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LEGAL INSIGHT

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Why Chinese Investors and
Corporations in Malaysia Should
Prioritise Arbitration as Their Dispute
Resolution Mechanism?

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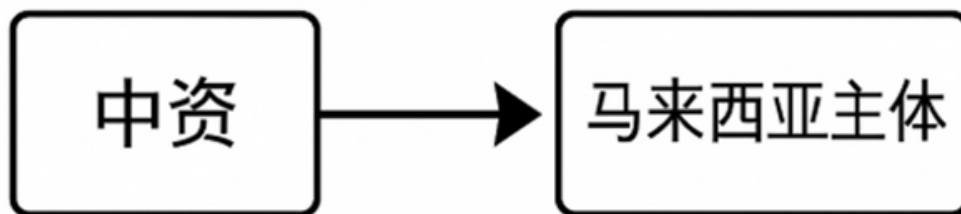
INTRODUCTION



For Chinese investors and corporations (“**Chinese Party**”) conducting business and investing in Malaysia, selecting an appropriate dispute resolution mechanism prior to the execution of a contract is crucial, particularly where the counterparty is a Malaysian entity with assets located in Malaysia, because:-

(a)**Firstly**, it has significant implications for the enforceability of any final determination issued by the chosen adjudicator or tribunal against the judgment debtor or losing party; and

(b)**Secondly**, it directly impacts the enforceability of the counterparty’s contractual obligations. If the Chinese Party faces difficulties in enforcing the final determination, the availability of meaningful remedies or recourse to compel compliance with the Malaysian counterparty’s contractual obligations becomes constrained, thereby undermining the practical effectiveness of the contract.



In this article, we explain why arbitration is especially recommended in such circumstances.



ENFORCEABILITY OF AWARDS ACROSS BORDERS

Resorting to the People's Court in China to **resolve disputes arising from or in connection with a contract between a Chinese party and a Malaysian entity presents significant challenges**. Even if a judgment is obtained in favour of the Chinese party, enforcing that judgment in Malaysia may prove difficult, as there is no reciprocal arrangement between the People's Republic of China and Malaysia for the mutual recognition and enforcement of court judgments.

While enforcement is **not entirely impossible**, it is far from straightforward. A judgment rendered by the People's Court in China cannot simply be registered and enforced in Malaysia. Instead, the Chinese Party must commence a fresh litigation process before the Malaysian courts by filing a writ action. The foreign judgment will be subject to strict judicial scrutiny, and the enforcement process requires full compliance with Malaysian procedural rules. In many cases, the court may require a full trial to assess the legitimacy of the foreign judgment, rather than relying solely on affidavit or sworn evidence.^[1] Furthermore, the scope of enforceable relief is confined to monetary judgments only, non-monetary reliefs such as declaratory orders, specific performance, injunctions, or claims in rem are not enforceable under this route.

In contrast to a judgment issued by the People's Court in China, the Malaysian courts will generally recognise and enforce a foreign arbitral award as if it were a judgment of their own, subject only to limited exceptions^[2]. This is because both the People's Republic of China and Malaysia are contracting states to the **1958 New York Convention on the**

[1] The key principles regarding the enforcement of foreign judgments are set out in the Federal Court case of *Pembinaan SPK Sdn Bhd v Conaire Engineering Sdn Bhd-LLC & Anor* and another appeal [2023] 2 MLJ 324.

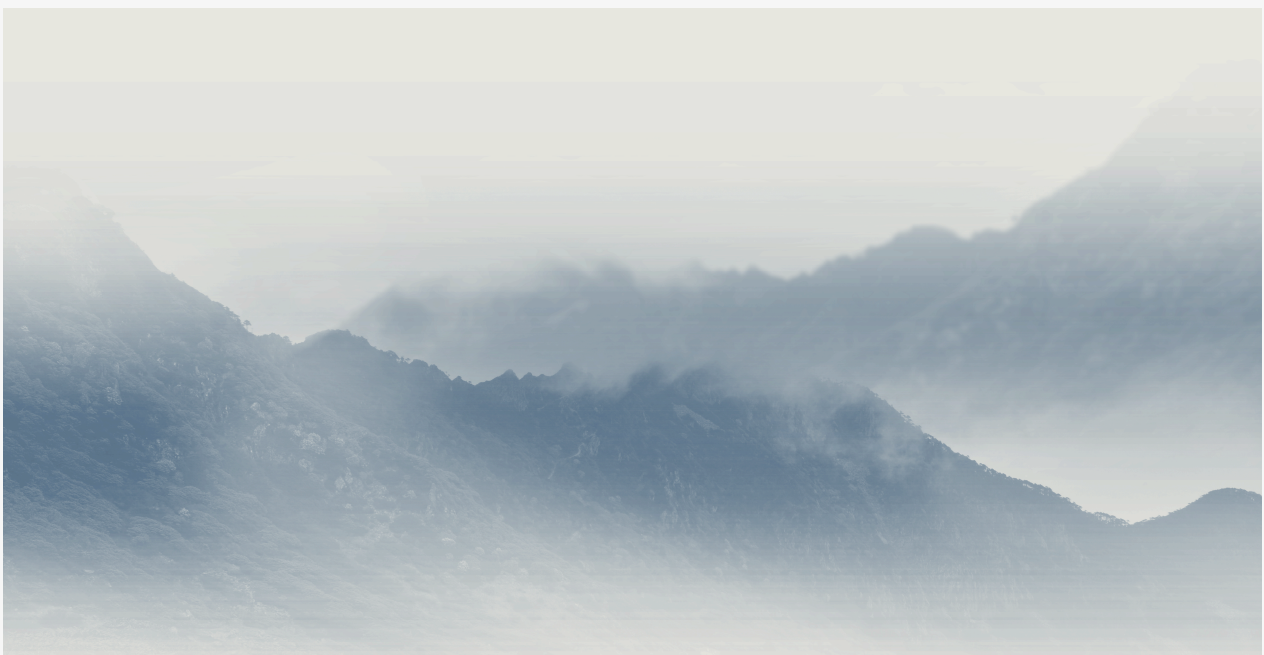
[2] The limited grounds to set aside, and refuse recognition or enforcement of a foreign arbitral award are set out in Sections 37 and 39 of the Malaysian Arbitration Act 2005 respectively.



