

IN-DEPTH

# International Arbitration

MALAYSIA



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# International Arbitration

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In-Depth: International Arbitration (formerly The International Arbitration Review) provides an analytical overview of what has occurred in each of the important arbitration jurisdictions during the past year, capturing recent developments while putting them in the context of each jurisdiction's legal arbitration structure and selecting the most important matters for comment.

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# Malaysia

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## Introduction

### Structure of the law

Arbitration in Malaysia is governed principally by the Arbitration Act 2005, which came into force on 15 March 2006.<sup>[1]</sup> The 2005 Act repealed its predecessors, the Arbitration Act 1952 and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 1985.<sup>[2]</sup> The procedure for court proceedings arising from either the 2005 Act or the 1952 Act is governed principally by the Rules of Court 2012, Order 69,<sup>[3]</sup> although other provisions remain relevant.<sup>[4]</sup> However, matters relating to arbitral awards under the International Centre for Settlement of Investment Disputes (ICSID) Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) are governed by a separate statute, the Convention on the Settlement of Investment Disputes Act 1966.<sup>[5]</sup> Correspondingly, ICSID-related court proceedings are procedurally governed by the general provisions of the Rules of Court 2012, and not Order 69.<sup>[6]</sup>

The Arbitration Act 2005 is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (the UNCITRAL Model Law),<sup>[7]</sup> making Malaysia a Model Law arbitral jurisdiction. The Act bears similarities to its counterparts in Singapore, India, Canada, the United Kingdom and, especially, New Zealand.<sup>[8]</sup> Malaysia is also a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958,<sup>[9]</sup> with a reservation of reciprocity and commerciality. This is reflected in the provisions on recognition and enforcement of awards in both the 2005 Act and the Rules of Court 2012.<sup>[10]</sup>

Generally, statutes in Malaysia are available officially in both Bahasa Malaysia (the national language) and English, with the Bahasa Malaysia text authoritative by default.<sup>[11]</sup> The position is reversed for the Arbitration Act 2005, as the English texts of the Act and subsidiary legislation under it take precedence.<sup>[12]</sup>

With respect to non-arbitration-specific statutes, the Evidence Act 1950, which applies to court proceedings (apart from affidavits), does not apply to arbitral proceedings.<sup>[13]</sup> In contrast, the Limitation Act 1953 and any other written laws relating to limitation periods do apply to arbitrations as they do to any other action.<sup>[14]</sup>

### Distinctions between international and domestic arbitration law

Unlike (for example) Singapore,<sup>[15]</sup> in Malaysia the Arbitration Act 2005 serves as a 'single reference point'<sup>[16]</sup> for all three categories of arbitration: domestic, international (but locally seated) and foreign-seated.<sup>[17]</sup> The definition of an 'international' arbitration substantially mirrors that in Article 1(3) of the UNCITRAL Model Law.

By default, Part III of the Act, titled 'Additional Provisions Relating to Arbitration', is stipulated to apply to domestic arbitration but not international locally seated arbitration, although the parties to an arbitration may choose to agree otherwise.<sup>[18]</sup> The Act contains no express stipulation for foreign-seated arbitration, but, applying the principle of minimal curial intervention (as embodied in Section 8), the absence of this stipulation arguably

implies that Part III does not apply to these arbitrations either, except where expressly stated.<sup>[19]</sup>

Three examples of arbitration-related court proceedings illustrate the practical implications of this framework: court-ordered interim measures, setting aside, and recognition and enforcement. Interim measures can be granted by the High Court under either Section 11(1) (where sought against a party to the relevant arbitration agreement)<sup>[20]</sup> or Section 19J(1) (whether against a party or a non-party),<sup>[21]</sup> irrespective of whether the seat of arbitration is in Malaysia. At the other end of the spectrum, the Malaysian courts have no power at all under Section 37 to set aside foreign-seated awards.<sup>[22]</sup> The position for applications for recognition and enforcement of awards is more nuanced. Although the scope of application of Sections 38 (recognition and enforcement) and 39 (refusal of recognition and enforcement) expressly includes foreign-seated awards,<sup>[23]</sup> the courts have generally considered themselves to be purely enforcement courts in respect of these awards, with limited ability to refuse recognition and enforcement compared to the courts of the foreign arbitral seat.<sup>[24]</sup>

The Court of Appeal clarified that a court-ordered reference to arbitration under Section 24A of the Courts of Judicature Act 1964 is fundamentally distinct from a voluntary submission to arbitration under the Arbitration Act 2005, and therefore an award arising from the former cannot be enforced via Section 38 of the Arbitration Act 2005. The Court further held that the subcontract constituted an '*Ali Baba*' arrangement, where a *Bumiputera* company subcontracted its entire scope of works, rendering the agreement void ab initio as contrary to public policy under Section 24(e) of the Contracts Act 1950. Both appeals were unanimously allowed, reinforcing that courts must apply the correct enforcement regime depending on the source of the arbitrator's authority, and that Courts are bound at all stages to take notice of illegality, whether *ex facie* or which later appears, even though not pleaded: *Pembinaan Jaya Zira Sdn Bhd v. Sungai Lui Construction & Development Sdn Bhd*.<sup>[25]</sup>

## Structure of the courts, including specialist tribunals

### Courts generally

Excluding criminal and Syariah<sup>[26]</sup> matters, civil matters generally may come before the subordinate courts (comprising the Sessions Court and the Magistrates' Court),<sup>[27]</sup> the High Court, the Court of Appeal and the Federal Court (the apex court in Malaysia).<sup>[28]</sup>

There are two high courts of coordinate jurisdiction: the High Court in Malaya, for Peninsular Malaysia, and the High Court in Sabah and Sarawak, for Sabah and Sarawak.<sup>[29]</sup> Each of these high courts has branches or 'sittings' at various locations.<sup>[30]</sup> For example, the Kuala Lumpur High Court and the Shah Alam High Court (in Selangor) are branches of the High Court in Malaya, whereas the Kuching High Court (in Sarawak) and the Kota Kinabalu High Court (in Sabah) are branches of the High Court in Sabah and Sarawak.

### Arbitration-related considerations

Under the Arbitration Act 2005, associated court applications are largely required to be made to the High Court<sup>[31]</sup> (although the subordinate courts are still empowered to

stay court proceedings where there is an arbitration agreement).<sup>[32]</sup> The application must be made to the correct branch of the High Court, as the seat of arbitration cannot be 'Malaysia' as a whole. Rather, the seat must (as a minimum) fall within the territorial jurisdiction of only one of the two high courts, such that the other High Court will not have supervisory jurisdiction over the arbitration in question.<sup>[33]</sup> The relevant Federal Court judgment arguably suggests (though perhaps obiter on the facts of that case) that this rule extends also to branches within the same High Court: for instance, the Seremban High Court and the Kuala Lumpur High Court (both branches of the High Court in Malaya) cannot both have supervisory jurisdiction over a given arbitration.<sup>[34]</sup>

There are no arbitration-specific specialist courts or tribunals in Malaysia. However, the Kuala Lumpur High Court has a Civil Division and a Commercial Division, as well as specialist admiralty and construction courts. Arbitration-related matters are generally heard by the Commercial Division and have their own case filing code.<sup>[35]</sup> The Shah Alam High Court also has a construction court. Otherwise, arbitration matters are generally heard by the civil divisions of high courts.<sup>[36]</sup> Malaysia does not have a specialist international commercial court as in Singapore,<sup>[37]</sup> although the Malaysian government is studying the possibility of establishing one.<sup>[38]</sup>

### Language

As with most other court proceedings,<sup>[39]</sup> cause papers for arbitration-related court proceedings in Peninsular Malaysia must be filed in Bahasa Malaysia, with the option of including an English translation.<sup>[40]</sup> This does not extend to documents in English used as exhibits. For instance, an arbitral award in English exhibited in support of an application for recognition and enforcement need not be translated.<sup>[41]</sup> In Sabah and Sarawak, the position is reversed: cause papers must be filed in English, with Bahasa Malaysia translation optional.<sup>[42]</sup>

### Extent of appellate intervention

Generally, appeals to the Court of Appeal against judgments or orders of a High Court may be filed as of right.<sup>[43]</sup> Appeals to the Federal Court from the Court of Appeal, meanwhile, require the intended appellant first to apply for and obtain leave to appeal, which essentially is granted only in matters of precedential, public or constitutional importance and novelty.<sup>[44]</sup> Nonetheless, decisions of the High Court under certain sections of the 2005 Act are non-appealable. These sections relate to the appointment of arbitrators,<sup>[45]</sup> challenge of arbitrators,<sup>[46]</sup> termination of an arbitrator's mandate upon withdrawal because of failure or impossibility to act,<sup>[47]</sup> and preliminary rulings by an arbitral tribunal on jurisdiction.<sup>[48]</sup> Otherwise, the general rules on the availability of appeals apply.

### Local institutions

The most prominent arbitral institution in Malaysia is the Asian International Arbitration Centre (AIAC), formerly named the Kuala Lumpur Regional Centre for Arbitration. The AIAC was established in 1978, pursuant to a Host Country Agreement between the Asian-African Legal Consultative Organization and the government of Malaysia.<sup>[49]</sup> For now, the AIAC enjoys special statutory status<sup>[50]</sup> under the Arbitration Act 2005, as the director of the

AIAC is the designated appointing authority<sup>[51]</sup> and no appeal lies against the director's decisions.<sup>[52]</sup> The director and former directors of the AIAC enjoy immunity in respect of functions exercised in good faith<sup>[53]</sup> and acts carried out in their directorial capacity, while the AIAC as a body also enjoys immunity as a declared international organisation.<sup>[54]</sup>

For arbitration, the AIAC's suite of arbitral rules includes the general AIAC Arbitration Rules 2023, the AIAC i-Arbitration Rules 2023 (for Islamic arbitration) and the Asian Sports Arbitration Rules. Apart from arbitration, the AIAC is the designated authority for statutory adjudication under the Construction Industry Payment and Adjudication Act 2012 and offers mediation and domain name dispute resolution services.<sup>[55]</sup>

Other bodies involved in arbitration include the Malaysian Institute of Arbitrators, the Malaysian Institute of Architects (PAM),<sup>[56]</sup> the Institution of Engineers, Malaysia, the Royal Institution of Surveyors Malaysia,<sup>[57]</sup> the Malaysian Rubber Board and the Palm Oil Refiners Association of Malaysia (PORAM).<sup>[58]</sup> The Chartered Institute of Arbitrators has a Malaysia branch.

The year 2023 also saw the prominent addition of the newly established Borneo International Centre for Arbitration and Mediation (BICAM), located at the Sabah International Convention Centre in Kota Kinabalu.<sup>[59]</sup> The BICAM Arbitration Rules are stated to be modelled on the UNCITRAL framework.<sup>[60]</sup> Notably, the Rules do not specify a default seat where parties have not agreed on one,<sup>[61]</sup> unlike the AIAC Arbitration Rules 2023, which designate Kuala Lumpur for this purpose.<sup>[62]</sup> Additionally, the Sabah Law Society has issued a circular stating that it will not object to applications for ad hoc admission of counsel who wish to practise in Sabah<sup>[63]</sup> – which is otherwise limited to those with 'Sabah connections'<sup>[64]</sup> – where the applications relate to arbitration or mediation at BICAM.<sup>[65]</sup> This partially addresses the previous issues faced by non-Sabahan counsel seeking to act in arbitrations in Sabah.<sup>[66]</sup>

## Arbitration trends and statistics

The main source of arbitration-related data and statistics in Malaysia is the AIAC's Annual Report. For 2023, the AIAC reported that a total of 178 arbitration cases were referred to it, of which only 103 – comprising 84 administered (81.55 per cent) and 19 ad hoc (18.44 per cent) – were ultimately fully registered.<sup>[67]</sup> The total of the amounts in dispute for all these arbitrations was reported to be around 3.5 billion ringgit.<sup>[68]</sup> Although not specifically reported, this presumably equates to an average dispute amount of around 19.7 million ringgit.<sup>[69]</sup> Of the 103 registered arbitrations, 92 were domestic (89 per cent) and 11 were international (11 per cent), with arbitrations involving 14 foreign parties from China, Singapore and Hong Kong.<sup>[70]</sup> The most frequent area of dispute was construction (57.28 per cent), followed by shareholders' agreements (13.59 per cent) and service agreements (12.62 per cent).<sup>[71]</sup> As for arbitrators, the AIAC's panel of 1,506 arbitrators comprises 1,295 male arbitrators and 211 female arbitrators, of which 52 male and 13 female arbitrators were newly empanelled in 2023.<sup>[72]</sup> Of these newly empanelled arbitrators, 54 were international and 11 were domestic.<sup>[73]</sup>

## Year in review

## Developments affecting international arbitration

### Legislation and court rules and practices

The year 2024 saw significant developments in terms of the Arbitration Act 2005. The Arbitration (Amendment) Bill 2024, to amend the Arbitration Act 2005, was passed by the Malaysian House of Representatives on 16 July 2024 and by the Malaysian Senate on 24 July 2024. On 1 November 2024, the Arbitration (Amendment) Act 2024 (the Amendment Act) was gazetted and came into force on 1 January 2026.

The following are among the key changes:

1. Section 6 of the Amendment Act substitutes the term 'director of the Asian International Arbitration Centre (Malaysia)' with 'president', granting the president powers to assume some functions of the director of the AIAC, such as the appointment of arbitrators.<sup>[74]</sup> This amendment aligns with the restructuring of the AIAC and the establishment of the AIAC Court of Arbitration, which is tasked with ensuring transparency, integrity and accountability in accordance with the laws and the AIAC Rules.
2. Section 5 of the Amendment Act introduces a default rule whereby, in the absence of party agreement, the law of the seat of arbitration shall be the applicable law to arbitration agreements.<sup>[75]</sup> This seeks to resolve legal uncertainty following the decision in *Enka v. Chubb*<sup>[76]</sup> and aims to reduce litigation costs and delays.
3. Section 9 of the Amendment Act substitutes Section 38(1) of the Arbitration Act to provide for automatic recognition of arbitration awards from a foreign state or where the seat of arbitration is Malaysia,<sup>[77]</sup> to harmonise the provision with the UNCITRAL Model Law. However, this amendment necessitates another amendment to Order 69 of the Rules of Court 2012, which currently requires court permission and a 14-day moratorium before enforcement.
4. Section 8 of the Amendment Act amends Section 33 of the Arbitration Act to introduce digital and electronic signatures on arbitral awards,<sup>[78]</sup> in line with modern business practices and global transaction trends.
5. Section 10 of the Amendment Act introduces third-party funding (TPF) into Chapter 2 of the Arbitration Act with defined terms and a prospective application. These changes permit TPF arrangements in arbitration without violating public policy on maintenance and champerty. The provision applies only to agreements made after the commencement of the Chapter. Parties entering into TPF arrangements must disclose them either before or at the start of arbitration or court proceedings, or within 15 days if the agreement is made after proceedings have commenced.<sup>[79]</sup> A code of practice may be implemented to guide the conduct of third-party funders.<sup>[80]</sup>

### Arbitration institution rules and practices

#### AIAC as institution

On 4 April 2024, pursuant to a Supplementary Agreement to the Host Country Agreement, the inaugural board of directors of the AIAC was constituted with the Attorney General of Malaysia as chair, with the stated objective of enhancing the AIAC's transparency, efficiency and good governance.<sup>[81]</sup> The AIAC had earlier acknowledged the government's plans to restructure the AIAC by March 2024, including abolition of the position of director and establishment of an Arbitration Court, a chief executive officer, a registrar and an executive board.<sup>[82]</sup> While these developments mirror the practices of other major arbitral institutions, including the International Chamber of Commerce (ICC) and the Singapore International Arbitration Centre (SIAC), it remains to be seen how these developments will affect the special statutory powers and immunities enjoyed by the AIAC and its officers in relation to arbitration (and adjudication).

#### AIAC Arbitration Rules

In 2023, the AIAC Arbitration Rules 2023 and the AIAC i-Arbitration Rules 2023 were published, replacing their 2021 predecessors. For the main Rules, the most visible change was a return to the overall structure of the Rules' 2018 edition, in that Part I contains the AIAC Arbitration Rules, Part II contains the UNCITRAL Arbitration Rules 2021 (termed as 'articles') and Part III contains schedules. Where Parts I and II conflict, Part I prevails. Effectively, the shorter AIAC Arbitration Rules in Part I can be conveniently referred to, to easily identify the respects in which the overall Rules differ from the widely known UNICTRAL Arbitration Rules, improving the accessibility and international standardisation of the AIAC Arbitration Rules to both domestic and foreign users. The AIAC i-Arbitration Rules 2023, meanwhile, are modelled on the main Rules, with the additional incorporation of specific Islamic elements, the most notable of which is perhaps the procedure for referring points of shariah principles to a Shariah Council under Rule 13.

