

Singapore International Arbitration Act

INTERNATIONAL ARBITRATION ACT (CHAPTER 143A)

Part I

PRELIMINARY

1. Short title.

This Act may be cited as the International Arbitration Act.

Part II

INTERNATIONAL COMMERCIAL ARBITRATION

2. Interpretation of Part II.

(1) In this Part, unless the context otherwise requires --

"arbitral tribunal" means a sole arbitrator or a panel of arbitrators or a permanent arbitral institution;

"arbitration agreement" means an agreement in writing referred to in Article 7 of the Model Law and includes an arbitration clause contained or incorporated by reference in a bill of lading;

"award" means a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award;

"Model Law" means the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21st June 1985, the text in English of which is set out in the First Schedule;

"party" means a party to an arbitration agreement or, in any case where an arbitration does not involve all of the parties to the arbitration agreement, means a party to the arbitration.

(2) Except so far as the contrary intention appears, a word or expression that is used both in this Part and in the Model Law (whether or not a particular meaning is given to it by the Model Law) has, in the Model Law, the same meaning as it has in this Part.

3. Model Law to have force of law.

(1) Subject to this Act, the Model Law, with the exception of Chapter VIII thereof, shall have the force of law in Singapore.

(2) In the Model Law --

"State" means Singapore and any country other than Singapore;

"this State" means Singapore.

4. Interpretation of Model Law by use of extrinsic material.

(1) For the purposes of interpreting the Model Law, reference may be made to the documents of --

(a) the United Nations Commission on International Trade Law; and

(b) its working group for the preparation of the Model Law, relating to the Model Law.

(2) Subsection (1) shall not affect the application of section 9A of the Interpretation Act for the purposes of interpreting this Act.

5. Application of Part II.

(1) This Part and the Model Law shall not apply to an arbitration which is not an international arbitration unless the parties agree in writing that this Part or the Model Law shall apply to that arbitration.

(2) Notwithstanding Article 1 (3) of the Model Law, an arbitration is international if --

(a) at least one of the parties to an arbitration agreement, at the time of the conclusion of the agreement, has its place of business in any State other than Singapore; or

Singapore International Arbitration Act

- (b) one of the following places is situated outside the State in which the parties have their places of business:
 - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
 - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
- (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
- (3) For the purposes of subsection (2) --
 - (a) if a party has more than one place of business, the place of business shall be that which has the closest relationship to the arbitration agreement;
 - (b) if a party does not have a place of business, a reference to his place of business shall be construed as a reference to his habitual residence.
- (4) Notwithstanding anything to the contrary in the Arbitration Act, that Act shall not apply to any arbitration to which this Part applies.

6. Enforcement of international arbitration agreement.

- (1) Without prejudice to Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any legal proceedings in any court in Singapore against 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 pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings.
- (2) The court to which an application has been made in accordance with subsection (1) shall make an order, upon such terms or conditions as it may think fit, staying the proceedings unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed.
- (3) Where a court makes an order under subsection (2), the court may, for the purpose of preserving the rights of parties, make such interim or supplementary orders as it may think fit in relation to any property which is the subject of the dispute to which the order under that subsection relates.
- (4) For the purposes of subsections (1), (2) and (3), a reference to a party includes a reference to any person claiming through or under such party.

7. Court's powers on stay of Admiralty proceedings.

- (1) Where a court stays Admiralty proceedings under section 6, the court may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest, order --
 - (a) that the property arrested be retained as security for the satisfaction of any award made on the arbitration; or
 - (b) that the stay be conditional on the provision of equivalent security for the satisfaction of any such award.
- (2) Subject to Rules of Court and to any necessary modification, the same law and practice shall apply in relation to property retained in pursuance of an order under this section as would apply if it were held for the purposes of proceedings in the court which made the order.

8. Authorities specified for purposes of Article 6 of Model Law.

- (1) The High Court in Singapore shall be taken to have been specified in Article 6 of the Model Law as courts competent to perform the functions referred to in that Article except for Article 11 (3) and (4) of the Model Law.
- (2) The Chairman for the time being of the Singapore International Arbitration Centre, or such other person as the Chief Justice may by notification published in the Gazette appoint, shall be

Singapore International Arbitration Act

taken to have been specified as the authority competent to perform the function under Article 11 (3) and (4) of the Model Law.

9. Number of arbitrators for purposes of Article 10

Notwithstanding Article 10 (2) of the Model Law, if the number of arbitrators is not determined by the parties, there shall be a single arbitrator.

10. Appeal under Article 16

Notwithstanding Article 16 (3) of the Model Law, an appeal from a decision of the High Court made under Article 16 (3) of the Model Law shall lie to the Court of Appeal only with the leave of the High Court; and there shall be no appeal against a refusal for grant of such leave.

