GATEWAY LAW CORPORATION
Advocates and Solicitors | Notary Public | Commissioners for Oaths
Patent, Design and Trade Mark Agents

39 Robinson Road
#20 – 03
Singapore 068911
Telephone: (65) 62216360
Facsimile: (65) 62216375

Amendments to the International Arbitration Act

Introduction

On 5 October 2020, Parliament passed the International Arbitration (Amendment) Bill (the "**Bill**") which contains amendments to the Singapore's International Arbitration Act (Cap. 143A) (the "**IAA**"). These amendments stem from the Ministry of Law's (the "**Ministry**") goal to enhance the options available to parties arbitrating under the IAA and to make Singapore more commercial attractive by bolstering Singapore's arbitration laws.

In seeking to adopt arbitration experiences that are more tailored to parties' needs while maintaining the elements of certainty, quality and confidentiality, the Ministry introduced four proposals in June 2019 via a Public Consultation on the International Arbitration Act. Of the four proposals, two were eventually approved by Parliament:

Default provisions for appointing arbitrators in multi-party disputes

Arbitrators for international disputes in Singapore are currently appointed pursuant to Section 9A of the IAA and Article 11 of the UNCITRAL Model Law on International Commercial Arbitration. However, these provisions are applicable only where there are two parties to the arbitration agreement.

The Bill introduces a default mode of appointment in multi-party arbitrations where three arbitrators are to be appointed in arbitrations with more than 2 parties (i.e. multi-party arbitrations). This is however subject to parties' arbitration agreements where the appointment of arbitrators in such multi-party arbitrations have already been provided for.

In this regard, the Bill further stipulates that all Claimants are to jointly appoint one arbitrator whilst all Respondents are to jointly appoint another arbitrator. These two party-appointed arbitrators will appoint the third arbitrator, who will serve as the presiding arbitrator.

Powers to enforce confidentiality obligations in arbitration

Presently, unless otherwise agreed, the parties and the arbitral tribunal have a common law duty of confidentiality not to disclose confidential information obtained during proceedings or use them for any purpose other than for resolving the dispute. The rules of many arbitral institutions also provide explicitly for confidentiality, which includes the confidentiality of the existence of the arbitration. However, the IAA itself makes no mention of any such duty of confidentiality.

To bridge this gap in the IAA regarding the confidentiality of proceedings, the Bill now explicitly recognises the powers of both the arbitral tribunal and the High Court to enforce obligations of confidentiality, whether existing under the law or pursuant to parties' agreement.

In particular, and with leave of the Singapore High Court, orders concerning confidentiality made by a Singapore-seated tribunal will be enforceable as though they are Court orders. Should there be a situation in which the arbitral tribunal has not been constituted, the High Court can also make interim orders to protect the confidentiality obligations of parties.

Conclusion

This Bill reflects the Ministry's determination to ensure that Singapore remains an attractive arbitration hub by considering the key push and pull factors of arbitration and actively fine tuning the IAA accordingly. The amendments to the IAA showcase Singapore's active approach towards making itself more attractive to large-scale arbitrations and to consolidate its status as the preferred arbitral seat in the region.

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Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.

Loshini Shanker
Associate
Gateway Law Corporation

Email: loshini.shanker@gateway-law.com

This article is intended to discuss the Amendments to the International Arbitration Act in Singapore, and it is not intended to be comprehensive nor should it be construed as legal advice. This article is updated as of 5 March 2021.

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