

# CHALLENGE OF ARBITRATORS' NEUTRALITY

NOR SHAM BIN SAFIEE

A project report submitted in partial fulfillment of the  
requirements for the award of the degree of  
Master in Science of Construction Contract Management

Faculty of Built Environment  
Universiti Teknologi Malaysia

SEPTEMBER 2016

To my beloved parents Hj Safiee Bin Sariff and Hjh. Zainon Bte Hj Hambari and to  
my baby Nabilah Sham Rin.

## ACKNOWLEDGEMENT

Alhamdulillah and praise to Allah for the opportunity, time and health He granted to me throughout my journey as a student in UTM. First and foremost, I would like to express my gratitude to my parents, Hj. Safiee and Hjh. Zainon for the neverending supports, dua' and loves they always provide me throughout my journey as a son, student and human. Sorry for the absence and silence and thank you for the love and understanding. To my siblings Faridzan, Badariah, Nor Shahfi and Safinaz thank you for always believing in what I do and supporting me all the ways to succeed.

To my partners at Nabilah Sham Rin, both Fatimah Nabilah and Suzairin Othman thank you for always lending you ears, time and motivate me until the very end to complete my study. Both of you are the best partners and friend one could ever asked for.

To my fellow partners in crime, Afiz Kassim, Ruth Lua, Kak Oja, Adila, Nabilah and Aiman we shall continue this friendship till the end of our breath. Thanks for the wonderful experiences and friendship. The same goes to the other CCM students batch 2015/2016 thank you for the laughs, experiences, knowledge and your presence.

To my esteemed Supervisor, En Jamaluddin Yaakob thank you for your comments and comforts you always provide to me.

## ABSTRACT

One of the fundamental principles required by arbitrators is to be able to act impartially and independently. This principle is also embodied in the Arbitration Act 2005 that was modelled from the UNCITRAL Model Law. Impartiality and independence throughout a proceeding is necessary to avoid unwanted challenge in future. Despite the existence of duty to disclose any interests and circumstances which may cause doubts to arbitrators' neutrality, some arbitrators continuously neglecting this and causing challenges to their neutrality or sometimes to the award rendered. Nonetheless, there is no specific definition of impartiality and independence in the Act nor explanation or assistance provided in the Act to illustrate on the alarming duty to disclose. Fortunately, at international level the International Bar Association (IBA) had worked together to assist arbitrators on the duty to disclose by introducing the IBA Guidelines on Conflict of Interest which is a great help to arbitrators to understand the circumstances that require disclosure in the proceeding. The purpose of this study is to identify the Malaysian courts and arbitrators understanding on impartiality and independence of arbitrators in discharging their duty. Due to confidentiality, arbitrators' practices and decisions on the challenge are not available. As such, reference to courts cases was used in carrying out this task. Cases concerning challenges due to justifiable doubts to arbitrators' impartiality and independence were analyzed. The reasons for every challenge made were analyzed critically and match with the IBA Guidelines on Conflicts of Interest in International Arbitration 2014. This IBA guidelines was chosen as it is one of its kind and it provides list of situations according to their seriousness, which may require disclosure or not. It is apparent that despite there were no specific reference made to the IBA Guidelines, our local courts in essence had applied the same principles in dealing with challenge to the arbitrators' neutrality.

