

Dispute Resolution in Malaysian Islamic Banking and Finance: Litigation or Arbitration?

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ABSTRACT

The Islamic banking and finance sector has grown rapidly in Malaysia. While many Islamic banks offer a wide variety of Islamic transactions, disputes arising from these transactions are also on the rise. Disputes are most commonly resolved through court litigation. However, arbitration is becoming an alternative mechanism for resolving disputes in Islamic banking and finance. Therefore, the objective of this article is to study the feasibility of arbitration as an alternative to court litigation in resolving disputes in Islamic banking and finance in Malaysia, particularly after the amendment of the Arbitration Act 2005 and the issuance of new AIAC i-Arbitration Rules. Further, this article also aims to identify the appropriate mechanism for dispute resolution of Islamic banking and finance disputes in Malaysia in light of the recent amendments to the law. The qualitative methods are applied and adopted in this study by analyzing relevant statutory legislations, decided cases, books, online articles, journals, newspaper articles, websites, and other periodicals.

Keywords: court litigation, arbitration, Islamic banking, Islamic finance, dispute resolution.

INTRODUCTION

The Islamic banking and finance industry has grown rapidly in Malaysia and is expected to grow faster than conventional banking (Asian Banking & Finance, 2024). Malaysia topped the world in sukuk issuance in 2023 and held the third-largest Islamic banking and takaful assets globally, as per the *ICD-LSEG Islamic Finance Development Report* (Pongsaparn, 2024). Despite the prevalence of conventional banking, Islamic banking has experienced significant growth due to its Shariah compliance (OCBC Business Banking, 2024). Islamic banking is a system of banking that complies with Islamic law, also known as Shariah law (Bank Negara Malaysia, 2020), and the Islamic financial contracts in Islamic banking are structured in a Shariah-compliant manner (Moqbel & Ahmed, 2020). The word "Islamic" herein refers to the Shariah-compliant nature of the contract, whereas the word "financial" refers to the conventional side that is governed by conventional laws (Trakic, 2013). Thus, even though it is structured by the Shariah law, the financial contracts in Islamic banking are still governed by the conventional contract law in Malaysia, *i.e.*, the Contracts Act 1950.

Currently, Malaysia has a significant number of Islamic banks, both local and international, offering a wide range of Islamic transactions to the public. Although Islamic transactions are increasing in popularity, disputes arising out of these transactions are also on the rise. Traditionally, disputes in Islamic banking and finance are resolved through court litigation. Nonetheless, parties have other options to go through an arbitration process to resolve their disputes rather than going to court. Arbitration is a procedure whereby the parties agree to submit the disputes to one or more arbitrators who make a binding decision on the dispute (World Intellectual Property Organization, 2022). It is a "private form of final and binding dispute resolution by an appointed arbitral tribunal acting in a quasi-judicial manner" (LexisNexis Dispute Resolution expert, 2022). Among all the alternative dispute resolution methods available, arbitration is known as an arbitral method because its decision is similar to the judgment obtained through court litigation, which is made by a neutral third party and

binds the disputing parties (Mohamed et al., 2015). Arbitration has been practiced within the Muslim community under a similar approach of *tahkim* in Islamic law (Labanieh et al., 2021). Several Qur'anic verses have proved and supported the use of the *tahkim* mechanism in handling any disputes (Al Quran, 4:58, 4:65). Thus, arbitration is not a new thing and can be conducted to resolve disputes that relate to Shariah law, such as Islamic banking and finance disputes.

Islamic banking dispute resolution primarily utilizes two main approaches: litigation through the courts, and alternative dispute resolution encompassing arbitration and mediation (Labanieh et al., 2019). Justice Datuk Dr. Haji Hamid Sultan Bin Abu Backer subscribed that such disputes should be resolved by way of arbitration (Abu Backer, 2016). However, court litigation has been widely favoured compared to arbitration, even though both approaches have almost identical roles (Labanieh et al., 2019). In addition, many past research studies have discussed viable dispute resolution mechanisms for Islamic banking and finance disputes. Labanieh et al. (2019) examined arbitration as a mechanism to resolve these disputes in Malaysia, highlighting challenges and drawbacks within the current framework. Subsequently, in 2021, they further explored the regulatory framework governing traditional arbitration for Islamic banking disputes in Malaysia and the prospect of reinforcing it with electronic arbitration. Furthermore, Zubair, A. (2020), in her paper, provides a comprehensive analysis of the existing dispute resolution mechanisms in the Islamic banking and finance industry in Malaysia, including the court system and various alternative dispute resolution methods, such as arbitration, mediation, and the role of the ombudsman. However, the existing literature was published before the amendment of the Arbitration Act 2005 through the Arbitration (Amendment) Act 2024 and the new issuance of the AIAC i-Arbitration Rules 2023. Therefore, they offer no coverage on the recent amendments, including the arbitral award, third-party funding, and the statutory recognition of electronic means via electronic and digital signatures. Thus, this article aims to address this gap and determine the most appropriate mechanism for dispute resolution of Islamic banking and finance disputes in Malaysia by comparing and contrasting court litigation and arbitration, with reference to the latest legal developments. This comparative analysis will provide insights into the advantages and disadvantages of each method while also exploring how recent legislative changes may influence the effectiveness and efficiency of resolving disputes in this specialized sector.

