

DECLARATION

COMPARATIVE STUDY OF ARBITRATION ACT 2005 AND 1952 -  
ARBITRATION AWARD, ENFORCEMENT AND CHALLENGE

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## ABSTRAK

Akta Timbang Tara 2005 diluluskan oleh Parlimen pada hujung tahun 2005 dan berkuatkuasa pada 15<sup>th</sup> March 2006. Akta ini dikatakan berdasarkan kepada UNICITRAL Model Law. 2005 Act ini dirangka oleh satu “ad hoc arbitration committee” yang dlantikkan oleh Masjils Peundangan Malaysia selepas menganalisisasikan peruntukan di dalam Akta tersebut berpandukan kepada bidangkuasa yang mana telah berjaya mengaplikasikan UNICITRAL Model Law untuk kegunaan dan penterjemahan perundangan. Akta baru diperkenalkan supaya Malaysia boleh memenuhi permintaan global untuk memberi keseragaman dan keharmonian dalam undang-undang timbang. UNICITRAL Model Law ini digunapakai disebabkan ia dapat menyeragamkan undang-undang timbang tara di Negara kita dengan 63 negara yang lain di dunia sekaligus dapat meransangkan pelaburan asing ke Negara kita memandangkan terdapat kesamaan pada kaedah menangani pertikaian. Akta baru ini, Akta Timbang Tara 2005 memberi kuasa autonomi kepada parti-parti yang terlibat di dalam kontrak untuk memilih di bawah perundangan apa dan di tempat mana yang mereka mahu pertikaian itu diselesaikan. Ia juga memberikuasa bahawa suatu award itu adalah muktamd dan hanya memberi keadaan yang terhad dimana award itu boleh diketepikan. Timbang Tara merupakan cara yang paling berkesan di dalam menanggapi masalah pertikaian komersial di mana ia adalah murah dan cepat. Parti-parti terlibat boleh menjalankan perniagaan seperti biasa daripada terperangkap di dalam perbicaraan mahkamah yang sangat merumitkan, menyelirukan, lambat dan menelankan perbelanjaan yang besar.

## ABSTRACT

Arbitration Act 2005 was passed by the Parliament during the late of 2005 and come into force of the Act on 15<sup>th</sup> March 2006. The Act is said to be base on UNICITRAL Model Law. The drafting of the 2005 Act is by ad hoc arbitration committee set up by the Malaysian Bar Council after analysed the provisions of the Act with reference to those of other jurisdictions which have successfully implemented the UNICITRAL Model Law for practical lessons and judicial interpretation. New Act is introduced so that Malaysia could be in tune with the global need for the unification and harmonization of the arbitral laws that is equipped with familiar and arbitral environment. UNICITRAL Model Law is adopted because it harmonise our arbitration laws with those of 63 other countries in the world which had already adopted it in order to stimulate foreign direct investment since there is a familiar dispute resolution mechanism. The new Act, Arbitration Act 2005 recognised the autonomy of the p[arties to any contract to the extent of permitting them to choose by what law and in what venue their dispute will be resolved. It also facilitated the finality of awards by allowing the parties to determine in what limited circumstances the validity of an award can be challenged. Arbitration is the best mechanism to solve commercial dispute as it is cheap and fast. The party could get back to business as usual instead of caught in a lawsuit which is complicated, confuse, a lot of delay and result in a high legal cost.