



Comparisons between applicable arbitration laws in Malaysia

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In recent years, arbitration in Malaysia has been given more emphasis by legislators, judicial bodies and legal practitioners and, given its increasing popularity, is considered to be the main alternative to litigation for commercial and trade practitioners. Laws concerning arbitration are set out in the *Malaysian Arbitration Act 2005*, the United Nations Commission on International Trade Law Arbitration Rules 1976 (UNCITRAL Rules) and the Kuala Lumpur Regional Centre for Arbitration Rules (KLRCA Rules) which adopt the UNCITRAL Rules.

The Laws

Repealing the *Arbitration Act 1952*, the *Malaysian Arbitration Act 2005* (the Act) adopts the UNCITRAL Model Law on International Commercial Arbitration Rules 1985. The Act has jurisdiction to govern any subject matter not considered contrary to public policy and applies substantive laws of Malaysia with respect to domestic arbitrations, whereas the parties will determine the laws applicable in an international arbitration.

In contrast, the KLRCA and UNCITRAL Rules govern disputes arising out of a contract. The KLRCA Rules apply upon the agreement of parties (in domestic or international proceedings) to be bound by the rules and are enforced at the commencement of the arbitration unless agreed otherwise. Similarly, the UNCITRAL Rules apply if parties have agreed in writing to adhere to the rules, and the arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute, or failing which, apply the law determined by the *conflict of laws* rules which it considers applicable. In the absence of any agreement to apply KLRCA or UNCITRAL Rules, arbitration proceedings in Malaysia will be governed by the Act.

Place of Arbitration

Where the parties have not agreed upon the seat of arbitration, the Act provides that the tribunal shall decide according to the

convenience of the parties. Pursuant to the KLRCA Rules, parties have freedom to determine the venue as convenient and upon request, the director of the Centre shall allow facilities and assistance for the arbitration. The UNCITRAL Rules also allow parties the freedom to determine the venue. The tribunal will otherwise determine the location having regard to the circumstances of the arbitration.

Appointment of arbitrators

Under the Act, one arbitrator is required in domestic proceedings and three in international proceedings. Failure of the parties to make an appointment within 30 days will confer the power of appointment to the KLRCA. Under the KLRCA Rules, such a failure would make the Centre the appointing authority, whereas the UNCITRAL Rules confer the power to the Secretary General for the Permanent Court of Arbitration at The Hague. The UNCITRAL Rules state that three arbitrators shall be appointed where the parties have not agreed on the number, whereas the KLRCA Rules state that unless the parties have agreed otherwise, the KLRCA shall be the appointing authority.

Jurisdiction

In respect of a domestic arbitration, the Act grants the High Court of Malaysia jurisdiction to determine any question of law, whereas parties to an international arbitration have the freedom to submit to the High Court's jurisdiction or otherwise. Whilst the KLRCA and UNCITRAL Rules do not provide any recourse to judicial bodies, the laws are unanimous that an arbitration award shall be final and binding and may be enforced in the same manner as a judgment.

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