MALAYSIA

Response to the questionnaire from the International Law Commission's Special Rapporteur on the topic "Settlement of international disputes to which international organisations are parties"

12 May 2023

This note provides the response of the Government of Malaysia to the Commission's questionnaire on the topic "Settlement of international disputes to which international organisations are parties", pursuant to the request from the Office of Legal Affairs of the United Nations vide Note Verbale no. LA/COD/73 dated 2 December 2022 for information and views from Member States and international organisations for the preparation of a memorandum on the practice of States and international organisations which may be of relevance to the Commission's future work on the above-mentioned topic.

QUESTION 7

Are there types of disputes that remain outside the scope of available dispute settlement methods?

1. The legal system provides resolutions for many different types of disputes. Some disputants will not reach an agreement through a collaborative process. Some disputes need the coercive power of the State to enforce a resolution. Perhaps more importantly, many people want a professional advocate when they become involved in a dispute, particularly, if the dispute involves perceived legal rights, legal wrongdoing, or threat of legal action against them. The most common form of judicial dispute resolution is litigation.

2. However, due to the antagonistic nature of litigation, collaborators frequently opt for solving disputes privately. Alternative dispute resolution ("ADR") is an extrajudicial process used to resolve a conflict between and among individuals, business entities, government agencies and States, such as arbitration, collaborative law, and mediation. In this regard, Malaysia has set a judicial system that would cater for all types of disputes.

<u>Litigation</u>

3. In general, a dispute may be resolved through civil litigation by commencing a civil action in court. A civil action is normally commenced by the plaintiff either by way of a writ or by an originating summons. In addition to that, Judicial Review is also a Court process for dispute settlement by which decisions of the government or government agencies can be challenged in the High Court by persons affected. In principle, the court in a judicial review application is concerned with the legality of the decision-making process of the executive and not with the merits of the decision.

4. The jurisdiction granted to Courts hearing and trying civil actions is provided for in the Courts of Judicature Act 1964 [*Act 91*] and Subordinate Courts Act 1948 [*Act 92*]. The rules governing the procedures in Courts are governed by their respective rules of procedures as follows: -

(a) Rules of Court 2012;
(b) Rules of the Court of Appeal 1994; and
(c) Rules of the Federal Court 1995.

5. In order to ensure smooth operations of the judicial system in Malaysia while at the same time providing better judicial service in terms of expertise, a few 'special' courts with specific expertise in a particular field of law were established. The existing special designated courts in Malaysia, inter alia, are as follows: -

(a) Construction Court;
(b) Cyber Court;
(c) Commercial Court;
(d) Intellectual Property Court; and
(e) Admiralty Court.

6. For a less formal and faster adjudication process of a specific type of dispute albeit being more administrative in nature, Malaysia has established a few tribunals that are accessible to the public without having to go through complicated court procedures. The tribunals established in Malaysia are, inter alia, as follows: -

(a) Tribunal for Consumer Claims under Consumer Protection Act 1999 [*Act 599*];
(b) Strata Management Tribunal under Strata Management Act 2013 [*Act 757*]; and
(c) Cooperative Tribunal under Cooperative Societies Act 1993 [*Act 502*].

7. Notwithstanding the above, Malaysia has long introduced ADR as alternatives for conventional court litigation. Generally, civil litigation can be regarded as a lengthy process. Sometimes, litigation in any particular jurisdiction may not be suitable in case of disputes between parties of two different jurisdictions because one of them will not be familiar with the system of administration of justice in the particular jurisdiction and may even not have trust in the system in place in that jurisdiction. In these cases, the difficulties may be overcome in ADR. It is always beneficial when the parties are able to reach an amicable settlement or resort to ADR to resolve their disputes or differences.

8. There are three ADR mechanisms applicable to the Malaysian legal fraternity, namely: -

(i) mediation or conciliation;
(ii) arbitration; and
(iii) adjudication.

