III of this Act shall not apply unless the parties agree otherwise in writing.

(4) For the purposes of paragraphs (2)(b) and (3)(b), the parties to a domestic arbitration may agree to exclude the application of Part III of this Act and the parties to an international arbitration may agree to apply Part III of this Act, in whole or in part.

Arbitrability of subject matter

4. (1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy.

(2) The fact that any written law confers jurisdiction in respect of any matter on any court of law but does not refer to the determination of that matter by arbitration shall not, by itself, indicate that a dispute about that matter is not capable of determination by arbitration.

Government to be bound

5. This Act shall apply to any arbitration to which the Federal Government or the Government of any component state of Malaysia is a party.

PART II

ARBITRATION

Chapter 1

General provisions

Receipt of written communications

6. (1) Unless otherwise agreed by the parties—

(a) a written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; and

(b) where the places referred to in paragraph (a) cannot be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered post or any other means which provides a record of the attempt to deliver it.

(2) Unless otherwise agreed by the parties, a written communication sent electronically is deemed to have been received if it is sent to the electronic mailing address of the addressee.

(3) The communication is deemed to have been received on the day it is so delivered.

(4) This section shall not apply to any communications in respect of court proceedings.

Waiver of right to object

7. A party who knows—

- (a) of any provision of this Act from which the parties may derogate; or
- (b) that any requirement under the arbitration agreement has not been complied with,

and yet proceeds with the arbitration without stating its objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived its right to object.

Extent of court intervention

8. No court shall intervene in matters governed by this Act, except where so provided in this Act.

Chapter 2

*Arbitration agreement***Definition and form of arbitration agreement**

9. (1) In this Act, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in an agreement or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing where it is contained in—

- (a) a document signed by the parties;
- (b) an exchange of letters, telex, facsimile or other means of communication which provide a record of the agreement; or
- (c) an exchange of statement of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(5) A reference in an agreement to a document containing an arbitration clause shall constitute an arbitration agreement, provided that the agreement is in writing and the reference is such as to make that clause part of the agreement.

Arbitration agreement and substantive claim before court

10. (1) A court before which proceedings are brought in respect of a matter which is the subject of an arbitration agreement shall, where a party makes an application before taking any other steps in the proceedings, stay those proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) The court, in granting a stay of proceedings pursuant to subsection (1), may impose any conditions as it deems fit.

(2A) Where admiralty proceedings are stayed pursuant to subsection (1), the court granting the stay may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest –

- (a) order that the property arrested be retained as security for the satisfaction of any award given in the arbitration in respect of that dispute; or
- (b) order that the stay of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award.

(2B) Subject to any rules of court and to any necessary modifications, the same law and practice shall apply in relation to property retained in pursuance of an order under subsection (2A) as would apply if it were held for the purposes of proceedings in the court making the order.

(2C) For the purpose of this section, admiralty proceedings refer to admiralty proceedings under Order 70 of the Rules of the High Court 1980 [*P.U. (A) 50/1980*] and proceedings commenced pursuant to paragraph 24(b) of the Courts of Judicature Act 1964 [*Act 91*].

(3) Where the proceedings referred to in subsection (1) have been brought, arbitral proceedings may be commenced or continued, and an award may be made, while the issue is pending before the court.

(4) This section shall also apply in respect of an international arbitration, where the seat of arbitration is not in Malaysia.

Arbitration agreement and interim measures by High Court

11. (1) A party may, before or during arbitral proceedings, apply to a High Court for any interim measure and the High Court may make the following orders for:

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) giving of evidence by affidavit;
- (d) appointment of a receiver;
- (e) securing the amount in dispute, whether by way of arrest of property or bail or other security pursuant to the admiralty jurisdiction of the High Court;

- (f) the preservation, interim custody or sale of any property which is the subject-matter of the dispute;
- (g) ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and
- (h) an interim injunction or any other interim measure.

(2) Where a party applies to the High Court for any interim measure and an arbitral tribunal has already ruled on any matter which is relevant to the application, the High Court shall treat any findings of fact made in the course of such ruling by the arbitral tribunal as conclusive for the purposes of the application.

(3) This section shall also apply in respect of an international arbitration, where the seat of arbitration is not in Malaysia.

