

**CONSULTATION PAPER
ON THE DRAFT INTERNATIONAL ARBITRATION
(AMENDMENT) BILL**

27 JULY 2009 – 17 AUGUST 2009

INTRODUCTION

The Ministry of Law, as part of its ongoing efforts to strengthen the well-respected arbitration framework in Singapore, is proposing amendments to the International Arbitration Act (IAA). These refinements to the IAA, proposed after a consultation with experienced arbitrators and arbitration counsel within the industry, will further enhance the legislative infrastructure for Singapore's international arbitration regime.

2 The IAA is based on the UNCITRAL¹ Model Law of 1985, which reflects established practices worldwide on key aspects of international arbitration. The Ministry of Law has reviewed the 2006 amendments to the 1985 Model Law in consultation with the industry experts.

3 In the enclosed Bill, three main amendments are proposed:

- (a) Our courts will be empowered to grant interim orders in aid of arbitrations held outside of Singapore. Interim orders include provision for the discovery of documents during the course of the proceedings as well as orders to freeze assets of parties. This move is in line with legislation in other countries such as the UK and New Zealand.
- (b) The current definition of an arbitration agreement will be modernised to make it clear that Singapore recognises that an arbitration agreement can be contained in "electronic communications" such as electronic emails or electronic data exchange.
- (c) The Minister for Law will be empowered to designate entities to authenticate, on a non-mandatory basis, "made in Singapore" arbitration awards. This facilitates the enforcement of such awards in countries which are party to the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)².

4 The Ministry invites interested parties to provide their feedback on the draft International Arbitration (Amendment) Bill. The consultation period is from 27 July 2009 to 17 August 2009. The public can view the consultation paper and Bill at www.minlaw.gov.sg and <http://app.reach.gov.sg/olcp/asp/ocp/ocp01a.asp>. The feedback may be sent in electronic or hard copy form to:

Legal Policy Division
Ministry of Law
100 High Street
#08-02, The Treasury
Singapore 179434

¹ United Nations Commission on International Trade Laws

² The New York Convention generally requires courts of one contracting State to recognise and enforce arbitral awards made in other States.

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5 The Ministry of Law reserves the right to make public all or parts of any written submission unless confidentiality is specifically requested for the whole or any part of the submission.

SCOPE OF THE DRAFT BILL

(a) Court-ordered interim measures in aid of foreign arbitrations

Our present IAA only empowers a Singapore court to grant interim orders to assist Singapore arbitrations and not arbitrations outside Singapore (foreign arbitrations). The proposed section 12A will empower the Singapore courts to grant interim orders in aid of foreign arbitrations. Interim orders include provision for the discovery of documents during the course of the proceedings and orders to freeze assets of parties. This move is consistent with the recent 2006 amendments to the 1985 Model Law. It is also in line with the legislation of other countries such as the UK and New Zealand.

2 The amendment also makes it clear that the arbitral tribunal plays the central role in arbitrations and the court will only grant interim orders in limited situations where the tribunal is unable to act effectively.

3 In addition, the proposed section 12A(3) gives the courts the discretion to refuse to grant interim orders to assist a foreign arbitration if the court considers it inappropriate to do so. This is an added safeguard to give the court sufficient flexibility to deal with complicated international disputes.

(b) New definition of “Electronic Communications”

4 The proposed amendment to section 2(1) seeks to modernise the current definition of an arbitration agreement to make it clear that Singapore recognises that an arbitration agreement can be contained in “electronic communications” such as electronic emails or electronic data exchange.

(c) Authenticating Agents

5 A party seeking to enforce an arbitral award outside Singapore under the New York Convention is required to tender before the foreign court:

- (i) A duly authenticated original award or a duly certified copy, and
- (ii) The original arbitration agreement or duly certified copy.

6 The Ministry of Law has received feedback that some parties face difficulties in enforcing their Singapore arbitration award overseas. These difficulties have arisen because some foreign courts require that the awards be duly authenticated before allowing the awards to be enforced.

7 As there is currently no public body authenticating awards made in Singapore, the proposed amendment at section 19C will allow the Minister to prescribe designated entities to authenticate, on a non-mandatory basis, “made in Singapore” awards for the purposes of overseas enforcement.

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Ministry of Law
27 July 2009