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REPRINT

Act 646

ARBITRATION ACT 2005

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ARBITRATION ACT 2005

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LAWS OF MALAYSIA

Act 646

ARBITRATION ACT 2005

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

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

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Arbitration Act 2005.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

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

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

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

"Minister" means the Minister charged with the responsibility for arbitration;

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

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

"arbitration agreement" means an arbitration agreement as defined in section 9;

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

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

"international arbitration" means an arbitration where—

(a) one of the parties to an arbitration agreement, at the time of the conclusion of that agreement, has its place of business in any State other than Malaysia;

(b) one of the following is situated in any State other than Malaysia in which the parties have their places of business:

(i) the seat of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of any commercial or other relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or

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

"domestic arbitration" means any arbitration which is not an international arbitration;

"arbitral tribunal" means an emergency arbitrator, a sole arbitrator or a panel of arbitrators.

(2) For the purposes of this Act—

(a) in the definition of "international arbitration"—

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

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

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

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

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

Application to arbitrations and awards in Malaysia

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

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

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

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

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

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

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

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

Representation

3A. Unless otherwise agreed by the parties, a party to arbitral proceedings may be represented in the proceedings by any representative appointed by the party.

Arbitrability of subject matter

4. (1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy or the subject matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia.

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

Government to be bound

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

PART II

ARBITRATION

Chapter 1

General provisions

Receipt of written communications

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

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

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

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

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

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

Waiver of right to object

7. A party who knows—

(a) of any provision of this Act from which the parties may derogate; or

(b) that any requirement under the arbitration agreement has not been complied with,

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

Extent of court intervention

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

Chapter 2

Arbitration agreement

Definition and form of arbitration agreement

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

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

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing—

(a) if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means; or

(b) if it is contained in an exchange of statement of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(4A) The requirement that an arbitration agreement be in writing is met by any electronic communication that the parties make by means of data message if the information contained therein is accessible so as to be useable for subsequent reference.

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

(6) For the purpose of this section, "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy.

Arbitration agreement and substantive claim before court

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

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

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

(a) order that the property arrested be retained as security for the satisfaction of any award given in the arbitration in respect of that dispute; or

(b) order that the stay of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award.

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

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

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

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

Arbitration agreement and interim measures by High Court

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

(a) maintain or restore the status quo pending the determination of the dispute;

(b) take action that would prevent or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitral process;

(c) provide a means of preserving assets out of which a subsequent award may be satisfied, whether by way of arrest of property or bail or other security pursuant to the admiralty jurisdiction of the High Court;

**NOTE*—Rules of the High Court 1980 [*P.U. (A) 50/1980*] has since been repealed by the Rules of Courts 2012 [*P.U. (A) 205/2012*]–*see* Order 94 P.U. (A) 205/2012.

(d) preserve evidence that may be relevant and material to the resolution of the dispute; or

(e) provide security for the costs of the dispute.

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

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

Chapter 3

Composition of arbitrators

Number of arbitrators

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

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

(a) in the case of an international arbitration, consist of three arbitrators; and

(b) in the case of a domestic arbitration, consist of a single arbitrator.

Appointment of arbitrators

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

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

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

(4) Where subsection (3) applies and—

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

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

either party may apply to the Director of the Asian International Arbitration Centre (Malaysia) for such appointment.

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

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

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

either party may apply to the Director of the Asian International Arbitration Centre (Malaysia) for the appointment of an arbitrator.

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

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

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

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

any party may request the Director of the Asian International Arbitration Centre (Malaysia) to take the necessary measures, unless the agreement on the appointment procedure provides other means for securing the appointment.

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

(8) In appointing an arbitrator the Director of the Asian International Arbitration Centre (Malaysia) or the High Court, as the case may be, shall have due regard to—

(a) any qualifications required of the arbitrator by the agreement of the parties;

(b) other considerations that are likely to secure the appointment of an independent and impartial arbitrator; and

(c) in the case of an international arbitration, the advisability of appointing an arbitrator of a nationality other than those of the parties.

(9) No appeal shall lie against any decision of the Director of the Asian International Arbitration Centre (Malaysia) or the High Court under this section.

Grounds for challenge

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

(2) An arbitrator shall, without delay, from the time of appointment and throughout the arbitral proceedings, disclose any circumstances referred to in subsection (1) to the parties unless the parties have already been informed of such circumstances by the arbitrator.