Five other changes in the main Rules are worth noting:

1. The 2023 Rules now require the deputy director, the assistant director or the head of legal services of the AIAC, in that order, to assume the powers of the director of the AIAC under the Rules, if the position of director becomes vacant.<sup>[83]</sup> Under the 2021 Rules, because only the director could exercise certain crucial functions, such as confirming appointments of arbitral tribunal members,<sup>[84]</sup> prolonged vacancies in the position resulted in arbitrations being unable to progress.<sup>[85]</sup>
2. Arbitral tribunals now have flexibility in the procedure for deciding on joinder applications, at any stage, so long as all parties (including the one to be joined) are given the opportunity to be heard.<sup>[86]</sup> The 2021 Rules had required joinder applications to be filed no later than the filing of a respondent's statement of defence and counterclaim, and prescribed a 15-day time limit for other parties to respond.<sup>[87]</sup> Summary determination has undergone similar changes. Whereas the 2021 Rules prescribed detailed procedures and timelines, and required requests to be submitted no later than 30 days after the filing of a respondent's statement of defence and counterclaim,<sup>[88]</sup> procedurally the 2023 Rules appear to require arbitral tribunals only to hear from all parties, without any time limit on when summary determination can be granted.<sup>[89]</sup>
3. Whereas the 2021 Rules merely empowered arbitral tribunals to make the necessary enquiries on the existence of third-party funding,<sup>[90]</sup> the 2023 Rules now impose

a mandatory continuous obligation on a party funded by a third party to disclose the existence of the funding and the identity of the funder.<sup>[91]</sup> This brings the 2023 Rules in line with the ICC Rules 2021<sup>[92]</sup> and the Hong Kong International Arbitration Centre Rules 2018<sup>[93]</sup> on this point. However, champerty is currently prohibited under Malaysian law, although, notably, the relevant cases involved contingent legal fees and the acquisition of shares for a nominal sum with a view to obtaining substantial sums in litigation,<sup>[94]</sup> rather than third-party funding per se. The government has nevertheless acknowledged the need for regulation of third-party funding in arbitration.<sup>[95]</sup>

4. The timelines for emergency arbitration are now faster and more certain. Under the 2021 Rules, barring extensions, delivery of an emergency award could effectively take up to 20 days from an emergency arbitrator request.<sup>[96]</sup> The 2023 Rules appear to have shortened this period to 14 days,<sup>[97]</sup> arguably improving the appeal of emergency arbitration as an alternative to court applications for interim measures where no non-parties are involved.
5. Parties and arbitral tribunals are now deemed to have consented to publication of an award by the AIAC by any means two years after release of the award to the parties, unless they otherwise inform the director in writing before the award is made.<sup>[98]</sup> The 2021 Rules had required express written consent from parties (but not arbitral tribunals) for publication, and appeared to mandate redaction of parties' names and other identifying information.<sup>[99]</sup> Apart from the usual benefits and drawbacks identified in relation to default publication of institutional arbitral awards,<sup>[100]</sup> it will be interesting in the Malaysian context to see whether parties opt out, given the existing practice in post-award court proceedings of producing arbitration papers, including awards, without redaction or anonymisation.

## Arbitration developments in local courts

### Interpretation and enforcement of arbitration clauses

Developments in Malaysian law relating to the interpretation and enforcement of arbitration clauses have tended to emerge most frequently from cases involving applications to stay court proceedings under Section 10(1) of the Arbitration Act 2005 where the matter is claimed to be subject to an arbitration agreement. There has been further case law on the 'fact-sensitive' question of what amounts to a step in the proceedings, as opposed to a step preparatory to taking a step in the proceedings.<sup>[101]</sup> Those issues aside, eight questions or scenarios in this area have shown noteworthy movement in recent months:

1. matters relating to whether an arbitration agreement is existent, valid or operative;
2. the presence of two related contracts where only the first one contains an arbitration clause;
3. arbitration clauses that are ambiguous on whether arbitration is mandatory or optional;
4. disputes involving non-parties to an arbitration agreement;

5. questions as to whether a dispute falls within a given arbitration clause;
6. a respondent's stalling of arbitration proceedings by refusing to pay its share of an advance deposit;
7. questions regarding when the time limitation period is suspended; and
8. clarifying what constitutes 'steps in the proceedings'.

These are addressed in turn.

Existence, validity or operability of arbitration agreement

The first (and seemingly largest) category is where the existence or validity of an arbitration agreement is challenged.

In *Luxor Holdings Sdn Bhd & Anor v. SQA Builders Sdn Bhd*,<sup>[102]</sup> the Court of Appeal held that the right to refer questions of law under Section 42 of the Arbitration Act 2005 does not survive the provision's repeal on 8 May 2018, even where the arbitration agreement and notices of arbitration predate that repeal. The Court clarified that these rights crystallise only upon publication of the arbitral award. The Court also confirmed the view of several High Court cases. It rejected the broader view in *Mammoth Empire Construction*,<sup>[103]</sup> and accepted the decisions from other High Court cases – *Tokio Marine*,<sup>[104]</sup> *AMDAC*<sup>[105]</sup> and *Johawaki*,<sup>[106]</sup> – affirming that awards issued post-repeal fall outside the scope of Section 42.<sup>[107]</sup> This decision resolves the conflicting High Court authority and underscores the prospective application of the repeal.

In *Peninsula Education (Setia Alam) Sdn Bhd (formerly known as Segi International Learning Alliance Sdn Bhd) v. Biaxis (M) Sdn Bhd (in liquidation)*,<sup>[108]</sup> the Court of Appeal held that a company's liquidation does not render an arbitration agreement inoperative.<sup>[109]</sup> The respondent contractor, through its liquidator, commenced court proceedings to claim outstanding sums under a PAM 2007 contract.<sup>[110]</sup> The appellant employer sought a stay under Section 10 of the Arbitration Act 2005, invoking the arbitration clause in the contract. The first instance court dismissed the application, citing the prohibitive cost of arbitration in liquidation. On appeal, the Court of Appeal found that under the doctrine of separability and Section 18 of the Act, arbitration agreements survive liquidation. A liquidator stepping into the shoes of the company remains bound by its contractual obligations, including arbitration clauses. The Court of Appeal emphasised that liquidation does not override an agreement to arbitrate nor render disputes non-arbitrable unless they fall squarely within insolvency matters reserved for the winding-up court.<sup>[111]</sup> The Court of Appeal further held that concerns over cost and delay do not justify refusing a stay and that courts cannot rewrite contractual arbitration clauses due to practical difficulties arising from liquidation.<sup>[112]</sup>

Standard of proof required

One key question relates to the extent to which a court must satisfy itself of the existence and validity of an arbitration agreement, before deciding to grant a stay of the court proceedings in favour of arbitration. Two recent judgments, both of the Court of Appeal, appear to diverge on the appropriate standard of proof. In the earlier case, *Cockett Marine*

*Oil (Asia) Pte Ltd v. MISC Bhd*,<sup>[113]</sup> a stay was sought on the ground that a hyperlink contained in correspondence led to standard terms including an arbitration agreement. In granting the stay, the Court of Appeal held that the courts' jurisdiction is limited to ascertaining the prima facie existence of an arbitration agreement; thereafter, in line with the principle of *kompetenz-kompetenz*, as codified in Section 18(8) of the Arbitration Act 2005, it is for arbitral tribunals in the first instance to make a 'full determination' on the question.<sup>[114]</sup>

In the latter case, *Macsteel International Far East Ltd v. Lysaght Corrugated Pipe Sdn Bhd*,<sup>[115]</sup> a purported arbitration agreement providing for arbitration in Hong Kong was alleged to have been forged. Acknowledging various approaches from other jurisdictions,<sup>[116]</sup> including the full merits and prima facie approaches, the Court of Appeal appeared to hold that the appropriate forum – the courts or arbitral tribunals – for determining the validity of an arbitration agreement depends on which is more just and convenient based on the specific facts and circumstances of each case.<sup>[117]</sup> Because the impugned contracts and likely witnesses were based in Malaysia, and one party to the suit was not a party to the alleged arbitration agreement, the Court of Appeal found that the courts in Malaysia were better placed than the Hong Kong-based arbitral tribunal to make this determination.<sup>[118]</sup> The Court of Appeal therefore dismissed the appeal, upholding the High Court's anti-arbitration injunction and refusal to stay the court proceedings. It is not explicit from the judgment whether the Court of Appeal, in so deciding, also agreed with the High Court<sup>[119]</sup> that the full merits test applies. As *Cockett Marine Oil* was apparently not considered in *Macsteel International Far East*, clarification by the Court of Appeal in a future judgment as to how the two can be reconciled, or which is to be preferred,<sup>[120]</sup> would be welcome.<sup>[121]</sup>

#### Effect of other laws

Matters relating to insolvency have also been addressed. In *Pembinaan Federal Sdn Bhd v. Biaxis (M) Sdn Bhd (in liq)*, the winding-up of a party to an arbitration agreement was found to render it inoperative because that party had become subject to statutory insolvency protections.<sup>[122]</sup> Meanwhile, in *Delta Corp Shipping Pte Ltd v. Michael Lwee Wan Thoo*, an arbitration clause was deemed null and void because one party had been dissolved when the relevant agreement was executed.<sup>[123]</sup>

On questions of foreign law, it was held in *Hew Choong Jeng & Ors v. Kok Low Kau* that a party opposing a stay application, on the ground that an arbitration agreement is null and void, inoperative or incapable of being performed under some foreign law, bears the burden of proving that foreign law.<sup>[124]</sup> However, it would appear that the more complex issues where there are competing systems of foreign law, as in *Enka v. Chubb*,<sup>[125]</sup> have yet to be examined in detail by the Malaysian courts.<sup>[126]</sup>

In *V Medical Services M Sdn Bhd v. Swissray Asia Healthcare Co Ltd*,<sup>[127]</sup> the Federal Court held that the existence of an arbitration agreement does not, by itself, bar a winding-up petition. A debtor must show a bona fide dispute on substantial grounds to obtain a *Fortuna* injunction. The Court followed the UK Privy Council's decision in *Sian*,<sup>[128]</sup> rejecting the lower threshold from *Salford Estates*.<sup>[129]</sup> This affirms that insolvency proceedings serve a distinct purpose and are not automatically displaced by arbitration clauses.

#### Subsequent contract not containing arbitration agreement

The second category is where a first contract contains an arbitration clause but is later claimed to be superseded by a subsequent contract, such as a settlement agreement, which contains neither an arbitration clause nor express incorporation by reference of the original contract. In some cases, the courts have refused a stay on the ground that the subsequent contract does not incorporate or refer to the first contract (adequately or at all) or essentially or expressly contains an 'entire agreement' clause.<sup>[130]</sup> However, a stay was granted in *Gise Kam Kwan International Trade Ltd v. Antara Steel Mills Sdn Bhd*,<sup>[131]</sup> where two earlier agreements contained arbitration clauses but an agreement to terminate them did not. While the High Court acknowledged the principles of *kompetenz-kompetenz* and separability at length, the precise basis of its decision seems to have been that the termination agreement arose not spontaneously, but from the earlier agreements, and that commercially the parties must have intended the earlier arbitration clause to remain effective in the absence of clear wording to the contrary.<sup>[132]</sup>

However, the High Court's decision was appealed to the Court of Appeal. The Court of Appeal<sup>[133]</sup> overruled the High Court's decision and held that an arbitration clause from a prior agreement is not incorporated into a subsequent contract merely by reference in the recitals.<sup>[134]</sup> The Court of Appeal found that the termination and settlement agreement was a stand-alone agreement that superseded earlier contracts, and its express language referring to 'legal action' and 'court fee' indicated a clear intention to litigate in court rather than arbitrate. Applying Section 9(5) of the Arbitration Act 2005, the Court of Appeal ruled that incorporation by reference requires specific and operative language.<sup>[135]</sup> It further clarified that the doctrines of separability and *kompetenz-kompetenz* under Sections 18 and 21 of the Act do not revive arbitration clauses that have been expressly displaced. Accordingly, the stay granted under Section 10 of the Act was set aside.

In relation to this, the court has taken divergent approaches in deciding stay applications when the existence or validity of the subsequent contract itself is in question. In *Uzma Engineering Sdn Bhd v. Khan Co Ltd*, a stay was granted where insufficient evidence of the subsequent contract was produced to the court.<sup>[136]</sup> In contrast, a stay was refused in *Sanjung Sepang Sdn Bhd v. Nagatron Engineering Sdn Bhd*,<sup>[137]</sup> despite the court proceedings having been brought based on an alleged oral settlement agreement, which, being unwritten, could not include an arbitration clause.<sup>[138]</sup> One party contended that no evidence of this oral agreement had been produced and that the alleged settlement agreement was in fact still being negotiated, such that the arbitration clause in the original contract still applied.<sup>[139]</sup> Despite this, the High Court refused a stay, finding that the settlement agreement must be deliberated on at full trial, because it had defeated the original contract.<sup>[140]</sup>

Optional, ambiguous or pathological arbitration clauses

The third category is where arbitration is not mandated by the relevant clause or the relevant clause is otherwise ambiguous or pathological. For instance, arbitration was found not to be mandatory in *Sumber Khazanah Sdn Bhd (in liq) v. Apex Communications Sdn Bhd*,<sup>[141]</sup> because the purported arbitration clause contained the word 'may' and another clause was interpreted to give the Malaysian courts exclusive jurisdiction.<sup>[142]</sup> This adds to the existing variety of Malaysian judgments<sup>[143]</sup> on whether the choice implied by the word 'may' in an arbitration clause relates to the dispute resolution forum (arbitration or litigation), such that arbitration is not mandatory,<sup>[144]</sup> or simply between whether to 'live'

with a dispute or refer it to arbitration, such that arbitration is mandatory.<sup>[145]</sup> An arbitration clause providing for arbitration at the 'Regional Centre for Arbitration in Singapore' was also found to refer, in effect, to the SIAC, as it was incapable of being understood to refer to any other arbitral institute or body in Singapore.<sup>[146]</sup>

Uniquely, in *Abd Rahman bin Soltan v. Federal Land Development Authority*, an arbitration clause was defined as entitling parties to apply to the courts for specific performance of the overall contract.<sup>[147]</sup> Applying business common sense and *contra proferentem*, the Court of Appeal interpreted the clause to mean that although a party had a choice of whether to litigate or arbitrate, one party's commencement of proceedings in one forum would bar both parties from subsequently bringing proceedings in the other.<sup>[148]</sup> As the court proceedings in that case had preceded the arbitration, the right to arbitrate had become unavailable.<sup>[149]</sup> The Court of Appeal accordingly affirmed the High Court's anti-arbitration injunction and dismissal of a stay application.<sup>[150]</sup>

The Court of Appeal in *SetiaAwan Management Sdn Bhd v. SPNB Aspirasi Sdn Bhd*<sup>[151]</sup> held that an arbitration clause giving parties the option to refer disputes to either court or arbitration is a valid arbitration agreement under Section 9 of the Arbitration Act 2005, and that missing "key components" such as the seat of arbitration, number of arbitrators, and mode of appointment do not invalidate the clause since the Arbitration Act 2005 itself provides default mechanisms to resolve those gaps under Sections 12, 13, and 22. Once either party exercises its option to arbitrate, a binding arbitration agreement crystallises and the court is mandatorily required under Section 10(1) to stay the court proceedings – the test is not which party filed first, but whether any party has validly elected arbitration. The appeals were unanimously allowed, reinforcing that courts must lean in favour of upholding arbitration agreements and that the permissive word "may" in an arbitration clause does not diminish its enforceability once the option to arbitrate is exercised.

