

Federal Court: Dual Enforcement Routes for Foreign Arbitral Awards

Introduction

The Federal Court in **ING Bank NV v Tumpuan Megah Development Sdn Bhd**¹ clarified that both the **Reciprocal Enforcement of Judgments Act 1958** (“REJA”) and the **Malaysian Arbitration Act 2005** (“MAA”) are valid enforcement routes that can be elected by award-creditors to enforce a foreign arbitral award in Malaysia.

Background

The dispute arose from contracts for the supply of marine fuel and its subsequent non-payment.

The Appellants obtained a favourable award in London arbitration under the London Maritime Arbitrators Association (“LMAA”) Rules of Arbitration (“the London Award”).

The Appellants were subsequently granted leave to enforce the London Award and judgment was entered in terms of the arbitral award by the English High Court pursuant to section 66 of the **UK Arbitration Act 1996** (“the English Judgment”).

Relying on REJA, the Appellants registered the English Judgment in Malaysia.

The Respondent applied to set aside the registration pursuant to section 5 of the REJA, alleging fraud and lack of jurisdiction, and sought a trial on these issues.

The High Court dismissed the Respondent’s request for trial but the Court of Appeal reversed, holding that enforcement should properly be pursued under the MAA and allowed for a trial.

The Federal Court reinstated the High Court’s decision.

Arbitration Update

SEPTEMBER
2025

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Decision of the Federal Court

The issues dealt with by the Federal Court were essentially as follows:

1. Whether an award-creditor may enforce a foreign arbitral award in Malaysia under REJA and/or the MAA, or only via the MAA.
2. Whether the MAA displaces REJA when the foreign award has been converted into a judgment in the foreign jurisdiction.
3. Whether the MAA, as the specific law on arbitral awards, should override REJA which is more general on foreign judgments on the ground of *lex specialis* — that is when two legal provisions apply to the same situation, the more specific provision takes precedence.
4. Whether a challenge put forward as a “*jurisdictional*” challenge, which is predicated on factual findings of fraud, is in law a true jurisdictional challenge.
5. The extent of judicial review under REJA in fraud cases when those issues have been tried and determined by the foreign arbitral tribunal and registered in that foreign jurisdiction. Whether it extends to the Malaysian Court ordering a trial of issues between the award-creditor and the award-debtor under the provisions of REJA.

The Federal Court clarified several important points:

1. Both the REJA and the MAA are valid enforcement routes that can be elected by award-creditors.
2. The MAA does not override or repeal the REJA, the two statutes operate independently and serve distinct purposes.
3. Enforcing a confirmation judgment under REJA in Malaysia is not “*judgment laundering*”.
4. Courts under REJA should adopt a minimal curial review by examining affidavit evidence but avoiding *de novo* hearings or witness testimony that would re-open issues already determined by the arbitral tribunal and the foreign court.

Key takeaways

1. Award-creditors have flexibility in choosing enforcement routes, with both statutes offering legitimate routes.
2. Malaysian courts will maintain a narrow scope of review in REJA proceedings, avoiding re-litigation of arbitral findings.
3. This decision reinforces Malaysia's status as an arbitration-friendly jurisdiction that values reciprocity, finality, and efficiency.

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¹ [2025] MLJU 2449.