

RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARD

TEN YUEN HER

UNIVERSITI TEKNOLOGI MALAYSIA

RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARD

TEN YUEN HER

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

Faculty of Built Environment
Universiti Teknologi Malaysia

August 2016

DEDICATION

*Special thanks to my parents, my sisters, my supervisor and friends for their
endless helps, support and understandings*

Thanks for Everything.

ACKNOWLEDGEMENT

Firstly, I want to express my deep sense of gratitude to my supervisor Assoc. Prof. Sr Dr. Maizon Bte Hashim for her encouragement, guidance and advice. Her supervision and support really help a lot in this research.

Next, for all the lecturers in course of Master of Science (Construction Contract Management), Assoc. Prof. Sr Dr. Maizon bte Hashim, En. Jamaludin Yaakob, Dr Norazam Othman, Dr. Nur Emma Mustaffa, Dr Muzani bin Mustapa for their passion of giving lectures and the guidance.

Furthermore, I would like to thank my family for giving endless support for my study in this master program. Lastly, I would like to thank all my friends who had assisted me in this research.

Thank you very much.

ABSTRACT

As one of the grounds that can be used by the party in arbitration to set aside and refuse enforcement of an arbitral award, public policy exception is often raised by the losing party. However, the pro-arbitration and pro-enforcement policy in most of the countries had made the interpretation of the term “public policy” much restricted to the “most basic notion of morality and justice” of the country. Furthermore, many narrow approaches had been adopted by the supervisory court as well as the enforcement court in order to uphold the arbitral award that had been issued by the arbitral tribunal. This makes the circumstances that will be considered as contrary to public policy becomes an interesting issue for this research. The objective of this study is to identify those circumstances that are contrary to public policy. The primary data for the analysis is the law cases from Malaysia, Hong Kong, United Kingdom and Australia. In this study, eleven law cases had been analysed to achieve the research objective. The method of analysis is the content analysis with the assist of Nvivo 11. In conclusion, five circumstances on substantive public policy had been identified which including award is not dealing the centre issue of the dispute; awards deals with illegal contract; enforcement of the award will defeat the objective of an Acts; award is not final and binding due to uncertainties and award is unable to be enforced whereas in term of procedural public policy, two circumstances which including right of the party to present his case has been breached and arbitrator fails to disclose his independence will be considered as contrary to public policy.

ABSTRAK

Sebagai salah satu alasan yang boleh digunakan oleh pihak dalam timbang tara untuk menyetujui dan menolak penguatkuasaan sesuatu award timbang tara, pengecualian dasar awam sering dibangkitkan oleh pihak yang kalah. Walau bagaimanapun, dasar menyokong timbang tara dan dasar menyokong penguatkuasaan award di kebanyakan negara telah menafsirkan istilah "dasar awam" kepada tafsiran yang lebih terhad kepada "pengertian moral dan keadilan yang paling asas". Tambahan pula, banyak pendekatan sempit telah diterima oleh mahkamah penyeliaan serta penguatkuasaan dalam usaha untuk mengekalkan award timbang tara yang telah dihasilkan oleh penimbang tara. Ini menjadikan keadaan yang akan dianggap sebagai bercanggah dengan dasar awam menjadi satu isu yang menarik untuk kajian ini. Objektif kajian ini adalah untuk mengenal pasti keadaan yang bercanggah dengan dasar awam. Data primer untuk analisis adalah kes-kes undang-undang dari Malaysia, Hong Kong, United Kingdom dan Australia. Kajian ini telah menganalisis sebelas kes undang-undang untuk mencapai objektif kajian ini. Kaedah analisis adalah analisis kandungan dengan bantuan NVivo 11. Kesimpulannya, lima keadaan dasar awam substantif telah dikenalpasti termasuk award tidak menangani isu penting dalam pertikaian; award mengenai kontrak haram; penguatkuasaan award itu akan mengalahkan tujuan sesetengah Akta; award tidak muktamad dan mengikat kerana mengandungi ketidakpastian dan award tidak boleh dikuatkuasakan manakala dari segi dasar awam prosedur, dua keadaan telah dikenalpasti termasuk pihak tidak mempunyai peluang untuk membentangkan kes dan penimbang tara itu tidak menzahirkan fakta-fakta yang akan membawa kepada keraguan munasabah akan dianggap sebagai bertentangan dengan dasar awam.