#### Involvement of non-parties

The fourth category concerns how the courts handle proceedings involving various permutations of both parties and non-parties to an arbitration agreement.<sup>[152]</sup> In *Macsteel International Far East*,<sup>[153]</sup> as mentioned above, the Court of Appeal upheld an anti-arbitration injunction against a Hong Kong-seated arbitration and refused a stay of the Malaysian court proceedings. The Court held that the forgery alleged in respect of the arbitration agreement would be more justly and conveniently tried in the Malaysian courts. This was because the necessary evidence would require testimony from witnesses from the Malaysian non-party to the arbitration agreement, which was a party to the court proceedings. Those witnesses could be subpoenaed by the Malaysian courts, but not the Hong Kong-based arbitral tribunal.<sup>[154]</sup>

Similar issues have arisen in contractual structures involving guarantees given by a non-party to the main contract. In *VME Process Asia Pacific Pte Ltd v. MTC Engineering Sdn Bhd*,<sup>[155]</sup> a main contract, with an arbitration clause, also encompassed what was essentially a parent company guarantee as an appendix, which did not contain an arbitration clause. The parent company was not named as a party to the main contract. Guided by the presence of references in the main contract to the guarantee, and provisions in the main contract stipulating that appendices were integral to the main contract, the High Court granted a stay, pursuant to Section 10(1) of the Arbitration Act 2005, of the court proceedings brought by the beneficiary against only the parent company.<sup>[156]</sup> The opposite

result was seen in *Abdul Latiff bin Hj Mohaideen v. Measat Broadcast Network Systems Sdn Bhd*, where a non-party guarantor's application for a stay was dismissed. Crucially, however, the guarantor had sought to invoke the High Court's inherent jurisdiction, rather than Section 10(1), leading the court to apply the 'rare and compelling circumstances' test for whether a stay should be ordered. On the facts, the test was not satisfied.<sup>[157]</sup>

Subject matter of dispute

The fifth category of cases, although diverse in subject matter, demonstrates both the wide scope of arbitrability under Malaysian law and the arbitration-friendly interpretation given to arbitration clauses by the Malaysian courts. In *Tune Group Sdn Bhd v. Tune Talk Sdn Bhd*, the High Court rejected the 'closeted' reading of an arbitration clause in a shareholders' agreement urged by a plaintiff shareholder who sought to invoke Section 346 of the Companies Act 2016, finding that the complaint of minority oppression essentially related to matters under the shareholders' agreement, which fell within the arbitration clause.<sup>[158]</sup> Similarly, recent case law has reaffirmed that allegations of fraud are both arbitrable and generally within the scope of a standard arbitration clause.<sup>[159]</sup> As for elements of public law, in *Cahaya Mata Phosphates Industries Sdn Bhd v. Syarikat SESCO Berhad*, a judicial review leave application brought against a state utility was stayed on the ground that the disputed termination of a contract fell within the contract's arbitration clause.<sup>[160]</sup>

Settlement of arbitration fees

The Court of Appeal's judgment in *JSB v. ACSB* merits particular mention in relation to settlement of arbitration fees.<sup>[161]</sup> The respondent to an arbitration refused to pay its share of a deposit required by the AIAC to cover the arbitral tribunal's fees and administrative fees, and the claimant declined to advance the shortfall. The arbitrator thus terminated the arbitration. The claimant then brought court proceedings against the respondent. The Court of Appeal held that the respondent's application to stay the court proceedings should be dismissed, characterising the respondent's conduct in refusing to pay its share of the deposit as a 'breach' of the arbitration agreement (which includes the applicable AIAC Arbitration Rules) that rendered it inoperative. The respondent should not be permitted to benefit from its own breach by obtaining a stay of the court proceedings.<sup>[162]</sup> To what extent this aligns with arbitral theory, contract law and standard practice internationally is open to debate, given that the claimant here could simply have advanced the shortfall and recovered it (if successful) at the end of the arbitration.<sup>[163]</sup>

Suspension of limitation period

In *Bongsor Bina Sdn Bhd v. SH Builders & Marketing Sdn Bhd*,<sup>[164]</sup> relying on Section 6(2) of the Limitation Act 1953, the Court of Appeal held that the limitation period freezes when a court action is commenced, even if the matter is later stayed and referred to arbitration under Section 10 of the Arbitration Act 2005.<sup>[165]</sup> It ruled that where arbitration follows a court-initiated suit, the notice of arbitration is a continuation of the earlier action and not a separate proceeding, thus avoiding any limitation bar. Section 30 of the Limitation Act 1953 and Section 23 of the Arbitration Act 2005 are only applicable to cases where the dispute is directly referred to arbitration *ab initio* in the absence of prior court action that has been

stayed.<sup>[166]</sup> This approach ensures parties are not unfairly penalised for complying with stay orders or invoking arbitration pursuant to contract terms.

What constitutes 'steps taken in proceedings'?

In *Airbus Helicopters Malaysia Sdn Bhd v. Malindo Airways Sdn Bhd*,<sup>[167]</sup> the Court of Appeal held that a mere request for an extension of time to file a defence does not amount to 'taking any other steps in the proceedings' under Section 10(1) of the Arbitration Act 2005.<sup>[168]</sup> The Court found that this type of request, especially where no defence was filed and a stay application was made promptly, does not constitute an unequivocal election to litigate.<sup>[169]</sup> In allowing the appeal, the Court of Appeal reinforced that procedural caution to preserve rights should not preclude arbitration where a valid arbitration clause exists. This case provides further clarity to the trite position established in *Sanwell Corporation*.<sup>[170]</sup> that only the service of pleadings is a step in the proceedings, and not a mere request for an extension of time.

It is worth noting that the Court of Appeal also provides a guideline in determining whether steps have been taken in proceedings.<sup>[171]</sup> A practical way to determine whether a step is taken 'before taking any other steps in the proceedings' is to ask: is this step merely preparatory to taking further action or is it itself a substantive step in the proceedings? This Court of Appeal's guideline was followed in *Esa Jurutera Perunding Sdn Bhd v. Universiti Malaya*.<sup>[172]</sup>

In *Esa Jurutera Perunding Sdn Bhd v. Universiti Malaya*, the Court of Appeal held that a party's actions, such as requesting extensions of time and issuing a demand for documents, do not necessarily constitute taking steps in court proceedings that would preclude a stay under Section 10 of the Arbitration Act 2005.<sup>[173]</sup> The defendant, appointed as a consultant under a 2008 agreement containing an arbitration clause, sought to stay court proceedings initiated by the plaintiff. The High Court dismissed the application, viewing the defendant's procedural actions as indicative of an intention to litigate. However, the Court of Appeal found that the defendant had expressly reserved its rights to arbitrate and that its actions did not unequivocally demonstrate an intention to abandon arbitration. The Court emphasised that Section 10 should be construed to minimise court intervention and that the defendant had not irreversibly submitted to the court's jurisdiction.<sup>[174]</sup> Accordingly, the appeal was allowed and a stay was granted in favour of arbitration.

#### Arbitrator qualifications and challenges

Recent Malaysian case law on issues surrounding challenges to arbitrators, particularly arbitrators' qualifications, would appear to be scarce. Judgments discussing these topics have tended to arise in the context of applications to set aside awards, rather than challenges to arbitrators under Sections 14 and 15 of the Arbitration Act 2005. For instance, it was reaffirmed in *Ketua Setiausaha Kementerian Dalam Negeri v. Salconmas Sdn Bhd* that Sections 7 and 18(1) require challenges to an arbitral tribunal (or its jurisdiction) to first be made to the arbitral tribunal itself.<sup>[175]</sup> In *Tunas Manja Development & Construction (KL) Sdn Bhd v. SPNB Aspirasi Sdn Bhd*, meanwhile, certain elements of an application to set aside an award were held, in substance, to actually be seeking replacement of the arbitrator. Rejecting this ground of the application, the High Court stressed that Sections 14 and 15 are the exclusive route for challenging arbitrators, and

compliance with their procedures is mandatory.<sup>[176]</sup> In *Pastura Sdn Bhd v. ZCM Minerals Sdn Bhd*, one ground of an application to set aside an award was that the arbitrator's appointment and the ensuing composition of the arbitral tribunal were not in accordance with the agreed procedure (Section 37(1)(a)(vi)).<sup>[177]</sup> While more accurately categorised as a case on the setting aside of awards than challenges to arbitrators,<sup>[178]</sup> the High Court was notably influenced by the applicant's delay of almost five months in writing to the director of the AIAC to challenge the appointment.<sup>[179]</sup>

On questions of independence and impartiality, in 2021, in *Low Koh Hwa v. Persatuan Kanak-Kanak Spastik Selangor & Wilayah Persekutuan*, the High Court endorsed *Halliburton v. Chubb*<sup>[180]</sup> in its decision to set aside an award because of an arbitrator's failure to fully and timeously disclose his relationship with a witness, as required by Section 14(1) of the Arbitration Act.<sup>[181]</sup> On appeal, the Court of Appeal reversed the finding of incomplete disclosure on the facts and was undeterred by the fact (seemingly accepted as such by the Court) that the arbitrator's brief verbal disclosure during cross-examination of the witness concerned had not been timely.<sup>[182]</sup> This perhaps implies that the obligation of disclosure upon arbitrators is not especially onerous. The applicant's failure to challenge the arbitrator in accordance with Sections 14 and 15 earlier on was also found to bar the applicant from now relying on these grounds in its setting-aside application.<sup>[183]</sup>

On the question of the doctrine of *stare decisis*, the recent case of *Datuk Bandar Kuala Lumpur v. Sri Tinggi Sdn Bhd*<sup>[184]</sup> reaffirmed that arbitrators are bound by the doctrine of *stare decisis*. In arriving at the arbitrator's interpretation of Clause 44 of the Conditions of Contract, the arbitrator ignored established legal precedents in determining that strict compliance with the procedures in Clause 44.1 was not a mandatory precondition. The arbitrator rationalised his interpretation by incorrectly asserting that *stare decisis* did not apply to arbitration proceedings due to their private and confidential nature and that court judgments were not 'strictly applicable' to arbitration. The arbitral award was set aside as the High Court ruled that Article 160 of the Malaysian Federal Constitution provides that 'law' encompasses written law or statutes and common law or judicial precedents of Malaysia; inferior tribunals are therefore bound by the doctrine of *stare decisis*. The arbitrator was found to be in breach of the rules of natural justice and had contravened the public policy of Malaysia under Sections 37 and 39 of the Arbitration Act 2005.

## Interim measures

Three key aspects of recent Malaysian case law are particularly relevant to interim measures: the relationship between arbitral tribunals and courts, given their concurrent jurisdiction to grant interim measures; the availability (or unavailability) of declaratory relief in an application for court-ordered interim measures under the Arbitration Act 2005; and consideration of the types of interim measures permitted under the Act, along with the extent to which the courts can and should examine the merits of the case when deciding applications.

### Relationship between arbitral tribunals and courts

In *Malaysia Resources Corp Bhd v. Desaru Peace Holdings Club Sdn Bhd*, the High Court held that where an arbitral tribunal and the courts have concurrent jurisdiction to grant a particular interim measure, the application should be made first to the arbitral tribunal and

only subsidiarily to the courts.<sup>[185]</sup> This decision arguably brings the Malaysian position (in case law) closer to the statutory position under Section 12A of the Singapore International Arbitration Act, although the High Court acknowledged that, unlike in the Malaysian Act, the limits on the Singapore High Court in the Singapore Act were express.<sup>[186]</sup> A similar outcome was seen in *CRCC Malaysia Bhd v. DSG Projects Malaysia Sdn Bhd*, where court applications were made for enforcement of an arbitrator's order of security for costs within a 14-day time limit where the arbitrator's order had not specified one.<sup>[187]</sup> The latter aspect was refused on the ground that it was in substance an application to modify or vary the arbitrator's interim measure and hence should have been made to the arbitrator (as envisaged in the arbitrator's own order).<sup>[188]</sup> On the former, citing Section 19I(1)(b)(i) of the Arbitration Act 2005, the High Court found enforcement to be incompatible with its powers, although the details underlying this finding are, with respect, not apparent.<sup>[189]</sup>

Interestingly, in *Samsung C&T Corp UEM Construction JV Sdn Bhd v. Global Wall (M) Sdn Bhd*,<sup>[190]</sup> the Court of Appeal reaffirmed that Malaysian courts may grant interim measures under Section 11 of the Arbitration Act 2005 to preserve the integrity of ongoing arbitral proceedings. The injunction obtained by the respondent was deemed interim in nature, pending final resolution of the underlying dispute in arbitration. Consequently, the Court ordered that a damages undertaking be recorded, recognising the interim character of the relief sought.<sup>[191]</sup>

The Court of Appeal also rejected an attempt to amend its prior order to insert a condition making the injunction contingent on the arbitral tribunal's determination of its propriety. The Court held that the wording was unnecessary and inappropriate, as liability under the undertaking would naturally crystallise upon the arbitral tribunal's decision on the merits. Moreover, the Court expressed doubt as to whether the arbitral tribunal would possess jurisdiction to assess the propriety of the court-ordered injunction, given the limits of the arbitral tribunal authority under the arbitration agreement.<sup>[192]</sup>

#### Availability of declaratory relief

There are currently conflicting judgments of the Court of Appeal on whether the courts may grant declaratory orders on an application for interim measures under Section 11(1) of the Arbitration Act 2005. In the first, *KNM Process Systems Sdn Bhd v. Ceca Gold Company Ltd*, an application for an injunction against a call on a bank guarantee also sought a declaration that the call was invalid.<sup>[193]</sup> The Court of Appeal considered declaratory orders, where there is an arbitration agreement, to be within the courts' powers, based (solely, it seems) on the fact that these orders had been granted in previous cases.<sup>[194]</sup> By contrast, in *Cypark Sdn Bhd v. KNM Process Systems Sdn Bhd*, the Court of Appeal agreed with the High Court that declaratory relief was not available because Section 11(1) empowered the courts to grant only interim measures; final relief and determinations (and hence declarations) of the merits of a dispute can be granted only by arbitral tribunals.<sup>[195]</sup> Similar reasoning was adopted in *Investasia Sdn Bhd v. NTSJ Construction (M) Sdn Bhd*, in which injunctions against the exercise of disputed post-termination contractual rights were refused; as the validity of the termination was a matter for arbitration, the courts must treat the termination as provisionally valid on an application for interim measures.<sup>[196]</sup> Notably, although the grounds in *Cypark* were published later than those in *Ceca Gold*, *Cypark* was actually decided earlier than *Ceca Gold*. Given the more detailed consideration

of arbitration-specific principles in *Cypark*, it is respectfully submitted that *Cypark* ought to be preferred moving forward.

#### Extent of inquiry and types of interim measures available

The extent of the inquiry to be carried out by the courts on an application for interim measures has been well illustrated by several cases involving calls on bank guarantees alleged to be unconscionable and hence susceptible to injunctive restraint.<sup>[197]</sup> Based on these cases, it appears to be widely accepted that breaches of contract alone do not amount to unconscionability so as to justify an interim injunction against calling or receiving funds under a guarantee, but rather are disputes that should be left to an arbitral tribunal.<sup>[198]</sup> However, this does not prevent the courts from conducting a 'tentative assessment' of the merits of a dispute to ascertain whether unconscionability is present, including whether the amount called is effectively 'oversecuritisation' against the beneficiary's actual claims.<sup>[199]</sup> A lower threshold will also be applied to *Fortuna* injunction applications where the debt concerned falls within an arbitration agreement, and the pendency of an arbitration will be taken into account.<sup>[200]</sup>

Similar findings were made by the Court of Appeal in *Perbadanan Pengurusan City Plaza v. Sigma Elevator (M) Sdn Bhd*, where in a court application for security for costs against an arbitral party, the details and merits of that party's claims in an arbitration were regarded as relevant considerations.<sup>[201]</sup> In relation to a *Mareva* injunction application in *Shen Yong Engineering Works Sdn Bhd v. Damai Residence Sdn Bhd*, the High Court was willing to pierce the veil of a company so that admissions in text messages by a director and majority shareholder could be attributed to the company.<sup>[202]</sup> Separately, in *Eversendai Constructions (M) Sdn Bhd v. Samsung C&T Corporation UEM Construction JV Sdn Bhd*, the High Court did not consider itself bound by the findings or conclusions in a prior adjudication decision when determining an application for interim measures under Section 11(1).<sup>[203]</sup>

Where the courts grant injunctions in respect of bank guarantees, they have also been willing to impose conditions: first, of renewal until delivery of an arbitral award, to allay concerns about expiry; and second, that an arbitrator's award may order payment directly from the guarantee.<sup>[204]</sup> However, Section 11(1) does not permit interim measures to be ordered against a guarantor bank that is not a party to an arbitration clause in a contract between only a principal and a beneficiary.<sup>[205]</sup> In these instances, interim relief is perhaps more appropriately sought under Section 19J(1), whose application is not limited to measures against parties to an arbitration agreement.<sup>[206]</sup> Meanwhile, Section 11(1)(c) permits *Mareva* injunctions to be applied to land owned by an arbitral party only as equitable beneficiary, to prevent the risk of a paper arbitral award, but does not allow injunctions restraining the use of land or assets or *Mareva* injunctions against assets only partially owned by an arbitral party.<sup>[207]</sup> Where a party to an arbitration agreement is a Malaysian governmental body, interim measures cannot be granted because of the prohibitions in Sections 29 and 54 of the Government Proceedings Act 1956.<sup>[208]</sup>

