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Amendments to Malaysian Arbitration Act 2005 facilitate arbitration in maritime disputes

As more maritime disputes are being referred to arbitration in recent years, it becomes vital for countries to adjust their arbitration laws to accommodate to commercial practicability. Along these lines, with the aim to move Malaysia forward in providing a competitive edge in this growing global arbitration arena, the Arbitration Act 2005 in Malaysia has recently been amended to provide extra measures to facilitate arbitral proceedings involving admiralty dispute.

The Arbitration (Amendment) Act 2011 (“the 2011 Amendment Act”) amends the Arbitration Act 2005 to bring forth some significant changes. One of the changes is that it is now possible to arrest vessel in Malaysia as security in aid of foreign arbitration proceedings.

The amendments empower the Malaysian Courts to order the arrest or retention of property, bail or security pursuant to the admiralty jurisdiction of the High Court pending the determination of arbitral proceedings in relation to admiralty disputes. These powers of the Courts are also extended to foreign arbitrations where the seat of Arbitration is not in Malaysia.

The 2011 Amendment Act also gives the Malaysia High Court powers to grant interim measures such as injunctions pending determination of international arbitration proceedings where the seat of arbitration is not in Malaysia. This amendment fundamentally overturns the position in *Aras Jalinan v Tipco Asphalt Public Company Ltd & Others [2008] 5 CLJ 65* which held that the Courts in Malaysia are not allowed to grant any interim orders to protect assets if the seat of arbitration is outside of Malaysia.

Section 10 has been amended by inserting sub-section 2(A), 2(B) and 2(C). The combination effects of these amendments empowers the Court to order that any property arrested (i.e. vessel), or bail or other security to be retained as security in aid of arbitration proceedings or to order that a stay of court proceedings be conditional until equivalent security is furnished for the satisfaction of any award in the arbitration proceedings. The scope of these powers of the Court has been extended to foreign arbitrations where the seat of arbitration is not in Malaysia.

Section 11(e) has been amended to give the Courts power to order arrest of property, bail or other security before or during arbitral proceedings pursuant to admiralty jurisdiction of the High Court to secure the amount in dispute if a party applies for any interim measure. And, **section 11(3)** has been added to empower Courts to make any interim orders in aid of arbitration even if the seat of arbitration is not Malaysia.

Oon & Bazul's associate office in Malaysia, TS Oon & Partners, is one of the first law firms which successfully obtained an injunction to preserve the assets of the defendants in a charterparty dispute subject to London arbitration several days after the 2011 Amendment Act took effect from 1 July 2011. In doing so, TS Oon & Partners protected its clients' interests by preserving disputed funds in aid of the London arbitration.

These aforementioned amendments and other amendments in the 2011 Act that now have come into force will undoubtedly play an important role in making Malaysia a not only a more arbitration friendly jurisdiction but a jurisdiction which will play its part to assist in arbitrations elsewhere. The Amendments serve to make Malaysia a jurisdiction to consider when parties seek to obtain security for their claims and interim relief such as *Mareva* injunctions and orders to take evidence or to preserve evidence such as *Mare del Nord* orders in aid of foreign arbitration.

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