TABLE OF CONTENTS

CHAPTER	TITLE	PAGE
	TITLE	i
	DECLARATION	ii
	DEDICATION	iii
	ACKNOWLEDGEMENT	iv
	ABSTRACT	v
	ABSTRAK	vi
	TABLE OF CONTENTS	vii
	LIST OF TABLES	x
	LIST OF CASES	xi
1	INTRODUCTION	1
	1.1 Background of Study	1
	1.2 Problem Statement	2
	1.3 Research Questions	5
	1.4 Research Objective	6
	1.5 Scope of Research	6
	1.6 Significance of the Research	6
	1.7 Research Methodology	7
	1.8 Chapter Organization	9
	1.9 Conclusion	11

2	LITERATURE REVIEW	12
2.1	Introduction	12
2.2	Definition of Public Policy	13
2.3	Categories of Public Policy	16
2.3.1	Procedural Public Policy	17
2.3.2	Substantive Public Policy	18
2.3.3	Domestic Public Policy	19
2.3.4	International Public Policy	19
2.3.5	Transnational Public Policy	20
2.3.6	Domestic Public Policy and International Public Policy	23
2.4	Judicial Review Procedure	24
2.4.1	Stage One: to Identify the Applicability of the Alleged public policy	25
2.4.2	Stage Two: to Identify whether the Enforcement will be Inconsistent with the Public Policy	27
2.4.3	Stage Three: to Determine whether the Court Should Continue to Recognise the Award Regardless the Contradiction	29
2.5	Circumstances that are Contrary to Public Policy	31
2.5.1	The Award Inconsistent with a Court Decision of the Enforcement State	35
2.5.2	The Award Asked for Excessive High Rate of Interest	35
2.5.3	The Parties Entered into Consent Agreement but Not Inform the Arbitrator	37
2.5.4	The Award Inconsistent with Mandatory Rules of the Enforcement State	38
2.5.5	The Award was Inconsistence with the Provisions in the Constitution of the Country	39
2.5.6	The Award was Threatening the Public Goods of the Country	40
2.5.7	The Right to Hearing of a Party had been Breached	41

2.5.8	The Award was Contrary to the Arbitration Agreement of the Parties	42
2.5.9	The Arbitrator Breaches the Principles of Independence and Impartiality	42
2.5.10	The Principle of Equality of the Parties had been Breached	43
2.6	Conclusion	44
3	DATA ANALYSIS AND FINDING	45
3.1	Introduction	45
3.2	Circumstances that are contrary to public policy	46
3.2.1	Substantive Public Policy	46
3.2.2	Procedural Public Policy	60
3.3	Conclusion	73
4	CONCLUSION AND RECOMMENDATION	85
4.1	Introduction	85
4.2	Summary of Findings	86
4.3	Limitation of Study	93
5.4	Recommendation for Future Research	94
5.5	Conclusion	95
	LIST OF REFERENCES	96

LIST OF TABLES

TABLE NO.	TITLE	PAGE
2.1	Differences and Similarities of Domestic and International Public Policy	24
3.1	Summaries of Cases	74
3.2	Summaries of Circumstances that are Contrary to Public Policy	80