## ABSTRAK

Salah satu prinsip utama yang diperlukan di dalam penimbangtara adalah kebolehan untuk mengadili secara saksama (impartial) dan bebas (independence). Prinsip ini juga telah jelas termaktub di dalam Akta Timbangtara 2005 yang bermodelkan UNCITRAL Model Law. Kesaksamaan dan kebebasan adalah penting bagi mengelakkan sebarang cabaran terhadap Penimbangtara di masa hadapan. Walaupun sudah termaktub di dalam Akta Timbangtara 2005 mengenai tanggungjawab untuk mendedahkan sebarang kepentingan dan keadaan-keadaan yang mungkin boleh membangkitkan keraguan terhadap pengecualian (neutrality) seseorang Penimbangtara, tetapi masih ada segelintir Penimbangtara yang mengabaikan tanggungjawab mereka ini. Walaubagaimanapun, tiada takrifan spesifik ataupun penerangan mengenai kesaksamaan dan kebebasan di dalam Akta tersebut yang boleh menjelaskan tentang kepentingan penzahiran mengenai konflik kepentingan. Di peringkat antarabangsa, International BAR Association (IBA) telah bekerjasama dan memperkenalkan satu garis panduan mengenai konflik kepentingan bagi membantu penimbangtara untuk melakukan penzahiran. Tujuan kajian ini dilakukan adalah bagi mengkaji pemahaman Mahkamah dan Penimbangtara terutamanya mengenai keperluan kesaksamaan dan kebebasan bagi Penimbangtara didalam melaksanakan amanah mereka. . Disebabkan kerahsiaan di dalam prosiding timbangtara, segala amalan dan keputusan Penimbangtara yang berkaitan dengan prosiding ini tidak dapat diakses. Oleh itu, rujukan kepada duluan-duluan Mahkamah akan digunakan di dalam melaksanakan kajian ini. Kes-kes berkaitan cabaran terhadap Penimbangtara atas dasar keraguan wajar terhadap kesaksamaan dan kebebasan Penimbangtara akan dianalisa. Sebab-sebab cabaran-cabaran itu dibuat akan dikaji dan dipadankan dengan Garispanduan IBA mengenai konflik kepentingan di dalam Timbangtara Antarabangsa 2014. Garispanduan ini dipilih kerana ia merupakan satu-satunya garispanduan yang wujud yang sedemikian dan terdapat senarai keadaan-keadaan mengikut keseriusan yang menentukan samaada pendedahan perlu dibuat ataupun tidak. Di akhir kajian ini, di dapati bahawa walaupun tiada sebarang rujukan khusus dibuat terhadap Garispanduan IBA tersebut, Mahkamah di Malaysia sememangnya secara prinsip menggunakan prinsip-prinsip yang sama di dalam menyelesaikan perihal cabaran terhadap kesaksamaan dan kebebasan penimbangtara.

## TABLE OF CONTENTS

|          |  |             |
|----------|--|-------------|
|          | <b>TITLE</b>   | <b>i</b>    |
|          | <b>DECLARATION</b>   | <b>ii</b>   |
|          | <b>DEDICATION</b>  | <b>iii</b>  |
|          | <b>ACKNOWLEDGEMENTS</b>  | <b>iv</b>   |
|          | <b>ABSTRACT</b>  | <b>v</b>    |
|          | <b>ABSTRAK</b>   | <b>vi</b>   |
|          | <b>TABLE OF CONTENTS</b>   | <b>vii</b>  |
|          | <b>LIST OF CASES</b>   | <b>xi</b>   |
|          | <b>LIST OF TABLES</b>  | <b>xiii</b> |
|          | <b>LIST OF ABBREVIATIONS</b>   | <b>xiv</b>  |
| <b>1</b> | <b>INTRODUCTION</b>  | <b>1</b>    |
|          | 1.1 Background of Research   | 1           |
|          | 1.2 Problem Statement  | 5           |
|          | 1.3 Objective of Research  | 6           |
|          | 1.4 Scope of Research  | 6           |
|          | 1.5 Significance of Research   | 6           |
|          | 1.6 Research Methodology   | 7           |
|          | 1.6.1 :1 <sup>ST</sup> Stage: Initial Study, Find Rsearch<br>Topic, Objective, Scope and Outline | 7           |
|          | 1.6.2 : 2 <sup>nd</sup> Stage : Data Collection and Research<br>Design                           | 7           |
|          | 1.6.3 : 3 <sup>rd</sup> Stage: Data Analysis   | 8           |
|          | 1.6.4 : 4 <sup>th</sup> Stage: Writing Up  | 8           |
|          | 1.7 Structure of Research  | 8           |

