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Court of Appeal Upholds Validity of Option Clause in Arbitration Agreement and Grants Stay Under Section 10 of the Arbitration Act 2005

Introduction

Arbitration clauses occasionally contain option clauses that allow the parties the flexibility to choose how they want to resolve disputes, whether through arbitration or by going to court. For example, an option clause may say that a dispute may be referred to Court or to arbitration, leaving the choice open.

Questions do arise as to whether such option clauses are valid and are sufficiently certain in their scope and meaning as to be enforceable. More importantly, the broader and more immediate question would be how do these clauses work when a dispute arises and the time comes for decisions to be made on these options.

The recent decision of the Court of Appeal in **Setia Awan Management Sdn Bhd v SPNB Aspirasi Sdn Bhd** [2025] MLJU 1264 provides important guidance on the enforceability of arbitration agreements containing option clauses.

The Court held that arbitration clauses are not invalid just because they give parties the choice to go either to Court or to arbitration. Nor are they invalid simply because they leave out procedural details — like the number of arbitrators or the location of arbitration.

The **Arbitration Act 2005** ("AA 2005") provides default rules to fill in these gaps. What matters is whether the parties have agreed to resolve disputes through arbitration, and that agreement will be upheld unless it is fundamentally flawed.

The Court took a practical, pro-arbitration approach, placing emphasis on party autonomy and the objectives of the Act.

Arbitration Update

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Background

The dispute arose from a Development and Contra Transaction ("DACT") Agreement between Setia Awan Management Sdn Bhd ("the Defendant") and SPNB Aspirasi Sdn Bhd ("the Plaintiff"). Clause 18 of the agreement contained an arbitration clause stating:

> "I*n the event that any dispute or difference whatsoever shall arise between parties touching or concerning this Agreement … the same may be referred to any court in Malaysia or to arbitration in accordance with the provisions of the Arbitration Act 2005.*"

When a dispute arose, the Plaintiff initiated court proceedings in the Ipoh High Court. The Defendant on the other hand subsequently applied for a stay under section 10 of the AA 2005, seeking to refer the matter to arbitration.

High Court decision

The High Court dismissed the application for a stay, finding that the arbitration clause was not enforceable. The Judge gave two primary reasons.

Firstly, the clause did not specify important procedural details such as where the arbitration would take place, how many arbitrators would be appointed, or the method of appointing them. The Judge held that this made the clause uncertain and therefore void.

Secondly, the use of the word "*may*" suggested that arbitration was optional rather than mandatory. Because the clause allowed parties to go either to Court or arbitration, it was seen as vague and not binding.

Court of Appeal's ruling

The Court of Appeal disagreed with the High Court and allowed the stay application. In doing so, it made three key observations.

To begin with, the Court clarified that there is no requirement under the AA 2005 for parties to set out detailed procedural terms within the arbitration clause itself. Where the agreement is silent, the statute provides a default procedural framework that applies.

Therefore, by referencing the AA 2005, the clause in question automatically attracted those default provisions. The clause was not void merely because it omitted procedural specifics.

Next, the Court rejected the suggestion that the inclusion of an option between Court and arbitration necessarily invalidates the clause. It held that giving parties a choice does not render the clause uncertain. Rather, it reflects the parties' intent to preserve flexibility.

Where the parties are unable to agree on a forum, the Court will step in to decide whether the dispute falls within the scope of the arbitration agreement. In this case, the clause was sufficiently clear to warrant a stay in favour of arbitration.

Finally, the Court highlighted the judicial policy in Malaysia of favouring arbitration as a dispute resolution mechanism. This policy is consistent with international trends and is reflected in the doctrine of *kompetenz-kompetenz*, which allows arbitral tribunals to determine their own jurisdiction. Even where ambiguities exist, courts should lean towards giving effect to the parties' agreement to arbitrate wherever reasonably possible.

Key takeaways

This decision confirms that parties do not need to specify every procedural detail in an arbitration clause; the AA 2005 provides default mechanisms to address any omissions.

It also affirms that option clauses, such as those stating that disputes may be referred to arbitration or court, do not invalidate the arbitration agreement. Courts will strive to uphold such clauses where the intention to arbitrate is evident. Ultimately, this approach reinforces Malaysia's pro-arbitration stance and the principle of party autonomy in dispute resolution.

Conclusion

This decision is a timely reminder that arbitration agreements should be drafted with care, but also that courts will take a practical approach when interpreting them. Even where clauses are flexible or broadly worded, the focus is on what the parties intended and whether the agreement still makes sense in practice.

The Court of Appeal's ruling reinforces Malaysia's commitment to upholding party autonomy and the efficient resolution of disputes through arbitration.

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