LIST OF CASES

NO	CASES	PAGE
1	<i>A v B</i> [2015] HKCFI 1077; [2015] 3 HKLRD 586; [2015] 5 HKC 509; HCCT 40/2014 (15 June 2015)	46, 74, 80 86
2	<i>A v R</i> [2010] 3 HKC 67	5
3	<i>Austrian Supreme Court, Judgment of 26 January 2005,</i> <i>3 Ob 221/04b</i>	12
4	<i>Bayerisches Oberstes Landgericht [BayObLG],</i> <i>decision of 20 November 2003, 4 Z Sch 17/03, NJOZ 2004</i>	38
5	<i>BCB Holdings Ltd and another v Attorney General of Belize</i> <i>(2013) 82 WIR 167</i>	39
6	<i>China Property Development (Holdings) Ltd v Mandecly Ltd</i> <i>and Others</i> [2016] Hkca 207; <i>Cacv 92/2015 (24 May 2016)</i>	65, 69, 71 74, 81, 91
7	<i>Corporation Transnacional de Inversiones, SA de CV v STET</i> <i>International SpA</i> 1999 CanLII 14819	15, 28
8	<i>Ciments Français v. OAO Holding Company Siberian Cement</i>	35
9	<i>Dato' Dr Muhammad Ridzuan bin Mohd Salleh & Anor v</i> <i>Syarikat Air Terengganu Sdn Bhd</i> [2012] 3 MLJ 737	61, 74, 80 92
10	<i>David Taylor & Son Ltd v Barnett</i> [1953] 1 All ER 843	54, 77, 83 87
11	<i>Downer-Hill Joint Venture v Government of Fiji</i> [2005] 1 NZLR 554	33

12	<i>Eco Swiss China Time Ltd v Benetton International NV</i> [1999] 2 All ER (Comm) 44	38
13	<i>Equitas Limited v Allianz General Insurance Company (Malaysia) Berhad</i> [2009] MLJU 1334	5, 63, 67 75, 81, 91
14	<i>Hanseatisches Oberlandesgericht, Germany, 1 Sch 02/99,</i> 14 May 1999	17
15	<i>Hebei Import & Export Corp v Polytek Engineering Co Ltd</i> (1999) 2 HKCFAR 111	5, 26, 29 31, 88
16	<i>Hemofarm DD, MAG International Trade Holding DD, Suram Media Ltd. v. Jinan Yongning Pharmaceutical Co. Ltd</i> [2008] Min Si Ta Zi No. 11	35
17	<i>International Movie Group Inc & Anor v Palace Entertainment Corporation Pty Ltd</i> [1995] VicSC 344	56, 77, 83 89
18	<i>Karaha Bodas Co LLC v Perusahaan Pertambangan Minyak dan Gas Bumi Negara (Pertamina)</i> [2007] 5 HKC 91	5
19	<i>LAMINOIRS, ETC. v. Southwire Co.</i> 484 F. Supp. 1063	35
20	<i>Louis Dreyfus S.A.S. v Holding Tusculum B.V.</i> 2008 QCCS 5903 (CanLII)	40
21	<i>Malicorp Ltd v Government of the Arab Republic of Egypt and others</i> [2015] EWHC 361 (Comm)	67, 71, 76 82, 91
22	<i>Oil & Natural Gas Corporation Ltd v Saw Pipes Ltd</i> [2003] INSC 236	12
23	<i>Open Type Joint Stock Company Efirnoye (“EFKO”) v. Alfa Trading Ltd</i> [2012] 1 CLJ 323, HC	5, 18
24	<i>Parsons & Whittemore Overseas Co Inc v Societe Generale de L’Industrie du Papier (Rakta)</i> (1974) 508 F 2d 969	5
25	<i>PT Asuransi Jasa Indonesi (Persero) v Dexia Bank SA</i> [2007] 1 SLR (R) 597	5, 15
26	<i>Renusagar Power Plant Co. Ltd vs General Electric Co</i> AIR 1994 SC 860	4, 12, 25