(3) An arbitrator may be challenged only if—

(a) the circumstances give rise to justifiable doubts as to that arbitrator's impartiality or independence; or

(b) that arbitrator does not possess qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by that party, or in whose appointment that party has participated, only for reasons which that party becomes aware of after the appointment has been made.

Challenge procedure

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

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

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

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

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

Failure or impossibility to act

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

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

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

Appointment of substitute arbitrator

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

(a) the mandate of an arbitrator terminates under section 15 or 16;

(b) an arbitrator withdraws from office for any other reason;

(c) the mandate of the arbitrator is revoked by agreement of the parties; or

(d) in any other case of termination of mandate.

(2) Unless otherwise agreed by the parties—

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

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

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

Chapter 4

Jurisdiction of arbitral tribunal

Competence of arbitral tribunal to rule on its jurisdiction

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

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

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

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

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

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

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

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

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

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

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

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

Power of arbitral tribunal to order interim measures

19. (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to—

(a) maintain or restore the status quo pending the determination of the dispute:

(b) take action that would prevent or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitral process itself;

(c) provide a means of preserving assets out of which a subsequent award may be satisfied;

(d) preserve evidence that may be relevant and material to the resolution of the dispute; or

(e) provide security for the costs of the dispute.

(3) (*Deleted by Act A1569*).

Conditions for granting interim measures

19A. (1) The party requesting for the interim measures order under paragraphs 19(2)*(a)*, *(b)* or *(c)* shall satisfy the arbitral tribunal that—

(a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

(2) The determination on the reasonable possibility referred to in paragraph (1)*(b)* shall not affect the discretion of the arbitral tribunal in making any subsequent determination relating to the dispute.

(3) In respect of the request for an interim measure order under paragraph 19(2)*(d)*, the conditions in subsections (1) and (2) shall apply only to the extent the arbitral tribunal considers appropriate.

Application for preliminary orders and conditions for granting preliminary orders

19B. (1) Unless otherwise agreed by parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided that the arbitral tribunal considers that prior disclosure of the request for the interim measure to the party against whom the measure is directed risks frustrating the purpose of the interim measure.

(3) The conditions specified in section 19A shall apply to any preliminary order provided that the harm to be assessed under paragraph 19A(1)*(a)* is the harm that is likely to result from the order being granted or not.

Specific regime for preliminary orders

19C. (1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall—

(a) give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto; and

(b) give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(2) The arbitral tribunal shall decide immediately on any objection to the preliminary order.

(3) A preliminary order shall expire after twenty days from the date on which the order was issued by the arbitral tribunal.

(4) Notwithstanding subsection (3), the arbitral tribunal may issue an interim measure which adopts or modifies the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present his case.

(5) A preliminary order shall be binding on the parties but shall not be subject to any enforcement by the High Court.

(6) The preliminary order referred to in subsection (5) shall not constitute an award.

Modification, suspension or termination

19D. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon an application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

Provision of security

19E. (1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Disclosure

19F. (1) The arbitral tribunal may require any party to immediately disclose any material change in the circumstances on the basis of which the interim measure or preliminary order was requested or applied or granted.

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all the circumstances that are likely to be relevant to the arbitral tribunal's determination on whether to grant or maintain the order and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case.

Costs and damages

19G. (1) The party requesting for an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the interim measure or the preliminary order to any party if the arbitral tribunal later determines that, in the circumstances, the interim measure or the preliminary order should not have been granted.

(2) The arbitral tribunal may award such costs and damages referred to in subsection (1) at any point during the proceedings.

Recognition and enforcement

19H. (1) Subject to the provisions of section 19I, an interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall immediately inform the court of any termination, suspension or modification of that interim measure.

(3) The court where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Grounds for refusing recognition or enforcement

19I. (1) Recognition or enforcement of an interim measure may be refused only—

(a) at the request of the party against whom it is invoked if the High Court is satisfied that—

(i) such refusal is warranted on the grounds set forth in subparagraph 39(1)*(a)*(i), (ii), (iii), (iv), (v) or (vi);

(ii) the arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or

(iii) the interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) if the High Court finds that—

(i) the interim measure is incompatible with the powers conferred upon the Court, but the Court may decide to reformulate the interim measure to the extent necessary, without modifying its substance, to adapt it to the Court's powers and procedures for the purposes of enforcing that interim measure; or

(ii) any grounds set forth in subparagraph 39(1)*(b)*(i) or (ii) apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the High Court on any of the grounds in subsection (1) shall be effective only for the purposes of the application to recognize or enforce the interim measure.

