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

Pursuant to the Ministry of Law (the "**Ministry**") having launched a Public Consultation on International Arbitration Act in June 2019, on 5 October 2020 Parliament passed the International Arbitration (Amendment) Bill (the "**Bill**") for amendments to be made to Singapore's International Arbitration Act (Cap. 143A) (the "**IAA**"). This call for amendments stems from the Ministry's determination to enhance the options available to parties arbitrating under the IAA and to bolster Singapore's law on arbitration, making it more commercially attractive.

In seeking to adopt a more customised arbitration experience while still maintaining the elements of certainty, quality and confidentiality, the Ministry introduced four proposals, of which only the following two proposals were considered for the Bill:

Default provisions for appointing arbitrators in multi-party disputes

Arbitrators in international disputes in Singapore are currently appointed in line with provisions set out in Section 9A of the IAA and Article 11 of the UNCITRAL Model Law on International Commercial Arbitration (the "**Model Law**"). However, these provisions only apply where there are two parties to the arbitration agreement.

The Bill introduces a default mode of appointment where there are more than two parties to an arbitration agreement, unless the parties' arbitration agreement has already provided for procedure for such appointments.

Powers to enforce confidentiality obligations in arbitration

Presently, unless otherwise agreed, the parties and the arbitral tribunal have a duty of confidentiality under the common law, not to disclose confidential information obtained in the course of the proceedings or use them for any purpose other than the dispute. The rules of many arbitral institutions also provide explicitly for confidentiality, which includes confidentiality of the existence of the arbitration.

The Bill now recognises the powers of both the arbitral tribunal and the High Court to enforce obligations of confidentiality, whether these obligations exist under the law or have been expressly agreed by the parties.

In particular, with leave of the High Court, orders in respect of 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 now make interim orders to protect confidentiality obligations.

Conclusion

This Bill reflects the Ministry's determination to ensure that Singapore remains an arbitration hub by considering the key push and pull factors of arbitration and actively fine tuning the same.

With such amendments made to the ICC and continued attention on fine tuning the arbitral procedure, Singapore continues to be commercially attractive and may remain 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 8 December 2020.

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