|           |  |           |
|-----------|--|-----------|
| 1.7.1     | : Chapter 1  | 9         |
| 1.7.2     | : Chapter 2  | 9         |
| 1.7.3     | : Chapter 3  | 9         |
| 1.7.4     | : Chapter 4  | 9         |
| 1.7.5     | : Chapter 5  | 10        |
| <b>2</b>  | <b>CHALLENGE OF ARBITRATOR</b>   | <b>11</b> |
| 2.1       | Introduction   | 11        |
| 2.2       | Appointment of Arbitrators   | 12        |
| 2.2.1     | Defining Arbitrator and Arbitral Tribunal  | 12        |
| 2.2.2     | Appointment Under Arbitration Act 2005   | 14        |
| 2.2.3     | Differences With Appointment of Judges   | 15        |
| 2.3       | Brief Historical Outline on Challenge of Arbitrators in Malaysia                             | 16        |
| 2.3.1     | Arbitration Act 1952   | 18        |
| 2.3.1.1   | Grounds for Removal  | 19        |
| 2.3.1.1.1 | Misconduct   | 19        |
| 2.3.1.1.2 | Impartiality and Fraud   | 21        |
| 2.3.2     | Arbitration Act 2005   | 22        |
| 2.4       | Comparison between Arbitration Act 1952 and Arbitration Act 2005 on Challenge of Arbitrators | 24        |
| 2.5       | Grounds for Challenge  | 26        |
| 2.5.1     | Independence   | 29        |
| 2.5.2     | Impartiality   | 31        |
| 2.6       | Test to Determine Lack of Impartiality and Independence                                      | 35        |
| 2.7       | Procedure  | 36        |
| 2.8       | Conclusion   | 37        |

|          |   |           |
|----------|---|-----------|
| <b>3</b> | <b>INTERNATIONAL BAR ASSOCIATION (IBA)<br/>GUIDELINES</b> | <b>39</b> |
|          | 3.1 Introduction to IBA Guidelines 2014                   | 39        |
|          | 3.2 Application of IBA Guidelines 2014                    | 40        |
|          | 3.2.1 General Standards                                   | 41        |
|          | 3.2.1.1 General Principle                                 | 41        |
|          | 3.2.1.2 Conflict of Interest                              | 42        |
|          | 3.2.1.3 Disclosure by Arbitrator                          | 42        |
|          | 3.2.1.4 Waiver by the Parties                             | 43        |
|          | 3.2.1.5 Scope   | 44        |
|          | 3.2.1.6 Relationship                                      | 44        |
|          | 3.2.1.7 Duty of the Parties and<br>Arbitrator             | 45        |
|          | 3.2.2 Practical Applications                              | 46        |
|          | 3.2.2.1 The Red List                                      | 46        |
|          | 3.2.2.2 The Orange List                                   | 47        |
|          | 3.2.2.3 The Green List                                    | 47        |
|          | 3.3 Response Towards IBA Guidelines 2014                  | 48        |
|          | 3.4 Recognition Towards IBA Guidelines 2014               | 50        |
|          | 3.4.1 International Arbitral Institutions                 | 50        |
|          | 3.4.2 Judicial Recognition                                | 51        |
|          | 3.4.2.1 England   | 51        |
|          | 3.4.2.2 United States of America                          | 54        |
|          | 3.4.2.3 Switzerland                                       | 55        |
|          | 3.4.2.4 Germany   | 56        |
|          | 3.4.2.5 Canada  | 57        |
|          | 3.4.2.6 France  | 58        |
|          | 3.5 Conclusion  | 61        |
| <b>4</b> | <b>DATA ANALYSIS</b>                                      | <b>64</b> |
|          | 4.1 Introduction  | 64        |
|          | 4.2 Summary of Cases                                      | 64        |



|          |   |           |
|----------|---|-----------|
| 4.2.1    | Sundra Rajoo v. Mohamed Abd<br>Majed & Anor   | 64        |
| 4.2.2    | Dato' Dr. Muhammad Ridzuan<br>Mohd Salleh & Anor. v. Syarikat<br>Air Terengganu Sdn Bhd | 68        |
| 4.2.3    | Tan Sri Dato' Professor Dr. Lim<br>Kok Wing v. Thurai Das A/L<br>Thraisingham & Anor.   | 71        |
| 4.2.4    | Sabah Medical Centre Sdn Bhd v.<br>Syarikat Neptune Enterprise Sdn<br>Bhd & Anor        | 75        |
| 4.2.5    | MMC Engineering Group Bhd &<br>Anor. v. Wayys & Freytag (M) Sdn<br>Bhd & Anor           | 78        |
| 4.3      | Observation   | 81        |
| 4.4      | Conclusion  | 83        |
| <b>5</b> | <b>CONCLUSION AND RECOMMENDATION</b>  | <b>85</b> |
| 5.1      | Introduction  | 85        |
| 5.2      | Summary of Research Finding   | 85        |
| 5.3      | Conclusion  | 88        |
| 5.4      | Problems Encountered During Research  | 89        |
| 5.5      | Recommendation for Future Research  | 89        |
|          | <b>REFERENCES</b>   | <b>90</b> |
|          | <b>BIBLIOGRAPHY</b>   | <b>93</b> |
|          | <b>APPENDIX I</b>   | <b>96</b> |

