

International Arbitration (Amendment) Bill

Bill No. 10/2012.

Read the first time on 8th March 2012.

A BILL

i n t i t u l e d

An Act to amend the International Arbitration Act (Chapter 143A of the 2002 Revised Edition) and to make related amendments to the Arbitration Act (Chapter 10 of the 2002 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the International Arbitration (Amendment) Act 2012 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Amendment of section 2**

2. Section 2 of the International Arbitration Act (referred to in this Act as the principal Act) is amended —

(a) by inserting, immediately after the words “permanent arbitral institution” in the definition of “arbitral tribunal” in subsection (1), the words “, and includes an emergency arbitrator appointed pursuant to the rules of arbitration agreed to or adopted by the parties including the rules of arbitration of an institution or organisation”;

(b) by deleting the definition of “arbitration agreement” in subsection (1) and substituting the following definition:

“ “arbitration agreement” means an arbitration agreement referred to in section 2A;”;

(c) by deleting the definitions of “data messages” and “electronic communications” in subsection (1); and

(d) by deleting subsections (3) and (4).

New section 2A

3. The principal Act is amended by inserting, immediately after section 2, the following section:

“Definition and form of arbitration agreement

25 **2A.**—(1) In this Act, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

5 (4) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by other means.

10 (5) The requirement that an arbitration agreement shall be in writing is satisfied by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

15 (6) Where in any arbitral or legal proceedings, a party asserts the existence of an arbitration agreement in a pleading, statement of case or any other document in circumstances in which the assertion calls for a reply and the assertion is not denied, there shall be deemed to be an effective arbitration agreement as between the parties to the proceedings.

20 (7) A reference in a contract to any document containing an arbitration clause shall constitute an arbitration agreement in writing if the reference is such as to make that clause part of the contract.

25 (8) A reference in a bill of lading to a charterparty or other document containing an arbitration clause shall constitute an arbitration agreement in writing if the reference is such as to make that clause part of the bill of lading.

(9) Article 7 of the Model Law shall not apply to this section.

(10) In this section —

30 “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

“electronic communication” means any communication that the parties make by means of data messages.”.

Repeal and re-enactment of section 10

5 **4.** Section 10 of the principal Act is repealed and the following section substituted therefor:

“Appeal on ruling of jurisdiction

10.—(1) This section shall have effect notwithstanding Article 16(3) of the Model Law.

10 (2) An arbitral tribunal may rule on a plea that it has no jurisdiction at any stage of the arbitral proceedings.

(3) If the arbitral tribunal rules —

(a) on a plea as a preliminary question that it has jurisdiction; or

15 (b) on a plea at any stage of the arbitral proceedings that it has no jurisdiction,

any party may, within 30 days after having received notice of that ruling, apply to the High Court to decide the matter.

20 (4) An appeal from the decision of the High Court made under Article 16(3) of the Model Law or this section shall lie to the Court of Appeal only with the leave of the High Court.

(5) There shall be no appeal against a refusal for grant of leave of the High Court.

(6) Where the High Court, or the Court of Appeal on appeal, decides that the arbitral tribunal has jurisdiction —

25 (a) the arbitral tribunal shall continue the arbitral proceedings and make an award; and

30 (b) where any arbitrator is unable or unwilling to continue the arbitral proceedings, the mandate of that arbitrator shall terminate and a substitute arbitrator shall be appointed in accordance with Article 15 of the Model Law.

(7) In making a ruling or decision under this section that the arbitral tribunal has no jurisdiction, the arbitral tribunal, the High Court or the Court of Appeal (as the case may be) may make an award or order of costs of the proceedings, including the arbitral proceedings (as the case may be), against any party.

(8) Where an award of costs is made by the arbitral tribunal under subsection (7), section 21 shall apply with the necessary modifications.

(9) Where an application is made pursuant to Article 16(3) of the Model Law or this section —

(a) such application shall not operate as a stay of the arbitral proceedings or of execution of any award or order made in the arbitral proceedings unless the High Court orders otherwise; and

(b) no intermediate act or proceeding shall be invalidated except so far as the High Court may direct.