27	<i>Resort Condominiums International Inc v Bolwell & Anor</i> (1993) 118 ALR 655	59, 78, 84 90
28	<i>Richardson v Mellish</i> (1824) 2 Bing 229	4
29	<i>RS Jiwani v. Ircon International Ltd 2010 (1) Bom.CR 529</i>	18
30	<i>Sami Mousawi-Utama Sdn Bhd v Kerajaan Negeri Sarawak</i> [2004] 2 MLJ 414	5, 51, 75 82, 88
31	<i>Schreter v. Gasmac Inc.</i> (1992), 7 O.R. (3d) 608, 89 D.L.R. (4th) 365 (Gen. Div.)	29
32	<i>S.D. Myers Inc. v. The Government of Canada</i>	12, 22
33	<i>Siemens A.G. v. BKMI Industrienlagen GmbH</i> XVIII Y.B. COM. ARB. 140 (1993)	43
34	<i>Smart Systems Technologies Inc. v. Domotique Secant Inc.</i> 2008 QCCA 444	42
35	<i>Soleimany v Soleimany</i> [1999] 3 All ER 847	52, 76, 82 87
36	<i>United World Ltd. Inc. v. Krasny Yakor</i> Case No. A43-10716/02-27-10isp (2003)	40
37	<i>William Hare UAE LLC v Aircraft Support Industries</i> <i>Pty Ltd</i> [2014] NSWSC 1403	69, 70, 79 84, 92

CHAPTER 1

INTRODUCTION

CHAPTER 1

INTRODUCTION

1.1 Background of Study

Arbitration can be defined as “the submission of a dispute to one or more impartial persons for a final and binding decision, known as an award.”¹ Nowadays, arbitration becomes a popular dispute resolution mechanism for almost all of the international trades.² This popularity of the arbitration should give credit to the characteristics of the arbitration itself. The characteristics of the arbitration are including the process is consensual; the parties are free to appoint their arbitrator tribunal; the process is impartial; the proceeding is confidential and the award given by the arbitrator is binding and easy to be enforced.

Among the characteristics that mentioned above, the recognition of the award is one of the important parts of the arbitration, especially for the international

¹ American Arbitration Association. (n.d.). Arbitration, 2015–04–20. Retrieved from https://www.adr.org/aaa/faces/services/disputeresolutionservices/arbitration?_afzWindowId=i62cy7yy5_1&_afzLoop=1125777488189414&_afzWindowMode=0&_adf.ctrl-state=i62cy7yy5_4

² Blackaby, N., Partasides, C., Redfern, A., & Hunter, J. M. H. (2009). *An Overview of International Arbitration*. Oxford University Press 2009, 1 – 83. Retrieved from www.kluwarbitration.com/print.aspx?ids=Ch1-ipn26303

arbitration.³ One of the roles of the arbitral tribunal is that it will give a decision at the end of the arbitration proceeding. The definition of “Award”, as stated in the Arbitration Act 2005, is “a decision of the arbitral tribunal on the substance of the dispute and includes any final, interim or partial award and any award on costs or interest but does not include interlocutory orders”. In order to improve the enforceability of the arbitration awards, a convention called “Convention on the Recognition and Enforcement of Foreign Arbitral Awards” (“New York Convention”) had been held in year 1958. To date, there is a total of 156 countries signed the convention.

The main determination of New York Convention is “to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards.”⁴ Through this Convention, the foreign arbitral awards are now widely respected and recognised all over the world. Subsequently, most of the countries in the world are adopting a pro-arbitration and pro-enforcement policy in relation to the arbitral awards especially those foreign arbitral awards.

1.2 Statement of Problem

As a signee of the New York Convention, our country had agreed to the other State that Malaysia will recognise and enforce all awards made by foreign arbitral tribunal without query on the merits of the dispute.⁵ However, according to Article V (2) of the 1958 New York Convention and Article 36(1)(b)(ii) of the UNCITRAL

³ Kenton, M., & Hirst, P. (2015). Advantages of International Commercial Arbitration. The International Comparative Legal Guide to: International Arbitration 2015, 20–24.

⁴ UNCITRAL. (n.d.). Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), from http://doi.org/http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html

⁵ Sundra Rajoo. (2016). International Commercial Arbitration - Basic Concepts and Introduction to Practice and Procedure.

Model Arbitration Law, the court can refuse to enforce a foreign arbitration award in the event that the award is somehow conflicting with public policy of the country.