Mediation or Conciliation

9. In practice, for court-annexed mediation, courts in Malaysia encourage parties in disputes to initiate mediation at the earliest stage possible as an attempt to settle disputes amicably without going through the normal court's procedures. This court-annexed mediation program will be integrated with the court process to ensure mediation is available to all litigants. A Mediation Centre was established in Kuala Lumpur Court Complex where High Court Judges, Session Court Judges and Magistrate may direct parties to mediate a settlement. In some occasions, mediation is also conducted by the presiding judges.

10. The Malaysian Mediation Centre ("MMC") was established in the year 1999, under the auspices of the Bar Council with the objective of promoting mediation as a means of alternative dispute resolution and providing a proper avenue for successful dispute resolutions. This was the end result of the recommendations of the Alternative Dispute Resolution Committee set up by the Bar Council in 1995 to look into the possibility of establishing a world class Mediation Centre in Malaysia.

11. In addition to the above, Malaysia had also legislated Mediation Act 2012 [*Act 749*] to encourage and promote mediation as a method of alternative dispute resolution by providing for the process of mediation, thereby facilitating the parties in disputes to settle disputes in a fair, speedy and cost-effective manner. Pursuant to section 2(a) of Act 749, mediation is widely applicable to various personal and commercial disputes save for the following disputes or court proceedings:

(a) Constitutional law;
(b) Prerogative writs;
(c) Temporary/ permanent injunctions;
(d) Election petitions under Election Offences Act 1954;
(e) Proceedings under the Land Acquisition Act 1960;
(f) Judicial review;
(g) Appeals;
(h) Revision;
(i) Native Court; and
(j) Any criminal matter

12. Generally, parties are more likely to accept and comply with the settlement agreement as mediation focuses on and addresses the needs and interests of the parties. Therefore, the dispute between the parties is more effectively resolved by way of mediation than litigation. In addition, mediation is a method that is more favourable to parties who wish to preserve family or business relationships. Even if the parties fail to reach an amicable settlement at the end of mediation, the parties may proceed to pursue their respective rights in litigation or arbitration.

13. Apart from that, all disclosure, concessions, admissions and communication made during the entire process of mediation are strictly "without prejudice", confidential and remain known only to the parties and the mediator involved. However, parties may waive the without prejudice privilege where both parties consent to the waiver.

Arbitration

14. Another ADR tool is arbitration as governed under Arbitration Act 2005 [*Act 646*]. Act 646 provides a clear and efficient process for conducting domestic and international arbitrations in Malaysia. Arbitration is a private and judicial determination of a dispute by an independent third party.

15. One significant advantage of arbitration is the guarantee of confidentiality and privacy as opposed to court proceedings which are generally open to the public. Privacy and confidentiality may be important in many business transactions, particularly where trade secrets are involved in the subject of dispute between the parties. In the case of court litigations, it may not be able to protect such confidentiality from being disclosed to the public.

16. The importance of arbitration does not merely stop with commercial litigation. It may be the only solution in nation-to-nation disputes. In such cases, the dispute cannot be practically litigated in the courts of either country, as one nation is unlikely to accept the decision made by the court of another nation. The only way to overcome this is perhaps by submitting the dispute to an arbitral tribunal made of arbitrators who have no nexus to either country.

17. The difference between mediation and arbitration is that parties maintain full control of the workings and outcome of the mediation. On the other hand, in arbitration the arbitrator decides the outcome of the proceedings and the parties are bound by that decision. Arbitration is similar to court proceedings in that the arbitrator will decide the dispute. The difference is that parties can decide on the appointment of the arbitrator and the rules and procedures to be applied in the arbitration.

18. Parties to a contract may agree through an arbitration clause to refer any dispute that might arise in respect of that contract to arbitration. Parties may also agree to refer an existing dispute to arbitration even though there was no such prior agreement between them. The Arbitration Act 2005 is the law governing arbitration in Malaysia. The United Nations Commission on International Trade Law (“UNCITRAL”) Model Law on International Commercial Arbitrations has been adopted as part of the working provisions of the Act. Pursuant to the Arbitration Act 2005, the Asian International Arbitration Centre (Malaysia) (“AIAC”), formerly known as the Kuala Lumpur Regional Centre of Arbitration (“KLRCA”), is the default appointing body.