(10) Where there is an appeal from the decision of the High Court pursuant to subsection (4) —

(a) such appeal shall not operate as a stay of the arbitral proceedings or of execution of any award or order made in the arbitral proceedings unless the High Court or the Court of Appeal orders otherwise; and

(b) no intermediate act or proceeding shall be invalidated except so far as the Court of Appeal may direct.”.

Amendment of section 12

5. Section 12(5) of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph:

“(b) may award simple or compound interest on the whole or any part of any sum in accordance with section 20(1).”.

Amendment of section 13

6. Section 13 of the principal Act is amended by deleting the word “court” in subsections (2) and (3) and substituting in each case the words “High Court or a Judge thereof”.

5 **Repeal of section 14**

7. Section 14 of the principal Act is repealed.

Amendment of section 19A

8. Section 19A(1) of the principal Act is amended by deleting the words “arbitration proceedings” and substituting the words “arbitral proceedings”.

Repeal and re-enactment of section 20

9. Section 20 of the principal Act is repealed and the following section substituted therefor:

“Interest on awards

15 **20.**—(1) Subject to subsection (3), unless otherwise agreed by the parties, an arbitral tribunal may, in the arbitral proceedings before it, award simple or compound interest from such date, at such rate and with such rest as the arbitral tribunal considers appropriate, for any period ending not later than the date of payment on the whole or any part of —

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- (a) any sum which is awarded by the arbitral tribunal in the arbitral proceedings;
 - (b) any sum which is in issue in the arbitral proceedings but is paid before the date of the award; or
 - 25 (c) costs awarded or ordered by the arbitral tribunal in the arbitral proceedings.

(2) Nothing in subsection (1) shall affect any other power of an arbitral tribunal to award interest.

30 (3) Where an award directs a sum to be paid, that sum shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.”.

Amendment of section 27

10. Section 27(1) of the principal Act is amended by deleting the definition of “arbitral award” and substituting the following definition:

5 ““arbitral award” has the same meaning as in the Convention, but also includes an order or a direction made or given by an arbitral tribunal in the course of an arbitration in respect of any of the matters set out in section 12(1)(c) to (i);”.

10 Related amendments to Arbitration Act

11. The Arbitration Act (Cap. 10) is amended —

(a) by inserting, immediately after the words “arbitral institution” in the definition of “arbitral tribunal” in section 2(1), the words “, and includes an emergency arbitrator appointed pursuant to the rules of arbitration agreed to or adopted by the parties including the rules of arbitration of an institution or organisation”;

(b) by deleting the definition of “arbitration agreement” in section 2(1) and substituting the following definition:

20 ““arbitration agreement” means an arbitration agreement referred to in section 4;”;

(c) by deleting the definitions of “data messages” and “electronic communications” in section 2(1);

(d) by repealing section 4 and substituting the following section:

“Definition and form of arbitration agreement

30 **4.—(1)** In this Act, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

5 (4) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by other means.

10 (5) The requirement that an arbitration agreement shall be in writing is satisfied by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

15 (6) Where in any arbitral or legal proceedings, a party asserts the existence of an arbitration agreement in a pleading, statement of case or any other document in circumstances in which the assertion calls for a reply and the assertion is not denied, there shall be deemed to be an effective arbitration agreement as between the parties to the proceedings.

20 (7) A reference in a contract to any document containing an arbitration clause shall constitute an arbitration agreement in writing if the reference is such as to make that clause part of the contract.

25 (8) A reference in a bill of lading to a charterparty or other document containing an arbitration clause shall constitute an arbitration agreement in writing if the reference is such as to make that clause part of the bill of lading.