In the context of Malaysian Law, Section 37(1)(b)(ii) of Arbitration Act 2005 which adopted UNCITRAL Model Law expressly stated that the award will be set aside if it is found to be conflicting with the Malaysian public policy. Besides that, in relation to the refusing of the enforcement of the arbitration awards, Section 39(1)(b)(ii) of Arbitration Act 2005 stated that that if the court found that an arbitral award is contrary to the public policy, the arbitration award will not be recognised. In addition, the word “public policy” is also appeared in Section 4(1) of the Arbitration Act 2005. In this section, it is clearly specified that the arbitration agreement that is conflicting with the public policy will not be allowed to proceed to the arbitration.

Therefore, it can be concluded that the reason of conflicting with public policy is really powerful and useful in order to set aside or refuse to recognise an arbitral award. It can be an ultimate right and control for the local court on the arbitration process and award.⁶ Furthermore, it had been observed that public policy is usually become the defence of the losing party in order to set aside or refuse the recognition of the arbitral award.⁷

However, the Arbitration Act 2005 and New York Convention, as well as UNCITRAL Model Law, have never specified the definition of the public policy. Generally, the definition of public policy will be interpreted by the national court and the judge itself.⁸ As a result, it varies from countries to countries and developed now and then.⁹ For example, the issue of gambling and casino may be varied among the

⁶ Sheppard, A. (2004). Public Policy and the Enforcement of Arbitral Awards. *Transnational Dispute Management (TDM)*, 1(1).

⁷ Jabatan Peguam Negara. (2012). Judicial Interpretation on the Public Policy Exception to the Enforcement of Arbitral Award. Retrieved July 20, 2016, from <http://agc-blog.agc.gov.my/agc-blog/?p=1398>

⁸ Sattar, S. (2011). Enforcement of Arbitral Awards and Public Policy: Same Concept, Different Approach? *Transnational Dispute Management Journal*, 8(5).

⁹ Redfern, A., & Hunter, M. (2004). *Law and Practice of International Commercial Arbitration* (4th Edition). London: Sweet & Maxwell Limited

country while some of the countries might claim that the contracts that are related to the gambling or casino will be considered as a normal transaction. However, there are some other countries may rule that the arbitral awards that are arising from contracts in relation to gambling or casino will be conflicting with public policy. Therefore, the ground of contrary to public policy is always being considered as “unruly horse” since it has a very unexpected scope.¹⁰ This is shown in the case of *Richardson v Mellish*¹¹ where the learned judge stated that:

“It is a very unruly horse, and when once you get astride it, you never know where it will carry you. It may lead you from sound law. It is never argued at all, but when other points fail.”

The meaning of public policy had been discussed in the case of *Renusagar Power Plant Co. Ltd vs General Electric Co.*¹² In this case, after the discussion, the court opined that it is tough to construe the actual meaning of public policy by saying that:

“It is obvious that since the Act is calculated and designed to sub serve the cause of facilitating international trade and promotion thereof by providing for speedy settlement of disputes arising in such trade through arbitration, any expression or phrase occurring therein should receive, consisting with its literal and grammatical sense, a liberal construction.”

However, the general approach that might be used by the court in relation to the definition of public policy is that the court will take a very narrow approach in relation to the pro-arbitration and pro-enforcement policy practised nowadays. This can be

¹⁰ Tweeddale, A. G. (2000). Enforcing Arbitration Awards Contrary to Public Policy in England. *The International Construction Law Review*, 160–174

¹¹ (1824) 2 Bing 229

¹² AIR 1994 SC 860

clearly shown in many cases such as the case of *A v R*,¹³ *Karaha Bodas Co LLC v Perusahaan Pertambangan Minyak dan Gas Bumi Negara (Pertamina)*,¹⁴ *Hebei Import & Export Corp v Polytek Engineering Co Ltd*,¹⁵ *Parsons & Whittemore Overseas Co Inc v Societe Generale de L'Industrie du Papier (Rakta)*¹⁶ and *PT Asuransi Jasa Indonesi (Persero) v Dexia Bank SA*.¹⁷

Recently, in the case of *Open Type Joint Stock Company Efirnoye (“EFKO”) v. Alfa Trading Ltd*,¹⁸ the Malaysian High Court takes the same approach of the other courts and held that the provision of “contrary to the public policy” should construe narrowly and not be used as an excuse to reopen the matter settled in the arbitration.