(3) The High Court where recognition or enforcement is sought shall not, in making any determination on any of the grounds in subsection (1), undertake a review of the substance of the interim measure.

Court-ordered interim measures

19J. (1) The High Court has the power to issue an interim measure in relation to arbitration proceedings, irrespective of whether the seat of arbitration is in Malaysia.

(2) The High Court shall exercise the power referred to in subsection (1) in accordance with its own procedures in consideration of the specific features of international arbitration.

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

Chapter 5

Conduct of arbitral proceedings

Equal treatment of parties

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

Determination of rules of procedure

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

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

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

(a) determine the admissibility, relevance, materiality and weight of any evidence;

(b) draw on its own knowledge and expertise;

(c) order the provision of further particulars in a statement of claim or statement of defence;

(d) order the giving of security for costs;

(e) fix and amend time limits within which various steps in the arbitral proceedings must be completed;

(f) order the discovery and production of documents or materials within the possession or power of a party;

(g) order the interrogatories to be answered;

(h) order that any evidence be given on oath or affirmation; and

(i) make such other orders as the arbitral tribunal considers appropriate.

Seat of arbitration

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

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

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

Commencement of arbitral proceedings

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

Language

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

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

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

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

Statements of claim and defence

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

(a) the facts supporting his claim;

(b) the points at issue; and

(c) the relief or remedy sought,

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

(2) The parties may—

(a) submit with their statements any document the parties consider relevant; or

(b) add a reference to the documents or other evidence that the parties may submit.

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

Hearings

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

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

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

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

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

Default of a party

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

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

(b) the respondent fails to communicate the statement of defence in accordance with subsection 25(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it; or

(d) the claimant fails to proceed with the claim, the arbitral tribunal may make an award dismissing the claim or give directions, with or without conditions, for the speedy determination of the claim.

Expert appointed by arbitral tribunal

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

(a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; or

(b) require a party to give the expert any relevant information or to produce or to provide access to any relevant documents, goods or other property for the expert's inspection.

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

Court assistance in taking evidence

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

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

Chapter 6

Making of award and termination of proceedings

Law applicable to substance of dispute

30. (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute.

(2) (*Deleted by Act A1569*).

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

(4) Failing any designation by the parties, the arbitral tribunal shall apply the laws determined by the conflict of laws rules which it considers applicable.

(4A) The arbitral tribunal shall decide according to equity and conscience only if the parties have expressly authorized it to do so.

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

Decision making by panel of arbitrators

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

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

Settlement

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

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

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

Form and contents of award

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

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

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

(a) the parties have agreed that no reasons are to be given; or

(b) the award is an award on agreed terms under section 32.

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

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

(6) Subject to subsection (8), unless otherwise agreed by the parties, the arbitral tribunal may, in the arbitral proceedings before it, award simple or compound interest from such date, at such rate and with such rest as the arbitral tribunal considers appropriate, for any period ending not later than the date of payment of the whole or any part of—

(a) any sum which is awarded by the arbitral tribunal in the arbitral proceedings;

(b) any sum which is in issue in the arbitral proceedings but is paid before the date of the award; or

(c) costs awarded or ordered by the arbitral tribunal in the arbitral proceedings.

(7) Nothing in subsection (6) shall affect any other power of an arbitral tribunal to award interest.

(8) Where an award directs a sum to be paid, that sum shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

Termination of proceedings

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

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

(a) the claimant withdraws the claim, unless the respondent objects to the withdrawal and the arbitral tribunal recognizes the respondent's legitimate interest in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings; or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

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

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

(a) the arbitral proceedings; or

(b) the authority of the arbitral tribunal.

Correction and interpretation of award or additional award

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

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

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

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

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

(4) Unless otherwise agreed by the parties, a party may, within thirty days of the receipt of the award and upon notice to the other party, request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

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

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

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

An award is final and binding

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

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

Chapter 7

Recourse against award

Application for setting aside

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

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

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

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or, failing any indication thereon, under the laws of Malaysia;

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present that party's case;

(iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;

(v) subject to subsection (3), the award contains decisions on matters beyond the scope of the submission to arbitration; or

(vi) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act; or

(b) the High Court finds that—

(i) the subject matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia; or

(ii) the award is in conflict with the public policy of Malaysia.