(9) In this section —

30 “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

“electronic communication” means any communication that the parties make by means of data messages.”;

(e) by deleting subsection (1) of section 21 and substituting the following subsection:

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“(1) The arbitral tribunal may rule on its own jurisdiction, including a plea that it has no jurisdiction and any objections to the existence or validity of the arbitration agreement, at any stage of the arbitral proceedings.”;

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(f) by deleting subsection (9) of section 21 and substituting the following subsection:

“(9) If the arbitral tribunal rules —

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(a) on a plea as a preliminary question that it has jurisdiction; or

(b) on a plea at any stage of the arbitral proceedings that it has no jurisdiction,

any party may, within 30 days after having received notice of that ruling, apply to the Court to decide the matter.”;

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(g) by deleting subsections (10) and (11) of section 21;

(h) by inserting, immediately after section 21, the following section:

“Appeal on ruling of jurisdiction

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21A.—(1) An appeal from the decision of the High Court made under section 21 shall lie to the Court of Appeal only with the leave of the High Court.

(2) There shall be no appeal against a refusal for grant of leave of the High Court.

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(3) Where the High Court, or the Court of Appeal on appeal, decides that the arbitral tribunal has jurisdiction —

(a) the arbitral tribunal shall continue the arbitral proceedings and make an award; and

5 (b) where any arbitrator is unable or unwilling to continue the arbitral proceedings, the mandate of that arbitrator shall terminate and a substitute arbitrator shall be appointed in accordance with section 18.

10 (4) In making a ruling or decision under this section or section 21 that the arbitral tribunal has no jurisdiction, the arbitral tribunal, the High Court or the Court of Appeal (as the case may be) may make an award or order of costs of the proceedings, including the arbitral proceedings (as the case may be), against any party.

15 (5) Where an award of costs is made by the arbitral tribunal under subsection (4), section 39(1) shall apply with the necessary modifications.

(6) Where an application is made pursuant to section 21 —

20 (a) such application shall not operate as a stay of the arbitral proceedings or of execution of any award or order made in the arbitral proceedings unless the High Court orders otherwise; and

25 (b) no intermediate act or proceeding shall be invalidated except so far as the High Court may direct.

(7) Where there is an appeal from the decision of the High Court pursuant to subsection (1) —

30 (a) such appeal shall not operate as a stay of the arbitral proceedings or of execution of any award or order made in the arbitral proceedings unless the High Court or the Court of Appeal orders otherwise; and

(b) no intermediate act or proceeding shall be invalidated except so far as the Court of Appeal may direct.”;

(i) by repealing section 35 and substituting the following section:

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“Interest

35.—(1) Subject to subsection (3), unless otherwise agreed by the parties, the arbitral tribunal may, in the arbitral proceedings before it, award simple or compound interest from such date, at such rate and with such rest as the arbitral tribunal considers appropriate, for any period ending not later than the date of payment on the whole or any part of —

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(a) any sum which is awarded by the arbitral tribunal in the arbitral proceedings;

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(b) any sum which is in issue in the arbitral proceedings but is paid before the date of the award; or

(c) costs awarded or ordered by the arbitral tribunal in the arbitral proceedings.

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(2) Nothing in subsection (1) shall affect any other power of the arbitral tribunal to award interest.

(3) Where an award directs a sum to be paid, that sum shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.”;

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(j) by deleting the Part heading of Part IV and substituting the following Part heading:

**“COMMENCEMENT OF ARBITRAL
PROCEEDINGS”;**

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(k) by deleting the words “arbitration proceedings” wherever they appear in the following provisions and substituting in each case the words “arbitral proceedings”:

5 Sections 9 (including section heading), 10(1)(a) and (d) and section heading, 14(2), 15(6), 16(3), 19(1), 20(b), 21(6), 24(3), 26(1)(a) and (2), 28(1), 31 (section heading), 37(1), 41(2), 43(4), 45(1), 48(1)(a)(iii) and (3), 49(1), 53(1), 60(1) and 63(2)(b), (3) and (4); and

(l) by deleting “21(10)” in section 52(1) and substituting “21A(1)”.

Transitional provision

10 **12.**—(1) This Act shall apply to arbitral proceedings commenced on or after the date of commencement of this Act but the parties may in writing agree that this Act shall apply to arbitral proceedings commenced before that date.