However, despite the narrow approach on the public policy exception, in the case of *Equitas Limited v Allianz General Insurance Company (Malaysia) Berhad*¹⁹ and *Sami Mousawi v Kerajaan Negeri Sarawak*,²⁰ the court somehow ever invokes the principle of “contrary to public policy” and refused to enforce the arbitration awards.

1.3 Research Questions

The issue discussed earlier brought to the following questions:

1. What are the circumstances that will be considered as contrary to public policy when the court is dealing with an arbitration award?

¹³ [2010] 3 HKC 67

¹⁴ [2007] 5 HKC 91

¹⁵ (1999) 2 HKCFAR 111

¹⁶ (1974) 508 F 2d 969

¹⁷ [2007] 1 SLR (R) 597

¹⁸ [2012] 1 CLJ 323, HC

¹⁹ [2009] MLJU 1334

²⁰ [2004] 2 MLJ 414

1.4 Research Objective

The objective of this research is to identify the circumstances that will be considered as contrary to public policy.

1.5 Scope of Research

This research is limited to the case reported in Malaysia, as reported in Malayan Law Journal and Malayan Law Unreported Journal; Hong Kong, as reported in Hong Kong Legal Information Institute; United Kingdom, as reported in Lexis Nexis and Australia, as reported in Australasian Legal Information Institute. There is no limitation on the time frame for the case selection. Besides, the case that had been selected as primary data for the analysis are the case that being held as contrary to public policy.

1.6 Significance of the Research

The issue of public policy is very important and it will determine the level of pro-arbitration or the level of arbitration-friendly in Malaysia. In the course of developing Malaysia as an international arbitration hub, this issue should be identified and settled.

Besides, the practitioners can use this study as a guideline in order to review their arbitration awards and also prepare for the reasons for challenging an arbitration award.

In addition, the study can be used by the arbitrator in order to act as a reminder so that the award prepared by them will be adequate and sustainable. It is to remind that if the arbitrator made an arbitral award, which is conflicting with public policy and had been set aside by the court, the arbitrator may be considered as misconduct.

Lastly, this research is important for the lecturers, students, and also other researchers in term of contributing to the body of knowledge and let others do further research in order to improve our legal system.

1.7 Research Methodology

The research methodology is the “...systematic way to solve a problem”.²¹ The aim to produce research methodology is to prepare a work plan for the research. In this research, there are five stages: identification of research topic and scope of study, literature review, data collection, data analysis and recommendation and conclusion.

Stage 1: Development of Research Proposal

In this stage, some preliminary studies are done by reading the current and available journals, books, newspaper and bulletins. The aim of this stage is to indicate the research topic and the field that is worth to be researched. By understanding the real situation and problems in the industry and based on interest, the research field can be determined. After the research field is identified, the problem statements and the

²¹ Rajasekar, S., Philominathan, P., & Chinnathambi, V. (2013). *Research Methodology*. Tamilnadu

research objectives are established before the scope of study is set up. Next, the significance of study has been identified to ensure the research is beneficial. Finally, outline research methodology and chapter organisation for the research is drafted.

Stage 2: Development of Theory Framework (Literature Review)

Literature review is a very important foundation for the whole research. The main aim of literature review is to enhance knowledge of the researcher regarding the research field. Lots of references and studies have been made on the previous related study. By referring critical and resourceful information from various types of sources such as books, journals, articles, reports, proceedings and previous dissertations, the researcher can better estimate possible outcomes of the research and thus formulate the questionnaire or interview questions based on those possible outcomes. In corresponding to the research objectives, the primary information that studied by the researcher are the definition of public policy, categories of public policy, characteristics of public policy, steps in judicial review and circumstances that are contrary to public policy.