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

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

(b) a breach of the rules of natural justice occurred—

(i) during the arbitral proceedings; or

(ii) in connection with the making of the award.

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

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

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

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

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

Chapter 8

Recognition and enforcement of awards

Recognition and enforcement

38. (1) On an application in writing to the High Court, an award made in respect of an arbitration where the seat of arbitration is in Malaysia or an award from a foreign State shall, subject to this section and section 39 be recognized as binding and be enforced by entry as a judgment in terms of the award or by action.

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

(a) the duly authenticated original award or a duly certified copy of the award; and

(b) the original arbitration agreement or a duly certified copy of the agreement.

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

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

Grounds for refusing recognition or enforcement

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

(a) where that party provides to the High Court proof that—

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

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or, failing any indication thereon, under the laws of the State where the award was made;

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present that party's case;

(iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;

(v) subject to subsection (3), the award contains decisions on matters beyond the scope of the submission to arbitration;

(vi) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement

was in conflict with a provision of this Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act; or

(vii) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the High Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia; or

(ii) the award is in conflict with the public policy of Malaysia.

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

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

PART III

ADDITIONAL PROVISIONS RELATING TO ARBITRATION

Consolidation of proceedings and concurrent hearings

40. (1) The parties may agree—

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

(b) that concurrent hearings shall be held,

on such terms as may be agreed.

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

Determination of preliminary point of law by court

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

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

(b) with the consent of every other party.

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

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

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

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

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

Disclosure of information relating to arbitral proceedings and awards prohibited

41A. (1) Unless otherwise agreed by the parties, no party may publish, disclose or communicate any information relating to—

(a) the arbitral proceedings under the arbitration agreement; or

(b) an award made in those arbitral proceedings.

(2) Nothing in subsection (1) shall prevent the publication, disclosure or communication of information referred to in that subsection by a party—

(a) if the publication, disclosure or communication is made—

(i) to protect or pursue a legal right or interest of the party; or

(ii) to enforce or challenge the award referred to in that subsection,

in legal proceedings before a court or other judicial authority in or outside Malaysia;

(b) if the publication, disclosure or communication is made to any government body, regulatory body, court or tribunal and the party is obliged by law to make the publication, disclosure or communication; or

(c) if the publication, disclosure or communication is made to a professional or any other adviser of any of the parties.

Proceedings to be heard otherwise than in open court

41B. (1) Subject to subsection (2), court proceedings under this Act are to be heard otherwise than in an open court.

(2) Notwithstanding subsection (1), the court may order the proceedings to be heard in an open court—

(a) on the application of any party; or

(b) if, in any particular case, the court is satisfied that those proceedings ought to be heard in an open court.

(3) An order of the court under subsection (2) is final.

42—43. (*Deleted by Act A1569*).

Costs and expenses of an arbitration

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

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

(i) direct to and by whom and in what manner those costs or any part thereof shall be paid;

(ii) tax or settle the amount of such costs and expenses; and

(iii) award such costs and expenses to be paid as between solicitor and client;

(b) any party may apply to the High Court for the costs to be taxed where an arbitral tribunal has in its award directed that costs and expenses be paid by any party, but fails to specify the amount of such costs and expenses within thirty days of having being requested to do so; or

(c) each party shall be responsible for its own legal and other expenses and for an equal share of the fees and expenses of the arbitral tribunal and any other expenses relating to the arbitration in the absence of an award or additional award fixing and allocating the costs and expenses of the arbitration.

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

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

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

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

Extension of time for commencing arbitration proceedings

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

Extension of time for making award

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

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

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

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

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

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

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

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

PART IV

MISCELLANEOUS

Liability of arbitrator

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

Immunity of arbitral institutions

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

Bankruptcy

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

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

(a) the matter is one to which the arbitration agreement applies;

(b) the arbitration agreement was made by a person who has been adjudged a bankrupt before the commencement of the bankruptcy proceedings; and

(c) the person having jurisdiction to administer the property does not adopt the agreement.

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

(a) any other party to the arbitration agreement; or

(b) any person having jurisdiction to administer the property of the bankrupt.