Chapter 3

Composition of arbitrators

Number of arbitrators

12. (1) The parties are free to determine the number of arbitrators.

(2) Where the parties fail to determine the number of arbitrators, the arbitral tribunal shall—

- (a) in the case of an international arbitration, consist of three arbitrators; and
- (b) in the case of a domestic arbitration, consist of a single arbitrator.

Appointment of arbitrators

13. (1) Unless otherwise agreed by the parties, no person shall be precluded by reason of nationality from acting as an arbitrator.

(2) The parties are free to agree on a procedure for appointing the arbitrator or the presiding arbitrator.

(3) Where the parties fail to agree on the procedure referred to in subsection (2), and the arbitration consists of three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator as the presiding arbitrator.

(4) Where subsection (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days of receipt of a request in writing to do so from the other party; or

(b) the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment or such extended period as the parties may agree,

either party may apply to the Director of the Kuala Lumpur Regional Centre for Arbitration for such appointment.

(5) Where in an arbitration with a single arbitrator—

(a) the parties fail to agree on the procedure referred to in subsection (2); and

(b) the parties fail to agree on the arbitrator,

either party may apply to the Director of the Kuala Lumpur Regional Centre for Arbitration for the appointment of an arbitrator.

(6) Where, the parties have agreed on the procedure for appointment of the arbitrator—

(a) a party fails to act as required under such procedure;

(b) the parties, or two arbitrators, are unable to reach an agreement under such procedure; or

- (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the Director of the Kuala Lumpur Regional Centre for Arbitration to take the necessary measures, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) Where the Director of the Kuala Lumpur Regional Centre for Arbitration is unable to act or fails to act under subsections (4), (5) and (6) within thirty days from the request, any party may apply to the High Court for such appointment.

(8) In appointing an arbitrator the Director of the Kuala Lumpur Regional Centre for Arbitration or the High Court, as the case may be, shall have due regard to—

- (a) any qualifications required of the arbitrator by the agreement of the parties;
- (b) other considerations that are likely to secure the appointment of an independent and impartial arbitrator; and
- (c) in the case of an international arbitration, the advisability of appointing an arbitrator of a nationality other than those of the parties.

(9) No appeal shall lie against any decision of the Director of the Kuala Lumpur Regional Centre for Arbitration or the High Court under this section.

Grounds for challenge

14. (1) A person who is approached in connection with that person's possible appointment as an arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to that person's impartiality or independence.

(2) An arbitrator shall, without delay, from the time of appointment and throughout the arbitral proceedings, disclose any

circumstances referred to in subsection (1) to the parties unless the parties have already been informed of such circumstances by the arbitrator.

- (3) An arbitrator may be challenged only if—
- (a) the circumstances give rise to justifiable doubts as to that arbitrator's impartiality or independence; or
 - (b) that arbitrator does not possess qualifications agreed to by the parties.
- (4) A party may challenge an arbitrator appointed by that party, or in whose appointment that party has participated, only for reasons which that party becomes aware of after the appointment has been made.

Challenge procedure

15. (1) Unless otherwise agreed by the parties, any party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or of any reasons referred to in subsection 14(3), send a written statement of the reasons for the challenge to the arbitral tribunal.

(2) Unless the challenged arbitrator withdraws from office or the other party agrees to the challenge, the arbitral tribunal shall make a decision on the challenge.

(3) Where a challenge is not successful, the challenging party may, within thirty days after having received notice of the decision rejecting the challenge, apply to the High Court to make a decision on the challenge.

(4) While such an application is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

(5) No appeal shall lie against the decision of the High Court under subsection (3).

Failure or impossibility to act

16. (1) Where an arbitrator becomes in law or in fact unable to perform the functions of that office, or for other reasons fails to act without undue delay, that arbitrator's mandate terminates on withdrawal from office or if the parties agree on the termination.

(2) Where any party disagrees on the termination of the mandate of the arbitrator, any party may apply to the High Court to decide on such termination and no appeal shall lie against the decision of the High Court.

(3) Where, under this section or subsection 15(2), an arbitrator withdraws from office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or subsection 14(3).

