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**Notification No. B 38** — The International Arbitration (Amendment) Bill is hereby published for general information. It was introduced in Parliament on the 25th day of September 2001.

# **International Arbitration (Amendment) Bill**

**Bill No. 38/2001.**

*Read the first time on 25th September 2001.*

A BILL

*intituled*

An Act to amend the International Arbitration Act (Chapter 143A of the 1995 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  
5 (Amendment) Act 2001 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 of the International Arbitration Act (referred to in this Act as the principal Act) is amended —

- (a) by deleting the definition of “arbitration agreement” in subsection (1) and substituting the following definitions: 5

“ “appointing authority” means the authority designated under section 8 (2) or (3);

“arbitration agreement” means an agreement in writing referred to in Article 7 of the Model Law and includes an agreement deemed or constituted under 10 subsection (3) or (4);”;

- (b) by inserting, immediately after the word “award” in the definition of “award” in subsection (1), the words “but excludes any orders or directions made under section 12”; and 15

- (c) by inserting, immediately after subsection (2), the following subsections:

“(3) Where in any arbitral or legal proceedings, a party asserts the existence of an arbitration agreement in a pleading, statement of case or any other document in 20 circumstances in which the assertion calls for a reply and the assertion is not denied, there shall be deemed to be an effective arbitration agreement as between the parties to the proceedings.

(4) A reference in a bill of lading to a charterparty or 25 some other document containing an arbitration clause shall constitute an arbitration agreement if the reference is such as to make that clause part of the bill of lading.”.

## **Amendment of section 6**

**3.** Section 6 of the principal Act is amended — 30

- (a) by deleting subsection (1) and substituting the following subsection:

“(1) Notwithstanding Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any proceedings in any court against 35 any other party to the agreement in respect of any matter

which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.”;

(b) by inserting, immediately after the word “proceedings” in the 4th line of subsection (2), the words “so far as the proceedings relate to the matter,”; and

(c) by deleting subsection (4) and substituting the following subsections:

“(4) Where no party to the proceedings has taken any further step in the proceedings for a period of not less than 2 years after an order staying the proceedings has been made, the court may, on its own motion, make an order discontinuing the proceedings without prejudice to the right of any of the parties to apply for the discontinued proceedings to be reinstated.

(5) For the purposes of this section and sections 7 and 11A —

(a) a reference to a party shall include a reference to any person claiming through or under such party;

(b) “court” means the High Court, District Court, Magistrate’s Court or any other court in which proceedings are instituted.”.

## **Amendment of section 7**

**4.** Section 7 (1) of the principal Act is amended by deleting the word “Admiralty” in the 1st line and in the marginal note thereto.

## **Amendment of section 8**

**5.** Section 8 of the principal Act is amended by deleting subsection (2) and substituting the following subsections:

“(2) The Chairman of the Singapore International Arbitration Centre shall be taken to have been specified as the authority competent to perform the functions under Article 11 (3) and (4) of the Model Law.

(3) The Chief Justice may, if he thinks fit, by notification published in the *Gazette*, appoint any other person to exercise the powers of the Chairman of the Singapore International Arbitration Centre under subsection (2).”.

## **New section 8A**

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6. The principal Act is amended by inserting, immediately after section 8, the following section:

### **“Application of Limitation Act**

**8A.**—(1) The Limitation Act (Cap. 163) shall apply to arbitration proceedings as it applies to proceedings before any court and a reference in that Act to the commencement of any action shall be construed as a reference to the commencement of arbitration proceedings. 10

(2) The High Court may order that in computing the time prescribed by the Limitation Act for the commencement of proceedings (including arbitration proceedings) in respect of a dispute which was the subject-matter of — 15

(a) an award which the High Court orders to be set aside or declares to be of no effect; or

(b) the affected part of an award which the High Court orders to be set aside in part or declares to be in part of no effect, 20

the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) or (b) shall be excluded. 25

(3) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of the Limitation Act, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.”. 30

## **New section 9A**

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

### **“Default appointment of arbitrators**

5       **9A.**—(1) Notwithstanding Article 11 (3) of the Model Law, in an arbitration with 3 arbitrators, each party shall appoint one arbitrator, and the parties shall by agreement appoint the third arbitrator.