11. Public policy and arbitrability.

- (1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy.
- (2) The fact that any written law confers jurisdiction in respect of any matter on any court of law but does not refer to the determination of that matter by arbitration shall not, of itself, indicate that a dispute about that matter is not capable of determination by arbitration.

12. Powers of arbitral tribunal.

- (1) Without prejudice to the powers set out in any other provision of this Act and in the Model Law, an arbitral tribunal shall have powers to make orders or give directions to any party for --
 - (a) security for costs;
 - (b) discovery of documents and interrogatories;
 - (c) giving of evidence by affidavit;
 - (d) the preservation, interim custody or sale of any property which is the subject-matter of the dispute;
 - (e) securing the amount in dispute;
 - (f) 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
 - (g) an interim injunction or any other interim measure.
- (2) An arbitral tribunal shall, unless the parties to an arbitration agreement have (whether in the arbitration agreement or in any other document in writing) agreed to the contrary, have power to administer oaths to or take affirmations of the parties and witnesses.
- (3) An arbitral tribunal shall, unless the parties to an arbitration agreement have (whether in the arbitration agreement or in any other document in writing) agreed to the contrary, have power to adopt if it thinks fit inquisitorial processes.
- (4) Without prejudice to the application of Article 28 of the Model Law, an arbitral tribunal, in deciding the dispute that is the subject of the arbitral proceedings --
 - (a) may award any remedy or relief that could have been ordered by the High Court if the dispute had been the subject of civil proceedings in that Court;
 - (b) may award interest (including interest on a compound basis) on the whole or any part of any sum which --
 - (i) is awarded to any party, for the whole or any part of the period up to the date of the award; or
 - (ii) is in issue in the arbitral proceedings but is paid before the date of the award, for the whole or any part of the period up to the date of payment.
- (5) All orders or directions made or given by an arbitral tribunal in the course of an arbitration shall, by leave of the High Court or a Judge thereof, be enforceable in the same manner as if

Singapore International Arbitration Act

they were orders made by a court and, where leave is so given, judgment may be entered in terms of the order or direction.

- (6) The High Court or a Judge thereof shall have, for the purpose of and in relation to an arbitration to which this Part applies, the same power of making orders in respect of any of the matters set out in subsection (1) as it has for the purpose of and in relation to an action or matter in the court.

13. Witnesses may be summoned by subpoena.

Any party to an arbitration agreement may take out a writ of subpoena ad testificandum or a writ of subpoena duces tecum, but 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.

14. Power to compel attendance of witness.

- (1) The High Court or a Judge thereof may order that a writ of subpoena ad testificandum or a writ of subpoena duces tecum shall issue to compel the attendance before an arbitral tribunal of a witness wherever he may be within Singapore.
- (2) The High Court or a Judge thereof may also issue an order under section 27 of the Prisons Act to bring up a prisoner for examination before an arbitral tribunal.

15. Settlement or resolution of dispute otherwise than in accordance with Model Law.

If the parties to an arbitration agreement have (whether in the arbitration agreement or in any other document in writing) agreed that any dispute that has arisen or may arise between them is to be settled or resolved otherwise than in accordance with this Part or the Model Law, this Part and the Model Law shall not apply in relation to the settlement or resolution of that dispute.

16. Appointment of conciliator.

- (1) In any case where an agreement provides for the appointment of a conciliator by a person who is not one of the parties and that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time of being requested by any party to the agreement to make the appointment, the Chairman for the time being of the Singapore International Arbitration Centre may, on the application of any party to the agreement, appoint a conciliator who shall have the like powers to act in the conciliation proceedings as if he had been appointed in accordance with the terms of the agreement.
- (2) 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 (1).
- (3) Where an arbitration agreement provides for the appointment of a conciliator and further provides that the person so appointed shall act as an arbitrator in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties --
 - (a) no objection shall be taken to the appointment of such person as an arbitrator, or to his conduct of the arbitral proceedings, solely on the ground that he had acted previously as a conciliator in connection with some or all of the matters referred to arbitration;
 - (b) if such person declines to act as an arbitrator, any other person appointed as an arbitrator shall not be required first to act as a conciliator unless a contrary intention appears in the arbitration agreement.
- (4) Unless a contrary intention appears therein, an agreement which provides for the appointment of a conciliator shall be deemed to contain a provision that in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties within 4 months, or such longer period as the parties may agree to, of the date of the appointment of the conciliator or, where he is appointed by name in the agreement, of the receipt by him of written notification of the existence of a dispute, the conciliation proceedings shall thereupon terminate.