19. Malaysia has a long history of using arbitration as a dispute resolution mechanism and is considered a regional arbitration hub in Southeast Asia. In 1978, the Regional Centre for Arbitration Kuala Lumpur (“RCAKL”) was established under the auspices of the Asian-African Legal Consultative Organisation (“AALCO”). It was subsequently renamed as the Kuala Lumpur Regional Centre of Arbitration (“KLRCA”) in April 2010 and then to the AIAC in February 2018. RCAKL was the first regional centre established by AALCO in the Asia Pacific region to provide institutional support as a neutral and independent venue for the conduct of domestic and international arbitration proceedings.

20. RCAKL was also established pursuant to a host country agreement with the Government of Malaysia. Being a non-profit, non-governmental and independent international body, it was also notably the first arbitral centre in the world to adopt the UNCITRAL Arbitration Rules 1976.

Adjudication

21. In Malaysia, the Construction Industry Payment & Adjudication Act 2012 [*Act 746*] was enacted to facilitate regular and timely payment, and to provide a mechanism for speedy dispute resolution for construction contracts in respect of work done and services rendered through adjudication, as well as remedies for the recovery of payment.

22. Act 746 applies to every construction contract made in writing relating to construction work, which is also inclusive of the oil and gas industry and telecommunications, carried out wholly or partly within Malaysia and includes a construction contract entered into by the Government. “Construction contract” has been defined in Act 746 to include construction work contracts and consultancy services contracts. Additionally, Act 746 applies to both local and international contracts, provided the subject construction work is carried out wholly or partly in Malaysia. Act 746, however, does not apply to a construction contract entered into by an individual for any construction work in respect of any building which is less than four storeys high and which is wholly intended for his or her own occupation.

23. Adjudication has a judicial element in that the adjudicator hears both sides and decides the dispute. The main thing that distinguishes arbitration and litigation from adjudication is that arbitration and litigation are usually the last options resorted to only when parties are ready to terminate the contract. In contrast, adjudication is about getting a quick neutral decision on disputes relating to payments commonly arising in construction projects. It is a summary procedure and an interim solution which in theory should not stop or delay the progress of the contract or works.

24. In summary, the dispute settlements mechanism available in Malaysia is rather comprehensive and that various types of disputes have been covered under the law aside from the explicit exclusion of matters under public law namely tax law, criminal law, insolvency, and family law. Thus far, there are no other types of disputes that are known outside the above-mentioned dispute settlement methods.

QUESTION 8

Does your organisation have a duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character under the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Convention on the Privileges and Immunities of the Specialised Agencies, or an equivalent treaty? How in practice has your organisation interpreted and applied the relevant provisions?

25. Malaysia had ratified the 1946 Convention on the Privileges and Immunities of the United Nations ("**1946 Convention**") and the 1947 Convention on the Privileges and Immunities of the Specialised Agencies ("**1947 Convention**") on 28 October 1957 and 29 March 1962, respectively.

26. Due to the dualist nature of Malaysia's legal framework, domestic legislation must be enacted in order for international law, i.e. treaties or conventions to have an effect and to be operative in Malaysia. Therefore, without express incorporation into domestic law by an Act of Parliament following the ratification of a convention, the provisions of international obligations in the said convention do not have any binding effect[1].