#### Judicial assistance in evidence gathering for arbitration proceedings

Section 29(1) of the Arbitration Act 2005 permits a party to apply to the High Court for assistance in gathering evidence with the approval of an arbitral tribunal. Section

29(2) empowers the High Court to order the attendance of a witness to give evidence or to produce documents on oath or affirmation before an officer of the High Court or any other person, including the arbitral tribunal. These provisions apply only where the arbitral seat is in Malaysia.<sup>[209]</sup> There are no recent reported judgments directly on these provisions. The most recent case would appear to be *Coneff Corporation Sdn Bhd v. Vivocom Enterprise Sdn Bhd (Dr Eng Zi Xun, Applicant)* in 2019, where a court-ordered subpoena *duces tecum* to produce certain raw data was upheld, while a subpoena *ad testificandum* for an individual to testify in an arbitration was set aside.<sup>[210]</sup> The High Court noted that, as in the law of evidence generally, relevance and materiality are the principal considerations and should be assessed without 'over splitting hairs'; however, legitimacy of purpose and oppressiveness are also material.<sup>[211]</sup> The Court further confirmed that non-parties to an arbitration can be subpoenaed.<sup>[212]</sup>

Although a 2021 case and not directly on Section 29, *Danieli & C Officine Meccaniche SPA v. Southern HRC Sdn Bhd* is also significant.<sup>[213]</sup> A Singapore-seated arbitral award provided for one party to pay a specified sum to the other, in exchange for the other transferring title to a plant in Malaysia. The paying party then asked to inspect the plant before making payment, which the counterparty refused. The paying party applied to the High Court in Malaysia for orders to the same effect, seeking to invoke Section 41 of the Specific Relief Act 1950 and the Court's inherent jurisdiction.<sup>[214]</sup> Dismissing the application, the High Court made two notable findings. First, the orders sought were effectively for court-ordered interim measures, which could be granted only if applied for before or during the arbitration, not after it.<sup>[215]</sup> Second, once a (foreign) award is delivered, the courts can only recognise and enforce it, and cannot grant any other relief.<sup>[216]</sup>

#### Enforcement or annulment of awards

This section focuses on four aspects of enforcement or annulment of awards:

1. the Malaysian courts' attitude to the admissibility–jurisdiction dichotomy recently applied in other jurisdictions;
2. the courts' application in practice of the rules of natural justice in relation to arbitral proceedings and awards;
3. the frequently asserted but infrequently established complaint that arbitrators have failed to decide on all issues or have decided on issues not submitted to them; and
4. notable issues relating to recognition and enforcement from recent case law.

#### Jurisdiction and admissibility

Where contractual preconditions to arbitration are not fulfilled, the trend in other jurisdictions has been to treat these as matters of procedure that relate to admissibility, not jurisdiction, such that arbitral tribunals' decisions on these matters are not reviewable by the courts.<sup>[217]</sup> In Malaysia, however, these matters currently appear to be treated as matters of jurisdiction. Accordingly, in *Petronas Carigali (Turkmenistan) Sdn Bhd v. Ishengir Individual Enterprise*, an arbitral tribunal's partial award finding that it had jurisdiction where

contractual preconditions were unfulfilled was set aside pursuant to Section 18(8) of the Arbitration Act 2005.<sup>[218]</sup>

A month later, however, in *Hindustan Oil Exploration Co Ltd v. Hardy Exploration & Production (India) Inc*, the Court of Appeal chose not to eschew the admissibility–jurisdiction dichotomy adopted in Singapore<sup>[219]</sup> altogether, but nevertheless diverged slightly, instead finding it 'more meaningful' to draw the distinction between issues of procedural admissibility and issues of merits or substance. As limitation periods are an issue of procedural admissibility, an arbitral tribunal's choice of the limitation laws of one country, as opposed to those of another, is not capable of amounting to an excess of jurisdiction under Section 37(1)(a)(v).<sup>[220]</sup> Neither can this choice cause the award to be against public policy under Section 37(1)(b)(ii).<sup>[221]</sup>

Rules of natural justice

A steady stream of Malaysian judgments has underscored that arbitral tribunals remain the 'masters of procedure', so long as the two pillars of natural justice are upheld. Certain acts have been held not to amount to a breach of the rules of natural justice<sup>[222]</sup> or a failure to conduct the arbitration in accordance with the parties' agreed procedure.<sup>[223]</sup> These are as follows:

1. asking counsel to be clear and concise in cross-examination;
2. asking counsel not to question a witness on questions of law, such as the interpretation of a contract or the relevance of content in a witness statement;
3. admitting additional evidence;
4. confining re-examination to matters raised in cross-examination;
5. comparing a standard form contract with a previous edition of the standard form to aid interpretation;<sup>[224]</sup>
6. allowing a voluminous claim to be assessed using a 'sampling and extrapolation methodology' despite one party's protests that it should instead be exhaustively proven item by item;<sup>[225]</sup>
7. interpreting and applying the International Bar Association (IBA) Rules<sup>[226]</sup> as an arbitral tribunal deemed appropriate, where a procedural order provided merely for 'reference' to the IBA Rules;<sup>[227]</sup> and
8. conducting the arbitration according to a summary procedure that omits cross-examination, where the parties had already consented to it.<sup>[228]</sup>

These judgments arguably provide comfort to arbitrators in Malaysian-seated arbitrations that due process paranoia is unnecessary.

Where an arbitration is commenced subsequent to an adjudication on the same subject matter, the arbitrator is still duty-bound to hear<sup>[229]</sup> and determine all claims afresh, independently of the adjudicator's findings, and cannot treat the adjudication decision as if on appeal or simply affirm it. For instance, the High Court in *Barisan Performa Sdn Bhd v. GLM Emerald Hills (Cheras) Sdn Bhd*<sup>[230]</sup> found that an arbitrator had improperly relied on and effectively adopted the earlier adjudication decision's findings without conducting

his own independent analysis – this was a fundamental error given that adjudication decisions under CIPAA carry only temporary finality, and parties are entitled to have all claims decided afresh in arbitration proceedings uninfluenced by any prior adjudication outcome. Critically, the Court noted that since Section 42 of the Arbitration Act 2005 (which previously allowed partial setting aside) was deleted by the 2018 amendment, there is no longer any provision permitting a court to set aside only part of an award – meaning that a breach tainting even one component of the award necessarily vitiates the entire final award. The enforcement application under Section 38 was consequently dismissed as well, reinforcing that where grounds for setting aside under Section 37 are established, the same grounds under Section 39 will equally defeat recognition and enforcement.

Failures to decide issues and decisions on issues not submitted to arbitration

There has similarly been an abundance of challenges to awards claiming that arbitral tribunals have either failed to decide on all or all key issues submitted to arbitration (alleged to be a breach of the rules of natural justice),<sup>[231]</sup> or decided on issues not submitted to arbitration<sup>[232]</sup> (a direct ground for setting aside under Section 37(1)(a)(iv) and (v) of the Arbitration Act 2005). Collectively, these cases demonstrate the practical, arbitration-friendly stance generally adopted by the Malaysian courts, which refrain from 'nit-pick[ing]' an award or 'microscopic treatment' of an award in deciding whether to set it aside.<sup>[233]</sup> Thus, in *Lingkaran Luar Butterworth (Penang) Sdn Bhd v. IJM Construction Sdn Bhd*, a finding that no breach of contract had taken place was deemed to imply rejection of a claim for an indemnity premised on breach.<sup>[234]</sup> Conversely, in *Ocned Water Technology Sdn Bhd v. UEM Builders Bhd*<sup>[235]</sup> and *Ranhill Process Systems Sdn Bhd v. Thyssenkrupp Industries (M) Sdn Bhd*,<sup>[236]</sup> arbitral tribunals were held to be free to make declarations and findings of fact and law, even if not specifically and expressly sought by a party, so long as the component issues or elements of their findings have been put forward by the parties. These lines of argument tend to be treated by the courts as impermissible attempts to challenge the substantive merits of awards<sup>[237]</sup> or dissatisfaction with an arbitral tribunal having validly drawn on its own experience to inform its thinking process.<sup>[238]</sup>

Therefore, instances of awards being set aside tend to be infrequent. One example is *Kebangunan Petroleum Operating Company Sdn Bhd v. Malaysia Marine and Heavy Engineering Sdn Bhd*, where, without explanation, an arbitral tribunal:

1. awarded a party the full sum it claimed, despite this exceeding the assessment of the party's own expert;
2. awarded the sum in full without addressing its five component subclaims;
3. disregarded the expert opinion and submissions of the parties; and
4. failed to address four of six defences raised by a party.

These were found to be a breach of the rules of natural justice.<sup>[239]</sup> The absence of reasons in the award was separately found to render the arbitral procedure not in accordance with the parties' agreement, justifying setting aside under Section 37(1)(a)(vi),<sup>[240]</sup> in an apparent departure from precedent.<sup>[241]</sup>

The Federal Court's decision in *Telekom Malaysia Bhd v. Obnet Sdn Bhd*<sup>[242]</sup> underscores the imperative that arbitral awards on substantive issues, such as liability, must be

rendered in writing to be valid under the Arbitration Act 2005. The Court held that an oral pronouncement on liability, even in bifurcated proceedings, does not constitute a valid award as envisaged by Sections 2 and 33 of the Arbitration Act 2005. This aligns with Article 34 of the UNCITRAL Arbitration Rules, which mandates that awards be in writing, final and binding. Consequently, the arbitrator was required to issue a written award on liability before proceeding to assess damages, ensuring compliance with statutory requirements and preserving the parties' rights to challenge the award.<sup>[243]</sup>

#### Recognition and enforcement

A string of cases have reaffirmed that once an arbitral award has been delivered, the courts' powers are limited to those in the Arbitration Act 2005; that is, to either allow or refuse recognition and enforcement of an award. This applies to foreign awards with particular force, in respect of which the Malaysian courts have held themselves to be purely enforcement courts.<sup>[244]</sup> Accordingly, in *Southern HRC Sdn Bhd v. Danieli Co Ltd*, an injunction application to prevent enforcement of a first arbitral award, on the ground that a second arbitral award between related entities contained an agreement to set off the two awards, was dismissed because this power was not present in the comprehensive 2005 Act.<sup>[245]</sup> Similarly, in *Qingdao Hongdaxinrong International Trade Co Ltd v. Charterwin Trading Sdn Bhd*, the High Court enforced an award issued in a China-seated arbitration at the China International Economic and Trade Arbitration Commission, emphasising that registration was granted as of right once the requirements of Section 38 are satisfied.<sup>[246]</sup>

However, the strict position adopted in *Sintrans Asia Services Pte Ltd v. Inai Kiara Sdn Bhd* – that arguments of lack of jurisdiction should be made in a setting-aside application to the courts of the (foreign) seat, not when resisting recognition and enforcement before the Malaysian courts<sup>[247]</sup> – may have been somewhat moderated by *ING Bank NV & Anor v. Tumpuan Megah Development Sdn Bhd*.<sup>[248]</sup> A London-seated arbitral award against a Malaysian entity was registered as a judgment of the English High Court. Registration was then sought in Malaysia but of the English judgment pursuant to the Reciprocal Enforcement of Judgments Act 1958, rather than of the arbitral award pursuant to the Arbitration Act 2005 (Section 38). In resisting enforcement of the judgment, the Malaysian entity nevertheless argued that the absence of a valid arbitration agreement meant that the arbitral tribunal had lacked jurisdiction, which is a ground for refusal of recognition and enforcement under Section 39(1)(a)(ii) of the Arbitration Act. The Court of Appeal held that arbitral award debtors are free to opt between active remedies (applying for setting aside) and passive remedies (resisting enforcement) and can rely on the same grounds in either scenario, including arguments as to lack of jurisdiction.<sup>[249]</sup> The Federal Court, although allowing the appeal, proceeded to deliberate the jurisdictional challenge raised by finding that the respondent's "jurisdictional challenge" does not truly amount to a true jurisdictional challenge in law, as factual findings of fraud are distinguished from a jurisdictional challenge based on allegations of fraud. Of significance, the Federal Court utilised this opportunity to clarify that the Arbitration Act 2005 and the Reciprocal Enforcement of Judgments Act 1958 provide separate and distinct avenues for the registration and enforcement of foreign arbitral awards – the former being the primary 'go-to' statutory route for the registration and enforcement of foreign arbitral awards, the latter governing all matters falling outside the Arbitration Act 2005 which includes confirmation judgments of arbitral awards.<sup>[250]</sup> In such scenarios, the arbitral award may be reviewed by the courts to the extent provided by the enforcing statute (i.e., the Reciprocal

Enforcement of Judgments Act 1958), which would not include a *de novo* re-hearing (which includes the examination of witnesses), but instead to consider the evidence on record before the Court.<sup>[251]</sup>

In terms of which parties may enforce an award, in *SPK-Sentosa Corporation Bhd (in liq) v. TRW Boulevard Square Sdn Bhd*, an assignment of the rights under an arbitral award purportedly declared in a consent judgment was held to be ineffective, as the award was binding only between the parties to the arbitration.<sup>[252]</sup> As to whether an award has become binding within the meaning of Section 39(1)(a)(vii), it was held in *IPL Middle East DMCC v. KNM Process Systems Sdn Bhd* that this must be decided based on context, such as the stipulations of the applicable arbitration rules (if any apply).<sup>[253]</sup>

## Investor–state disputes

### Cases involving the local state as a party

Based on public information, Malaysia as a state has been involved in four investor–state arbitrations, none of which are recent. Three of these arbitrations were within the ICSID framework. The first, *Gruslin v. Malaysia (I)*, was brought by a Belgian national in reliance of a bilateral investment treaty (BIT) between the Belgo-Luxembourg Economic Union and Malaysia, but as the dispute settled amicably, the arbitration was discontinued in 1996.<sup>[254]</sup> The second, *Gruslin v. Malaysia (II)*,<sup>[255]</sup> was premised on a claim that by imposing exchange controls in relation to the Kuala Lumpur Stock Exchange, the government of Malaysia had breached the same BIT and caused the Belgian national's securities to lose value.<sup>[256]</sup> In an award rendered in 2000, the arbitral tribunal declined jurisdiction, as the specific securities in question had not been shown to be an 'approved project' within the meaning of the BIT.<sup>[257]</sup> ICSID annulment proceedings were then brought but discontinued in 2002.

The third ICSID case was *Malaysian Historical Salvors Sdn Bhd v. Malaysia*.<sup>[258]</sup> An English company contracted with Malaysia to locate and salvage a sunken vessel.<sup>[259]</sup> A payment dispute led the company to bring ICSID proceedings against Malaysia, pursuant to a 1988 BIT between Malaysia and the United Kingdom.<sup>[260]</sup> The sole arbitrator declined jurisdiction, finding that there was no investment within the meaning of Article 25(1) of the ICSID Convention, and accordingly did not rule on whether the salvage contract was an 'approved investment' under the BIT.<sup>[261]</sup> However, in what has been described as a 'significant and anticipated' decision,<sup>[262]</sup> the majority of an ad hoc committee favoured a 'capacious' interpretation of 'investment' and annulled the arbitrator's ruling.<sup>[263]</sup> Notably, the committee found it problematic that the arbitrator had elevated the five *Salini* factors<sup>[264]</sup> to the rank of mandatory jurisdictional requirements and failed to consider the BIT itself.<sup>[265]</sup>

In the fourth case (not under ICSID), *Boonsom Boonyanit v. Malaysia*, the estate of a Thai citizen who had been the registered owner of land in Malaysia issued a notice of dispute against Malaysia, claiming breach of the Association of Southeast Asian Nations Agreement for the Promotion and Protection of Investments 1987.<sup>[266]</sup> By forging the owner's signature, a different individual apparently of the same name purported to sell and transfer the land to a third-party company. The original owner's attempts to seek recourse before the Malaysian courts, all the way up to the Federal Court, proved unsuccessful,<sup>[267]</sup> although the Federal Court later overruled itself on the relevant point of law in a different

case.<sup>[268]</sup> The notice of dispute claimed that by virtue of these events, Malaysia had breached its obligations under the Treaty in its treatment of the original owner. However, an amicable settlement was reportedly reached in October 2018.<sup>[269]</sup>

For completeness, two other matters involving Malaysia or a Malaysian state-owned entity as a party, although not strictly investor–state disputes, warrant brief acknowledgment. The first is *Heirs to the Sultanate of Sulu v. Malaysia*, where descendants of the former Sultan of Sulu claimed damages for termination of an 1878 deed, under which, it was asserted, Malaysia was required to pay rent for what is today the Malaysian state of Sabah. These claims were brought in arbitration pursuant to what the descendants contended was an arbitration clause in the 1878 deed. For brevity, it suffices to note that these developments have spawned an ongoing saga marked by controversy, legal proceedings across multiple jurisdictions and a wealth of existing commentary.<sup>[270]</sup> The second matter relates to 1Malaysia Development Berhad (1MDB), a Malaysian sovereign development fund beset by scandals. Following earlier legal proceedings between 1MDB and other parties,<sup>[271]</sup> Goldman Sachs reportedly commenced arbitration at the London Court of International Arbitration against 1MDB and the government of Malaysia in October 2023, alleging breach of a settlement agreement.<sup>[272]</sup> The government and 1MDB filed their reply to the request for arbitration in November 2023.<sup>[273]</sup>

#### Cases decided locally involving investors and other states

As for locally decided cases, 2023 yielded the first ever decision of the Malaysian courts in addressing the International Convention on the Settlement of Investment Disputes Act 1966 (the ICSID Act) in the High Court case, *Elisabeth Regina Maria Gabriele Von Pezold & Ors v. Republic of Zimbabwe*.<sup>[274]</sup> The case arose from two ICSID awards issued under a Germany–Zimbabwe BIT and a Switzerland–Zimbabwe BIT,<sup>[275]</sup> which had been premised on claims by German and Swiss investors against the Republic of Zimbabwe for expropriation of property. Armed with one of the awards and a decision of the ICSID Annulment Committee refusing annulment, the investors applied for a declaration that the award be recognised as binding and enforceable as if it were a judgment of the High Court, and for an order that the pecuniary obligations under the award be so enforced, as well as for similar orders in respect of the annulment decision,<sup>[276]</sup> all of which the High Court granted.<sup>[277]</sup>

Dissatisfied with the decision of the High Court, Zimbabwe appealed to the Court of Appeal.<sup>[278]</sup> In dismissing the appeals, the Court of Appeal affirmed that the High Court had jurisdiction under the ICSID Act to grant recognition and enforcement of the arbitration awards under the ICSID Convention.<sup>[279]</sup>

Three main points are noted from the decisions of the High Court and the Court of Appeal.