Singapore International Arbitration Act

17. Power of arbitrator to act as conciliator.

- (1) If all parties to any arbitral proceedings consent in writing and for so long as no party has withdrawn his consent in writing, an arbitrator or umpire may act as a conciliator.
- (2) An arbitrator or umpire acting as conciliator --
 - (a) may communicate with the parties to the arbitral proceedings collectively or separately; and
 - (b) shall treat information obtained by him from a party to the arbitral proceedings as confidential, unless that party otherwise agrees or unless subsection (3) applies.
- (3) Where confidential information is obtained by an arbitrator or umpire from a party to the arbitral proceedings during conciliation proceedings and those proceedings terminate without the parties reaching agreement in settlement of their dispute, the arbitrator or umpire shall before resuming the arbitral proceedings disclose to all other parties to the arbitral proceedings as much of that information as he considers material to the arbitral proceedings.
- (4) No objection shall be taken to the conduct of arbitral proceedings by a person solely on the ground that person had acted previously as a conciliator in accordance with this section.

18. Award by consent.

If the parties to an arbitration agreement reach agreement in settlement of their dispute and the arbitral tribunal has recorded the terms of settlement in the form of an arbitral award on agreed terms in accordance with Article 30 of the Model Law, the award shall be treated as an award on an arbitration agreement and may, by leave of the High Court or a Judge thereof, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

19. Enforcement of awards.

An award on an arbitration agreement may, by leave of the High Court or a Judge thereof, be enforced in the same manner as a judgment or order to the same effect and, where leave is so given, judgment may be entered in terms of the award.

20. Interest on awards.

Where an award directs a sum to be paid, that sum shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

21. Taxation of costs.

- (1) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable by the Registrar of the Singapore International Arbitration Centre (referred to in this section as the Registrar).
- (2) Unless the fees of the arbitral tribunal have been fixed by a written agreement or where such agreement has provided for determination of the fees by a person or institution agreed to by the parties, any party to the arbitration may require that such fees be taxed by the Registrar.
- (3) A certificate signed by the Registrar on the amount of costs or fees taxed shall form part of the award of the arbitral tribunal.
- (4) The Chief Justice may if he thinks fit, by notification published in the Gazette, appoint any other person to exercise the powers of the Registrar under this section.

22. Proceedings to be heard otherwise than in open court.

Proceedings under this Act in any court shall, on the application of any party to the proceedings, be heard otherwise than in open court.

23. Restrictions on reporting of proceedings heard otherwise than in open court.

- (1) This section shall apply to proceedings under this Act in any court heard otherwise than in open court.

Singapore International Arbitration Act

- (2) A court hearing any proceedings to which this section applies shall, on the application of any party to the proceedings, give directions as to whether any and, if so, what information relating to the proceedings may be published.
- (3) A court shall not give a direction under subsection (2) permitting information to be published unless --
 - (a) all parties to the proceedings agree that such information may be published; or
 - (b) the court is satisfied that the information, if published in accordance with such directions as it may give, would not reveal any matter, including the identity of any party to the proceedings, that any party to the proceedings reasonably wishes to remain confidential.
- (4) Notwithstanding subsection (3), where a court gives grounds of decision for a judgment in respect of proceedings to which this section applies and considers that judgment to be of major legal interest, the court shall direct that reports of the judgment may be published in law reports and professional publications but, if any party to the proceedings reasonably wishes to conceal any matter, including the fact that he was such a party, the court shall --
 - (a) give directions as to the action that shall be taken to conceal that matter in those reports; and
 - (b) if it considers that a report published in accordance with directions given under paragraph (a) would be likely to reveal that matter, direct that no report shall be published until after the end of such period, not exceeding 10 years, as it considers appropriate.

24. Court may set aside award.

Notwithstanding Article 34 (1) of the Model Law, the High Court may, in addition to the grounds set out in Article 34 (2) of the Model Law, set aside the award of the arbitral tribunal if --

- (a) the making of the award was induced or affected by fraud or corruption; or
- (b) a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced.

25. Liability of arbitrator.

An arbitrator shall not be liable for --

- (a) negligence in respect of anything done or omitted to be done in the capacity of arbitrator; and
- (b) any mistake in law, fact or procedure made in the course of arbitral proceedings or in the making of an arbitral award.

26. Transitional provisions.

- (1) This Part shall not apply in relation to an international arbitration between parties to an arbitration agreement that was commenced before 27th January 1995 unless the parties have (whether in the agreement or in any other document in writing) otherwise agreed.
- (2) Subject to subsection (1), where the arbitral proceedings were commenced before 27 January 1995, the law governing the arbitration agreement and the arbitration shall be the law which would have applied if this Act had not been enacted.
- (3) In any written law, agreement in writing or other document, a reference to arbitration under the Arbitration Act shall, so far as relevant and unless the contrary intention appears, be construed to include a reference to arbitration under this Act.
- (4) For the purposes of this section arbitral 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 to be taken as the date of commencement of the arbitral proceedings, then on that date.