27. Following Malaysia's ratification of the 1946 and 1947 Conventions, Malaysia had enacted the **International Organisations (Privileges and Immunities) Act 1992 [*Act 485*]** in which the 1946 and 1947 Conventions had been incorporated into the Act, for the purpose to give effect to both conventions in Malaysia. Sections 1A and 1B of Act 485 provide provisions as follows:

- ***Application of the Convention on the Privileges and Immunities of the United Nations***

*1A. The Articles set out in the **Seventh Schedule** (being Articles of the Convention on the Privileges and Immunities of the United Nations) **shall have the force of law in Malaysia**.*

- ***Application of the Convention on the Privileges and Immunities of the Specialised Agencies***

*1B. (1) The Articles set out in the **Eighth Schedule** (being Articles of the Convention on the Privileges and Immunities of the Specialised Agencies) **shall have the force of law in Malaysia**.*

28. Based on the above-mentioned provisions, both conventions have been incorporated into the Seventh and Eight Schedules of Act 485. It is observed that both Schedules had retained the original language used in the 1946 and 1947 conventions. Of this, both Schedules contained a chapter on the Settlement of Disputes which can be seen as follows:

[1] AIRASIA BHD v. RAFIZAH SHIMA MOHAMED ARIS [2015] 2 CLJ 510

"SEVENTH SCHEDULE

[Sections 1A and 6A]
ARTICLES OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS HAVING THE FORCE OF LAW IN MALAYSIA

…

Article VIII
SETTLEMENT OF DISPUTES

Section 29

The United Nations shall make provisions for appropriate modes of settlement *of –*

(a) ***disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party****;*
(b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

EIGHTH SCHEDULE

[Sections 1B and 6B]
ARTICLES OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALISED AGENCIES HAVING THE FORCE OF LAW IN MALAYSIA

…

Article IX
SETTLEMENT OF DISPUTES

Section 31

Each specialised agency shall make provision for appropriate modes of settlement *of-*

(a) ***disputes arising out of contracts or other disputes of private character to which the specialised agency is a party****;*
(b) disputes involving any official of a specialised agency who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with the provisions of section 22."

29. By referring to the above Schedules, it is observed that the duty to make provisions for appropriate modes of settlement arising out of contracts or other disputes of a private law character is imposed on the United Nations and specialised agencies.

30. In practice, even though under the law the duty to make provisions for appropriate modes of settlement is imposed on the United Nations and specialised agencies, Malaysia, through the Attorney General's Chambers of Malaysia (AGC), ensures that the clause regarding settlement of disputes be incorporated in the agreement between the Government of Malaysia and the United Nations or specialised agencies.

31. Malaysia's action and duty regarding this matter are in line with the principle underlined under Article 2(3) of the Charter of the United Nations whereby all Member States are obliged "to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." Further, Malaysia also respects the principle guided under Article 33 of the Charter of the United Nations which provides that the parties to any disputes which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial decision, resort to regional agencies or arrangements, or other peaceful means of their own choice.

QUESTION 9

Are there standard/ model clauses concerning dispute settlement in your treaty and/ or contractual practice? Please provide representative examples.

32. In practice, many treatises follow standardised Bilateral Investment Treaties ("BITs") models which contain model dispute resolution clauses that include tiered solutions. Most clauses include diplomatic negotiations at the first level followed by the constitution of an International Centre for Settlement of Investment Disputes tribunal in case a solution is not reached at the diplomatic level. The following are standard clauses concerning dispute settlement:

"Article 10[2]
SETTLEMENT OF INVESTMENTS DISPUTES BETWEEN A PARTY AND AN INVESTOR OF THE OTHER PARTY

1. *Any dispute between a Party (hereinafter referred to in this Article as the "disputing Party") and an investor of the other Party (hereinafter referred to in this Article as the "disputing investor") that has incurred loss or damage by reason of or arising out of an alleged breach of any rights conferred by this Agreement with respect to the investment of the disputing investor, shall as far as possible, be settled by the parties to the dispute in an amicable way.*

2. *If the dispute cannot be settled within six (6) months from the date on which the dispute has been notified by either party, it shall be submitted upon request and choice of the disputing investor:*

   (a) to conciliation or arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter referred to in this Article as "ICSID") done at Washington on 18 March 1965, in the event both Parties shall have become a party to the Conventions; or

   (b) to an international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

   (c) to the Kuala Lumpur Regional Centre for Arbitration (KLRCA); or

   (d) to the competent court of the disputing Party.