Appointment of substitute arbitrator

17. (1) A substitute arbitrator shall be appointed in accordance with the provisions of this Act where—

- (a) the mandate of an arbitrator terminates under section 15 or 16;
- (b) an arbitrator withdraws from office for any other reason;
- (c) the mandate of the arbitrator is revoked by agreement of the parties; or
- (d) in any other case of termination of mandate.

(2) Unless otherwise agreed by the parties—

- (a) where a single or the presiding arbitrator is replaced, any hearings previously held shall be repeated before the substitute arbitrator; or

(b) where an arbitrator other than a single or the presiding arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(3) Unless otherwise agreed by the parties, any order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely on the ground there has been a change in the composition of the arbitral tribunal.

Chapter 4

Jurisdiction of arbitral tribunal

Competence of arbitral tribunal to rule on its jurisdiction

18. (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

(2) For the purposes of subsection (1)—

(a) an arbitration clause which forms part of an agreement shall be treated as an agreement independent of the other terms of the agreement; and

(b) a decision by the arbitral tribunal that the agreement is null and void shall not *ipso jure* entail the invalidity of the arbitration clause.

(3) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.

(4) A party is not precluded from raising a plea under subsection (3) by reason of that party having appointed or participated in the appointment of the arbitrator.

(5) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(6) Notwithstanding subsections (3) and (5), the arbitral tribunal may admit such plea if it considers the delay justified.

(7) The arbitral tribunal may rule on a plea referred to in subsection (3) or (5), either as a preliminary question or in an award on the merits.

(8) Where the arbitral tribunal rules on such a plea as a preliminary question that it has jurisdiction, any party may, within thirty days after having received notice of that ruling appeal to the High Court to decide the matter.

(9) While an appeal is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

(10) No appeal shall lie against the decision of the High Court under subsection (8).

Power of arbitral tribunal to order interim measures

19. (1) Unless otherwise agreed by the parties, a party may apply to the arbitral tribunal for any of the following orders:

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) giving of evidence by affidavit;
- (d) the preservation, interim custody or sale of any property which is the subject-matter of the dispute.

(2) The arbitral tribunal may require any party to provide appropriate security in connection with such measure as ordered under subsection (1).

(3) Unless otherwise agreed by the parties, sections 38 and 39 shall apply to orders made by an arbitral tribunal under this section as

if a reference in those sections to an award were a reference to such an order.

Chapter 5

Conduct of arbitral proceedings

Equal treatment of parties

20. The parties shall be treated with equality and each party shall be given a fair and reasonable opportunity of presenting that party's case.

Determination of rules of procedure

21. (1) Subject to the provisions of this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Where the parties fail to agree under subsection (1), the arbitral tribunal may, subject to the provisions of this Act, conduct the arbitration in such manner as it considers appropriate.

(3) The power conferred upon the arbitral tribunal under subsection (2) shall include the power to—

- (a) determine the admissibility, relevance, materiality and weight of any evidence;
- (b) draw on its own knowledge and expertise;
- (c) order the provision of further particulars in a statement of claim or statement of defence;
- (d) order the giving of security for costs;

- (e) fix and amend time limits within which various steps in the arbitral proceedings must be completed;
- (f) order the discovery and production of documents or materials within the possession or power of a party;
- (g) order the interrogatories to be answered;
- (h) order that any evidence be given on oath or affirmation; and
- (i) make such other orders as the arbitral tribunal considers appropriate.

Seat of arbitration

22. (1) The parties are free to agree on the seat of arbitration.

(2) Where the parties fail to agree under subsection (1), the seat of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding subsections (1) and (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Commencement of arbitral proceedings

23. Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute shall commence on the date on which a request in writing for that dispute to be referred to arbitration is received by the respondent.

Language

24. (1) The parties are free to agree on the language to be used in the arbitral proceedings.

(2) Where the parties fail to agree under subsection (1), the arbitral tribunal shall determine the language to be used in the arbitral proceedings.

(3) The agreement or the determination referred to in subsections (1) and (2) respectively shall, unless otherwise specified in the agreement or determination, apply to any written statement made by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language agreed upon by the parties or determined by the arbitral tribunal.

Statements of claim and defence

25. (1) Within the period of time agreed by the parties or, failing such agreement, as determined by the arbitral tribunal, the claimant shall state—

- (a) the facts supporting his claim;
- (b) the points at issue; and
- (c) the relief or remedy sought,

and the respondent shall state his defence in respect of the particulars set out in this subsection, unless the parties have otherwise agreed to the required elements of such statements.

