

Arbitration Alert

Dear Clients & Friends

Ministry of Law proposes changes to enhance the legislative infrastructure for Singapore's international arbitration regime

The Ministry of Law is proposing amendments to the International Arbitration Act following a review of the 2006 amendments to the 1985 UNCITRAL Model Law on International Commercial Arbitration and in consultation with arbitration industry experts. The Ministry of Law released a consultation paper on 27 July 2009 and is seeking feedback from the public on the proposed changes.

Key amendments

In sum, the proposed amendments cover the following three key areas:

1. Granting of interim relief

Under the proposed amendments, the Singapore courts will be empowered to grant interim orders in aid of arbitrations held outside of Singapore, such as the discovery of documents during the course of the proceedings as well as orders to freeze assets of parties. This move is in line with legislation in other countries such as the United Kingdom and New Zealand, and represents a shift in the position previously articulated in *Swift-Fortune Ltd v Magnifica Marine SA* [2007] 1 SLR 629 where the Court of Appeal decided that the Singapore courts did not have statutory power to grant interim orders or relief to assist arbitrations abroad.

Nonetheless, the proposed amendments provide that the Singapore courts may decline to make an interim order 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.

Further, regardless of whether the arbitration in question is in Singapore or overseas, the Singapore court may only grant an order to the extent that the arbitral tribunal hearing the matter had no power or was unable for the time being to act effectively. The court's order will, however, cease to have effect in whole or in part if the arbitral tribunal has power to act in relation to the subject matter of the order and expressly makes an order which relates to a part of or the entire order.

2. Designation of authenticating bodies

The proposed amendments seek to empower the Minister for Law to designate entities to authenticate, on a non-mandatory basis, arbitration awards rendered in Singapore. This measure aims to facilitate the enforcement of such awards in countries which are party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) as the Convention requires the party seeking enforcement before the foreign courts to tender a duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement or a duly certified copy thereof. This move comes about as the Ministry of Law has received feedback that parties faced difficulties enforcing arbitration awards in foreign courts because of authentication issues.

3. Definition of arbitration agreement

The proposed amendments also seek to modernise the current definition of an arbitration agreement to make it clear that Singapore recognises that an arbitration agreement can be contained in electronic communications such as electronic e-mail or electronic data exchange.

Reference links

Please click on the following links to access the required information:

- [Press release issued by the Ministry of Law on 27 July 2009](#)
- [Background brief on international arbitration in Singapore](#)
- [Public consultation paper](#)
- [Draft International Arbitration \(Amendment\) Bill](#)

These resources are available from the Ministry of Law website www.minlaw.gov.sg

Feedback sought

The consultation exercise is open for feedback until **17 August 2009**.

If you would like our assistance in providing feedback to the Ministry of Law, please do not hesitate to get in touch by **11 August 2009** with your usual contact at Allen & Gledhill LLP or any of the following:

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