#### Absence of specific procedural framework immaterial

First, the High Court did not consider the absence of a specific procedural framework in Malaysian legislation for recognition and enforcement of ICSID awards to prevent the courts from having jurisdiction to grant these orders.<sup>[280]</sup> For comparison, the United Kingdom and Singapore each have a main Act on ICSID as well as ICSID-specific procedural rules.<sup>[281]</sup> In Malaysia, the ICSID Act is not accompanied by any procedural rules. For the

Court, this simply meant that its undoubted substantive jurisdiction under the ICSID Act, Section 3<sup>[282]</sup> was to be exercised according to procedures to be appropriately formulated by the Court using its inherent powers.<sup>[283]</sup>

The Court of Appeal held that the Schedule of the ICSID Act incorporates the Convention itself, which sets out a process for recognition and enforcement at Article 54(2). A contention that there is an absence of relevant procedural framework would be contrary to the High Court's substantive jurisdiction under Section 3, its inherent powers and the treaty obligations of Malaysia as a contracting state to the Convention under Article 69 of the Convention.

#### Most-favoured nation provisions

Second, in construing provisions in the BITs on enforcement of associated awards, the Court preferred an interpretation that it considered to be consistent with most-favoured nation (MFN) provisions elsewhere in the BITs.<sup>[284]</sup> The relevant provision in one BIT (essentially similar to that in the other BIT) stated that awards 'shall be enforced in accordance with the domestic law of the Contracting Party in the territory of which the investment in question is situated'.<sup>[285]</sup> It was submitted that enforcement proceedings could thus be brought only in Zimbabwe. This interpretation was rejected, in light of the MFN provisions, a reading of the BITs in their entirety and the absence of any express limitation or exclusion of enforcement proceedings in other states.<sup>[286]</sup> The Court of Appeal agreed with the High Court's findings that the BITs do not limit the enforcement of the awards to Zimbabwe.

#### Sovereign immunity available only at execution, not recognition

Third, Zimbabwe's claimed defence of sovereign immunity in proceedings seeking recognition – as opposed to the later stage of execution – was found to be premature.<sup>[287]</sup> The High Court adopted the analysis of the New Zealand High Court in a different case<sup>[288]</sup> to the effect that because of the wording of Articles 54 and 55 of the ICSID Convention, the general term of 'enforcement' first requires 'recognition' of an award before it can be 'executed'.<sup>[289]</sup> The High Court further found that by signing the ICSID Convention, Zimbabwe had entered into an international agreement that modified the sovereign immunity it might otherwise have enjoyed at common law, in respect of recognition.<sup>[290]</sup> The Court of Appeal upheld the High Court's view and noted that the same conclusion was arrived at by the English Court of Appeal in *Infrastructure Services Luxembourg SARL & Anor v. The Kingdom of Spain*<sup>[291]</sup> and *Border Timbers Limited & Anor v. Republic of Zimbabwe*.<sup>[292]</sup>

Zimbabwe has applied for leave to appeal to the Federal Court against the Court of Appeal's decision.<sup>[293]</sup> If granted, the appeal is expected to be heard in late 2025 or early 2026. Pending the Federal Court's decision, the High Court's and Court of Appeal's willingness to grant orders for recognition and enforcement arguably reinforces Malaysia's standing as an arbitration-friendly jurisdiction, both generally and with respect to ICSID awards.

## Outlook and conclusions

Over the past few years, arbitration law and practice in Malaysia have continued to evolve steadily. The year 2024, in particular, marked a pivotal point in this trajectory with the passage of the Amendment Act. The Amendment Bill was passed by the Malaysian House of Representatives on 16 July 2024 and by the Malaysian Senate on 24 July 2024. The Amendment Act was gazetted on 1 November 2024 and came into force on 1 January 2026. These legislative reforms introduced notable modifications to the Arbitration Act 2005, reflecting both international best practices and domestic priorities.

A key institutional reform under the Amendment Act is the substitution of the term 'director of the Asian International Arbitration Centre (Malaysia)' with 'president', as provided in Section 6.<sup>[294]</sup> This change corresponds with the restructuring of the AIAC, including the establishment of the AIAC Court of Arbitration, whose mandate is to promote transparency, integrity and accountability in the administration of arbitral proceedings. The president is empowered to undertake core functions such as the appointment of arbitrators, marking a significant evolution in the governance structure of the AIAC.

Substantively, Section 5 of the Amendment Act introduces a default rule on the applicable law governing arbitration agreements: in the absence of party agreement, the law of the seat of arbitration will apply.<sup>[295]</sup> This amendment addresses the uncertainty highlighted in *Enka v. Chubb*<sup>[296]</sup> and aims to reduce satellite litigation and associated costs. Section 9 of the Amendment Act amends Section 38(1) of the Arbitration Act to provide for automatic recognition of awards – whether rendered in Malaysia or a foreign state<sup>[297]</sup> – thus aligning Malaysia's arbitration framework more closely with the UNCITRAL Model Law. However, procedural harmonisation remains incomplete pending a corresponding amendment to Order 69 of the Rules of Court 2012, which currently imposes a court permission requirement and a 14-day moratorium prior to enforcement.

In line with technological developments, Section 8 of the Amendment Act amends Section 33 of the Arbitration Act to permit the use of digital and electronic signatures on arbitral awards.<sup>[298]</sup> This facilitates modern commercial practices and cross-border transactions by promoting efficiency and enforceability. Meanwhile, Section 10 introduces a legislative framework for TPF in arbitration.<sup>[299]</sup> The Amendment Act defines TPF arrangements and permits them prospectively, subject to disclosure obligations at or before the commencement of arbitral or related court proceedings – or within 15 days if agreements are entered into thereafter.<sup>[300]</sup> The proposed regulatory framework contemplates the introduction of a code of practice to guide the conduct of third-party funders, addressing concerns about transparency, control and conflicts of interest.<sup>[301]</sup>

Beyond legislative reform, institutional developments have also progressed. The establishment of BICAM in Sabah offers a regional alternative to the AIAC and may enhance the accessibility of administered arbitration in East Malaysia. The AIAC itself has remained active, launching revised versions of its Arbitration Rules and i-Arbitration Rules in 2023, as well as publishing the Asian Sports Arbitration Rules. These updates reflect a commitment to evolving institutional design and procedural clarity.

In terms of jurisprudential development, the courts have continued to play a central role in shaping the contours of arbitration law. In *V Medical Services M Sdn Bhd v. Swisstray Asia Healthcare Co Ltd*,<sup>[302]</sup> the Federal Court held that the mere existence of an arbitration agreement does not preclude the presentation of a winding-up petition. Rather, a debtor seeking a *Fortuna* injunction must demonstrate a bona fide dispute on substantial grounds. In doing so, the Court aligned itself with the Privy Council's decision in *Sian*,<sup>[303]</sup> eschewing

the lower threshold applied in *Salford Estates*<sup>[304]</sup> and reaffirming the distinct objectives served by insolvency proceedings.

In *Telekom Malaysia Bhd v. Obnet Sdn Bhd*,<sup>[305]</sup> the Federal Court underscored the mandatory requirement under Sections 2 and 33 of the Arbitration Act for arbitral awards to be rendered in writing. The Court rejected the validity of an oral pronouncement on liability in bifurcated proceedings, holding that pronouncements do not constitute enforceable awards under Malaysian law. The judgment affirms the principles embedded in Article 34 of the UNCITRAL Arbitration Rules and ensures that parties' rights to challenge awards are preserved through adherence to proper formalities.

Looking ahead, several areas appear poised for further development. The eventual enforcement of the Amendment Act will necessitate interpretive and procedural adjustments, particularly in respect of TPF and automatic award recognition. Additionally, diversification in arbitral subject matter may emerge as a by-product of Malaysia's strengthened arbitral ecosystem. While construction disputes continue to dominate the caseload, institutional and legislative reforms may catalyse growth in other areas, such as finance, insurance and sports arbitration. The adoption of new technologies – including the potential integration of artificial intelligence in dispute analysis and document review – also holds transformative potential for arbitral practice.

In sum, Malaysia's arbitration landscape in 2026 and beyond reflects both continuity and transformation, marked by a legislative pivot towards modernisation, institutional restructuring and judicial engagement with complex arbitral issues. The Amendment Act is expected to consolidate Malaysia's position as a key arbitral jurisdiction in the region, supported by robust statutory frameworks and evolving jurisprudence.

## Endnotes

- 1 PU(B) 65/2006, Appointment of Date of Coming into Operation. [^ Back to section](#)
- 2 Arbitration Act 2005, Section 51(1). [^ Back to section](#)
- 3 Rules of Court 2012, Order 69, Rule 2. [^ Back to section](#)
- 4 Such as Order 11 Rule 1(1)(M), for service of a notice of a writ out of the jurisdiction to enforce or set aside an arbitral award. [^ Back to section](#)
- 5 Despite the absence in the 2005 Act of an express exclusion of International Centre for Settlement of Investment Disputes (ICSID) matters, as had been the case in the 1952 Act, Section 34. See Sundra Rajoo, *Law, Practice and Procedure of Arbitration* (2nd edition, LexisNexis, 2011) 42. [^ Back to section](#)
- 6 *Elisabeth Regina Maria Gabriele Von Pezold & Ors v. Republic of Zimbabwe* [2023] MLJU 2657 (HC) [53]–[67]. [^ Back to section](#)
- 7 UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006. [^ Back to section](#)

- 8 *Master Mulia Sdn Bhd v. Sigur Rus Sdn Bhd* [2020] 12 MLJ 198 (FC) [28]. [^ Back to section](#)
- 9 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958). [^ Back to section](#)
- 10 Arbitration Act 2005, Sections 38 and 39; Rules of Court 2012, Order 69, Rules 8 and 9. [^ Back to section](#)
- 11 National Language Acts 1963/67, Section 6. [^ Back to section](#)
- 12 PU(B) 61/2006. However, note *Putrajaya Holdings Sdn Bhd v. Digital Green Sdn Bhd* [2008] 7 MLJ 757 (HC) [45]–[56], where the Bahasa Malaysia text of the 2005 Act was preferred due to what was described to be a 'defective provision' in the English text. This has been criticised: Sundra Rajoo, 'Arbitration and its Development in Malaysia' [2020] 1 MLJ lv, lxiv–lxvi. [^ Back to section](#)
- 13 Evidence Act 1950, Section 2. [^ Back to section](#)
- 14 Limitation Act 1953, Section 30(1) and (3). [^ Back to section](#)
- 15 Which has both an Arbitration Act (for domestic arbitrations) and an International Arbitration Act. [^ Back to section](#)
- 16 *Aras Jalinan Sdn Bhd v. Tipco Asphalt Public Co & Ors* [2008] 5 CLJ 654 (HC) [15]–[16]. [^ Back to section](#)
- 17 Arbitration Act 2005, Section 2(1). [^ Back to section](#)
- 18 *id.*, Section 3. [^ Back to section](#)
- 19 *Twin Advance (M) Sdn Bhd v. Polar Electro Europe BV* [2013] 7 MLJ 811 (HC) [23]; *Hew Choong Jeng & Ors v. Kok Low Kau* [2022] MLJU 1738 (HC) [40]. [^ Back to section](#)
- 20 Arbitration Act 2005, Section 11(3). [^ Back to section](#)
- 21 *Padda Gurtaj Singh & Ors v. Axiata Group Bhd & Ors* [2022] 8 CLJ 671 (HC) [33]–[37]. [^ Back to section](#)
- 22 *Twin Advance* (footnote 19), [27]–[28]. [^ Back to section](#)
- 23 Arbitration Act 2005, Sections 38(1) and 39(1). [^ Back to section](#)

- 24** *Sintrans Asia Services Pte Ltd v. Inai Kiara Sdn Bhd* [2016] 2 MLJ 660 (CA) [16], but note also *Kejuruteraan Bintai Kindenko Sdn Bhd v. Serdang Baru Properties Sdn Bhd and another case* [2018] 12 MLJ 706 (HC) [26] and [33] and *Tumpuan Megah Development Sdn Bhd v. ING Bank NV & Anor* [2024] 3 CLJ 18 (CA) [31]–[43]. See also Nicholas Towers, 'Active vs Passive Remedies in Arbitration – A Malaysian Perspective of the Astro-FM Case' [2014] 3 MLJ i. [^ Back to section](#)
- 25** See paragraphs 31 – 37, 42 – 46, 51 – 53 of *Pembinaan Jaya Zira Sdn Bhd v. Sungai Lui Construction & Development Sdn Bhd* [2025] MLJU 4705 (CA). [^ Back to section](#)
- 26** Federal Constitution, Article 121(1A). [^ Back to section](#)
- 27** Subordinate Courts Act 1948, Section 3(2). [^ Back to section](#)
- 28** Federal Constitution, Article 121(1), (1B) and (2). [^ Back to section](#)
- 29** *id.*, Article 121(1). [^ Back to section](#)
- 30** Courts of Judicature Act 1964, Section 19. [^ Back to section](#)
- 31** Such as Sections 11(1) and 19J(1) (court-ordered interim measures), 37 (setting aside) and 38 (recognition and enforcement). [^ Back to section](#)
- 32** Arbitration Act 2005, Section 10(1); *Tech Art Sdn Bhd v. Konsesi Kota Permatamas Sdn Bhd* [2021] 12 MLJ 614 (HC), where the High Court held that the sessions court below should have granted a stay; and *Juaramedic Sdn Bhd v. MRCB Engineering Sdn Bhd* [2017] 11 MLJ 427 (HC), where a stay granted by the sessions court was upheld by the High Court on appeal. [^ Back to section](#)
- 33** *Masenang Sdn Bhd v. Sabanilam Enterprise Sdn Bhd* [2021] 6 MLJ 255 (FC) [174]–[185]. [^ Back to section](#)
- 34** *id.*, [89]–[91]. [^ Back to section](#)
- 35** Circular No. 1/2010 by Registrar of High Court of Malaya. [^ Back to section](#)
- 36** Practice Direction No. 6/2013 by Chief Registrar of Federal Court of Malaysia, paragraph 11.12. [^ Back to section](#)
- 37** Singapore International Commercial Court. [^ Back to section](#)
- 38** Legal Affairs Division of Prime Minister's Office, '20 Disember 2023 – Mesyuarat bagi membincangkan Cadangan Penubuhan International Commercial Court di Malaysia' (20 December 2023). [^ Back to section](#)