(2) The parties may—

- (a) submit with their statements any document the parties consider relevant; or
- (b) add a reference to the documents or other evidence that the parties may submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement the claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Hearings

26. (1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or oral arguments, or whether the proceedings shall be conducted on the basis of documents and other materials.

(2) Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall upon the application of any party hold oral hearings at an appropriate stage of the proceedings.

(3) The parties shall be given reasonable prior notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(4) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party.

(5) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Default of a party

27. Unless otherwise agreed by the parties, if without showing sufficient cause—

(a) the claimant fails to communicate the statement of claim in accordance with subsection 25(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate the statement of defence in accordance with subsection 25(1), the arbitral

tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it; or
- (d) the claimant fails to proceed with the claim, the arbitral tribunal may make an award dismissing the claim or give directions, with or without conditions, for the speedy determination of the claim.

Expert appointed by arbitral tribunal

28. (1) Unless otherwise agreed by the parties, the arbitral tribunal may—

- (a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; or
- (b) require a party to give the expert any relevant information or to produce or to provide access to any relevant documents, goods or other property for the expert's inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of a written or oral report, participate in a hearing where the parties have the opportunity to put questions to the expert and to present other expert witnesses in order to testify on the points at issue.

Court assistance in taking evidence

29. (1) Any party may with the approval of the arbitral tribunal, apply to the High Court for assistance in taking evidence.

(2) The High Court may order the attendance of a witness to give evidence or, where applicable, produce documents on oath or affirmation before an officer of the High Court or any other person, including the arbitral tribunal.

Chapter 6

Making of award and termination of proceedings

Law applicable to substance of dispute

30. (1) Unless otherwise agreed by the parties, in respect of a domestic arbitration where the seat of arbitration is in Malaysia, the arbitral tribunal shall decide the dispute in accordance with the substantive law of Malaysia.

(2) In respect of an international arbitration, the arbitral tribunal shall decide the dispute in accordance with the law as agreed upon by the parties as applicable to the substance of the dispute.

(3) Any designation by the parties of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(4) Failing any agreement under subsection (2), the arbitral tribunal shall apply the law determined by the conflict of laws rules.

(5) The arbitral tribunal shall, in all cases, decide in accordance with the terms of the agreement and shall take into account the usages of the trade applicable to the transaction.

Decision making by panel of arbitrators

31. (1) Unless otherwise agreed by the parties, in any arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

(2) Where so authorized by the parties or by all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.

Settlement

32. (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of section 33 and shall state that it is an award.

(3) An award made under subsection (1) shall have the same status and effect as an award on the merits of the case.

Form and contents of award

33. (1) An award shall be made in writing and subject to subsection (2) shall be signed by the arbitrator.

(2) In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall be sufficient provided that the reason for any omitted signature is stated.

(3) An award shall state the reasons upon which it is based, unless—

- (a) the parties have agreed that no reasons are to be given; or
- (b) the award is an award on agreed terms under section 32.

(4) An award shall state its date and the seat of arbitration as determined in accordance with section 22 and shall be deemed to have been made at that seat.

(5) After an award is made, a copy of the award signed by the arbitrator in accordance with subsections (1) and (2) shall be delivered to each party.

(6) Unless otherwise provided in the arbitration agreement, the arbitral tribunal may—

- (a) award interest on any sum of money ordered to be paid by the award from the date of the award to the date of realisation; and
- (b) determine the rate of interest.

Termination of proceedings

34. (1) The arbitral proceedings shall be terminated by a final award or by an order of the arbitral tribunal in accordance with subsection (2).

(2) The arbitral tribunal shall order the termination of the arbitral proceedings where—

- (a) the claimant withdraws the claim, unless the respondent objects to the withdrawal and the arbitral tribunal recognizes the respondent's legitimate interest in obtaining a final settlement of the dispute;
- (b) the parties agree on the termination of the proceedings; or
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to the provisions of section 35 and subsection 37(6), the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

(4) Unless otherwise provided by any written law, the death of a party does not terminate—

(a) the arbitral proceedings; or

(b) the authority of the arbitral tribunal.

