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SINGAPORE PROPOSED AMENDMENTS TO ITS INTERNATIONAL ARBITRATION ACT

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SUMMARY

The Ministry of Law of Singapore (the "MinLaw") tabled and introduced the International Arbitration (Amendment) Bill (the "Bill") for first reading in the Parliament of Singapore on 1 September 2020.

The Bill proposes amendments to the International Arbitration Act (Chapter 143A) (the "IAA"), which was last amended in 2012. These amendments take into account the experience of other jurisdictions and feedback received from the public consultation conducted during June and August 2019.

The purpose of the reform is to enhance Singapore's status as an international commercial arbitration hub by strengthening the current legislative framework to provide parties with a greater suite of options to tailor an international arbitration agreement to suit their unique purposes.

There are two key features in the Bill:

(a) to provide for the default procedure for appointment of arbitrators in multi-party situations; and

(b) to recognise that an arbitral tribunal, the High Court and a Judge all have powers to make orders or give directions to any party to an arbitration for enforcing any obligation of confidentiality.

Default appointment of arbitrators in multi-party arbitrations

The existing section 9A of the IAA provides the default mode of appointment of arbitrators in a two-party arbitration with three arbitrators:

(a) The claimant and the respondent each appoint one arbitrator; and

(b) The parties appoint the third arbitrator by agreement or, if no agreement is reached in 30 days, the appointing authority appoints the third arbitrator.

The MinLaw recognized the limitation of the existing section 9A of the IAA. It applies only to situations involving a single claimant and a single respondent. It does not envisage the situation where multiple claimants and/ or respondents might not be able to reach an agreement on the choice of arbitrators in a multi-party arbitration.

In particular, the MinLaw observed that there is a growing trend for multi-party arbitrations, especially in arbitrations arising from joint venture, oil and gas exploration and merger and acquisition disputes. Where the parties are unable to agree on the appointment of the arbitrators in a multi-party arbitration, the arbitration process may be stalled or delayed in the absence of a clear default mode of appointment of arbitrators.

As a result, section 9B of the Bill proposes a new default mode of appointment of arbitrators in a multi-party arbitration:

(a) The sole claimant or all the claimants by agreement must:

(i) appoint an arbitrator on or before the date of sending of the request for the dispute to be referred to arbitration; and

(ii) inform the respondent(s) of the appointment on the same date that the request for the dispute to be referred to arbitration is sent to the respondent(s).

(b) The sole respondent or all the respondents by agreement must:

(i) appoint an arbitrator; and

(ii) inform the claimant(s) of the appointment within 30 days after the date of receipt of the request for the dispute to be referred to arbitration by the sole respondent, or by the last respondent to receive the request if there is more than one respondent.

(c) Thereafter, the arbitrators appointed by the claimant(s) and the respondent(s) must by agreement nominate the third arbitrator within 60 days after the date of receipt of the request for the dispute to be referred to arbitration by the sole respondent, or by the last respondent to receive the request if there is more than one respondent. The third arbitrator is to be the presiding arbitrator.

(d) If the claimants or respondents are unable to appoint their arbitrator, the appointing authority must, upon the request of any party, appoint all three arbitrators and designate one of the three arbitrators as the presiding arbitrator. In doing so, the appointing authority may, having regard to all relevant circumstances, re-appoint or revoke any appointment already made. (At first blush, it might seem curious that a failure by one side of the parties to agree

internally renders inoperative the internal agreement reached by the other side. However, there is flexibility for the appointing authority to take into account the internal agreement that was reached.)

(e) Where the arbitrators appointed by the claimant(s) and the respondent(s) are unable to agree on the appointment of the third arbitrator within the specified period of time, the appointing authority must, upon the request of any party and having regard to all relevant circumstances, appoint the third arbitrator, who shall be the presiding arbitrator.

Section 9A of the IAA has also been amended by the Bill, so that it is clear that the original default arbitrators nomination process only applies in an arbitration with two parties and three arbitrators.

Powers to enforce obligations of confidentiality in an arbitration

Presently, the IAA does not contain any provisions explicitly setting out the duty of confidentiality owned by the parties to an arbitration. The parties only bear a duty of confidentiality under the common law, i.e. not to disclose confidential information obtained in the course of the proceedings or use it for any purpose other than in respect of the dispute.

The MinLaw considered the importance of confidentiality to arbitration. The proposed section 12(1)(j) of the Bill will provide explicit recognition of the powers of the arbitral tribunal and the High Court to enforce obligations of confidentiality, by making orders or giving directions, where such obligations exist.

Despite this amendment, the Bill does not codify obligations of confidentiality but seeks to strengthen parties' ability to enforce existing obligations.

By way of comparison, the Hong Kong Arbitration Ordinance (Cap. 609) contains an express imposition of confidentiality in arbitration proceedings. It states that no party to the arbitration may communicate any information relating to the arbitral proceedings or an award made in the proceedings.

Watch the space for other amendments

The Bill only introduces two of the four proposals put forward for consultation during 2019. The MinLaw said it will continue to study the two remaining proposals, namely:

(a) allowing parties, by mutual agreement, to request the arbitrator(s) to decide on jurisdiction at the preliminary award stage; and

(b) allowing a party to arbitral proceedings to appeal to the High Court on a question of law arising out of an award made in the proceedings, provided parties have agreed to opt in to this mechanism.

RELATED CAPABILITIES

- International Arbitration

MEET THE TEAM

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