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**Arbitration Alert**

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**Ministry of Law clarifies provision in International Arbitration (Amendment) Bill 2009 concerning curial support of arbitration proceedings**

On 14 September 2009, the International Arbitration (Amendment) Bill 2009 (the "**Bill**") was introduced in Parliament.

A draft version of the Bill had earlier been released for public consultation by the Ministry of Law (the "**Ministry**") between 27 July to 17 August 2009. The Bill and its accompanying Explanatory Statement incorporate important changes arising from feedback received from the public consultation.

***Fine-tuning of section 12A***

The feedback which the Ministry received was generally supportive and related primarily to fine-tuning the proposed provision which deals with curial support of arbitration proceedings, that is, section 12A of the International Arbitration Act (the "**IAA**").

Section 12A applies to arbitrations seated outside Singapore and provides that the Singapore court may order interim measures in support of such arbitrations in certain circumstances.

In response to feedback received in relation to this provision, the Ministry made, amongst others, the following points:

- Parties should not be allowed to contract out of section 12A as it is intended to be a default provision providing for curial assistance to arbitration proceedings.

- The Ministry agreed that neither the High Court nor a Judge thereof should have the power under section 12A(2) to make orders for discovery, interrogatories and security for costs, as these are procedural matters for the arbitral tribunal to decide.

- As regards section 12A(3), which provides that the High Court or a Judge thereof may refuse to make an order under section 12A(2) if 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*", the Ministry disagreed that it was necessary to provide guidelines as to when it would be "inappropriate" to issue such an order. In this connection, the Ministry had received feedback that the following guidelines should be expressly inserted into section 12A(3):

    (i) Whether the order would offend against the principle of comity;

    (ii) Whether the High Court or Judge thereof has personal jurisdiction over the respondent to the application for the order; and

    (iii) Whether the plaintiff has a justifiable cause of action against the respondent under the laws of Singapore.

With regard to (i) above, the Ministry opined that the principle of comity was one which the courts should adhere to without the need for it to be expressly articulated in the legislation. In relation to (ii) above, the discretion allowed to the court under established case law would operate as a sufficient safeguard. Further, introducing an additional element of whether the issue is justiciable before the Singapore court is likely to lead to further litigation as it is not entirely clear what "justiciable" means. Lastly, the Ministry opined that section 12A(3) was meant to be wider than the UK House of Lords decision in *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334 where it was held that the English court has the power to grant Mareva injunctions in aid of a foreign court or arbitral proceedings if the substantive claim was justifiable in an English court.

- The Ministry clarified that the ambit of section 12A(4), which provides that the High Court or a Judge thereof may make an order under section 12A(2) as "*it thinks necessary for the purpose of preserving evidence or assets*", includes choses in action and rights under a contract.

- In relation to the automatic lapsing of the court order upon the arbitral tribunal making an order which expressly relates to the whole or part of the court's order under section 12A(7), the Ministry rejected the suggestion that the court should decide whether its orders lapse. The Ministry stated that the policy intent was to give primacy to the arbitral tribunal. As regards orders of the court which the arbitral tribunal itself had no power to make (such as orders binding on third parties), the Ministry stated that parties in such situations would need to go back to the courts.

In addition to dealing with the proposed section 12A of the IAA, the Ministry also clarified that the extended definition of an "arbitration agreement" (which under the proposed amendment to section 2 of the IAA includes agreements made by electronic communications) would apply to both the IAA and the Arbitration Act (the latter generally applies to arbitrations which are not considered "international" under the IAA).

***Reference materials***

Further resources concerning this development can be found as follows:

- **International Arbitration (Amendment) Bill 2009**

- **Ministry of Law's Response to Public Feedback on the Draft International Arbitration (Amendment) Bill**

- **Ministry of Law Consultation Paper on the Draft International Arbitration (Amendment) Bill**

The International Arbitration (Amendment) Bill 2009 is available on the Singapore Parliament website **www.parliament.gov.sg**, while the other resources are available on the Ministry of Law's website **www.minlaw.gov.sg**

***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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