Each Party gives its consent to the submission of disputes to conciliation or arbitration set out in subparagraphs (a), (b) or (c). Such consent is conditional upon the submission of the disputing investor's written waiver of its right to initiate or continue any proceedings before the courts or administrative tribunals of either Party, or other dispute settlement procedures, any proceedings with respect to any measure alleged to constitute a breach of any rights conferred by this Agreement with respect to the investment of the disputing investor.

[2] Agreement between the Government of Malaysia and the Government of the Republic of San Marino on the Promotion and Protection of Investments

3. *An investor shall not be entitled to make a claim, if more than three (3) years have elapsed from the date on which the investor first acquired, or should have first acquired knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.*

4. *The disputing investor who intends to submit the dispute pursuant to paragraph 2 shall give to the disputing Party written notice of intent to do so at least ninety (90) days before the claim is submitted. The notice of intent shall specify:*

   (a) the name and address of the disputing investor and its legal representative;
   (b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the dispute sufficient to present the problem clearly, including the provisions of this Agreement alleged to have been breached;
   (c) the relief sought, and where appropriate, the approximate amount of damages claimed; and
   (d) the dispute settlement procedures set forth in paragraph 2 which the disputing investor will seek.

5. *The applicable arbitration rules shall govern the arbitration referred to in this Article except to the extent modified in this Article.*

6. *Unless the disputing investor and the disputing Party (hereinafter referred to as "the disputing parties") agree otherwise, an arbitral tribunal established under subparagraphs 2(a), (b) and (c) shall comprise three (3) arbitrators, one (1) arbitrator appointed by each of the disputing parties and the third, who shall be presiding arbitrator, appointed by the two arbitrators appointed by the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator within sixty (60) days from the date on which the investment dispute was submitted to arbitration, the Chairman of the Administrative Council of ICSID in the case of arbitration referred to in subparagraph 2(a), or the Secretary-General of the Permanent Court of Arbitration (PCA) in the case of arbitration referred to in subparagraph 2(b), or the Director of KLRCA, in the case of arbitration referred to in subparagraph 2(c), on the request of either of the disputing parties, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed from the ICSID, PCA or KLRCA Panel of Arbitrators respectively subject to the requirements of paragraph 7.*

7. *Unless the disputing parties agree otherwise, the third arbitrator shall not be of the same nationality as the disputing investor, nor be a national of the disputing Party, nor have his or her usual place of residence in the territory of either Party, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity.*

8. *The award shall include:*

   (a) a judgment as to whether or not there has been a breach by the disputing Party of any rights conferred by this Agreement in respect of the disputing investor and its investments; and
   (b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following:

(i) payment of monetary damages and applicable interest; and
(ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

Costs may also be awarded in accordance with the applicable arbitration rules.

9. *The award rendered in accordance with paragraph 8 shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of any such award and provide in the disputing Party for the enforcement of such award in accordance with its relevant laws and regulations.*

10. *Neither Party shall, in respect of a dispute which one of its investors shall have submitted to arbitration in accordance with paragraph 2, give diplomatic protection, or bring an international claim before another forum, unless the other Party shall have failed to abide by, and comply with, the award in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.*

11. *Each disputing Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the presiding arbitrator in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the disputing parties. The arbitral tribunal may, however, apportion each of such costs between the Parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.*

12. *The provisions of this Article shall not prejudice the Parties from using the procedures specified in Article 11 (Settlement of Disputes between the Parties) where a dispute concerns the interpretation or application of this Agreement.*

Article 11
SETTLEMENT OF INVESTMENTS DISPUTES BETWEEN THE PARTIES

1. *Disputes between the Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled by consultation.*

2. *If the dispute between the Parties cannot thus be settled, within six (6) months it shall upon the request of either Party be submitted to an arbitral tribunal in accordance with the provisions of this Article. Such submission shall be notified in writing to other Party.*