**LIST OF TABLES**

| <b>TABLE NO.</b> | <b>TITLE</b>  | <b>PAGE</b> |
|------------------|---|-------------|
| 1.1              | Comparison between Arbitration Act 1952 and Arbitration Act 2005              | 24          |
| 1.2              | Recognition and Reference by Different National Courts Towards IBA Guidelines | 59          |
| 1.3              | Division of Stages, Issues and Outcome of Cases                               | 82          |

**LIST OF ABBREVIATIONS**

|          |  |
|----------|--|
| AC       | Appeal Cases   |
| All ER   | All England Reports                                    |
| CLJ      | Current Law Journal                                    |
| EWHC     | High Court of England and Wales                        |
| IBA      | International BAR Association                          |
| KLRCA    | Kuala Lumpur Regional Centre for Arbitration           |
| LNS      | Legal Network System                                   |
| MLJ      | Malayan Law Journal                                    |
| MLJU     | Malayan Law Journal Unreported                         |
| QB       | Queen's Bench  |
| UKSC     | United Kingdom Supreme Court                           |
| UNCITRAL | United Nation Commission on International<br>Trade Law |
| WLR      | Weekly Law Reports                                     |

**LIST OF APPENDICES**

| <b>APPENDIX</b> | <b>TITLE</b>  | <b>PAGE</b> |
|-----------------|---|-------------|
| A               | IBA Guidelines of Conflict of Interest in International Arbitration | 96          |

## CHAPTER 1

### INTRODUCTION

#### 1.1 Background of Research

It is said that arbitration is a unique alternative dispute resolution compared to litigation. This may be due to the fact that in arbitration proceeding, disputing parties have the liberty to tailor their own set of rules and procedures which eventually entitle them to choose their own arbitrator. Arbitrators have always been regarded as extraordinary judges<sup>1</sup> because they are appointed by the disputants, and they are also extraordinary because some arbitrators are not legally trained officers but they are entrusted to decide disputes brought before them and deliver decision or an award that is legally binding and enforceable in the eyes of law.

On the appointment of arbitrator, both parties have equal opportunity to nominate their own candidate until consensus is met. But, that may not be the situation in all arbitration proceeding as it is not easy as it sounds. The process can be very tedious, lengthy and even frustrating when parties are not able to agree on the nominees, but fortunately parties may resort to another appointment mechanism that is appointment by the Director of Kuala Lumpur Regional Centre (KLRCA) or Appointing Authority as designated in the parties' arbitration agreement.

---

<sup>1</sup> As quoted by Nordon, C.L (1935, January) British Experience With Arbitration. *University of Pennsylvania Law Review* pp.314-325 from Giles Jacob's Law Dictionary that was published in 1729.

Based on Arbitration Act 2005, appointment by director can happen in two situations:

- (i) when the parties agree on the procedures for appointment but agreement on appointment cannot be reached or either party fails to comply with the rule or an appointing person or institution cannot be able to perform such duty: under this heading, even though parties have agreed on the appointment's procedures and consensus cannot be met (*Section 13(6)(a),(b) & (c)*),
- (ii) when the parties cannot agree on the procedures and the appointment both in single arbitrator (*Section 13(5)(a)&(b)*) and three arbitrators (*Section 13(3),(4)(a) &(b)*)

Thus, to avoid stalemate on the appointment, the Act empowered the Director of Kuala Lumpur Regional Centre for Arbitration to make the appointment. Mutual consent or consent by the parties is not a pre-condition under such situation<sup>2</sup>, it is sufficient if either one of the parties or the co-arbitrator<sup>3</sup> requests to the Director of KLRC. Further, if the Director fails or unable to act within 30 days from the date of reference made then any party may apply to High Court to make the appointment<sup>4</sup>. The decision by the Director is considered as final and binding as there shall not be any appeal against the decision of the Director or the High Court<sup>5</sup>. The Act also provides statutory considerations need to be fulfilled by the Director before appointing any person as an arbitrator<sup>6</sup>.