- 39** Exceptions include divorce, matrimonial, insolvency and winding-up proceedings, cause papers for which may (for now) be filed in English only: *Robinder Singh Jaj a/l Bijir Singh v. Jasminder Kaur a/p Bhajan Singh* [2024] 2 MLJ 126 (FC) [30]–[33]; Practice Direction No. 2/1990 by Chief Justice of Malaya. ^ [Back to section](#)
- 40** Rules of Court 2012, Order 92, Rule 1(1). ^ [Back to section](#)
- 41** *ibid.*; Arbitration Act 2005, Section 38(3). ^ [Back to section](#)
- 42** Rules of Court 2012, Order 92, Rule 1(2). ^ [Back to section](#)
- 43** Courts of Judicature Act 1964, Section 67(1). ^ [Back to section](#)
- 44** *id.*, Section 96; *Terengganu Forest Products Sdn Bhd v. Cosco Container Lines Co Ltd & Anor and other applications* [2011] 1 MLJ 25 (FC) [34]. ^ [Back to section](#)
- 45** Section 13(9). ^ [Back to section](#)
- 46** Section 15(5). ^ [Back to section](#)
- 47** Section 16(2). ^ [Back to section](#)
- 48** Section 18(10). ^ [Back to section](#)
- 49** Asian International Arbitration Centre (AIAC), 'Annual Report 2023: Revitalisation Unleashed' (15 December 2023), 3. ^ [Back to section](#)
- 50** *Sundra Rajoo* (footnote 5), 283. ^ [Back to section](#)
- 51** Arbitration Act 2005, Section 13(4), (5), (6) and (8). ^ [Back to section](#)
- 52** *id.*, Section 13(9). ^ [Back to section](#)
- 53** *id.*, Section 48. ^ [Back to section](#)
- 54** International Organizations (Privileges and Immunities) Act 1992, Sections 3 and 4, Parts I and II; Kuala Lumpur Regional Centre for Arbitration (Privileges and Immunities) Regulations 1996; Kuala Lumpur Regional Centre for Arbitration (Privileges and Immunities) (Amendment) Regulations 2023; and Arbitration Act 2005, Note, *Sundra Rajoo a/l Nadarajah v. Menteri Luar Negeri, Malaysia & Ors* [2021] 5 MLJ 209 (FC); and *One Amerin Residence Sdn Bhd v. Asian International Arbitration Centre & Ors* [2019] MLJU 540 (HC). ^ [Back to section](#)
- 55** AIAC Mediation Rules 2023; Mediation Act 2012; Asian Domain Name Dispute Resolution Centre. ^ [Back to section](#)

- 56 Malaysian Institute of Architects Arbitration Rules 2019. [^ Back to section](#)
- 57 Royal Institution of Surveyors Malaysia Arbitration Rules 2020. [^ Back to section](#)
- 58 Palm Oil Refiners Association of Malaysia Rules of Arbitration and Appeal. [^ Back to section](#)
- 59 [www.bicam.org/about](http://www.bicam.org/about). [^ Back to section](#)
- 60 Borneo International Centre for Arbitration and Mediation Arbitration Rules, Chairman's Message. [^ Back to section](#)
- 61 id., Rule 14.1. [^ Back to section](#)
- 62 AIAC Arbitration Rules, Part I, Rule 7(1). [^ Back to section](#)
- 63 Sabah Advocates Ordinance 1953, Section 10. [^ Back to section](#)
- 64 Loosely, a person who was born, or is resident or domiciled, in Sabah: Sabah Advocates Ordinance 1953, Section 2(2). Thus, those born, resident or domiciled in Peninsular Malaysia will not ordinarily have 'Sabah connections'. [^ Back to section](#)
- 65 Sabah Law Society, 'Ad-Hoc Admission Guidelines' (15 June 2023, Circular No. 74/2023). [^ Back to section](#)
- 66 *Mohamed Azahari bin Matiasin v. GBB Nandy @ Gaanesh (in his capacity as the President of the Sabah Law Association is sued/named as the respondent in this appeal proceedings pursuant to s 9(c) of the Societies Act 1966) & Anor* [2013] 5 MLJ 474 (CA). [^ Back to section](#)
- 67 AIAC, Annual Report 2023 (footnote 49), 23. [^ Back to section](#)
- 68 id., 25. [^ Back to section](#)
- 69 3.5 billion ringgit across 178 arbitration cases. [^ Back to section](#)
- 70 AIAC, Annual Report 2023 (footnote 49), 24–25. [^ Back to section](#)
- 71 id., 25. [^ Back to section](#)
- 72 id., 33. [^ Back to section](#)
- 73 id., 33. [^ Back to section](#)
- 74 Arbitration (Amendment) Act 2024, Section 6. [^ Back to section](#)

- 75 id., Section 5. [^ Back to section](#)
- 76 *Enka Insaat ve Sanayi AS v. 000 Insurance Company Chubb* [2020] UKSC 38 [2020] 1 WLR 4117. [^ Back to section](#)
- 77 Arbitration (Amendment) Act 2024, Section 9. [^ Back to section](#)
- 78 id., Section 8. [^ Back to section](#)
- 79 id., Section 10, insertion of Section 46G into Arbitration Act 2005. [^ Back to section](#)
- 80 id., Section 10, insertion of Section 46D into Arbitration Act 2005. [^ Back to section](#)
- 81 Legal Affairs Division of Prime Minister's Office, Media Statement (4 April 2024); AIAC, 'Appointment of the AIAC Board of Directors' (4 April 2024). [^ Back to section](#)
- 82 AIAC, Annual Report 2023 (footnote 49), 12. [^ Back to section](#)
- 83 AIAC Arbitration Rules 2023, Part I, Rule 24. [^ Back to section](#)
- 84 AIAC Arbitration Rules 2021, Rule 9.10. [^ Back to section](#)
- 85 'Appoint new arbitration centre director quickly, says Bar Council', *Free Malaysia Today* (12 January 2023), [www.freemalaysiatoday.com/category/nation/2023/01/12/appoint-new-arbitration-centre-director-quickly-says-bar-council/](http://www.freemalaysiatoday.com/category/nation/2023/01/12/appoint-new-arbitration-centre-director-quickly-says-bar-council/). [^ Back to section](#)
- 86 AIAC Arbitration Rules 2023, Part I, Rule 9 and Part II, Article 17(5). [^ Back to section](#)
- 87 AIAC Arbitration Rules 2021, Rules 21.1 and 21.5. [^ Back to section](#)
- 88 id., Rule 19. [^ Back to section](#)
- 89 AIAC Arbitration Rules 2023, Part I, Rule 11(1). [^ Back to section](#)
- 90 AIAC Arbitration Rules 2021, Rule 13.5(e). [^ Back to section](#)
- 91 AIAC Arbitration Rules 2023, Part I, Rule 12. [^ Back to section](#)
- 92 International Chamber of Commerce (ICC) Arbitration Rules 2021, Article 11(7). [^ Back to section](#)
- 93 Hong Kong International Arbitration Centre Administered Arbitration Rules 2018, Article 44. [^ Back to section](#)

- 94** *Amal Bakti Sdn Bhd & Ors v. Milan Auto (M) Sdn Bhd & Ors* [2009] 5 MLJ 95 (HC) [11]–[12]; *Federal Furniture Industries Sdn Bhd v. Chim Yiam Lee, Tan & Associates (formerly known as Chim Yiam, Lee & Associates) (sued as a firm)* [2012] MLJU 1629 (HC) [18]; *Mastika Jaya Timber Sdn Bhd v. Shankar a/I Ram Pohumall* [2010] 5 MLJ 707 (HC) [13]–[14]. [^ Back to section](#)
- 95** 'Malaysia, EU recognise need to regulate third-party litigation funding, says Azalina', *Malay Mail* (13 February 2024), [www.malaymail.com/news/malaysia/2024/02/13/malaysia-eu-recognise-need-to-regulate-third-party-litigation-funding-says-azalina/117828](http://www.malaymail.com/news/malaysia/2024/02/13/malaysia-eu-recognise-need-to-regulate-third-party-litigation-funding-says-azalina/117828). [^ Back to section](#)
- 96** AIAC Arbitration Rules 2021, Rules 17.5, 18.4 and 18.9. [^ Back to section](#)
- 97** AIAC Arbitration Rules 2023, Part III, Clause 1.6(a). However, note a potential ambiguity: the 14-day period runs 'from the date the application was referred to the emergency arbitrator pursuant to Clause 1.2'. An application under Clause 1.2 should presumably be sent to the AIAC rather than the emergency arbitrator who would not necessarily have been appointed yet. One might thus question whether the relevant start date is the date of the emergency arbitrator application or the (potentially later) date when the AIAC refers the application to the appointed emergency arbitrator. [^ Back to section](#)
- 98** *id.*, Part I, Rule 21(5). [^ Back to section](#)
- 99** AIAC Arbitration Rules 2021, Rule 44.6. [^ Back to section](#)
- 100** Vanessa Naish and Rebecca Warder, 'The transparency conundrum: will the ICC's new pro-publication approach to arbitral awards win over the majority? (Part 1)' *Practical Law Arbitration Blog* (15 April 2019), <http://arbitrationblog.practicallaw.com/the-transparency-conundrum-will-the-iccs-new-pro-publication-approach-to-arbitral-awards-win-over-the-majority-part-1/> (no longer available); Vanessa Naish and Rebecca Warder, 'The transparency conundrum: will the ICC's new pro-publication approach to arbitral awards win over the majority? (Part 2)' *Practical Law Arbitration Blog* (18 April 2019) <http://arbitrationblog.practicallaw.com/the-transparency-conundrum-will-the-iccs-new-pro-publication-approach-to-arbitral-awards-win-over-the-majority-part-2/> (no longer available); New York City Bar, 'Report by the Committee on International Commercial Disputes: Publication of International Arbitration Awards and Decision' (February 2014), [www2.nycbar.org/pdf/report/uploads/20072645-PublicationofInternationalArbitrationAwardsandDecisions.pdf](http://www2.nycbar.org/pdf/report/uploads/20072645-PublicationofInternationalArbitrationAwardsandDecisions.pdf); Elina Zlatanska, 'To Publish, or Not to Publish Arbitral Awards: That is the Question . . .' (2015) 81, *International Journal of Arbitration, Mediation and Dispute Management*, 13–17. [^ Back to section](#)

- 101** *Airbus Helicopters Malaysia Sdn Bhd (formerly known as Eurocopter Malaysia Sdn Bhd) v. Aerial Power Lines Sdn Bhd* [2024] 2 MLJ 471 (CA) [25]. A request for an extension of time to file a defence was held, on the facts, not to be a step in the proceedings, which disentitled the requesting party from a mandatory stay under the Arbitration Act 2005, Section 10(1). See *Universiti Malaya v. Esa Jurutera Perunding Sdn Bhd* [2023] MLJU 1130 (HC) [34]–[37] (the request for extension for the defence amounted to a step in proceedings); *Ambico Offshore Sdn Bhd v. Sapura Fabrication Sdn Bhd* [2022] MLJU 2663 (HC) [42]–[43] (filing defence after a stay application to comply with courts' directions, not a step in proceedings); *Black Swan Petroleum DMCC v. The Owners and/or Demise Charterers of The Ship or Vessel 'Oceania' of the Port of Antwerp, Belgium* [2023] MLJU 3048 (HC) [42]–[43] (striking out and setting aside an application filed concurrently with a stay application without unequivocal reservation of right to arbitrate amounted to a step in proceedings). [^ Back to section](#)
- 102** *Luxor Holdings Sdn Bhd & Anor v. SQA Builders Sdn Bhd* [2025] MLJU 829 (FC). [^ Back to section](#)
- 103** *Mammoth Empire Construction v. Kenwise* [2020] MLJU 1473. [^ Back to section](#)
- 104** *Tokio Marine Insurance v. Hi-Poly Industries* [2020] MLJU 1446. [^ Back to section](#)
- 105** *AMDAC v. BYD Auto Industry* [2020] 6 CLJ 625. [^ Back to section](#)
- 106** *Johawaki Development v. Majlis Agama Islam Wilayah Persekutuan* [2020] MLJU 660. [^ Back to section](#)
- 107** *Luxor Holdings* (footnote 102), [15]–[19] and [34]–[42]. [^ Back to section](#)
- 108** *Peninsula Education (Setia Alam) Sdn Bhd (formerly known as Segi International Learning Alliance Sdn Bhd) v. Biaxis (M) Sdn Bhd (in liquidation)* [2024] 5 MLJ 388 (CA). [^ Back to section](#)
- 109** See also *Hashim bin Abdul Razak & Ors v. Pembinaan PD Jaya Sdn Bhd* [2026] 2 MLJ 608 (CA) where this principle was affirmed by the Court of Appeal. As the Court of Appeal authoritatively held in *Peninsula Education (Setia Alam) Sdn Bhd v. Biaxis (M) Sdn Bhd* (In Liquidation), an arbitration agreement has a life of its own and survives challenges to the main contract, including its termination and even the winding up of a party. Consequently, the liquidation of the respondent or any dispute regarding the termination of the JVA does not, *ipso jure*, render the arbitration clause inoperative. [^ Back to section](#)
- 110** *id.*, [48], [55] and [60]–[61]. [^ Back to section](#)
- 111** *id.*, [68], [72] and [74]. [^ Back to section](#)
- 112** *id.*, [79]–[80] and [83]. [^ Back to section](#)

- 113** *Cockett Marine Oil (Asia) Pte Ltd v. MISC Bhd and another appeal* [2022] 6 MLJ 786 (CA). [^ Back to section](#)
- 114** *id.*, [26], [31] and [42]. [^ Back to section](#)
- 115** *Macsteel International Far East Ltd v. Lysaght Corrugated Pipe Sdn Bhd and other appeals* [2023] 4 MLJ 551 (CA). [^ Back to section](#)
- 116** *Malini Ventura v. Knight Capital Pte Ltd and others* [2015] SGHC 225, [2015] 5 SLR 707; *Albon (t/a N A Carriage Co) v. Naza Motor Trading Sdn Bhd and another (No. 3)* [2007] EWHC 665 (Ch), [2007] 2 All ER 1075. [^ Back to section](#)
- 117** *Macsteel International Far East* (footnote 115), [33]–[34]. [^ Back to section](#)
- 118** *id.*, [35]. [^ Back to section](#)
- 119** *Lysaght Corrugated Pipe Sdn Bhd & Anor v. Popeye Resources Sdn Bhd & Anor* [2022] MLJU 165 (HC) [102] and [107]. [^ Back to section](#)
- 120** *Dalip Bhagwan Singh v. PP* [1998] 1 MLJ 1 (FC), 12–13. [^ Back to section](#)
- 121** See also *Stamford College (Malacca) Sdn Bhd v. Asia Pacific Higher Learning Sdn Bhd* (registered owner and licensee of the higher learning institution Lincoln University College) [2023] MLJU 2578 (HC) [77], which interpreted *Macsteel International Far East* (footnote 115) to require the full merits approach but did not consider *Cockett Marine Oil* (footnote 113). [^ Back to section](#)
- 122** *Pembinaan Federal Sdn Bhd v. Biaxis (M) Sdn Bhd (in liq)* [2024] MLJU 452 (HC) [32]–[35]; see also *Biaxis (M) Sdn Bhd (in liq) v. Peninsula Education (Setia Alam) Sdn Bhd* (formerly known as Segi International Learning Alliance Sdn Bhd) [2023] MLJU 2938 (HC) [25]–[29]. [^ Back to section](#)
- 123** *Delta Corp Shipping Pte Ltd v. Michael Lwee Wan Thoo & Ors* [2023] MLJU 630 (HC) [4] and [7]. [^ Back to section](#)
- 124** *Hew Choong Jeng* (footnote 19), [21]–[22]. [^ Back to section](#)
- 125** *Enka v. Chubb* (footnote 76). [^ Back to section](#)
- 126** *id.*, *Enka v. Chubb* was cited in submissions in *Hindustan Oil Exploration Co Ltd v. Hardy Exploration & Production (India) Inc* [2023] 7 MLJ 415 (HC) [24]. However, at [30], the High Court (whose judgment was affirmed on appeal) considered determination of the applicable limitation laws to be a matter rightly for the arbitral tribunal. See also S Subramaniam, 'Determining the Law to Govern an Arbitration Agreement' (2020) 47 *Journal of Malaysian and Comparative Law*, 1 and 15. [^ Back to section](#)

