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International Financial Law Review

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Promoting arbitration

The Malaysian Courts have recently delivered a number of decisions which take a non-interventionist approach in dealing with arbitration agreements and arbitration decisions. We will consider three recent decisions of the Court of Appeal, all of which promote arbitration.

Limited right to challenge the appointment of the arbitrator

In *Sebiro Holdings v Bhag Singh & Anor* the Court of Appeal was of the view that where parties fail to agree on the appointment of an arbitrator, and the matter is referred to the director of the Kuala Lumpur Regional Centre for Arbitration (KLRCA), the court cannot then interfere with the appointment made by the director. The appointment of the arbitrator by the director of the KLRCA under section 13 of the Arbitration Act 2005 (Act) was treated as final. However, if there are justifiable doubts as to the independence or impartiality of the arbitrator, or where the arbitrator does not possess the requisite qualifications to deal with the issues, the parties will be at liberty to challenge the appointment of the arbitrator.

Arbitrator to deal with jurisdictional challenges

The Court of Appeal in *Press Metal Sarawak v Etiqa Takaful* was of the view that once parties have agreed to refer the dispute to arbitration, the courts will be slow to interfere with the arbitration process. The Court held that the issue of whether or not the arbitration clause forms part of the contract between the parties is a matter that goes to the jurisdiction of the appointment of the arbitrator; the arbitrator is, under section 18 of

the Act, competent to deal with this issue at the arbitration itself. Further, it was held that issues of fraud and breach of good faith are capable of being subject to the arbitration.

Limiting the right to appeal

In *Awangku Dewa bin Pgn Momin & Ors v Superintendent of Lands and Surveys, Limbang Division* the Court of Appeal held that section 42 of the Act does not operate as an appeal provision. An application under section 42 must be confined to genuine questions of law and is not to be used as a means of appealing against the arbitration award. The questions must be clearly and concisely framed and cannot be questions of mixed fact and law. There should be no complication, confusion or duplicity in framing the questions.

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