LITERATURE REVIEW

Litigation in Civil Court and its Obstacles

In most jurisdictions, the civil law courts are the competent tribunals for resolving banking and finance disputes. Likewise, in Malaysia, the jurisdiction to hear Islamic banking and finance cases falls under the civil court under List 1 of the Ninth Schedule of the Federal Constitution of Malaysia, whereby items 7 and 8 of List 1 of the Ninth Schedule of the Federal Constitution of Malaysia provide for the jurisdiction of civil courts in matters related to banking, finance, and insurance. This position has been adopted in the landmark case of *Bank Islam Malaysia Bhd. (BIMB) v. Adnan Bin Omar [1994] 3 CLJ 735*, where the court held that the civil court has jurisdiction to hear all cases falling under the Federal List. The High Court, in the case of *Mohd Alias Ibrahim v. RHB Bank Berhad & Anor [2011] 4 CLJ 654*, has subsequently reaffirmed this position and stated that in cases involving banking transactions based on Islamic principles, it is the civil courts that will have jurisdiction to hear these matters. Based on the above assertion, the High Court has begun to hear related cases in Islamic banking and finance disputes since the Islamic Banking Act of 1983 came into force with the proliferation of Islamic financing products in the country (Oseni & Ahmad, 2016).

Further, Islamic banking and finance disputes generally relate to contractual matters such as the formation of a contract, its subject matter including vehicles, houses, and land, and its legal effects and consequences; and taxation matters such as payment of stamp duties and gain tax (Mat Ali et al., 2022). The laws governing the contractual matters for Islamic banking and finance disputes are similar to the conventional laws. The Court of Appeal in the case of *Bank Kerjasama Rakyat Bhd v Emcee Corporation Sdn Bhd [2003] 1 MLRA 7 (COA)*, has explicitly ruled that despite the facility given to the respondent is an Islamic banking facility, that does not mean the law applicable is different from the law applicable to the conventional facility. The court further stated that the charge is a charge under the National Land Code 1965 and the court procedure is based on the Rules of High Court 1980.

The procedural rules governing civil litigation cases are enunciated in the Rules of Court 2012. The Rules of Court 2012 came into effect on 1 August 2012, replacing the Rules of the High Court 1980 and the Subordinate Courts Rules 1980. However, the early reported cases on Islamic banking transactions have shown that the civil courts were inclined to decide Islamic banking and finance disputes strictly based on civil laws and procedures without considering the Islamic dimension of Islamic banking contracts and documents (Trakic, 2013). It is even worse when Islamic banking and finance matters are litigated in courts that have little or no idea about the underlying philosophy and principles underpinning Islamic banking and finance transactions (Labanieh et al., 2019). This inclination was understandable because the judges and legal counsels at the civil courts were not trained in Shariah and most of them were not exposed to Islamic banking and finance concepts and practices, especially during the early period of its introduction in the 1980s and 1990s (Engku Ali & Oseni, 2017).

Justice Mohd Zawawi delivered his judgment in the case of *Tan Sri Abdul Khalid v Bank Islam Malaysia Berhad* [2012] 7 MLJ 597 on pages 615- 616 that: -

“... civil courts may not be sufficiently equipped to deal with the issue of whether a transaction under Islamic banking is in accordance with the religion of Islam or otherwise. Civil courts are not conversant with the rubrics of Fiqh Al-Muamalat which is a highly complex yet underdeveloped area of Islamic jurisprudence.”

Development of Muamalat Court and its Challenges

To overcome this problem, the authorities had attempted a few strategies which included introducing a special court. The establishment of the Muamalat High Court on 1 March 2003, a dedicated court for Islamic banking and finance disputes, marked a significant development in dispute resolution (Office Of The Chief Registrar, 2012). This court was created following the Central Bank's recommendation to the Judiciary and under Practice Direction No. 1/2003 (later superseded by Practice Direction No. 1/2008) issued by the Chief Judge of Malaya (Office Of The Chief Registrar, 2012). To distinguish Islamic banking and finance cases from other court cases, all such cases must be registered in the Muamalat Division of the High Court under codes 24A and 22A (Mat Ali et al., 2022). Following its establishment in February 2009 at the Kuala Lumpur High Court, the Muamalat Court registered 1,867 active Islamic banking and finance cases in 2012, disposing of 1,649 and leaving only 218 cases pending as of 1 January 2013 (Hassan et al., 2013).

Unfortunately, this strategy initially did not achieve its main objectives for the mere fact that the judge presiding in the Muamalat Court was still a civil court judge who was not trained in Shariah and did not have adequate exposure to Islamic banking and finance concepts and practices (Engku Ali & Oseni, 2017). Consequently, the court has rendered some awkward decisions in Islamic banking and finance cases, as exemplified by *Affin Bank Bhd v Zulkifli Abdullah* [2006] 3 MLJ 67 and *Arab-Malaysian Finance Bhd v Taman Ihsan Jaya Sdn Bhd Ors* [2008] 5 MLJ 631. This position conveys that the capability of the judges to understand and decide Islamic banking and finance disputes together with the lawyer's qualification and understanding became the paramount issues at stake. Hence, the Central Bank had come up with another proactive initiative for Islamic banking and finance disputes to be referred to the Shariah Advisory Council under the Central Bank of Malaysia Act 2009 (Act 701). Additionally, the Muamalat Court faces logistic challenges in practice as there is no Muamalat Division in the High Court of other states in Malaysia.