15 (2) Notwithstanding subsection (1), where the arbitral proceedings were commenced before the date of commencement of this Act, the law governing the arbitration agreement and the arbitration shall be the law which would have applied if this Act had not been enacted.

20 (3) For the purposes of this section, arbitral proceedings are to be taken as having commenced on the date of the receipt by the respondent of a request for the dispute to be referred to arbitration, or where the parties have agreed in writing that any other date is to be taken as the date of commencement of the arbitral proceedings, then on that date.

EXPLANATORY STATEMENT

This Bill seeks to amend the International Arbitration Act (Cap. 143A) for the following purposes:

- (a) to incorporate Option I of Article 7 of the Model Law as amended by the United Nations Commission on International Trade Law (“UNCITRAL”) on 7th July 2006 with regard to the definition of “arbitration agreement”;
- (b) to permit appeal to the High Court and the Court of Appeal on negative jurisdictional rulings made by arbitral tribunals;

- (c) to empower the High Court and the Court of Appeal to make cost orders where the Court rules that an arbitral tribunal has no jurisdiction;
- (d) to expand an arbitral tribunal's powers to award interest;
- (e) to clarify that awards and orders given by emergency arbitrators are enforceable by the High Court;
- (f) to clarify that orders and directions of interim measures set out in section 12(1)(c) to (i) made by arbitral tribunals in arbitrations outside Singapore are enforceable by the High Court; and
- (g) to delete a redundant provision.

The Bill also makes related amendments to the Arbitration Act (Cap. 10) for the purposes set out in paragraphs (a) to (e) above.

Clause 1 relates to the short title and commencement.

Clause 2 amends the definition of "arbitral tribunal" in section 2(1) to include an emergency arbitrator. The objective is to clarify that awards and orders given by emergency arbitrators are enforceable by the High Court. An emergency arbitrator is one appointed pursuant to the rules of arbitration agreed to or adopted by the parties including the rules of arbitration of an institution or organisation.

The clause also amends the definition of "arbitration agreement" by reference to the definition set out in the new section 2A that is inserted by clause 3. The clause further deletes the definitions of "data messages" and "electronic communications" in section 2(1) and section 2(3) and (4) that are consequential to the insertion of the new section 2A.

Clause 3 inserts a new section 2A to redefine "arbitration agreement" by incorporating the expanded definition of "arbitration agreement" in Option I of Article 7 of the Model Law as amended by UNCITRAL on 7th July 2006 ("Option I of Article 7 of the Model Law"). Option I of Article 7 of the Model Law preserves the requirement that arbitration agreements be "in writing", but redefines the requirement to include agreements concluded by any means (orally, by conduct or otherwise), as long as their content is recorded in any form. "Arbitration agreement" is also given expanded meanings in the new section 2A(6) and (8) which substitutes the deleted section 2(3) and (4), respectively.

Clause 4 repeals and re-enacts section 10 so as to consolidate in one section all the provisions on appeals on ruling of jurisdiction. The new section 10 modifies Article 16(3) of the Model Law to expand the powers of an arbitral tribunal to rule on its own jurisdiction at any stage of the arbitral proceedings, as well as the extent to which appeals against such jurisdictional rulings may be brought in the High Court and in the Court of Appeal. Departures from the

procedure prescribed in Article 16(3) of the Model Law are that an arbitral tribunal may rule on a plea that it has no jurisdiction at any stage of the arbitral proceedings and an appeal against both positive and negative jurisdictional rulings lie to the High Court and with the leave of the High Court to the Court of Appeal. There is no appeal against a refusal for grant of leave. The new section 10(6) clarifies the effect of a positive jurisdictional ruling by the High Court or the Court of Appeal. The new section 10(7) and (8) empowers the arbitral tribunal and the High Court or the Court of Appeal (as the case may be) to award costs against any party when it is ruled that the arbitral tribunal has no jurisdiction. The costs awarded include the costs of the arbitral proceedings in order to overcome the impediment that the arbitral tribunal has been determined to have no jurisdiction. These amendments take into account the views of the Law Reform Committee of the Singapore Academy of Law in its Report on the Right to Judicial Review of Negative Jurisdictional Rulings (January 2011).

