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Wider Scope of Challenge to section 42 Arbitration Act 2005

Far East Holdings Bhd v Majlis Ugama Islam dan Adat Resam Melayu Pahang [2018] 1 MLJ 1

| by Lim Tse Wei |

The recent landmark ruling by the Federal Court in the *Far East* case has been followed by significant amendments to the Arbitration Act 2005, in particular, the removal of section 42 challenges. These statutory amendments, yet to come into force, effectively redress the jurisprudential complications raised by the *Far East* decision, which introduced new risks to the enforcement of arbitral awards and the availability of pre-award interest as an arbitral remedy in Malaysia. A further significance of the Federal Court decision is that it affirmed the lower courts' reversal of an entire set of Malaysian arbitration jurisprudence which has been applied for almost a half-century.

While the statutory amendment will insulate future arbitral awards from the effects of the *Far East* decision, the Federal Court's findings still apply to section 42 challenges available before the amendment comes into force. The *Far East* decision will require parties to reassess their legal risk exposure in any arbitration.

For more on the case, click here for the LexisPSL* interview of counsel for the Malaysian Bar, who appeared as *amicus curiae* in the *Far East* case, Dato' Nitin Nadkarni (who heads the Energy, Infrastructure & Projects and International Arbitration Practice Group), and associate Mr Lim Tse Wei.

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