Arbitration Concept and Key Features

Generally, arbitration has been practiced within the Muslim community for over 1400 years, as the religion of Islam continues to underline the concept of harmony rather than hostilities and encourage peaceful compromise in any dispute instead of confrontation (Dahlan, 2018). The *tahkim* concept in Islamic law ultimately refers to arbitration. From a Sunnah perspective, during the time of the Prophet Muhammad (Peace be Upon Him), the Prophet Muhammad (Peace be Upon Him) promoted and practiced *tahkim*, and sometimes acted as a *hakam* or *muhakkam* (the arbitrator) between tribes and individuals to resolve their disputes (Al-

Shibli, 2018). Thus, arbitration became a popular method of dispute resolution in Islamic banking and finance as it derived from the Shariah principles.

The challenges faced in the court litigation aforesaid pose a great risk and may be overcome by way of arbitration. This is so because Islamic jurisprudence accepts arbitration in contrast to litigation (Labanieh et al., 2019). Arbitration, a dispute resolution mechanism in the Islamic finance industry, involves the referral of a dispute to impartial individuals for a final and binding determination (Zubair, 2020). The arbitral panel in arbitration is composed of experts who are not only learned in commercial transactions but also possess a rudimentary knowledge of Islamic principles or can identify matters to be referred to relevant Shari'ah scholars for their views (Labanieh et al., 2019). Under Section 56(1) of the Central Bank of Malaysia Act 2009 (Act 701), in the event of any dispute during the proceeding, the arbitrator is required to refer to any published rulings made by the Shariah Advisory Council ("SAC") in the ascertainment of Shariah issues in Islamic finance or refer such question to the SAC for its rulings.

Nevertheless, arbitration cannot be resorted to, except if an arbitration clause is inserted in the respective commercial agreement (Olayemi & al-Zabyani, 2014). Alternatively, for the Islamic banking and finance disputes to be referred to arbitration, a separate arbitration agreement must be executed between the parties. As such, an arbitration is a voluntary process conducted by an arbitration agreement that will be referred to an arbitrator who is an expert in the field of dispute involved, hears the arguments of both parties, and settles their dispute with fairness (Dhillon & Sook Ling, 2015). Therefore, it is apparent that the party's autonomy, the involvement of the independent expert arbitrator, and the flexibility of the arbitration process are the key features that attract the parties to opt for arbitration to resolve their disputes.

The Governing Law and Institution of Arbitration in Malaysia

The primary law governing arbitration in Malaysia is the Arbitration Act 2005 (Act 646) ("Principal Act"). The Principal Act has been amended multiple times, including by the Arbitration (Amendment) Act 2011 ("the 2011 Amendment Act"), the Arbitration (Amendment) Act 2018 and Arbitration (Amendment) (No. 2) Act 2018 (collectively referred as "the 2018 Amendment Act") and the Arbitration (Amendment) Act 2024, which received its Royal Assent on 23 October 2024 and was published in the Gazette on 1 November 2024 ("the 2024 Amendment Act"). However, the 2024 Amendment Act has not yet been in force (Federal Legislation, 2024), pending a date to be appointed by the Minister (Ooi & Thiagarajan, 2024). The 2024 Amendment Act introduces significant positive developments that enhance the viability of arbitration for resolving Islamic banking and finance disputes in Malaysia.

Alongside the Principal Act, the Asian International Arbitration Centre (AIAC) provides comprehensive arbitration rules, such as the AIAC Arbitration Rules and the AIAC i-Arbitration Rules, to guide arbitration proceedings in Malaysia. The AIAC Arbitration Rules or AIAC i-Arbitration Rules generally refer to "*a comprehensive set of procedural rules upon which parties may agree to conduct their arbitral proceedings*" (C. W., 2021). For this article, the authors will only refer to the i-Arbitration Rules issued by the AIAC.

The AIAC was previously renowned as the Kuala Lumpur Regional Centre for Arbitration ("KLRCA"). In 2012, the KLRCA issued the KLRCA i-Arbitration Rules 2012, exclusively designed for handling Islamic banking and finance cases, which were subsequently amended in 2017 (Mat Ali et al., 2022). To expand and become a global hub for dispute resolution, the KLRCA was rebranded as the AIAC in 2018. Following this rebranding, the AIAC issued the AIAC i-Arbitration Rules 2018 ("i-Rules 2018"). The AIAC emerged as the first institution to establish "i-Arbitration Rules," aimed at balancing the principles of Islamic banking and finance with arbitration (Rajoo, 2020). Two years later, the AIAC announced amendments to the Rules 2018, resulting in the i-Arbitration Rules 2021 ("i-Rules 2021"), which took effect on 1 November 2021 as stated in the Preamble of the i-Rules 2023. Effective 24 August 2023, the AIAC issued a new version, the i-Arbitration Rules 2023 ("i-Rules 2023"), introducing significant changes from the previous 2021 Rules. The i-Rules 2023 superseded all prior i-arbitration rules for proceedings commencing after their effective date unless otherwise agreed by the parties, as specified in the i-Rules 2023 Preamble. As stated in the Preamble of the i-Rules 2023, the rules represent the current version of procedural rules that adhere to Shariah principles and are designed to

govern disputes arising from commercial transactions grounded in Islamic law. It consists of three (3) parts: Part I (the AIAC i-Arbitration Rules 2023), Part II (the UNCITRAL Arbitration Rules, as revised in 2021), and Part III (the Schedules) as per the introductory provisions of the i-Rules 2023.

