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ACTS SUPPLEMENT

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The following Act was passed by Parliament on 19th October 2009 and assented to by the President on 30th October 2009:—

REPUBLIC OF SINGAPORE

No. 26 of 2009.

I assent.

(LS)

S R NATHAN,
President.
30th October 2009.

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 2009 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 2

2. Section 2(1) of the International Arbitration Act (referred to in this Act as the principal Act) is amended —

(a) by deleting the definition of “arbitration agreement” and substituting the following definition:

“ “arbitration agreement” means an agreement in writing referred to in Article 7 of the Model Law and includes —

(a) an agreement made by electronic communications if the information contained therein is accessible so as to be useable for subsequent reference; and

(b) an agreement deemed or constituted under subsection (3) or (4);” and

(b) by inserting, immediately after the definition of “award”, the following definitions:

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

Amendment of section 12

3. Section 12 of the principal Act is amended by deleting subsection (7).

New section 12A

4. The principal Act is amended by inserting, immediately after section 12, the following section:

“Court-ordered interim measures

12A.—(1) This section shall apply in relation to an arbitration —

- (a) to which this Part applies; and
- (b) irrespective of whether the place of arbitration is in the territory of Singapore.

(2) Subject to subsections (3) to (6), for the purpose of and in relation to an arbitration referred to in subsection (1), the High Court or a Judge thereof shall have the same power of making an order in respect of any of the matters set out in section 12(1)(c) to (i) as it has for the purpose of and in relation to an action or a matter in the court.

(3) The High Court or a Judge thereof may refuse to make an order under subsection (2) if, in the opinion of the High Court or Judge, the fact that the place of arbitration is outside Singapore or likely to be outside Singapore when it is designated or determined makes it inappropriate to make such order.

(4) If the case is one of urgency, the High Court or a Judge thereof may, on the application of a party or proposed party to the arbitral proceedings, make such orders under subsection (2) as the High Court or Judge thinks necessary for the purpose of preserving evidence or assets.

(5) If the case is not one of urgency, the High Court or a Judge thereof shall make an order under subsection (2) only on the application of a party to the arbitral proceedings (upon notice to the other parties and to the arbitral tribunal) made with the permission of the arbitral tribunal or the agreement in writing of the other parties.

(6) In every case, the High Court or a Judge thereof shall make an order under subsection (2) only if or to the extent that the arbitral tribunal, and any 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.

(7) An order made by the High Court or a Judge thereof under subsection (2) shall cease to have effect in whole or in part (as the case may be) if the arbitral tribunal, or any such arbitral or other institution or person having power to act in relation to the subject-matter of the order, makes an order which expressly relates to the whole or part of the order under subsection (2).”

New section 19C

5. The principal Act is amended by inserting, immediately after section 19B, the following section:

“Authentication of awards and arbitration agreements

19C.—(1) For the purposes of the enforcement of an award in any Convention country, the Minister may by order appoint such persons holding office in such arbitral institution or other organisation as the Minister may specify in the order, to authenticate any award or arbitration agreement or to certify copies thereof.

(2) Any person appointed under subsection (1) —

(a) shall comply with any condition imposed by the Minister; and

(b) shall not, without the written consent of the parties, directly or indirectly disclose any matter, including the identity of any party to the award or arbitration agreement, to any third party.

(3) An award or arbitration agreement or a copy thereof duly authenticated or certified by a person appointed under subsection (1) shall be deemed to have been authenticated or certified by a competent authority in Singapore for the purposes of enforcement in any Convention country.

(4) For the avoidance of doubt, nothing in this section shall —

(a) prevent any person from authenticating any award or arbitration agreement or certifying copies thereof in any other manner or method or by any other person, institution or organisation; or

(b) affect the right of a person to challenge or appeal against any award by any available arbitral process of appeal or review, or in accordance with the provisions of this Act and the Model Law.

(5) In this section, “Convention country” has the same meaning as in section 27(1).”.

Repeal of section 32

6. Section 32 of the principal Act is repealed.

Amendment of Second Schedule

7. Article II of the Second Schedule to the principal Act is amended by inserting, immediately after the word “Article,” in paragraph 3, the word “shall,”.

Related amendments to Arbitration Act

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

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

““arbitration agreement” means an arbitration agreement referred to in section 4 and includes an agreement made by electronic communications if the information contained therein is accessible so as to be useable for subsequent reference;”;

(b) by inserting, immediately after the definition of “court” in section 2(1), the following definitions:

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

(c) by deleting subsection (2) of section 31 and substituting the following subsection:

“(2) An order made by the Court under this section shall cease to have effect in whole or in part (as the case may be) if the arbitral tribunal, or any such arbitral or other institution or person having power to act in relation to the subject-matter of the order, makes an order which expressly relates to the whole or part of that order of the Court.”; and

(d) by inserting, immediately after section 59, the following section:

“Authentication of awards and arbitration agreements

59A.—(1) For the purposes of the enforcement of an award in any Convention country, the Minister may by order appoint

such persons holding office in such arbitral institution or other organisation as the Minister may specify in the order, to authenticate any award or arbitration agreement or to certify copies thereof.

(2) Any person appointed under subsection (1) —

- (a) shall comply with any condition imposed by the Minister; and
- (b) shall not, without the written consent of the parties, directly or indirectly disclose any matter, including the identity of any party to the award or arbitration agreement, to any third party.

(3) An award or arbitration agreement or a copy thereof duly authenticated or certified by a person appointed under subsection (1) shall be deemed to have been authenticated or certified by a competent authority in Singapore for the purposes of enforcement in any Convention country.

(4) For the avoidance of doubt, nothing in this section shall —

- (a) prevent any person from authenticating any award or arbitration agreement or certifying copies thereof in any other manner or method or by any other person, institution or organisation; or
- (b) affect the right of a person to challenge or appeal against any award by any available arbitral process of appeal or review, or in accordance with the provisions of this Act.

(5) In this section, “Convention country” has the same meaning as in section 27(1) of the International Arbitration Act (Cap. 143A).”.

Saving and transitional provision

9. Where an application has been made to the High Court or a Judge thereof for any order or direction under section 12(7) of the principal Act before the date of commencement of the International Arbitration (Amendment) Act 2009, the principal Act shall continue to apply to that application as if sections 3 and 4 had not been enacted.