LAW BITES - NOVEMBER 2020

Amendments to the Singapore International Arbitration Act

The Singapore Parliament passed a bill to amend the International Arbitration Act (Cap. 143A) (the "IAA") aimed at enhancing Singapore arbitration law to make it more commercially attractive (the "Bill").

In 2019, the Ministry of Law conducted a public consultation on four proposals to amend the IAA. The proposals include:

1. A default mode of appointment of arbitrators in multi- party situations

2. Powers of the arbitral tribunal and the High Court to enforce obligation of confidentiality in an arbitration

3. The opt-in mechanism for appeals to the Singapore High Court on questions of law arising out of an arbitral award

4. Allowing parties to, by agreement, request the tribunal to decide on jurisdiction at the preliminary stage

Of the four mentioned above, only the first two proposals were adopted in the Bill. The Bill passed the second reading in the Parliament on 5 October 2020 and will come into effect on a day to be determined by the Minister in charge of the IAA by notification in the Gazette.

Key Features of the Amendment

Default Mode of Appointment of Arbitrators in Multi-Party Situations

The Bill provides for a default mode for appointment of arbitrations in multi-party situations. This provision will apply where the parties' agreement does not specify the procedure that would apply for situations where there are more than two parties to a dispute, allowing the appointment of a three-member arbitration tribunal.

The default procedure as introduced by section 9B of the IAA is similar to the section 9A (which has been amended to refer to only two-party arbitration). All claimants will jointly appoint an arbitrator within 30 days after the date of receipt of the request for the dispute to be referred to arbitration by the respondent(s), and all respondents will be required to do the same. Both arbitrators will then appoint a third and presiding arbitrator within 60 days after the date of receipt of the request for the dispute to be referred to arbitration by the respondent(s). If there is no agreement between the party-appointed arbitrators within the specified timeframe, the appointing authority must, upon the request of any party and having regard to all relevant circumstances, appoint the third and presiding arbitrator. Should the claimants or respondents be unable to agree on an arbitrator of choice within the timeframe, the appointing authority must, upon the request of any party, appoint all three arbitrators.

Recognising that an arbitral tribunal and the High Court have powers to enforce obligations of confidentiality in an arbitration

In recognition of the parties' expectations that arbitration proceedings are confidential, the amendments to sections 12(1) and 12A(2) recognise that the arbitral tribunal and the Singapore High Court, respectively, can enforce obligations of confidentially, regardless of whether these obligations exist by virtue of express agreement, law or the rules of arbitration agreed by the parties. This amendment reinforces the common law implied duty of confidentiality in arbitration proceedings, even when the parties have not expressly provided for the private and/or confidential nature of the arbitration. In Singapore, it has been held that the obligation of confidentiality is applicable to the disclosure of an award, pleadings, written submissions, proofs of witnesses as well as transcripts and notes of the evidence given in the arbitration.

The present opt-out position reflects that of most institutional rules and arbitration laws, including those of the SIAC, HKIAC, the Hong Kong Arbitration Ordinance and the Australian International Arbitration Act. It also echoes prevailing commercial sentiment, as evidenced by the results of a recent survey, where it was found that "a decisive majority of 74% of the respondent group believed that confidentiality should be an opt-out feature while only 26% thought that confidentiality should not be presumed by default". Notably, the Australian International Arbitration Act moved from an opt-in basis to an opt-out one to ensure that international arbitrations in Australia are in line with community expectations and international best practice.

Nonetheless, it should be noted by parties seeking to arbitrate disputes that there is no autonomous obligation of confidentiality. Rather, the IAA amendment provides the tribunal and the High Court with the power to "make orders or give directions" to enforce violations of confidentiality obligations.

For further information, please contact:

THONG YING XUAN
Associate
E: yingxuan@jtjb.com
T: (65) 6220 9388

MORE THAN JUST A LAW FIRM

Our relationship with our clients does not end with the close of a deal or the conclusion of a case. We look to enhance that relationship and provide value beyond just legal services. Utilising our store of knowledge and experience as well as our extensive contact base, JTJB holds exclusive training and networking events for our clients. The firm's Partners also speak at conferences and seminars organized by other bodies and institutions.

Training
We conduct practical seminars on topics relevant to our clients' business. These seminars are conducted at our and our clients' offices.

Networking
We hold boutique events to enable our clients to network and make new contacts in an enjoyable environment.

This update is for general information only and is not intended to constitute legal advice. JTJB has made all reasonable efforts to ensure the information provided is accurate at the time of publication.