Interestingly, despite such impediment to appeal, the right to challenge the arbitrator can be done at any stage of the arbitration proceeding especially when the party only aware of the existence of 'justifiable doubts' at later stage after the

---

<sup>2</sup> *Sebiro Holdings Sdn Bhd v Bhag Singh & Anor* [2015] 4 CLJ 209, COA.

<sup>3</sup> *Sundra Rajoo v Mohamed Abd Majed & Anor* [2011] 6 CLJ 923, HC

<sup>4</sup> Section 13(7) of the Arbitration Act 2005.

<sup>5</sup> Section 13(9) of the Arbitration Act 2005.

<sup>6</sup> Section 13(8) of the Arbitration Act 2005

appointment is made<sup>7</sup>. It is also apparent that the challenge can also be made at very later stage i.e after an award is made, this is made available during the setting aside procedure under section 37(1) (vi) especially if there is a non-disclosure on the part of the arbitrator which would amount not only to the principle of natural justice but also breach of the arbitration agreement that requires impartiality and independence of the arbitrator<sup>8</sup>.

Upon appointment by the parties, the arbitrator has a duty to disclose any circumstances which may give rise to ‘justifiable doubts’ as to his or hers impartiality and independence. This is as encapsulated in Section 14(1) of the Act that says:

*“14. (1) A person who is approached in connection with that person’s possible appointment as an arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to that person’s impartiality or independence”<sup>9</sup>*

Such duty continues throughout the proceeding until and unless parties have been made aware of such circumstances<sup>10</sup> and upon such knowledge, any party affected with such disclosure may challenge the arbitrator’s appointment. There are only two grounds provided by the Act for such challenge to be successful, they are:

- (1) Justifiable doubts to the arbitrator’s impartiality or independence;(Section 14(3)(a)) or
- (2) Non-conformity to the agreed qualification by the parties (Section 14(3)(b)).

---

<sup>7</sup> Section 15 of the Arbitration Act 2005

<sup>8</sup> *Dato’ Dr. Muhammad Ridzuan Mohd Salleh & Anor v. Syarikat Air Terengganu Sdn Bhd [2012] 6 CLJ 156*, HC at. pp.175-176

<sup>9</sup> Arbitration Act 2005

<sup>10</sup> 14(2) of the Arbitration Act 2005

There is no specific definition of impartiality or independence in the Act or even illustration provided. As such, the terms may carry broader meaning than it supposed to be. Procedurally, the Act also provide for the challenge procedure. In brief, a challenge may be made either to the arbitrator<sup>11</sup>, Arbitral Tribunal, Director of KLRCAs or to the High Court depending on circumstances.

Even though the Act provides avenue for the party doubting the arbitrator's impartiality, independence and also qualifications, there is no specific definition or illustration provided in the Act that may assists the parties to understand the terms better. Be that as it may, it has always been the duty of the court to interpret the terms depending on circumstances, facts and evidences brought before the court. Ideally, this challenge proceeding can be avoided if the arbitrator disclose the necessary information to the parties (Windsor, 2009). Thus, it is also pertinent for the arbitrators to understand their duty to disclose to allow efficiency in the whole proceeding.

As stated above, there is no specific provisions enumerating impartial and dependence circumstances that would undermine the arbitration proceeding.

Nonetheless, there has been attempts made by international bodies to fill the hole by providing a guidelines to the arbitrators especially the International Bar Association (IBA) that come out with their own Guidelines on Conflicts of Interest in International Arbitration<sup>12</sup>. As stated in the introduction section of the guidelines, the 2014 revised edition was made after analysis of developments in case laws and statutes from different jurisdictions of the world. This guidelines even though not legally binding in nature is an important document to reflect the general standards as being practiced by international arbitrators.

---

<sup>11</sup> This recognizing the principle of *Kompetenz-Kompetenz* where arbitrators have the power to rule on their own jurisdiction. It is now specifically embodied in s.15(1) and (2) of the Arbitration Act 2005

<sup>12</sup> IBA had reviewed their 2004 Guidelines in 2014 to cater criticism and other developments on the subject matter.



## 1.2 Problem statement

A challenge to the arbitrator's impartiality and independence may be made either after the appointment made by one of the disputants, appointing authorities or the Director of KLRCA or a High Court Judge. According to Allen & Mallet (2011), the ability to challenge is really important especially to ensure that disputants are always confident throughout the proceeding and it is vital to maintain arbitration relevancy as an alternative dispute resolution process<sup>13</sup>.

