

Arbitration Alert

Dear Clients & Friends

International Arbitration (Amendment) Act comes into force 1 January 2010: Better court support for arbitration proceedings

On 1 January 2010, the International Arbitration (Amendment) Act 2009 (the “**Amendment Act**”) will come into force. The Amendment Act amends the International Arbitration Act (the “**IAA**”) and the Arbitration Act (the “**AA**”). These amendments are outlined below.

Definition of arbitration agreement

The Amendment Act widens the definition of “arbitration agreement” in both the IAA and the AA to include agreements made by electronic communications, such as electronic messages.

Interim measures

A new provision, section 12A, will be introduced into the IAA to provide the Singapore High Court with the power to order interim measures in international arbitrations, regardless of whether or not the place of arbitration is Singapore. The interim measures which the High Court may order are as follows:

- (i) Giving of evidence by affidavit;
- (ii) The preservation, interim custody or sale of any property which is or forms part of the subject-matter of the dispute;
- (iii) Samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute;
- (iv) The preservation and interim custody of any evidence for the purposes of the proceedings;
- (v) Securing the amount in dispute;
- (vi) Ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and
- (vii) An interim injunction or any other interim measure.

There are, however, limits to the High Court’s power to order the above interim measures. As a starting point, the High Court’s power may only be exercised to the extent that the arbitral tribunal, and an arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively. In addition, unless the case is urgent, the High Court may only make an order for interim measures with the permission of the arbitral tribunal, or written agreement of the parties. Should the arbitral tribunal subsequently make an order expressly relating to a whole or part of an earlier order of the High Court, the order of the High Court will cease to have effect in whole or in part, as the case may be.

Further, the High Court may refuse to exercise its powers to order interim measures if the fact that the place of arbitration is outside Singapore, or likely to be outside Singapore, makes it inappropriate to make such an order.

The Amendment Act also introduces a new provision in the AA which mirrors the new section 12A of the IAA.

Authentication of arbitration awards

The Amendment Act amends both the IAA and the AA to empower the Minister for Law to appoint any person holding office in an arbitral institution or other organisation to authenticate arbitration awards which are made in Singapore and arbitration agreements, and certify copies thereof, for the purposes of enforcement of awards in countries which are Contracting States to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

Further information

Should you have any queries as to how this may affect your business, please do not hesitate to get in touch with your usual contact at Allen & Gledhill LLP or either of the following:

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