10       (2) 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.”.

## **Amendment of section 11**

15       **8.** Section 11 (1) of the principal Act is amended by deleting the words “the arbitration agreement is contrary to public policy” and substituting the words “it is contrary to public policy to do so”.

## **New section 11A**

9. The principal Act is amended by inserting, immediately after section 11, the following section:

### **“Reference of interpleader issue to arbitration**

20       **11A.** Where in proceedings before any court relief by way of interpleader is granted and any issue between the claimants is one in respect of which there is an arbitration agreement between them, the court granting the relief may direct the issue  
25       between the claimants to be determined in accordance with the agreement.”.

## **Amendment of section 12**

**10.** Section 12 of the principal Act is amended —

30       (a) by inserting, immediately after the word “is” in subsection (1) (d), the words “or forms part of”;

(b) by inserting, immediately after paragraph (d) of subsection (1), the following paragraphs:

“(da) 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;

(db) the preservation and interim custody of any evidence for the purposes of the proceedings;” and

(c) by inserting, immediately after subsection (3), the following subsection: 5

“(3A) The power of the arbitral tribunal to order a claimant to provide security for costs as referred to in subsection (1) (a) shall not be exercised by reason only that the claimant is — 10

(a) an individual ordinarily resident outside Singapore; or

(b) a corporation or an association incorporated or formed under the law of a country outside Singapore, or whose central management and control is exercised outside Singapore.”. 15

### **Repeal and re-enactment of section 13**

**11.** Section 13 of the principal Act is repealed and the following section substituted therefor:

#### **“Witnesses may be summoned by subpoena 20**

**13.—**(1) Any party to an arbitration agreement may take out a writ of subpoena ad testificandum (writ to compel witness to attend and give evidence) or a writ of subpoena duces tecum (writ to compel witness to attend and give evidence and produce specified documents). 25

(2) The court may order that a writ of subpoena ad testificandum or a writ of subpoena duces tecum shall be issued to compel the attendance before an arbitral tribunal of a witness wherever he may be within Singapore.

(3) The court may also issue an order under section 38 of the Prisons Act (Cap. 247) to bring up a prisoner for examination before an arbitral tribunal. 30

(4) No person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.”. 35

## **Repeal and re-enactment of section 15**

**12.** Section 15 of the principal Act is repealed and the following section substituted therefor:

### **“Law of arbitration other than Model Law**

5       **15.**—(1) If the parties to an arbitration agreement (whether made before or after the date of commencement of the International Arbitration (Amendment) Act 2001) have expressly agreed either —

10           (a) that the Model Law or this Part shall not apply to the arbitration; or

          (b) that the Arbitration Act 2001 or the repealed Arbitration Act (Cap. 10) shall apply to the arbitration, then, both the Model Law and this Part shall not apply to that arbitration but the Arbitration Act 2001 or the repealed  
15       Arbitration Act (if applicable) shall apply to that arbitration.

          (2) For the avoidance of doubt, a provision in an arbitration agreement referring to or adopting any rules of an arbitral institution shall not of itself be sufficient to exclude the application of the Model Law or this Part to the arbitration  
20       concerned.”.

## **Amendment of section 16**

**13.** Section 16 of the principal Act is amended by inserting, immediately after subsection (4), the following subsection:

          “(5) For the purposes of this section and section 17 —

25           (a) any reference to “conciliator” shall include a reference to any person who acts as a mediator;

          (b) any reference to “conciliation proceedings” shall include a reference to mediation proceedings.”.

## **New sections 19A and 19B**

30       **14.** The principal Act is amended by inserting, immediately after section 19, the following sections:

### **“Awards made on different issues**

**19A.**—(1) Unless otherwise agreed by the parties, the arbitral tribunal may make more than one award at different points in



time during the arbitration proceedings on different aspects of the matters to be determined.

(2) The arbitral tribunal may, in particular, make an award relating to —

- (a) an issue affecting the whole claim; or 5
- (b) a part only of the claim, counter-claim or cross-claim, which is submitted to it for decision.

