



MDBC / AIAC: Commercial Conundrums
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Landscape of Commercial Arbitration in Malaysia

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Azman Davidson & Co.



Commercial
in Malaysia

Arbitration

Landscape



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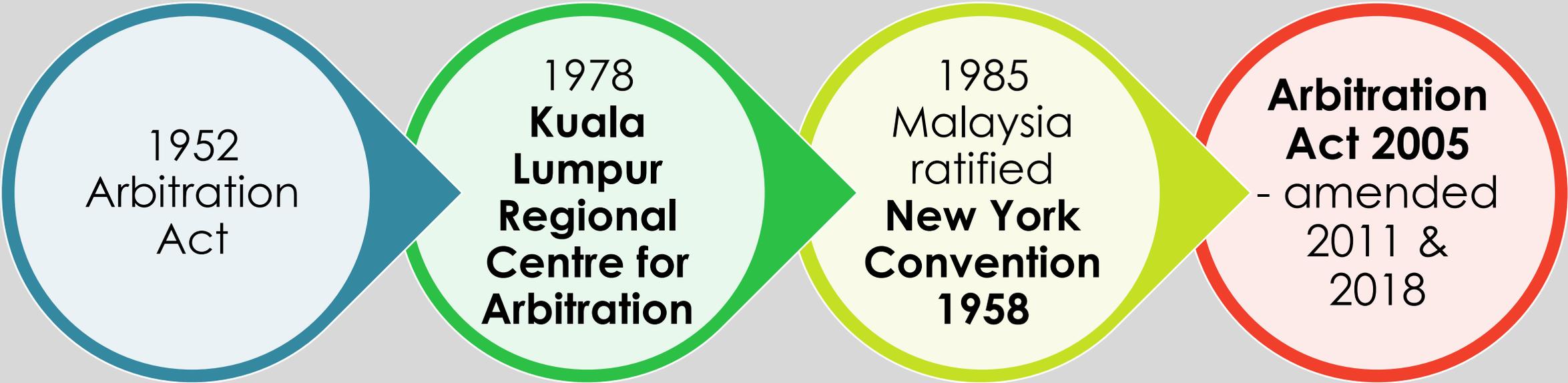
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graph LR; A[Early Arbitration Ordinances from 1809, common law from England] --> B[Arbitration Ordinance 1950]; B --> C[Arbitration Act 1952 - based on English Arbitration Act]; C --> D[Arbitration Act 2005 - UN Model Arbitration Law];
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Early
Arbitration
Ordinances
from 1809,
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Arbitration
Ordinance
1950