The Evolution of Arbitration: Highlighting the New Advantages

As discussed above, the parties' autonomy is one of the key features as well as an advantage of arbitration. Another great advantage of arbitration is concerning the arbitral award. Arbitral awards are final and cannot be challenged for factual or legal errors, unlike civil court judgments, which can be appealed on multiple grounds (Abu Backer, 2016). Further, the former KLRCA Director, Datuk Sundra Rajoo had stated in Global Arbitration Review that awards under the i-Arbitration Rules will be enforceable in the 146 countries that are signatories to the New York Convention (Rajoo, 2020). The above-mentioned advantage is essential for resolving Islamic banking and finance disputes involving cross-border transactions and international parties, as the arbitration award is final and binding, as well as enforceable in foreign jurisdictions. In addition, arbitration awards are now automatically recognized, without requiring a court application. A significant change worth noting from the 2024 Amendment Act is the automatic recognition of arbitration awards. Clause 9 of the 2024 Amendment Act amends subsection 38(1) of the Principal Act to automatically recognize all arbitral awards, whether from Malaysia or a foreign state, as binding (AIAC, 2024). The amendment removes the existing procedure requiring High Court applications for the recognition of arbitral awards (Rahmat Lim & Partners, 2024). This change streamlines the arbitration process, saving parties costs, time, and resources associated with court applications for award recognition.

Another significant advantage of arbitration is its Shariah-compliant arbitral procedure, which is well-suited for resolving Islamic banking and finance disputes. For instance, to compensate a successful party for late payment of damages under an award, the AIAC designed a specific mechanism for handling money and damages to avoid *riba*-based practices (Harhouz, 2022). Rule 6(i) of the i-Rules 2023 provides that:-

“Unless otherwise agreed by the Parties, the Arbitral Tribunal may: [...] (i) award a late payment charge in accordance with the principles of *Ta’widh* and *Gharamah*...”

Further, confidentiality is often trumpeted as a unique characteristic of arbitration (Meng, 2022). Arbitration, unlike open court litigation, maintains confidentiality, preventing public access to proceedings and documents without the parties' permission (Meng, 2022). Rule 22(3) of the i-Rules 2023 now makes clear that the duty of confidentiality *“equally applies to the Arbitral Tribunal, the Director, AIAC, the Shariah Council, any administrative secretary of the Arbitral Tribunal, any witness or expert appointed by the Arbitral Tribunal, and any person involved in the arbitration”*. However, it is to be noted that AIAC may publish an arbitration award after two (2) years, provided that all references to the parties' names and other identifying information are redacted, unless the parties object in writing beforehand as stated in Rules 22(5) and (6) of the i-Rules 2023. This is a remarkable move that contributes to the development of commercial law and arbitration practices, without compromising the confidentiality of the arbitration process.

It is well known that arbitration involves significant costs, including but not limited to arbitrator fees, rental of AIAC facilities, and transcribing fees. Thus, arbitration as a method of dispute resolution does not bode well with a small claim where the cost of going for arbitration is higher than the claim amount. Schedule 1 of the AIAC i-Rules 2023 provides for Arbitrator's Fees and AIAC Administrative Fees, which indicates that fees are scaled according to the amount in dispute and that the calculation varies when multiple arbitrators are involved (Labanieh et al., 2019). For instance, if the amount in dispute for domestic i-arbitration with only one arbitrator is MYR10,000.00, then the total cost of arbitration would be MYR15,876.00, consisting of arbitration fees of MYR9,936.00 and an administrative fee of MYR5,940.00, according to the AIAC's fee calculator on their website (AIAC, 2025). The cost would be higher if it involved more than one arbitrator.

Nevertheless, the recent amendments to the Principal Act allow Third-Party Funding (“TPF”) to improve access to justice through arbitration, enabling parties with limited financial means to pursue their claims, which are often hindered by funding limitations (LAW Partnership, 2025). Section 10 of the 2024 Amendment Act amends the Principal Act by introducing a new Chapter 2 in Part III, specifically to regulate TPF (Yuong

et al., 2024). TPF refers to the financial support provided by a third party (the funder) to a litigant for legal proceedings, with the funder receiving a portion of any proceeds or benefits gained from the litigation (LHAG, 2024). TPF was previously prohibited due to public policy concerns related to champerty and maintenance, specifically the risk of process abuse and funder influence on the litigation (LAW Partnership, 2025). However, the recent amendment exempts TPF agreements from the doctrines of maintenance and champerty, allowing TPF for arbitration proceedings in Malaysia without being considered against the public policy (AIAC, 2024). Moreover, TPF is consistent with Shariah law as a financial instrument in Islamic finance because both operate on a profit-loss sharing basis, aligning with Islamic legal principles (Eken, 2021). Furthermore, Rule 12 of the i-Rules 2023 allows Shariah-compliant TPF to finance a party's share of arbitration costs, provided that the funder's identity and the funding's existence are disclosed. These provisions in the amended Principal Act and the AIAC i-Rules 2023 demonstrate that TPF is permitted in arbitration to assist parties with the costs involved.

Recognizing the growing prevalence of digital technology in commercial transactions, the 2024 Amendment Act facilitates efficient arbitration through the statutory recognition of electronic means. Section 33 of the Principal Act is amended by inserting a new subsection (2A) which allows the use of "digital signatures" and "electronic signatures" by arbitrators for arbitral awards (Yuong et al., 2024). Digital and electronic signatures promote faster execution of arbitral awards by removing the necessity for physical document processes (AIAC, 2024).