the Recognition and Enforcement of Foreign Arbitral Awards.^[3] As a result, the legal procedures for enforcing an arbitral award rendered by a Chinese-based arbitration institution are significantly more straightforward compared to those required for enforcing a foreign court judgment.^[4]

An application to enforce a foreign arbitral award in Malaysia may be made without prior notice to the other party. It is sufficient to adduce, by way of affidavit evidence, the arbitral award, the arbitration agreement, and, where either document is in a language other than English or the national language of Malaysia, a duly certified English translation. There is no requirement for the Chinese party to initiate a fresh litigation process or undergo a full trial to assess the legitimacy of the foreign award, making enforcement far more efficient than that of a foreign court judgment.

Recent trends, particularly in 2023, indicate that the Malaysian Courts tend to uphold the sanctity of arbitral awards Chinese-based arbitration institutions such as the **China International Economic and Trade Arbitration Commission ("CIETAC")** as seen in the cases of ***Qingdao Hongdaxinrong International Trade Co. Ltd V. Alliance Integrity Trading Sdn Bhd [2023] MLJU 1467*** and ***Perfect Channel Sdn Bhd V. Tan Sri Pheng Yin Huah [2023] 1 LNS 1880***.



[3] The list of contracting states to the New York Convention can be seen at <https://www.newyorkconvention.org/contracting-states/contracting-states>.

[4] The applicable legal framework in Malaysia is set out in Section 38 of the Malaysian Arbitration Act 2005 and the procedural rules are prescribed under Order 69 of the Rules of Court 2012.



OTHER KEY REASONS TO OPT FOR ARBITRATION

In addition to the strong enforceability of foreign arbitral award in Malaysia, there are also other key reasons ***why arbitration should be the preferred forum over litigation:-***

(a) Flexibility and Party Autonomy.

Arbitration offers significant procedural flexibility. Parties are free to tailor procedural timelines, define the scope and structure of document disclosure, and adopt evidentiary rules best suited to the complexity and commercial realities of their dispute. This level of flexibility is particularly advantageous in cross-border projects or transactions where rigid litigation processes may lead to unnecessary delays and inefficiencies.

Critically, arbitration also minimizes the risk of being subjected to unfamiliar or unpredictable court systems. By agreeing in advance to arbitrate, a Chinese party can insulate itself from litigation before Malaysian courts or other foreign judicial systems that may not align with its strategic or legal expectations.

Importantly, parties retain full autonomy to designate arbitration institutions based in China, such as CIETAC or the Beijing Arbitration Commission, or opt for a reputable international institution in Malaysia, such as the Asia Pacific International Arbitration Chamber (Malaysia), which maintains a robust panel of Chinese-speaking arbitrators. This allows Chinese investors to conduct proceedings in a more familiar linguistic and cultural environment, even where the governing law of the contract is not Chinese law. Such arrangements offer both comfort and neutrality without compromising the enforceability of the arbitral award.

(b) Confidentiality of Proceedings

Arbitration proceedings are private and confidential by default, unlike court litigation which is generally public. This protects the commercial reputation of the parties and safeguards sensitive business information. For Chinese state-owned enterprises or private companies with substantial cross-border exposure, confidentiality can be a key consideration, particularly in industries involving proprietary technologies, sensitive pricing mechanisms, or public-private partnerships.

(c) Cost and Time Efficiency

While arbitration may involve upfront costs (such as arbitrators' fees), it is often more cost-effective in the long run for complex or high-value disputes due to shorter timelines, procedural efficiency, avoidance of appeals and associated delays, and greater likelihood of enforceability, thereby reducing the risk of pursuing multiple enforcement proceedings.





CONCLUSION

In light of the legal and practical advantages outlined above, **Chinese investors and corporations doing business in Malaysia are strongly encouraged to adopt arbitration** as their preferred dispute resolution mechanism in cross-border contracts, particularly where the Malaysian counterparty holds assets in Malaysia. **Arbitration offers not only a more reliable and efficient enforcement pathway under the New York Convention but also greater flexibility, confidentiality, and neutrality**, all of which are critical in managing legal risks in international commercial transactions. By making this strategic choice at the outset, **Chinese parties can better safeguard their investments, ensure contractual compliance, and avoid unnecessary litigation hurdles in foreign jurisdictions.**

The views expressed herein are those of the author and do not necessarily reflect the views of the firm. Should you have any legal queries, corporate or otherwise, please feel free to reach out to the firm for further assistance.



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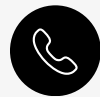


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