Stage 3: Data Collection

Data collection is a process to obtain useful data from various relevant sources. Through several proper instruments or methods of data collection, a set of raw materials can be obtained for the data analysis. For this research, the primary data that should be collected are the case laws which reported in Malaysia, Hong Kong, United Kingdom and Australia which had been held as contrary to public policy.

Stage 4 Data Analysis

After the data is collected, the analysis is carried out based on the raw data. Through the analysis, the objectives are supposed to be achieved. For this research, the data analysis method used is the content analysis. The rationale of using this data analysis method in this research is due to the type of primary data which is the case laws. In addition, to advance the outcome and result of the data analysis, Nvivo 11 is used by the researcher.

Stage 5: Recommendation and Conclusion

Lastly, the recommendation and conclusion are prepared according to the results that were found in the fourth stage. Besides, the limitation of the study is also discussed at this stage.

1.8 Chapter Organisation

The chapter organisation in this research is shown as below:

- Chapter 1 as the introduction to the research defined the scaffolding and gave a general view for the readers to the situation and development of the principle of public policy exception in arbitration. Some relevant issues are stated, followed by research questions and objectives derived from the issues stated. In addition, the scope and significance of study are identified in this chapter.

- Chapter 2 is the literature review. All the theories related to the topic of research are stated and analysed in this chapter. The relevant theory included definition of public policy, categories of public policy, steps in judicial review and circumstances that are contrary to public policy.
- Chapter 3 is the analysis of the data collected. All the data collected are analysed according the research objectives and presented in this chapter. The main data of the research is the case laws reported in Malaysia, Hong Kong, United Kingdom and Australia.
- Chapter 4 is the conclusion and recommendations. Through the whole process of research, the results are summarised based on the objectives. Furthermore, the recommendations and limitation of the study are identified in this chapter.

1.9 Conclusion

In this chapter, the researcher had discussed the background of study, problem statement, research question, research objective, scope of the study, significance of study, research methodology and chapter organisation for this study. From the background of study, it is shown that international arbitration is getting popular and the enforcement of the arbitral award is becoming easier by the New York Convention. The problem statement had demonstrated that the definition of public policy and the circumstances that are contrary to public policy are still unclear. The research objective of this study is to identify the circumstances that are contrary to public policy. The research is carried out in five stages which are including identification of research topic and scope of study, literature review, data collection, data analysis and recommendation and conclusion. Furthermore, the research is divided into four chapters.

LIST OF REFERENCES

- American Arbitration Association. (n.d.). Arbitration, 2015–04–20. Retrieved from https://www.adr.org/aaa/faces/services/disputeresolutionservices/arbitration?_afzWindowId=i62cy7yy5_1&_afzLoop=1125777488189414&_afzWindowMode=0&_adf.ctrl-state=i62cy7yy5_4
- Blackaby, N., Partasides, C., Redfern, A., & Hunter, J. M. H. (2009). An Overview of International Arbitration. *Oxford University Press 2009*, 1 – 83. Retrieved from www.kluwerarbitration.com/print.aspx?ids=Ch1-ipn26303
- Gaillard, E., & Bermann, G. (2016). Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York). Retrieved July 28, 2016, from http://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=729&opac_view=-1
- Glusker, E. (2010). Arbitration Hurdles Facing Foreign Investors in Russia: Analysis of Present Issues and Implications, *10*(3), 595–622.
- Hunter, M., & Silva, G. C. E. (2003). Transnational Public Policy and its Application in Investment Arbitration. *The Journal of World Investment*, *4*(3), 368–378.
- IBA Subcommittee on Recognition and Enforcement of Arbitral Awards. (2015). Report on the Public Policy Exception in the New York Convention, (October), 1–19.
- International Law Association. (2002). Final Report on Public Policy as a Bar to Enforcement of International Arbitral Awards.