Mode of application

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

Repeal and savings

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

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

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

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

**NOTE*—Rules of the High Court 1980 [*P.U. (A) 50/1980*] has since been repealed by the Rules of Courts 2012 [*P.U. (A) 205/2012*]–*see* Order 94 P.U. (A) 205/2012.

LAWS OF MALAYSIA

Act 646

ARBITRATION ACT 2005

LIST OF AMENDMENTS

Amending law	Short title	In force from
Akta A1395	Arbitration (Amendment) Act 2011	01-07-2011
Akta A1563	Arbitration (Amendment) Act 2018	28-02-2018
Act A1569	Arbitration (Amendment) (No. 2) Act 2018	08-05-2018

LAWS OF MALAYSIA

Act 646

ARBITRATION ACT 2005

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	Act A1395	01-07-2011
	Act A1569	08-05-2018
3A	Act A1569	08-05-2018
4	Act A1569	08-05-2018
8	Act A1395	01-07-2011
9	Act A1569	08-05-2018
10	Act A1395	01-07-2011
11	Act A1395	01-07-2011
	Act A1569	08-05-2018
19	Act A1569	08-05-2018
19A – 19J	Act A1569	08-05-2018
30	Act A1395	01-07-2011
	Act A1569	08-05-2018
33	Act A1569	08-05-2018
38	Act A1395	01-07-2011
39	Act A1395	01-07-2011
41A – 41B	Act A1569	08-05-2018
42	Act A1395	01-07-2011
	Act A1569	08-05-2018

Section	Amending authority	In force from
43	Act A1569	08-05-2018
51	Act A1395	01-07-2011
General amendment	Act A1563	28-02-2018

DICETAK OLEH
PERCETAKAN NASIONAL MALAYSIA BERHAD,
KUALA LUMPUR
BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA
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LAWS OF MALAYSIA

Act A1737

ARBITRATION (AMENDMENT) ACT 2024

Date of Royal Assent	... ...	23 October 2024
Date of publication in the *Gazette*	... ...	1 November 2024

LAWS OF MALAYSIA

Act A1737

ARBITRATION (AMENDMENT) ACT 2024

An Act to amend the Arbitration Act 2005.

[ ]

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Arbitration (Amendment) Act 2024.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Amendment of section 2

2. The Arbitration Act 2005 [*Act 646*], which is referred to as the "principal Act" in this Act, is amended in section 2 by inserting after the definition of "party" the following definition:

' "President" means the President of the Asian International Arbitration Centre Court of Arbitration;'.

Amendment of section 3

3. Section 3 of the principal Act is amended—

(a) in subsection (2)—

(i) in paragraph *(a)*, by substituting for the words "Parts I, II and IV" the words "Parts I and II, Chapter 2 of Part III and Part IV"; and

(ii) in paragraph *(b)*, by substituting for the words "Part III" the words "Chapter 1 of Part III";

(b) in subsection (3)—

(i) in paragraph *(a)*, by substituting for the words "Parts I, II and IV" the words "Parts I and II, Chapter 2 of Part III and Part IV"; and

(ii) in paragraph *(b)*, by substituting for the words "Part III" the words "Chapter 1 of Part III";

(c) by inserting after subsection (3) the following subsection:

"(3A) In respect of an international arbitration, where the seat of arbitration is not in Malaysia or there is no seat of arbitration but any of the services in relation to the arbitration are provided in Malaysia, Chapter 2 of Part III of this Act shall apply."; and

(d) in subsection (4), by substituting for the words "Part III" wherever appearing the words "Chapter 1 of Part III".

Amendment of section 9

4. Paragraph 9(4)*(b)* of the principal Act is amended by inserting after the word "defence" the words "or any other documents".

New section 9A

5. The principal Act is amended by inserting after section 9 the following section:

"**Law applicable to arbitration agreement**

9A. (1) The parties are free to agree on the law to be applicable to the arbitration agreement.

(2) Where the parties fail to agree under subsection (1), the law applicable to the arbitration agreement shall be the law of the seat of the arbitration.

(3) The agreement by the parties on the law applicable to an agreement of which the arbitration agreement forms a part shall not constitute an express agreement that the law shall also be applicable to the arbitration agreement.".

