THE ARBITRABLE DISPUTES IN MALAYSIAN CONSTRUCTION INDUSTRY

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DECLARATION

I declare that this thesis entitled “The Arbitrable Disputes in Malaysian Construction Industry” is the result of my own research except as cited in the references. The thesis has not been accepted for any degree and is not concurrently submitted in candidature of any other degree.

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Date : 10th SEPTEMBER, 2012
DEDICATION

Especially to...

My beloved parents, my sister, my brothers and all my friends for their helps and understandings.

Thanks for Everything!!
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ABSTRACT

Arbitration had been recognised as the common dispute resolution mechanism in the construction industry. The critical issue which regularly arises in the arbitration was arbitrator’s jurisdiction such as arbitrable disputes issue as the arbitrator’s award can be challenged if the subject-matter of dispute was not within the arbitrator’s jurisdiction. Hence, the purpose of this study had determined the arbitrator’s jurisdiction particular to the subject matter of arbitrable disputes in the Malaysian construction industry. Jurisdictional issue of arbitrable disputes in arbitration is a preliminary matter that must be decided prior to arbitration proceeding otherwise it will generate another dispute to be challenged in the court of litigation. This research had reviewed the relevant case law journals and the court’s decisions where courts have interpreted provisions in their legislations with regards to arbitrable disputes. There are seven principles on the arbitrable dispute which can be deduced through the analysis of the 16 legal cases. The principles of the arbitrable disputes highlight that amongst others a dispute which involve a third party is not an arbitrable dispute due to the principle of privity of contract. Furthermore, the issue on point of law is not an arbitrable dispute but it may be referred to High Court as the arbitration is aimed to solve technical problem. In addition, a mere claim on a certified amount or admitted submission does not constitute a valid arbitrable dispute. The arbitrable dispute was mainly depends on the terms under the arbitration agreement and indirectly it is within the ambit of the parties to decide on. Moreover, a refusal to response or reply on a claim can lead to the existence of the arbitrable dispute. Arbitrable dispute deems to occur when the dispute crystallised on the date of submission. Arbitrable dispute can also arise in the circumstances where the submission is to be decided on the question of right or wrong whereby either one of the party is in the position of right allegation or otherwise and vice versa. In conclusion, this study established general guidelines on the arbitrable disputes to expose the parties on the reference of the right dispute to be arbitrated.
ABSTRAK

Lazimnya, timbangtara merupakan penyelesaian pertikaian yang diaplikasikan dalam industri pembinaan. Isu kuasa penimbangtara contohnya seperti bidang kuasa pertikaian merupakan satu isu kritikal kerana keputusan penimbangtara boleh dibatalkan jika subjek pertikaian adalah di luar kuasa penimbangtara. Justerus itu, penyelidikan ini dijalankan untuk mengkaji kuasa penimbangtara terutamanya dalam subjek kepemimbangtaranan pertikaian dalam industri pembinaan di Malaysia. Kuasa penimbangtara merupakan isu yang perlu dikenalpasti sebelum memulakan mana-mana prosiding kerana ia mungkin mengakibatkan lebih banyak pertikaian jika dibantah. Penyelidikan ini telah mengkaji semula kes-kes mahkamah berkaitan dengan industri pembinaan dalam hal kepemimbangtaranan pertikaian melalui keputusan hakim mengenai kepemimbangtaranan pertikaian. Terdapat tujuh prinsip kepemimbangtaranan pertikaian yang ditempuh melalui 16 kes mahkamah yang dikumpul dalam penyelidikan ini. Ia boleh diringkaskan seperti berikut:-