(3) If the arbitral tribunal makes an award under this section, it shall specify in its award, the issue, or claim or part of a claim, which is the subject-matter of the award. 10

### **Effect of award**

**19B.**—(1) An award made by the arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties and on any persons claiming through or under them and may be relied upon by any of the parties by way of defence, set-off or otherwise in any proceedings in any court of competent jurisdiction. 15

(2) Except as provided in Articles 33 and 34 (4) of the Model Law, upon an award being made, including an award made in accordance with section 19A, the arbitral tribunal shall not vary, amend, correct, review, add to or revoke the award. 20

(3) For the purposes of subsection (2), an award is made when it has been signed and delivered in accordance with Article 31 of the Model Law.

(4) This section shall not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Act and the Model Law.”. 25

### **Amendment of section 21**

**15.** Section 21 (2) of the principal Act is amended by deleting the word “where” in the 2nd line. 30

## **New section 25A**

**16.** The principal Act is amended by inserting, immediately after section 25, the following section:

**“Immunity of appointing authority and arbitral institutions, etc.**

5       **25A.**—(1) The appointing authority, or an arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator, shall not be liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad  
10       faith.

(2) The appointing authority, or an arbitral or other institution or person by whom an arbitrator is appointed or nominated, shall not be liable, by reason only of having appointed or nominated him, for anything done or omitted by the arbitrator, his employees  
15       or agents in the discharge or purported discharge of his functions as arbitrator.

(3) This section shall apply to an employee or agent of the appointing authority or of an arbitral or other institution or person as it applies to the appointing authority, institution or  
20       person himself.”.

## **Transitional provisions**

**17.**—(1) Unless the parties have otherwise agreed in writing, this Act shall not apply to arbitration proceedings commenced before the date of commencement of the International Arbitration (Amendment)  
25       Act 2001.

(2) Notwithstanding subsection (1), where the arbitration proceedings were commenced before the date of commencement of the International Arbitration (Amendment) Act 2001, the law governing the arbitration agreement and the arbitration shall be the  
30       law which would have applied if this Act had not been enacted.

(3) For the purposes of this section, arbitration proceedings are to be taken as having commenced on the date of the receipt by the respondent of a request for the dispute to be referred to arbitration, or, where the parties have agreed in writing that any other date is  
35       to be taken as the date of commencement of the arbitration proceedings, then on that date.

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## EXPLANATORY STATEMENT

This Bill seeks to amend the International Arbitration Act (Cap. 143A) to make certain provisions consistent with the provision of the new Arbitration Act 2001. The amendments provide for —

- (a) a definition of “arbitration agreement”, that is consistent with the definition under the new Arbitration Act 2001 (clause 2);
- (b) the court to make an order of discontinuance in respect of certain stayed actions after at least 2 years since the last step in legal proceedings was taken, but subject to certain safeguards (clause 3);
- (c) the Chief Justice to appoint any other person to exercise the powers of the Chairman of the Singapore International Arbitration Centre (clause 5);
- (d) the application of the Limitation Act (Cap. 163) (clause 6);
- (e) the High Court, District Court or Magistrate’s Court to refer issues that arise by way of interpleader to arbitration (clause 9);
- (f) the conferment on an arbitral tribunal of the powers to take samples and to order the preservation and interim custody of any evidence (clause 10);
- (g) the summoning of witnesses by subpoenas (clause 11);
- (h) the circumstances in which the Model Law and Part II of the Act will not apply and the express stipulation that a reference to the adoption of any arbitral institutional rules shall not be sufficient to exclude the application of the Model Law or Part II of the Act (clause 12);
- (i) references to “conciliator” and “conciliation proceedings” to include references to “mediator” and “mediation proceedings”, respectively (clause 13);
- (j) the clarification that an arbitral tribunal may make more than one award at different points in time and on different issues, or on different parts of a claim, counter-claim or cross-claim (clause 14);
- (k) the clarification that except as provided in the Model Law, an award made in accordance with Article 31 of the Model Law shall not be revisited by an arbitral tribunal. Every award, including an award made at different points in time on different issues or different parts of a claim, counter-claim or cross-claim is final and may not be varied, amended, corrected, reviewed, added to or revoked except as allowed under the Model Law (clause 14); and
- (l) the limited immunity of the appointing authority and arbitral institutions (clause 16).

EXPENDITURE OF PUBLIC MONEY

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

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