Correction and interpretation of award or additional award

35. (1) A party, within thirty days of the receipt of the award, unless any other period of time has been agreed upon by the parties—

(a) upon notice to the other party, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error or other error of similar nature; or

(b) upon notice to and with the agreement of the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) Where the arbitral tribunal considers the request made under subsection (1) to be justified, it shall make the correction or give the interpretation within thirty days of the receipt of the request and such interpretation shall form part of the award.

(3) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) on its own initiative within thirty days of the date of the award.

(4) Unless otherwise agreed by the parties, a party may, within thirty days of the receipt of the award and upon notice to the other party, request the arbitral tribunal to make an additional award as to

claims presented in the arbitral proceedings but omitted from the award.

(5) Where the arbitral tribunal considers the request under subsection (4) to be justified, it shall make the additional award within sixty days from the receipt of such request.

(6) The arbitral tribunal may, where it thinks necessary, extend the period of time within which it shall make a correction, interpretation or an additional award under this section.

(7) The provisions of section 33 shall apply to a correction or interpretation of the award or to an additional award.

An award is final and binding

36. (1) An award made by an arbitral tribunal pursuant to an arbitration agreement shall be final and binding on the parties and may be relied upon by any party by way of defence, set-off or otherwise in any proceedings in any court.

(2) The arbitral tribunal shall not vary, amend, correct, review, add to or revoke an award which has been made except as specifically provided for in section 35.

Chapter 7

Recourse against award

Application for setting aside

37. (1) An award may be set aside by the High Court only if—

(a) the party making the application provides proof that—

(i) a party to the arbitration agreement was under any incapacity;

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or, failing

any indication thereon, under the laws of Malaysia;

- (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present that party's case;
- (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
- (v) subject to subsection (3), the award contains decisions on matters beyond the scope of the submission to arbitration; or
- (vi) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act; or

(b) the High Court finds that—

- (i) the subject matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia; or
- (ii) the award is in conflict with the public policy of Malaysia.

(2) Without limiting the generality of subparagraph (1)(b)(ii), an award is in conflict with the public policy of Malaysia where—

- (a) the making of the award was induced or affected by fraud or corruption; or

- (b) a breach of the rules of natural justice occurred—
 - (i) during the arbitral proceedings; or
 - (ii) in connection with the making of the award.

(3) Where the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside.

(4) An application for setting aside may not be made after the expiry of ninety days from the date on which the party making the application had received the award or, if a request has been made under section 35, from the date on which that request had been disposed of by the arbitral tribunal.

(5) Subsection (4) does not apply to an application for setting aside on the ground that the award was induced or affected by fraud or corruption.

(6) On an application under subsection (1) the High Court may, where appropriate and so requested by a party, adjourn the proceedings for such period of time as it may determine in order to allow the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

(7) Where an application is made to set aside an award, the High Court may order that any money made payable by the award shall be brought into the High Court or otherwise secured pending the determination of the application.

Chapter 8

Recognition and enforcement of awards

Recognition and enforcement

38. (1) On an application in writing to the High Court, an award made in respect of an arbitration where the seat of arbitration is in Malaysia or an award from a foreign State shall, subject to this

section and section 39 be recognized as binding and be enforced by entry as a judgment in terms of the award or by action.

(2) In an application under subsection (1) the applicant shall produce—

- (a) the duly authenticated original award or a duly certified copy of the award; and
- (b) the original arbitration agreement or a duly certified copy of the agreement.

(3) Where the award or arbitration agreement is in a language other than the national language or the English language, the applicant shall supply a duly certified translation of the award or agreement in the English language.

(4) For the purposes of this Act, “foreign State” means a State which is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration in 1958.

Grounds for refusing recognition or enforcement

39. (1) Recognition or enforcement of an award, irrespective of the State in which it was made, may be refused only at the request of the party against whom it is invoked—

- (a) where that party provides to the High Court proof that—
 - (i) a party to the arbitration agreement was under any incapacity;
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or, failing any indication thereon, under the laws of the State where the award was made;

- (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present that party's case;
- (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
- (v) subject to subsection (3), the award contains decisions on matters beyond the scope of the submission to arbitration;
- (vi) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act; or
- (vii) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the High Court finds that—

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia; or
- (ii) the award is in conflict with the public policy of Malaysia.