Arbitration
Act 1952
- based on
English
Arbitration
Act

Arbitration
Act 2005
- UN Model
Arbitration
Law



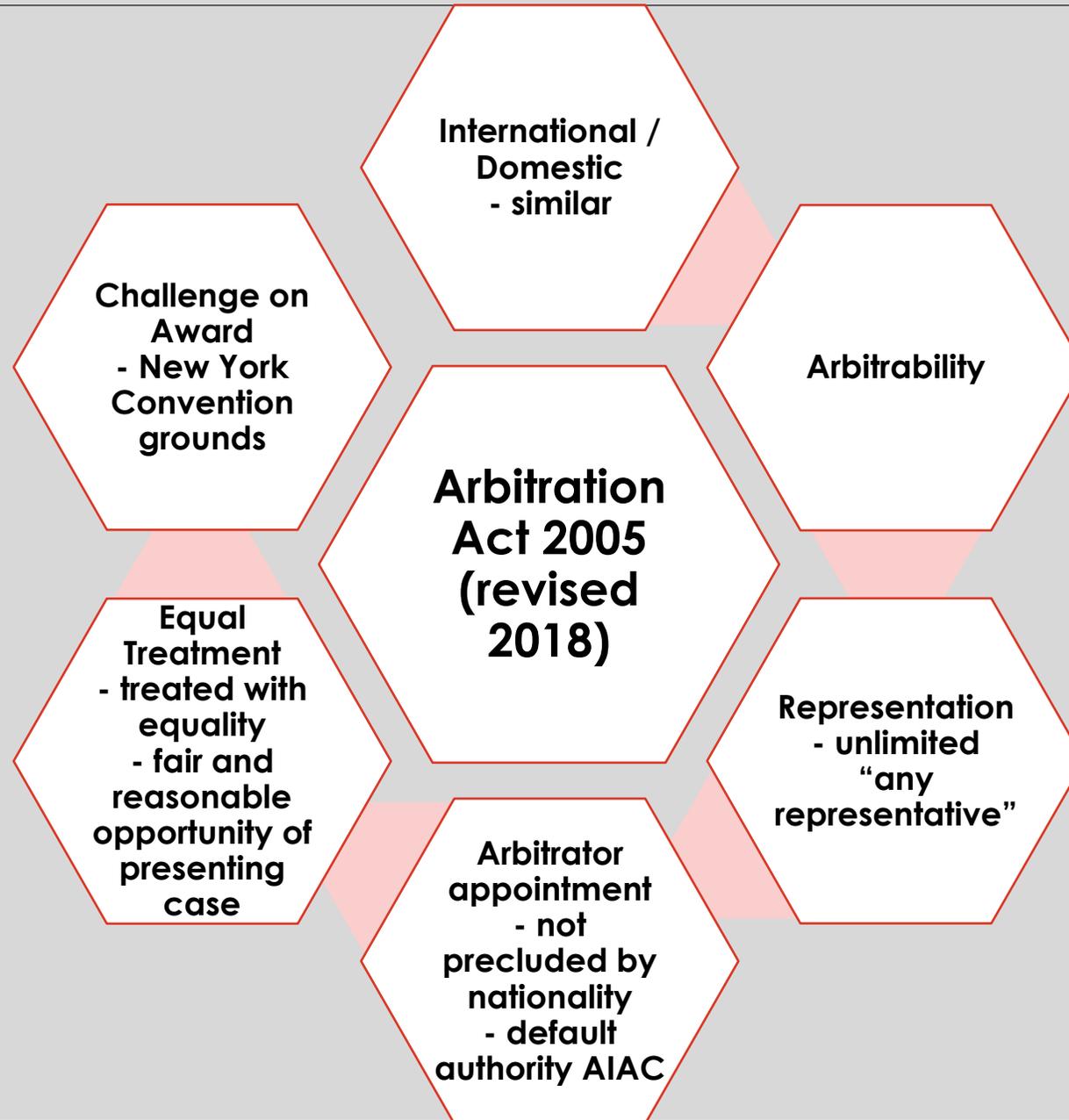
A horizontal timeline consisting of four overlapping circles connected by arrows pointing from left to right. The circles are colored blue, green, yellow-green, and red from left to right. Each circle contains text describing a milestone in the history of arbitration in Malaysia.

1952
Arbitration
Act

1978
**Kuala
Lumpur
Regional
Centre for
Arbitration**

1985
Malaysia
ratified
**New York
Convention
1958**

**Arbitration
Act 2005**
- amended
2011 &
2018



Arbitration
Agreement
Sec 9

"in writing"
includes oral or
conduct or other
means, and recorded in
any form



Emergency
Arbitrator
Sec 2

Interim
Measures by
Arbitrator
Sec 19 – 19I



Recognition and Enforcement of Arbitration Awards

Section 38 of AA 2005

Malaysian Courts shall recognise as binding:

- awards made in an arbitration seated in Malaysia
- awards from States who are party to the New York Convention

Enforced by entry as court judgment in terms of the award or by action

New York Convention 1958

Article III

- Each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with rules of procedure.



POLL QUESTION

POLL QUESTION

What is your most important consideration for choice of dispute resolution procedure?

- (1) Familiarity
- (2) Cost
- (2) Speed
- (3) Enforceability of result



CASE STUDY

Case Study

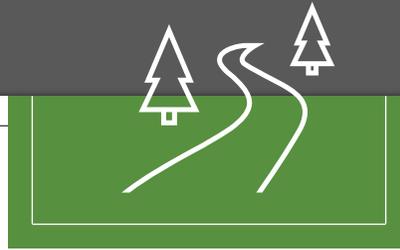
Party A (Malaysian entity) and Party B (Netherlands entity) entered into contract in Malaysia.

Party A and Party B went for mediation. Mediation successful, settlement reached.

Question 1: Can Party A enforce the settlement agreement in Malaysia?

Question 2: Can Party A enforce the settlement agreement in Netherlands?

Question 3: Is there any difference if the parties had commenced an arbitration and an arbitration award was made to record the settlement?



ARBITRATION - PREFERRED DISPUTE RESOLUTION?



ARBITRATION

- ✓ International legal framework for recognition and enforcement
- ✓ Strong foundation and consistency in arbitration laws across countries
- ✓ Rich history and experience, yet flexible enough to modernise

COMPARE OTHER ALTERNATIVE DISPUTE RESOLUTION?

- ✗ international legal framework for recognition and enforcement
- ✗ legal foundation or consistent laws across countries