

# Whole arbitration award or just dispositive portion: what should be registered with the courts?

26 May 2020 | Contributed by [Gan Partnership](#)

[High court decision](#)  
[Court of Appeal decision](#)  
[Federal Court decision](#)  
[Comment](#)

In *Siemens Industry Software GmbH & Co KG v Jacob & Toralf Consulting Sdn Bhd*,<sup>(1)</sup> the appellant commenced arbitration against a group of respondents in Singapore claiming, among other things, a sum in excess of €3 million. The arbitral tribunal dismissed the appellant's claim in its entirety and awarded costs, fees and expenses in the respondents' favour.

## High court decision

The respondents filed an originating summons pursuant to Section 38 of the Arbitration Act 2005 in a high court to enforce and recognise the entire award as a high court judgment. The appellant did not file a setting-aside application pursuant to Section 39 of the Arbitration Act but instead opposed the originating summons on, among others, the ground that only the dispositive portion of the award (which set out the orders or reliefs) – and not the entire award – could be registered.

The court allowed part of the originating summons, finding that only the dispositive portion of the award and not the entire award could be recognised and enforced.

The court's decision was based on the following grounds:

- According to the meaning of 'award' under Section 2 of the Arbitration Act and the dictionary definition of 'decision', the latter means the arbitral tribunal's final conclusion, excluding reasonings leading to this conclusion. Thus, the appellant had failed to comply with the mandatory formal requirements under Section 38 of the Arbitration Act.
- An enforcement court should not go beyond the matters which have been dealt with in arbitration.
- The registration of the entire award would contradict the principles of confidentiality in arbitration.
- The approach under the Reciprocal Enforcement of Judgment Act 1956 (REJA), which concerns the registration of the operative part of a foreign judgment, applied.<sup>(2)</sup>

## Court of Appeal decision

The respondents appealed to the Court of Appeal, which set aside the high court's order.

The Court of Appeal's decision was based on the following grounds:

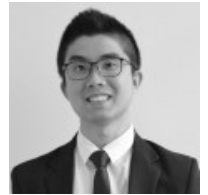
- Upon complying with the formal requirements under Section 38 of the Arbitration Act, an award should, by right, be registered, unless grounds against registration under Sections 38 or 39 of the Arbitration Act apply. No such grounds were established in this case.
- If only the dispositive part of an award is registered, the enforcement court is deprived of the advantage of understanding the arbitral tribunal's reasoning.
- Section 38 of the Arbitration Act does not allow partial enforcement of an award.
- The high court had no jurisdiction to refuse to register the award in question on the grounds of confidentiality as this was not provided for under Section 39 of the Arbitration Act.
- The REJA does not apply to arbitration awards.<sup>(3)</sup>

## Federal Court decision

The appellant was granted leave to appeal the Court of Appeal's decision on the following question of law:

AUTHOR

[Lee Xin Div](#)



*Whether for the purposes of an application made under section 38 of the Arbitration Act 2005 and Order 69 rule 8 of the Rules of Court 2012 ("Recognition and Enforcement Application"), the recognition and enforcement of an arbitration award by way of entry as a judgment of the High Court of Malaya ought to relate only to the disposition of the said award and not the entire award containing the reasoning, evidentiary and factual findings of the arbitral tribunal?*

The Federal Court answered this question in the affirmative and allowed the appeal. It held that the high court had not erred in recognising and enforcing only the dispositive portion of the award as a high court judgment.

The Federal Court's decision was based on the following grounds:

- Section 38 of the Arbitration Act aims to enable the successful party to an arbitration to convert the arbitral award into a judgment for the purposes of invoking the various enforcement methods available. The phrase "in terms of the award" indicates that only the dispositive portion is to be enforced. There is no issue of bifurcation. The difference in use of the word 'shall' in the Arbitration Act and 'may' in foreign arbitration legislations is irrelevant. The requirement to produce the entire award is purely evidentiary, which does not necessarily entail the conversion of the entire award into a judgment.
- Section 2 of the Arbitration Act defines the term 'award' as "a decision of the arbitral tribunal on [as opposed to and] the substance of the dispute".
- A dispositive award is akin to a judgment, whereas an entire award is akin to grounds of judgment. Thus, it is illogical that the whole award containing the findings and analysis of the arbitral tribunal is to be enforced. An analogy may be drawn from the approaches under the REJA, Order 42 Rule 5 and Form 75 of the Rules of Court 2012.
- The arbitral tribunal's reasoning or findings would be relevant only in considering the merits of the award (eg, a setting-aside application under Section 39 of the Arbitration Act). An enforcement court in an application made pursuant to Section 38 of the Arbitration Act is not concerned with the merits of the award. If the formal requirements under Section 38 of the Arbitration Act are satisfied, the registration of the award is granted by right.
- The registration of the entire award would undermine the confidentiality of the arbitration proceedings. **(4)**

## **Comment**

The analogy drawn by Chief Justice of Malaysia Tengku Maimun that the dispositive portion of an arbitration award is akin to a court's judgment or order, whereas the entire award is akin to grounds of judgment, makes legal, practical and logical sense. An enforcement court in, for example, garnishee, writ of seizure and sale or winding-up proceedings would ordinarily be concerned only with the actual order or judgment (or dispositive portion of the award), rather than the grounds of judgment (or the entire award). The chief justice of Malaysia affirmed the practice that, in an application for recognition and enforcement under Section 38 of the Arbitration Act, only the dispositive portion of the award will be incorporated as prayers in the originating summons.

*For further information on this topic please contact [Lee Xin Div](mailto:xindiv@ganlaw.my) at Gan Partnership by telephone (+603 7931 7060) or email ([xindiv@ganlaw.my](mailto:xindiv@ganlaw.my)). The Gan Partnership website can be accessed at [www.ganlaw.my](http://www.ganlaw.my).*

## **Endnotes**

(1) *Siemens Industry Software GmbH & Co KG v Jacob & Toralf Consulting Sdn Bhd* [2020] 1 LNS 249, 27 March 2020.

(2) *Jacob & Toralf Consulting Sdn Bhd v Siemens Industry Software GmbH & Co KG* [2018] 1 LNS 460. Presided by Judicial Commissioner Khadijah Idris.

(3) *Jacob & Toralf Consulting Sdn Bhd v Siemens Industry Software GmbH & Co KG* [2020] 2 MLJ 537. Presided by Vernon Ong JCA. The other two members of the panel were Hasnah Hashim and Harmindar Singh JJCA.

(4) Presided by the chief justice of Malaysia. The other four members of the panel were Federal Court Judges Mohd Zawawi Salleh, Idrus Harun, Nallini Pathmanathan and Abdul Rahman Sebli.

References were also made to *Arbitration in Malaysia: A Practical Guide* by Tun Ariffin Zakaria, Datuk Professor Sundra Rajoo and Philip Koh; *Atkins Court Forms Malaysia in Civil Proceedings*; Originating Summons Number LBN-24-8/7-2013 between *CTI Group v International Bulk Carrier SPA*; Civil Suit 24 ARB-2-08/2015 between *Kerajaan Negeri Selangor v Triumph City Development Sdn Bhd*; *Caucedo Investments Inc and Anor v Saipem SA* [2013] EWHC 3375 (TCC); *LR Aivonics Technologies Limited v The Federal Republic of Nigeria* [2016] EWHC 1761; and *Denmark*

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).