

GOVERNING LAW AND DISPUTE RESOLUTION CONSIDERATIONS IN MALAYSIA

Introduction

Disputes can occur in our daily lives and could arise in different contexts, such as business, employment, family, and civil matters. People could use various methods and processes to resolve disputes and conflicts between parties, and this would be referred to as dispute resolution.

In Malaysia, several dispute resolution methods are available to parties, mainly categorized as litigation and alternative dispute resolutions. This article will briefly explain the different types of dispute resolution available in Malaysia.

Litigation

In Malaysia, litigation involves resolving disputes through the legal system. This typically involves going to court to present evidence and arguments supporting a particular position, with the end goal of obtaining a favorable judgment or outcome[1].

The litigation process in Malaysia is governed by a complex system of laws and regulations that includes both substantive and procedural rules. The primary sources of laws governing litigation in Malaysia are the Federal Constitution, the Civil Law Act 1956[2], and the Courts of Judicature Act 1964[3].

During the pandemic lockdown in 2020, the Malaysian Judiciary recognises that the administration of justice cannot come to a grinding halt even though courts are not listed as an essential service under the Schedule of the Prevention and Control of Infectious Disease (Measures within the Infected Local Areas) Regulations 2020[4].

Additionally, the Malaysian Judiciary has taken steps to amend the relevant laws such as the Courts of Judicature Act 1964[5], Subordinate Courts Act 1948[6], Rules of the Federal Court 1995[7], Rules of the Court of Appeal 1994[8], and Rules of Court 2012[9] to give effect to the conduct of online hearings. Chief Justice Tengku Maimun stated in 2022 that the advent of online hearings is not merely a means to cope with the pandemic but a permanent feature of our justice system[10].

The Court of Appeal in *Ezzen Heights Sdn Bhd v Ikhlas Abadi Sdn Bhd*[11] (Soh Yuh Mian, intervener) emphasized that the Court has broad inherent powers to avoid any abuse of process and to uphold justice in a regular and effective manner[12].

Alternative Dispute Resolution

The litigation process in Malaysia can be lengthy and complex, with multiple stages and opportunities for appeals and review. Some disputes may be resolved through alternative dispute resolution (“**ADR**”) methods, such as arbitration or mediation, which might be faster and less expensive than traditional litigation. These are usually preferred in commercial settings to preserve the parties’ relationship[13].

Arbitration

Arbitration in Malaysia is governed under the Arbitration Act 2005, with the latest amendment in 2021. Some of the clauses in the AA 2005 are drafted based on the UNCITRAL Model Law on International Commercial Arbitration, and AA 2005 applies to both domestic and international arbitrations[14].

There are several arbitration institutions in Malaysia, including the Asian International Arbitration Centre (AIAC) [previously known as Kuala Lumpur Regional Centre for Arbitration (KLRC)] and the Malaysian Institute of Arbitrations (MIArb), which provide administrative support and facilities for arbitration proceedings[15].

Any matter may be determined by arbitration unless it is contrary to public policy or outside the range of subject matter to be decided by arbitration[16]. The parties are free to determine the number of arbitrators[17], the procedure for the appointment of arbitrators[18] and proceedings[19].

As the general rule, parties shall be treated equally and fairly[20]. An arbitral award is final and binding on the parties. The award can be enforced in Malaysian courts in the same way as a court judgment. The Malaysian courts have the power to enforce arbitration agreements and to hear applications relating to arbitration proceedings. In certain circumstances, the courts also have the power to set aside arbitral awards[21].

In December 2021, AIAC entered into a partnership with Opus 2, a leader in cloud-based collaboration solutions for the legal sector to offer more comprehensive ADR hearing services to the legal community in Asia-Pacific[22].

Mediation

Mediation is a voluntary process where a mediator facilitates to settle a dispute between two parties by facilitating communication and negotiation. In Malaysia, mediation is governed under the Mediation Act 2012[23].

Generally, the parties are free to choose or request the Malaysian Mediation Centre of the Bar Council ("**MMC**") to appoint their mediator. During the mediation process, the parties can take control of the outcome of the mediation. Mediation is widely used in situations where it involves family, employment, and civil disputes[24]. In accordance with Securities Industry Dispute Resolution Centre (Sidrec), there is a total of 275 claims and enquiries comprising 47 eligible disputes and 228 enquiries reported in 2021[25].

Besides, COVID-19 Mediation Centre which was established pursuant to Section 9(2) of the Temporary Measures For Reducing The Impact of Coronavirus Disease 2019 (COVID-19) 2020 to assist in resolving contractual disputes not exceeding RM500,000.00 arising from the implementation of the Movement Control Order. Nonetheless, starting from 23rd October 2022, the Centre will no longer accept any applications for mediation in parallel with the closing date of the Act[26].

Other types of Alternative Dispute Resolution

Negotiation could also be a form of ADR. This method involves the parties in dispute to work together to reach a mutually acceptable solution and outcome without the involvement of a third party[27]. Conciliation is a method of dispute resolution that involves a conciliator, who is a neutral third party. The conciliator will work with the parties in dispute to reach a mutually acceptable solution[28].

Online Dispute Resolution (ODR)

There is a new emerging trend of online dispute resolution that uses technology to resolve disputes online without needing physical presence.

In 2022, former Prime Minister Datuk Seri Ismail Sabri Yaakob stated that the government will establish a new online dispute resolution mechanism to resolve minor disputes among small and medium enterprises and boost cross-border e-commerce activities[29].

Private sectors in Malaysia also offer ODR services, such as the AIAC. The AIAC provides a variety of online dispute resolution services, such as online mediation, arbitration, and adjudication[30].

Conclusion

The legal framework for dispute resolution in Malaysia is well-established and organized, with a tiered court system and various statutes that govern the different dispute resolution methods. Court system in Malaysia is accessible to both locals and foreigners, and verdicts made by the Malaysian courts are recognized and enforceable in other countries.

Malaysia offers a range of options for dispute resolution, and the rising use of online dispute resolution makes Malaysia an attractive destination for businesses and individuals seeking to resolve their disputes efficiently and effectively.

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