Despite its advantages, arbitration faces several drawbacks that can make it a less preferable option. One of the obstacles in arbitrating Islamic banking and finance disputes containing a Shariah matter in Malaysia is that the arbitrators have insufficient knowledge and expertise in Shariah law (Hussain et al., 2022). Additionally, Islamic banking and finance cases subject to arbitration face a risk of delay when there is more than one arbitrator who cannot agree on a hearing schedule, resulting in unnecessary delays for the parties (Labanieh et al., 2019). Moreover, the increased use of arbitration and the active engagement of lawyers in arbitral procedures have made arbitration unappealing and has been practiced similarly to litigation, subsequently making arbitration a less attractive approach for settlements (A Rahman et al., 2017). In practice nowadays, those circumstances have defeated the key features of arbitration and caused arbitration proceedings to be delayed, less formal, and less flexible.

METHODOLOGY

This article uses doctrinal legal research methodology. It relies on primary sources like legislation and court cases, and secondary sources such as books, journals, and online databases. Both types of data were analyzed critically and analytically.

FINDINGS

Similarities between Court Litigation and Arbitration

It is important to first highlight the similarities between court litigation and arbitration before we delve into the differences. Firstly, if any question arises regarding Shariah, the court and the arbitrator are both required to refer to the SAC's published rulings or the SAC for its ruling by section 56(1) of the Central Bank of Malaysia Act 2009. Secondly, court litigation is known to be time-consuming in settling disputes between parties. Nonetheless, with the active involvement of lawyers in arbitration proceedings, arbitration has become akin to litigation, resulting in delays in resolving disputes between parties as a result. Considering these two similarities before deciding whether to opt for court litigation or arbitration to settle their disputes would be an important factor for the parties to consider.

Differences between Court Litigation and Arbitration

Court litigation and arbitration have their own advantages and drawbacks. However, it is important to analyze critically how the two mechanisms differ when it comes to resolving Islamic banking and finance disputes. The summary of differences between court litigation and arbitration are illustrated in Table A below.

Table A: Differences between court litigation and arbitration.

DIFFERENCES	COURT LITIGATION	ARBITRATION
Definition	The act, process, or practice of settling a dispute in the court of law: the act or process of litigating (Merriam-Webster Dictionary, 2022).	A private form of final and binding dispute resolution presided over by an appointed arbitral tribunal acting in a quasi-judicial manner (LexisNexis Dispute Resolution expert, 2022).
Background of judges/arbitrators	No requirement that the judge presiding in the Muamalat Court be trained and specialized in Islamic banking and finance matters.	The arbitral panel in arbitration consists of experts in commercial transactions and Islamic principles.
Nature of proceeding	Based on civil laws and procedures under Rules of Court 2012.	Shariah-compliant arbitral procedure based on AIAC i-Arbitration Rules 2023.
Commencement of court litigation/arbitral proceedings	A civil claim against a party can be brought to a court of law.	There must be an arbitration clause or separate agreement on arbitration for parties to resort to arbitration.
Confidentiality	Proceedings and documents are accessible to the public.	No access to the proceedings and documents without the consent of the arbitrating parties.
Court Judgment / Arbitral Award	The judgment of the court can be challenged on various grounds in the appeal process.	The grounds of the arbitral award cannot be challenged, final, and binding (Rahmat Lim & Partners, 2022).
Cost	Lawyer's fee & Court costs.	Arbitrator's fee, AIAC administrative fee, AIAC's room rental, transcribing fees, and Lawyer's fee (if lawyers are involved).

Source: Summarised from several sources including the authors' observation in this study.

CONCLUSION AND RECOMMENDATIONS

As an alternative to court litigation, arbitration is an ideal option for resolving disputes in Islamic banking and finance in Malaysia. Nonetheless, in actual practice, it has not yet been the most preferred dispute resolution method mostly due to the high costs involved and complexity of the disputes. To date, in practice, the Islamic banking and finance cases are still being actively heard and referred to the Muamalat Court. For instance, in the case of *Khee San Berhad v. Khee San Food Industries Sdn Bhd [2021] 1 LNS 993*, the learned judge transferred the suit to the Muamalat Court as the subject matter of this dispute concerns an Islamic finance matter i.e., Murabahah Overdraft Facility and related financing facilities.

Therefore, what should be the most appropriate mechanism to resolve Islamic banking and finance disputes would revolve around the types of cases and the claim amounts of such disputes. For complex, high-value disputes involving corporations and cross-border parties, arbitration remains the preferred choice due to its finality, international enforceability, and confidentiality. However, for less complex, low-value domestic disputes between financial institutions and customers, court litigation may be more practical given the potentially prohibitive costs of arbitration.

Comparing the benefits and drawbacks of both methods underscores the need for a strategic approach to dispute resolution in this sector, considering factors beyond a simple preference for one over the other. To enhance the effectiveness and accessibility of arbitration, particularly given its advantages, further research is needed on the cost structure outlined in Schedule 1 of the AIAC i-Arbitration Rules 2023. Offering tiered fee

scales based on arbitrator expertise could allow parties to select arbitrators aligned with the complexity and their budget. Furthermore, exploring the adoption of Third-Party Funding (TPF) in Malaysia could alleviate the financial burden of arbitration. To bolster the quality of arbitration, stakeholders should also consider establishing specialized training programs for arbitrators focusing on Islamic banking and finance principles.