The clause also inserts a new section 10(9) and (10) to clarify that any appeal to the High Court or the Court of Appeal on a jurisdictional ruling (including one made by an emergency arbitrator) will not operate as a stay of the arbitral proceedings or of execution of any award or order made in the arbitral proceedings unless otherwise ordered by the Court.

Clause 5 amends section 12(5)(b) to make a reference to section 20(1).

Clause 6 amends section 13(2) and (3) to clarify that the High Court or a Judge thereof may order the issue of a subpoena to testify or a subpoena to produce documents and may also issue an order under section 38 of the Prisons Act (Cap. 247).

Clause 7 repeals section 14, which was rendered redundant when section 13 was enacted in 2001.

Clause 8 amends section 19A(1) to substitute the words “arbitration proceedings” with the words “arbitral proceedings”, so as to align the terminology used in that provision with the terminology used in the Model Law and in the other provisions of the International Arbitration Act (except for the provisions in Part III, where the term “arbitration proceedings” is used, in line with the terminology used in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in 1958 by the United Nations Conference on International Commercial Arbitration).

Clause 9 repeals and re-enacts section 20 to clarify the scope of arbitral tribunals’ powers to grant post-award interest. The new section 20 confers upon an arbitral tribunal the discretion to vary the rate and timing of interest on arbitral awards. It also provides for the award of interest on costs awarded or ordered by the arbitral tribunal in the arbitral proceedings.

Clause 10 amends the definition of “arbitral award” in section 27(1) (which applies to Part III on foreign awards) to include an order or a direction made or

given by an arbitral tribunal in the course of arbitration in respect of the interim measures set out in section 12(1)(c) to (i).

Clause 11 makes related amendments to the Arbitration Act to mirror the substantive amendments to the International Arbitration Act (except for the amendment to section 27(1) of the International Arbitration Act in relation to enforcement of foreign awards (clause 10)).

Clause 11(a) amends the definition of “arbitral tribunal” in section 2(1) to include an emergency arbitrator.

Clause 11(b) and (d) amends section 2(1) and repeals and re-enacts section 4, respectively, to redefine “arbitration agreement” by incorporating the expanded meaning of “arbitration agreement” in Option I of Article 7 of the Model Law.

Clause 11(c) deletes the definitions of “data messages” and “electronic communications” in section 2(1) that is consequential to the re-enacted section 4.

Clause 11(e) and (f) amends section 21(1) and (9), respectively, to provide that an arbitral tribunal may rule on a plea that it has no jurisdiction at any stage of the arbitral proceedings.

Clause 11(g) deletes section 21(10) and (11) that is consequential to the insertion of the new section 21A (by clause 11(h)).

Clause 11(h) inserts a new section 21A to provide for appeals on ruling of jurisdiction.

Clause 11(i) repeals and re-enacts section 35 to clarify the scope of arbitral tribunals’ powers to grant post-award interest.

Clause 11(j) amends the Part heading of Part IV to align the terminology used in the Part heading with the terminology used in the new section 21(1) (to be inserted by clause 11(e)).

Clause 11(k) amends sections 9 (including section heading), 10(1)(a) and (d) and section heading, 14(2), 15(6), 16(3), 19(1), 20(b), 21(6), 24(3), 26(1)(a) and (2), 28(1), 31 (section heading), 37(1), 41(2), 43(4), 45(1), 48(1)(a)(iii) and (3), 49(1), 53(1), 60(1) and 63(2)(b), (3) and (4) to align the terminology used in these provisions with the terminology used in the new section 21(1) (to be inserted by clause 11(e)).

Clause 11(l) amends section 52(1) by deleting the reference to section 21(10) which is deleted by clause 11(g) and substituting with the new section 21A(1).

Clause 12 is a transitional provision to provide that the amendments introduced by the Bill will apply to arbitral proceedings commenced on or after the date that the amendments come into operation, but the parties may agree that the amendments apply to arbitral proceedings commenced before that date.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