But, there remain uncertainties in this area of arbitration which requires detail study. Since Malaysia is aspiring to become international arbitration and dispute resolution hub, there is a need to ensure that our practice is always in consonant with international standard. The international standard as suggested here is the IBA Guidelines on Conflict of Interest'. The study will show that this IBA Guidelines is an internationally recognized guidelines comprises of theoretical and practical aspects in dealing with the subject matter on conflict of interest and duty of disclosure.

We shall see in this study if our local courts adopt the 'IBA Guidelines on Conflict of Interest' or in line with the spirit of the guidelines especially in hearing and deciding application on challenge of arbitrator's neutrality which indirectly determine if our local courts moving in parallel with international standards and practices. Eventually, we will see the judicial trend in deciding the matter.

Decisions from other jurisdictions will be analyzed especially from the United Kingdom as they do not follow the UNCITRAL Model Law as they have their own Arbitration Act 1996 and we shall see if there is any different between the two.

---

<sup>13</sup> Allen, N. and Mallet, D. (2011) Arbitrator Disclosure- No Room for The Colour Blind. *Asian International Arbitration Journal*, 7(2), 118-147 at p.119

By conducting this study, we can see if our local courts and arbitration practitioners follow the international standard and can guarantee confidence to our prospect participants.

### **1.3 Objective of Research**

Based on the above issues, the objective of this study is to identify local courts' decisions concerning challenge of arbitrator's neutrality and match it with IBA Guidelines 2014.

### **1.4 Scope of Research**

This research will be focusing on cases decided by Malaysian courts particularly after 2005 *i.e* after implementation of Arbitration Act 2005 and by matching it with the IBA Guidelines and to see if such guidelines will be of assistance to arbitrators to avoid challenge on the ground of bias or conflict of interest.

### **1.5 Significance of Research**

This study is important especially after considering the government's idea on making Malaysia as a world class Dispute Resolution Hub. It is hope that this study

will enable to assist both judicial bodies and local arbitrators to understand the concept of neutrality, conflict of interest and duty of disclosure of interest better and eventually prepare them to be at par with their international counterparts. Eventually if the local arbitrators understand their duty and the possibility of their appointment being challenged, then they can avoid that proceeding at earliest stage. If the practice of Malaysian courts and arbitrators are in line with the IBA Guidelines, then there is a possibility of utilizing the IBA Guidelines in assisting judges, lawyers, arbitrators and arbitration players on the subject matter.

## **1.6 Research Methodology**

### **1.6.1 1st Stage: Initial Study , Find Research Topic, Objective, Scope and Outline**

This is a crucial stage in the research methodology. Initial study initiated with topic finding which requires reading from various literature and cases. Then once the topic is identified, objective of the research is determine. In focusing to the objective, there is a need to limit the scope of the research to avoid the objective from being unattainable. An outline will also useful to focus on the relevant area only.

### **1.6.2 2nd Stage: Data Collection and Research Design**

The second stage is data collection stage which will be important tool to meet the objective. Data comprises of scholastic materials and judicial decisions by Malaysian Courts and other selected foreign jurisdiction. Since this is a legal research, cases and statutes are being used. Reported cases will be gathered from LexisNexis, CLJLaw Online and when necessary unreported decisions as published at the

Kehakiman (Judiciary) website as well. Other scholastic writings are also gathered to understand the scholars view on the subject matter and for the preparation of the literature review.

### **1.6.3 3rd Stage: Data Analysis**

The third stage is data analysis based on the data collected earlier. Cases will be critically analyze to understand the reasoning of each decisions and for other materials. This stage is crucial on forming the findings of the research. The judgment and reasoning will be matched with the IBA Guidelines to see if the practice matched.

### **1.6.4 4th Stage: Writing Up**

Based on the analysis then opinion is formed and write up is prepared. The analysis is related to the intended objective and determine if it has been achieved. The last stage merely putting all the findings in structural manner which included the findings of the research and suggestion on future research. Then, a conclusion and relevant recommendations (if any) is formed by deducing from the findings of the research.

