

# **International Arbitration (Amendment) Bill**

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**Bill No. 29/2020.**

*Read the first time on 1 September 2020.*

A BILL

*intituled*

An Act to amend the International Arbitration Act (Chapter 143A 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 is the International Arbitration (Amendment) Act 2020 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

### 5 **Amendment of section 9A**

2. Section 9A of the International Arbitration Act (called in this Act the principal Act) is amended —

(a) by inserting, immediately after the words “an arbitration with” in subsection (1), the words “2 parties and”;

10 (b) by deleting the words “days of” in subsection (2) and substituting the words “days after”; and

(c) by inserting, immediately after the word “arbitrators” in the section heading, the words “in arbitration with 2 parties”.

### 15 **New section 9B**

3. The principal Act is amended by inserting, immediately after section 9A, the following section:

#### **“Default appointment of arbitrators in arbitration with 3 or more parties**

20 **9B.**—(1) Notwithstanding Article 11(3) of the Model Law, in an arbitration with 3 or more parties and 3 arbitrators —

25 (a) the claimant, or all the claimants by agreement if there is more than one claimant, must appoint an arbitrator on or before the date of sending of the request for the dispute to be referred to arbitration and inform the respondent or respondents of the appointment on the date when the request for the dispute to be referred to arbitration is sent to the respondent or respondents;

30 (b) the respondent, or all the respondents by agreement if there is more than one respondent, must appoint an arbitrator and inform the claimant or claimants of the appointment within 30 days after the date of receipt of

the request for the dispute to be referred to arbitration by the respondent, or by the last respondent to receive the request if there is more than one respondent; and

- (c) the 2 arbitrators appointed under paragraphs (a) and (b) must by agreement appoint the third arbitrator, who is to be the presiding arbitrator, within 60 days after the date of receipt of the request for the dispute to be referred to arbitration by the respondent, or by the last respondent to receive the request if there is more than one respondent.

(2) Notwithstanding subsection (1), the appointing authority must, upon the request of any party, appoint all 3 arbitrators and designate any one of the arbitrators as the presiding arbitrator if —

- (a) the claimant or claimants fail to appoint an arbitrator, or fail to inform the respondent or respondents of such appointment, by the date specified in subsection (1)(a); or
- (b) the respondent or respondents fail to appoint an arbitrator, or fail to inform the claimant or claimants of such appointment, within the time specified in subsection (1)(b).

(3) In making the appointments under subsection (2), the appointing authority may, having regard to all relevant circumstances, re-appoint or revoke the appointment of an arbitrator appointed under subsection (1)(a) or (b).

(4) Notwithstanding subsection (1)(c), the appointing authority must, upon the request of any party and having regard to all relevant circumstances, appoint the third arbitrator if the 2 arbitrators appointed by the parties fail to agree on the appointment of the third arbitrator within the time specified in subsection (1)(c).”

## Amendment of section 12

4. Section 12(1) of the principal Act is amended —

(a) by deleting the word “and” at the end of paragraph (h); and

(b) by deleting the full-stop at the end of paragraph (i) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(j) enforcing any obligation of confidentiality —

(i) that the parties to an arbitration agreement have agreed to in writing, whether in the arbitration agreement or in any other document;

(ii) under any written law or rule of law; or

(iii) under the rules of arbitration (including the rules of arbitration of an institution or organisation) agreed to or adopted by the parties.”.

## Amendment of section 12A

5. Section 12A(2) of the principal Act is amended by deleting the words “to (i)” and substituting the words “to (j)”.

## Amendment of section 27

6. Section 27(1) of the principal Act is amended by deleting the words “to (i)” in the definition of “arbitral award” and substituting the words “to (j)”.

## Saving and transitional provisions

7.—(1) Section 2 applies to arbitral proceedings commenced on or after the date of commencement of that section.

(2) Section 3 applies to arbitral proceedings commenced on or after the date of commencement of that section.

(3) Despite subsection (1), the parties may agree in writing that section 2 applies to arbitral proceedings commenced before the date of commencement of that section if none of the arbitrators for those arbitral proceedings have been appointed by that date.

(4) For the purposes of this section, arbitral proceedings are to be taken as having commenced on —

- (a) the date of receipt of the request for the dispute to be referred to arbitration by the respondent, or by the last respondent to receive the request if there is more than one respondent; or
- (b) 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.