3. *Such an arbitral tribunal shall be constituted for each individual case in the following way. Within three months of the receipt through diplomatic channels of the request for arbitration, each Party shall appoint one member of the arbitral tribunal. Those two members shall then select a national of a third State who on approval by the two Parties shall be appointed Chairman of the arbitral tribunal. The Chairman shall be appointed within two (2) months from the date of appointment of the other two members.*

4. *If the necessary appointments have not been made within the periods specified in paragraph 3 of this Article, either Party may, in the absence of any other agreement, invite the Secretary-General of the Permanent Court of Arbitration to make the necessary appointments. If the Secretary-General is a national of either party or is otherwise prevented from discharging the said function, the official of the Permanent Court of Arbitration next in seniority who is not a national of either Party or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.*

5. *The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Parties. Each Party shall bear the cost of its own member of the arbitral tribunal and of its representation in the arbitral proceeding; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Parties. The arbitral tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.*

6. *The arbitral tribunal shall determine its own procedures after consultation with the Parties."*

33. Apart from that, the other standard clauses pertaining to dispute settlement included in the Memorandum of Understanding are provided as follows:

"SETTLEMENT OF DISPUTES

Any difference or dispute concerning the interpretation, implementation and/or application of this Agreement shall be settled amicably through mutual consultation and/or negotiation between the Parties concerned through diplomatic channels.

Article 15[3]
SETTLEMENT OF DISPUTES

Any dispute between Parties concerning the interpretation or application of, or compliance with this Agreement shall be settled amicably by consultation or negotiation.

Article 11[4]
DISPUTE SETTLEMENT MECHANISM

1. *The Parties shall, within 1 year after the date of entry into force of this Agreement, establish appropriate formal dispute settlement procedures and mechanism for the purposes of this Agreement.*

2. *Pending the establishment of the formal dispute settlement procedures and mechanism under paragraph 1 above, any disputes concerning the interpretation, implementation or application of this Agreement shall be settled amicably by consultations and/ or mediation."*

[3]Agreement on the Establishment of the ASEAN Co-Ordinating Centre for Humanitarian Assistance on Disaster Management
[4] Framework Agreement on Comprehensive Economic Co-Operation between the Association of South East Asian Nations and the People's Republic of China

3. Given the foregoing, it is clear that the parties are encouraged to resolve their disputes amicably through alternative dispute resolution such as consultation, negotiation or mediation without reference to international tribunal.

QUESTION 10

Does "other disputes of a private law character" (see 8) above) encompass all disputes other than those arising from contracts? If not, which categories are not included? What has been the practice of your organisation in determining this? What methods of settlement have been used for "other disputes of a private law character" and what has been regarded as the applicable law?

34. It is pertinent to first differentiate private law and public law. Idrus Harun JCA (as he then was) in the case of *Kelana Megah Development Sdn. Bhd. v. Kerajaan Negeri Johor & Another Appeal [2016] 8 CLJ 818-819* in delivering his judgment stated the following:

> "Before proceeding further, we wish to deal briefly with the difference between public law and private law human rights. Public law, we apprehend, governs relationship between Government or public authorities and subjects, where the authority concerned has power in matters that affect the rights of subjects such as the matter before us that is land acquisition. Additionally, public law also governs relationships that are direct concerns to society such as criminal law. In short, public law powers cannot be exercised by any private individual or entity. Private law on the other hand, deals with relationship between private individuals or entities which State is not directly concerned, as in the relations between husband and wife, the law of contract and law of torts. Governments and public authorities too can be subjected to private law as in cases where the government contracts with a private individual or a cooperation to enter into a transaction. Private law is the counterpart to public law."

35. It is agreeable that other disputes of a private law character shall include disputes other than those arising from contracts. Nevertheless, it needs to be noted that the Government of Malaysia, so far, has not had prior experience in handling matters of private law in nature other than contracts with international organisations, since private law disputes will be brought by the individuals themselves.