- 127** *V Medical Services M Sdn Bhd v. Swissray Asia Healthcare Co Ltd* [2025] 2 MLJ 744 (FC) [72]. [^ Back to section](#)
- 128** *Sian Participation Corp (in liquidation) v. Halimeda International Ltd* [2024] UKPC 16. [^ Back to section](#)
- 129** *Salford Estates (No. 2) Ltd v. Altomart Ltd (No. 2)* [2014] EWCA Civ 1575. [^ Back to section](#)
- 130** *IBN Highland Sdn Bhd v. Zhongji Construction Sdn Bhd* [2023] MLJU 2762 (HC) [14]–[20]; *Syarikat Perumahan Negara Bhd v. MBAS Jaya Sdn Bhd* [2023] MLJU 1928 (HC) [21]–[30]. [^ Back to section](#)
- 131** *Gise Kam Kwan International Trade Ltd v. Antara Steel Mills Sdn Bhd* [2022] MLJU 3475 (HC). [^ Back to section](#)
- 132** *id.*, [34]–[36]. [^ Back to section](#)
- 133** *Gise Kam Kwan International Trade Ltd v. Antara Steel Mills Sdn Bhd* [2024] 4 CLJ 611 (CA). [^ Back to section](#)
- 134** See also *Apex Communications Sdn Bhd v. Sumber Khazanah Sdn Bhd* [2025] MLJU 3914 (CA) which affirmed that the operation of Section 9(5) of the Arbitration Act 2005 is significantly wide so as to allow the incorporation of an arbitration clause into another contract by way of general reference without strict requirement for specific reference or explicit mention of the arbitration clause. [^ Back to section](#)
- 135** See also *MTC Engineering Sdn Bhd v. VME Process Asia Pacific Pte Ltd* [2025] MLJU 3634 (CA) whereby the Court of Appeal held that reference in the contract to another contract (with an arbitration clause) was merely to provide context and did not have the purpose of incorporating that arbitration agreement into the present contract. [^ Back to section](#)
- 136** *Uzma Engineering Sdn Bhd v. Khan Co Ltd & Anor* [2023] MLJU 1561 (HC) [24]–[28]. [^ Back to section](#)
- 137** *Sanjung Sepang Sdn Bhd v. Nagatron Engineering Sdn Bhd* [2022] MLJU 2493 (HC). [^ Back to section](#)
- 138** *id.*, [28]–[29]. [^ Back to section](#)
- 139** *id.*, [23] and [27]. [^ Back to section](#)
- 140** *id.*, [27]–[31]. [^ Back to section](#)
- 141** *Sumber Khazanah Sdn Bhd (in liq) v. Apex Communications Sdn Bhd* [2023] MLJU 2260 (HC). [^ Back to section](#)

- 142** *id.*, [41]–[42], although it is unclear whether the plaintiff (described in the case name as 'Sumber Khazanah Sdn Bhd') and the party (described in the grounds of judgment as 'Sumbertech Ventures Sdn Bhd') are the same party. [^ Back to section](#)
- 143** The cases mentioned here do not appear to have been considered by the High Court in *Sumber Khazanah* (footnote 141). [^ Back to section](#)
- 144** *Lembaga Pelabuhan Kelang v. Kuala Dimensi Sdn Bhd and another appeal* [2011] 2 MLJ 606 (CA) [30]. [^ Back to section](#)
- 145** *Koperasi Permodalan Felda Malaysia Bhd v. Alrawda Investment For Real Estate Development & Projects Management Co Ltd & Anor* [2021] 7 MLJ 647 (HC) [44]; *Majlis Perbandaran Alor Gajah v. Sunrise Teamtrade Sdn Bhd* [2014] 7 MLJ 570 (HC) [15]. [^ Back to section](#)
- 146** *Uzma Engineering* (footnote 136), [33]–[35]. [^ Back to section](#)
- 147** *Abd Rahman bin Soltan & Ors v. Federal Land Development Authority & Anor and other appeals* [2023] 4 MLJ 318 (CA) [5]. [^ Back to section](#)
- 148** *id.*, [51]–[52]. [^ Back to section](#)
- 149** *id.*, [53]. [^ Back to section](#)
- 150** *id.*, [68], [71]–[73]. [^ Back to section](#)
- 151** *Setia Awan Management Sdn Bhd v. SPNB Aspirasi Sdn Bhd* [2025] 4 MLJ 181; [2025] MLJU 1264. [^ Back to section](#)
- 152** *Setia Awan Management Sdn Bhd v. SPNB Aspirasi Sdn Bhd* [2025] 4 MLJ 181. See also *PT Wijaya Karya (Persero) TBK & Anor v. Zecon Bhd & Anor* [2025] 6 MLJ 867 (CA) where the Court of Appeal held that the High Court erred in setting aside an arbitral award on the ground that there was no single arbitration agreement made between all four parties. The Court of Appeal held that the requirement for a single arbitration agreement between all four parties was satisfied through the principal-agent relationship, and the dispositive portion of the award was sufficiently clear in identifying the liable parties. The Court further affirmed that courts do not sit in appellate capacity over arbitral findings, and that a breach of natural justice will only justify setting aside an award if the breach is significant or serious enough to have materially affected the outcome – the respondents in the case failed to demonstrate any such impact, particularly as the agency argument had been consistently advanced throughout the proceedings and the respondents had ample opportunity to rebut it. The appeal was unanimously allowed, reinforcing the policy of arbitral finality and minimal judicial intervention, and endorsing a flexible approach to implied consent and multi-party arbitration in complex contractual arrangements. [^ Back to section](#)
- 153** *Macsteel International Far East* (footnote 115). [^ Back to section](#)

- 154** *id.*, [35]. [^ Back to section](#)
- 155** *VME Process Asia Pacific Pte Ltd v. MTC Engineering Sdn Bhd* [2022] MLJU 2551 (HC). [^ Back to section](#)
- 156** *Luxor Holdings* (footnote 102), [20]–[23] and [43]–[49]. [^ Back to section](#)
- 157** *Abdul Latiff bin Hj Mohaideen v. Measat Broadcast Network Systems Sdn Bhd* [2022] MLJU 3469 (HC) [23] and [42]–[45], preferring *Apex Marble Sdn Bhd & Anor v. Leong Tat Yan* [2021] CLJU 37 (CA) [28]–[29] to *Protasco Bhd v. Tey Por Yee & another appeal* [2018] 5 CLJ 299 (CA) [47]–[48]. [^ Back to section](#)
- 158** *Tune Group Sdn Bhd v. Tune Talk Sdn Bhd & Ors* [2023] MLJU 1998 (HC) [57]–[60] and [66]–[68]. [^ Back to section](#)
- 159** *K Mark Network Plt & Anor v. Kenneth Lee An-Tzan* [2022] MLJU 3396 (HC) [18]–[19], citing *Press Metal Sarawak Sdn Bhd v. Etiqa Takaful Bhd* [2016] 5 MLJ 417 (FC) [101]. [^ Back to section](#)
- 160** *Cahaya Mata Phosphates Industries Sdn Bhd (formerly known as Malaysian Phosphate Additives (Sarawak) Sdn Bhd) v. Syarikat SESCO Berhad* [2023] MLJU 2171 (HC) [8]–[15]. [^ Back to section](#)
- 161** *JSB v. ACSB* [2024] 1 MLJ 195 (CA); judgment below in *JKP Sdn Bhd v. Anas Construction Sdn Bhd* [2022] MLJU 3058 (HC); see *Lion Pacific Sdn Bhd v. Pestech Technology Sdn Bhd* [2022] MLJU 108 (HC). [^ Back to section](#)
- 162** *id.*, [68]–[72]. [^ Back to section](#)
- 163** Suren Rajah, 'Theoretical Analysis and Opinion – Can a Breach of Payment Obligations Render an Arbitration Agreement Inoperative?' [2024] *CLJU(A)* x. [^ Back to section](#)
- 164** *Bongsor Bina Sdn Bhd v. SH Builders & Marketing Sdn Bhd* [2024] 5 MLJ 85. [^ Back to section](#)
- 165** *id.*, [45]–[46]. [^ Back to section](#)
- 166** *id.*, [41]–[42]. [^ Back to section](#)
- 167** *Airbus Helicopters Malaysia Sdn Bhd v. Malindo Airways Sdn Bhd* [2024] 2 MLJ 472 (CA). [^ Back to section](#)
- 168** *id.*, [70]. [^ Back to section](#)
- 169** *id.*, [10]. [^ Back to section](#)

- 170** *Sanwell Corporation v. Trans Resources Corporation And Bhd & Anor* [2002] 3 CLJ 213. [^ Back to section](#)
- 171** *Airbus Helicopters* (footnote 167), [49]. [^ Back to section](#)
- 172** *Esa Jurutera Perunding Sdn Bhd v. Universiti Malaya* [2025] 2 MLJ 618 (CA) [35]. [^ Back to section](#)
- 173** *id.*, [30]–[31]. [^ Back to section](#)
- 174** *id.*, [37]–[38]. [^ Back to section](#)
- 175** *Ketua Setiausaha Kementerian Dalam Negeri & Anor v. Salconmas Sdn Bhd* [2022] 6 MLJ 836 (CA) [40]–[42]. [^ Back to section](#)
- 176** *Tunas Manja Development & Construction (KL) Sdn Bhd v. SPNB Aspirasi Sdn Bhd and another application* [2024] 7 MLJ 617 (HC) 654, [60]. [^ Back to section](#)
- 177** *Pastura Sdn Bhd v. ZCM Minerals Sdn Bhd* [2023] MLJU 3003 (HC) [27]. [^ Back to section](#)
- 178** The judgment does not mention Section 14 or 15. [^ Back to section](#)
- 179** *Pastura* (footnote 177), [40]. [^ Back to section](#)
- 180** *Halliburton Co v. Chubb Bermuda Insurance Ltd and others (International Court of Arbitration of the International Chamber of Commerce and others intervening)* [2020] UKSC 48, [2021] AC 1083. [^ Back to section](#)
- 181** *Low Koh Hwa @ Low Kok Hwa (practising as sole chartered architect at Low & Associates) v. Persatuan Kanak-Kanak Spastik Selangor & Wilayah Persekutuan and another case* [2021] 10 MLJ 262 (HC) [25]–[31] and [36]–[38]. See also *Ragawang Corporation Sdn Bhd v. One Amerin Residence Sdn Bhd and other cases* [2022] MLJU 2121 (HC) [31(2)]. [^ Back to section](#)
- 182** *Persatuan Kanak-Kanak Spastik Selangor & Wilayah Persekutuan v. Low Koh Hwa @ Low Kok Hua (practicing as the sole certified architect for Low & Associates)* [2023] 1 MLJ 342 (CA) [42]–[43]. [^ Back to section](#)
- 183** *id.*, [45]–[54]. [^ Back to section](#)
- 184** *Datuk Bandar Kuala Lumpur v. Sri Tinggi Sdn Bhd* [2025] MLJU 618. [^ Back to section](#)
- 185** *Malaysia Resources Corp Bhd v. Desaru Peace Holdings Club Sdn Bhd* [2023] 11 MLJ 412 (HC) [49]–[52]. [^ Back to section](#)
- 186** *id.*, [54]. [^ Back to section](#)

- 187** *CRCC Malaysia Bhd v. DSG Projects Malaysia Sdn Bhd* [2023] 9 MLJ 713 (HC) [1]. <sup>^</sup> [Back to section](#)
- 188** *id.*, [47]–[53]. <sup>^</sup> [Back to section](#)
- 189** *id.*, [44]. <sup>^</sup> [Back to section](#)
- 190** *Samsung C&T Corp UEM Construction JV Sdn Bhd v. Global Wall (M) Sdn Bhd and other appeals* [2024] 6 MLJ 795 (CA). <sup>^</sup> [Back to section](#)
- 191** *id.*, [19], [23]–[24] and [26]. <sup>^</sup> [Back to section](#)
- 192** *id.*, [29]. <sup>^</sup> [Back to section](#)
- 193** *KNM Process Systems Sdn Bhd v. Ceca Gold Company Ltd & Ors* [2023] 1 MLJ 814 (CA). <sup>^</sup> [Back to section](#)
- 194** *id.*, [23]–[26], citing (among others) *KNM Process Systems Sdn Bhd v. Lukoil Uzbekistan Operating Company LLC* [2020] MLJU 85 (CA). <sup>^</sup> [Back to section](#)
- 195** *Cypark Sdn Bhd v. KNM Process Systems Sdn Bhd* [2024] CLJU 740 (CA) [29]–[32]; *KNM Process Systems Sdn Bhd v. Cypark Sdn Bhd* [2020] 10 MLJ 321 (HC) [34]–[36]. <sup>^</sup> [Back to section](#)
- 196** *Investasia Sdn Bhd v. NTSJ Construction (M) Sdn Bhd* [2022] MLJU 3527 (HC) [51]–[52]. <sup>^</sup> [Back to section](#)
- 197** See, for example, *Pengerang Refining Company Sdn Bhd v. Sinopec Engineering (Group) Co Ltd* [2026] 1 MLJ 636 (CA) where the Court of Appeal held, among others, that where construction works had been completed, any demand on the performance bond was unconscionable, upholding the High Court’s injunction to restrain a call on a bank guarantee. <sup>^</sup> [Back to section](#)
- 198** *Ssangyong Engineering & Construction Co Ltd v. Oxley Rising Sdn Bhd* [2022] MLJU 888 (HC) [53]; *JSNT2 Sdn Bhd v. Exyte Malaysia Sdn Bhd & Ors* [2024] MLJU 438 (HC) [52]–[53]; *MEB Technology Sdn Bhd v. Petrotechnic Engineering and Construction Sdn Bhd & Anor* [2023] MLJU 725 (HC) [8]–[9] and [15]–[16]. <sup>^</sup> [Back to section](#)
- 199** *Syarikat Ong Yoke Lin Sdn Bhd v. Grand Dynamic Builders Sdn Bhd* [2023] MLJU 1490 (HC) [48]–[50]. <sup>^</sup> [Back to section](#)
- 200** *Setia Fontaines Sdn Bhd v. Pro Tech Enterprise Sdn Bhd* [2023] 12 MLJ 324 (HC) [24], [25] and [46]. <sup>^</sup> [Back to section](#)

- 201** *Perbadanan Pengurusan City Plaza v. Sigma Elevator (M) Sdn Bhd* [2023] MLJU 3091 (CA) [26]–[32]. Leave to appeal to the Federal Court has reportedly been granted in Federal Court Civil Application No. 08(f)-512-11/2022(J): Cecil Abraham & Partners, 'Court-ordered interim measures in aid of arbitral proceedings: a Malaysian perspective' *Global Arbitration Review* (26 May 2023) <https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2024/article/court-ordered-interim-measures-in-aid-of-arbitral-proceedings-malaysian-perspective>. ^ [Back to section](#)
- 202** *Shen Yong Engineering Works Sdn Bhd v. Damai Residence Sdn Bhd & Anor* [2023] MLJU 104 (HC) [38]–[40]. ^ [Back to section](#)
- 203** *Eversendai Constructions (M) Sdn Bhd v. Samsung C&T Corporation UEM Construction JV Sdn Bhd* [2023] MLJU 2025 (HC) [86]. See also *Econpile (M) Sdn Bhd v. ASM Development (KL) Sdn Bhd* [2023] MLJU 855 (HC) [27], seemingly unaffected on the point by proceedings in the courts above. ^ [Back to section](#)
- 204** *Syarikat Ong Yoke Lin* (footnote 199), [54]. ^ [Back to section](#)
- 205** *Damai City Sdn Bhd v. MCC Overseas (M) Sdn Bhd and other appeals* [2023] 1 MLJ 258 (CA) [35]. ^ [Back to section](#)
- 206** *Padda Gurtaj Singh* (footnote 21), [33]–[37]. ^ [Back to section](#)
- 207** *Shen Yong Engineering Works* (footnote 202), [63]–[69] and [73]. ^ [Back to section](#)
- 208** *Kharisma Wira Sdn Bhd v. Ketua Setiausaha Kementerian Pertahanan Malaysia & Ors* [2023] MLJU 1250 (HC) [30]–[31]. ^ [Back to section](#)
- 209** Arbitration Act 2005, Section 3(2) and (3). ^ [Back to section](#)
- 210** *Coneff Corporation Sdn Bhd v. Vivocom Enterprise Sdn Bhd (Dr Eng Zi Xun, Applicant)* [2019] MLJU 1666 (HC). ^ [Back to section](#)
- 211** *id.*, [31]–[34]. ^ [Back to section](#)
- 212** *id.*, [33]. ^ [Back to section](#)
- 213** *Danieli & C Officine Mecchaniche SPA v. Southern HRC Sdn Bhd* [2021] 10 MLJ 48 (HC). ^ [Back to section](#)
- 214** Rules of Court 2012, Order 92, Rule 4. ^ [Back to section](#)
- 215** *Danieli* (footnote 213), [36]–[38]. ^ [Back to section](#)
- 216** *id.*, [53]. ^ [Back to section](#)