## **1.7 Structure of Research**

This thesis is presented by dividing five (5) different chapters with designated scope. The intended outline for each chapter are as follows:

### **1.7.1 Chapter 1**

The first chapter comprises of introductory section which covers background of research, problem statement, objective, scope of study, significance of research, research methodology and some brief on the structure of the research.

### **1.7.2 Chapter 2**

The second chapter is basically the literature review on the challenge of arbitrator's appointment which include brief historical outline on the topic based on Arbitration Act 1952 and Arbitration Act 2005, comparison between the two, discussion on justifiable doubts that may give rise to impartiality and independence of arbitrator and discussion on the qualification. That will include discussion of approach from different jurisdiction based on decided cases and scholastic papers which will cover the prevailing test use in deciding a challenge application.

### **1.7.3 Chapter 3**

The third chapter will be a discussion on the IBA Guidelines 2014 which includes brief history on the guidelines, understanding on the guidelines, appraisal, criticism and its application in arbitration scene both locally and internationally.

### **1.7.4 Chapter 4**

The fourth chapter four will be focusing on case review and comparison with IBA Guidelines 2014, discussion on the court's decisions, understanding the judicial

trend in deciding cases, compare such decisions with IBA Guidelines 2014 to determine if the local courts' decisions in tandem with the guidelines.

### **1.7.5 Chapter 5**

The fifth chapter will be discussion on the finding and data interpretation based on the gathered data, conclusion and recommendations (if any).

## REFERENCES

- Allen, N., & Mallett, D. (2011). Arbitrator Disclosure-No Room for The Colour Blind. *Asian International Arbitration Journal*, 7(2), 118-147.
- Chew, L. K. (2003). *Singapore Arbitration Handbook*. Singapore: LexisNexis.
- Chung, R. K. (2014). Conceptual Framework of Arbitrator's Impartiality and Independence. *Arbitration*, 80(1), 2-7.
- Eiseman, N. M., Bulman, J. E., & Dunn, R. T. (2013). A Tale of Two Lawyers : How Arbitrators and Advocates Can Avoid the Dangerous Convergence of Arbitration and Litigation. *Cardozo Journal of Conflict Resolution*, 683-725.
- Foster, D., & Barratt, J. (2013). Challenge to and Replacement of Arbitrators. In J. D. Lew, H. Bor, G. Fullelove, & J. Greenway, *Arbitration in England with Chapters on Scotland and Ireland* (pp. 319-337). The Netherlands: Kluwer Law International.
- Hascher, D. (2012). Independence and Impartiality of Arbitrators: 3 Issues. *Am. U. Int'l L. Rev.*, 27(4), 789-806.
- Hodges, P., & Greenway, J. (2013). Duties of Arbitrators. In J. D. Lew, H. Bor, G. Fullelove, & J. Greenway, *Arbitration in England with Chapters on Scotland and Ireland* (p. 743). The Netherlands: Kluwer Law International.
- International Bar Association . (2014). *IBA Guidelines on Conflicts of Interest in International Arbitration 2014*. London: IBA.
- Joelson, M. R. (2015). A Critique of the 2014 International BAR Association Guidelines on Conflicts of Interest in International Arbitration. *American Review of International Arbitration*, 483-491.

- Luttrell, S. R. (2008, September 15). Bias Challenges in International Arbitration The Need for A 'Real Danger Test'. Murdoch University.
- Melwom, L. (2014). Note: Biased? Prove It: Addressing Arbitrators Bias and the Merits of Implementing Broad Disclosure Standards. *Cardozo Journal of International and Comparative Law*, 431-471.
- Mullerat, R. (2010, May). Arbitrators' Conflicts of Interest Revisited: A Contribution to the Revision of the Excellent IBA Guidelines on Conflicts of Interest in International Arbitration. *Dispute Resolution International*, 4(1), 55-69.
- Mustill, M., & Boyd, S. C. (1989). *Practice of Commercial Arbitration in England*. 2nd ed. London: Butterworths.
- Ng, J. (2015-2016). When the Arbitrator Creates the Conflict: Understanding Arbitrator Ethics through the IBA Guidelines on Conflict of Interest and Published Challenges. *McGill Journal of Dispute Resolution*, 2, 23-42.
- Nordon, C. L. (1935, January). British Experience with Arbitration. *University of Pennsylvania Law Review*, pp. 314-325.
- Park, W. (2009). Arbitrator Integrity: The Transient and the Permanent. *San Diego Law Review*.
- Petrochilos, G. (2004). *Procedural Law in International Arbitration* (1st ed.). Oxford: Oxford University Press.
- Sanders, P. (2004). *The Work of UNCITRAL on Arbitration and Conciliation*. Hague: Kluwer Law International.
- Scherer, M. (2008). New Case Law from Austria, Switzerland and Germany Regarding the IBA Guidelines on Conflicts of Interest in International Arbitration. *Transnational Dispute Management*, 5(4), 1-14.