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## EXPLANATORY STATEMENT

This Bill seeks to amend the International Arbitration Act (Cap. 143A) —

- (a) to provide for the default procedure for the appointment of arbitrators in multi-party arbitrations; and
- (b) to recognise that an arbitral tribunal, the High Court or a Judge has powers to make orders or give directions to any party to an arbitration for enforcing any obligation of confidentiality.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 9A so that the default procedure for the appointment of arbitrators in that section only applies in an arbitration with 2 parties and 3 arbitrators. The clause also substitutes the words “days of” in section 9A(2) with the words “days after” for consistency with section 10(1), and to avoid ambiguity as to whether the date of receipt of the earliest request by either party to appoint the third arbitrator should be included when counting the 30-day duration under section 9A(2). The substitution is not intended to change the existing legal position.

Clause 3 inserts a new section 9B to provide for the appointment of arbitrators in an arbitration with 3 or more parties and 3 arbitrators, where parties have not agreed on a procedure for the appointment of the arbitrators. The default procedure is for the claimant (or all the claimants by agreement if there is more than one claimant) to appoint an arbitrator and for the respondent (or all the

respondents by agreement if there is more than one respondent) to also appoint an arbitrator. The 2 arbitrators appointed by the parties must by agreement appoint the third arbitrator, who is to be the presiding arbitrator.

The new section 9B also provides for the timelines within which each of the arbitrators must be appointed. The new section 9B(1) provides that in an arbitration with 3 or more parties and 3 arbitrators, the claimant or claimants must appoint an arbitrator on or before the date of sending of the request for the dispute to be referred to arbitration and inform the respondent or respondents of the appointment on the date when the request for the dispute to be referred to arbitration is sent to the respondent or respondents, while the respondent or respondents must appoint an arbitrator and inform the claimant or claimants of the appointment within 30 days after the date of receipt of the request for the dispute to be referred to arbitration by the respondent, or by the last respondent to receive the request if there is more than one respondent. Subsequently, the 2 arbitrators appointed by the parties must appoint an arbitrator within 60 days after the date of receipt of the request for the dispute to be referred to arbitration by the respondent, or by the last respondent to receive the request if there is more than one respondent.

In addition, the new section 9B sets out 2 alternative procedures for the appointment of arbitrators in an arbitration with 3 or more parties and 3 arbitrators, and the circumstances under which each of the alternative procedures is to apply.

The first alternative procedure, contained in the new section 9B(2), is for the appointing authority (upon the request of any party) to appoint all 3 arbitrators and designate any one of the arbitrators as the presiding arbitrator if either of the following occurs:

- (a) the claimant or claimants fail to appoint an arbitrator, or fail to inform the respondent or respondents of the appointment, by the date specified in the new section 9B(1)(a);
- (b) the respondent or respondents fail to appoint an arbitrator, or fail to inform the claimant or claimants of the appointment, within the time specified in the new section 9B(1)(b).

In appointing all 3 arbitrators using the first alternative procedure, the appointing authority may, having regard to all relevant circumstances, revoke an appointment made under the new section 9B(1)(a) or (b) or re-appoint an arbitrator appointed under either of those provisions.

The second alternative procedure, contained in the new section 9B(4), is for the appointing authority (upon the request of any party and having regard to all relevant circumstances) to appoint the third arbitrator if the 2 arbitrators appointed by the parties fail to agree on the appointment of the third arbitrator within the time specified in the new section 9B(1)(c). This third arbitrator is to be the presiding arbitrator.

Clause 4 amends section 12(1) to recognise that an arbitral tribunal has powers to make orders or give directions to any party to an arbitration for enforcing any obligation of confidentiality —

- (a) that the parties to an arbitration agreement have agreed to in writing, whether in the arbitration agreement or in any other document;
- (b) under any written law or rule of law (which includes rules under the common law); or
- (c) under the rules of arbitration (including the rules of arbitration of an institution or organisation) agreed to or adopted by the parties.

Clause 5 amends section 12A(2) to give the High Court or a Judge the same power of making an order in respect of the matters set out in the new section 12(1)(j) (as inserted by clause 4) as the High Court or a Judge has for the purpose of and in relation to an action or a matter in the court.

Clause 6 makes a related amendment to section 27(1) consequent to the amendment of section 12(1) by clause 4.

Clause 7 contains saving and transitional provisions relating to the amendments in the Bill.

## EXPENDITURE OF PUBLIC MONEY

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

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