(2) If an application for setting aside or suspension of an award has been made to the High Court on the grounds referred to in subparagraph (1)(a)(vii), the High Court may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

(3) Where the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the award

which contains decisions on matters submitted to arbitration may be recognized and enforced.

PART III

ADDITIONAL PROVISIONS RELATING TO ARBITRATION

Consolidation of proceedings and concurrent hearings

40. (1) The parties may agree—

(a) that the arbitration proceedings shall be consolidated with other arbitration proceedings; or

(b) that concurrent hearings shall be held,

on such terms as may be agreed.

(2) Unless the parties agree to confer such power on the arbitral tribunal, the tribunal has no power to order consolidation of arbitration proceedings or concurrent hearings.

Determination of preliminary point of law by court

41. (1) Any party may apply to the High Court to determine any question of law arising in the course of the arbitration—

(a) with the consent of the arbitral tribunal; or

(b) with the consent of every other party.

(2) The High Court shall not consider an application under subsection (1) unless it is satisfied that the determination—

(a) is likely to produce substantial savings in costs; and

(b) substantially affects the rights of one or more of the parties.

(3) The application shall identify the question of law to be determined and, except where made with the agreement of all parties to the proceedings, shall state the grounds that support the application.

(4) While an application under subsection (1) is pending, the arbitral proceedings may be continued and an award may be made.

Reference on questions of law

42. (1) Any party may refer to the High Court any question of law arising out of an award.

(1A) The High Court shall dismiss a reference made under subsection (1) unless the question of law substantially affects the rights of one or more of the parties.

(2) A reference shall be filed within forty-two days of the publication and receipt of the award, and shall identify the question of law to be determined and state the grounds on which the reference is sought.

(3) The High Court may order the arbitral tribunal to state the reasons for its award where the award—

(a) does not contain the arbitral tribunal's reasons; or

(b) does not set out the arbitral tribunal's reasons in sufficient detail.

(4) The High Court may, on the determination of a reference—

(a) confirm the award;

(b) vary the award;

(c) remit the award in whole or in part, together with the High Court's determination on the question of law to the arbitral tribunal for reconsideration; or

(d) set aside the award, in whole or in part.

(5) Where the award is varied by the High Court, the variation shall have effect as part of the arbitral tribunal's award.

(6) Where the award is remitted in whole or in part for reconsideration, the arbitral tribunal shall make a fresh award in respect of the matters remitted within ninety days of the date of the order for remission or such other period as the High Court may direct.

(7) Where the High Court makes an order under subsection (3), it may make such further order as it thinks fit with respect to any additional costs of the arbitration resulting from that order.

(8) On a reference under subsection (1) the High Court may—

(a) order the applicant to provide security for costs; or

(b) order that any money payable under the award shall be brought into the High Court or otherwise secured pending the determination of the reference.

Appeal

43. A decision of the High Court under section 42 shall be deemed to be a judgment of the High Court within the meaning of section 67 of the Courts of Judicature Act 1964 [*Act 91*].

Costs and expenses of an arbitration

44. (1) Unless otherwise agreed by the parties—

(a) the costs and expenses of an arbitration shall be in the discretion of the arbitral tribunal who may—

- (i) direct to and by whom and in what manner those costs or any part thereof shall be paid;
 - (ii) tax or settle the amount of such costs and expenses; and
 - (iii) award such costs and expenses to be paid as between solicitor and client;
- (b) any party may apply to the High Court for the costs to be taxed where an arbitral tribunal has in its award directed that costs and expenses be paid by any party, but fails to specify the amount of such costs and expenses within thirty days of having being requested to do so; or
- (c) each party shall be responsible for its own legal and other expenses and for an equal share of the fees and expenses of the arbitral tribunal and any other expenses relating to the arbitration in the absence of an award or additional award fixing and allocating the costs and expenses of the arbitration.

(2) Unless otherwise agreed by the parties, where a party makes an offer to the other party to settle the dispute or part of the dispute and the offer is not accepted and the award of the arbitral tribunal is no more favourable to the other party than was the offer, the arbitral tribunal, in fixing and allocating the costs and expenses of the arbitration, may take the fact of the offer into account in awarding costs and expenses in respect of the period from the making of the offer to the making of the award.

