

**INTERNATIONAL ARBITRATION (AMENDMENT) ACT
2012**

No. 12 of 2012.

An Act to amend the International Arbitration Act (Chapter 143A of the 2002 Revised Edition) and to make related amendments to the Arbitration Act (Chapter 10 of the 2002 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 (Amendment) Act 2012 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 inserting, immediately after the words “permanent arbitral institution” in the definition of “arbitral tribunal” in subsection (1), the words “, and includes an emergency arbitrator appointed pursuant to the rules of arbitration agreed to or adopted by the parties including the rules of arbitration of an institution or organisation”;

(b) by deleting the definition of “arbitration agreement” in subsection (1) and substituting the following definition:

“ “arbitration agreement” means an arbitration agreement referred to in section 2A;”;

(c) by deleting the definitions of “data messages” and “electronic communications” in subsection (1); and

(d) by deleting subsections (3) and (4).

New section 2A

3. The principal Act is amended by inserting, immediately after section 2, the following section:

“Definition and form of arbitration agreement

2A.—(1) In this Act, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by other means.

(5) The requirement that an arbitration agreement shall be in writing is satisfied by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

(6) 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 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.

(7) A reference in a contract to any document containing an arbitration clause shall constitute an arbitration agreement in writing if the reference is such as to make that clause part of the contract.

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

(9) Article 7 of the Model Law shall not apply to this section.

(10) In this section —

“data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

“electronic communication” means any communication that the parties make by means of data messages.”.

Repeal and re-enactment of section 10

4. Section 10 of the principal Act is repealed and the following section substituted therefor:

“Appeal on ruling of jurisdiction

10.—(1) This section shall have effect notwithstanding Article 16(3) of the Model Law.

(2) An arbitral tribunal may rule on a plea that it has no jurisdiction at any stage of the arbitral proceedings.

(3) If the arbitral tribunal rules —

(a) on a plea as a preliminary question that it has jurisdiction;
or

(b) on a plea at any stage of the arbitral proceedings that it has no jurisdiction,

any party may, within 30 days after having received notice of that ruling, apply to the High Court to decide the matter.

(4) An appeal from the decision of the High Court made under Article 16(3) of the Model Law or this section shall lie to the Court of Appeal only with the leave of the High Court.

(5) There shall be no appeal against a refusal for grant of leave of the High Court.

(6) Where the High Court, or the Court of Appeal on appeal, decides that the arbitral tribunal has jurisdiction —

(a) the arbitral tribunal shall continue the arbitral proceedings and make an award; and

(b) where any arbitrator is unable or unwilling to continue the arbitral proceedings, the mandate of that arbitrator shall terminate and a substitute arbitrator shall be appointed in accordance with Article 15 of the Model Law.

(7) In making a ruling or decision under this section that the arbitral tribunal has no jurisdiction, the arbitral tribunal, the High Court or the Court of Appeal (as the case may be) may make an award or order of costs of the proceedings, including the arbitral proceedings (as the case may be), against any party.

(8) Where an award of costs is made by the arbitral tribunal under subsection (7), section 21 shall apply with the necessary modifications.

(9) Where an application is made pursuant to Article 16(3) of the Model Law or this section —

- (a) such application shall not operate as a stay of the arbitral proceedings or of execution of any award or order made in the arbitral proceedings unless the High Court orders otherwise; and
- (b) no intermediate act or proceeding shall be invalidated except so far as the High Court may direct.

(10) Where there is an appeal from the decision of the High Court pursuant to subsection (4) —

- (a) such appeal shall not operate as a stay of the arbitral proceedings or of execution of any award or order made in the arbitral proceedings unless the High Court or the Court of Appeal orders otherwise; and
- (b) no intermediate act or proceeding shall be invalidated except so far as the Court of Appeal may direct.”.

Amendment of section 12

5. Section 12(5) of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph:

- “(b) may award simple or compound interest on the whole or any part of any sum in accordance with section 20(1).”.

Amendment of section 13

6. Section 13 of the principal Act is amended by deleting the word “court” in subsections (2) and (3) and substituting in each case the words “High Court or a Judge thereof”.

Repeal of section 14

7. Section 14 of the principal Act is repealed.

Amendment of section 19A

8. Section 19A(1) of the principal Act is amended by deleting the words “arbitration proceedings” and substituting the words “arbitral proceedings”.

Repeal and re-enactment of section 20

9. Section 20 of the principal Act is repealed and the following section substituted therefor:

“Interest on awards

20.—(1) Subject to subsection (3), unless otherwise agreed by the parties, an arbitral tribunal may, in the arbitral proceedings before it, award simple or compound interest from such date, at such rate and with such rest as the arbitral tribunal considers appropriate, for any period ending not later than the date of payment on the whole or any part of —

- (a) any sum which is awarded by the arbitral tribunal in the arbitral proceedings;
- (b) any sum which is in issue in the arbitral proceedings but is paid before the date of the award; or
- (c) costs awarded or ordered by the arbitral tribunal in the arbitral proceedings.

(2) Nothing in subsection (1) shall affect any other power of an arbitral tribunal to award interest.

(3) 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.”.

Amendment of section 27

10. Section 27(1) of the principal Act is amended by deleting the definition of “arbitral award” and substituting the following definition:

“ “arbitral award” has the same meaning as in the Convention, but also includes an order or a direction made or given by an arbitral tribunal in the course of an arbitration in respect of any of the matters set out in section 12(1)(c) to (i);”.