Amendment of section 13

6. Section 13 of the principal Act is amended—

(a) by inserting after subsection (3) the following subsection:

"(3A) For the purposes of subsection (3), where there are multiple claimants or multiple respondents, all the claimants shall jointly appoint one arbitrator and all the respondents shall jointly appoint one arbitrator.";

(b) in subsection (4), by substituting for the words "Director of the Asian International Arbitration Centre (Malaysia)" the word "President";

(c) in subsection (5), by substituting for the words "Director of the Asian International Arbitration Centre (Malaysia)" the word "President";

(d) in subsection (6), by substituting for the words "Director of the Asian International Arbitration Centre (Malaysia)" the word "President";

(e) in subsection (7), by substituting for the words "Director of the Asian International Arbitration Centre (Malaysia)" the word "President";

(f) in subsection (8), by substituting for the words "Director of the Asian International Arbitration Centre (Malaysia)" the word "President"; and

(g) in subsection (9), by substituting for the words "Director of the Asian International Arbitration Centre (Malaysia)" the word "President".

Amendment of section 17

7. The principal Act is amended by substituting for subsection 17(2) the following subsection:

"(2) Unless otherwise agreed by the parties, where any arbitrator including the presiding arbitrator is replaced, hearings previously held may be repeated at the discretion of the arbitral tribunal.".

Amendment of section 33

8. Section 33 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsection:

"(2A) For the purposes of subsection (2), "signatures" include digital signatures and electronic signatures."; and

(b) by inserting after subsection (8) the following subsection:

"(9) In this section—

(a) "digital signature" has the meaning assigned to it in the Digital Signature Act 1997 [*Act 562*]; and

(b) "electronic signature" has the meaning assigned to it in the Electronic Commerce Act 2006 [*Act 658*].".

Amendment of section 38

9. The principal Act is amended by substituting for subsection 38(1) the following subsection:

"(1) An award made in respect of an arbitration where the seat of arbitration is in Malaysia or an award from a foreign State shall be recognized as binding and, upon an application in writing to the High Court, shall be enforced subject to section 39.".

Amendment of Part III

10. Part III of the principal Act is amended—

(a) by inserting after the heading of Part III the following heading:

"Chapter 1

Proceedings and hearings";

(b) in paragraph 41A(2)*(c)*, in the national language text by deleting the word "penasihat" after the word "seorang"; and

(c) by inserting after section 46 the following chapter:

"Chapter 2

Third party funding

Interpretation

46A. In this Chapter—

(a) "costs or expenses of the arbitration" includes any costs or expenses of the arbitration incurred prior to the commencement of the arbitration or during the arbitral proceedings or the court proceedings relating to the arbitration;

(b) "third party funder" means a person who is a party to a third party funding agreement who provides third party funding to the funded party and does not have an interest recognized by law in the arbitration of the funded party, other than under the third party funding agreement;

(c) "third party funding" means a funding by a third party funder of all or part of the costs and expenses of the arbitration of the funded party made under a third party funding agreement in return for the third party funder receiving a financial benefit only if the arbitration is successful within the meaning of the third party funding agreement;

(d) "third party funding agreement" means an agreement in writing for a third party funding between a funded party and a third party funder; and

(e) "funded party" means a person who was or is a party, or is likely to be a party to an arbitration and is a party to a third party funding agreement.

Non-application of this Chapter

46B. This Chapter shall not apply to any third party funding agreement made before the date of the commencement of this Chapter.

Rule against maintenance and champerty shall cease to apply

46C. (1) The rule of common law against maintenance and champerty shall cease to apply in relation to the third party funding and a third party funding agreement shall not be treated as contrary to public policy on the grounds of maintenance and champerty.

(2) The cessation of the application of the rule of common law against maintenance and champerty under subsection (1) shall not affect any rule of law as to the cases in which a contract is to be treated as contrary to public policy or otherwise illegal.

Code of practice

46D. (1) The Minister may issue a code of practice setting out the practices and standards relating to the third party funding in which third party funders are ordinarily expected to comply.

(2) Without prejudice to the generality of subsection (1), the code of practice may provide for—

(a) the requirements on promotion of the third party funding;

(b) the requirements for a third party funding agreement including the degree of control that a third party funder will have in relation to an arbitration, liability of a funded party and termination of a third party funding agreement;

(c) the criteria of a third party funder including the sufficient minimum amount of capital which shall be satisfied by the third party funder;

(d) the procedures for addressing potential, actual or perceived conflicts of interest by a third party funder; and

(e) the procedures for enhancing the protection of a funded party.

