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Modernisation of Malaysia's Arbitration Legislation: A Concise Overview of the Arbitration (Amendment) Bill 2024

As the arbitration world transforms, our laws must evolve accordingly to remain relevant and effective. On 15.7.2024, the Arbitration (Amendment) Bill 2024 (Act 646) ("**Bill**") was tabled for its first reading in Parliament. The Bill presents several proposed amendments to the current legislative framework in Malaysia, aimed at enhancing the nation's reputation and influence within the international arbitration community.

In the past year, the Legal Affairs Division of the Prime Minister's Department has actively engaged with industry stakeholders and experts, including our Consultant Dato' Nitin Nadkarni and Partner Crystal Wong Wai Chin, in shaping these amendments.

These proposed amendments should be welcomed as they reflect international best practices and seek to modernise the legislative framework governing arbitration law in Malaysia.

This alert will outline some of the key amendments introduced in the Bill:

1. Introduction of the President of the AIAC Court of Arbitration (“President”)

Clause 6 of the Bill seeks to substitute the term “Director of the Asian International Arbitration Centre (Malaysia)” with the term “President” in the Arbitration Act 2005. The proposed changes will see the President assume some functions of the Director of the Asian International Arbitration Centre (“AIAC”), such as the appointment of arbitrators.

This amendment is necessary as it reflects the recent restructuring initiatives towards the AIAC, especially with the constitution of the AIAC Court of Arbitration (“AIAC Court”), tasked with ensuring transparency, integrity, and accountability in the decision-making process of the AIAC Court in accordance with the laws and the AIAC Rules.¹

2. Designation of Applicable Law for Arbitration Agreement

Clause 5 of the Bill seeks to introduce a default position to designate the law of the seat of arbitration as the applicable law to arbitration agreements, in the absence of any agreement between the parties.

Following the saga created by *Enka v Chubb* [2020] UKSC 38, the default position introduced is welcomed as it avoids unnecessary legal battles in trying to retrospectively decipher the applicable law for arbitration agreements. This, in turn, prevents wasted litigation costs and undesirable delays in the resolution of disputes.

3. Automatic Recognition

Clause 9 of the Bill seeks to substitute subsection 38(1) of the AA 2005 on the recognition and enforcement of an arbitration award where the seat of arbitration is Malaysia, or an award from a foreign state, so as to harmonise the provision with the UNCITRAL Model Law.

With this proposed amendment, an arbitration award shall be recognised as binding at the first instance

¹ Media Statement dated 1.6.2024, Legal Affairs Division, Establishment of the Protem Committee for the Asian International Arbitration Centre (Malaysia) (AIAC) Court of Arbitration.

court without requiring an application to be made for its recognition.

However, to achieve this objective, amendments to Order 69 of the Rules of Court 2012 would be necessary. The existing Order 69 Rule 8(7) requires an applicant to serve a court order granting permission to enforce the award and a moratorium of 14 days before the award can be enforced as a judgment before the Malaysian courts.

4. Digital Signatures

Clause 8 of the Bill seeks to amend Section 33 of the AA 2005 to introduce digital and electronic signatures on arbitral awards. This is a long-awaited and welcomed amendment, as the proposed changes align with contemporary business practices and the global trend towards borderless transactions.

5. Introduction of Third-Party Funding (TPF)

Clause 10 of the Bill seeks to amend Chapter 2 of the AA 2005 by introducing TPF with defined terms and prospective application. The proposed changes are designed to introduce the adoption of TPF arrangements for arbitration proceedings while ensuring such arrangements do not contravene public policy considerations. Thus, any future TPF agreement for arbitration purposes will no longer be deemed contrary to public policy on the grounds of maintenance and champerty.

The amendments introduced in Clause 10 of the Bill applies prospectively, and not retrospectively, “*to any TPF agreement made before the date of the commencement of this Chapter*”². The party who has entered into a TPF agreement must disclose such arrangement either before or upon the commencement of the arbitration or court proceedings in respect of the arbitration, or within 15 days after the TPF agreement is made in situations where the relevant proceedings have already commenced.³

A code of practice may be introduced to outline the practices and standards of TPF that third-party funders

² See the proposed Section 46B of the AA 2005, as outlined in the Bill.

³ See the proposed Section 46G of the AA 2005, as outlined in the Bill.

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are ordinarily expected to comply with.⁴ It appears that this initiative aims to establish a uniform standard and practice for TPF arrangements in Malaysia, with the objective of enhancing governance and fostering a more conducive arbitration ecosystem for businesses. Some of the code of practice currently available in other jurisdictions include [the Code of Practice for Third Party Funding for Arbitration published on 7 December 2018](#), [Code for Conduct for Litigation Funders in England & Wales \(November 2016\)](#), and [Guidance Note 10.1.1 on Third-Party Funding \(25.4.2017\)](#).

For further insights into the provisions and implications of TPF, we invite you to read our article [here](#).

It is important for parties to an arbitration, or parties who are contemplating the commencement of arbitrations, to closely monitor the developments on the passage of the Bill. Once the Bill is passed by Parliament and enacted as primary legislation, the changes introduced may significantly impact arbitration strategies and engagements. Should you require any clarification or assistance in navigating these proposed changes, please do not hesitate to contact us.

A copy of the Bill can be accessed [here](#).

If you have any queries, please contact Associate, **Soh Zhen Ning** (szn@lh-ag.com) or his team Partner, **Crystal Wong Wai Chin** (wwc@lh-ag.com).

⁴ See the proposed Section 46D of the AA 2005, as outlined in the Bill.