

## Federal Court dismisses collateral challenge to registration of arbitral award

The Federal Court, on 14 August 2023, dismissed Southern HRC Sdn Bhd's application for leave to appeal the decision of the Court of Appeal, which affirmed that Malaysian courts have no jurisdiction to grant declarations of rights emanating from unrecognised arbitral awards within Malaysia, or to injunct recognition and enforcement of arbitral awards on the basis that no sums are due<sup>1</sup>.

The case stemmed from an application filed on 6 December 2021 by Danieli Co Ltd to recognise and enforce a foreign arbitral award obtained against Southern HRC Sdn Bhd by way of entry as a judgment in the High Court ("Registration Application"). Southern HRC Sdn Bhd opposed the Registration Application. Southern HRC Sdn Bhd also filed a suit seeking declarations and injunctions against recognising the foreign arbitral award, referencing an alleged set off between two foreign arbitral awards.

In June 2022, The High Court ruled that it lacked jurisdiction to grant the reliefs sought by Southern HRC Sdn Bhd by reason of section 8 of the **Arbitration Act 2005**. The High Court emphasised that post-arbitral award intervention is only permitted in the manner stipulated in sections 37 to 39 of the **Arbitration Act 2005**<sup>2</sup>. The injunction sought by Southern HRC Sdn Bhd was to restrain statutory recognition of a foreign arbitral award, which is beyond the jurisdiction conferred on courts by the **Arbitration Act 2005**.

The Court of Appeal upheld the High Court decision. In its oral grounds of judgment, the Court of Appeal further found that with express provisions with respect to recognising enforcement of awards under the **Arbitration Act 2005**, the courts should be slow in assuming jurisdiction to decide on alleged set offs arising out of two separate foreign awards which have not been recognised by the Malaysian courts<sup>3</sup>.

Further, the Court of Appeal highlighted that Southern HRC Sdn Bhd is not without remedy as it is not precluded from asking the Malaysian courts to decide on the issue as to whether there was a concluded set off or settlement after the respective awards have been recognised by the Malaysian courts.

# Arbitration Update

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This decision of the Federal Court reinforces section 8 of the **Arbitration Act 2005** and the rigour with which the courts of Malaysia guard party autonomy enshrined in the **Arbitration Act 2005**. The limited judicial intervention provided by the **Arbitration Act 2005** is always to support, and never to stymie the arbitral process.

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<sup>1</sup> *Southern HRC Sdn Bhd v Danieli Co Ltd* (Civil Application No: 08(i)-118-04/2023(W)).

<sup>2</sup> *Southern HRC Sdn Bhd v Danieli Co Ltd* [2023] 2 CLJ 831.

<sup>3</sup> *Southern HRC Sdn Bhd v Danieli Co Ltd* (Civil Appeal No: W-02(IM)(NCC)-1217-07/2022).