Important changes to the Singapore International Arbitration Act

COMMENTARY BY STUART ISAACS QC, 22ND OCTOBER 2020

Singapore is arguably the world's most pro-arbitration jurisdiction. Last month, the Ministry of Law introduced a bill to make two important amendments to the International Arbitration Act ("IAA"), which governs the conduct of international arbitrations seated in Singapore. The amendments will further enhance the IAA and Singapore's position as a major international arbitration hub in the Asia-Pacific region. They will come into force on a date to be notified by the Minister.

The first amendment, although somewhat technical in nature, introduces into the IAA a new section 9B which provides a default mechanism for the appointment of arbitrators in a multi-party situation. Under the existing legislation – section 9A of the IAA - a default mechanism exists only for two-party situations: section 9A provides that each party shall appoint one arbitrator, and the parties shall by agreement appoint the third arbitrator; and where the parties fail to agree on the appointment of the third arbitrator within 30 days of the receipt of the first request by either party to do so, the appointment shall be made, upon the request of a party, by the appointing authority. In practice, those provisions were often considered to be unworkable in multi-party situations. The new section 9B therefore provides that where there is an arbitration with three or more parties and three arbitrators and each "side" (the claimants' or the respondents' group) is unable to agree amongst itself on the appointment of its arbitrator, the appointing authority must, on the request of any party, appoint all three arbitrators. The provisions apply when there is a single claimant or respondent but two or more parties on the opposing side. In this way, any semblance of unfairness resulting from one group having its arbitrator on the tribunal and the other not is avoided. As in the case of a two-party situation under section 9A, where each side has managed to appoint an

arbitrator and the two arbitrators are unable to agree on the third arbitrator, the third arbitrator will be appointed by the appointing authority.

The second amendment concerns confidentiality. Section 12(1) of the IAA sets out various powers accorded to an arbitral tribunal. The amendment introduces a new sub-section (j) which confers broad powers a tribunal to make orders or give directions to any party for 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. The new provision reflects the growing appreciation in international commercial arbitration of the need to protect confidentiality in a world where the electronic transmission of documents across borders is now commonplace. (As an aside, the new LCIA Arbitration Rules which took effect as from 1 October 2020 make electronic communication the primary method of communication).

Of equal importance and interest to these amendments is the decision of the Ministry not to include in the bill a proposal to allow parties to agree on a right of appeal to the Singapore High Court on a question of law arising from an award. In England, section 69 of the Arbitration Act 1996 provides (unless otherwise agreed by the parties) for a party to appeal to the court on a question of law arising out of an award with either the agreement of all the other parties or the court's permission. No such equivalent provision exists under the IAA. The proposal would have allowed parties who preferred court supervision on questions of law to choose that course while preserving the present position for parties who wished for the finality of awards. In the end, the feedback obtained during the consultation period from the arbitration community lay against the proposal, which has been omitted from the new legislation.

Another proposal not in the end adopted was the imposition of a requirement that arbitrators decide on jurisdiction at the preliminary stage if requested by all parties. Such a requirement was widely opposed during the consultation period by arbitrators and practitioners alike. It would have tied the hands of the arbitral tribunal to decide whether or not to determine a jurisdiction issue as a preliminary issue. While recognising the principle of party autonomy, the tribunal has a duty of its own to conduct the arbitral proceedings in a

cost- and time-effective manner. The proposal risked slowing down the arbitral process and leading to unfortunate situations where the determination of a jurisdiction issue cannot properly be divorced from the facts of the case to be decided at an evidentiary hearing and yet would nonetheless have to be determined preliminarily. It would have been regrettable if the tribunal's view as to the unsuitability of a jurisdiction or other issue for determination preliminarily were to be overridden by the mutual agreement of the parties.

For more information on our International Arbitration practice, please click here.

If you are viewing this document on LinkedIn, you can download it by clicking on the icon in the top-right-hand corner when in full screen view.