- Scherer, M. (2010). The IBA Guidelines on Conflicts of Interest in International Arbitration: The First Five Years 2004-2009. *Dispute Resolution International* . 4(1), 5-53
- Sheppard, A. (2009). Arbitrator Independence in ICSID Arbitration. In U. K. C.Binder, *International Investment Law for the 21st Century* (pp. 131-156). New York: Oxford University Press.
- Sun, C. L. (2007). Arbitrators' Conflict of Interest: Bias by Any Name. *Singapore Academy of Law Journal*, 19, 245-266.
- Syed Khalid Rashid. (2000). *Alternative Dispute Resolution in Malaysia*. Kuala Lumpur: Kulliyah of Laws, IIUM.
- Trakman, L. (2007). *The Impartiality and Independence of Arbitrators Reconsidered*. New South Wales: University of New South Wales.
- Turner, P., & Mohtashami, R. (2009). *A Guide to the LCIA Arbitration Rules*. New York: Oxford University Press.
- Walton, A., & Victoria, M. (1982). *Russel on the Law of Arbitration, 20th Edn*. London: Stevens & Sons.
- Windsor, K. A. (2009). Defining Arbitrator Evident Partiality: The Catch-22 of Commercial Litigation Disputes. *Seton Hall Circuit Review*, 6(191), 191-217.

## BIBLIOGRAPHY

- Carter, J. H. (2012). Reaching Consensus on Arbitrator Conflicts: The Way Forward. *Dispute Resolution International*, 6(1), 17-35.
- Dundas, H. R. (2015). Arbitral Rarities; Recent Arbitration Cases in the English Courts with a Scottish Postscript. *Arbitration*, 81(3), 332-342.
- Fan, K. (2011). The Risk of Apparent Bias When An Arbitrator Acts as a Mediator Remarks on Hong Kong Court Decision in Gao Haiyan. *Yearbook of Private International Law*, 13, 535-556.
- Flood, J., & Caiger, A. (1993). Lawyers and Arbitration: The Juridification of Construction Disputes. *The Modern Law Review*, 56, 412-440.
- Gilles, M., & Friedman, G. (2012). After Class: Aggregate Litigation in the Wake of "AT & T Mobility v. Conception". *The University of Chicago Law Review*, 79(2), 623-675.
- Jacobs, R. T. (1997). Arbitrator or Private Investigator: Should the Arbitrator's Duty to Disclose Include a Duty to Investigate- Abdullah E. Al-Harbi v Citibank, N.A and Citibank, AS. *Journal of Dispute Resolution*, 1997(1), 133-142.
- Korland, L. (2003). What an Arbitrator Should Investigate and Disclose: Proposing a New Test for Evident Partiality under the Federal Arbitration Act. *Case Western Reserve Law Review*, 53(3).
- Martin, C. C. (2015). Arb-Med-Arb Service in Singapore International Mediation Centre. *Asian JM*, 35-48.
- Martinez-Fraga, P. J. (2012). King or Arbitrator: Exploring the Inherent Authority of Arbitrators to Impose Sanction Within the Framework of the 2010 IBA Rules

on the Taking of Evidence in International Arbitration. *NALSAR ADR Review*, 1, 1-23.

Rajoo, S. (2011). Arbitration and Mediation as Alternative Dispute Resolution Mechanism. *The Law Review*, 453-467.

Tellez, F. M. (2012). Arbitrators' Independence and Impartiality: A Review of SCC Board Decisions on Challenges to Arbitrators (2010-2012). *SCC*, 16.

Wells, B. (2016). YUKOS- the First Instalments in the Post-Award Story. *International Energy Law Review*, 3, 101-108.

Yu, H. L., & Shore, L. (2003, Oct.). Independence, Impartiality, and Immunity of Arbitrators: US and English Perspectives. *The International and Comparative Law Quarterly*, 52(4), 935-967.