(3) The code of practice issued under this section shall be published in the manner as may be determined by the Minister.

(4) The Minister may revoke, vary, revise or amend the whole or any part of the code of practice issued under this section.

(5) The code of practice issued under this section is admissible in evidence in proceedings before any court or arbitral tribunal.

Non-compliance with code of practice

46E. (1) Any non-compliance with any of the provisions of the code of practice issued under section 46D shall not, by itself, render a third party funder liable to any action or legal proceedings.

(2) Notwithstanding subsection (1), any compliance or non-compliance with any of the provisions of the code of practice may be taken into account by any arbitral tribunal or court if such compliance or non-compliance is relevant to a question being decided by the arbitral tribunal or court.

Disclosure of information for purpose of seeking or securing third party funding

46F. (1) Notwithstanding section 41A, any information relating to the arbitral proceedings under the arbitration agreement or an award made in those arbitral proceedings may be disclosed or communicated by a party to any person for the purpose of seeking or securing a third party funding from the person.

(2) The person referred to in subsection (1) shall not further disclose or communicate the information disclosed or communicated to him under that subsection unless such further disclosure or communication—

(a) is made to protect or pursue a legal right or interest of the person;

(b) is made to any government body, regulatory body, court or tribunal and the person is obliged by law to make the disclosure or communication; or

(c) is made to a professional or any other advisers for the purpose of obtaining advice relating to the third party funding.

(3) If a further disclosure or communication is made by the person referred to in subsection (1) to a professional or adviser under paragraph (2)*(c)*, the professional or adviser shall not further disclose or communicate the information received except in accordance with subsection (2).

Disclosure on third party funding agreement

46G. (1) Where the funded party has made a third party funding agreement, the funded party shall disclose or communicate to the other party to the arbitration and the arbitral tribunal or the court before which the proceedings are brought in respect of the arbitration, as the case may be, the fact that a third party funding agreement has been made and the name of the third party funder in the third party funding agreement.

(2) The disclosure or communication under subsection (1) shall be made—

(a) where the third party funding agreement is made on or before the commencement of the arbitration or court proceedings in respect of the arbitration, upon the commencement of the arbitration or court proceedings; or

(b) where the third party funding agreement is made after the commencement of the arbitration or court proceedings in respect of the arbitration, within fifteen days after the third party funding agreement is made.

(3) For the purposes of subsection (2), if there is no arbitral tribunal appointed at the end of the period specified in paragraph (2)*(b)*, the disclosure or communication under subsection (1) to the arbitral tribunal shall be made immediately after the arbitral tribunal is appointed.

Disclosure of termination or end of third party funding agreement

46H. Where a third party funding agreement is terminated or has come to an end, the funded party shall, within fifteen days after the termination or end of the third party funding agreement, disclose or communicate to the other party to the arbitration, and the arbitral tribunal or the court before which proceedings are brought in respect of the arbitration, as the case may be, if any, the fact that the third party funding agreement has been terminated or has ended and the date of the termination of the third party funding agreement or the date the third party funding agreement ended.

Non-compliance with sections 46F, 46G and 46H

46I. (1) Any non-compliance with any of the provisions under sections 46F, 46G and 46H shall not, by itself, render a third party funder liable to any action or legal proceedings.

(2) Notwithstanding subsection (1), any compliance or non-compliance with any of the provisions under sections 46F, 46G and 46H may be taken into account by any arbitral tribunal or court if such compliance or non-compliance is relevant to a question being decided by the arbitral tribunal or court.".

Amendment of section 48

11. Section 48 of the principal Act is amended by substituting for the words "The Director of the Asian International Arbitration Centre (Malaysia) or any other person" the words "Any person".

Saving

12. (1) All appointments, decisions or any other acts made, given or done by the Director of the Asian International Arbitration Centre (Malaysia) before the date of coming into operation of this Act shall, on the date of coming into operation of this Act, be deemed to have been made, given or done by the President of the Asian International Arbitration Centre Court of Arbitration and shall continue to remain in force and have effect until revoked, amended, repealed, rescinded or replaced by the President of the Asian International Arbitration Centre Court of Arbitration.

(2) The law applicable to an arbitration agreement which is made before the date of coming into operation of this Act shall, on the date of coming into operation of this Act, be dealt with under the principal Act as if the principal Act had not been amended by this Act.