- 217** *C v. D* [2023] HKCFA 16 [2023] 5 HKC 440 [39]–[49]; *NWA and another v. NVF and others* [2021] EWHC 2666 (Comm) [67]–[78]. [^ Back to section](#)
- 218** *Petronas Carigali (Turkmenistan) Sdn Bhd v. Ishengir Individual Enterprise* [2023] MLJU 1060 (HC) [16]–[18], [28] and [34]. [^ Back to section](#)
- 219** *BBA and others v. BAZ and another appeal* [2020] SGCA 53. [^ Back to section](#)
- 220** *Hindustan Oil Exploration Co Ltd v. Hardy Exploration & Production (India) Inc* [2023] 4 MLJ 113 (CA) [69]–[70]. [^ Back to section](#)
- 221** *id.*, [70]. [^ Back to section](#)
- 222** Arbitration Act 2005, Section 37(1)(b)(ii) and (2)(b)(ii). [^ Back to section](#)
- 223** *id.*, Section 37(1)(b)(vi). [^ Back to section](#)
- 224** *Ragawang Corporation Sdn Bhd v. One Amerin Residence Sdn Bhd and another case* [2024] MLJU 310 (HC) [48] and [54]–[55]. [^ Back to section](#)
- 225** *Sabah Shell Petroleum Company Limited v. Gumusut-Kakap Semi-Floating Production System (Labuan) Limited and another case* [2022] MLJU 3504 (HC) [45]–[53]. [^ Back to section](#)
- 226** International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration. [^ Back to section](#)
- 227** *Acro Avenue Sdn Bhd v. Westorm Energy Engineering Sdn Bhd and another case* [2022] MLJU 3412 (HC) [26]. [^ Back to section](#)
- 228** *Qingdao Hongdaxinrong International Trade Co Ltd v. Charterwin Trading Sdn Bhd and other cases* [2023] MLJU 1467 (HC) [44]–[46]. [^ Back to section](#)

- 229** See *One Amerin Residence Sdn Bhd v. Ragawang Corp Sdn Bhd* [2025] MLJU 2774 (CA) whereby an arbitrator was found to have wrongfully deprived the respondent of its fundamental right to be heard. The dispute arose from a construction contract where the first arbitration was deliberately limited in scope to liquidated and ascertained damages (LAD) and loss and expense claims, with the first arbitrator expressly declining jurisdiction over the final account and retention sum on grounds of pre-maturity. After the first final award, the employer (OASB) issued a unilateral set-off letter deducting the LAD award against outstanding progress certificate balances and the retention sum, which the contractor (Ragawang) did not protest — leading the second arbitrator to terminate the contractor's subsequent second and third arbitrations on the basis of *res judicata*. The Court of Appeal upheld the High Court's decision to set aside the second final award, finding that the second arbitrator wrongly applied *res judicata* since the first arbitration had expressly excluded those claims from its scope, and that the wrongful termination deprived Ragawang of its fundamental right to be heard, amounting to a breach of natural justice contrary to public policy under Section 37 of the Arbitration Act 2005. The Court varied the High Court's order by applying estoppel by conduct to bar Ragawang from re-litigating the progress certificate balances and retention sum (which it had acquiesced to via the set-off letter), while holding that Ragawang's remaining claims for under-certified works, late payment interest, and sponsorship refund had never been determined and remained arbitrable. ^ [Back to section](#)
- 230** *Qingdao Hongdaxinrong International Trade Co Ltd v. Charterwin Trading Sdn Bhd and other cases* [2023] MLJU 1467 (HC) [44]–[46]. ^ [Back to section](#)
- 231** Arbitration Act 2005, Section 37(1)(b)(ii) and (2)(b)(ii); *Johawaki Development Sdn Bhd* (footnote 106), [74]–[76]. See, for example, *Kebangunan Petroleum Operating Co Sdn Bhd v. Malaysia Marine and Heavy Engineering Sdn Bhd* [2025] 4 MLJ 214 (CA) whereby a tribunal was found to have failed to take into consideration the parties' expert opinions and parties' submissions on issues which were significant that could have affected the arbitral outcome. ^ [Back to section](#)
- 232** See, for example, *Eng Han Engineering Sdn Bhd v. Toshiba Elevator (M) Sdn Bhd & Anor* [2025] MLJU 1446 (CA) whereby the Court of Appeal found that an arbitrator had decided on matters not in evidence and had not been submitted by either party. This case reinforces that an arbitrator's power under Section 21(3)(b) of the Arbitration Act 2005 to draw on personal expertise is not unbounded – where the arbitrator introduces new factual matters that the parties could not have foreseen, they must be given notice and an opportunity to be heard, regardless of the arbitrator's expertise. ^ [Back to section](#)
- 233** *Lingkaran Luar Butterworth (Penang) Sdn Bhd v. IJM Construction Sdn Bhd* [2024] MLJU 297 (HC) [134]. ^ [Back to section](#)
- 234** *id.*, [41(e)]. ^ [Back to section](#)
- 235** *Ocned Water Technology Sdn Bhd v. UEM Builders Bhd & Anor and another case* [2023] MLJU 3044 (HC) [36] and [48]–[51]. ^ [Back to section](#)

- 236** *Ranhill Process Systems Sdn Bhd v. Thyssenkrupp Industries (M) Sdn Bhd* [2024] 4 CLJ 310 (HC) [51] and [76]–[77]. [^ Back to section](#)
- 237** *Khor Khye Hing Constructions Sdn Bhd v. EXYTE Malaysia Sdn Bhd and another case* (HC), 29 February 2024, Originating Summons No. PA-24C(ARB)-4-09/2023 [26]–[57]. [^ Back to section](#)
- 238** *Eng Han Engineering Sdn Bhd v. Toshiba Elevator (Malaysia) Sdn Bhd (formerly known as MS Elevators Engineering Sdn Bhd) and another case* [2023] MLJU 1867 (HC) [17] and [27]; *Cobrain Holdings Sdn Bhd v. Kasugi Prima Sdn Bhd and another case* [2023] MLJU 1794 (HC) [22] and [35]–[37]. [^ Back to section](#)
- 239** *Kebabangan Petroleum Operating Company Sdn Bhd v. Malaysia Marine and Heavy Engineering Sdn Bhd and another case* [2023] MLJU 1995 (HC) [66]–[80] and [90]–[93].- [^ Back to section](#)
- 240** *id.*, [110]–[111]. [^ Back to section](#)
- 241** *JY Creative Sdn Bhd v. MEACS Construction Sdn Bhd and another case* [2022] MLJU 941 [54] and *Tanjung Langsat Port Sdn Bhd v. Trafigura Pte Ltd & another case* [2016] 4 CLJ 927 (HC) [78], which held that the duty to give reasons is not part of the rules of natural justice and a failure to do so is not a ground for setting aside an award. [^ Back to section](#)
- 242** *Telekom Malaysia Bhd v. Obnet Sdn Bhd* [2024] 6 MLJ 293 (FC) [34]–[39], [43] and [54]. [^ Back to section](#)
- 243** *id.*, [34]–[39], [43] and [54]. [^ Back to section](#)
- 244** For example, *Super Sea Cable Networks Pte Ltd v. Sacofa Sdn Bhd* [2023] MLJU 2244 (HC) where recognition and enforcement of a Singapore-seated arbitral award were granted; *Sintrans* (footnote 24), [16]. [^ Back to section](#)
- 245** *Southern HRC Sdn Bhd v. Danieli Co Ltd* [2023] 2 CLJ 831 (HC) [16]–[18]. [^ Back to section](#)
- 246** *Qingdao Hongdaxinrong* (footnote 221), [19]. [^ Back to section](#)
- 247** *Sintrans* (footnote 24), [16]. [^ Back to section](#)
- 248** *ING Bank NV & Anor v. Tumpuan Megah Development Sdn Bhd* [2025] 6 MLJ 751 (FC). [^ Back to section](#)
- 249** *id.*, [110]–[113]. The Court of Appeal made no finding on whether the arbitral tribunal in the case itself lacked jurisdiction, a question that was sent back to the High Court for trial. [^ Back to section](#)

- 250** Paragraphs 106–114, among others, of *ING Bank NV & Anor v. Tumpuan Megah Development Sdn Bhd* [2025] 6 MLJ 751 (FC). [^ Back to section](#)
- 251** Paragraph 289–292, among others, of *ING Bank NV & Anor v. Tumpuan Megah Development Sdn Bhd* [2025] 6 MLJ 751 (FC). [^ Back to section](#)
- 252** *SPK-Sentosa Corporation Bhd (in liq) v. TRW Boulevard Square Sdn Bhd* [2023] MLJU 1043 (HC) [68]–[70]. However, note the High Court's finding at [67] that the consent judgment did not meet the requirements for an assignment under the Civil Law Act 1956, Section 4(3). It is not clear whether this suggests that rights under an award may be assignable if these requirements are fulfilled. [^ Back to section](#)
- 253** *IPL Middle East DMCC v. KNM Process Systems Sdn Bhd* [2022] MLJU 136 (HC) [9]–[11]. [^ Back to section](#)
- 254** *Gruslin v. Malaysia (I)*, ICSID Case No. ARB/94/1; United Nations Conference on Trade and Development (UNCTAD), 'Gruslin v. Malaysia (I)', Investment Policy Hub, <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/3/gruslin-v-malaysia-i>. [^ Back to section](#)
- 255** *Gruslin v. Malaysia (II)*, ICSID Case No. ARB/99/3. [^ Back to section](#)
- 256** *Gruslin v. Malaysia (II)*, Award on 27 November 2000, paragraphs 8.1–8.3. [^ Back to section](#)
- 257** *id.*, paragraphs 25.5–25.7 and 26.1. [^ Back to section](#)
- 258** *Malaysian Historical Salvors Sdn Bhd v. Malaysia*, ICSID Case No. ARB/05/10. [^ Back to section](#)
- 259** *Malaysian Historical Salvors*, Award on Jurisdiction, 17 May 2007, paragraph 7. [^ Back to section](#)
- 260** *id.*, paragraphs 14 and 18. [^ Back to section](#)
- 261** *id.*, paragraphs 146–49. [^ Back to section](#)
- 262** Charbel A Moarbes, 'Introductory Note to the International Centre for Settlement of Investment Disputes: Malaysian Historical Salvors Sbn, Bhd v. Government of Malaysia & Phoenix Action Ltd v. Czech Republic' (2009) 48(5) *International Legal Materials*, 1082. [^ Back to section](#)
- 263** *Malaysian Historical Salvors*, Decision on Annulment, 16 April 2009, paragraphs 57–61, 80–81 and 83. [^ Back to section](#)
- 264** *Salini Costruttori SpA and Italstrade SpA v. Kingdom of Morocco*, ICSID Case No. ARB/00/4. [^ Back to section](#)

- 265** *Malaysian Historical Salvors*, Decision on Annulment (footnote 263), paragraphs 76–78. [^ Back to section](#)
- 266** *Boonyanit Boonsom v. Malaysia*, Notice of Dispute, 31 July 2017. [^ Back to section](#)
- 267** *Adorna Properties Sdn Bhd v. Boonsom Boonyanit @ Sun Yok Eng* [2001] 1 MLJ 241 (FC); *Boonsom Boonyanit v. Adorna Properties Sdn Bhd* [1997] 2 MLJ 62 (CA); *Boonsom Boonyanit v. Adorna Properties Sdn Bhd* [1995] 2 MLJ 863 (HC). See also *Kobchai Sosothikul (representative of the estate of Boonsom Boonyanit @ Sun Yok Eng, deceased) v. Pengarah Tanah dan Galian, Pulau Pinang* [2012] 3 MLJ 297 (HC). [^ Back to section](#)
- 268** *Tan Ying Hong v. Tan Sian San & Ors* [2010] 2 MLJ 1 (FC). [^ Back to section](#)
- 269** Roger Tan, 'Let justice be seen to be done', *The Star* (19 July 2020), [www.thestar.com.my/opinion/columnists/with-all-due-respect/2020/07/19/let-justice-be-seen-to-be-done](http://www.thestar.com.my/opinion/columnists/with-all-due-respect/2020/07/19/let-justice-be-seen-to-be-done). [^ Back to section](#)
- 270** See also *Government of Malaysia v. Nurhima Kiram Fornan & Ors* [2020] MLJU 425 (HC). [^ Back to section](#)
- 271** *Minister of Finance (Inc) and another v. International Petroleum Investment Company and another* [2019] EWCA Civ 2080, [2020] 2 All ER (Comm) 269. [^ Back to section](#)
- 272** Toby Fisher, 'Goldman Sachs files claim against Malaysia over 1MDB settlement', *Global Arbitration Review* (12 October 2023), <https://globalarbitrationreview.com/article/goldman-sachs-files-claim-against-malaysia-over-1mdb-settlement>. [^ Back to section](#)
- 273** 'AG's Chambers files reply in response to LCIA request', *The Star* (9 November 2023), [www.thestar.com.my/news/nation/2023/11/09/ag039s-chambers-files-reply-in-response-to-lcia-request](http://www.thestar.com.my/news/nation/2023/11/09/ag039s-chambers-files-reply-in-response-to-lcia-request). [^ Back to section](#)
- 274** *Von Pezold* (footnote 6). [^ Back to section](#)
- 275** *Bernhard von Pezold and Others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15; *Border Timbers Limited, Border Timbers International (Private) Limited, and Hangani Development Co (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25. [^ Back to section](#)
- 276** *Von Pezold* (footnote 6), [11] and [13]. [^ Back to section](#)
- 277** *id.*, [143]. [^ Back to section](#)
- 278** As at the time of writing, the Court of Appeal had only delivered an oral pronouncement of its decision of the appeals. No brief grounds of judgment have been made available yet. [^ Back to section](#)

- 279** Court of Appeal, Civil Appeals No. W-02(NCC)(A)-365-03/2023, No. W-02(IM)(NCC)-366-03/2023, No. W-02(NCC)(A)-367-03/2023 and No. W-02(IM)(NCC)-368-03/2023. [^ Back to section](#)
- 280** *id.*, [58]. [^ Back to section](#)
- 281** Arbitration (International Investment Disputes) Act 1966 (UK); Civil Procedure Rules (UK), Rule 62.21; Arbitration (International Investment Disputes) Act 1968 (Singapore); Arbitration (International Investment Disputes) Rules 1982 (Singapore). [^ Back to section](#)
- 282** 'An award made by an arbitrator under the Convention shall be binding and may be enforced in the same manner as if it is a decree judgment or order of the Court.' [^ Back to section](#)
- 283** *Von Pezold* (footnote 6), [60]–[63]. [^ Back to section](#)
- 284** *id.*, [79]–[81].  
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- 285** *id.*, [69].  
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- 286** *id.*, [68]–[81].  
[^ Back to section](#)
- 287** *id.*, [32]–[34] and [45]. [^ Back to section](#)
- 288** *Sodexo Pass International SAS v. Hungary* [2021] NZHC 371 [25]–[26]. [^ Back to section](#)
- 289** *Von Pezold* (footnote 6), [39]–[40]. [^ Back to section](#)
- 290** *id.*, [50]. [^ Back to section](#)
- 291** *Infrastructure Services Luxembourg SARL & Anor v. The Kingdom of Spain* [2023] EWHC 1226 (Comm). [^ Back to section](#)
- 292** *Border Timbers Limited & Anor v. Republic of Zimbabwe* [2024] EWCA Civ 1257. [^ Back to section](#)
- 293** Court of Appeal, Civil Appeal No. W-02(IM)(NCC)-366-03/2023. [^ Back to section](#)
- 294** Arbitration (Amendment) Act 2024, Section 6. [^ Back to section](#)
- 295** *id.*, Section 5. [^ Back to section](#)
- 296** *Enka v. Chubb* (footnote 76). [^ Back to section](#)

**297** Arbitration (Amendment) Act 2024, Section 9. [^ Back to section](#)

**298** id., Section 8. [^ Back to section](#)

**299** id., Section 10. [^ Back to section](#)

**300** id., Section 10, insertion of Section 46G into Arbitration Act 2005. [^ Back to section](#)

**301** id., Section 10, insertion of Section 46D into Arbitration Act 2005. [^ Back to section](#)

**302** *V Medical* (footnote 127). [^ Back to section](#)

**303** *Sian* (footnote 128). [^ Back to section](#)

**304** *Salford Estates* (footnote 129). [^ Back to section](#)

**305** *Telekom Malaysia* (footnote 242). [^ Back to section](#)



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