(3) An offer to settle made under subsection (2) shall not be communicated to the arbitral tribunal until it has made a final determination of all aspects of the dispute other than the fixing and allocation of costs and expenses.

(4) Where an arbitral tribunal refuses to deliver its award before the payment of its fees and expenses, the High Court may order the arbitral tribunal to deliver the award on such conditions as the High Court thinks fit.

(5) A taxation of costs, fees and expenses under this section may be reviewed in the same manner as a taxation of costs.

Extension of time for commencing arbitration proceedings

45. Where an arbitration agreement provides that arbitral proceedings are to be commenced within the time specified in the agreement, the High Court may, notwithstanding that the specified time has expired, extend the time for such period and on such terms as it thinks fit, if it is of the opinion that in the circumstances of the case undue hardship would otherwise be caused.

Extension of time for making award

46. (1) Where the time for making an award is limited by the arbitration agreement, the High Court may, unless otherwise agreed by the parties, extend that time.

(2) An application under subsection (1) may be made—

(a) upon notice to the parties, by the arbitral tribunal; or

(b) upon notice to the arbitral tribunal and the other parties, by any party to the proceedings.

(3) The High Court shall not make an order unless—

(a) all available tribunal processes for obtaining an extension of time have been exhausted; and

(b) the High Court is satisfied that substantial injustice would otherwise be done.

(4) The High Court may exercise its powers under subsection (1) notwithstanding that the time previously fixed by or under the arbitration agreement or by a previous order has expired.

PART IV

MISCELLANEOUS

Liability of arbitrator

47. An arbitrator shall not be liable for any act or omission in respect of anything done or omitted to be done in the discharge of his functions as an arbitrator unless the act or omission is shown to have been in bad faith.

Immunity of arbitral institutions

48. The Director of the Kuala Lumpur Regional Centre for Arbitration or any other person or institution designated or requested by the parties to appoint or nominate an arbitrator, shall not be liable for anything done or omitted in the discharge of the function unless the act or omission is shown to have been in bad faith.

Bankruptcy

49. (1) Where a party to an arbitration agreement is a bankrupt and the person having jurisdiction to administer the property of the bankrupt adopts the agreement, the arbitration agreement shall be enforceable by or against that person.

(2) The High Court may direct any matter in connection with or for the purpose of bankruptcy proceedings to be referred to arbitration if—

- (a) the matter is one to which the arbitration agreement applies;
- (b) the arbitration agreement was made by a person who has been adjudged a bankrupt before the commencement of the bankruptcy proceedings; and
- (c) the person having jurisdiction to administer the property does not adopt the agreement.

(3) An application under subsection (2) may be made by—

- (a) any other party to the arbitration agreement; or
- (b) any person having jurisdiction to administer the property of the bankrupt.

Mode of application

50. Any application to the High Court under this Act shall be by an originating summons as provided in the Rules of the High Court 1980 [*P.U. (A) 50/1980*].

Repeal and savings

51. (1) The Arbitration Act 1952 [*Act 93*] and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 1985 [*Act 320*] are repealed.

(2) Where the arbitral proceedings were commenced before the coming into operation of this Act, the law governing the arbitration agreement and the arbitral proceedings shall be the law which would have applied as if this Act had not been enacted.

(3) Nothing in this Act shall affect any proceedings relating to arbitration which have been commenced in any court before the coming into operation of this Act.

(4) Any court proceedings relating to arbitration commenced after the commencement of this Act shall be governed by this Act notwithstanding that such proceedings arose out of arbitral proceedings commenced before the commencement of this Act.

LAWS OF MALAYSIA**Act 646****ARBITRATION ACT 2005**

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A1395	Arbitration (Amendment) Act 2011	01-07-2011

LAWS OF MALAYSIA**Act 646****ARBITRATION ACT 2005**

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	Act A1395	01-07-2011
8	Act A1395	01-07-2011
10	Act A1395	01-07-2011
11	Act A1395	01-07-2011
30	Act A1395	01-07-2011
38	Act A1395	01-07-2011
39	Act A1395	01-07-2011
42	Act A1395	01-07-2011
51	Act A1395	01-07-2011