Ultimately, the evolution of arbitration, particularly through the amendments to the Arbitration Act 2005 and the issuance of the AIAC i-Arbitration Rules, indicates a promising shift towards more efficient and accessible dispute resolution options for parties engaged in Islamic banking and finance in Malaysia. It is crucial for stakeholders in the Islamic banking and finance sector to actively engage with these developments, ensuring that arbitration practices not only adhere to Shariah principles but also evolve to meet the needs of a dynamic financial landscape.

REFERENCES

1. Abu Backer, J. D. D. H. H. S. (2016). Arbitration Clause in Islamic Finance Facilities. CLJ, 1(LNS(A)), xcvi.
2. Abu Backer, J. D. D. H. H. S. (2016). Malaysia As A Choice Jurisdiction For Dispute Resolution In The Global Islamic Finance Industry. LNS, 1(A), xcvi.
3. Affin Bank Bhd vs Zulkifli Abdullah [2006] 3 MLJ 67.
4. AIAC i-Arbitration Rules 2023.
5. AIAC. (n.d.). Frequently Asked Questions. AIAC. Retrieved March 18, 2025, from <https://www.aiac.world/Frequently-Asked-Questions->
6. AIAC. (2024, July 26). Announcement on the Arbitration (Amendment) Bill 2024 and the Construction Industry Payment and Adjudication (Amendment) Bill 2024. AIAC. Retrieved March 9, 2025, from [https://www.aiac.world/news/399/Announcement-on-the-Arbitration-\(Amendment\)-Bill-2024-and-the-Construction-Industry-Payment-and-Adjudication-\(Amendment\)-Bill-2024](https://www.aiac.world/news/399/Announcement-on-the-Arbitration-(Amendment)-Bill-2024-and-the-Construction-Industry-Payment-and-Adjudication-(Amendment)-Bill-2024)
7. AIAC. (2025). Fee Calculator. AIAC. <https://www.aiac.world/fee-calculator>
8. Al-Shibli, F. S. (2018). Litigation or Arbitration for Resolving Islamic Banking Disputes. Arab Law Quarterly, 32(4), 413-438. <https://doi.org/10.1163/15730255-12324040>
9. Arab-Malaysian Finance Bhd v. Taman Ihsan Jaya Sdn Bhd Ors (Koperasi Seri Kota Bukit Cheraka Bhd, third party) [2008] 5 MLJ 631.
10. A Rahman, S., Syed Fadhil Hanafi, & Mokhtar, K. A. (2017). The financial ombudsman scheme as an alternative dispute resolution mechanism for financial disputes: The Malaysian experience. International Conference on Dispute Resolution 2017 - Modern Trends in Effective Dispute Resolution. <http://irep.iium.edu.my/id/eprint/57282>
11. Arbitration Act 2005 (Act 646).
12. Asian Banking & Finance. (2024). Malaysia's Islamic banks continues to fly high in 2024: Fitch. Asian Banking & Finance. Retrieved March 18, 2025, from <https://asianbankingandfinance.net/islamic-banking/news/malaysias-islamic-banks-continues-fly-high-in-2024-fitch>
13. Bank Islam Malaysia Bhd (BIMB) v. Adnan Bin Omar [1994] 3 CLJ 735.
14. Bank Kerjasama Rakyat Bhd v Emcee Corporation Sdn Bhd [2003] 1 MLRA 7 (COA).
15. Bank Negara Malaysia, "Islamic Banking & Takaful". 27 November 2022 <<https://www.bnm.gov.my/islamic-banking-takaful>>.
16. Bernama, "Moody's expects Malaysia's Islamic banking continue to grow in 2022, 2023", The Edge Markets 5 October 2022. 27 November 2022 <[https://www.theedgemarkets.com/article/moodys-expects-malaysias-islamic-banking-continue-grow-20222023#:~:text=Moody's%20expects%20Malaysia's%20Islamic%20banking%20to%20continue%20to%20grow%20in%202022%2C%202023,-Bernama&text=KUALA%20LUMPUR%20\(Oct%205\)%3A,2023%2C%20Moody's%20Investors%20Service%20said](https://www.theedgemarkets.com/article/moodys-expects-malaysias-islamic-banking-continue-grow-20222023#:~:text=Moody's%20expects%20Malaysia's%20Islamic%20banking%20to%20continue%20to%20grow%20in%202022%2C%202023,-Bernama&text=KUALA%20LUMPUR%20(Oct%205)%3A,2023%2C%20Moody's%20Investors%20Service%20said)>.
17. Central Bank of Malaysia Act 2009 (Act 701).
18. C. W., L. (2021, August 18). AIAC Arbitration Rules 2021 – What's New? Tuang, Chu & Co. Retrieved January 23, 2023, from <https://tcclaw.com.my/aiac-arbitration-rules-2021-whats-new/>
19. Dahlan, Rosli and Fawza Sabila Faudzi, "Malaysia: The Syariah Court: Its Position Under the Malaysian Legal System", Lee Hishamuddin Allen & Gledhill 9 March 2016. 21 December 2022