- Jabatan Peguam Negara. (2012). Judicial Interpretation on the Public Policy Exception to the Enforcement of Arbitral Award. Retrieved July 20, 2016, from <http://agc-blog.agc.gov.my/agc-blog/?p=1398>
- Jenkins, J. (2014). *International Construction Arbitration Law* (Second Edi). Wolters Kluwer Law & Business.
- Kenton, M., & Hirst, P. (2015). Advantages of International Commercial Arbitration. *The International Comparative Legal Guide to: International Arbitration 2015*, 20–24.
- Lalive, P. (1986). Transnational (or Truly International) Public Policy and International Arbitration. *ICCA Congress Series*, 3, 258–318.
- Ma, W. (2005). *Public Policy in The Judicial Enforcement of Arbitral Awards: Lessons for and from Australia*. Bond University.
- Merriam Webster. (n.d.). Constitutional. Retrieved August 4, 2016, from <http://www.merriam-webster.com/dictionary/constitution>
- Mistelis, L. (2000). “Keeping the Unruly Horse in Control” or Public Policy as a Bar to Enforcement of (Foreign) Arbitral Awards, 248–253.
- Mustill, & Boyd. (1989). *The Law and Practice of Commercial Arbitration in England* (2nd Editio). London.
- Pryles, M. (2007). Reflections on Transnational Public Policy. *Journal of International Arbitration*, 6(1).
- Rajasekar, S., Philominathan, P., & Chinnathambi, V. (2013). *Research Methodology*. Tamilnadu.
- Razumov, K. (1986). Public Policy as a Condition for Recognition and Enforcement of Foreign Court Judgments and Arbitral Awards in the USSR. *ICCA Congress Series No. 3*, 348–352.
- Redfern, A., & Hunter, M. (2004). *Law and Practice of International Commercial Arbitration* (4th Editio). London: Sweet & Maxwell Limited.

- Ryabinin, A. (2009). *Procedural Public Policy in Regard to the Enforcement and Recognition of Foreign Arbitral Awards*. Central European University.
- Sattar, S. (2011). ENFORCEMENT OF ARBITRAL AWARDS AND PUBLIC POLICY: SAME CONCEPT, DIFFERENT APPROACH? *Transitional Dispute Management Journal*, 8(5).
- Schaner, L. (2010). Due Process in International Commercial Arbitration. In *12th International Arbitration Day*. Retrieved from <https://books.google.co.uk/books?id=ZM5MAgAAQBAJ&printsec=frontcover&dq=Due+Process+in+International+Arbitration&hl=en&sa=X&ved=0CCkQuwUwAGoVChMIorG99uSVyQIVQQsaCh04rgVo#v=onepage&q&f=false>
- Sheppard, A. (2004). Public Policy and the Enforcement of Arbitral Awards. *Transnational Dispute Management (TDM)*, 1(1).
- Sundra Rajoo. (2016). *International Commercial Arbitration - Basic Concepts and Introduction to Practice and Procedure*.
- Sundra Rajoo, & Davidson, W. (2007). *The Arbitration Act 2005: UNCITRAL Model Law as Applied in Malaysia*. Selangor: Sweet & Maxwell Asia.
- Trimble, M. (2009). The Public Policy Exception to Recognition and Enforcement of Judgments in Cases of Copyright Infringement.
- Tweeddale, A. G. (2000). Enforcing Arbitration Awards Contrary to Public Policy in England. *The International Construction Law Review*, 160–174.
- UNCITRAL. (n.d.). Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention"); http://doi.org/http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html
- UNCITRAL. (2012). *Digest of Case Law on the Model Law on International Commercial Arbitration*. New York: United Nations Publication.
- UNCITRAL. (2014). UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York , 1958).

Van den Berg, A. J. (1981). *The New York Arbitration Convention of 1958*. Kluwer Law and Taxation Publishers.

Merriam-Webster. (n.d.). audi alteram partem. Retrieved August 1, 2016, from [http://www.merriam-webster.com/dictionary/audi alteram partem](http://www.merriam-webster.com/dictionary/audi%20alteram%20partem)