Related amendments to Arbitration Act**11. The Arbitration Act (Cap. 10) is amended —**

- (a) by inserting, immediately after the words “arbitral institution” in the definition of “arbitral tribunal” in section 2(1), the words “, and includes an emergency arbitrator appointed pursuant to the rules of arbitration agreed to or adopted by the parties including the rules of arbitration of an institution or organisation”;
- (b) by deleting the definition of “arbitration agreement” in section 2(1) and substituting the following definition:
 - “ “arbitration agreement” means an arbitration agreement referred to in section 4;”;
- (c) by deleting the definitions of “data messages” and “electronic communications” in section 2(1);
- (d) by repealing section 4 and substituting the following section:

“Definition and form of arbitration agreement

4.—(1) In this Act, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by other means.

(5) The requirement that an arbitration agreement shall be in writing is satisfied by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

(6) 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 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.

(7) A reference in a contract to any document containing an arbitration clause shall constitute an arbitration agreement in writing if the reference is such as to make that clause part of the contract.

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

(9) In this section —

“data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

“electronic communication” means any communication that the parties make by means of data messages.”;

(e) by deleting subsection (1) of section 21 and substituting the following subsection:

“(1) The arbitral tribunal may rule on its own jurisdiction, including a plea that it has no jurisdiction and any objections to the existence or validity of the arbitration agreement, at any stage of the arbitral proceedings.”;

(f) by deleting subsection (9) of section 21 and substituting the following subsection:

“(9) If the arbitral tribunal rules —

- (a) on a plea as a preliminary question that it has jurisdiction; or
- (b) on a plea at any stage of the arbitral proceedings that it has no jurisdiction,

any party may, within 30 days after having received notice of that ruling, apply to the Court to decide the matter.”;

- (g) by deleting subsections (10) and (11) of section 21;
- (h) by inserting, immediately after section 21, the following section:

“Appeal on ruling of jurisdiction

21A.—(1) An appeal from the decision of the High Court made under section 21 shall lie to the Court of Appeal only with the leave of the High Court.

(2) There shall be no appeal against a refusal for grant of leave of the High Court.

(3) Where the High Court, or the Court of Appeal on appeal, decides that the arbitral tribunal has jurisdiction —

- (a) the arbitral tribunal shall continue the arbitral proceedings and make an award; and
- (b) where any arbitrator is unable or unwilling to continue the arbitral proceedings, the mandate of that arbitrator shall terminate and a substitute arbitrator shall be appointed in accordance with section 18.

(4) In making a ruling or decision under this section or section 21 that the arbitral tribunal has no jurisdiction, the arbitral tribunal, the High Court or the Court of Appeal (as the case may be) may make an award or order of costs of the proceedings, including the arbitral proceedings (as the case may be), against any party.

(5) Where an award of costs is made by the arbitral tribunal under subsection (4), section 39(1) shall apply with the necessary modifications.

(6) Where an application is made pursuant to section 21 —

(a) such application shall not operate as a stay of the arbitral proceedings or of execution of any award or order made in the arbitral proceedings unless the High Court orders otherwise; and

(b) no intermediate act or proceeding shall be invalidated except so far as the High Court may direct.

(7) Where there is an appeal from the decision of the High Court pursuant to subsection (1) —

(a) such appeal shall not operate as a stay of the arbitral proceedings or of execution of any award or order made in the arbitral proceedings unless the High Court or the Court of Appeal orders otherwise; and

(b) no intermediate act or proceeding shall be invalidated except so far as the Court of Appeal may direct.”;

(i) by repealing section 35 and substituting the following section:

“Interest

35.—(1) Subject to subsection (3), unless otherwise agreed by the parties, the arbitral tribunal may, in the arbitral proceedings before it, award simple or compound interest from such date, at such rate and with such rest as the arbitral tribunal considers appropriate, for any period ending not later than the date of payment on the whole or any part of —

(a) any sum which is awarded by the arbitral tribunal in the arbitral proceedings;

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- (b) any sum which is in issue in the arbitral proceedings but is paid before the date of the award; or
- (c) costs awarded or ordered by the arbitral tribunal in the arbitral proceedings.
- (2) Nothing in subsection (1) shall affect any other power of the arbitral tribunal to award interest.
- (3) 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.”;
- (j) by deleting the Part heading of Part IV and substituting the following Part heading:
- “COMMENCEMENT OF ARBITRAL PROCEEDINGS”;
- (k) by deleting the words “arbitration proceedings” wherever they appear in the following provisions and substituting in each case the words “arbitral proceedings”:
- Sections 9 (including section heading), 10(1)(a) and (d) and section heading, 14(2), 15(6), 16(3), 19(1), 20(b), 21(6), 24(3), 26(1)(a) and (2), 28(1), 31 (section heading), 37(1), 41(2), 43(4), 45(1), 48(1)(a)(iii) and (3), 49(1), 53(1), 60(1) and 63(2)(b), (3) and (4); and
- (l) by deleting “21(10)” in section 52(1) and substituting “21A(1)”.

Transitional provision

12.—(1) This Act shall apply to arbitral proceedings commenced on or after the date of commencement of this Act but the parties may in writing agree that this Act shall apply to arbitral proceedings commenced before that date.

(2) Notwithstanding subsection (1), where the arbitral proceedings were commenced before the date of commencement of this Act, 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) 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.