- <<https://www.mondaq.com/trials-appeals-compensation/472794/the-syariah-court-its-position-under-the-malaysian-legal-system>>.
20. Dahlan, N. K. (2018). Alternative dispute resolution for Islamic finance in Malaysia. Paper presented in Malaysia Technical Universities Conference on Engineering and Technology, 150. Malaysia, Kuala Lumpur, 1-4.
 21. Dhillon, G., & Sook Ling, L. (2015). Alternative Dispute Resolution Methods and Processes in Malaysia: A Review. *Malayan Law Journal Articles*, 2, viii.
 22. Engku Ali, E. R. A., & Oseni, U. A. (2017), "Towards an effective legal and regulatory framework for Islamic financial transactions major initiatives of the Central Bank of Malaysia", *International Journal of Law and Management*, 59(5), 652-672.
 23. Eken, C. (2021). Analysis of Third-Party Funding within the Islamic Framework. TDM. Retrieved March 23, 2025, from www.transnational-dispute-management.com
 24. Engku Ali, E. R. A., & Oseni, U. A. (2017). Towards an effective legal and regulatory framework for Islamic financial transactions: Major initiatives of the Central Bank of Malaysia. *International Journal of Law and Management*, Vol. 59(Issue: 5), pp.652-672. <https://doi.org/10.1108/IJLMA-04-2016-0038>
 25. Federal Legislation. (2024, November 1). Amendment Act. Federal Legislation. Retrieved March 16, 2025, from <https://lom.agc.gov.my/principal.php?type=amendment>
 26. Harhouz, I. (2022). Arbitration in Islamic Banking & Finance Disputes. *Sciences PO Law Review [Preprint]*. <https://doi.org/https://www.revuedesjuristesdesciencespo.com/index.php/2022/05/31/arbitration-in-islamic-banking-finance-disputes/>
 27. Hassan, R., Hussain, M. A., & Yusoff, A. (2013). PENUBUHAN DAN BIDANG KUASA MAHKAMAH MUAMALAT DI MALAYSIA: ISU DAN CABARAN. *Kanun: Jurnal Undang-Undang Malaysia*, 25(1), 83-106. <https://ptsldigital.ukm.my/jspui/handle/123456789/577699>
 28. Hussain, M. A., Mahdzir, N., L., M. F., Sulaiman, N., & Bawazir, O. S. A. (2022). The Potential Application of the Expert System in Facilitating Arbitration in Malaysia. *BiLD Law Journal*, 7(1), 10-15. <https://bildbd.com/index.php/blj/article/view/146>
 29. Khee San Berhad v. Khee San Food Industries Sdn Bhd [2021] 1 LNS 993.
 30. Labanieh, M. F., Hussain, M. A., & Mahdzir, N. (2021). The Regulatory Framework Governing Traditional Arbitration in Resolving Islamic Banking Disputes in Malaysia: The Time for Change. *Jurnal Hukum Novelty*, 12(02), 137-152. <https://www.semanticscholar.org/reader/8f08ae2ce48503e25f60ae1ddcadb9967858f9c9>
 31. Labanieh, M. F., Hussain, M. A., & Mahdzir, N. (2019, July). Arbitration as a mechanism to resolve Islamic banking disputes in Malaysia: Challenges and Drawbacks. *UUMJLS*, 10(2), 19-44. https://www.researchgate.net/publication/348586225_ARBITRATION_AS_A_MECHANISM_TO_RESOLVE_ISLAMIC_BANKING_DISPUTES_IN_MALAYSIA_CHALLENGES_AND_DRAWBACKS
 32. Labanieh, M. F., & Mahdzir, N. (2013). The adjudication of Shari'ah issues in Islamic financial contracts Is Malaysian Islamic finance litigation a solution? *HUM*, 29(4), 260-275.
 33. LAW Partnership. (2025, January 8). Key Amendments to the Malaysian Arbitration Act. LAW P. Retrieved March 9, 2025, from <https://law-partnership.com/key-amendments-to-the-malaysian-arbitration-act/>
 34. LexisNexis Arbitration Expert. (2023, September 12). AIAC Arbitration Rules 2023—a summary of the key changes. LexisNexis. Retrieved March 18, 2025, from <https://www.lexisnexis.co.uk/legal/news/aiac-arbitration-rules-2023-a-summary-of-the-key-changes>
 35. LexisNexis Dispute Resolution expert. (2022). Arbitration definition. LexisNexis. Retrieved March 21, 2025, from <https://www.lexisnexis.co.uk/legal/glossary/arbitration>
 36. List 1 of the 9th Schedule of the Federal Constitution.
 37. LHAG. (2024, February 19). [INTERNATIONAL ARBITRATION] Special Alert: Balancing Desire and Danger: Regulating Third-Party Funding In A Global Context. LHAG. Retrieved March 18, 2025, from <https://lh-ag.com/international-arbitration-special-alert-balancing-desire-and-danger-regulating-third-party-funding-in-a-global-context/>
 38. Mat Ali, S.A., Hassan, R., & Othman, A.A. (2022). Islamic Banking in Malaysia: Laws Applicable to Musharakah Mutanaqisah Home Financing. Malaha Press.
 39. Meng, H.L. (2022). What You Need to Know about the AIAC Arbitration Rules 2021. Christopher & Lee Ong Malaysia. <https://www.christopherleeong.com/>

40. Merriem-Webster Dictionary. (2022). Litigation. Merriam-Webster Dictionary. <https://www.merriam-webster.com/dictionary/litigation>
41. Mohd Alias Ibrahim v. RHB Bank Berhad & Anor [2011] 4 CLJ 654.
42. Mohamed, A.M.T., Makhtar, M., Hamid, N.A., & Asari, K. N. (2015). Arbitration as Method of Dispute Settlement in Islamic Banking and Finance: A Perspective from Malaysian Governing Law. *Pertanika J. Soc. Sci. & Hum.*, 23(S), 153-164. [http://www.pertanika.upm.edu.my/resources/files/Pertanika%20PAPERS/JSSH%20Vol.%2023%20\(S\)%20Nov.%202015/14%20JSSH%20Vol%2023%20\(S\)%20Nov%202015_pg153-164.pdf](http://www.pertanika.upm.edu.my/resources/files/Pertanika%20PAPERS/JSSH%20Vol.%2023%20(S)%20Nov.%202015/14%20JSSH%20Vol%2023%20(S)%20Nov%202015_pg153-164.pdf)
43. Moqbel, T., & Ahmed, H. (2020, July 22). Flexibility and Shari'ah Compliance of Islamic Financial Contracts: An Evaluative Framework. *BRILL*. Retrieved March 19, 2025, from https://brill.com/view/journals/alq/35/1-2/article-p92_5.xml?language=en
44. Office Of The Chief Registrar. (2012). The Malaysian Judiciary: Yearbook 2012. Annual Report of Judiciary. Retrieved March 23, 2025, from <https://www.kehakiman.gov.my/en/annual-report-judiciary>
45. Olayemi, A. A. M., & al-Zabyani, B. K. (2014). Arbitration Clause in Islamic Banking Contracts: A Contractual Necessity. *International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS)*, Vo. 1(No. 7), 1-6. <http://www.ijims.com>
46. Ooi, C., & Thiagarajan, N. (2024, November 5). Malaysia: The Arbitration (Amendment) Act 2024 and the Construction Industry Payment and Adjudication (Amendment) Act 2024 passed as law! Baker McKenzie. Retrieved March 16, 2025, from <https://insightplus.bakermckenzie.com/bm/dispute-resolution/malaysia-the-arbitration-amendment-act-2024-and-the-construction-industry-payment-and-adjudication-amendment-act-2024-passed-as-law>
47. Oseni, U.A., & Ahmad, A.U.F. (2016). Towards a Global Hub: the Legal Framework for Dispute Resolution in Malaysia's Islamic Finance Industry. *International Journal of Law and Management*, Vol. 58(No. 1), pp. 48-72. <https://doi.org/10.1108/IJLMA-08-2014-0052>
48. Pongsaparn, R. (2024, December 11). Malaysia's Strategic Path to Global Islamic Finance Leadership. AMRO. Retrieved March 18, 2025, from <https://amro-asia.org/malaysias-strategic-path-to-global-islamic-finance-leadership>
49. Rahmat Lim & Partners. (2024, October 3). Arbitration Act amendments strengthening regime passed by Parliament. Rahmat Lim & Partners. Retrieved March 18, 2025, from <https://www.rahmatlim.com/publication/articles/29106/arbitration-act-amendments-strengthening-regime-passed-by-parliament>
50. Section 56(1) of the Central Bank of Malaysia Act 2009 (Act 701).
51. Rahmat Lim & Partners. (2022, July 25). High Court affirms binding effect of arbitration award notwithstanding pending proceedings to challenge award in seat of arbitration. Rahmat Lim & Partners. Retrieved April 5, 2025, from <https://www.rahmatlim.com/publication/articles/22126/high-court-affirms-binding-effect-of-arbitration-award-notwithstanding-pending-proceedings-to-challenge-award-in-seat-of-arbitration>
52. Rajoo, S. (2020). Arbitration and its Development in Malaysia. *Malayan Law Journal*, Vol. 1, iv.
53. Tan Sri Abdul Khalid v Bank Islam Malaysia Berhad [2012] 7 MLJ 597 at page 615- 616.
54. The Malaysian Judiciary: Yearbook 2012 (2012). Percetakan Nasional Malaysia Berhad, retrieved on 25th November 2022 from <https://www.kehakiman.gov.my/sites/default/files/WJD000836%20Msian%20judiciary.pdf>.
55. Trakic, A. (2013). The adjudication of Shari'ah issues in Islamic financial contracts : is Malaysian Islamic finance litigation a solution? *Humanomics*, 29(4), 260-275.
56. World Intellectual Property Organization. (2022). What is Arbitration? WIPO. Retrieved November 27, 2022, from <https://www.wipo.int/amc/en/arbitration/what-is-arb.html#:~:text=Arbitration%20is%20a%20procedure%20in%20,instead%20of%20going%20to%20court.>
57. Yuong, D. L. H., Jeyaratnam, A. K., & Shamsudin, N. S. S. (2024, August 29). THE ARBITRATION (AMENDMENT) ACT 2004 AND THE KEY CHANGES TO MALAYSIAN ARBITRATION PRACTICE & PROCEDURE. ZUL RAFIQUE & PARTNERS. Retrieved March 9, 2025, from https://www.zulrafique.com.my/article-sample.php?id=2249#_ftn24
58. Zubair, A. (2020). An Analysis of Dispute Resolution Mechanisms in the Islamic Banking and Finance Industry in Malaysia. *Jurnal Hukum Novelty*, 11(02), 164-178. <https://api.semanticscholar.org/CorpusID:225405657>